

# **Review of the Telecommunications Dispute Resolution Scheme (2024)**

Under Part 7 of the Telecommunications Act 2001

## **Final report to Telecommunications Dispute Resolution Scheme Limited on recommendations for improvements to TDRS**

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## Associated documents

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29 March 2021	978-1-869458-80-5	<a href="#">Review of industry dispute resolution schemes – Framework document</a>
11 November 2021	978-1-869459-47-5	<a href="#">Report to the New Zealand Telecommunications Forum Inc. (TCF) on recommendations for improvements to the TDRS</a>
11 April 2024	Not applicable	<a href="#">Launch letter for 2024 review of the Telecommunications Dispute Resolution Scheme (TDRS)</a>
8 November 2024	Not applicable	<a href="#">Review of the TDRS – Expert Report – October 2024</a>

## Glossary, defined terms and abbreviations

Term	Definition
<b>Act</b>	Telecommunications Act 2001
<b>Commission</b>	Commerce Commission
<b>Constitution</b>	The TDRL Constitution sets out the rights, powers and duties of TDRL, its owners and board of directors
<b>CRK</b>	cameron.ralph.khoury is the expert consultancy hired to conduct certain tasks for the Commission’s first review of the TDRS in 2021 and the second review of TDR in 2024
<b>Customer Care Code</b>	The industry code developed by the TCF to replace the Customer Complaints Code from 1 July 2023 and sets out a requirement for providers to develop a customer care policy and the minimum provisions for standards of practice and dealing with complaints
<b>Customer Complaints Code</b>	The former industry code developed by the TCF that set out the rights and obligations of Scheme Members and their customers regarding the handling of complaints and resolution of disputes
<b>DPP</b>	Means the TDR Disputes Procedures Process document that sets out the process of handling disputes under the Scheme
<b>EDR</b>	Means external dispute resolution scheme and is a generic term for dispute resolution that takes place via an ombudsman scheme or other complaint handling organisation that is external to the organisation that is the subject of the dispute
<b>Fairway</b>	Fair Way Resolution Limited, a company contracted by TDRL to provide the dispute resolution service for TDR
<b>IVR</b>	Interactive Voice Recording
<b>MBIE</b>	Ministry of Business, Innovation and Employment
<b>NPS</b>	Net Promoter Score measuring customer satisfaction
<b>RSQ</b>	Retail Service Quality
<b>Scheme</b>	The term we use to refer to the documents that collectively comprise TDR (ie, the Customer Care Code, the TOR, the DPP and the TDRL Constitution). We use the term “scheme” (lower case) to refer to TDR

<b>Term</b>	<b>Definition</b>
<b>Scheme Agent</b>	The independent body contracted by the TDRL to provide the dispute resolution service for TDR. Fairway is the current contracted organisation
<b>Scheme Member</b>	A provider who provides services to a customer or a third-party who provides a telecommunications input service to a provider (for example, a local fibre company)
<b>Scheme Provider</b>	The person responsible for an industry dispute resolution scheme under s 232 of the Act. TDRL is the Scheme Provider for TDR
<b>Service provider</b>	A telecommunications service provider
<b>TCF</b>	New Zealand Telecommunications Forum Inc. – an industry body made up of both wholesale and retail telecommunications service providers
<b>TDR</b>	The Telecommunications Dispute Resolution Scheme – the industry dispute resolution scheme which is the subject of this review. TDR is New Zealand’s main dispute resolution service for consumers who have disputes with their service providers about mobile, internet and landline services. Formerly known as the TDRS
<b>TDRL</b>	Telecommunications Dispute Resolution Limited
<b>TDRS</b>	Telecommunications Dispute Resolution Scheme - the previous name for TDR
<b>TDR Board</b>	Means the board of directors of TDRL
<b>TIO</b>	The Australian Telecommunications Industry Ombudsman
<b>TOR</b>	Terms of Reference – a document setting out the rules and governance for TDR

## Contents

<b>ASSOCIATED DOCUMENTS</b> .....	<b>2</b>
<b>GLOSSARY, DEFINED TERMS AND ABBREVIATIONS</b> .....	<b>3</b>
<b>CONTENTS</b> .....	<b>5</b>
<b>FOREWORD FROM THE TELECOMMUNICATIONS COMMISSIONER</b> .....	<b>7</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>9</b>
KEY ASSESSMENT FINDINGS.....	9
<i>Usage of TDR</i> .....	11
<i>Review Of Scheme Documents</i> .....	11
<i>Awareness</i> .....	11
<i>Position Statements And Case Studies (Practice Management)</i> .....	12
<i>Complaints Handling</i> .....	12
<i>Systemic Issues</i> .....	13
<i>Governance</i> .....	13
<i>Jurisdiction</i> .....	14
2024 RECOMMENDATIONS .....	14
<b>INTRODUCTION</b> .....	<b>18</b>
PURPOSE OF THE REVIEW .....	18
THE 2024 REVIEW.....	18
APPOINTMENT OF EXTERNAL PROVIDER .....	20
<b>OVERVIEW OF TDR SCHEME</b> .....	<b>21</b>
THE PURPOSE OF TDR .....	21
THE ROLE OF TDRL.....	21
THE DOCUMENTS THAT FORM THE BASIS OF TDR.....	21
<i>The Customer Care Code</i> .....	21
<i>The TOR</i> .....	22
<i>The TDRL Constitution</i> .....	22
<i>The DPP</i> .....	22
DISPUTE RESOLUTION PROVIDER/SCHEME AGENT .....	22
MEMBERSHIP OF TDR.....	22
WHO CAN BRING COMPLAINTS TO TDR.....	23
STRUCTURE AND GOVERNANCE OF TDR.....	23
<i>The TCF</i> .....	23
<i>The TDR Board</i> .....	23
<b>USAGE OF TDR</b> .....	<b>25</b>
<b>REVIEW OF THE 2021 REPORT RECOMMENDATIONS</b> .....	<b>27</b>
REVIEW THE CUSTOMER COMPLAINTS CODE, SCHEME TERMS OF REFERENCE AND SCHEME AGENT AGREEMENT.....	28
AWARENESS .....	33
PRACTICE MANAGEMENT - POSITION STATEMENTS AND CASE STUDIES.....	38
SYSTEMIC ISSUES.....	41
COMPLAINTS HANDLING PROCESS .....	43
GOVERNANCE.....	50
JURISDICTION .....	54
ADDITIONAL OBSERVATIONS BY CRK .....	56
<b>2024 RECOMMENDATIONS</b> .....	<b>57</b>
HOW WE INTEND TO MONITOR IMPLEMENTATION.....	60
<b>APPENDIX 1: 2021 REVIEW RECOMMENDATIONS</b> .....	<b>61</b>
REVIEW THE CUSTOMER COMPLAINTS CODE, SCHEME TERMS OF REFERENCE AND SCHEME AGENT AGREEMENT.....	61
AWARENESS .....	62
POSITION STATEMENTS AND CASE STUDIES.....	63
SYSTEMIC ISSUES.....	63

COMPLAINTS HANDLING PROCESS .....64  
GOVERNANCE.....65  
JURISDICTION .....66  
**APPENDIX 2: LEGAL FRAMEWORK FOR THE REVIEW .....67**

## Foreword from the Telecommunications Commissioner

Kia ora koutou

This report into the performance of the Telecommunications Disputes Resolution Scheme (**TDR**) – the dispute resolution scheme established by the industry under the Telecommunications Act – assesses how well it is serving the needs of Kiwi telecommunications users.

We are required to review TDR every three years. Our first review in 2021 made some significant recommendations for change. In the intervening years, we have been encouraged to see the progress TDR has made towards delivering better outcomes for Kiwi consumers.

TDR has undergone a transformation by improving its governance and operations, boosting consumer awareness, covering more of the problems that matter to consumers and delivering faster resolution times – all without sacrificing high levels of consumer satisfaction with the service.

Our 2024 review has identified opportunities for improvements to build on the progress that has been made. As a result, we have recommended further changes, with a focus on consumer awareness and greater independence of funding.

It is important that as many Kiwis as possible know where to go if they run into issues with their provider. The Ministry of Business, Innovation and Employment's NZ Consumer Survey shows TDR awareness has increased from 13% in 2022 to 20% now – but we want to see this higher.

We also want to see TDR complete its journey to independence from industry by ensuring it has the financial resources to focus on fairly resolving issues for Kiwi telecommunications users, rather than worrying about what telecommunications providers are prepared to fund.

These recommendations sit alongside the ongoing baseline challenge of identifying systemic issues and maximising membership of the scheme.

We believe TDR is well placed to look across the industry and identify new and emerging systemic issues in the sector. This would allow industry to more effectively pre-empt developing areas of concern and head-off disputes.

We would also like to see an increase in TDR's member-base to ensure as many Kiwis as possible have recourse to the industry dispute resolution scheme. Membership has

increased by 54% over the past few years, but there is room to grow this further, so that no one finds themselves locked out of the scheme when they need it most.

We are grateful to the board and staff of TDR for their assistance in this review. We look forward to working with them to implement our 2024 Recommendations and further improve the critical service they offer to telecommunications consumers.

Ngā mihi nui

Tristan Gilbertson  
Telecommunications Commissioner



## Executive Summary

1. In 2021 we undertook a comprehensive review of the Telecommunications Disputes Resolution Scheme (**TDR**). This resulted in a report to the Telecommunications Forum (**TCF**), the Scheme Provider at the time, setting out 24 recommendations for improving the efficiency and effectiveness of TDR for consumers.<sup>1</sup> We were assisted in that review by cameron.ralph.khoury (**CRK**), a leading international expert in dispute resolution schemes, who provided us with an expert report which we published alongside our report.<sup>2</sup>
2. This report outlines the key findings from our second review of TDR. It sets out our assessment of the implementation of the 2021 recommendations as well as recommendations for further improvements. We were again assisted in this review by CRK, whose expert report is published alongside this report.<sup>3</sup> Prior to finalisation of this report, we consulted on the key findings through publishing a draft report. Insights and observations received through submissions have supported and informed this final report.

### Key assessment findings

3. TDR has undergone significant transformation since 2021 in response to our recommendations. It has taken steps to:
  - 3.1 increase consumer awareness of and accessibility to the scheme;
  - 3.2 improve its complaints handling process; and
  - 3.3 increase transparency, independence and accountability of the scheme.
4. The work, which was started by the TCF and continued by Telecommunications Dispute Resolution Limited (**TDRL**), to implement our 2021 recommendations has seen positive movement towards best practice in order to deliver better outcomes for consumers.
5. We have determined that, of the 24 recommendations we made in our previous review, 21 have been implemented satisfactorily, two have been implemented

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<sup>1</sup> The Report to the New Zealand Telecommunications Forum Inc (TCF) on recommendations for improvements to the TDRS published on 11 November 2021 can be found here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0020/270083/Report-to-the-New-Zealand-Telecommunications-Forum-on-recommendations-for-improvements-to-the-TDRS-11-November-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0020/270083/Report-to-the-New-Zealand-Telecommunications-Forum-on-recommendations-for-improvements-to-the-TDRS-11-November-2021.pdf).

<sup>2</sup> The Review of the TDRS – Expert report – 30 August 2021 published on 30 August 2021 can be found here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0037/269938/Review-of-the-TDRS-Expert-report-30-August-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0037/269938/Review-of-the-TDRS-Expert-report-30-August-2021.pdf).

