

2021 Review of the Telecommunications Dispute Resolution Scheme

Under Part 7 of the Telecommunications Act 2001

**Report to the New Zealand Telecommunications Forum Inc. (TCF) on
recommendations for improvements to the TDRS**

Date: 11 November 2021



Associated documents

Publication date	Reference	Title
29 October 2020	Not applicable	Open letter – Improving retail service quality for consumers
29 March 2021	978-1-869458-80-5	Review of industry dispute resolution schemes – Framework document
29 March 2021	978-1-869458-81-2	Review of the Telecommunications Dispute Resolution Scheme – Process paper
23 April 2021	978-1-869458-88-2	Review of the Telecommunications Dispute Resolution Scheme – Issues paper
30 August 2021	Not applicable	CRK Report (Public Version)
30 August 2021	978-1-869459-22-2	Draft report to the New Zealand Telecommunications Forum Inc. (TCF) on recommendations for improvements to the TDRS
11 November 2021	978-1-869459-47-5	Report to the New Zealand Telecommunications Forum Inc. (TCF) on recommendations for improvements to the TDRS (this report)

Glossary, defined terms and abbreviations

Act	Telecommunications Act 2001
Commission	Commerce Commission
Customer Complaints Code	Industry code developed by the TCF which sets out rights and obligations of Scheme Members and their customers with regard to the handling of complaints and resolution of disputes
CRK	cameron. ralph. khoury – consultancy hired to conduct certain tasks for the Commission’s first review of the TDRS
Dispute resolution provider	Body providing the dispute resolution service for the TDRS. Also referred to as the “Scheme Agent” or “FairWay” for the purposes of this paper
FairWay	FairWay Resolution Limited, a company contracted by the TCF to provide the dispute resolution service for the TDRS
MBIE	Ministry of Business, Innovation and Employment
Scheme	The term we use to refer to the documents that collectively comprise the TDRS (ie, the Customer Complaints Code, the Scheme ToR and the TCF Rules). We use the term “scheme” (lower case) to refer to the TDRS.
Scheme Agent	The independent body contracted by the TCF to provide the dispute resolution service for the TDRS
Scheme Deed	The document which parties sign to become a Scheme Member and thereby bound by the terms of the Scheme ToR and the Customer Complaints Code
Scheme Member	Means a provider of telecommunications services to a customer and who has the billing relationship with the customer for that telecommunications service and who has signed the Scheme Deed. Scheme Members include TCF members and non-TCF members
Scheme Provider	The person responsible for an industry dispute resolution scheme under s232 of the Act. The TCF is the Scheme Provider for the TDRS
Scheme ToR	Terms of Reference – document created by the TCF setting out the rules and governance for the TDRS
Service provider	A telecommunications service provider
RSQ	Retail Service Quality
TCF	New Zealand Telecommunications Forum Inc. – an industry body made up of both wholesale and retail telecommunications service providers
TCF Rules	The rules or constitution of the TCF
TDRS	Telecommunications Dispute Resolution Scheme - the industry dispute resolution scheme which is the subject of this review. The TDRS is New Zealand’s main dispute resolution service for consumers who have disputes with their service providers about mobile, internet and landline services
TIO	The Australian Telecommunications Industry Ombudsman

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Foreword

Tēnā koutou

The high volume of consumer complaints in the telecommunications industry has been a persistent issue for over a decade. Complaints have doubled over the past five years.

Part 7 of the Telecommunications Act 2001 was introduced in 2018 to address these issues and requires the Commission to take steps to improve retail service quality for consumers.

As part of this work, we have reviewed the industry telecommunications dispute resolution scheme, the TDRS, to determine how effectively it is delivering for consumers.

Fast and effective dispute resolution is a critical aspect of retail service quality and essential to building consumer confidence in the performance of the sector.

This report sets out our recommendations for improvements to the TDRS. These are designed to make the TDRS a more effective mechanism for dealing with complaints that consumers cannot resolve directly with their providers.

We have found that, while the TDRS does some things well, it needs to raise its profile and performance in order to become a trusted and useful tool for both consumers and telecommunications service providers.

We have divided our recommendations into three phases, based on the time required to implement them. This is to ensure that changes to improve the scheme for consumers that can be delivered quickly are prioritised over other changes that are likely to take more time (such as governance-related changes to increase the independence of the scheme).

In this way, we have sought to set out a balanced pathway for change, supported by regular monitoring and reporting requirements, to ensure effective delivery of the change programme.

We are grateful for the insights and experiences shared with us by consumers and consumer groups, the TCF, industry, and the TDRS, during this review, and the constructive nature of the engagement and input we received.

To make the best use of the ideas and constructive suggestions we received from stakeholders and incorporated into our findings, we encourage the TCF to engage widely when implementing the recommendations.

We look forward to seeing the improvements to the TDRS that the TCF will implement over the next two years.

Ngā mihi nui

Tristan Gilbertson

Telecommunications Commissioner

EXECUTIVE SUMMARY

1. Telecommunications services are essential services for New Zealanders who rely on them in all aspects of their lives. Mobile, internet and landline services allow consumers to contact friends and family, conduct business, be entertained, and engage with government, medical, educational and emergency services. They connect New Zealanders to one another and to the world.
2. Consumers and businesses need to be able to purchase and use telecommunications services with confidence; to take advantage of competition in the market; and to have recourse to an independent and impartial means of resolving disputes with their telecommunications service providers (**service providers**).
3. We are required under Part 7 of the Telecommunications Act 2001 (**the Act**) to review each telecommunications industry dispute resolution scheme at least once every three years.¹ Currently, there is one industry dispute resolution scheme for telecommunications - the Telecommunications Dispute Resolution Service (**TDRS**).
4. The TDRS is New Zealand's main dispute resolution service for consumers who have disputes with their service providers about mobile, internet and landline services. It is also the dispute resolution service for disputes related to the Commission's 111 Contact Code and Copper Withdrawal Code.²
5. This is our first review of the TDRS under Part 7 of the Act.
6. After each review, the Commission must provide a report to the Scheme Provider on any recommendations for improving the scheme and when the recommendations should be implemented.³ The TDRS Scheme Provider is the New Zealand Telecommunications Forum Inc (**TCF**).
7. This report sets out our recommendations for improving the TDRS.

Key findings and recommendations

8. The TDRS has many of the basic components that a dispute resolution scheme requires in order to deliver appropriate consumer outcomes. It generally aligns with many of the key principles of a successful dispute resolution scheme.
9. We found that most consumers who interact with the scheme experience early resolution of their disputes, and those who progress to the more formal mediation and adjudication processes say they are reasonably well served.

¹ Telecommunications Act 2001 (the Act), s 246(1).

² Telecommunications disputes for broadband shared property access (for fibre Installation) are handled by Utilities Disputes, and some disputes can also be looked at by the Disputes Tribunal, the District Court and the High Court.

³ Section 246(4).

10. However, in our review, we have identified a number of changes that need to be made to the TDRS' processes and operating framework, alongside improvements to increase consumers' awareness of the scheme. These changes will allow the TDRS to better meet the statutory purposes and uphold the key principles of a successful dispute resolution scheme.⁴
11. We consider there are two core areas where the TDRS needs to change:
- 11.1 **Governance** - adjustments to the governance structure are needed to ensure the TDRS Council is independent of the TCF, and to establish clear lines of accountability; and
- 11.2 **Customer Complaints Code** - a significant number of changes must be made to the Customer Complaints Code.⁵ These changes are necessary in order to better align the scheme with the key principles of a successful dispute resolution scheme set out in s 246(2)(f) of the Act; to address RSQ matters; and to achieve better outcomes for consumers.
12. Our recommendations are grouped into the tables below to address:
- 12.1 Overarching recommendations to review the Customer Complaints Code, Scheme Terms of Reference (**ToR**) and Agent Agreement;⁶ and
- 12.2 Recommendations according to the key themes we identified in our issues paper:
- 12.2.1 Awareness;
- 12.2.2 Complaint handling;
- 12.2.3 Systemic issues;
- 12.2.4 Position statements and case studies;
- 12.2.5 Governance; and
- 12.2.6 Jurisdiction.
13. Our recommendations follow a phased approach for implementation, with three phases spread over a two-year period. Phase 1 contains recommendations that we understand can be made relatively quickly, or be fast-tracked, with any necessary formal codification being made over a longer period. Phases 2 and 3 contain

⁴ The purpose of the scheme, and the dispute resolution provider are set out in s 247 and 248 of the Act. The key principles are set out in s 246(2)(f) of the Act - accessibility, independence, fairness, accountability, efficiency, and effectiveness.

⁵ Customer Complaints Code accessible at <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>

⁶ TDRS ToR accessible at <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/terms-of-reference-telecommunications-dispute-resolution-scheme.pdf>

recommendations that we understand will need longer to implement or require a staged, longer-term approach.

14. Figure 1 shows the overall timing for implementation of the recommendations and monitoring activities from this review. Attachment A also collates the recommendations by implementation phase.
15. We intend to monitor the implementation of recommendations through twice yearly written updates from the TCF.

Table 1 – Review the Customer Complaints Code, Scheme ToR and Scheme Agent Agreement

Reference	Recommendation	When
R1	Conduct a full review of the Customer Complaints Code and publish the revised Code by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [3b, 5, 11, 13, 15, 18b, 24] of this report. Proposed changes should be developed with the TDRS Council and tested via a full public consultation process with the Scheme Agent and other interested parties (including consumers and consumer groups).	Phase 2
R2	Conduct a full review of the Scheme Terms of Reference and “Agreement with the Scheme Agent for Provision of Services in respect of the Telecommunications Dispute Resolution Service” and publish the revised Terms of Reference by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [20, 21, 22].	Phase 2
R3a	Complete an interim amendment to the Customer Complaints Code to ensure the TDRS’ jurisdiction covers disputes under a Commission Code (meaning the 111 Contact Code and a Commission RSQ code), any industry RSQ code as required by s 247 of the Telecommunications Act 2001, and the Copper Withdrawal Code.	Phase 1
R3b	The review of the Customer Complaints Code under R1 should minimise the number of exclusions that prevent consumers from utilising the scheme. At a minimum, the review should include reviewing and either amending or removing the following exclusions from clause 18: <ul style="list-style-type: none"> • Clause 18.1.4 • Clause 18.1.6 • Clause 18.1.21 	Phase 2

Table 2 – Awareness

Reference	Recommendation	When
R4	The TCF and TDRS should work to improve consumer awareness of the TDRS, in particular, to ensure that consumers who have raised an enquiry or complaint with their service provider are informed of their right of recourse to the TDRS.	Phase 1

R5	<p>The Customer Complaints Code (see R1) should establish clearer guidelines and obligations on Retail Scheme Members to raise awareness of the TDRS among their customers. This should be accompanied by regular compliance testing.</p> <ul style="list-style-type: none"> • This should ensure Retail Scheme Members take a consistent approach to raising awareness at different customer touch points, such as websites, bills, promotional materials, Interactive Voice Recording messages and call centre handling. • Retail Scheme Members should inform their customers of the TDRS when a complaint is first made, during the complaint process and when deadlock has been reached. 	Phase 2
R6	<p>The engagement requirements in the TDRS 2021/22 Business Plan should be extended in future years so that the Scheme Agent carries out high quality engagement with Scheme Members, consumer organisations, Māori, and the wider community to improve consumers' awareness and understanding of the scheme.</p>	Phase 3
R7	<p>Continue increased resourcing for awareness initiatives beyond 2021/22 to ensure they have a lasting effect. The work should focus on, among other things:</p> <ul style="list-style-type: none"> • ensuring consumers are made aware of the TDRS at the beginning of the complaints process; • reaching consumers from groups that are rarely using the TDRS; and • continuing to build general awareness of the TDRS. 	Phase 3

Table 3 – Position statements and case studies

Reference	Recommendation	When
R8	<p>Undertake a review of topic-specific guidance to:</p> <ul style="list-style-type: none"> • update current position statements to ensure they are fit for purpose; • identify and fill coverage gaps in guidance; and • develop topic-specific guidance in the form of recurring issues articles and news articles into position statements. <p>The review and (re)publication of position statements should occur by 24 December 2021.</p>	Phase 1
R9	<p>Ensure that all current and new topic-specific guidance set clear standards for Scheme Members and include how the TDRS will handle complaints where those standards are not met.</p>	Phase 1
R10	<p>Publish anonymised determinations (including those regarding assessment of jurisdiction) on the TDRS website to allow consumers, consumer groups and industry parties to understand how the TDRS has considered a matter in more detail.</p>	Phase 1

Table 4 – Systemic issues

Reference	Recommendation	When
R11	Amend the Customer Complaints Code to give express authority to, and place an obligation on, the Scheme Agent to analyse all complaints and enquiries it receives to identify systemic issues (see R1).	Phase 2
R12	<ul style="list-style-type: none"> Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues. Within 18 months of the publication of this report, public reporting should include data on systemic issues and root causes. 	Phase 3

Table 5 – Complaints handling process

Reference	Recommendation	When
R13	Amend the Customer Complaints Code to reset the deadlock period for the TDRS from six weeks to 15 working days (see R1). ⁷	Phase 2
R14	<p>To ensure consumers have confidence that their dispute will be dealt with quickly and efficiently and without undue delay:</p> <ul style="list-style-type: none"> the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period; the TDRS quality assurance framework should be amended by 24 December 2021 to require assurance reviewers to check whether Resolution Coordinators are deadlocking complaints promptly in line with the Customer Complaints Code; and the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon. 	Phase 1
R15	Improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see R1).	Phase 2
R16	<ul style="list-style-type: none"> Revise the TDRS' internal complaints handling processes to ensure that information consumers provide regarding their complaint is referred back to and utilised. Ensure there is clear communication with consumers to inform them when additional information is required in order to progress their complaint. The TDRS should ensure that it offers and supports various means of submitting complaints (such as over the phone or referrals from consumer agencies), to ensure all consumers are able to make a complaint. 	Phase 1

⁷ Excluding Copper Withdrawal Code and 111 Contact Code complaints – these complaints will continue to have a five working day deadlock period.

