



**TCF Submission to
Commerce Commission
Improving Retail Service Quality for Consumers:
Telecommunications Dispute Resolution Scheme Review
18 December 2020**

A. Introduction

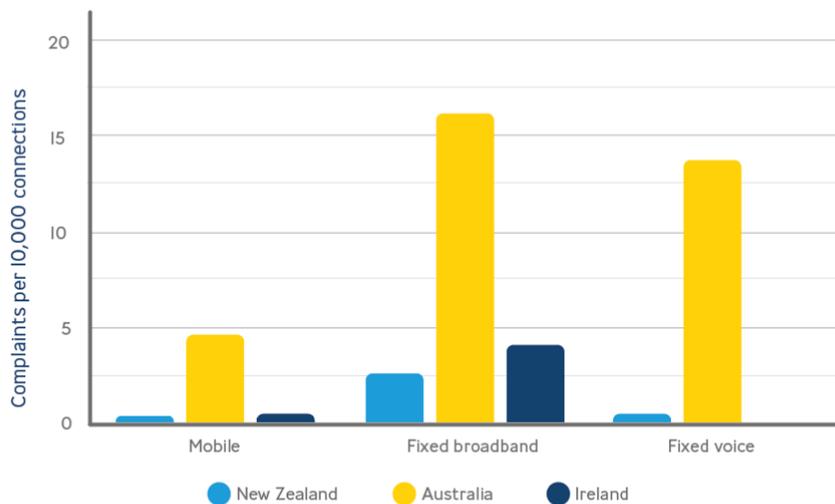
1. The New Zealand Telecommunications Forum (TCF) welcomes the opportunity to provide a submission to the Commerce Commission (the Commission) in response to its letter dated 29 October 2020 relating to its review of the Telecommunications Dispute Resolution Scheme (the Scheme). The Telecommunications Act 2001 (the Act) provides that the Commission is required to review the Industry Scheme every three years, with the first review required to be completed by November 2021. The review announced by the Commission is the first such Commission review of the Scheme.
2. The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF members provide services to over 95 percent of New Zealand telecommunications consumers.

B. Telecommunications Dispute Resolution Scheme

3. This submission will provide an overview of the Scheme's current governance arrangements, the membership of the Scheme and the Scheme Rules.

4. The dispute resolution provider is FairWay Resolution Services Ltd (FairWay) which provides the scheme’s services under contract to the TCF. The services of the Scheme are provided free to consumers and the fixed costs are fully funded by Retail Service Provider (RSP) members.
5. The Scheme is known publicly as the Telecommunications Dispute Resolution service (TDR). There are a number of different terms that are often used interchangeably when referring to the Scheme. These are set out in a glossary at Appendix 1.
6. The Scheme handles approximately 2,800 complaints and enquiries per year. Given the industry has over 8.3 million connections, this indicates that the number of complaints and enquiries per connection is considerably lower than similar telecommunications dispute resolutions schemes in Australia and Ireland, as shown in figure 1 below.
7. It is also important to note that approximately 98% of cases received by the Scheme do not require formal intervention by resolution practitioners, as scheme members resolve them directly with consumers. The Scheme has a Net Promoter Score of +73.

Figure 1: Telecommunications complaints in New Zealand compared to Australia and Ireland, October to December 2019¹



Source: Telecommunications Dispute Resolution, Telecommunications Industry Ombudsman, ACMA, ComReg

¹ 2020 TCF Industry Report [here](#), page 23

Governance

8. There are three entities involved with the governance of the Scheme:

8.1. Scheme Provider – TCF

8.2. The TDRS Council, and

8.3. Dispute Resolution Service Provider - FairWay.

TCF (Scheme provider)

9. The TCF contracts with FairWay to provide the industry dispute resolution service, therefore we consider that the TCF is the ‘Scheme Provider’ as referenced in the Act.

10. The TCF Board has oversight of the Scheme and approves the TDR annual budget, as recommended by the TDRS Council. The TCF is also responsible for approving changes to the Scheme Rules which are described in the Terms of Reference (ToR) and the TCF Customer Complaints Code (which combined are referred to as the Scheme Rules). The TCF funds a Forum Administrator to administer the scheme by arranging TDR Council meetings, keeping minutes and other relevant documents as required.

TDRS Council

11. The ToR establishes the TDRS Council. Membership of the Council comprises:

- Four consumer representatives: One of these representatives is appointed by the Minister of Consumer Affairs. The remaining three are appointed by a panel comprising the CEO of Consumer NZ and the CEO of TUANZ.
- Four Scheme member representatives: Two of these are Tier 1 representatives who rotate annually, and the remaining two positions are scheme members selected by vote by the membership.