<sup>3</sup> The Review of the TDRS – Expert report – October 2024 published on 8 November 2024 can be found here: <https://comcom.govt.nz/?a=362899>.

partially and one, related to systemic issues and public reporting, has not been implemented satisfactorily. Full implementation of all recommendations is essential for continued improvement of TDR to deliver better outcomes for consumers. We have also identified several gaps between current and best practice. The findings of the expert report have informed our recommendations for further improvements.

**Table 1: Review Summary**

Focus Area	Results
<b>Usage</b>	<b>GREEN</b> Total contacts have increased by 23% (from 2,800 in 2019/2020 pre-review to 3,460 in 2023/2024)
<b>Review of Scheme documents</b>	<b>GREEN</b> New Scheme documents created Exclusions have been reduced from 24 to 12 Number of excluded complaints has fallen from 52% in 2021 to ~22% year to date <sup>4</sup>
<b>Awareness</b>	<b>GREEN</b> Prompted awareness has increased from 13% to 20%
<b>Position Statements and Case Studies</b>	<b>GREEN</b> Guidance materials have been updated and published
<b>Systemic Issues</b>	<b>RED</b> 1 recommendation not implemented
<b>Complaints Handling</b>	<b>GREEN</b> 96% complaints closed or resolved within 60 days 46% reduction in outside jurisdiction matters Overall turnaround times steady (despite increased volumes) NPS steady at 90% (despite increased volumes) Reduced deadlock period (6 weeks to 15 working days)
<b>Governance</b>	<b>GREEN</b> Revised governance structure but independence of scheme funding remains a concern
<b>Jurisdiction</b>	<b>GREEN</b>

<sup>4</sup> TDRL Submission 2024 Review of the TDRS dated 29 November 2024.

Overall total membership increased by 54% (from 19 retail members / 5 wholesale members in 2021 to 30 retail members and 7 wholesale members in 2024).

### *Usage of TDR*

6. The number of customers who have contacted TDR has increased since 2021. This growth has occurred alongside an increase in consumer awareness, reduction in exclusions restricting access to the scheme, and increased information available in alternate languages and formats. While the current rate of growth is promising, more time is needed to ascertain whether this growth rate represents a sustained trend over the long-term. There is also an opportunity to gain further insight into the high percentage of contacts whose complaints do not require adjudication after referral to their providers by tracking the end-result or resolution of these complaints.

### *Review Of Scheme Documents*

7. A full review of the 2021 scheme documents and public consultation was conducted by TCF in response to our recommendations aimed at delivering better outcomes for consumers. TCF, as the Scheme Provider at the time, initiated a comprehensive project to conduct the review and made significant changes. These included the development of the Terms of Reference (**TOR**), Customer Care Code and a Disputes Procedure Process (**DPP**). The introduction of these new documents gave consumers more clarity and visibility on the complaints handling process and reduced some of the challenges consumers faced in 2021.
8. The changes also removed some of the barriers which prevented consumers from accessing the scheme and now allows equal opportunity for consumers to seek legal advice and have a right of response to submissions made by their providers. The changes have also reduced the number of jurisdictional exclusions preventing access to TDR and increased accountability of scheme members to promote awareness of the scheme across different customer-facing touchpoints and publish a customer care policy setting out minimum standards of practice when engaging with consumers. We have noted, however, issues around the amendments to exclusions relating to network coverage and broadband performance which remain as excluded matters in the TOR.

### *Awareness*

9. Significant efforts were made in response to our recommendations to raise consumer awareness of the scheme. Key improvements include:

- 9.1 clearer obligations on Scheme Members to promote awareness across multiple consumer-facing touchpoints including at deadlock;
  - 9.2 mandating a function for the Scheme Agent to promote awareness of the scheme; and
  - 9.3 ensuring appropriate engagement with Māori, consumer organisations and the wider community.
10. A concerted marketing campaign targeting community awareness was also rolled out by TCF following the review which contributed to raising awareness of the scheme. Consequently, awareness of TDR has increased since our review and recommendations in 2021. However, while we welcome the increase, we consider that more can be done by TDR and Scheme Members to continuously raise awareness. We also note the lack of compliance testing by TDR to monitor Scheme Members' obligations to promote TDR as well as the lack of engagement perceived by external stakeholders and community groups despite this now being mandated under the new TOR. Resourcing of awareness initiatives is also an area of concern.

#### *Position Statements And Case Studies (Practice Management)*

11. Improvements to practice management have been made in response to our recommendations on the guidance materials which are used to assist consumers to know their rights and what to expect when making a complaint. TDR Guides (previously known as position statements under the Customer Complaints Code), which contain anonymised determinations and case studies, are now being published more regularly pursuant to new requirements in the TOR. The TOR also standardises the contents of TDR Guides, ensuring consistency and transparency of TDR's approach when dealing with certain complaints and as a result helping to inform consumer expectations. The utility of these guidance materials to consumers and Scheme Members should be improved through regular updates to reflect changes in the telecommunications industry or applicable codes of conduct and be responsive to ongoing complaint trends.

#### *Complaints Handling*

12. Improvements to the complaints handling process have been made such that there is now more clarity and transparency in the new governing documents including the Customer Care Code, the TOR and the DPP. Key improvements include:
- 12.1 the reduction of the deadlock periods (from 6 weeks to 15 working days) and more proactive deadlocking of complaints;
  - 12.2 a more integrated process for complaints involving wholesale and third-party scheme members; and

- 12.3 a more transparent and fair complaints summary process where consumers have equal opportunity to review and respond.
13. Scheme Members are also now prevented from initiating debt recovery action or service disconnection while a dispute is being investigated if the complaint relates to a disputed amount. These changes improve consumer experience of the scheme and address some of the challenges consumers were facing in 2021. There are, however, points in the complaints handling process related to fairness settings towards consumers which should be improved. CRK suggests that a useful process in other EDR schemes to assist in identifying and adjusting these settings is for a periodic independent review conducted by an external independent and legally qualified expert experienced in external dispute resolution schemes (**EDR**).

#### *Systemic Issues*

14. Changes have been made to enable the identification and analysis of systemic issues by the Scheme Agent. The ability of the scheme to address systemic issues was hindered in 2021 by the absence of an authorising framework within which the Scheme Agent could work proactively with industry to address systemic issues. Under the TOR, the Scheme Agent is now authorised to identify and analyse complaints data for potential areas of improvement and good practices including on systemic issues.
15. Under the Customer Care Code, providers are required to analyse complaints and improve their complaints handling process when areas requiring attention are identified. CRK also reports that the Scheme Agent and Scheme Members are revising their approach to the categorisation of complaints. This is intended to enable a more granular view of complaints and improve comparability of complaint data across Scheme Members in order to better identify recurring issues affecting consumers. However, the focus on systemic issues by TDR remains an area in need of improvement and more work needs to be done to implement the recommendation we made in 2021. This includes prioritising and adequately resourcing the identification and analysis of systemic issues and regular public reporting on systemic issues (which has not been done in recent years).

#### *Governance*

16. In response to our recommendation in 2021 to increase independence of the scheme, the TCF carried out a comprehensive project to review the governance arrangements of the scheme and consult on changes needed to increase independence of the scheme in line with key principles and best practice. Key improvements include:

- 16.1 the establishment of the new governing entity (TDRL), and with it, an independent board of directors to oversee TDR and enhance governance and operational independence from the TCF;
  - 16.2 new constituent documents, each addressing different parts of the dispute resolution process and establishing clear lines of accountability; and
  - 16.3 most recently the appointment of the TDRL Chief Executive Officer (**CE**) by the TDR Board to oversee the Scheme Agent and operation of the scheme.
17. While the resulting restructure of the scheme has gone beyond what we anticipated, TCF retains a minority shareholding (25% stake) in TDR which gives it an effective power of veto over major decisions such as approval of TDR budget. We are concerned about the risk that this may have on ensuring the scheme has the resourcing and funding it needs to operate in a truly independent way.

### *Jurisdiction*

18. Membership has increased from 19 Retail Service Members (**RSM**) and 5 wholesale scheme members in 2021 to 30 RSM and 7 wholesale scheme members in 2024<sup>5</sup> - a key improvement in response to our recommendation in 2021 to actively encourage broader membership of TDR. It is important that TDR maintains regular engagement with smaller service providers to encourage them to join as well as to understand and address the potential barriers to these providers becoming scheme members.<sup>6</sup>
19. TDR has also removed jurisdictional exclusions preventing consumers from accessing the scheme if they are using the services of a lawyer, if they fail to respond to an offer of resolution within the identified timeframe, and if their complaints are not referred within 12 months of discovery. These changes remove barriers restricting consumer access to the scheme. We note that in addition to measuring membership numbers, another useful indicator of TDR's coverage is to measure the number of consumers who are not able to access the scheme because their providers are not members.

### **2024 Recommendations**

20. We consider that there are areas where more progress and improvement is needed, and these form our 2024 Recommendations. Alongside each recommendation we have included prescribed timeframes for implementation and performance metrics where appropriate.

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<sup>5</sup> The list of members can be found on the TDR website: <https://www.tdr.org.nz/our-role/tdr-members>.

<sup>6</sup> Terms of Reference clause 9.1(n).

**Table 2: 2024 Recommendations**

Reference	Recommendation	Timing	Measurement
<b>R2024.1a</b>	<p><b>Increase awareness</b></p> <p>Continue to raise awareness of the scheme through marketing campaigns, promotion of the scheme, and coordinated member actions (such as Interactive Voice Recording messaging and bill notifications) and engagement with community and consumer organisations.</p>	Ongoing with six monthly reporting	Prompted awareness % (measured six monthly via the Commission's Customer Satisfaction Survey)
<b>R2024.1b</b>	<p><b>Ensure accessibility</b></p> <p>Ensure that all groups have equal access to and usage of the scheme. This should be monitored through capture of socioeconomic and demographic data of complainants.</p>	Ongoing with first report by July 2025	Makeup of scheme users versus national population (six monthly reporting to the Commission)
<b>R2024.2</b>	<p><b>Improve reporting</b></p> <p>To ensure good consumer experience and gather insight for systemic issues, TDR should monitor and report on complaints that are closed, resolved or withdrawn after referral to the Scheme Member, including collection and analysis of granular issue categorisation and complaint outcomes.</p>	Bi-annual reporting with first report by July 2025	Six monthly reporting to the Commission
<b>R2024.3</b>	<p><b>Ensure compliance</b></p> <p>Develop an appropriate compliance programme to ensure Scheme Members are complying with their obligations to promote TDR.</p>	By December 2025	Annual reporting to the Commission on compliance
<b>R2024.4</b>	<p><b>Improve practice management</b></p> <p>To ensure that guidance materials are useful and of high quality, periodically check in with stakeholders and consumers on the value, utility and accessibility of guidance materials.</p>	Ongoing with annual check in	Annual reporting to the Commission