R17	When deadlock has been reached, the TDRS should immediately remind the relevant Scheme Member(s) of its/their Customer Complaints Code obligations to cease debt recovery action and to desist from disconnecting consumers for services under dispute.	Phase 1
R18a	<p>All parties should have equal opportunity to provide views and respond to others' submissions during the Complaint Summary process. Adjustments should include, but are not limited to:</p> <ul style="list-style-type: none"> revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary; and revising the Customer Complaints Code to explicitly permit consumers to respond to the Complaint Summary including to respond to Scheme Member submissions that the complaint should be ruled outside jurisdiction (see R1). 	Phase 1
R18b		Phase 2
R19	The complaints handling process should be amended to allow parties the opportunity to review the determination to ensure that key facts are accurate before it is finalised. This will improve the quality of determinations.	Phase 1

Table 6 - Governance

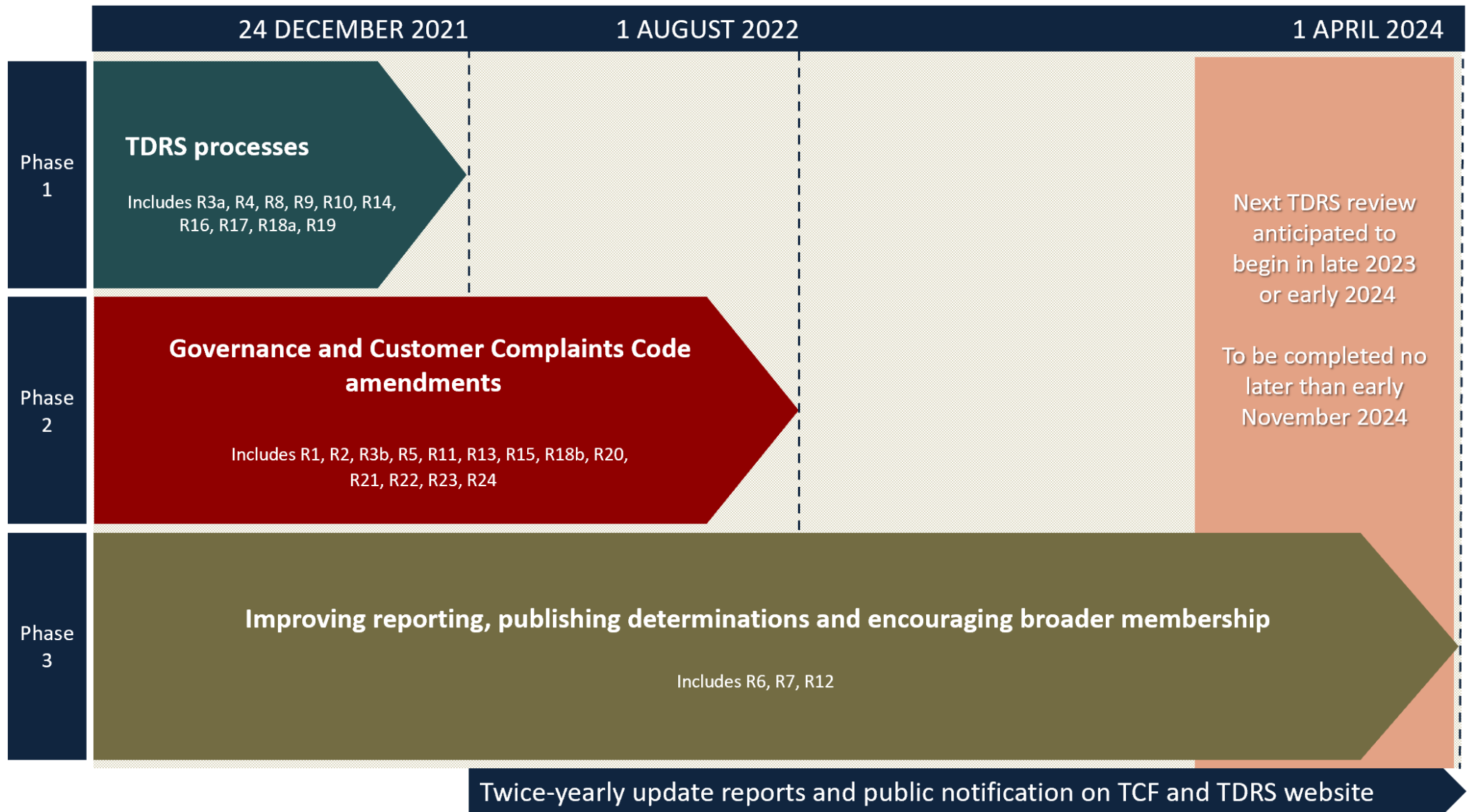
Reference	Recommendation	When
R20	<p>Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:</p> <ul style="list-style-type: none"> The TDRS Council has the powers to set and amend the rules for the TDRS including, but not limited to, jurisdiction, monetary compensation, process quality, and Scheme Members' roles and responsibilities. The Scheme Agent is accountable to the TDRS Council, enabling the TDRS Council to: <ul style="list-style-type: none"> set and manage the terms of the Scheme Agent's contract; set KPIs and assess the Scheme Agent's performance; and either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget. 	Phase 2
R21	<p>The TDRS Council's composition should be rebalanced to ensure that resolutions can be passed using a combination of independent council members and either consumer group or industry group representatives, ensuring that no one group has the effective or explicit right of veto.</p> <p>This could be accomplished by:</p> <ul style="list-style-type: none"> having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or the TDRS Council could be comprised of equal numbers of independent, consumer and industry representatives, with a two thirds majority required to pass a resolution. 	Phase 2

R22	<ul style="list-style-type: none"> • Adjust the terms for which the TDRS Council members can serve, to ensure continuity through longer tenures. This should be coupled with regular, staggered refreshes of the council members. • There should be a limit placed on the number of consecutive terms for which members can serve. This will ensure the TDRS Council members and Chair are refreshed on a regular basis. 	Phase 2
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Table 7 – Jurisdiction

Reference	Recommendation	When
R23	The TCF should actively encourage a broader membership of the TDRS. This should, at a minimum, include regularly engaging with smaller service providers to encourage them to join, and to understand and address the potential barriers to them becoming Scheme Members.	Phase 2
R24	<p>The Customer Complaints Code should be amended (R1) to ensure that:</p> <ul style="list-style-type: none"> • Consumers are able to appoint a lawyer to advise them in relation to a complaint without causing their complaint to be deemed outside of the TDRS' jurisdiction. • Consumers have longer periods to access the scheme (ie, longer than the existing 12-month limit) and to respond to offers of resolution from their provider before a complaint can be closed (ie, longer than the six-week limit). • The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal. 	Phase 2

Figure 1 – Implementation timeline



INTRODUCTION

Purpose of the review

16. Part 7 of the Telecommunications Act 2001 (**Act**) is focused on consumer matters, and in particular, retail service quality (**RSQ**). A key element of Part 7 is to ensure consumers have access to an effective dispute resolution scheme which ensures fair and independent resolution of their complaints against service providers.
17. The current industry dispute resolution scheme is the Telecommunications Dispute Resolution Scheme (**TDRS**). The TDRS is a scheme created and funded by industry body the Telecommunications Forum New Zealand Inc. (**TCF**). The TDRS deals with complaints under the TCF's Customer Complaints Code.
18. The TDRS also has a statutory mandate to provide a forum for resolution of disputes between a consumer and a service provider about their rights and obligations under all Commission codes.⁸
19. The Commission is required to review each industry dispute resolution scheme at least once every three years, and to make recommendations for improving the scheme.⁹ This is the first such review of the TDRS and this report sets out our recommendations for improvements to the TDRS.

Timeline of the review

20. In October 2020, we published an open letter in which we sought interested parties' views on the TDRS. In December 2020, we published the 12 submissions we received in response.^{10,11}
21. On 29 March 2021, we published a framework document in which we set out our approach to conducting reviews of industry dispute resolution schemes under Part 7.¹² We also published a process paper outlining timeframes for our first TDRS review and the ways in which interested parties could contribute.¹³

⁸ Telecommunications Act 2001, s 241.

⁹ Telecommunications Act 2001, s 246(1); s 246(4).

¹⁰ Our open letter published on 29 October 2020 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0023/227354/Improving-retail-service-quality-for-consumers-Open-letter-29-October-2020.pdf

¹¹ The submissions can be found at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/2021-review-of-the-telecommunications-dispute-resolution-scheme?target=documents&root=250379>

¹² Our review of dispute resolution schemes framework document published on 29 March 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0026/251387/Review-of-industry-dispute-resolution-schemes-Framework-paper-29-March-2021.pdf

¹³ Our TDRS review process paper published on 29 March 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0027/251388/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Process-paper-29-March-2021.pdf

22. On 23 April 2021, we published an issues paper outlining the issues we intended to explore during this review of the TDRS.¹⁴
23. On 30 August 2021, we published our draft recommendations report and an accompanying expert report from cameron. ralph. khoury (CRK).¹⁵ We received submissions on our draft report from 19 stakeholders.¹⁶

¹⁴ Our TDRS review issues paper published on 23 April 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0013/253210/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Issues-paper-23-April-2021.pdf

¹⁵ Our draft recommendations report published on 30 August 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0019/264034/8677028cef8c6e061d950ddb3cca968da7d5128a.pdf; CRK's expert report published on 30 August 2021 can be found at https://comcom.govt.nz/_data/assets/pdf_file/0018/264033/Review-of-the-Telecommunications-Dispute-Resolution-Scheme-Expert-report-30-August-2021.pdf

¹⁶ Public versions of the submissions can be found at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/2021-review-of-the-telecommunications-dispute-resolution-scheme?target=documents&root=250384>

How we conducted the review

Legal framework for the review

Background: introduction of Part 7 – Consumer matters

24. Part 7 – Consumer matters was introduced to the Act by the Telecommunications (New Regulatory Framework) Amendment Act 2018. The policy objectives underpinning these provisions were to ensure that consumers:¹⁷
- 24.1 can make informed choices about retail telecommunications services;
 - 24.2 can expect service quality at competitive levels that reflect consumer demands; and
 - 24.3 have access to efficient and responsive complaint and dispute resolution procedures if problems arise.
25. The last of those objectives is relevant to this review of the TDRS.

New requirement for Commission to conduct periodic reviews of the TDRS

26. One of the new Part 7 provisions is s 246(1), which requires the Commission to review each industry dispute resolution scheme at least once every three years.
27. The Act sets out a non-exhaustive list of matters we may choose to consider when we conduct a review of an industry dispute resolution scheme.¹⁸ These matters include:
- 27.1 the purpose of the industry dispute resolution scheme;
 - 27.2 the Scheme Provider;
 - 27.3 the dispute resolution provider for the scheme;
 - 27.4 the purpose of the dispute resolution provider for the scheme;
 - 27.5 the effectiveness of the scheme in resolving complaints by consumers against service providers;
 - 27.6 the adequacy of the scheme rules;
 - 27.7 the procedures that are used for receiving, investigating, and resolving complaints;
 - 27.8 how promptly complaints are dealt with;

¹⁷ Ministry of Business, Innovation and Employment Regulatory Impact Statement: Telecommunications Act review - consumer matters (30 March 2017) accessible at <https://www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf>, para 51.

¹⁸ Telecommunications Act 2001, s 246(2).

- 27.9 whether any recommendations for improving the scheme have been implemented.
28. We set out the specific matters or issues on which our review will focus at paragraph 39 below.
29. The industry dispute resolution scheme and dispute resolution provider each have their own distinct statutory purposes (refer to paragraphs 31-33 below).
30. In considering the industry dispute resolution scheme and the dispute resolution provider as part of our review, we have considered each according to its respective purpose. This enables us to assess whether each is meeting, or could better meet, its respective purpose. We set out our recommendations in detail in the section titled “Key assessment findings and recommendations” below.

Purpose of industry dispute resolution scheme

31. The purpose of an industry dispute resolution scheme is to:¹⁹
- ensure that, if a consumer has a dispute with a service provider in relation to a Commission code or an industry retail service quality code, the consumer has access to a dispute resolution scheme for resolving that dispute in accordance with the principles set out in section 246(2)(f).
32. The principles set out in s 246(2)(f) are:
- 32.1 accessibility;
 - 32.2 independence;
 - 32.3 fairness;
 - 32.4 accountability;
 - 32.5 efficiency;
 - 32.6 effectiveness.

Purpose of dispute resolution provider

33. Section 248 provides that the purpose of a dispute resolution provider in relation to a dispute resolution scheme for a Commission code or an industry retail service quality (**RSQ**) code, is—
- (a) to operate the scheme; and
 - (b) to administer the relevant code; and
 - (c) to manage consumer complaints relating to the code; and

¹⁹ Telecommunications Act 2001, s 247.

