



**THE  
ADR  
CENTRE**

Te Whakatau Tautohe  
Huarahi Kē

# Telecommunications Dispute Resolution Scheme Review 2024 - Submission from ADR Centre Limited (the ADR Centre)

**29 November 2024**

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THE CENTRE  
FOR ALTERNATIVE  
DISPUTE  
RESOLUTION

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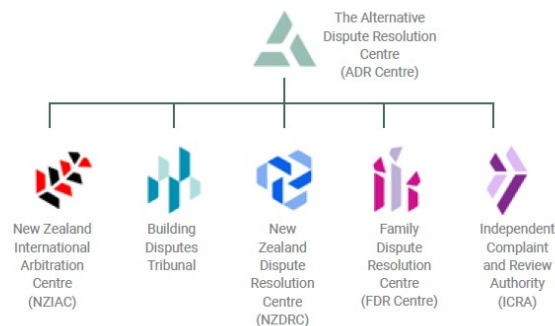
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## Introduction

This submission is made by the ADR Centre (Te Whakatau Tautohe Huarahi Kē) (**ADR Centre**).

The ADR Centre is a pioneer in the field of private dispute resolution. We have over 30 years of experience in the design and delivery of private dispute resolution services. We have a proven track record of designing, developing and delivering accessible and effective alternative dispute resolution services and schemes for industry sectors, the community and Government agencies.

The ADR Centre hosts five subsidiaries – New Zealand International Arbitration Centre (**NZIAC**), Building Disputes Tribunal (**BDT**), New Zealand Dispute Resolution Centre (**NZDRC**), Family Dispute Resolution Centre (**FDRC**) and Independent Complaint and Review Authority (**ICRA**).



This diagram illustrates the ADR Centre’s relationship with our five – NZIAC, BDT, NZDRC, FDRC and ICRA.

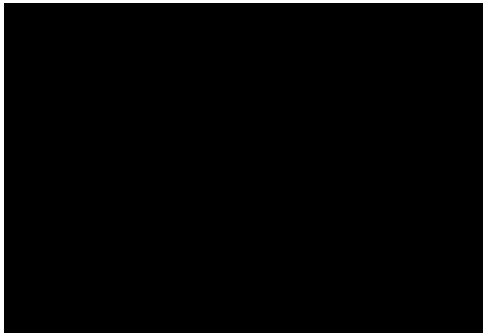
We are innovative and responsive to the needs of our customers. Our extensive knowledge and experience designing and implementing private dispute resolution services has enabled us to develop a sound and comprehensive understanding of the commercial requirements and realities to deliver dispute resolution services. Information on our delivery model is annexed at the end of this submission.

Our submission draws on our extensive experience in designing and implementing dispute resolution schemes across various sectors. We understand that the telecommunications industry’s unique dynamics require a solution that balances the interests of stakeholders while facilitating timely and cost-effective resolutions. Our track record demonstrates our commitment to independence, expertise and transparency - values that are vital for building trust in any dispute resolution framework.

Thank you for considering our submission. We hope to begin dialogue with you so that the telecommunications dispute resolution service provides a tangible value to the telecommunications industry’s stakeholders while bolstering the dispute resolution scheme’s reputation as a reliable and consumer-centric service.

We look forward to hearing from you.

Nāku noa, nā



**Willem van Gent**

Head of Commercial, Compliance and Complaints



For more general information about The ADR Centre, please refer to our website:

[www.adrcentre.co.nz](http://www.adrcentre.co.nz)

### **Making the most of the dispute resolution scheme**

The ADR Centre recognises the importance of the services provided for by the Telecommunications Dispute Resolution Scheme (**TDRS**).

We welcome the general direction of the Commission laid out in the 2024 Review Report in improving the TDRS and ensuring that it operates in a fully independent manner.

### **Our view on the Commission's Review (the Review)**

#### **Comments on the Commission's recommendations**

In this section, we will suggest ways the TDRS could reach its general goals. Many of these suggestions come from findings the ADR Centre has made on our own services.

For point of reference, we wish to briefly explain the techniques we apply to guarantee services that have been trusted by key stakeholders such as the Accident Compensation Corporation, the Ministry of Justice, Fire and Emergency New Zealand, the Commerce Commission and the Domain Name Commission.

## Our submission

In light of our expertise and experience delivering private, independent dispute resolution services, our submission provides general high-level commentary in response to key pillars we observed within the Commerce Commission's 2024 Review Report.