Reference	Recommendation	Timing	Measurement
R2024.5	<p><b>Improve identification of Systemic Issues</b> Prioritise the identification and analysis of systemic issues to identify root causes of complaints affecting consumers to drive improvements in industry and consumer outcomes.</p>	Ongoing with first report by July 2025	Six monthly reporting to the Commission
R2024.6	<p><b>Increase membership.</b> Reduce the number of consumers without access to the scheme by carrying out regular engagement activities with non-members to encourage them to join TDR and to address barriers preventing them from joining.</p>	Ongoing	<p>% increase in total membership (measured six monthly by TDR)</p> <p>% of consumers not covered (measured six monthly via the Commission)</p>
R2024.7a	<p><b>Improve complaints handling process</b> Ensure timely completion of all disputes by reporting on completion rates within 30 <u>and</u> 60 working days to better track timeliness improvements.</p>	Ongoing with first report by July 2025	Six monthly reporting to the Commission
R2024.7b	<p><b>Improve complaints handling process</b> Conduct annual external independent periodic reviews of closed case files and jurisdiction decisions sampling for fairness settings.</p>	Ongoing	Annual reporting to the Commission
R2024.8	<p><b>Increase budget independence</b> Conduct a review of the budget setting process to mitigate any risk to the TDR's financial and budgetary independence and ensure that TDR is fully funded to carry out all its duties including raising awareness and engagement.</p>	By July 2026	Reporting to the Commission on changes
R2024.9	<p><b>Reduce exclusions</b> Improve accessibility of consumers to TDR by reviewing remaining exclusions, including network coverage and broadband performance exclusions, and amending or removing these exclusions.</p>	By July 2025	Reporting to the Commission on changes



21. The TDR Board and, by extension, the TCF in its budget approving capacity must ensure that appropriate resources and budget are available in order to deliver these recommendations and to meet the requirements of a successful dispute resolution scheme.
22. We acknowledge the concerns raised in submissions to the draft report. We expect measurement and reporting to be appropriately sized and cost effective, utilising as much as possible monitoring and reporting that is already underway. We have extended the time for a review of budget independence to allow for new governance settings to further mature but remain of the view that these should be looked at within the next 1-2 years by TDR rather than waiting for our next review.

## Introduction

### Purpose of the review

23. Telecommunication services are essential to the lives of New Zealanders, providing the foundation for connection and interaction across all aspects of life. In a rapidly changing telecommunications sector environment, the relationship between consumers and their telecommunication service providers is central to this dynamic, with expectations for reliable and transparent services.
24. To maintain a competitive market that consumers can benefit from, it is essential that consumers have confidence in their ability to engage with their service providers effectively and that they are able to seek recourse through an independent and impartial means of resolving complaints and disputes with their service providers.
25. The Telecommunications Dispute Resolution Scheme (**TDR**) plays a key role by providing this independent and impartial platform for consumers to address complaints or disputes with their service providers. Formerly known as the TDRS, TDR is a scheme originally established by the Telecommunications Forum (**TCF**) and continued by Telecommunications Dispute Resolution Limited (**TDRL**). It operates under the TDRL Terms of Reference (**TOR**).
26. We are required under Part 7 of the Telecommunications Act 2001 (**Act**) to review each telecommunications industry dispute resolution scheme such as TDR at least once every three years.<sup>7</sup> After each review, we must provide a report to the Scheme Provider on any recommendations for improving the Scheme and when the recommendations should be implemented.<sup>8</sup> Our review is guided by the provisions of the Act and an overview of our guiding legal framework is outlined in Appendix 2.

### The 2024 review

27. This is the second review of TDR and is a targeted assessment focused on evaluating the implementation of the recommendations we made in our first review in 2021<sup>9</sup> and making further recommendations for improvements to TDR. As a targeted review, the focus is on the implementation of our recommendations, as opposed to the more comprehensive review carried out in 2021.
28. On 11 April 2024, we published an open letter in which we launched the 2024 review, setting out the purpose of the review, the proposed timeline, the approach

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<sup>7</sup> Telecommunications Act 2001, s 246(1).

<sup>8</sup> Telecommunications Act 2001, s 246(4).

<sup>9</sup> Report to the New Zealand Telecommunications Forum on recommendations for improvements to the TDRS 2021.

we would take and seeking stakeholder input on the effectiveness of the changes and any further improvements to support good practice of the scheme.<sup>10</sup>

29. In the letter we set out the six focus areas which were targeted in our 2021 report and which guide this review:
- 29.1 Awareness – increasing consumer awareness of the scheme which, at the time of the 2021 review, was just 13%;
  - 29.2 Practice management – improving the way the scheme produces position statements and case studies;
  - 29.3 Systemic issues – improving reporting to better identify and address systemic issues;
  - 29.4 Complaints handling – improving the complaints handling processes and reducing turnaround times;
  - 29.5 Jurisdiction – reducing exclusions that limited the type and number of complaints the scheme could adjudicate; and
  - 29.6 Governance – improving the governance and increasing the independence of the scheme.
30. In addition to this, we set out three questions which we have considered when reviewing the implementation of the recommendations in 2021 and when formulating further recommendations:
- 30.1 How effective have the changes to TDRS been in improving outcomes for consumers?
  - 30.2 Are there any other ways TDRS could be improved for the benefit of consumers and to maintain best practice in this area?
  - 30.3 Are there any issues or opportunities that should be addressed in this review?
31. In conducting this review, we have also had regard to the following:
- 31.1 CRK’s expert findings in its 2024 expert report;

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<sup>10</sup> Launch letter for 2024 review can be found here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/349430/Launch-letter-for-2024-review-of-the-Telecommunications-Dispute-Resolution-Scheme.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/349430/Launch-letter-for-2024-review-of-the-Telecommunications-Dispute-Resolution-Scheme.pdf)

- 31.2 Ministry of Business, Innovation & Employment (**MBIE**)’s Government Centre for Disputes Resolution’s best practice guidance;<sup>11</sup>
- 31.3 Overseas practice in dispute resolution bodies such as the Telecommunications Industry Ombudsman (**TIO**) in Australia;
- 31.4 The practices of other New Zealand dispute resolution services;
- 31.5 Improving consumer outcomes by ensuring TDR aligns with the key principles of a successful dispute resolution scheme<sup>12</sup> and best practice in this area;
- 31.6 Ability of TDR to implement recommendations, including matters within/outside its control, the timescales or processes that may be needed by TDR to give effect to our recommendations; and
- 31.7 Ongoing nature of our role in reviewing industry dispute resolution schemes including TDR which will see the Commission continue to assess TDR and engage with TDR.

#### **Appointment of external provider**

- 32. For this review we have engaged Melbourne based consultancy CRK as an external disputes resolution scheme 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 TIO. CRK assisted the Commission in the 2021 review by providing us with an expert report on the performance and governance of the scheme. The observations and findings contained in CRK’s expert report informed the recommendations we made in 2021.
- 33. The tasks undertaken by CRK in this review are similar to those performed in the first review. These tasks include consulting with stakeholders, analysing information related to the review, and preparing an expert report of their findings.
- 34. As we did in 2021, we will use the findings from CRK’s review to inform our recommendations.

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<sup>11</sup> MBIE Aotearoa best practice dispute resolution framework and standards can be found here: <https://www.mbie.govt.nz/cross-government-functions/government-centre-for-dispute-resolution/guidance-on-dispute-resolution/aotearoa-best-practice-dispute-resolution-framework>.

<sup>12</sup> The key principles are set out in Section 246(2)(f) of the Act.

## Overview of TDR Scheme

### The purpose of TDR

35. The purpose of TDR, as described in its constituting document, is to:<sup>13</sup>
- 35.1 ensure that customers have access to an effective independent dispute resolution mechanism to address issues where the customer is not satisfied with the outcome of, or the parties have been unable to resolve, a complaint;
  - 35.2 facilitate the resolution of disputes through practices that are fair and equitable and are consistent with the purposes and provisions of the Act;
  - 35.3 provide prompt, independent resolution of disputes, having regard to the Customer Care Code (if applicable) and relevant legal requirements; and
  - 35.4 increase consumer confidence in the telecommunications industry by maintaining appropriate standards of practice that apply consistently across the telecommunications industry.

### The role of TDRL

36. TDRL is the company established in 2023 whose purpose is to administer TDR to ensure customers have access to an effective independent dispute resolution mechanism to address issues where the customer is not satisfied with the outcome from their Scheme Member provider.<sup>14</sup>

### The documents that form the basis of TDR

37. There are four important documents which relate to TDR:
- 37.1 the Customer Care Code;
  - 37.2 the TOR;
  - 37.3 the DPP; and
  - 37.4 the TDRL Constitution.

### *The Customer Care Code*

38. The Customer Care Code is administered by the TCF and sets out the rights and obligations of Scheme Members and their customers with regard to the handling of complaints.

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<sup>13</sup> Terms of Reference, clause 3.1.

<sup>14</sup> TDRL Constitution clause 2.1(a).

39. The Customer Care Code is a mandatory code for all TDR Scheme Members and TCF members and is reviewed every two years as required under the code compliance framework which is overseen by the TCF.

#### *The TOR*

40. The TOR set out details regarding scheme membership and how TDR is governed, including its relationship with the Customer Care Code and the DPP, as well as the role of the TDR Board. It further sets out the functions of the TDR Board.<sup>15</sup>

#### *The TDRL Constitution*

41. The TDRL Constitution is the foundational document of TDRL and sets out the rights, powers and duties of TDRL and its owners and TDR Board.

#### *The DPP*

42. The DPP is a new document that operationalises the TOR and describes the interactions of the consumer, the Scheme Agent and a Scheme Member when dealing with a dispute.<sup>16</sup>

#### **Dispute resolution provider/Scheme Agent**

43. Fairway is an independent employee-owned company providing conflict management and dispute resolution services and has been the dispute resolution provider for TDR since 2007.

#### **Membership of TDR**

44. There continues to be no requirement for telecommunications service providers to be members of TDR.<sup>17</sup> This appears to run counter to best practice as other jurisdictions, such as Australia and the United Kingdom, require mandatory membership of telecommunications industry dispute resolution services.
45. A Scheme Member is “a Provider who provides services to a Customer or a third-party who provides a telecommunications input service to a Provider (for example, a local fibre company)”.<sup>18</sup> Currently, Scheme Members include both TCF members (for which membership is mandatory) and a number of service providers who are not TCF members.

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<sup>15</sup> Terms of Reference clause 8.2.

<sup>16</sup> Terms of Reference clause 2.1(s).

<sup>17</sup> MBIE is currently looking at consumer access to the TDR and under its “Discussion document: Enhancing telecommunications regulatory funding frameworks 2024” have included as one of the issues a mandatory requirement for all telecommunication service providers to belong to an industry dispute resolution scheme like TDR.

<sup>18</sup> Terms of Reference clause 2.1(hh).

46. In 2021, TDR comprised 19 retail Scheme Members and 5 wholesale scheme members. This has grown to 30 retail Scheme Members and 7 wholesale scheme members currently.<sup>19</sup>

### **Who can bring complaints to TDR**

47. Customers of telecommunications service providers who are Scheme Members and consumers of services provided by a third-party member can lodge disputes with TDR.<sup>20</sup> Otherwise, any consumer can bring a complaint to TDR where it relates to the Commission's 111 Contact Code and Copper Withdrawal Code.<sup>21</sup>

### **Structure and governance of TDR**

48. On 1 July 2023, TDRL and the TDR Board commenced operation to govern and administer TDR.
49. At the helm of TDRL is its CE whose role it is to enhance the visibility and recognition of TDRL and to work with the Scheme Agent to operate TDR. The CE is responsible to the TDR Board.