- (d) to investigate disputes relating to the code; and
- (e) to promote awareness of the scheme and the code; and
- (f) to monitor compliance with the scheme and the code; and
- (g) to enforce the provisions of the scheme and the code.

34. The Act uses the term “dispute resolution provider” whereas the Scheme ToR use the term “Scheme Agent”. For the purposes of this paper, we use the terms interchangeably.

Requirements the Commission must fulfil as part of the review

Report setting out recommendations for any improvements to the scheme

35. As part of the review, the Commission is required to report to the TCF on any recommendations for improving the scheme. Our report must specify timeframes for the Scheme Provider to implement our recommendations.²⁰ Timeframes are set out alongside recommendations in the section titled “Key assessment findings and recommendations” below and are also captured in Figure 1.

Report to the Minister if recommendations are not implemented satisfactorily

36. If we consider that any of our recommendations have not been implemented satisfactorily, we must provide a report to the Minister. Our report must outline:
- 36.1 our recommendations for improving the industry dispute resolution scheme;
 - 36.2 whether, in our opinion, those recommendations have been implemented; and
 - 36.3 whether we consider that either:
 - 36.3.1 the industry dispute resolution scheme fails to achieve the purpose set out in s 247; or
 - 36.3.2 the dispute resolution provider for the industry dispute resolution scheme fails to achieve the purpose set out in s 248.²¹
37. If we propose to provide such a report to the Minister, we must allow the Scheme Provider, the dispute resolution provider for the scheme, and members of the industry dispute resolution scheme 20 working days to make submissions on our draft report.²²

²⁰ Telecommunications Act 2001, s 246(4).

²¹ Telecommunications Act 2001, s 246(5).

²² Telecommunications Act 2001, s 246(6).

38. If we report to the Minister under s 246(5), one possible outcome is that the Minister may bring in a statutory consumer complaints system under Part 4B.²³ The statutory consumer complaints system under Part 4B would become the dispute resolution scheme responsible for Commission-led RSQ matters (for example, Commission RSQ codes and 111 Contact Code).²⁴

Key themes

39. In our issues paper, we identified the following “key themes” that we considered require particular attention for our first review:²⁵
- 39.1 awareness;
 - 39.2 position statements;
 - 39.3 systemic issues;
 - 39.4 complaints handling process;
 - 39.5 jurisdiction; and
 - 39.6 governance.
40. The issues paper also set out some of the questions we have considered when reviewing each of the key themes. The relevant questions are reproduced at the beginning of each of the key themes, findings, and recommendations sections under “Key assessment findings and recommendations” for ease of reference.

Appointment of external provider

41. We engaged Melbourne-based consultancy CRK as an external expert to assist us in undertaking certain tasks for the review. CRK has conducted independent reviews of external complaints handling schemes in New Zealand, Canada, and Australia, including the 2017 review of the Australian Telecommunications Industry Ombudsman (TIO).²⁶
42. CRK assisted the Commission during the review, carrying out:
- 42.1 telephone and videoconference interviews with interested parties, including TDRS Scheme Members, consumer representative groups, the TDRS Council, the Scheme Agent and consumers who have engaged with the TDRS; and

²³ Section 240(1)(b). Refer to s 54, 156S, 156T of the Telecommunications Amendment Act (No 2) 2006.

²⁴ Section 240(1)(b). Refer to s 54 and Part 4B of the Telecommunications Amendment Act (No 2) 2006.

²⁵ The key themes were shaped by feedback on our 29 October 2020 open letter from industry, consumers and community groups about aspects of the TDRS that work well, and those that could be improved. – The open letter can be found at https://comcom.govt.nz/_data/assets/pdf_file/0023/227354/Improving-retail-service-quality-for-consumers-Open-letter-29-October-2020.pdf.

²⁶ CRK’s independent review report of the TIO can be found at https://www.tio.com.au/sites/default/files/2019-05/2017_0929-TIO-Report-Final_0.pdf

- 42.2 reviews of case studies, process documentation and other governing documents, such as the Customer Complaints Code, the Scheme ToR and information obtained by the Commission from the TCF, TDRS Council, Scheme Agent (FairWay Resolution Limited) and other parties the Commission has engaged with during the review.
- 43. CRK provided the Commission with an expert report, published alongside our draft report, that sets out findings from its review of the scheme.
- 44. In compiling our recommendations, the Commission has had regard to:
 - 44.1 CRK’s expert report as published on 30 August 2021;²⁷
 - 44.2 interviews the Commission and CRK carried out with interested parties as part of the review;
 - 44.3 documents and information requested by the Commission during the review;
 - 44.4 submissions from parties made in response to our draft recommendations report and our October 2020 open letter; and
 - 44.5 the assessment criteria and considerations set out in paragraphs 45-46 below.

Assessment criteria for the review

- 45. Consumers need to be at the heart of a high quality dispute resolution scheme. When conducting this review of the TDRS, we have had regard to the following:
 - 45.1 the policy intent of Part 7 of the Act, which includes that “...if problems arise, there should be efficient and responsive complaint and dispute resolution procedures;”²⁸
 - 45.2 the purpose of a dispute resolution provider set out in s 248 of the Act;²⁹
 - 45.3 the purpose of an industry dispute resolution scheme set out in s 247 of the Act, including the principles set out in s 246(2)(f) of the Act;³⁰

²⁷ No changes have been made to the CRK Expert Report since its publication.

²⁸ Ministry of Business, Innovation and Employment Regulatory Impact Statement: Telecommunications Act review - consumer matters (30 March 2017) accessible at <https://www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf>, para 51, Objective C.

²⁹ See paragraph 33 of this report.

³⁰ See paragraph 31 and 32 of this report.

- 45.4 Australia and New Zealand standards for dispute resolution, including Ministry of Business, Innovation and Employment (**MBIE**)’s Government Centre for Disputes Resolution’s best practice guidance;³¹
- 45.5 overseas practice, including overseas dispute resolution bodies, such as the TIO in Australia; and
- 45.6 the practices of other New Zealand dispute resolution services, such as the Disputes Tribunal.

Considerations when developing recommendations

- 46. When considering potential recommendations for improvements to the TDRS we have considered a range of factors, including the impact on:
 - 46.1 ensuring that the purpose of a dispute resolution scheme provider is being met;
 - 46.2 ensuring that the purpose of a dispute resolution scheme is being met, eg, the alignment of the scheme with the key principles;
 - 46.3 improving consumer outcomes, particularly consumer access to the scheme; the breadth of issues that can be heard by the scheme; and its fairness and timeliness in dealing with disputes;
 - 46.4 the ability of the TCF and TDRS to implement our recommendations, including those matters that are within the control of the TCF, and those that are not, and the timescales or processes that may be needed by the TCF and TDRS to give effect to our recommendations; and
 - 46.5 the ongoing nature of our role in reviewing the TDRS, which will see the Commission continue to assess the TDRS and make recommendations over time.

³¹ Ministry of Business, Innovation and Employment “Aotearoa best practice dispute resolution framework” accessible at <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/dispute-resolution-tools-and-resources/aotearoa-best-practice-dispute-resolution-framework/>; The Australian Government: The Treasury “Key Practices for Industry-based Customer Dispute Resolution” (2015) accessible at <https://treasury.gov.au/publication/key-practices-for-industry-based-customer-dispute-resolution>

Overview of the TDRS

Purpose of the TDRS

47. The purpose of the TDRS, as described in its constituting documents, is:³²
- 47.1 to encourage Scheme Members to resolve customer complaints effectively themselves;
 - 47.2 to provide prompt, independent resolution of disputes, having regard to the Customer Complaints Code and relevant legal requirements; and
 - 47.3 to educate the industry about systemic issues arising from disputes and determinations.

The role of the TCF

48. The TDRS is a self-regulatory regime created by the TCF in 2007.
49. The TCF is an industry body whose membership is made up of both retail and wholesale telecommunications service providers. The TCF's stated purpose is to "actively foster co-operation among participants in the telecommunications industry to efficiently resolve regulatory, technical and policy issues".³³

The Scheme: documents that form the basis of the TDRS

50. At the time the TCF established the TDRS, the TCF created the following documents:
- 50.1 the Customer Complaints Code;³⁴ and
 - 50.2 the Scheme ToR (which are incorporated into and form part of the TCF Rules).³⁵
51. We set out below a brief overview of each of these documents and how they interact with one another. The operation and interrelationship between these documents form part of our review.

³² Scheme ToR, clause 1.2.

³³ TCF Rules, as accessed through the business register (Search for a business, 'Telecommunications Forum', Filings tab, "Alteration of rules 09 December 2014" - <https://app.businessregisters.govt.nz>. See also "About us" accessed on 22 March 2021 - <https://www.tcf.org.nz/industry/about-us/>

³⁴ The Code can be found at <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/customer-complaints-code.pdf>. The reference to the Code includes all of its annexures.

³⁵ The Scheme ToR can found at <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/customer-complaints/terms-of-reference-telecommunications-dispute-resolution-scheme.pdf>. Refer to clause 4.1.

The Customer Complaints Code

52. The Customer Complaints Code administered by the TCF sets out the rights and obligations of Scheme Members and their customers with regard to the handling of complaints. In particular:
- 52.1 it sets out the principles and commitments that Scheme Members agree to follow for the resolution of a complaint internally;³⁶ and
 - 52.2 it provides for a specialised dispute resolution mechanism and procedures to address issues where a Scheme Member's internal complaints handling or dispute resolution process fail to deliver a solution acceptable to consumers.^{37,38}
53. The Scheme Agent, Scheme Members and the TDRS Council may recommend changes to the Customer Complaints Code to the TCF.³⁹ The TCF Board must consult with Scheme Members and the TDRS Council before passing any resolution to alter, add to, or rescind the Customer Complaints Code.⁴⁰ In particular, the TCF Board must establish a TCF Working Party to draft changes and consult with Scheme Members and the TDRS Council. The revised Customer Complaints Code must then be submitted to the TCF Board for approval to release for consultation, public consultation, and final TCF Board approval.
54. We understand that the TCF may agree to implement changes in practice for the TDRS before the Customer Complaints Code is altered. These practice changes can be implemented relatively quickly, depending on the scale and complexity of what is required, and the impacts on Scheme Agent and Scheme Member processes and systems.
55. At a high level, the process for practice changes (ahead of formal Customer Complaints Code changes) involves:
- 55.1 ensuring Scheme Members, and typically also the Scheme Agent, agree with the changes;
 - 55.2 TCF Board approval; and
 - 55.3 implementation of the new practice by the Scheme Agent and Scheme Members.

³⁶ Customer Complaints Code, clause 22.

³⁷ Customer Complaints Code, clause 17.3.

³⁸ Customer Complaints Code, Annexure 1.

³⁹ Scheme ToR, clause 18.1.

⁴⁰ Scheme ToR, clause 18.2.

The Scheme ToR

56. The Scheme ToR set out details regarding Scheme membership and how the TDRS is governed, including the role of the TDRS Council and the TCF Board (governance is discussed in greater detail at paragraphs 168-179 below).
57. The Scheme ToR form part of, and are incorporated into, the TCF Rules.⁴¹
58. The TCF Board has the power to amend the Scheme ToR, but the TCF Board must consult with Scheme Members and the TDRS Council on any proposed changes prior to making them.⁴²

The TCF Rules

59. The TCF Rules are the constitution of the TCF. They set out details regarding membership and governance of the TCF and its functions as an industry body, including in relation to the creation of industry codes and the TDRS.⁴³

Dispute resolution provider/Scheme Agent

60. Section 248 provides that the purpose of a dispute resolution provider in relation to a dispute resolution scheme for a Commission code or an industry RSQ code is:
 - (a) to operate the scheme; and
 - (b) to administer the relevant code; and
 - (c) to manage consumer complaints relating to the code; and
 - (d) to investigate disputes relating to the code; and
 - (e) to promote awareness of the scheme and the code; and
 - (f) to monitor compliance with the scheme and the code; and
 - (g) to enforce the provisions of the scheme and the code.
61. Under the Scheme ToR, the primary role of the dispute resolution provider is to handle disputes, administer the Customer Complaints Code, and develop position statements that provide guidance on how particular recurring types of complaint are commonly approached and resolved.⁴⁴

⁴¹ Scheme ToR, clause 4.1.

⁴² Scheme ToR, clauses 18.2-18.3.

⁴³ TCF Rules, as accessed through the business register (Search for a business 'Telecommunications Forum', Filings tab, Alteration of rules 09 December 2014 - <https://app.businessregisters.govt.nz>

⁴⁴ Scheme ToR, clause 14.

62. The Scheme Agent reports to the TDRS Council, a governing body established under the Scheme ToR.⁴⁵ (The TDRS Council is discussed further at paragraphs 73-74 below).
63. In 2007, the TCF appointed FairWay Resolution Limited (**FairWay**) as the Scheme Agent/dispute resolution provider for the TDRS.
64. FairWay is an independent employee-owned company providing conflict management and dispute resolution services.⁴⁶ It provides dispute resolution services for a number of schemes and handles over 16,000 cases a year across different schemes. FairWay has been the dispute resolution provider for the TDRS since it was established in 2007.
65. As noted at para 34, the Act uses the term “dispute resolution provider” whereas the Scheme ToR use the term “Scheme Agent”. For the purposes of this paper, we use the terms interchangeably.

