

Submission to the Commerce Commission on the Draft report to the New Zealand Telecommunications Forum Inc. (TCF) on recommendations for improvements to the TDRS

1. Introduction

Thank you for the opportunity to make a submission on the Review of the Telecommunications Dispute Resolution Scheme (Draft report to the New Zealand Telecommunications Forum Inc. (TCF) on recommendations for improvements to the TDRS, 30 August 2021). The following submission is made by the Telecommunications Disputes Resolution Service Council, the body that oversees the telecommunications dispute resolution scheme (TDRS) and works closely with the scheme agent, Fairway Resolution Services.

The council considered the recommendations of the review and the reports at a special meeting on 14 September 2021.

2. General Comments

The council agrees that the Commerce Commission report and the report from its consultants, CRK, were timely, comprehensive, and aligned with much of the council's thinking on how to improve the TDRS. The Commerce Commission report provides a clear pathway towards enhancing the scheme with a welcome emphasis on improving awareness, governance, independence and being more responsive to consumers. The council appreciated the opportunity to meet with the reviewers and discuss a range of issues as part of the review process.

3. Timing issues

Most importantly, the council welcomes the recommendation to review the customer complaints code, terms of reference and scheme agent agreement. These reviews are essential, overdue and the best way to bring about many of the suggestions made in the reports. However, the council is concerned at the idea that some of the proposed changes should be invoked almost immediately. The council believes that ad hoc practice changes ahead of the full document reviews is unnecessary and does not reflect sound management.

4. Mandatory membership

Although the council understands it is not within the Commerce Commission's powers to require compulsory membership of EDR schemes, we would have liked the Commission to acknowledge the issues raised by CRK regarding the TDR's coverage. We believe all customers of telecommunications providers and wholesalers would benefit from the protection of an external dispute resolution scheme. This is consistent with the situation in Australia where all telecommunications carriers and eligible carriage service providers are required to be members.

5. Response to each recommendation

The council responds to the recommendations in the order that they have been presented in the implementation timeline in the Commission's review report (figure 1).

DR3	As above the TDRS council agrees with the reviews of the code, the terms of reference and scheme agent agreement.
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	<p><i>Clause 18.1.4</i> (there is a typo 18.1.14 in report). Council is concerned that this recommendation would force a scheme member to be responsible for equipment (for example, a modem purchased by a customer from a third party, say Dick Smith) which is not supported by the scheme member, may be faulty or not compatible.</p> <p><i>Clause 18.1.6.</i> This is poorly defined and too open ended. It potentially promotes a situation of providing network coverage to all no matter what, including in isolated places that have previously not had coverage.</p> <p><i>Clause 18.1.21.</i> This, too, needs to be defined.</p>
DR14	This is accepted but with the words “where appropriate” before proactively deadlocking ...
DR16	This is accepted but it should be clear that a complainant may add further information and comments to their original complainant if they want to.
DR17	Accepted
DR 18	Accepted
DR4	Accepted
DR5	Accepted. Do not agree that this is done via change in practice.
DR8	Accepted
DR9	Accepted. Clearer position statements will assist.
DR10	<p>The council supports the publication of case notes, guides and summaries of anonymised determinations. All of these tools are useful in enhancing early resolution, preventing further disputes and aiding scheme transparency, especially in cases where there are widespread issues. Summarised determinations can be useful when disputes involve complex and/or multiple issues. In some high profile cases, it may be prudent to publish the full written determination.</p> <p>In the first instance, the Council considers that the number of case notes needs to be increased, including jurisdictional decisions, and TDRS should publish summaries of determinations.</p> <p>Because the TDRS has a number of tools for educating consumers and scheme participants about its approach to common issues, criteria will need to be established as to whether case notes, summarised determinations and/or guides (with linked case notes) or full determinations are most useful in the circumstances. Consideration also needs to be given to any potential impact on TDRS’s ability to resolve similar, but different, cases in the future and to avoid the perception that the TDRS is overly rigid or legalistic.</p>
DR14	Accepted
DR19	Accepted
DR1	Accepted
DR2	Accepted
DR11	Accepted
DR15	Accepted
DR18	Accepted
DR 20	Accepted – the council supports option (a) for the funding of the scheme
DR21	The council supports the proposition that council’s composition should be reviewed and constituted so as to ensure that no one group has the effective or explicit right of veto.
DR22	Accepted

DR23	As discussed in the introductory remarks, the council supports mandatory membership of the scheme and that wholesale members should become full members
DR24	<ol style="list-style-type: none">1. Agree2. This should be changed to reflect a situation where a complainant can seek legal assistance, but a lawyer cannot be involved beyond that. Noted that the Disputes Tribunal does not allow lawyers to be part of hearings.3. This bullet point requires some explanation.4. Agree5. Agree that compensation limits should be the same as the Disputes Tribunal.
DR6	Accepted
DR7	Accepted
DR12	Accepted