#### *The TCF*

50. The TCF is an industry body whose membership is made up of both retail and wholesale telecommunications service providers.
51. The TCF maintains a 25% shareholding stake in TDRL.

#### *The TDR Board*

52. The TDR Board is the board of directors of TDRL established under the Constitution. It comprises a maximum of seven directors.
53. Three directors are classed as A Directors and are nominated by MBIE, Consumer NZ and the Technology Users Association of New Zealand and Citizens Advice Bureau. These are the consumer representative directors and are appointed by the chairperson.
54. The remaining three directors are classed as B Directors and are appointed by the TCF as the holder of the B Shares. These are industry representative directors.
55. All directors serve three-year terms and may hold office for up to six years.
56. The Independent Director must not be directly affiliated with a Scheme Member or any consumer organisation named in the Constitution. The Independent Director is

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<sup>19</sup> Wholesale scheme members are voluntary members and do not contribute to funding the scheme.

<sup>20</sup> Terms of Reference clause 1.4 (a).

<sup>21</sup> Terms of Reference clause 1.4 (b).

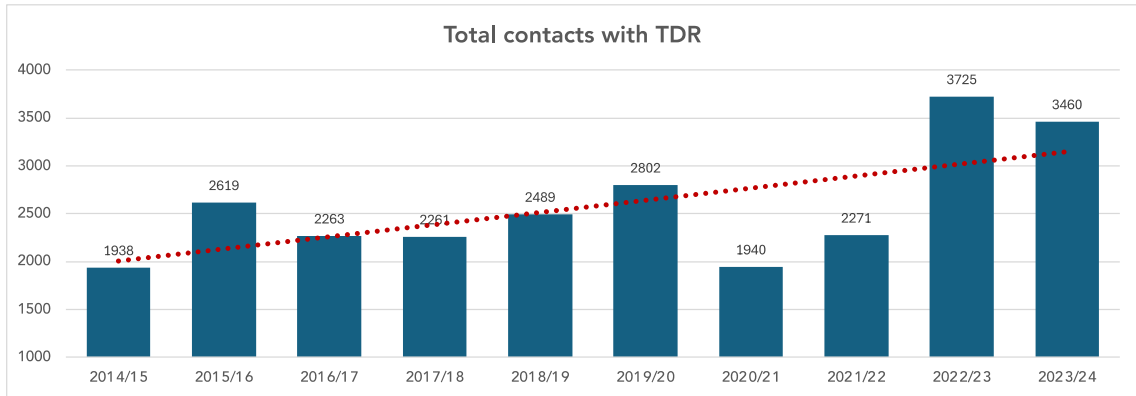
appointed to serve a maximum of one term of three years unless otherwise extended and is the chairperson of the TDR Board.



## Usage of TDR

57. Consumer usage of TDR has increased since the 2021 review. Total contacts have increased from 2,800 in 2019/2020 to 3,460 in 2023/2024.

**Figure 1: Total complaint and service requests with TDR per year<sup>22</sup>**



58. However, while this indicates a higher level of access to and use of TDR, CRK considered that it is too early to know if this growth is indicative of a long-term trend.<sup>23</sup>
59. CRK notes that, while it is difficult to make a comparison with consumer use of other external schemes, per capita usage of the TIO is roughly 25 times higher than TDR, and Utilities Disputes in New Zealand, which handles electricity disputes, has a per capita usage roughly three times higher than TDR<sup>24</sup>. This comparison is based on 2021 review data in the absence of more recent data at the time of the review, and UDL submitted that the current usage comparison is more likely to be 4 times higher when considering TDR total contacts.<sup>25</sup> While there may be difficulties in direct comparisons, the per capita usage information from CRK and UDL suggests potential underutilisation of the scheme and need for TDR to look at opportunities to broaden its reach to consumers to engage with the scheme when disputes arise.
60. Various factors have influenced the complaints landscape, including COVID which saw a drop in numbers before a surge in 2022/2023 and a slip in 2023/2024, along with evolving technology and industry changes. To understand if the recent growth rate is the “new normal” and how far the measures taken in response to the 2021 recommendations have lifted consumer use of TDR above its long-term trend since 2021, additional time is required.

<sup>22</sup> Source: TDR Data.

<sup>23</sup> 2024 CRK Expert Report Finding 1 page 7.

<sup>24</sup> 2024 CRK Expert Report paragraph 20 pages 7–8.

<sup>25</sup> UDL Submission on Review of the TDR dated 29 November 2024.

61. Usage of TDR can also be impacted by how most complaints are handled and tracked. CRK notes in its report that over 96% of the contacts that make up these numbers are closed or resolved by referral to the relevant Scheme Member. The remaining 4% is what is substantively handled by TDR.<sup>26</sup>
62. While in practice the Scheme Agent conducts a follow-up contact process for both complainants and Scheme Member, this process is not in the TOR or the DPP and while there are provisions in the TOR and the DPP on the course of action once a complaint reaches deadlock, there are improvements to be gained in clarifying this process in written form and in collecting granular information from Scheme Members and more crucially complainants about the end-result or method of resolution of a referred complaint.

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<sup>26</sup> 2024 CRK Expert Report paragraph 16 page 7.

## Review of the 2021 Report Recommendations

63. The first review under Part 7 of the Act was completed in 2021 and resulted in the Commission issuing a report to the TCF (which was the Scheme Provider at the time) on recommendations to improve the scheme.
64. The report identified two core areas where the Scheme needed to change:
  - 64.1 **Governance** - We identified and recommended that adjustments to the governance structure were needed to ensure the governing body of the Scheme (the TDRS Council) was independent of the industry body and to establish clear lines of accountability.
  - 64.2 **Customer Complaints Code** - We identified that a significant number of changes needed to be made to the Code in order to better align TDR with the key principles of a successful dispute resolutions scheme set out in s 246(2)(f), to address RSQ matters and to achieve better outcomes for consumers.
65. As part of the 2021 report, we made 24 recommendations, which are detailed in Appendix One.
66. We have assessed the implementation of the 2021 recommendations by considering whether actions have been implemented and the extent of such implementation, the resulting changes as well as the overall impact of these changes on enhancing consumer outcomes.
67. Based on our assessment each area has been given an overall rating:
  - 67.1 **GREEN** means recommendation has been implemented satisfactorily;
  - 67.2 **AMBER** means a recommendation has either been partially implemented or reasonable progress has been made to implement; and
  - 67.3 **RED** means a recommendation has not been implemented satisfactorily and more work needs to be done.

## Review the Customer Complaints Code, Scheme terms of reference and Scheme Agent Agreement

Reference	Recommendation	Rating
<b>R1</b>	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).	<b>GREEN</b>

68. We recommended specific Customer Complaints Code amendments to better align the TDRS with the key principles of a successful dispute resolution scheme and to strengthen the scheme's complaints handling process.
69. The TCF reviewed the Customer Complaints Code, and a new Customer Care Code was released for public consultation in March 2023. Accompanied by the new TOR, DPP and Constitution, the Customer Care Code operates to supersede and replace the Customer Complaints Code.
70. CRK notes that, with the full redrafting of the previous governing documents including the Customer Complaints Code and the wholesale shift of obligations from this code to the new TOR, a like-for-like comparison is not straightforward.<sup>27</sup>
71. The matters R1 required to be covered in the review of the Customer Complaints Code (R3b, R5, R11, R13, R15, R18b and R24) appear to have been addressed through the new TOR and Customer Care Code.
72. However, CRK notes that while the specific matters have been addressed, the extent to which the changes deliver better outcomes for consumers are varied. For example, when discussing R3b (recommendation to review the Customer Complaints Code to minimise exclusions), CRK highlights that, while a number of exclusions have been removed, it does not follow that matters previously excluded are now automatically included.<sup>28</sup> A more fulsome assessment of the specific recommendations captured under R1 (including R3b) is covered later in this report where we set out our concerns on exclusions in more detail.

<sup>27</sup> 2024 CRK Expert Report, paragraph 67 page 20.

<sup>28</sup> 2024 CRK Expert Report, paragraph 68 page 20.

73. We note that R1 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

Reference	Recommendation	Rating
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].	GREEN

74. We recommended a full review of the scheme’s TOR and the Agreement with the Scheme Agent to improve independence and governance of TDR as well as strengthening the complaints handling process.
75. As part of the implementation of a new governance structure for TDR, the TCF rewrote its TOR and released it for public consultation in March 2023, accompanied by the other new governing documents (Customer Care Code, the DPP and the Constitution). The new TOR took effect on 1 July 2003 alongside the revised governance model for TDR, delivering the changes identified in R20, R21 and R22.
76. CRK notes that, while the changes incorporated in the TOR as well as the Constitution address the specific governance matters R2 required to be covered (R20, R21 and R22), the extent to which these changes have sufficiently addressed the independence of the Scheme remains as a concern.<sup>29</sup> A more fulsome assessment of these specific recommendations is covered later in this report including our concerns on R20 which are set out in more detail in the recommendations section of this report.
77. The TCF reviewed the Agreement with the Scheme Agent (**Agreement**) as part of its project to implement the new governance structure for the scheme. The review was conducted following the creation of the new governing documents including the TOR. On 1 July 2023 the Agreement was novated to TDRL where it was reshaped to ensure alignment with the TOR and TDR’s vision and priorities, clarity of roles and accountability. The operational and strategic functions which had been previously handled by the Scheme Agent in the absence of an independent owner have now been transitioned to the TDR Board and the CE, allowing the TDR Board and the CE to take a more directive role in managing TDR.

<sup>29</sup> 2024 CRK Expert Report, paragraphs 100-101 page 28.

78. We consider that the review of the TOR and the Agreement has been completed and that, subject to the proviso set out above and discussed later in this report, the changes have improved the independence and governance of TDR.
79. We note that R2 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

Reference	Recommendation	Rating
<b>R3a</b>	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.	<b>GREEN</b>

80. We recommended that an interim amendment to the Customer Complaints Code be made to ensure consumers with complaints under Commission codes had recourse to the scheme.
81. The TCF in December 2021 amended the Customer Complaints Code by interim code amendment clause 17.4. This effectively allowed TDR to receive complaints relating to Commission codes like the 111 Contact Code and the Copper Withdrawal Code.
82. This amendment has been carried over to the TOR which now provides that complaints under a Commission code or "Other Codes"<sup>30</sup> can now be brought to TDR.
83. This recommendation was implemented by the Phase 1 deadline of December 2021.

Reference	Recommendation	Rating
<b>R3b</b>	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"> <li>• Clause 18.1.4</li> <li>• Clause 18.1.6</li> <li>• Clause 18.1.21</li> </ul>	<b>AMBER</b>

<sup>30</sup> The TOR defines "Other Code" to mean "a Commission Code, any Industry Retail Service Quality Code, and the Copper Withdrawal Code under clause 3 of Schedule 2A of the Telecommunications Act".