Membership of the TDRS

Scheme Members

66. There is no requirement under legislation that all telecommunications service providers must be members of the TDRS.
67. The Customer Complaints Code defines a Scheme Member as “a provider of Telecommunication Services to a Customer, and who has the Billing Relationship with the Customer for that Telecommunications Service and who has signed the Scheme Deed. Scheme Members include TCF members and non-TCF members.”⁴⁷
68. The Customer Complaints Code provides for both Retail Scheme Members and Wholesale Scheme Members. Retail Scheme Members are defined as Scheme Members who hold the billing relationship with the customer. Wholesale Scheme Members are service providers who supply wholesale telecommunications services to:⁴⁸
- 68.1 a Retail Scheme Member, who may then supply telecommunications services to the customer; or
- 68.2 another Wholesale Scheme Member and all or part of the services are ultimately supplied to a Retail Scheme Member so that the Retail Scheme Member may supply telecommunications services to the customer.⁴⁹

⁴⁵ Customer Complaints Code, clause 3.

⁴⁶ <https://www.fairwayresolution.com/about-fairway>

⁴⁷ Customer Complaints Code, clause 3.

⁴⁸ Customer Complaints Code, clause 28.1.

⁴⁹ This recognises that there may be a number of Wholesale Scheme Members in the chain of supply of telecommunications services to the customer.

69. Current Scheme Members include both TCF members and a number of service providers who are not TCF members.⁵⁰ The TDRS is estimated to be available to over 99% of residential mobile market consumers and at least 87% of residential fixed broadband consumers.⁵¹

Which consumers can lodge disputes with the TDRS?

70. Only customers of telecommunications service providers who are Scheme Members can lodge disputes with the TDRS. The exception to this is for disputes related to the Commission's 111 Contact Code and Copper Withdrawal Code. For these matters, any consumer, irrespective of whether their service provider is a Scheme Member, may lodge a dispute with the TDRS.⁵²
71. The TDRS deals with disputes up to a maximum of \$15,000 in value.⁵³
72. Consumers must first refer complaints to the Scheme Member with whom they have a billing relationship (ie, the Retail Scheme Member). Where relevant, the Retail Scheme Member may then refer any aspects of the complaint to the Wholesale Scheme Member and request the Wholesale Scheme Member's assistance in investigating or resolving the complaint in accordance with the Customer Complaints Code.⁵⁴

Structure and governance of the TDRS

The TDRS Council

73. The TDRS Council is a governing body established under the Scheme ToR. Its role as explained in the explanatory statement to the Customer Complaints Code is "to provide independence and ensure industry and public confidence in the Scheme."⁵⁵ It is comprised of four consumer representatives and four industry representatives.⁵⁶

⁵⁰ A list of Scheme Members can be found at <https://www.tdr.org.nz/about-tdr/tdr-scheme-members>

⁵¹ See Figures 17 and 18 of the 2020 Annual Telecommunication Monitoring Report for market share estimates at https://comcom.govt.nz/_data/assets/pdf_file/0030/247377/2020-Annual-Telecommunications-Monitoring-Report-Revised-version-16-March-2021.pdf

⁵² We note that there are some jurisdictional exemptions in the Customer Complaints Code that could potentially mean that, in some cases, a consumer may not have recourse to the TDRS for Copper Withdrawal Code and the 111 Contact Code. Recommendation R24 addresses this issue: it recommends that the Customer Complaints Code is amended to ensure that complaints relating to the 111 Contact Code, and Copper Withdrawal Code and other Commission codes are explicitly recognised as within the jurisdiction of the TDRS.

⁵³ Customer Complaints Code, clause 18.1.15.

⁵⁴ Customer Complaints Code, clauses 29-30. The Scheme Agent may rule that a WSM is partially at fault or responsible for one or more matters raised in the complaint and may apportion liability between relevant WSM(s) and RSM: refer to Code, clause 34.7.

⁵⁵ Customer Complaints Code, page 2.

⁵⁶ Scheme ToR, clause 7.1. Industry representatives are determined by reference to the TCF membership category tiers.

74. The Scheme ToR set out the functions of the TDRS Council, which include:⁵⁷
- 74.1 overseeing the operation of the TDRS and ensuring it operates efficiently and within the approved budget;
 - 74.2 providing guidance to the dispute resolution provider (the Scheme Agent) on policy and procedural questions; and
 - 74.3 providing the TCF Board and Scheme Members with quarterly reports on the progress of the TDRS.

The TCF

75. As set out at paragraph 49 above, the TCF is an industry body whose membership is made up of both retail and wholesale telecommunications service providers.⁵⁸
76. TCF membership consists of full members and associate members.⁵⁹
77. Full members are divided into membership tiers according to membership fees they pay, which are determined based on the telecommunications revenue the particular member earns.⁶⁰

The TCF Board

78. The functions of the TCF Board in relation to the TDRS are to:⁶¹
- 78.1 maintain an oversight role;
 - 78.2 approve the overall budget for the TDRS;
 - 78.3 decide on the fees and other levies for the TDRS;
 - 78.4 approve and authorise payment to consumer representatives on the TDRS Council;
 - 78.5 determine which Scheme Members are entitled to appoint industry representatives to the TDRS Council;
 - 78.6 execute the contract with the Scheme Agent; and
 - 78.7 alter, add to, or rescind the Customer Complaints Code and/or the Scheme ToR.

⁵⁷ Scheme ToR, clause 6.1.

⁵⁸ A list of TCF members can be found at <https://www.tcf.org.nz/industry/about-us/our-members/>

⁵⁹ TCF membership types are set out at <https://www.tcf.org.nz/industry/about-us/about-the-tcf/join-the-tcf/> Associate Members are made up of “Numbering Associates” and “General Associates”. TCF Rules, clause 6.1.

⁶⁰ TCF Rules, clause 9.1.

⁶¹ Scheme ToR, clause 10.

79. The TCF Rules state that the TCF Board shall be comprised of:⁶²
- 79.1 the Chairperson;
 - 79.2 one representative from each Tier One Member;
 - 79.3 one representative for each Tier Two Tier Representative; and
 - 79.4 one representative for each Tier Three Tier Representative.
80. The current members of the TCF Board are the chief executives of 2degrees, Chorus, Spark, Vodafone, Enable, Ultrafast Fibre, Vocus and Trustpower.

⁶² TCF Rules, clause 9.2. Tier Four Members, Numbering Associates and General Associates have no Board representatives.

Key assessment findings and recommendations

Introduction

81. We make a number of recommendations in this report. These concern issues we consider require specific action from the TCF over the next two years. They set the standard against which we propose to measure the progress made by the TCF.
82. The observations and findings contained in CRK's expert report have informed the Commission's recommendations, but we have not made corresponding recommendations for each of CRK's 31 findings. Nonetheless, we consider that the TCF should consider each of CRK's findings within a strategy of continuous improvement for the benefit of consumers.
83. The Commission reserves the right to provide recommendations on any matters relevant to the TDRS in our next review, including those matters touched on in CRK's report that we have not included as part of our recommendations in this review.
84. Utilities Disputes Limited identified in its submission that our review had not addressed the scheme's consistency with Standard 1 in the Government Centre of Dispute Resolution's capability model, being a commitment to the principles in Te Tiriti o Waitangi/Treaty of Waitangi (including partnership, active protection, and participation). UDL suggested that the issue of "whether the TDRS is competent [in this regard] may be an area of consideration for inclusion in the Commission's implementation timeline".⁶³
85. While we did not review the scheme for its consistency with the principles of Te Tiriti under the themes of this review, we recognise the importance of ensuring that the TDRS is designed and delivered in a way that is effective for, and responsive to the needs of, Māori consumers.
86. To that end, we encourage the TCF, when it is considering the design and delivery of the TDRS, to ensure that the scheme is well placed to respond to the needs of Māori consumers, and that it encourages participation of Māori in the design and operation of the scheme. We will also look to identify opportunities for us to engage with Māori and the TCF on these issues, as part of our own journey to understand te ao Māori and what it means for our work as an Independent Crown Entity.
87. In making our recommendations we have sought to balance two key matters. The first is to improve consumer outcomes and to ensure the TDRS aligns with the key principles set out in s 246(2)(f) (as set out at paragraph 32 above). The second is to allow the TCF and the Scheme Agent reasonable timeframes within which to consider and implement our recommendations.
88. For the avoidance of doubt, in situations where the responsibilities of a party named in a recommendation are devolved to another party (such as changes in governance responsibility from the TCF to the TDRS Council), we will assess the performance of

⁶³ Utilities Disputes Limited "Submission on the TDRS review" (27 September 2021) page 1.

the party that assumes the relevant responsibilities when we assess whether recommendations have been implemented.

89. Our recommendations are set out below in the following order:
 - 89.1 General assessment findings and recommendations;
 - 89.2 Assessment findings and recommendations for each key theme:
 - 89.2.1 Awareness;
 - 89.2.2 Systemic issues;
 - 89.2.3 Position statements and case studies;
 - 89.2.4 Complaints handling process;
 - 89.2.5 Governance; and
 - 89.2.6 Jurisdiction.

Phased approach to recommendations

90. Our recommendations follow a phased approach for implementation, with three phases spread over a two-year period. Phase 1 contains recommendations we understand can be implemented relatively quickly, or be fast-tracked, with any necessary formal codification occurring over a longer period. Phases 2 and 3 contain recommendations that will need longer to implement or require a staged, longer-term approach.
91. In our draft report we adopted a four-phase approach. However, following feedback received in submissions we have amended our approach. We have removed the previous 1 April 2022 phase. We have deferred the deadline for three of our recommendations to 1 August 2021, to allow the TCF to consider them as part of the Customer Complaints Code review. We have brought forward six of our recommendations to 21 December 2021 given the TCF's indication that they can be implemented more quickly.⁶⁴

⁶⁴ TCF submission on draft recommendations report (27 September 2021), para 18 and appendix.

General assessment findings and recommendations

92. This section captures assessment findings and recommendations that encompass a number of key themes.

General assessment of the TDRS

93. The TDRS has many of the basic components that a dispute resolution scheme requires in order to deliver appropriate consumer outcomes. It generally aligns with many of the key principles of a successful dispute resolution scheme.
94. We found that most consumers who interact with the scheme experience early resolution of their disputes, and those who progress to formal mediation and adjudication processes say they are reasonably well served.
95. However, in our review we have identified a number of changes that need to be made to the TDRS' processes and operating framework, alongside improvements to increase consumers awareness of the scheme. These changes will allow the TDRS to better meet the statutory purposes and uphold the key principles of a successful dispute resolution scheme.
96. We consider there are two core areas where the TDRS needs to change:
- 96.1 **Governance** - adjustments to the governance structure are needed to ensure the TDRS Council is independent of the TCF, and to establish clear lines of accountability; and
- 96.2 **Customer Complaints Code** - a significant number of changes must be made to the Customer Complaints Code. These changes are necessary in order to better align the scheme with the key principles of a successful dispute resolution scheme set out in s 246(2)(f) of the Act; to address RSQ matters; and to achieve better outcomes for consumers.
97. We set out our recommendations regarding governance in detail at paragraphs 174-183 of this report.
98. Our recommendations for specific Customer Complaints Code amendments are discussed in the relevant key themes sections later in the document but they are governed by the overall (general) recommendation R1 below.
99. We also set out a recommendation regarding reviewing the scope of the TDRS' jurisdiction (including those matters currently excluded from jurisdiction). Stakeholder feedback on this recommendation included:
- 99.1 support for some widening of the TDRS' jurisdiction, with certain parties requesting clarifications and suggesting amendments, such as restricting

coverage complaints to mobile services only and retaining exclusions for non-supported consumer equipment.⁶⁵

99.2 concerns with the practicality of introducing practice changes by 24 December 2021, and an alternative suggestion to split the recommendation across two phases.⁶⁶

100. We have finalised the recommendation regarding jurisdiction (R3a and R3b) to clarify its purpose and to acknowledge the practical constraints of making changes to the scheme practice ahead of changes to the Customer Complaints Code. We consider that:

100.1 Consumers should have recourse to their service provider for all parts of the service they purchase or receive from their service provider. Complaints or disputes regarding any equipment sold or provided to consumers by their service provider should be within the jurisdiction of the TDRS.

100.2 Consumers must have the ability to raise complaints regarding poor network performance, reliability or coverage irrespective of the underlying technology. Exclusions to jurisdiction should not prevent the consumer from addressing changes in the quality of service they receive, or from raising issues of degrading coverage, service quality or being provided a service that is not consistent with representations made by service providers.

100.3 The recommendation can be split across phases 1 and 2 so that:

100.3.1 certain changes can be made more quickly — in particular, the explicit requirement that the TDRS' jurisdiction includes disputes relating to Commission codes and industry RSQ codes; but

100.3.2 the full review of the exemptions can align with the wider Customer Complaints Code review.

We recommend a full review of the TCF Customer Complaints Code, the ToR and Scheme Agreement

Reference	Recommendation	When
R1	Conduct a full review of the Customer Complaints Code and publish the revised Code by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [3b, 5, 11, 13, 15, 18b, 24] of this report. Proposed changes should be developed with the TDRS Council and tested via a full public consultation process with the Scheme Agent and other interested parties (including consumers and consumer groups).	Phase 2

⁶⁵ For example; TDRS Council submission on draft recommendations report (27 September 2021), page 2; Enable, Northpower Fibre, and Ultrafast Fibre LFC's submission on draft recommendations report (27 September 2021), para 4.3.