We would like to address what seem to be the key pillars of the Commission's direction:

### **Boosting consumer awareness**

Despite an increase in awareness, as noted within the Commission's Report, overall awareness of the TDRS remains relatively low. The following measures can assist:

#### *Marketing campaigns and promotion of the scheme*

We agree that marketing campaigns and promotion of the scheme should increase awareness. Marketing is a key tenant of any type of service. Our own experience has shown that strategic, targeted marketing translates to increased awareness and better understanding of dispute resolution services, particularly the various dispute resolution process options available to our clients.

TDRS members have a range of avenues available through which information about the scheme can be disseminated. This capacity to display a considerable amount of information should be utilised to increase scheme awareness. An example of this is including information about the scheme within emails to consumers. Another could be to have information about the scheme clearly displayed on the front page of websites of telecommunications service providers - this may require variations to the TFC Code Compliance Framework Obligations.

We note and agree with the recommendation that scheme members should inform their customers of the scheme when a complaint is first made, during the complaint process and when a deadlock had been reached. If the scheme is to be rigorously promoted – a recommendation with which we agree – then reference to and information about the scheme should be readily accessible.

To further maximise awareness, we suggest marketing and promoting the scheme not merely to consumers of telecommunications services, but also to dispute resolution/legal professionals. Lawyers have an obligation to explore with their clients' methods on how to have a dispute resolved as efficiently as possible. Equipping them with information about the scheme assists lawyers to proactively suggest the use of the scheme to their clients.

Partnering with community organisations (such as Community Law and the Citizens Advice Bureau) could be an effective way of targeting consumers at a demographic level. To ensure that the scheme is promoted it will often be worth taking a realistic approach to the public. A 'one-size fits all' approach may not work and the message will have to be tailored.

#### *Lessons from the financial sector*

The TDRS can draw upon lessons learnt from the financial sector. In its [2023 annual report](#), the Banking Ombudsman outlined the steps it had taken to become the most well-known financial dispute resolution scheme. The Banking Ombudsman had:

- introduced and monitored a requirement for all banks to have information about its services and complaints procedures available on their websites and apps;

- partnered with another dispute resolution scheme to hold focus groups in order to reach communities to better understand how to connect with them;
- met regularly with financial mentors to strengthen relationships and better understand the issues facing their clients; and
- worked with their customer advisory group to identify and address banking issues impacting vulnerable consumers.

## **Better practice management**

### *Dedicated case managers*

Having a team of dedicated case managers assists can assist the scheme in a number of ways. Case managers can:

help members and consumers schedule dispute resolution events;

- explain the dispute resolution process to consumers;
- store key documents in an organised way; and
- be available to respond to queries from parties accessing the scheme.

### *Continuous training and development*

We recommend that dispute resolution practitioners are trained to write in a way that centres to the issues of the consumer. The use of plain language in decisions and outcome agreements should be emphasised.

Parties navigating the scheme may not be in a position to afford legal representation and/or may not be familiar with the subject matter. A finding from our customer satisfaction surveys is that customers are more content with the decision when they feel it understands and speaks to the exact problem they have faced.

Tone is also vital in this respect. Decision makers should write in a way that speaks empathetically about their experience. This practice is particularly effective in arrangements where there is a clear power imbalance between the parties, as is the case in telecommunications services.

### *Mechanism for reviewing the quality of outcomes*

A dedicated team that peer-reviews the decisions of the dispute resolution practitioners will help ensure that the law is applied correctly and ensure that fair, equitable outcomes are achieved.

Reviewing decisions to ensure that the law is applied correctly and consistently, and that decisions are written in a clear and correct manner ensures that decisions are of the highest quality and less susceptible to correction or challenge. The ADR Centre has a dedicated peer review team that conducts a quality check on all decisions. The degree to which TDR adopts a review process for its decisions will depend on its resourcing.

### *Scope of dispute resolution*

One obstacle for consumers in accessing the scheme is that they may have a limited understanding of the scope of disputes to which the scheme is designed to respond.

Communication should be clear on the types of disputes the scheme can resolve. One way this could be achieved is through fictional case studies. Alternatively, real cases could be used, but with identifying information redacted.

Some dispute resolution services, such as the Domain Name Commission (**DNC**), which is administered by the New Zealand Dispute Resolution Centre (**NZDRC**),<sup>1</sup> publishes its expert determinations. The DNC has also previously published summaries of expert determinations. This type of communication could supplement case-studies.