84. We recommended that the Customer Complaints Code minimise exclusions to improve accessibility and fairness of the scheme.
85. The exclusions which were previously under the Customer Complaints Code have now been shifted to the TOR. As noted by CRK in its report, with the full redrafting of the previous governing documents and the wholesale shift of obligations from the Customer Complaints Code to the new TOR, a like-for-like comparison is not straightforward.<sup>31</sup> However, CRK notes there has been a noticeable reduction in the number of complaints that are excluded from being considered by TDR which is viewed as a significant improvement to the operation of TDR including by Scheme Members.<sup>32</sup> TDRL has submitted that “the number of excluded complaints has fallen from 52% in 2021 to ~22% year to date”<sup>33</sup> reflecting efforts to make the Scheme more accessible and inclusive.
86. CRK has created a comparison table to analyse what has happened to the previous exclusions under the new TOR and notes that “although a specific exclusion may have been removed, it does not follow that such a matter would now be included.<sup>34</sup> Often, such a complaint would be excluded by some other means (eg a new definition as to eligibility or excluded or not upheld on merit)”.<sup>35</sup>
87. In assessing the changes to exclusions, CRK notes that the number of specific exclusions has been reduced from 24 to 12 and that correspondingly the TOR has also incorporated the changes we recommended in R3b (regarding clauses 18.1.4, 18.1.6 and 18.1.21 of the Customer Complaints Code).<sup>36,37</sup>
88. Clause 18.1.4 has been amended in the TOR by way of paragraph 1 of Schedule 4 so that a customer can now bring a complaint about equipment, applications or downloads purchased from or supplied by the Scheme Member. This addresses the issue of consumers not being able to bring complaints about equipment bought from or supplied by the Scheme Member but to which the Scheme Member no longer provides support.
89. Clause 18.1.6 has also been amended in the TOR by way of paragraph 3 of Schedule 4 so that a customer can bring a complaint “relating to the absence of network coverage (provided that a Consumer shall not be prevented from basing a Complaint

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<sup>31</sup> 2024 CRK Expert Report, paragraph 67 page 20.

<sup>32</sup> 2024 CRK Expert Report, paragraph 66 page 20.

<sup>33</sup> TDRL Submission 2024 Review of the TDRS dated 29 November 2024.

<sup>34</sup> 2024 CRK Expert Report, paragraph 68 page 20.

<sup>35</sup> 2024 CRK Expert Report, paragraph 68 page 21.

<sup>36</sup> Terms of Reference - Schedule 4.

<sup>37</sup> Clause 18.1.4 excluded complaints related to equipment and/or applications the customer owned which the Scheme Member did not support (including products and services customer had purchased from the scheme member but which the member no longer supported);  
Clause 18.1.6 excluded complaints if it related to the extent of network coverage.

on the Scheme Member engaging in misleading conduct regarding its coverage)”. Previously, all complaints about the extent of network coverage were barred.

90. However, while it appears that the change has narrowed the scope of the exclusion, the amended exclusion would appear to exclude complaints where network coverage previously existed but has been withdrawn by the Scheme Member. It would also appear to exclude complaints where a customer previously experienced good coverage, but it has deteriorated.
91. Additionally, it is not clear whether TDR in assessing a complaint against coverage would define a lack of coverage where a provider’s coverage information (including maps) indicates coverage exists, or where a provider incorrectly markets coverage, as “misleading conduct”. Submitters expressed some concern of the commercial impact of changes to this exclusion<sup>38</sup> but our intention is simply to ensure the appropriate complaints are not excluded and the parties can reach a satisfactory resolution, without impacting on the commercial decisions of providers regarding coverage and service provision. We remain of the opinion that complaints relating to the removal, degradation or incorrect marketing of coverage should not be excluded.
92. Clause 18.1.21 previously excluded complaints if it related only to broadband congestion or speed, unless the broadband service was sold with a guaranteed minimum speed or Committed Information Rate.
93. The new corresponding provision in the TOR states that a matter is excluded “relating to broadband performance, unless the complaint relates to a material failure of a broadband service to meet performance standards that have been represented to the Customer as the applicable standards for the broadband service, and which is covered by the complaints process set out in the TCF Broadband Marketing Code”.<sup>39</sup>
94. The new exclusion now applies more broadly to broadband performance (not just speed and congestion). In addition, the new exclusion does not define what is ‘material failure’ of a broadband service to meet the performance standards. A complaint on broadband performance can only be accepted by TDR on the basis of the Scheme Member’s assessment of material failure. We do not see this as being fair to the consumer if the only entry point allowing their complaint to go through depends on the Scheme Member they are complaining about.

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<sup>38</sup> Chorus, Enable Tuatahi Joint Submission dated 29 November 2024.

<sup>39</sup> Terms of Reference – Schedule 4 (8).



95. There is also risk to consumers in tying the complaint process to a voluntary TCF code to which providers may not be signatories.<sup>40</sup> The TCF website currently lists only 6 signatories to this code.
96. We note that R3b was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.
97. The concerns or gaps raised in this assessment are addressed in our recommendations following this review.

### Awareness

Reference	Recommendation	Rating
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.	GREEN

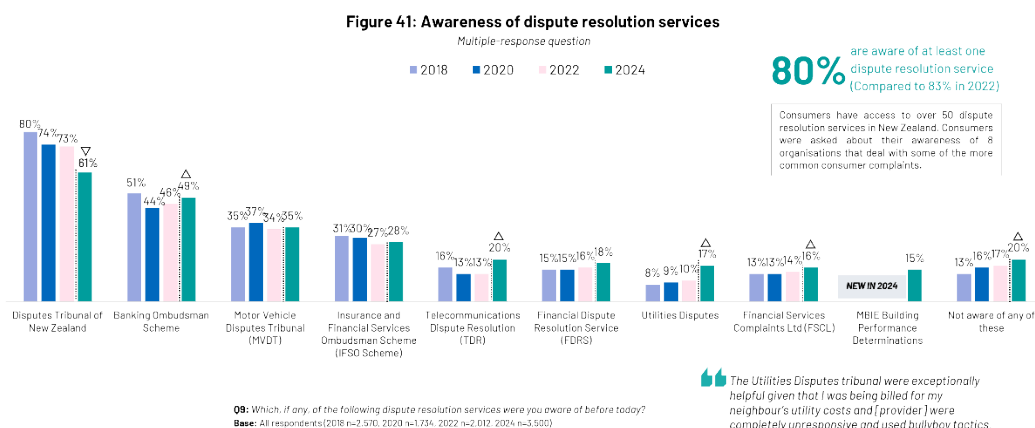
98. Raising consumer awareness was a key focus area of our 2021 report. We made four recommendations aimed at raising awareness starting with R4 as an overarching recommendation for both the TCF and the TDRS to work on improving consumer awareness, so consumers are informed and empowered to access TDR and understand their rights under the Scheme.
99. The TCF in 2021 and 2022 invested significantly in general awareness marketing efforts to raise awareness of the Scheme. It approved a considerable boost in budget for promotion and awareness across two phases of marketing activities including television, radio and online advertisements. These aimed to inform customers of TDR and their right to recourse for complaints.
100. Consumer awareness (prompted awareness) of TDR, as measured by the MBIE NZ Consumer Survey, has increased from 13% in 2022 to 20% in 2024:

<sup>40</sup> There are six signatories to the TCF Broadband Marketing Code as noted by the TCF here: <https://www.tcf.org.nz/industry-hub/industry-codes/broadband-marketing-code>.

## Figure 2: NZ Consumer Survey 2024 – Summary Report<sup>41</sup>

### General consumer awareness of dispute resolution services is strong, with 8 in 10 aware of at least one service, despite a longer-term downwards trend.

While awareness of various dispute resolution services remains broadly consistent with 2020, fewer consumers are aware of at least one agency (down from 83% in 2022 to 80% in 2024). While most consumers claim to have heard of the Disputes Tribunal of New Zealand, awareness is at its lowest level to date at 61%, compared to 73% in 2022. This is followed by the Banking Ombudsman Scheme (49%) and the Motor Vehicle Disputes Tribunal (35%). Awareness of all other listed dispute services is less than 30%.



101. We welcome this increase but note that other disputes resolution bodies, such as the Banking Ombudsman Scheme and the Motor Vehicle Disputes Tribunal, currently have awareness levels greater than 35%.<sup>42</sup>
102. The TDR Board and TCF have noted that they believe that the level of investment in marketing was a temporary surge effort which cannot be sustained in the long-term and may not have been optimally targeted.<sup>43</sup> To that end, the TDR Board recouped the funding that had been secured for a third phase of marketing activity in 2023/2024 and TDR budget has returned to pre-surge (2020/2021) levels.
103. We would note that ensuring a dispute resolution scheme is properly resourced to carry out all its duties, including awareness, is one of the standards recognised in MBIE's best practice framework.<sup>44</sup>
104. We agree with CRK that that the TDR Board and TCF (as shareholders of TDRL) must remain open to exploring appropriate ongoing awareness and engagement resourcing proposals from the CE.<sup>45</sup>
105. While the deadline for implementation as a Phase 1 recommendation was set for December 2021 and was met, the nature of the tasks requires ongoing

<sup>41</sup> The NZ Consumer Survey 2024 Summary Report can be found here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/361274/Commerce-Commission-and-Ministry-of-Business2C-Innovation-and-Employment-NZ-Consumer-Survey-2024-July-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/361274/Commerce-Commission-and-Ministry-of-Business2C-Innovation-and-Employment-NZ-Consumer-Survey-2024-July-2024.pdf).

<sup>42</sup> 2024 NZ Consumer Survey.

<sup>43</sup> 2024 CRK Expert Report paragraph 38 page 14.

<sup>44</sup> Standard 8 MBIE Aotearoa best practice framework.

<sup>45</sup> 2024 CRK Expert Report paragraph 39 page 14.

implementation including resourcing awareness initiatives which we address in our R7 assessment.

106. The concerns or gaps raised in this assessment are addressed in our recommendations following this review.

Reference	Recommendation	Rating
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"> <li>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.</li> <li>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.</li> </ul>	GREEN

107. We recommended changes to the Customer Complaints Code to improve awareness obligations of Scheme Members as the obligations on Scheme Members to promote awareness of the scheme fell short of best practice.
108. The Customer Care Code and the TOR have now put in place clearer guidelines and obligations on Scheme Members to promote TDR so that awareness is raised at different customer touch points. Scheme members are also required to ensure their customer-facing staff are equipped to provide information to customers about TDR when appropriate.<sup>46</sup> There is also a requirement on Scheme Members to provide information about TDR when a customer logs an online complaint.<sup>47</sup> The Customer Care Code requires Scheme Members to have customer care policies and to raise awareness of TDR as a further recourse option when a complaint is first made and when deadlock is reached.
109. We consider, however, that alongside these positive inroads, individual Scheme Members can and should be doing more to raise awareness. This includes the use of Interactive Voice Recording messages as well as clear and prominent placement of information on the front of bills and prominent website links (as has already happened in the utilities space).

<sup>46</sup> Terms of Reference clause 5.3(a)(iv).

<sup>47</sup> Terms of Reference clause 5.3(a)(iii).

110. We also agree with CRK<sup>48</sup> that, while the TOR requires Scheme Members to self-assess their compliance, TDRL should actively monitor Scheme Members compliance itself. In addition, this should extend to monitoring compliance with the Customer Care Code for Scheme Members rather than solely relying on the TCF compliance framework.
111. We note that R5 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.
112. The concerns or gaps raised in this assessment are addressed in our recommendations following this review.