⁶⁶ TCF submission on draft recommendations report (27 September 2021), para 10.

R2	Conduct a full review of the Scheme Terms of Reference and “Agreement with the Scheme Agent for Provision of Services in respect of the Telecommunications Dispute Resolution Service” and publish the revised Terms of Reference by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [20, 21, 22].	Phase 2
R3a	Complete an interim amendment to the Customer Complaints Code to ensure the TDRS’ jurisdiction covers disputes under a Commission Code (meaning the 111 Contact Code and a Commission RSQ code), any industry RSQ code as required by s 247 of the Telecommunications Act 2001, and the Copper Withdrawal Code.	Phase 1
R3b	<p>The review of the Customer Complaints Code under R1 should minimise the number of exclusions that prevent consumers from utilising the scheme. At a minimum, the review should include reviewing and either amending or removing the following exclusions from clause 18:</p> <ul style="list-style-type: none"> • Clause 18.1.4 • Clause 18.1.6 • Clause 18.1.21 	Phase 2

Assessment findings and recommendations by key theme

Awareness

This section should be read in conjunction with Section 4 - Awareness in the CRK Expert Report.

101. There are three primary channels by which consumers are made aware of a dispute resolution scheme, including the TDRS:
 - 101.1 advice to the customer from the Scheme Member;
 - 101.2 advice and referral from points of advice in the community; and
 - 101.3 general community awareness.
102. The Customer Complaints Code states that “good awareness of the TDRS is recognised as an important part of providing a commitment to the Scheme and its principles.”⁶⁷
103. The Scheme ToR state that FairWay (as the Scheme Agent) will undertake promotion of the TDRS in accordance with the TDRS Business Plan (as approved by the TCF Board).⁶⁸

⁶⁷ Customer Complaints Code, clause 5.3.

⁶⁸ Scheme ToR, clause 14.3.

Assessment guide and consumer outcomes for awareness

104. Both MBIE's best practice guidance and the Australian guidance include raising awareness under the accessibility principle.
105. Consumers need to be informed and empowered to access the scheme and understand their rights under the scheme.
106. Some of the questions we have considered when reviewing this key theme include:
- 106.1 how is the scheme promoted and awareness of it raised?
 - 106.2 does the Scheme Provider focus its promotional efforts on areas where consumers are likely to seek information in the event of a dispute, eg, the websites of consumer agencies and advocacy services?
 - 106.3 what forms of media are used to promote the scheme (eg, online, posters, television)?
 - 106.4 is information about the scheme easy to find and understand?
 - 106.5 is the promotional material consistent across the different media and entry channels?

Assessment of the TDRS on awareness

107. The obligations on Scheme Members regarding informing customers of the existence of the TDRS are not clearly set out in the Customer Complaints Code. This leads to highly variable methods for promoting the TDRS. This can be confusing for consumers and can reduce their awareness of, and access to, the TDRS. Putting in place and enforcing clearer guidelines and obligations on Scheme Members would support consumers by ensuring they have the appropriate recourse when they have complaints.
108. The TDRS needs to improve its focus on increasing consumer awareness in order to improve the accessibility of the regime. MBIE's New Zealand Consumer Survey 2020 found that only 13% of those surveyed were aware of the TDRS.⁶⁹ Work is also required to build awareness when consumers wish to raise a complaint and to target underrepresented groups. As MBIE's survey found, certain groups are more likely to have low awareness of dispute resolution services such as the TDRS.
109. As specified in the Customer Complaints Code, Scheme Members are required to include the TDRS logo on their websites; a link to the TDRS website; and an explanation of when it is appropriate for complaints to be referred to the TDRS. Scheme Members are required to provide information about the TDRS once a complaint has reached deadlock.

⁶⁹ MBIE "New Zealand Consumer Survey 2020: Report", page 18.

110. We understand that there will be a significant increase in resourcing for initiatives to increase general awareness of the TDRS among consumers in 2021/22.⁷⁰
111. Scheme Members are required to provide information regarding the TDRS when a consumer raises a complaint. CRK found that many consumers escalate their complaints to the TDRS after being made aware of the TDRS through means other than their provider, as many Scheme Members are not providing information to their consumers early in the complaints process, in particular prior to deadlock. As such we have recommended that the TCF and TDRS work to ensure that consumers who have raised an enquiry or complaint with a Scheme Member are informed of their right of recourse to the TDRS at the time they raise the enquiry or complaint.
112. Spark suggested that it was impractical for it to make every customer aware of the TDRS (ie, even those who have simply made an enquiry, as opposed to raised a complaint).⁷¹ We note that the terms ‘enquiry’ and ‘complaint’ are used inconsistently among service providers in the industry.⁷² While in the case of simple enquiries, service providers do not necessarily need to alert customers to the existence of the TDRS, consumers who express dissatisfaction need to be made aware of their options for laying complaints and resolving disputes.
113. The 2021/22 Business Plan placed considerable emphasis on the need for the Scheme Agent to engage with Scheme Members, but less emphasis on the need to engage with consumer organisations. This is a concern, as consumer organisations are a common point from which consumers seek advice.
114. Submitters supported our proposed recommendations regarding improving consumer awareness. Consumer NZ suggested that consumer awareness of the TDRS should be measured at set periods to ensure that our recommendations have been effective.⁷³ We agree that there is merit in this proposal and encourage the TCF to monitor both general awareness of the TDRS and the information regarding consumers accessing the scheme to ensure no particular group is unaware or underrepresented.
115. On balance, considering submissions and the other evidence gathered during this review, we have made a set of recommendations we consider are appropriate at this time to improve awareness of the TDRS.

We recommend the TCF/TDRS continue to improve the focus on increasing consumer awareness

Reference	Recommendation	When
R4	The TCF and TDRS should work to improve consumer awareness of the TDRS, in particular, to ensure that consumers who have raised an enquiry or complaint with their service provider are informed of their right of recourse to the TDRS.	Phase 1

⁷⁰ CRK expert report, para 54.

⁷¹ Spark submission on draft recommendations report (27 September 2021), paras 28-32.

⁷² We note that the Customer Complaints Code has definitions for ‘complaints’ and ‘enquiries’.

⁷³ Consumer NZ submission on draft recommendations report (27 September 2021), page 2.

R5	<p>The Customer Complaints Code (see R1) should establish clearer guidelines and obligations on Retail Scheme Members, to raise awareness of the TDRS among their customers. This should be accompanied by regular compliance testing.</p> <ul style="list-style-type: none"> • This should ensure Retail Scheme Members take a consistent approach to raising awareness at different customer touch points, such as websites, bills, promotional materials, Interactive Voice Recording messages and call centre handling. • Retail Scheme Members should inform their customers of the TDRS when a complaint is first made, during the complaint process and when deadlock has been reached. 	Phase 2
R6	<p>The engagement requirements in the TDRS 2021/22 Business Plan should be extended in future years so that the Scheme Agent carries out high quality engagement with Scheme Members, consumer organisations, Māori, and the wider community to improve consumers' awareness and understanding of the scheme.</p>	Phase 3
R7	<p>Continue increased resourcing for awareness initiatives beyond 2021/22 to ensure they have a lasting effect. The work should focus on, among other things:</p> <ul style="list-style-type: none"> • ensuring consumers are made aware of the TDRS at the beginning of the complaints process; • reaching consumers from groups that are rarely using the TDRS; and • continuing to build general awareness of the TDRS. 	Phase 3

Position statements and case studies

This section should be read in conjunction with Section 5 – Position Statements and other TDRS Guidance in the CRK Expert Report.

116. The Customer Complaints Code states that position statements are designed to guide the Scheme Agent on how particular recurring types of complaint are commonly approached and resolved, to allow for more efficient resolution of complaints. The code states that the Scheme Agent must take position statements into account when evaluating any complaint.⁷⁴
117. Position statements typically contain a summary of the issue and set out the TDRS' interpretation (ie, its position) on the matter. Position statements are recommended by the Scheme Agent and approved by the TDRS Council before being published on the TDRS website.
118. The Scheme Agent currently publishes:
- 118.1 position statements, to show both consumers and Scheme Members how the TDRS approaches complaints with common themes; and

⁷⁴ Code, Section I (Position Statements).

- 118.2 case studies that provide examples of the types of complaints the TDRS can help to resolve.

Assessment guide and consumer outcomes for position statements and case studies

119. To be fair, efficient, and accountable, a dispute resolution scheme is expected to develop and publish information about its approach to complaints.⁷⁵ This includes guidance as to what the scheme considers members must do in order to meet their obligations and to be fair to consumers.
120. While it is not mandatory for a member to comply with this guidance, members are typically on notice that if they provide a lesser standard of customer service than that set in the guidance, the scheme adjudicator is likely to find against them in the event of a dispute.
121. In this way, as recognised in MBIE Framework Standard 7, scheme guidance helps users of the scheme to know what to expect and informs early resolution of complaints.⁷⁶
122. Published scheme guidance also helps scheme staff and adjudicators to achieve consistent outcomes. It also provides consumers and consumer representative groups with a useful resource to understand how the scheme views certain matters, and what likely outcomes would be for common complaints.
123. Some of the questions we have considered when reviewing this key theme include:
- 123.1 what complaints information does the dispute resolution provider collect, analyse, and publish?
- 123.2 to what extent does the dispute resolution provider publish information that is educative and assists consumers, providers and other organisations to achieve early resolution of disputes?
- 123.3 does the dispute resolution provider publish final determinations of the TDRS?

Assessment of the TDRS on position statements and case studies

124. In total, the TDRS has published 19 position statements on its website covering a range of topics. In recent years however, position statements have not been afforded sufficient priority by the TDRS. No position statements have been published since 2015; existing position statements have not been updated; and gaps in coverage have developed (including in relation to vulnerable consumers). Given the changes that have occurred in the telecommunications industry since 2015, it is concerning that the suite of position statements has not been reviewed and updated.

⁷⁵ Australian Key Practices for Industry-based Customer Dispute Resolution para 4.1, 4.2 and 4.5d).

⁷⁶ MBIE Framework Standard 7.1.1.

125. In the last five years, instead of publishing position statements, the TDRS has issued “topic-specific guidance” (ie, articles described either as “recurring issues” articles or news articles). Given that only position statements are recognised in the Customer Complaints Code, this is an unsatisfactory change. Unlike position statements, these other types of topic-specific guidance do not require TDRS Council approval, so this shift could indicate wider governance issues.
126. To uphold the principle of accountability, TDRS guidance needs to set clear standards for Scheme Members to meet and set out how the TDRS will deal with complaints. Much of the TDRS’ guidance, particularly the recurring issues articles, does not do this and instead presents views on what the TDRS “would like” Scheme Members to do.⁷⁷ CRK also identified that some TDRS guidance falls short of either what may be required under the full reach of consumer protection laws, or of the standards that TDRS adjudicators actually expect of Scheme Members, as shown in their final determinations.
127. In the Commission’s view, a review of the current topic-specific guidance is required in order to better give effect to the principles of fairness, efficiency and accountability, including making sure it is up to date, in line with consumer protection law (ie, the Fair Trading Act 1986 and Consumer Guarantees Act 1993), and that it covers the latest technologies and the most relevant and complained about issues.
128. In addition to topic-specific guidance, the TDRS publishes case studies on its website. To date, the TDRS has published over 100 case studies, covering complaints that were determined to be outside of jurisdiction; settled following mediation; or those that proceeded to adjudication. Not every complaint that proceeds to adjudication and a determination is summarised in a case study however.
129. The TDRS does not currently publish adjudicator determinations. By way of comparison, the Disputes Tribunal does publish determinations. We consider there is benefit in the scheme taking the initiative and publishing anonymised determinations, including adjudicator decisions regarding whether a complaint falls within the scheme’s jurisdiction. This would allow consumers and consumer groups to see clear and detailed discussions of relevant consumer laws and scheme rules as applied to specific cases and rulings on jurisdiction. It would also allow other industry parties to understand how the TDRS has ruled on matters in which they were not involved.
130. We note that some parties have made submissions noting that publication of full determinations may be confusing to complainants, as they may lack the wider context in which the dispute was determined.⁷⁸ Full determinations will include a background or context section. Publication of full determinations is the approach the Disputes Tribunal takes. We therefore consider that publication of full

⁷⁷ For example, see “Internet data usage” recurring issue article at <https://www.tdr.org.nz/cases/recurring-issues/internet-data-usage>

⁷⁸ Spark submission on draft recommendations report (27 September 2021), appendix 1.

determinations is the most logical and transparent approach. This does not preclude the TDRS from also publishing summaries where necessary to aid understanding.

131. At this stage, we consider that determinations should remain anonymous. We acknowledge the feedback and may consider in further reviews whether naming the providers in determinations is necessary or desirable to increase consumer confidence or improve the effectiveness of the scheme.
132. On balance, considering submissions and the other evidence gathered during this review, we have made set of recommendations we consider are appropriate at this time for improvements to the TDRS.