### *Equal access and usage*

One of the most efficient ways of enabling broad demographic access is to provide the services in the language of consumers. Of course, there are clear resource limitations here. One workaround could be to contain as much information in the scheme as possible in the top spoken languages in New Zealand (te reo Māori, Samoan, Tongan, Mandarin, Cantonese, Korean, Hindi). In other commonly spoken languages, just the key information could be contained.

### *Tikanga*

We note that Telecommunications Dispute Resolution Limited's terms of reference do not contain any reference to tikanga. This is also not addressed in the Review.

In our view, the Commerce Commission should incorporate a tikanga-based framework into the scheme. The scope of such assessment should investigate who could be approached to develop the framework and how it should be marketed.

To clarify, we have not suggested investigating whether it would be appropriate for the scheme. In our view, tikanga is a trusted method for enhancing the dispute resolution process for Māori.

### *How the ADR Centre uses tikanga*

The ADR Centre has a longstanding partnership to provide a wrap-around Tikanga based Māori cultural support framework for those parties who wish to adopt it. This looks different in different cases. The framework we use symbolises us working together in collaboration with our stakeholders to establish unique pathways for guiding and supporting parties to dispute resolution services as we journey together using Māori beliefs, principles, values, and practices that derive from traditional knowledge (mātauranga Māori) for improved outcomes for parties.

We would welcome the opportunity to explain how the tikanga framework enhances services at the ADR Centre.

## **Membership and funding of the scheme**

### *Membership*

As per the current requirements., TDRS scheme membership is mandatory for TCF members, but voluntary for other telecommunications providers.

Non-membership inhibits the ability of non-members' customers from accessing the TRDS. Requiring mandatory membership will remove barriers restricting customers access to the scheme,

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<sup>1</sup> The New Zealand Dispute Resolution Centre is a subsidiary of the ADR Centre.

thereby providing customers of all telecommunications service providers with access to dispute resolution services.

We note the comments that mandatory membership of an industry dispute resolution service is a common feature of telecommunications regulatory frameworks in certain overseas jurisdictions. We agree with this approach and are of the view that membership to the TDRS should be made mandatory.

### ***Funding***

Budget independence may lead to a more independent scheme, or at least the perception of such. However, we would be hesitant to support the recommendation without a further understanding of where the independent funding would be derived from.

In our view, the perception of impartiality and independence does not necessarily have to come from independent funding. There are a number of structural processes that the scheme can adopt to ensure that the existence of independence is understood clearly by consumers.

Setting clear service delivery expectations (including KPIs) in agreements with dispute resolution suppliers would help. The requirement for mandatory periodic reporting to track key deliverables and KPIs is an effective mechanism to monitor performance and compliance. Regularly scheduled meetings to discuss and resolve issues that may arise is also useful.

Each of the dispute resolution schemes administered by the ADR Centre have key deliverables and set KPIs. This ensures that decisions, and the processes that create the decisions, have objective standards to which they are held.

By way of example, the Grocery Industry Dispute Resolution Scheme, which is set up to deal with disputes between regulated grocery retailers and suppliers of wholesale customers, is funded by levies paid for by regulated grocery retailers. The New Zealand Dispute Resolution Centre (**NZDRC**) has been entrusted by the Commerce Commission to design, deliver and administer the Grocery Industry Dispute Resolution Scheme. Despite the funding model and any perception of lack of independence, the Grocery Industry Dispute Resolution Scheme operates independently and free from any influence from grocery industry stakeholders.

### **Delivering faster resolution times**

#### ***More effective service delivery***

We note at paragraph 6 of the Review Report that the number of customers who have accessed the TDRS has grown significantly over the past decade. Establishing a second provider would assist in the better management of cases. This would allow the current provider to commit more resources to more effectively manage their case load and ensure that outcomes can be reached in a timely and efficient manner. Having a second provider can also address the perception of lack of independence of the scheme.

Our experience has shown that opening the market to other dispute resolution suppliers can lead to more efficient case management and better outcomes for users of dispute resolution services.

The addition of a second provider will also enhance competition, aligning comfortably with the mission of the Commerce Commission. As the Commission will know, the history of the



telecommunications market in New Zealand, particularly the deregulation of the market in 1989, suggests strongly that competition has tangible benefits to consumers.