Reference	Recommendation	Rating
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, consumer organisations, Māori, and the wider community to improve consumers' awareness and understanding of the scheme.	GREEN

113. We recommended that TDR extend engagement to ensure that the Scheme Agent engages with the identified groups in order to improve consumer engagement.
114. The Scheme Agent is now accountable under the TOR to promote the Scheme in accordance with the TDR Business Plan including engagement with the groups prescribed in R6.
115. TDR has set specific commitments in its draft Business Plan 2023/2024 to deliver effective community engagement options for the TDR Board's approval, engage at least quarterly with NGOs to promote TDR and scope consumer organisations to target for engagement. Some of the planned activities include engagement with the public, older persons and Māori.
116. However, CRK reports that external stakeholder organisations feel that engagement with TDR dropped off during the governance restructure period. While we agree with CRK that there does not appear to be any intentional scaling back on engagement,<sup>49</sup> for improved consumer awareness, engagement with all groups is required.

<sup>48</sup> 2024 CRK Expert Report Finding 4 page 15.

<sup>49</sup> 2024 CRK Expert Report paragraph 40 page 14.

117. As the new governance of TDR continues to evolve past its first year, we would expect to see that high quality engagement as envisaged by R6 is designed, planned and executed with the prescribed groups. Submitters have highlighted the importance of ensuring engagement is targeted, particularly with Māori and consumer organisations.<sup>50</sup> We agree and encourage initiatives by TDR to ensure prioritisation of such engagement with these groups.
118. As a Phase 3 recommendation, there is no specific deadline and implementation should be approached as an ongoing process.
119. The concerns or gaps raised in this assessment are addressed in our recommendations following this review.

Reference	Recommendation	Rating
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"> <li>ensuring consumers are made aware of the TDRS at the beginning of the complaints process;</li> <li>reaching consumers from groups that are rarely using the TDRS; and</li> <li>continuing to build general awareness of the TDRS.</li> </ul>	AMBER

120. We recommended in 2021 continued resourcing for awareness initiatives beyond the fiscal and financial year 2021/2022 to ensure that awareness activities continue and have a lasting effect.
121. The TCF allocated considerable funding for promotion and awareness building across two phases during 2021/2022 and 2022/2023 covering television, radio and online advertising. While funding was initially secured for a third phase of marketing activity in 2023/2024, this funding was later recouped by TDRL when it was operationalised, and a more constrained marketing program was deployed. Some funding was reserved for some commendable accessibility efforts including the production of multilingual materials and resources for individuals with hearing and vision disabilities. CRK reports that, while these initiatives appear to have had some impact in raising awareness, TDR budget has returned to pre-boost levels.
122. We note that an engagement stream attached to the second phase of the scheme's marketing activities for 2022/2023 was ultimately not approved and instead deferred to be revisited under the new governance structure for TDR. The engagement stream

<sup>50</sup> UDL Submission on Review of the TDR dated 29 November 2024

had planned to tackle reaching groups which had been identified in the 2020 NZ Consumer Survey<sup>51</sup> as having low awareness of the scheme.

123. CRK notes that the awareness initiatives to reach groups that rarely use TDR, as required by R7, was an area where TDR effort was not meeting community expectations for better data collection, insight and systemic issue reporting. In the current TDR information capture process, address information such as postcodes are not mandatory fields and around one-third of consumers do not provide this information.<sup>52</sup>
124. We agree with CRK that, while it is important for TDR to avoid placing unnecessary barriers on consumers using the scheme, improving the collection of key data points like postcodes is essential for supporting better insights into which groups are not using TDR or facing barriers in accessing it. We consider that more work needs to be done by TDR to collect key demographic and socioeconomic data points to identify the groups prescribed in R7 and conduct initiatives on awareness.
125. The TDR Board and CE have acknowledged the demographic information gap and the need to collect additional data points to better understand which consumer segments are and are not accessing the scheme.
126. The concerns or gaps raised in this assessment are addressed in our recommendations later in this report.

### Practice management - Position statements and case studies

Reference	Recommendation	Rating
R8	<p>Undertake a review of its topic-specific guidance to:</p> <ul style="list-style-type: none"> <li>• update current position statements to ensure they are fit for purpose;</li> <li>• identify and fill coverage gaps in its guidance; and</li> <li>• develop topic-specific guidance in the form of recurring issues articles and news articles into position statements.</li> </ul> <p>The review and (re)publication of position statements should occur by 24 December 2021.</p>	GREEN

127. We recommended the development of topic-specific guidance materials so that consumers can understand how the scheme's approach to handling complaints meets expectations of fairness, efficiency and accountability.

<sup>51</sup> 2020 NZ Consumer Survey can be found here: <https://www.mbie.govt.nz/dmsdocument/14642-nz-consumer-survey-2020-report-pdf>.

<sup>52</sup> 2024 CRK Expert Report paragraph 46 page 14.

128. The MBIE Framework Standard 7 recognises that scheme guidance assists users of the scheme to know what to expect and informs early resolution of complaints.<sup>53</sup> For consumers, Scheme Members and stakeholders these resources set expectations on how complaints will be handled by TDR.
129. CRK notes that a significant refresh of TDR Guides (formerly position statements) commenced in January 2022 with 18 TDR Guides on a range of topics posted on the TDR website.<sup>54</sup> These guidance materials were clear and practical and good practice.<sup>55</sup>
130. We agree with CRK that, while the rate of production of new guides will slow over time as the most common issues will have been covered, reviewing and updating these guides is an ongoing essential task which we would expect to see continuing to occur regularly.<sup>56</sup> This will improve their usefulness in guiding both consumers and members.
131. While the deadline for implementation as a Phase 1 recommendation was set for December 2021 and was met, the nature of the task requires ongoing implementation.
132. The concerns or gaps raised in this assessment are addressed in our recommendations later in this report.

Reference	Recommendation	Rating
<b>R9</b>	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.	<b>GREEN</b>

133. We recommended clear standards in guidance materials aimed at ensuring TDR met community expectations of fairness, efficiency and accountability when dealing with Scheme Members.
134. The TOR sets out that TDR Guides must include a description of the dispute type, a summary of common positions taken by complainants and Scheme Members, and a recommended position or "TDR view" on how the dispute is customarily resolved by the Scheme Agent or adjudicator. These requirements serve to clarify what is expected of Scheme Members and how TDR will handle complaints where those

<sup>53</sup> Standard 7 MBIE Aotearoa best practice framework

<sup>54</sup> 2024 CRK Expert Report paragraph 49 page 16.

<sup>55</sup> 2024 CRK Expert Report paragraph 49 page 16.

<sup>56</sup> 2024 CRK Expert Report paragraph 50 page 16.

expectations are not met. As CRK reported, these are quite clear and practical and good practice.<sup>57</sup>

135. While the deadline for implementation as a Phase 1 recommendation was set for December 2021, the nature of the task requires ongoing implementation.

Reference	Recommendation	Rating
<b>R10</b>	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.	<b>GREEN</b>

136. We recommended publication of determinations to enhance transparency and to provide useful insights on how TDR decides complaints.
137. CRK highlights that anonymised determinations have been published in full since December 2021, where previously only highly abbreviated case studies were published. TDR has made 20 determinations publicly available on its website, including three in 2024, with TDR committed to an internal goal to maintain this pace by releasing updates every few months.<sup>58</sup>
138. CRK reports that the combination of TDR Guides, Determinations, and Case Studies, along with information about TDR's approach to complaints in its Annual and Half-Yearly Reports, reflects a good standard of practice.<sup>59</sup> By offering insights into recurring issues, common outcomes and standards applied in adjudication, these documents help consumers better understand what to expect and inform early resolution of complaints while the shift in publishing determinations enhances transparency and accountability.
139. CRK also notes that TDR should periodically ensure that consumers and stakeholders continue to find these resources useful and relevant.<sup>60</sup> Regular feedback helps refine the guidance so that they continue to be clear, relevant and practical for consumers to understand and resolve their issues. It is important that these resources are kept up to date to maintain their effectiveness in guiding consumers and providers through the dispute resolution process.

<sup>57</sup> 2024 CRK Expert Report paragraph 49 page 16.

<sup>58</sup> 2024 CRK Expert Report paragraph 51 page 16.

<sup>59</sup> 2024 CRK Expert Report paragraph 53 page 17.

<sup>60</sup> 2024 CRK Expert Report paragraph 53 page 17.



140. While the deadline for implementation as a Phase 1 recommendation was set for December 2021, the nature of tasks requires ongoing implementation.

### Systemic issues

Reference	Recommendation	Rating
<b>R11</b>	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).	<b>GREEN</b>

141. We recommended amendments to the Customer Complaints Code so the Scheme Agent had the necessary powers to identify and analyse complaints for systemic issues and work with industry to address these.
142. The TOR now authorises the Scheme Agent to identify and analyse complaints data as one of its mandated functions and advise Scheme Members of potential areas of improvement and good practices in respect of disputes. The function extends to advising the TDR Board about systemic issues including on unfair contract terms.<sup>61</sup> These changes now enable the Scheme Agent to work proactively with Scheme Members to address systemic issues.
143. We note that R11 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

Reference	Recommendation	Rating
<b>R12</b>	<ul style="list-style-type: none"> <li>Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues.</li> <li>Within 18 months of the publication of this report, public reporting should include data on systemic issues and root causes.</li> </ul>	<b>RED</b>

144. We recommended these changes so that industry could address the identified systemic issues and root causes to improve ongoing consumer experience.

<sup>61</sup> Terms of Reference clause 25.1.

145. CRK confirms the ongoing efforts on improving categorisations between the Scheme Agent and Scheme Members and notes that this is a process that takes time to have an impact and is a work in progress.
146. However, the absence of significant focus on systemic issues by the Scheme Agent and Scheme Members is concerning. CRK notes that stakeholders were not conscious of any greater focus on systemic issues by either TDR or Scheme Members, nor did the 2022/2023 Annual Report give any weight to the systemic value of individual complaints.<sup>62</sup> CRK also notes concerns with first draft iterations of reporting information on root causes which are intended for the TDR 2023/2024 annual report.<sup>63</sup>
147. CRK highlights that there are possibly challenges to addressing systemic issues from a resourcing and capacity perspective.<sup>64</sup> Investigating systemic problems requires time, effort and coordination. Without adequate funding or support from Scheme Members, a scheme like TDR may struggle to undertake the broader analysis needed to uncover and support Scheme Members to resolve systemic problems.
148. While plans to improve systemic analysis in 2023/2024 and 2024/2025 appear positive, the ongoing delay risks compounding the problem. While CRK acknowledges that a framework for systemic investigations takes time and collaboration to establish, TDR is already capable of reporting and publishing the systemic issues that arise from individual matters.
149. Submissions in response to the launch of the review also recommended that this review look at the process TDR uses to identify systemic issues and its root causes. Collecting more complaint details at the referral stage may help to identify potential systemic issues.<sup>65</sup>
150. We note the commitment expressed by the TDR Board to addressing systemic issues uncovered through complaint and enquiry data to gain insights into underlying systemic problems and their efforts to collaborate with the Scheme Agent to ensure it has the necessary data and analytics to take a more strategic and proactive approach to systemic issues.
151. However, failure to place significant focus and resources on systemic issues and their root causes has significant implications for consumers. By failing to address broader problems, TDR risks missing opportunities to drive meaningful improvements within

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<sup>62</sup> 2024 CRK Expert Report paragraph 57 page 18.

<sup>63</sup> 2024 CRK Expert Report paragraph 57 page 18.

<sup>64</sup> 2024 CRK Expert Report paragraph 60 page 18.