12. The current members of the TDRS Council can be found [here](#). The Chairperson must be one of the consumer representatives.

13. The TDRS Council is an advisory body to the dispute resolution service provider. The TDRS Council has oversight of the Scheme and a range of governance functions such as overseeing the operation of the Scheme, approving the TDR business plan for the Scheme, and recommending the annual budget to the TCF Board. The Council also recommends changes to the Scheme Rules and monitors the response to promotional activities related to the Scheme.

Dispute Resolution Provider (Fairway)

14. FairWay is contracted by the TCF to provide an independent dispute resolution service. As such, the TCF considers that FairWay is the ‘dispute resolution provider’ referred to in the Act. FairWay is also referred to as the Scheme Agent in the ToR.

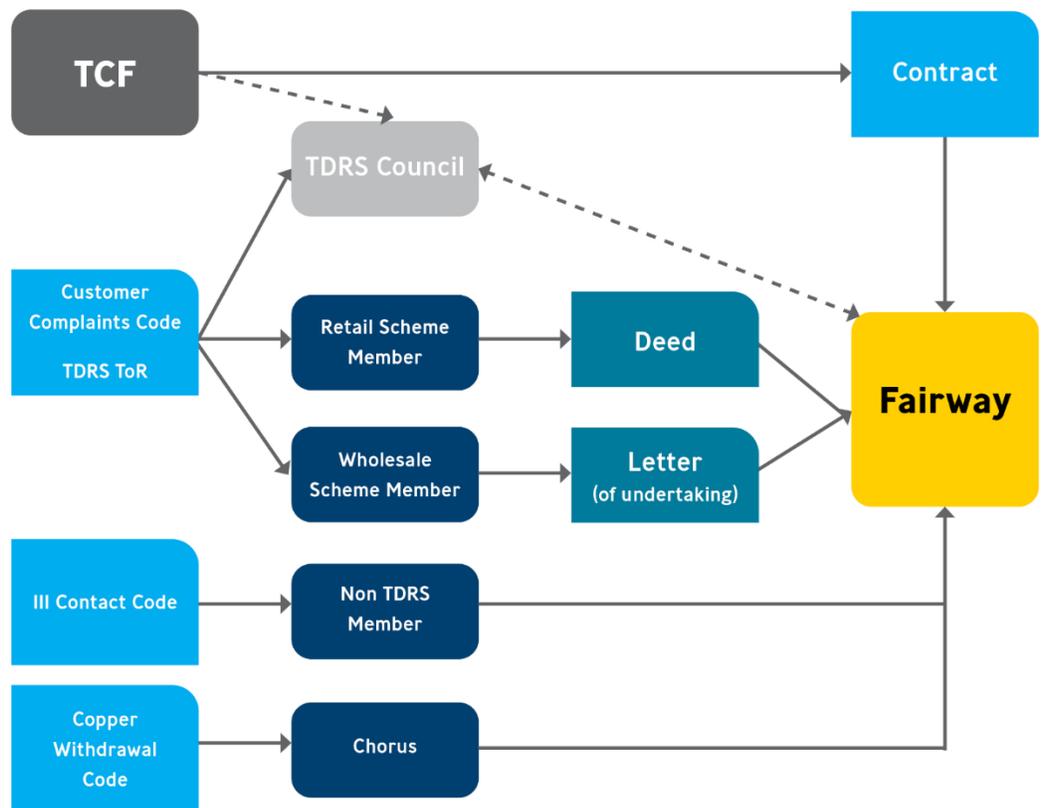
15. FairWay reports to the TDRS Council in terms of its performance, including a high-level overview of the financial performance of the scheme.
16. All of FairWay's dispute resolution decisions are completely independent of the TCF and the scheme members.
17. FairWay is a limited liability company and is governed by its own Board.
18. FairWay invoices TDR Retail Scheme Members (RSMs) for its service, according to the cost allocation methodology, agreed by the TCF. It also charges a variable fee to all scheme members for disputes that it resolves or adjudicates.
19. FairWay manages the complaints and enquiries it receives from consumers, investigates disputes which are deadlocked between consumers and their service provider, facilitates resolution of those complaints and adjudicates on complaints where necessary. It also writes articles, develops position statements on systemic issues, and provides complaint management advice and guidance to scheme members.

