

Commerce Commission – TDRS Review

Who are we?

FairWay is New Zealand’s leading dispute resolution and conflict management organisation. We specialise in solving problems, making impossible conversations possible, and helping people in conflict to move forward.

FairWay Resolution Limited is an independent, employee-owned company providing specialist conflict management and dispute resolution services. FairWay employs around 70 staff and contracts with over 110 specialist reviewers and dispute resolution practitioners (adjudicators, reviewers, mediators and conciliators) throughout New Zealand.

FairWay handles over 16,000 cases each year — of all kinds and levels of complexity, including medical, insurance, financial services, telecommunications, family, local government, building and construction, school and workplace disputes. Our dispute resolution experience underpins our conflict management expertise in all parts of the conflict management cycle — prevention, management, resolution and analysis of conflict.

Feedback on Commerce Commission Draft Review of TDRS

FairWay Resolution Limited as the scheme agent for the Telecommunications Dispute Resolution service thanks the Commerce Commission and Cameron Ralph Khoury for their clear guidance and timeframes during the review.

We appreciate the opportunity to provide feedback to the draft review document. After considering the draft recommendations we are, at a high level, supportive of these and believe many will provide ongoing benefits to scheme participants into the future. We note there are a number of recommendations relating to work that has already commenced within the Scheme, confirming the direction TCF, TDR Council and FairWay have set. We will continue with our implementation plans in this regard.

We are in general agreement regarding the timings of implementation, however, note that there are some technical challenges to work through to fulfil the Commission draft implementation plan. This is particularly evident in the jurisdiction changes and the impact on the code.

We note the observations regarding declining numbers due to ‘lack of awareness’. Notwithstanding the importance of increased service visibility, we believe it important to note the impact of work Scheme members have done to enhance their internal processes for resolving issues before they escalate to TDR would have on overall case numbers. In addition and related to the MBIE research regarding a lack of awareness, it is important to also note the research identifies a widespread issue across New Zealand regarding a general lack of awareness of pathways to resolve disputes. This is an area where government agencies could assist through general awareness campaigns.

For the sake of brevity, we have provided comment on areas where:

- we believe more clarity is required from the Commission
- there are other factors to consider impacting the recommendation and/or timing of their implementation, or
- we propose an alternative view.

DR3 FairWay agrees with the broadening of scope for jurisdiction however, the split implementation of a practice change pre codification creates some complexities, including the potential for double handling when the Code is formally reviewed. In addition, the current governance and membership structure of TDR would require voluntarily adoption of the changes until codification is achieved. For example, a TDR Member who is not also a TCF Member may have some challenges with broadening jurisdiction when the changes are in 'practice' rather than in the Code.

DR10 While we agree with the need to provide anonymised determinations on the TDR website, we do not agree that every jurisdictional decision should be included in this. First, they are not determinations, and confirmation of jurisdiction (or otherwise) is provided using the complainants preferred method of contact. Second, the provision for jurisdiction is clearly detailed in Section 17-18 in the (current) Code – to the extent such information is clearly available to parties, greater clarity would be achieved. We do however believe there is value in the area of reporting detailing the number and type of jurisdictional exclusions from the scheme – so much so we will commence reporting on this detail in our next annual report.

DR13 We do not support this change. While simple resolutions can be resolved quickly resolutions that require a billing cycle to complete or involve a wholesale provider can and do take longer to resolve.

We recommend time is set to a minimum 15 working days, but preferably 20 working days.

DR15 FairWay supports this provision however provides comment that wholesale providers are not signatories of the Customer Complaints Code or “full” scheme members of the scheme.

DR16 TDR is a conduit to providing a pathway to have customers complaints resolved directly through their telco provider, together with providing early resolution and determinative process if complaints cannot be resolve.

In the former when TDR is initially contacted by a customer, if the matter has not reached the threshold of deadlock we request minimal personal information (for scheme member account identification), a summary of the matter and the customers requested resolution.

TDR has no 'complaint' (active) involvement in the matter at this time. However, we do provide support to both parties to discuss the complaint, query suggested resolutions or assist in prompting communication.

While we agree the correct terminology is that this is a 'complaint', given our limited involvement we record this contact as an enquiry, as it has not been

deadlocked/entered the TDR process. If the matter continues and deadlock is reached TDR will then request the customer to provide their full formal complaint (for the first time).

We agree that customers should have assistance to make complaints and enquiries however we ask the Commission to:

- i. clarify the distinction between a complaint and an enquiry.*
- ii. give consideration to privacy issues relating to gathering more information than is required to perform our duty (e.g. Privacy Principle 1).*

DR18: Section 40.8 of the Code allows both the customer and scheme member to provide oral submissions in support of their written submission prior to issuing a Final Determination. The area of DR18 that refers to this section of the Code may require revisiting by the Commission to align it with the section where a Scheme Member submits their written response, which includes their opinions regarding jurisdiction (section 39.16)

DR19 While we support in principle, we believe this recommendation needs to be carefully considered to eliminate the potential for participants to use this 'fact check' as a chance to attempt to relitigate the whole case.

Can the Commission confirm in the final review that this 'fact check' can be enforced to protect against relitigating the issue.

DR24 While we support the majority of suggestions here, we do not agree that consumers should be able to appoint lawyers to act on their behalf. FairWay believes in mediation and early resolution. These methods focus on retaining a future relationship with customers, where settlements and determinations just deal with the issue at hand. A legal representative can put an additional barrier between the customer and provider. We note that legal representation is still not allowed in normal dispute tribunal hearings, albeit lawyers may be used to bring together the case evidence

We believe a customer should have access to legal advice and support however our preference is that the scheme operates similarly to the Disputes Tribunal in this respect.

FairWay is committed to working with other stakeholders within the telecommunications sector to achieve implementation of the recommendations

We look forward to ongoing engagement with the Commerce Commission for the benefit of all New Zealanders.