<sup>65</sup> Utilities Disputes Submission (23 May 2024).

the industry that go beyond resolving individual complaints. Therefore, consumers are at risk of facing recurring problems.<sup>66</sup>

152. An additional observation by CRK highlights the usefulness of reporting on outcomes that have led to process changes for consumers.<sup>67</sup> Tracking and reporting these outcomes as a measure of the performance of TDR on systemic issues would offer valuable insights into the impact of TDR beyond individual cases and drive improvements within the industry and better outcomes for consumers.
153. The concerns and gaps we have raised are addressed in our recommendations later in this report.

### Complaints handling process

Reference	Recommendation	Rating
<b>R13</b>	Amend the Customer Complaints Code to reset the deadlock period for the TDRS from six weeks to 15 working days (see R1)	<b>GREEN</b>

154. We recommended a reduction in the deadlock period from six weeks to 15 working days to provide quicker resolutions for consumers and avoid unnecessary delays in the complaint handling process.
155. The TCF amended the Customer Complaints Code in 2021 to reset the deadlock period to 15 working days from the previously mandated six-week deadlock period.
156. This change has carried over to the TOR where the deadlock period has been reduced so that a deadlock happens immediately in one of three situations. The Scheme Agent is also empowered to deadlock when the complainant is not satisfied with the Scheme Member's final response or within 15 working days if the dispute remains unresolved despite parties' attempts at resolution. The Scheme Agent can also determine a deadlock within 30 working days if the complainant has not received a final response from the Scheme Member.<sup>68</sup>
157. CRK notes the positive impact of these changes and that the reduced timeframes as well as the more flexible approach to deadlock has operated to progress the early part of the dispute resolution process faster, with some cases moving through the early steps ahead of the deadlines.<sup>69</sup>

<sup>66</sup> 2024 CRK Expert Report paragraph 61 page 18-19.

<sup>67</sup> 2024 CRK Expert Report paragraph 123 page 32.

<sup>68</sup> Terms of Reference clause 2.1(q).

<sup>69</sup> 2024 CRK Expert Report paragraph 76 page 23.

158. We see these changes as delivering better outcomes for consumers who now have earlier resolution pathways for their complaints without having to wait for the Scheme Member to acknowledge that a complaint is deadlocked.
159. This recommendation was completed by the Phase 1 deadline of December 2021.

Reference	Recommendation	Rating
<b>R14</b>	<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"> <li>the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period;</li> <li>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</li> <li>the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon.</li> </ul>	<b>GREEN</b>

160. As a natural progression from a reduced deadlock period recommended in R13, we recommended changes to ensure complaints move quickly to resolution with reporting mechanisms in place to monitor the process.
161. TDR's implementation of a more flexible approach to the deadlock period now allows complaints to proceed more quickly. The system also tracks deadlock timings, and this is reported to the TDR Board monthly.<sup>70</sup>
162. The TOR also empowers the Scheme Agent to deadlock a matter when the complainant is not satisfied with the Scheme Member's final response or within 15 working days if the dispute remains unresolved despite parties' attempts at resolution. The Scheme Agent can also determine a deadlock within 30 working days if the complainant has not received a final response from the Scheme Member.<sup>71</sup>
163. These changes ensure consumer complaints are resolved promptly by enforcing deadlock periods. It entails proactive management, tracking and reporting of deadlock processes, helping to avoid delays and giving consumers confidence that

<sup>70</sup> 2024 CRK Expert Report paragraph 76-77 page 23.

<sup>71</sup> Terms of Reference clause 2.1(q).

their complaints will be handled efficiently and without unnecessary stalling by either their providers or the Scheme Agent.

164. CRK notes, however, that despite these timeliness improvements at the early stages of the process, the overall average completion time for disputes has remained consistent (96% of matters resolved within 60 days over the three-year period of 2021/2022 to 2023/2024). Customer satisfaction with timeliness stayed consistent over the same three-year period with 89%, 88% and 88% (respectively) of respondents agreeing that timeliness was reasonable.<sup>72</sup> To make certain that consumers experience timely completion of their disputes, TDR should ensure that improvements to timeliness in the early stages of the process and through the deadlock process are reflected in overall completion timeliness.
165. Without the benefit of a detailed analysis of full-time staff applied to the process at each point over the three-year period, as well as an analysis of other factors that could have impacted on timeliness, it is difficult to assess the true impact of the changes made on timeliness.<sup>73</sup>
166. CRK also notes that good practice requires timeliness measures to be calculated based on consumer experience with the scheme.<sup>74</sup>
167. Consumers need to be at the heart of a high quality dispute resolution scheme. An approach to view timeliness from their perspective and use measures that matter to them would centre the process on consumers and thereby deliver better consumer outcomes.
168. CRK also notes that, while TDR is comfortably exceeding two of its three new efficiency targets on complaints handling processes, as a general rule comfortably exceeded targets are not robust enough to perform any real accountability function.<sup>75</sup> Also, the measures chosen by TDR may not represent the key aspects of the complaints handling process that matter to the consumer so that the process feels responsive, accessible and fair to them.<sup>76</sup>
169. This recommendation was implemented by the Phase 1 deadline in December 2021.
170. The further concerns and gaps we have raised are addressed in our recommendations later in this report.

Reference	Recommendation	Rating
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<sup>72</sup> 2024 CRK Expert Report paragraph 78 page 23.

<sup>73</sup> 2024 CRK Expert Report paragraph 79 page 24.

<sup>74</sup> 2024 CRK Expert Report paragraph 121 page 31.

<sup>75</sup> 2024 CRK Expert Report paragraph 120 page 31.

<sup>76</sup> 2024 CRK Expert Report paragraph 122 page 31-32.

Reference	Recommendation	Rating
<b>R15</b>	Improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see R1).	<b>GREEN</b>

171. We recommended in 2021 that wholesale scheme members be included in the complaints handling process so that consumers' complaints are resolved quickly and efficiently.
172. The Customer Care Code now has a detailed process and minimum requirements for complaints involving third-party members which can include wholesale scheme members.<sup>77</sup>
173. These changes have removed the issues which were identified in 2021 including that complaints involving wholesale scheme members could be cumbersome and exacerbate the deadlock issue. CRK notes that Scheme Agent staff and Scheme Members all felt that the coordination and response to complaints involving wholesale scheme members has led to substantive improvements for consumers. Submissions in response to the launch of the review also commended the integration of wholesale members and improved processes.<sup>78</sup>
174. We note that R15 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

Reference	Recommendation	Rating
<b>R16</b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	<b>GREEN</b>

<sup>77</sup> Customer Care Code Section H.

<sup>78</sup> Chorus submission on the review of the TDRS (23 May 2024).

175. We recommended that changes should be made to improve the scheme’s internal complaints handling processes to reduce issues experienced by consumers and ensure efficiency and transparency for the consumer.
176. The DPP provides a Complaint Summary process which ensures all information provided by consumers is used effectively and that they are kept informed when additional information is needed to progress their complaint. CRK notes that this process promotes efficiency and transparency by building a single evolving Complaint Summary document. This document progressively includes all relevant information such as complaint details, consumer’s desired resolution, response from the Scheme Member, analysis and final outcome.<sup>79</sup> CRK notes that TDR’s revised process is seen as good practice.<sup>80</sup>
177. However, CRK notes that more work may need to be done to enable consumers to submit complaints by other means. While complaints can be made by telephone as well as in writing, the vast majority of those who call are told to provide their complaint in writing by email or the webform.<sup>81</sup> This point is also covered later this report with regards to fairness settings of the complaint handling process.
178. CRK also observes that jurisdiction checks could be improved.<sup>82</sup> We agree that, from the perspective of a consumer, a reasonable assumption could be made that a complaint is within jurisdiction once it goes past the first phase of the process and is registered. To then be informed after that point that the matter was in fact out of jurisdiction would not appear to meet consumer expectations.
179. This recommendation was implemented by the Phase 1 deadline of December 2021. The further concerns or gaps raised are addressed in our recommendations later in this report.

Reference	Recommendation	Rating
<b>R17</b>	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.	<b>GREEN</b>

180. We recommended that TDR remind Scheme Members of their obligations to cease debt recovery action or disconnection of the consumer’s service when deadlock was

<sup>79</sup> 2024 CRK Expert Report paragraph 81 page 24.

<sup>80</sup> 2024 CRK Expert Report paragraph 82 page 24.

<sup>81</sup> 2024 CRK Expert Report paragraph 93 page 25.

<sup>82</sup> 2024 CRK Expert Report paragraph 127 page 32.

reached, in order to improve fairness for the consumer and remove concerns that the scheme processes are skewed towards members.

181. While the Customer Complaints Code was being reviewed, TCF introduced a deadlock confirmation email which was sent to Scheme Members advising them of their obligations. These obligations to cease debt recovery action and disconnection action have been carried over to the TOR which now prevents Scheme Members from initiating actions while the dispute is being investigated by the Scheme Agent. Correspondingly, the Customer Care Code also provides that where a complaint relates to a disputed amount, a provider will not make payment demands or take any debt recovery action while the complaint is being investigated.
182. CRK confirms that there are now standard letters issued by TDR to warn Scheme Members about the need to cease debt recovery and any disconnection action.
183. The recommendation was implemented by the Phase 1 deadline of December 2021.

Reference	Recommendation	Rating
<b>R18a</b>	<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"> <li>revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary; and</li> </ul>	<b>GREEN</b>
<b>R18b</b>	<ul style="list-style-type: none"> <li>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).</li> </ul>	

184. We recommended that all parties to a dispute have equal opportunity for review and comment on responses during the Complaint Summary process to improve fairness, efficiency and transparency of the process.
185. TCF approved an interim code amendment to the Customer Complaints Code in 2021 allowing consumers a right of review and response.
186. This change was carried over to the DPP giving parties equal opportunity to provide views and respond to others' submissions during the Complaint Summary process.<sup>83</sup> This process also clearly sets out different points throughout the process where information is provided between parties with the Scheme Agent acting as conduit.

<sup>83</sup> 2023 TDR Disputes Procedure Process page 4-6.



This includes allowing the consumer to provide feedback on the Scheme Member's response on TDR's jurisdiction on the matter complained of.

187. The changes made have now afforded both the consumer and Scheme Member the opportunity to rebut assertions made by either party in relation to the complaint, allowing more fairness, transparency and accountability in the process.
188. R18a was implemented by the Phase 1 deadline of December 2021.
189. R18b was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

Reference	Recommendation	Rating
<b>R19</b>	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.	<b>GREEN</b>

190. We recommended in 2021 that parties should also be allowed the opportunity to review and comment on a proposed determination to improve fairness for parties and transparency of the process.
191. TCF approved an interim code amendment to the Customer Complaints Code in 2021 allowing parties the opportunity to comment and submit on proposed determinations. This change was carried over to the DPP where both the customer and the Scheme Member are now given the opportunity to make oral submissions as part of the final determination process.<sup>84</sup>
192. However, CRK raises one concern related to the fairness settings of TDR's complaints handling process. From a limited review of case files and Fairway's explanation of its procedures, it seems that some fairness settings may lean more toward strict neutrality and protecting TDR, rather than actively ensuring fairness by levelling the playing field for consumers.<sup>85</sup>
193. To meet good practice fairness settings, adjustments suggested by CRK would include TDR being more willing to assist the consumer to frame or draft their complaint, provide guidance on evidence requirements or on achievable claims, and push back on Scheme Members when they consider a stance on jurisdiction or

<sup>84</sup> 2023 TDR Disputes Procedure Process 2023 page 7.