Scheme Structure

20. There are a number of arrangements and documents which constitute the TDRS, as presented in figure 2:
 - The contract between the TCF and FairWay for the provision of the dispute resolution services.
 - The TCF Customer Complaints Code (CCC). This is a mandatory code for TCF members and sets out the principles and standards of customer service which are enforced by TDR. The CCC also establishes the processes for customers to make a complaint to TDR and how these complaints will be managed by TDR.
 - The TDRS Terms of Reference (ToR) sets out the rules of the Scheme.
 - The TDRS Council which is established under the ToR.
 - Scheme Deeds are signed by RSMs agreeing to comply with the Scheme Rules and obligations.
 - Wholesale Scheme Members have signed letters of undertaking confirming they will comply with the wholesale obligations of the Scheme.
21. In November 2020, the Commission published the 111 Contact Code (the 111 Code) which requires all RSPs to register vulnerable consumers, and ensure they have an appropriate means to contact 111 emergency services in the event of a power failure to their premises. The Act (confirmed in the 111 Code) provides that all consumers, and RSPs may take a dispute to the Scheme (as the industry scheme) for any failure to comply with the 111 Code. The Scheme Rules and processes accommodate this extension to its scope without the need to make any changes to the scheme, and this is shown in Figure 1.

22. The Commission’s Copper Withdrawal Code (the CWC), published on 10 December 2020, sets out the process which Chorus must follow in order to withdraw copper services from specified fibre areas. The CWC provides that any dispute between an end-user and a telecommunications service provider, relating to the requirements of the CWC, may likewise be taken to the Scheme for resolution. The CWC duplicates some of the provisions of the Act relating to dispute resolution (ss. 240 – 245). As with the 111 Code, the TCF believes that the Scheme Rules and processes accommodate this extension to its reach without the need to make any changes to the scheme, and this is shown in Figure 2.

Figure 2: Structure of the TDRS



Scheme Membership

23. All TCF members are required to be scheme members. The scheme draws a distinction between retail scheme members and wholesale scheme members. In addition, non-scheme retailers are now subject to the scheme for the purposes of the 111 Code, as is Chorus and any other relevant parties for the purposes of CWC related disputes. The distinction of the membership is described below.

Retail Scheme Members

24. Membership of the Scheme is mandatory for TCF RSPs, however other RSPs can, and do, join voluntarily. These parties are defined in the CCC as 'Scheme Members' but are also referred to as Retail Scheme Members (RSMs). RSMs are defined in the CCC as those members with a billing relationship with the customer.
25. The Scheme is funded by an allocation of an annual fixed scheme membership fee. In addition, when a case is assigned to a resolution practitioner a per complaint fee is charged by the Scheme. This is payable by the RSM, but in some instances can be payable by the Wholesale Scheme Members (WSMs), as discussed below.
26. RSMs sign a Deed Poll undertaking to comply with the Scheme Rules.
27. While TCF members provide services to over 95% of telecommunications customers, there are some telecommunications retailers who are not captured by the Scheme. For those customers, if they have a dispute with their telecommunications provider then they will need to use other avenues outside of the Scheme, such as the Disputes Tribunal, to resolve the matter.

Retail Scheme Members for 111 Contact Code only

28. There is a reasonable number of smaller RSPs in the industry who do not belong to any dispute resolution scheme but will find themselves subject to the Scheme for the purposes of the 111 Code. Any disputes involving non-scheme members are subject to the normal rules of the Scheme (with minor variations set out in the 111 Code). Non-scheme members will be invoiced by FairWay for the cost of a dispute which FairWay is required to resolve under the 111 Code.

Wholesale Scheme Members

29. All TCF members are obliged to be members of the Scheme, however different rules apply to the WSMs where a complaint relates to a wholesale service. WSMs have specific obligations under the Scheme and their agreement to comply with these obligations is set out in their letters of undertaking. This aspect of the Scheme Rules reflects the fact that some retailers also provide wholesale services and therefore it keeps these activities separate. Note, the Scheme was established prior to the industry moving to structurally separated wholesale and retail providers.
30. The Scheme Rules require that a customer must first complain to the person they have the billing relationship with (their RSP) before the matter can be considered by FairWay. If the complaint relates to a wholesale activity, e.g. a fibre installation issue, the complaint must still be taken to the RSP first, who has discretion to involve the relevant wholesale provider if appropriate. However, if the complaint is not able to be resolved by the RSM

and becomes deadlocked, the Scheme Rules permit that FairWay may deal directly with any WSM involved.