We recommend the TDRS revises the way it produces position statements and case studies

Reference	Recommendation	When
R8	Undertake a review of its topic-specific guidance to: <ul style="list-style-type: none"> • update current position statements to ensure they are fit for purpose; • identify and fill coverage gaps in its guidance; and • develop topic-specific guidance in the form of recurring issues articles and news articles into position statements. The review and (re)publication of position statements should occur by 24 December 2021.	Phase 1
R9	Ensure that all current and new topic-specific guidance set clear standards for Scheme Members and include how the TDRS will handle complaints where those standards are not met.	Phase 1
R10	Publish anonymised determinations (including those regarding assessment of jurisdiction) on the TDRS website to allow consumers, consumer groups and industry parties to understand how the TDRS has considered a matter in more detail.	Phase 1

Systemic issues

This section should be read in conjunction with Section 6 – Systemic Issues in the CRK Expert Report.

133. One of the purposes of the TDRS set out in the Scheme ToR is to educate the industry about systemic issues arising from disputes and determinations.⁷⁹
134. Systemic issues may be issues that affect several customers of one service provider, or, in the case of industry-wide issues, customers of a number of different service providers. Systemic issues can affect a significant number of consumers or a particular category of consumers.⁸⁰

⁷⁹ Scheme ToR, clause 1.2(c).

⁸⁰ <https://www.tio.com.au/about-us/policies-and-procedures/systemic-problem-investigation>

135. Addressing systemic issues is key to improving outcomes for consumers, as it allows service providers to address the root cause of the issue, rather than dealing with recurring complaints.

Assessment guide and consumer outcomes for systemic issues

136. Addressing systemic issues promotes the principles of efficiency, accessibility and effectiveness.⁸¹
137. Both MBIE's best practice guidance and the Australian guidance include addressing systemic issues under the efficiency principle.
138. Some of the questions we have considered when reviewing this key theme include:
- 138.1 does the dispute resolution provider routinely collect and record dispute data and other information?
- 138.2 does the dispute resolution provider regularly analyse scheme data and information to identify trends, underlying issues, and systemic problems?
- 138.3 how does the dispute resolution scheme respond to the trends, underlying issues, and systemic problems that are identified?

Assessment of the TDRS on addressing systemic issues

139. The TDRS collects and categorises all complaints and enquiries it receives into high-level complaint categories. These categories include faults, billing, credit management and customer services. The TDRS also assigns a more detailed root cause for most complaints and enquiries.
140. The TDRS then publishes on its website annual and biannual reports which present data on the number of complaints and enquiries falling into these high-level complaint areas, and the number of complaints and enquiries by service provider per 10,000 connections. This public reporting, however, does not contain further details, such as complaint areas categorised according to provider or service. Nor does the public reporting detail the root cause sub-categories within each of the complaint categories.
141. In its 2020/21 Business Plan, the TDRS Council identified the reporting and analysis of complaints data as an issue in need of addressing. We understand that work is underway to improve the quality and consistency of the reporting and the insights that can be gained from the data collected. We welcome these improvements to public reporting.
142. In order to effectively uphold the principle of efficiency, an external dispute scheme needs to identify root causes of complaints and work to influence Scheme Members' behaviour. The current Customer Complaints Code limits the TDRS' power to investigate and work with industry regarding complaints that proceed to an

⁸¹ Telecommunications Act 2001, s 246(2)(f)(v); (i) and (vi).

adjudication. The very low number of complaints that progress to adjudication, and therefore can be assessed for systemic issues, limits the TDRS' ability to effectively identify and deal with systemic issues.⁸²

143. Informally, the Scheme Agent may suggest to individual Scheme Members that they look into or address issues that appear to be recurring. These are not brought to the attention of the Scheme Members as a whole, however, which is likely to limit the benefits to consumers that would accrue from identification of issues that all Scheme Members could move to address.
144. We consider that the TDRS would benefit from express powers to assess all complaints and enquiries it receives in order to identify systemic issues. This would significantly improve the sample to draw upon, and the ability of the scheme to identify and categorise systemic issues and work with all Scheme Members to address these.
145. Submissions were generally supportive of our recommendations regarding systemic issues provided in our draft report.⁸³ As a result we consider our set of recommendations for improvements to the TDRS are appropriate at this time.

We recommend the TDRS improves its reporting to better identify and address systemic issues

Reference	Recommendation	When
R11	Amend the Customer Complaints Code to give express authority to, and place an obligation on, the Scheme Agent to analyse all complaints and enquiries it receives to identify systemic issues (see R1).	Phase 2
R12	<ul style="list-style-type: none"> Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues. Within 18 months of the publication of this report, public reporting should include data on systemic issues and root causes. 	Phase 3

⁸² From July to December 2020, 13 complaints proceeded to adjudication.

⁸³ For example; Spark submission on draft recommendations report (27 September 2021), appendix 1; Chorus submission on draft recommendations report (27 September 2021), para 13.

Complaints handling process

This section should be read in conjunction with Section 7 – Complaints handling process in the CRK Expert Report.

146. The TDRS has rules and processes that consumers and Scheme Members must follow for the resolution of a customer complaint before the Scheme Agent will accept a customer's complaint for mediation or determination. These include, for example, rules relating to timeframes within which Scheme Members should resolve complaints directly with their customers.
147. Once the Scheme Agent has accepted a complaint and assessed it to be within jurisdiction, it will investigate the matter, following the process outlined in the Customer Complaints Code. This usually includes encouraging the parties to mediate the dispute. If the parties do not agree, the Scheme Agent will consider and ultimately make a final decision on the dispute.⁸⁴

Assessment guide and consumer outcomes for complaint handling process

148. The complaints handling process engages the principles of accessibility, fairness, and efficiency.⁸⁵
149. Some of the questions we have considered when reviewing this key theme include:
- 149.1 how easy is it for consumers to use the TDRS?
- 149.2 is the complaints handling process considered fair by consumers, Scheme Members and other organisations?
- 149.3 is the complaints handling process appropriate when considering the number, size, and complexity of the issues for the disputes received?
- 149.4 is timeliness considered in the complaints handling process (eg, timeliness of acknowledging and responding to an initial complaint, time taken to investigate a complaint, time taken to make a decision etc)?
- 149.5 is the existing six-week deadlock requirement before a dispute can be accepted by the TDRS reasonable?

Assessment of the TDRS on the complaints handling process

150. TDRS Scheme Members have a history of fair, early, and timely resolution of matters referred to them by the TDRS.
151. However, for complaints that are not resolved promptly following referral to the TDRS, CRK's review found that there are delays in the TDRS assessment process

⁸⁴ Customer Complaints Code, Annexure 1 – Dispute Resolution Procedures.

⁸⁵ MBIE's guidance includes fairness and independence in the same principle, whereas they are separate principles in the Australian guidance.

commencing.⁸⁶ There are also points in the complaints handling process where fairness towards consumers could be improved.

Deadlock period

152. The Customer Complaints Code mandates a six-week deadlock period beginning when the customer first makes a complaint to the Scheme Member. The Customer Complaints Code states that deadlock:

means either where:

- a customer is not satisfied with the Scheme Member's final response to a complaint and the customer has received a Referral Number, or
- where more than six weeks has passed since the customer complained to the Scheme Member and no final response has been forthcoming

153. But CRK's case review found that in practice, deadlock often occurred after more than six weeks had elapsed. These delays are occurring because the TDRS waits for Scheme Member's acknowledgement that a complaint is in deadlock even when there is evidence that more than six weeks has elapsed since the customer's complaint to the Scheme Member. To improve the efficiency of the scheme, the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints.

154. CRK also noted that the six-week deadlock period is unusually long when compared with other dispute resolution schemes, such as the TIO, which has a 15-day deadlock period. The Commission considers that the TDRS' deadlock period needs to be shortened to improve the efficiency of the scheme.

155. In our draft report, we recommended that the deadlock period be shortened to 10 working days. All submitters agreed that the deadlock period should be shortened from six weeks but held differing views on what an appropriate deadlock period should be:

155.1 Industry submitters and FairWay argued that 10 working days was insufficient to properly investigate complaints, particularly complex ones. These parties suggested that a deadlock period of between 15 and 20 working days was more appropriate.⁸⁷

155.2 On the other hand, Consumer NZ and FinCap recommended a deadlock period shorter than 10 working days for urgent situations where consumers were being harmed (such as being disconnected).⁸⁸

⁸⁶ CRK report, para 147.

⁸⁷ For example; FairWay submission on draft recommendations report (27 September 2021), page 2.

⁸⁸ Consumer NZ submission on draft recommendations report (27 September 2021), page 2; FinCap submission on draft recommendations report (27 September 2021), page 3.

156. On balance, we consider that 10 working days may be too short to work through more complex complaints and so have adjusted our recommended deadlock period to 15 working days. This brings the TDRS into line with the TIO. However, we expect the TDRS and industry to prioritise resolution of urgent disputes where the consumer is being harmed by hardship related to the dispute and that the industry should not use the deadlock period as a mechanism to ‘wait out’ a complaint.

Wholesale Scheme Members

157. The Customer Complaints Code stipulates that complaints that are primarily, or even solely, about a Wholesale Scheme Member must be assigned first to the customer’s Retail Scheme Member. The Wholesale Scheme Member may then be added as a party to the complaint. CRK’s case review found that TDRS’ processes for Wholesale Scheme Members can be cumbersome and can exacerbate the issue of deadlock acknowledgement noted at paragraph 152 above.⁸⁹
158. To reduce the complexity of the complaints handling process and improve efficiency of the scheme, the Commission considers that Wholesale Scheme Members should be better integrated into the Customer Complaints Code. This is particularly the case with respect to complaints under the Copper Withdrawal Code or about fibre installation, where Chorus or a Local Fibre Company (a Wholesale Scheme Member), will typically be a party to the dispute. The need for better integration of Wholesale Scheme Members was supported by submitters on our draft report.⁹⁰
159. We consider that the exact changes to the Customer Complaints Code to enable timely and efficient resolution of complaints involving Wholesale Scheme Members are best worked through by industry as part of the Customer Complaints Code review process.

Complaints initiation phase

160. We consider improvements should be made to the complaint initiation process of the scheme. Currently, a consumer who contacts the TDRS will be asked to provide information on their ‘complaint’ and if that complaint is subsequently deadlocked, the TDRS asks the consumer for details of that complaint again in writing before it can proceed to jurisdictional assessment.⁹¹

⁸⁹ In cases where both a Retail Scheme Member and Wholesale Scheme Member are involved both scheme members are asked to confirm deadlock.

⁹⁰ For example; Chorus submission on draft recommendations report (27 September 2021), para 12; Spark submission on draft recommendations report (27 September 2021), appendix 1.

⁹¹ As FairWay note in their submission the correct terminology is ‘complaint’ but the TDRS records initial contact with them prior to deadlock as an ‘enquiry’ as they have no active involvement in the matter. See FairWay submission on draft recommendations report (27 September 2021), pages 2-3.

161. A number of consumers found this request “*confusing or frustrating because they interpreted the request as requiring them to repeat previously provided information.*”⁹² We consider that the TDRS needs to utilise information previously provided by the consumer and clearly communicate to consumers:
- 161.1 what (if any) additional information is required to progress their complaint; and
 - 161.2 that they have the opportunity to refine details of their complaint, but only if they wish to do so.
162. Age Concern noted that contacting the TDRS is a big step for some consumers.⁹³ As such, the Commission considers that reducing real or perceived hurdles to progressing complaints is key to increasing the accessibility of the scheme. Accessibility to the scheme should also be improved by accommodating various means of submitting complaints (for example, over the phone or through referrals from consumer agencies).

Debt recovery issues

163. Where a consumer’s complaint involving a disputed debt reaches deadlock, the TDRS does not, as a matter of standard practice, remind the Retail Service Member of its Customer Complaints Code obligations to cease debt recovery action and to desist from disconnecting the customer.⁹⁴ This is at odds with other external dispute resolution schemes. In this regard, CRK identified a case where the TDRS’ complaint closure notification to the Retail Scheme Member advised the Scheme Member was now free to pursue debt collection. This is concerning as it suggests that TDRS’ processes are skewed towards the interests of Retail Scheme Members.
164. To align with best practice and avoid perceived bias, the TDRS should remind Retail Scheme Members of their Customer Complaints Code obligations to cease debt recovery action and to desist from disconnecting the customer from services under dispute until the complaint is resolved or otherwise closed.

Opportunity for comment

165. TDRS processes do not give a consumer who has made a formal complaint sufficient opportunity to rebut the assertions (including assertions that challenge jurisdiction over a complaint) of the Scheme Members who are party to the complaint. This is a concern given the high number of formal complaints progressed to jurisdictional assessment that were found to be outside jurisdiction.⁹⁵ To uphold the principle of fairness, both the Scheme Member and the consumer should have equal opportunity to comment on one another’s submissions during the complaint summary process.

⁹² CRK expert report, para 129.

⁹³ Age Concern NZ submission on draft recommendations report (27 September 2021), para 1.f.

⁹⁴ Customer Complaints Code, clauses 11.4, 11.5

⁹⁵ In 2019/20, 45% of the TDRS complaints were found to be outside jurisdiction.

166. TDRS adjudicators do not usually provide the parties to a complaint with a proposed determination. Accordingly, the parties do not usually have an opportunity to point out any factual errors. To achieve procedural fairness, the TDRS should give the consumer and the Scheme Member a chance to provide submissions on a proposed determination before it is finalised.
167. On balance, considering submissions and the other evidence gathered during this review, we have made a set of recommendations for improvements to the TDRS complaints handling processes that we consider are appropriate at this time.

