

**Item:** Review of the draft 111 Contact Code

**To:** Commerce Commission

**Date:** 15 July 2020

**From:** Liz Hogan, Head of Commercial Services, FairWay Resolution Limited

### **Background and Key Issues**

This submission is from FairWay Resolution, the Telecommunication Disputes Resolution Service (TDRS) Scheme agent.

As consumers transition away from using traditional copper voice services to new telecommunications technologies, they may be unable to contact the 111 emergency services during a power failure at their premises. This is because some new telecommunications technologies will not work in a power failure (such as fibre or fixed wireless). Calling 111 is the primary means to request emergency assistance from the ambulance, police and fire and emergency services.

The purpose of this Code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111-emergency service in the event of a power failure (clause 3).

The Code sets out mandatory requirements on providers of certain telecommunications services to provide vulnerable consumers with appropriate means of contacting the 111-emergency service in the event of a power failure.

The way that the Code is written and presented to the industry and to consumers is such that it is likely to be treated as the definitive answer on the obligations of the industry, the rights of the consumer and the method for resolving a dispute, in relation to the 111 Contact Code. Many consumers will be unaware of general consumer legislation and might rely on the Code to accurately set out their legal rights in a telecommunications dispute.

### **Considerations with the 111 Contact Code and the TDRS Customer Complaints Code**

In relation to the Act and how non-scheme members will be bound by the Code, the Commerce Commission has advised us that its interpretation is as follows:

- a) Section 241 of the Telecommunication Act (Act) provides that a consumer may refer a dispute to the TDRS. It doesn't limit that right to only consumers who are customers of scheme members.
- a) Further, section 242(3) explains how determinations are binding when they involve parties who are not scheme members. This provision would be redundant if consumers of non-scheme members could not refer a dispute.

TDRS agrees with this interpretation but notes there could be issues with how TDRS would deal with complaints for non-members of the TDRS Scheme, both in terms of compliance and cost recovery in providing the dispute resolution service.

- A. As a member of TDRS, providers are bound by any decisions made during the dispute resolution process, and customers still have the right to appeal through to the district court. If there is an issue with a non-member complying, under section 245 of the Act, TDRS would have to make an application to the District Court. TDRS should be able to cover reasonable and actual costs, and these types of costs would be borne by the non-member.
- B. The 111 Contact Code states that a consumer is able to refer a dispute to the TDRS at any time. The TDR Customer Complaints Code affords scheme members 6 weeks to resolve complaints directly with their customer. Our initial interpretation is that the Scheme Member would still be afforded this opportunity and we would remain in contact with the customer during this time, as currently is the case.

The Act appoints the TDRS as the dispute scheme. The Commission should accept that the TDRS rules apply without modification. If the Commission requires changes to the scheme it can recommend this as part of its TDRS review. Any provisions within the existing rules of TDRS are to be interpreted to give effect to complaints received by the 111 Contact Code, meaning if there is any conflict between the 111 Contact Code and the scheme rules (the Customer Complaints Code), that the 111 Contact Code will prevail.

### **Suggested changes to the draft Code**

We can see two ways the above issues could be clarified in the Code to allow 111 Contact Code complaints to be considered by TDRS:

The 111 Contact Code could include an express provision (our recommended option) holding that all providers of retail landline services will be treated as if they were a full scheme member of the TDRS (as the nominated dispute resolution scheme) for the purpose of any 111 Contact Code disputes, from the date of the Code comes into force; OR

The Telecommunications Forum could introduce a set of supplementary rules specifically for the 111 Contact Code, which says in effect that if there is any conflict between the 111 Contact Code, and the Customer Complaints Code, the 111 Contact Code will prevail. Because the 111 Contact Code requires compliance with the rules of the dispute resolution scheme, then that would logically include all rules including supplementary rules. The changes would require support from retail and wholesale members of the TDRS.

While both options could be applied, our submission is that the better option would be option 'A'. The reason being that the 111 Contact Code provides strict requirements with compliance of decisions that are binding and could be the subject of a court order. That being the case, we consider that the more appropriate approach would be to confirm in the 111 Contact Code that all retailers will be treated as full scheme members for the purposes of the 111 Contact Code. This would also make it clear to all non-TDRS members about the

Commerce Commission's interpretations about how the Act applies to the 111 Contact Code.

### Other points for consideration

1. Under Clause 6.8 does the ability for a consumer to go to either TDRS or the Commission create a lack of clarity for vulnerable customers. Under the Telecommunication Act S9A(1)(c) states the Commission must monitor compliance with the Commission 111 contact Code and S248(f) states the dispute resolution provider is to monitor compliance with the scheme and the Code.
2. As both the Commission and TDRS are responsible for monitoring the Code, we would suggest that any complaint arising under the Code be directed to TDRS in the first instance. If during the enquiry/investigation a provider is found not to comply with the Code, TDRS would then be able to refer the matter to the Commission.

Clause 6.8 could be rewritten as follows:

- 6.8 how a consumer may make a complaint in relation to a matter arising under the Code, including that:
  - 6.8.1 any dispute between a consumer and provider about their rights and obligation and complaints regarding the providers compliance with the Code
  - 6.8.2 Should the TDRS identify non-compliance by the provider with the Code, TDRS may then refer the matter to the Commerce Commission for its investigation.
3. There is confusion in relation to who can make a complaint in clauses 6.8.1 and 27.1 of the Code. In clause 6.8 a “consumer” may make a complaint in relation to a matter arising under the Code. However, the following applies in clause 27.
  - 27 For the avoidance of doubt:
    - 27.1 only a customer or a provider may refer a dispute under the Code to the Telecommunications Dispute Resolution Scheme.
4. There needs to be a clearer definition between a consumer and a customer, so that consumers understand that they cannot make a complaint unless they are a customer.
5. Under Clause 28, does the inclusion of ‘but are not limited to’ create further confusion for a consumer, as they may not understand what is or is not a dispute arising under the Code and assume this means any type of telecommunication dispute. This could potentially create issues when the customers expectation are not met in relation to the process followed under the 111 Code, if the dispute relates

to a matter under the Customer Complaints Code. Could an additional clause be included such as:

- 28.3 only where it falls within the scope of the 111 Contact Code and does not include wider telecommunication disputes.
6. Under clause 6.1 providers are required to inform customers about options available for vulnerable consumers and must specify information about telecommunications technologies that may not work in a power failure (including cordless phones and medical alarms, if they do not have inbuilt battery). Has the Commission completed any modelling on expected complaint numbers and what consumers this would capture?
7. Consideration should be given to including information on what a vulnerable customer can do if their application is declined. This would provide a customer with an assurance that they have options, should the initial application be declined, and would also highlight that a complaint can be made to TDR.