31. If FairWay makes a finding against the WSM, it can award the costs of dealing with the dispute directly to the WSM, which has occurred. In those circumstances, WSMs contribute to variable costs but not the fixed costs of the Scheme. When the Scheme was first set up it was designed this way to reflect the fact that WSMs do not hold the contractual relationship with the end-user for the services concerned and are only involved in disputes the Scheme can consider at the discretion of the RSM or FairWay.
32. The CWC provides that end-users may take a dispute to the scheme, whether or not the party is a scheme member, and those parties must comply with the rules of the scheme. This clarifies that CWC related disputes can be taken to the TDR, including disputes relating to Chorus or a non-retail member.

Scope of Customer Complaints Code

33. The Scheme deals with most telecommunications complaints. The CCC sets out what is in scope and what is out of scope. For example, there is a \$15,000 limit on the amount of any claim and the Scheme cannot deal with complaints under subpart 3 of Part 4 of the Act as these are dealt with by the Broadband Shared Property Access Dispute Scheme.

C. What do you think is currently working well?

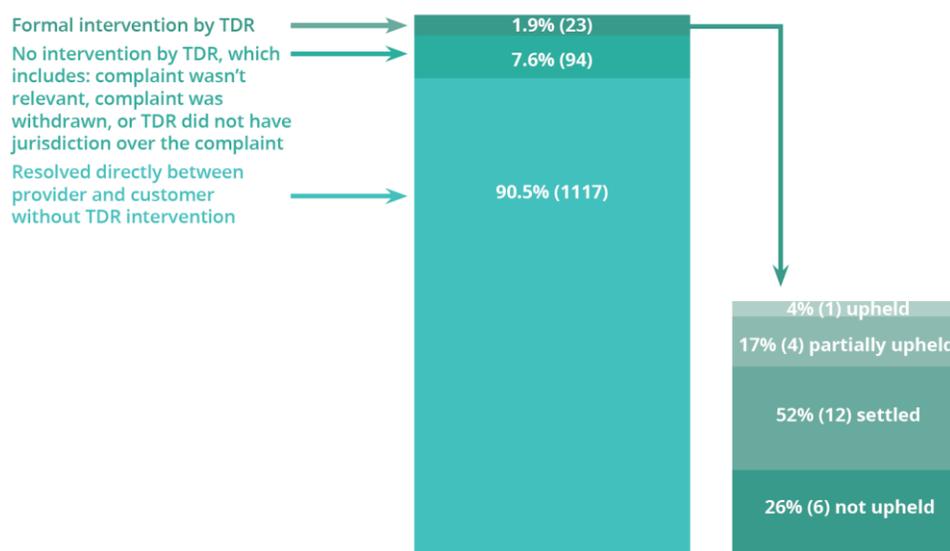
34. The Scheme works very well; it is free to consumers, and Fairway makes its decisions fully independently of the industry and scheme members. The accessibility of the Scheme, and the quality of Fairway's service is reflected in its high Net Promoter Scores (NPS) and satisfaction results.
35. The NPS scale is -100 to +100. The NPS measures the likelihood that someone will recommend the scheme. For the Financial Year ended 30 June 2018 it was +78, 2019 year it was +81 and for the year ended 30 June 2020 it was +73².
36. FairWay is a competent, professional and independent dispute resolution provider. It has contracts providing dispute resolution services to a range of government owned entities and other industries. FairWay employs around 100 staff and contracts with over 110 specialist reviewers and dispute resolution practitioners (adjudicators, reviewers, mediators and conciliators) throughout New Zealand and handles over 16,000 cases each year.
37. Overall, complainants have been very satisfied or satisfied with their experience of the Scheme, with 87% for the 2018 year, 96% for the 2019 year and 89% for the 2020 year.

² TDR Annual Report 2020 [here](#), page 14

38. There has been increased public reporting with the Biannual Report, which is a tool to inform consumer choice. The Biannual Report includes complaint and enquiry data per 10,000 connections by the largest five scheme members. The reporting methodology for this calculation has recently been updated.
39. Non-TCF members have joined the Scheme which can be seen as testament to the good service TDR provides.
40. There has been improved communication with the Commission with the introduction of quarterly catch-up meetings with TDR (in addition to providing quarterly complaints data to the Commission).
41. FairWay is doing targeted work to increase public awareness of the scheme. For example, FairWay is part of a joint Pasifika engagement campaign with other dispute resolution bodies and attends events such as the Hui with Te Kahui Mana Ririki. A slight increase in complaint and enquiry contacts to the scheme can be attributed to the increased awareness of the Scheme. In addition, Fairway has commenced a new marketing and awareness campaign, and this includes work to update the branding and logo of the scheme to make it more accessible to consumers.
42. Alongside the awareness campaigns conducted by Fairway, the RSMs are required to include information about the scheme on their websites, and on retail bills. The 111 Code and the CWC also require providers to provide information about the scheme on the information they provide to customers.