We recommend that adjustments are made to improve the complaint handling processes

Reference	Recommendation	When
R13	Amend the Customer Complaints Code to reset the deadlock period for the TDRS from six weeks to 15 working days (see R1). ⁹⁶	Phase 2
R14	To ensure consumers have confidence that their dispute will be dealt with quickly and efficiently and without undue delay: <ul style="list-style-type: none"> the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period; the TDRS quality assurance framework should be amended by 24 December 2021 to require assurance reviewers to check whether Resolution Coordinators are deadlocking complaints promptly in line with the Customer Complaints Code; and the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon. 	Phase 1
R15	Improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see R1).	Phase 2
R16	<ul style="list-style-type: none"> Revise the TDRS' internal complaints handling processes to ensure that information consumers provide regarding their complaint is referred back to and utilised. Ensure there is clear communication with consumers to inform them when additional information is required in order to progress their complaint. The TDRS should ensure that it offers and supports various means of submitting complaints (such as over the phone or referrals from consumer agencies), to ensure all consumers are able to make a complaint. 	Phase 1
R17	When deadlock has been reached, the TDRS should immediately remind the relevant Scheme Member(s) of its/their Customer Complaints Code obligations to cease debt recovery action and to desist from disconnecting consumers for services under dispute.	Phase 1

⁹⁶ Excluding Copper Withdrawal Code and 111 Contact Code complaints – these complaints will continue to have a five working day deadlock period.

<p>R18a</p>	<p>All parties should have equal opportunity to provide views and respond to others' submissions during the Complaint Summary process. Adjustments should include, but are not limited to:</p> <ul style="list-style-type: none"> revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary; and 	<p>Phase 1</p>
<p>R18b</p>	<ul style="list-style-type: none"> revising the Customer Complaints Code to explicitly permit consumers to respond to the Complaint Summary including to respond to Scheme Member submissions that the complaint should be ruled outside jurisdiction (see R1). 	<p>Phase 2</p>
<p>R19</p>	<p>The complaints handling process should be amended to allow parties the opportunity to review the determination to ensure that key facts are accurate before it is finalised. This will improve the quality of determinations.</p>	<p>Phase 1</p>

Governance

This section should be read in conjunction with Section 8 – Governance in the CRK Expert Report.

168. A summary of the governance structure of the scheme is set out at paragraphs 73 to 80 above.
169. The TCF appointed the Scheme Agent as an independent party to facilitate the efficient working of the TDRS.⁹⁷ The Scheme Agent reports to the TDRS Council, which in turn provides guidance to the Scheme Agent on policy and procedural questions, including the approval, suggested amendment, and removal of position statements.
170. In 2019, the TDRS Council instigated a self-review of the TDRS for the purpose of testing the real and perceived independence of the TDRS.⁹⁸ The TCF retains an active role in the governance of the TDRS (for example, the TCF Board approves the overall budget for the TDRS and can modify the code and the Scheme ToR).⁹⁹

Assessment guide and consumer outcomes for governance

171. The relevant principle when considering the governance structure (including funding) is the principle of independence.¹⁰⁰
172. Governance of the TDRS is critical to ensuring the scheme runs effectively and efficiently and gives consumers confidence in the independence and impartiality of the scheme.

⁹⁷ Scheme ToR, clause 14.1.

⁹⁸ <https://www.tdr.org.nz/news/review-of-the-tdr-scheme>.

⁹⁹ Scheme ToR, clause 10.1.

¹⁰⁰ Telecommunications Act, s 246(2)(f).

173. Some of the questions we have considered when reviewing this key theme include:
- 173.1 is there an appropriate balance of powers between the TCF, the TDRS Council and the Scheme Agent?
- 173.2 is the funding model appropriate in terms of independence (eg, is there a relationship between the decision-maker for resolving disputes and any participating organisations that fund or administer the TDRS)?
- 173.3 are the funding arrangements transparent?

Assessment of the TDRS on governance

174. The current structure of the TDRS Council includes four consumer representatives and four industry representatives. A chair is appointed by the TDRS Council from among the consumer representatives. Consumer representatives serve a two-year term and industry representatives a one-year term. The TDRS Council requires a 75% majority vote (ie, a minimum of six council members) to pass resolutions.¹⁰¹
175. As CRK notes, this is an unusual council structure, which provides an effective veto for either industry or consumer representatives if they vote as a bloc.¹⁰² The TDRS Council needs to have, and be seen to have, independence while representing consumers and industry appropriately. We consider that the current structure does not appropriately balance the need for independence. The structure should change to ensure no one representative group has an effective power of veto, while retaining the benefits of having industry membership on the council.
176. Continuity of council members also needs to be balanced with the need to bring new voices and perspectives to the governance board. A well-balanced approach would allow council members time to come up to speed on the TDRS, drive continuous improvement, and ensure that evolving industry and consumer perspectives are taken into account by the TDRS.
177. The current governance of the scheme (as set out in the ToR) charges the TDRS Council with governance of the scheme but stops short of giving the TDRS Council important governance powers. Instead, certain roles and responsibilities are split between the TCF and the TDRS Council when dealing with the Scheme Agent (FairWay in this case). This means that there are matters that are either explicitly outside of the remit of the TDRS Council or are not clearly delineated as its responsibility (meaning there are certain matters for which it is unclear who is responsible). This reduces the effectiveness of the TDRS Council and harms the real and perceived independence of the TDRS.
178. This is further exacerbated by the quality and frequency of reporting on the scheme to the TDRS Council, and to the TCF, limiting the oversight of the scheme and the ability of the council to identify issues and drive continuous improvement.

¹⁰¹ ToR clause 11.29(c)

¹⁰² CRK report, para 201 and finding 19.

179. The TDRS uses an outsourced model for adjudication of disputes. While this provides the ability for the scheme to increase or decrease its resources to deal with peaks and troughs, it also relies on the ongoing ability to access quality adjudicators, and on clear and effective governance of the scheme. We consider that as the scheme develops —and particularly if the scheme begins to deal with a great number of complex complaints— the scheme may need to transition to become a self-contained model and bring its expertise in-house to ensure there is clear accountability and consistency of decision-making.
180. We expect that improving governance will lead to a more proactive scheme that is better able to drive continuous improvement and further align itself with relevant best practice dispute resolution standards.
181. Parties were generally supportive of our recommendations on improving governance provided in our draft report. Most parties expressed no preference regarding the alternatives suggested for budget setting and the TDRS Council’s composition.¹⁰³ As a result we consider those recommendations for improvements to the TDRS are appropriate at this time.

We recommend that governance of the TDRS sits with the TDRS Council

Reference	Recommendation	When
R20	<p>Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:</p> <ul style="list-style-type: none"> • The TDRS Council has the powers to set and amend the rules for the TDRS including, but not limited to, jurisdiction, monetary compensation, process quality, and Scheme Members’ roles and responsibilities. • The Scheme Agent is accountable to the TDRS Council, enabling the TDRS Council to: <ul style="list-style-type: none"> ○ set and manage the terms of the Scheme Agent’s contract; ○ set KPIs and assess the Scheme Agent’s performance; and ○ either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget. 	Phase 2
R21	<p>The TDRS Council’s composition should be rebalanced to ensure that resolutions can be passed using a combination of independent council members and either consumer group or industry group representatives, ensuring that no one group has the effective or explicit right of veto.</p> <p>This could be accomplished by:</p> <ul style="list-style-type: none"> • having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or • the TDRS Council could be comprised of equal numbers of independent, consumer and industry representatives, with a two thirds majority required to pass a resolution. 	Phase 2

¹⁰³ For example; WISPANZ submission on draft recommendations report (27 September 2021), para 2.f.ii.

R22

- Adjust the terms for which the TDRS Council members can serve, to ensure continuity through longer tenures. This should be coupled with regular, staggered refreshes of the council members.
- There should be a limit placed on the number of consecutive terms for which members can serve. This will ensure the TDRS Council members and Chair are refreshed on a regular basis.

Phase 2

Jurisdiction

This section should be read in conjunction with Section 9 – Jurisdiction in the CRK Expert Report.

182. The jurisdiction of the TDRS is set out in the Customer Complaints Code. The Customer Complaints Code currently contains 18 specific exclusions (ie, types of disputes that the Scheme Agent cannot consider). For example, disputes relating to broadband congestion and performance are currently not included within the jurisdiction of the TDRS, except under specific and limited circumstances.¹⁰⁴
183. Also, Wholesale Scheme Members have limited liability under the Customer Complaints Code, meaning that consumers can only bring complaints against a Wholesale Scheme Member if there is an existing billing relationship with a Scheme Member.¹⁰⁵ The current exceptions to this are for disputes related to the Copper Withdrawal Code.¹⁰⁶

Assessment guide and consumer outcomes for jurisdiction

184. When considering the jurisdiction of a dispute resolution scheme, the most relevant best practice principles are the accessibility principle and the effectiveness principle (eg, appropriateness of the scope).¹⁰⁷
185. Ensuring the scheme has the appropriate jurisdiction (including that its scope is clear and sufficient) is important to ensure consumers and industry are able to confidently use the scheme to resolve most issues. An ideal scheme would handle all issues for consumers who are unable to resolve telecommunications-related disputes with their service providers.
186. Some of the questions we have considered when reviewing this key theme include:
- 186.1 is the jurisdiction of the scheme (including membership) appropriate and sufficiently broad to allow it to deal with the majority of disputes?
- 186.2 is the jurisdiction of the scheme (including membership) clearly outlined and accessible to all relevant stakeholders?

¹⁰⁴ Customer Complaints Code, clause 18.

¹⁰⁵ Customer Complaints Code, clause 34.7.

¹⁰⁶ Disputes related to the Copper Withdrawal Code can be raised with the TDRS under the rules set out in the Copper Withdrawal Code.

¹⁰⁷ Telecommunications Act, s 246(2)(f).

- 186.3 is the process for becoming a Scheme Member clearly outlined and accessible?
- 186.4 is there a referral procedure for matters that are outside the scheme's jurisdiction?
- 186.5 is the financial jurisdiction of the scheme consistent with the nature, extent and value of consumer transactions in the telecommunications industry?

Assessment of the TDRS' jurisdiction

187. Jurisdiction of the TDRS is primarily defined by the Customer Complaints Code. Section 241 of the Act provides that the TDRS has jurisdiction over complaints relating to Commission codes, which includes the 111 Contact Code. Additionally, the Copper Withdrawal Code provides that disputes under that code may be referred to the TDRS.
188. We note, however, that the Customer Complaints Code has not been amended substantively since 2016.¹⁰⁸

Scheme membership

189. The Customer Complaints Code specifies that a complaint must be brought against a telecommunications service provider with whom the customer has a billing relationship. A Wholesale Scheme Member can however be joined to a Retail Scheme Member complaint if implicated by the complaint.¹⁰⁹
190. Membership of the TDRS is not mandatory which differs from the typical mandatory nature of telecommunications dispute resolution schemes, and a number of other sectors in New Zealand, including financial service providers and electricity distributors and retailers.^{110,111} The current voluntary membership in the TDRS results in a gap in coverage for consumers, particular for fixed line consumers, with an estimated 13% unable to access the scheme.¹¹²
191. Most submitters expressed that it would be beneficial for the scheme to become mandatory as this would close the gap and ensure that all telecommunications consumers have access to a dispute resolution scheme.¹¹³
192. We note that it is not within the power of either the Commission or the TCF to mandate that service providers become members of an industry dispute resolution scheme. Ultimately, any decision to make membership of a disputes resolution

¹⁰⁸ Non-material amendments were made in July 2021.

¹⁰⁹ Customer Complaints Code clause 28 and 34.7.

¹¹⁰ CRK Expert Report, para 238

¹¹¹ Section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008); section 96 of the Electricity Industry Act 2010.

¹¹² It is estimated that less than 1% of mobile customers are unable to access the scheme. See figures 17 and 18 of the 2020 Annual Telecommunications Monitoring Report for market share estimates.

¹¹³ Consumer NZ submission on draft recommendations report (27 September 2021), page 2; Vodafone submission on draft recommendations report (27 September 2021), para 3.a.

scheme mandatory for service providers is a policy decision that would require legislation. This is a step that only Parliament could take.

193. However, recognising the benefits of wider membership we recommend that the TCF encourages broader membership of the TDRS. We recommend the TCF engages with smaller providers to understand and address any barriers to them becoming Scheme Members. We also strongly encourage service providers who are not TDRS members to consider the benefits involved in joining the scheme and to actively engage with the TCF to work towards becoming members.
194. If this engagement does not lead to almost all service providers becoming members of the scheme, we will consider taking additional steps. This might include considering whether a Commission RSQ code should be introduced to require every service provider to inform consumers if they have access to the TDRS in the event of a dispute, whether the service provider is a member of the TDRS and, if not, what dispute resolution mechanisms are available to them.¹¹⁴ We note that such a step, while an improvement on the status quo, may not be as effective as mandatory membership of the industry dispute resolution scheme for all service providers.

Access to the scheme

195. CRK's review of the Customer Complaints Code identified jurisdictional exclusions that are restricting consumer's access to the TDRS:
- 195.1 complaints must be referred within 12 months of discovery;
 - 195.2 consumers lose the right to access the TDRS if they fail to respond to a Scheme Member's offer to resolve the complaint within six weeks; and
 - 195.3 consumers may not access the TDRS if they are using the services of a lawyer for the complaint.
196. Spark and Vodafone supported our recommendation to increase the period within which consumers can access the TDRS from the current period of 12 months. However, both noted that there needed to be a reasonable time limit to accessing the scheme.¹¹⁵
197. In our draft report, we recommended that the current exclusion of complaints where consumers appointed a lawyer to act on their behalf should be removed (ie, these complaints should be within the TDRS' jurisdiction). Our intention was that consumers ought to be able to obtain advice and/or representation by legal counsel in relation to a dispute in the TDRS.