*Lessons from opening ACC dispute resolution to more providers*

Competition among dispute resolution providers has been promoted by other government/publicly funded entities. The example of ACC's dispute resolution services illustrates the point well.

ACC had previously conducted its dispute resolution procedures in-house. The need to appear impartial prompted ACC to privatise this service. ACC operated with one provider for some years. However, in 2018 ACC made it public that it wanted to establish a second provider. This decision was made to create competition in the ACC dispute resolution space.

Through this process, the Independent Complaint Review Authority (**ICRA**),<sup>2</sup> was chosen as one of the providers for independent review and dispute resolution services of ACC disputes. Five years on, ICRA remains a trusted supplier to ACC of review and dispute resolution services.

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We would be pleased to provide the Commerce Commission with any further information required. Should the opportunity arise to make oral representations, the ADR Centre would welcome the opportunity to assist further.

For any questions regarding this submission, please contact Willem van Gent:

[REDACTED]

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<sup>2</sup> The Independent Complaint Review Authority is a subsidiary of the ADR Centre.

## Annexure

### *The ADR Centre's delivery model*

Founded and built to develop and deliver a wide range of credible private dispute resolution services as an alternative to court proceedings on an entirely commercial basis, we are pioneers in developing best practice private dispute resolution services.

Our success is built on our underlying ethos which is to design and deliver dispute resolution processes that meet the needs of the communities we serve. Any form of conflict, whether personal or commercial, is challenging and stressful for those involved. Accordingly, we have invested heavily to build up systems and processes which ensure the effective and efficient delivery of our services, and which free up our people to engage in a person-centric capacity.

Every case we administer has a dedicated case manager who is directly accessible – we do not operate a call centre. This means that those who need to avail themselves of our services can have confidence that they will receive dedicated support throughout their case. Our current team includes both internal and external resources. Internally, we have 51 employees with in-house capability and talent to deliver the following functions:

- **Professional case management:** We deliver a dedicated case management function, with each case assigned to a case manager who will administer and manage the case from start to finish. This provides the parties with one point of contact. This is essential to ensure the process is as efficient, effective and stress-free as possible for all participants.
- **Knowledge management:** Our in-house Knowledge Management Team are legally qualified. They provide support to everyone across the business, including our external contracted dispute resolution practitioners. This ensures our systems, processes and resource materials are constantly updated and continuously improved, ensuring ongoing learning and professional development to deliver best-in-class services to the clients/customers we serve. The Knowledge Management Team undertakes legal research, policy reviews, policy drafting, and drafting of relevant law templates and other documents for use by determinative practitioners. They are also responsible for peer reviewing all determinative outputs from the five subsidiaries they support, ensuring our review and appeal decisions, adjudication and expert determinations, and arbitral awards are of the highest quality and less susceptible to correction or challenge in the courts. This unique quality assurance mechanism makes our determinative services certain and reliable.
- **Marketing:** Our marketing team ensures that those who might need to engage, and those who would benefit from engaging in the services and schemes we deliver are aware of them and able to access the information and materials they need in the most accessible media for them.
- **IT:** Our internal IT capability delivers and supports our websites, online case management software and overall tech stack. Technology underpins the delivery of our services. Our approach is to leverage technology to free up our case managers to provide personalised support to our clients. Our government-approved and penetration-tested case management platform ensures that the personal information we hold is secure, yet readily accessible to those who need it. We can generate large amounts of relevant statistical data to inform accurate reporting and ongoing scheme refinements and improvements.

- **Management and oversight:** The team is supported by direct management and hands on engagement by the directors who are highly experienced and respected dispute resolution professionals. This ensures top quality and relevant services are designed and delivered under the careful guidance and oversight of experienced and skilled managers who are also respected and experienced private dispute resolution and conflict management practitioners. They understand the private complaint management and dispute resolution business better than anyone else in the market.

Externally, we engage with specialist practitioners to deliver our services with nationwide coverage. This allows us to readily scale up or down to meet market demand and ensures we can appoint the most appropriate person to act in each case, not just any available staff member.

We currently provide dispute resolution services nationwide through our network of dispute resolution practitioners. Our office is staffed between 7.00 am and 5.00 pm Monday to Friday. Our web-based application service is available 24/7. We work with a wide range of practitioners who are located throughout Aotearoa New Zealand. Many are also willing to travel where necessary for in-person dispute resolution. Our practitioners are also experienced in delivering credible and effective dispute resolution services remotely using both telephone and video conferencing.