Figure 3: How complaints and enquiries were resolved by TDR - January to June 2020³

How complaints and enquiries were resolved by TDR



³ TDR 2020 Biannual Report January to June 2020

43. The RSMs have a good record of resolving issues directly with consumers. For the period January to June 2020 only 1.9% of cases became complaints that required formal intervention by FairWay with the use of conciliation, facilitation or adjudication to resolve the matter. 98% of cases were passed back to the RSP, and were resolved without any formal intervention by FairWay. Of the cases that required an adjudicated decision from FairWay, only 1 was upheld, 4 were partially upheld and 6 were not upheld.
44. Consistently RSMs have been resolving matters without formal intervention by FairWay. For both the year ended 30 June 2019 and 30 June 2020, 97.5% of cases were resolved by the RSP without formal intervention by FairWay.⁴

D. What do you think could be improved and how?

45. The TCF is aware that there is some room for changes to the scheme, particularly in relation to the governance structure of the Scheme and improving the accessibility of the Scheme for all telecommunications consumers. The expanded reach of the scheme to include disputes relating to the 111 Code and the CWC could also be clarified in the Scheme Rules as part of any other general changes.
46. Some work has already been done to consider options for changes to the Scheme and the TCF is continuing to develop options for change. We expect to make a further submission to the Commission's TDR review on these issues in the first quarter of 2021.

E. Other matters

47. The TCF recommends that the Commission's TDR Review Terms of Reference should include a requirement to set out the benchmark standards used to assess the Scheme so that the TCF, as scheme provider, is aware of what the Scheme is being measured against.

F. Conclusion

48. The Scheme provides an excellent service; offering free, independent dispute resolution for telecommunications consumers. The Scheme has a good reputation and receives good customer feedback and exceptionally high NPS scores from users of the service.

⁴ https://www.tdr.org.nz/sites/default/files/field/file_attachment/TDR-Annual-Report-2018-19-FINAL.pdf, page 9 and page 10 of https://www.tdr.org.nz/sites/default/files/field/file_attachment/TDR%20Annual%20Report%202019-20%20%2815.7%20MB%29.pdf

49. The TCF will make a further submission early in 2021 setting out recommended changes to the Scheme. We look forward to working with the Commission on the review.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Thorn', followed by a horizontal line.

Geoff Thorn
Chief Executive Officer
New Zealand Telecommunications Forum (TCF)

Appendix 1: Glossary

Terms	Meaning	Source
Act	Telecommunication Act 2001	The Act
CCC	Customer Complaints Code	The CCC
Council	TDRS Council is made up of four consumer members and four industry members as set out in the Terms of Reference.	The ToR
Dispute resolution provider	Not specifically defined in the Act. Interpreted to be the person who provides the actual dispute resolution service, which is FairWay.	Part 7 of the Act
FairWay	FairWay Resolution Services Ltd. TCF contracts with FairWay to provide the industry dispute resolution service, also known as the Scheme Agent, dispute resolution provider and referred to publicly as TDR.	ToR and contract between TCF and FairWay
Retail Scheme Member (RSM)	This is a retail scheme member of TDR. This is the person who holds the Billing Relationship with the Customer, and who has signed the TDRS Deed Poll.	CCC
RSP	Retail Service Provider	
Scheme	Telecommunications Dispute Resolution Scheme	
Scheme Agent	The independent party appointed to facilitate the efficient working of the TDRS. Currently TCF contracts with FairWay to provide this service.	ToR and CCC
Scheme provider	TCF. The TCF is the person responsible for the industry dispute resolution Scheme.	S232 of the Act
Scheme Rules	Together the Terms of Reference and the TCF Customer Complaints Code are referred to as the Scheme Rules	
ToR	TDRS Terms of Reference	ToR
TCF	NZ Telecommunications Forum	ToR

TDR (Telecommunications Dispute Resolution)	Is the public name and branding of the scheme. TDR services are provided by the Scheme Agent, FairWay.	
TDRS	Telecommunications Dispute Resolution Scheme. This is made up of the TDRS Terms of Reference and the Customer Complaints Code.	ToR and CCC
WSM	Wholesale Scheme Member	CCC