¹¹⁴ We note here however that any customer who has a dispute under the 111 contact code, Copper Withdrawal Code or Commisison RSQ code may take their dispute to the TDRS: for such disputes, the customer's service provider does not need to be a member of the TDRS (refer to paragraph 70 above).

¹¹⁵ Spark submission on draft recommendations report (27 September 2021), appendix 1; Vodafone submission on draft recommendations report (27 September 2021), para 38.

198. Neither FairWay nor Scheme Members supported this recommendation.¹¹⁶ While they were not opposed to consumers seeking advice in relation to a dispute, they did not agree that consumers should be able to have legal representation in the TDRS. Vodafone pointed out that such an approach is consistent with the approach in the Disputes Tribunal.¹¹⁷
199. We have adjusted our recommendation to clarify that consumers should be able to obtain legal advice in relation to a complaint but may not have a lawyer represent them before the TDRS. This aligns with the approach taken in the Disputes Tribunal.

Complaint types

200. While the TDRS' jurisdiction has expanded as a result of the Commission 111 Contact Code and Copper Withdrawal Code, this has yet to be reflected in the Customer Complaints Code. Amendments to the Customer Complaints Code must be made to reflect the expanded jurisdiction of the TDRS.
201. Through this review, interested parties have expressed that the categories of dispute that are excluded from the TDRS' jurisdiction need to be revised.
202. As noted at paragraph 99, the Commission is concerned that the effectiveness of the TDRS may be limited by its exclusions relating to RSQ matters. In particular, we have concerns with the exclusions for:
- 202.1 equipment sold by a service provider to a consumer;
 - 202.2 the extent of network coverage; and
 - 202.3 broadband congestion or speed (unless a committed information rate is present).
203. The Commission considers that consumers should have recourse to their service provider for all parts of the service they purchase or receive from their service provider. Complaints or disputes regarding any equipment sold or provided to consumers by their service provider should be within the jurisdiction of the TDRS. Consumers must have the ability to raise complaints regarding poor network performance, reliability or coverage irrespective of the underlying technology. Exclusions to jurisdiction should not prevent the consumer from addressing changes in the quality of service they receive, or from raising issues of degrading coverage, service quality or being provided a service that is not consistent with representations made by service providers.
204. The TDRS has a claims cap of \$15,000 (ie, the total sought under the claim can be no more than \$15,000). This is lower than the Disputes Tribunal cap of \$30,000. Scheme Members have previously argued that the \$15,000 cap is almost always sufficient

¹¹⁶ For example; FairWay submission on draft recommendations report (27 September 2021), page 3; Chorus submission on draft recommendations report (27 September 2021), para 18.

¹¹⁷ Vodafone submission on draft recommendations report (27 September 2021), para 38.

and, in unusual situations where it is not, the complaint will almost always be voluntarily accepted. The Commission considers, however, that there are situations where the cap would be insufficient (for example, small business complaints and complaints about installation). Submissions on our draft report supported aligning the TDRS' claims cap with that which applies in the Disputes Tribunal.¹¹⁸ We agree with this approach and consider that raising the limit to \$30,000 will ensure that the scheme has sufficient coverage.

205. On balance, considering submissions and the other evidence gathered during this review, we have made set of recommendations for improvements to the TDRS jurisdiction that we consider are appropriate at this time.

We recommend adjustments to improve the TDRS' ability to address consumer complaints

Reference	Recommendation	When
R23	The TCF should actively encourage a broader membership of the TDRS. This should, at a minimum, include regularly engaging with smaller service providers to encourage them to join, and to understand and address the potential barriers to them becoming Scheme Members.	Phase 2
R24	The Customer Complaints Code should be amended (R1) to ensure that: <ul style="list-style-type: none"> • Consumers are able to appoint a lawyer to advise them in relation to a complaint without causing their complaint to be deemed outside of the TDRS' jurisdiction. • Consumers have longer periods to access the scheme (ie, longer than the existing 12-month limit) and to respond to offers of resolution from their provider before a complaint can be closed (ie, longer than the six-week limit). • The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal. 	Phase 2

¹¹⁸ For example; WISPANZ submission on draft recommendations report (27 September 2021), 2.g.iv; TDRS Council submission on draft recommendations report (27 September 2021), page 3.

How we intend to monitor the implementation of the recommendations

206. The Act requires us to review the TDRS at least once every three years.¹¹⁹ We anticipate starting our next review of the TDRS in the last quarter of 2023 or the first quarter of 2024.
207. We will however monitor progress to assess whether any of our recommendations for improving the scheme have not been implemented satisfactorily which would require us to provide a report to the Minister.¹²⁰
208. Our recommendations follow a three-phase implementation plan:
- 208.1 Phase 1 - recommendations that should be implemented by 24 December 2021;
- 208.2 Phase 2 - recommendations that should be implemented by 1 August 2022; and
- 208.3 Phase 3 - recommendations that have an 18-month or longer implementation period, such as some of the awareness and reporting recommendations.
209. We will monitor progress of implementation of the recommendations through seeking written updates from the TCF. These updates should set out the progress the TCF and the Scheme Agent have made towards implementing each of the recommendations. We expect written update reports to be provided on the dates below, but we may also require updates from time to time on progress on specific issues between reporting periods.

20 April 2022
20 August 2022
20 April 2023
20 August 2023
20 April 2024

210. The TCF and the Scheme Agent should also provide public notification on the TCF and TDRS websites that they have implemented the recommendations set out in this report.
211. If we consider that if any of our recommendations have not been implemented satisfactorily by the timeframes we advise, or that reasonable progress is not being made, the Commission will notify parties that we will be providing a report to the Minister as required by s 246(5) of the Act.

¹¹⁹ Telecommunications Act 2001, s 246(1).

¹²⁰ The requirements of the Act are discussed further at paragraph 36.

Attachment A: Recommendations by implementation phase

Phase 1 – Recommendations to be implemented by 24 December 2021

Reference	Recommendation
R3a	Complete an interim amendment to the Customer Complaints Code to ensure the TDRS' jurisdiction covers disputes under a Commission Code (meaning the 111 Contact Code and a Commission RSQ code), any industry RSQ code as required by s 247 of the Telecommunications Act 2001, and the Copper Withdrawal Code.
R4	The TCF and TDRS should work to improve consumer awareness of the TDRS, in particular, to ensure that consumers who have raised an enquiry or complaint with their service provider are informed of their right of recourse to the TDRS.
R8	Undertake a review of its topic-specific guidance to: <ul style="list-style-type: none"> • update current position statements to ensure they are fit for purpose; • identify and fill coverage gaps in its guidance; and • develop topic-specific guidance in the form of recurring issues articles and news articles into position statements. <p>The review and (re)publication of position statements should occur by 24 December 2021.</p>
R9	Ensure that all current and new topic-specific guidance set clear standards for Scheme Members and include how the TDRS will handle complaints where those standards are not met.
R10	Publish anonymised determinations (including those regarding assessment of jurisdiction) on the TDRS website to allow consumers, consumer groups and industry parties to understand how the TDRS has considered a matter in more detail.
R14	To ensure consumers have confidence that their dispute will be dealt with quickly and efficiently and without undue delay: <ul style="list-style-type: none"> • the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period; • the TDRS quality assurance framework should be amended by 24 December 2021 to require assurance reviewers to check whether Resolution Coordinators are deadlocking complaints promptly in line with the Customer Complaints Code; and • the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon.
R16	<ul style="list-style-type: none"> • Revise the TDRS' internal complaints handling processes to ensure that information consumers provide regarding their complaint is referred back to and utilised. Ensure there is clear communication with consumers to inform them when additional information is required in order to progress their complaint. • The TDRS should ensure that it offers and supports various means of submitting complaints (such as over the phone or referrals from consumer agencies), to ensure all consumers are able to make a complaint.

R17	When deadlock has occurred, the TDRS should immediately remind the relevant Scheme Member(s) of its/their obligation to cease debt recovery action and to desist from disconnecting consumers.
R18a	All parties should have equal opportunity to provide views and respond to others' submissions during the Complaint Summary process. Adjustments should include, but are not limited to: <ul style="list-style-type: none"> revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary.
R19	The complaints handling process should be amended to allow parties the opportunity to review the determination to ensure that key facts are accurate before it is finalised. This will improve the quality of determinations.

Phase 2 – Recommendations to be implemented by 1 August 2022

Reference	Recommendation
R1	Conduct a full review of the Customer Complaints Code and publish the revised Code by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [3b, 5, 11, 13, 15, 18b, 24] of this report. Proposed changes should be developed with the TDRS Council and tested via a full public consultation process with the Scheme Agent and other interested parties (including consumers and consumer groups).
R2	Conduct a full review of the Scheme Terms of Reference and "Agreement with the Scheme Agent for Provision of Services in respect of the Telecommunications Dispute Resolution Service" and publish the revised Terms of Reference by 1 August 2022. At a minimum, the review must cover the matters identified in recommendations [20, 21, 22].
R3b	The review of the Customer Complaints Code should include, at a minimum, reviewing and amending or removing the following exclusions from clause 18: <ul style="list-style-type: none"> Clause 18.1.4 Clause 18.1.6 Clause 18.1.21
R5	The Customer Complaints Code (see R1) should establish clearer guidelines and obligations on Retail Scheme Members, to raise awareness of the TDRS among their customers. This should be accompanied by regular compliance testing. <ul style="list-style-type: none"> This should ensure Retail Scheme Members take a consistent approach to raising awareness at different customer touch points, such as websites, bills, promotional materials, Interactive Voice Recording messages and call centre handling. Retail Scheme Members should inform their customers of the TDRS when a complaint is first made, during the complaint process and when deadlock has been reached.
R11	Amend the Customer Complaints Code to give express authority to, and place an obligation on, the Scheme Agent to analyse all complaints and enquiries it receives to identify systemic issues (see R1).

R13	Amend the Customer Complaints Code to reset the deadlock period for the TDRS from six weeks to 15 working days (see R1). ¹²¹
R15	Improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see R1).
R18b	<p>All parties should have equal opportunity to provide views and respond to others' submissions during the Complaint Summary process. Adjustments should include, but are not limited to:</p> <ul style="list-style-type: none"> revising the Customer Complaints Code to explicitly permit consumers to respond to the Complaint Summary including to respond to Scheme Member submissions that the complaint should be ruled outside jurisdiction (see R1).
R20	<p>Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:</p> <ul style="list-style-type: none"> The TDRS Council has the powers to set and amend the rules for the TDRS including, but not limited to, jurisdiction, monetary compensation, process quality, and Scheme Members' roles and responsibilities. The Scheme Agent is accountable to the TDRS Council, enabling the TDRS Council to: <ul style="list-style-type: none"> set and manage the terms of the Scheme Agent's contract; set KPIs and assess the Scheme Agent's performance; and either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget.
R21	<p>The TDRS Council's composition should be rebalanced to ensure that resolutions can be passed using a combination of independent council members and either consumer group or industry group representatives, ensuring that no one group has the effective or explicit right of veto. This could be accomplished by:</p> <ul style="list-style-type: none"> having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or the TDRS Council could be comprised of equal numbers of independent, consumer and industry representatives, with a two thirds majority required to pass a resolution.
R22	<ul style="list-style-type: none"> Adjust the terms for which the TDRS Council members can serve, to ensure continuity through longer tenures. This should be coupled with regular, staggered refreshes of the council members. There should be a limit placed on the number of consecutive terms for which members can serve. This will ensure the TDRS Council members and Chair are refreshed on a regular basis.
R23	The TCF should actively encourage a broader membership of the TDRS. This should, at a minimum, include regularly engaging with smaller service providers to encourage them to join, and to understand and address the potential barriers to them becoming Scheme Members.

¹²¹ Excluding Copper Withdrawal Code and 111 Contact Code complaints – these complaints will continue to have a five working day deadlock period.

R24	<p>The Customer Complaints Code should be amended (R1) to ensure that:</p> <ul style="list-style-type: none"> • Consumers are able to appoint a lawyer to advise them in relation to a complaint without causing their complaint to be deemed outside of the TDRS' jurisdiction. • Consumers have longer periods to access the scheme (ie, longer than the existing 12-month limit) and to respond to offers of resolution from their provider before a complaint can be closed (ie, longer than the six-week limit). • The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal.
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Phase 3 – Recommendations to be implemented 18 months and beyond

Reference	Recommendation
R6	The engagement requirements in the TDRS 2021/22 Business Plan should be extended in future years so that the Scheme Agent carries out high quality engagement with Scheme Members, and consumer organisations, Māori, and the wider community to improve consumers' awareness and understanding of the scheme.
R7	<p>Continue increased resourcing for awareness initiatives beyond 2021/22 to ensure they have a lasting effect. The work should focus on, among other things:</p> <ul style="list-style-type: none"> • ensuring consumers are made aware of the TDRS at the beginning of the complaints process; • reaching consumers from groups that are rarely using the TDRS; and • continuing to build general awareness of the TDRS.
R12	<ul style="list-style-type: none"> • Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues. • Within 18 months of the publication of this report, public reporting should include data on systemic issues and root causes.