<sup>85</sup> 2024 CRK Expert Report paragraph 92 page 25.

remedy is unreasonable.<sup>86</sup> We see these adjustments as being conducive to improving consumer outcomes by enhancing fairness for consumers.

194. CRK suggests that a useful process in other EDR schemes to assist in identifying and adjusting these settings is for an independent periodic review conducted by an external independent legally qualified EDR expert.<sup>87</sup>
195. The recommendation was implemented by Phase 1 deadline December 2021.
196. The concerns and gaps we have raised here are addressed in our recommendations later in this report.

## Governance

Reference	Recommendation	Rating
R20	<p>Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:</p> <ul style="list-style-type: none"> <li>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.</li> <li>The Scheme Agent is accountable to the TDRS Council, enabling the TDRS Council to: <ul style="list-style-type: none"> <li>set and manage the terms of the Scheme Agent's contract;</li> <li>set KPIs and assess the Scheme Agent's performance; and</li> <li>either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget.</li> </ul> </li> </ul>	GREEN

197. We recommended a change in governance to improve the independence of TDR so that it aligns with relevant best practice standards and the key principles set out in s 246(2)(f) of the Act. Governance was one of the core areas the 2021 review addressed.
198. TCF implemented a new governance structure to ensure governance of the scheme would be largely independent of TCF. It established a separate company (TDRL) to run TDR with its TDR Board having overall responsibility for TDR. This served to replace the then TDRS Council.

<sup>86</sup> 2024 CRK Expert Report paragraph 87 page 25.

<sup>87</sup> 2024 CRK Expert Report paragraph 96 page 26.

199. CRK notes in its report that stakeholders from both industry and consumer organisations have expressed confidence in the revised governance model.<sup>88</sup>
200. While the creation of a separate legal entity is a clear improvement of the previous governance structure, there is a residual concern about the continuing role of TCF as a minority shareholder in TDRL. TCF holds a 25% stake in the company, and this may limit the ability of TDR to govern independently when deciding major items such as TDR budget and fee structure which requires a unanimous resolution by shareholders. As a minority shareholder, TCF also appoints the three industry representatives to the TDR Board.<sup>89</sup>
201. CRK notes that TCF's control over TDR budget and fees structure are inconsistent with the desire for independence that drove the governance reforms arising from the 2021 review.<sup>90</sup>
202. We also consider that the continuing role of TCF as a minority shareholder raises concerns about the independence of the scheme. TDR must be able to conduct its work independent of the industry that falls within its jurisdiction and provides its funding. The requirement for unanimity in resolutions related to the budget of TDR and its fee structure effectively confers a power of veto with no mechanism to address this. Indeed, being independent and mitigating impacts where independence could be compromised is one of the best practice standards schemes like TDR must exhibit<sup>91</sup> so consumers have confidence in the scheme.
203. Independence for TDRL to consider its funding is vital given the need for TDR to strengthen activity and action in focus areas and ensure that it has appropriate resources to support its objectives and duties to best practice standards.
204. TDRL has submitted that the resulting changes to governance in response to the 2021 review exceeded expectations and consequently the rating for R20 implementation should be Green.<sup>92</sup> We agree that the new structure did indeed go beyond what was envisaged in 2021 and in this regard have changed the rating from the draft. However, we emphasise that risk to TDR's financial and budget independence remains.
205. R20 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

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<sup>88</sup> 2024 CRK Expert Report paragraph 100 page 28.

<sup>89</sup> TDRL Constitution clause 9.4.

<sup>90</sup> 2024 CRK Expert Report Finding 10 page 28.

<sup>91</sup> Standard 4 MBIE Aotearoa best practice dispute resolution framework.

<sup>92</sup> TDRL Submission 2024 Review of the TDRS dated 29 November 2024.

206. The concerns we have raised are addressed in our recommendations later in this report.

Reference	Recommendation	Rating
<b>R21</b>	<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"> <li>• having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or</li> <li>• 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.</li> </ul>	<b>GREEN</b>

207. We recommended the restructure of the TDRS Council so that decisions were made fairly with balanced representation from both consumer and industry groups ensuring no effective power of veto of any group. The changes would align the scheme with the key principles of a successful dispute resolution scheme as set out in the Act.<sup>93</sup>
208. The new composition of the TDR Board now includes three consumer representative directors appointed by the Independent Director and three industry representative directors appointed by the TCF as the minority shareholder.<sup>94</sup> The Independent Director must not be associated with a Scheme Member or consumer group and serves as the chairperson of the TDR Board.<sup>95</sup>
209. Whereas the recommendation suggested a two-thirds majority for resolutions for the composition that eventuated, the Constitution allows either a simple majority with unanimous consent as an option or if unanimity is not achieved, a simple majority of directors.<sup>96</sup> This structure allows a fallback to a simple majority if there is dissent. We consider that this mechanism operates to minimise an effective power of veto where consent is not unanimous.
210. CRK notes that, compared to other EDR schemes, the maximum of 7 directors (including the Independent Director who is also the chairperson) is not excessive,

<sup>93</sup> Section 246(2)(f).

<sup>94</sup> TDRL Constitution clause 9 page 12.

<sup>95</sup> TDRL Constitution clause 9.5 page 12.

<sup>96</sup> TDRL Constitution clause 12.5 page 16.

and allows for a seat for anticipated new members, given the likely need to bring wholesale and smaller service providers into TDR membership.<sup>97</sup>

211. R21 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

Reference	Recommendation	Rating
R22	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	GREEN

212. We recommended adjusting the terms of members to promote continuity of members and balance this out by bringing new perspectives to the governance body.
213. The TDR Board now has a more balanced approach to the terms directors can serve. The Independent Director serves a maximum of one term of three years unless the board resolves by special majority to extend the term.<sup>98</sup> All directors regardless of representative group serve a three-year term and may be reappointed for one additional term of up to three years provided no director holds office for more than six years in total.
214. We consider that these adjustments promote a well-balanced approach to governance of the TDR Board to drive continuous improvement and ensure that evolving industry and consumer perspectives are responsive to the changes in the industry and consumer landscape. It also ensures continuity by allowing directors to serve for up to six years giving them enough time to build experience and contribute effectively to the TDR Board.
215. R22 was supposed to be completed by the Phase 2 deadline of August 2022. However, due to the impact of the overhaul of the governance arrangements, we allowed extensions for these substantive changes to be made.

<sup>97</sup> 2024 CRK Expert Report paragraph 108 page 29.

<sup>98</sup> TDRL Constitution clause 9.5 page 13.

## Jurisdiction

Reference	Recommendation	Rating
<b>R23</b>	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.	<b>GREEN</b>

216. We recommended active encouragement of broader membership of the scheme in recognition of the benefits of wider membership of the scheme for consumers whose service providers are not members.
217. MBIE is currently looking into the question of membership of TDR and has asked for feedback from stakeholders including smaller service providers and consumers on making membership mandatory.<sup>99</sup> We expect that any consequent changes from this will be considered by TDRL for the purposes of planning its activities going forward. In the meantime, TDR is encouraged to continue the call for increasing membership of TDR.
218. TCF conducted ongoing membership activities to invite non-scheme members to join and TDRL has assumed this as an ongoing responsibility through its new CE and the Scheme Agent through its mandated function in the TOR.<sup>100</sup>
219. We see this as an ongoing priority for TDR. Membership has increased from 19 RSM and 5 wholesale scheme members in 2021 to 30 RSM and 7 wholesale scheme members currently.<sup>101</sup>
220. However, this may not be best indicator of TDR's coverage as an increase in membership size does not account for market share, geographical reach or the variety of services provided to consumers. CRK suggests that the number of consumers not covered by the scheme may be a better approach.<sup>102</sup>
221. We estimate that approximately 200,000 or approximately 11% of consumers remain unable to access the scheme because their providers are not members.<sup>103</sup> We believe this number should be reduced and, through our market monitoring activities, can provide data to TDR to assist in measuring this.

<sup>99</sup> MBIE "Discussion Document: Enhancing telecommunications regulatory and funding frameworks" 2024.

<sup>100</sup> Terms of Reference clause 9.1(n).

<sup>101</sup> The list of members can be found on the TDR website:  
<https://www.tdr.org.nz/our-role/tdr-members>.

<sup>102</sup> 2024 CRK Expert Report paragraph 114 page 30.

<sup>103</sup> We've measured this based on our market monitoring function.

222. R23 was supposed to be completed by the Phase 2 deadline of August 2022. However, with the change in governance of the scheme and TDRL taking on this recommendation we consider that this should be approached as an ongoing process.
223. The concerns or gaps we have raised here are addressed in our recommendations later in this report.

Reference	Recommendation	Rating
R24	<p>The Customer Complaints Code should be amended (R1) to ensure that:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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).</li> <li>• The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal.</li> </ul>	GREEN

224. We recommended amendments to the Customer Complaints Code to address identified shortcomings which operated to exclude consumers from being able to access the scheme. These changes were necessary to better align TDR with key principles of a successful dispute resolution scheme as set out in s 246(2)(f) of the Act and best practice principles.
225. TCF, as part of its Governance Project, considered the amendments for incorporation into the Customer Complaints Code. With the change in governance and the creation of new governing documents, these have now been shifted to and embedded in the TOR:
- 225.1 consumers are now able to appoint a lawyer without risk of exclusion from the scheme;
- 225.2 the 12-month limit has been amended so that a matter is only excluded if lodged more than three years since the customer reasonably became aware of the matter; and

225.3 the Scheme Agent is now able to make a final determination (which can include compensation) equivalent to an order which the Disputes Tribunal has jurisdiction to make.<sup>104</sup>

226. R24 was supposed to be completed by the Phase 2 deadline of August 2022. With the change in governance of the scheme and TDRL taking on this recommendation we consider that this should be approached as an ongoing process.

#### **Additional observations by CRK**

227. CRK makes additional observations which do not fit within the scope of the assessment of 2021 recommendations but which we see as useful for TDR to consider for best practice.

227.1 Public reporting on outcomes: CRK observes that reporting on outcomes, Scheme Members, compensation awarded, revoked penalties and unfair contracts would enhance transparency and credibility of the scheme.

227.2 Efficiency targets: CRK observes that TDR should consider setting more ambitious targets for efficiencies especially for areas where it is exceeding targets.

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<sup>104</sup> Terms of Reference clause 21.2 (vii).



## 2024 Recommendations

228. We acknowledge that TDR continues to be on a journey under its new governance structure. While much of the focus in its first year has been operational, we note that the TDR Board and CE have committed to ensuring that the operation and governance of TDR aligns with best practice.
229. The findings in CRK's expert report have informed the following recommendations (the 2024 Recommendations). These target areas where we consider more progress and improvement is required. TDRL should address each recommendation and related expert findings<sup>105</sup> within a strategy of continuous improvement of the scheme for the benefit of consumers.

Alongside the 2024 Recommendations we have also prescribed timeframes for implementation as well as the corresponding metrics.

**Table 3: 2024 Recommendations**

Reference	Recommendation	Timing	Measurement
<b>R2024.1a</b>	<p><b>Increase awareness</b></p> <p>Continue to raise awareness of the scheme through marketing campaigns, promotion of the scheme, and coordinated member actions (such as Interactive Voice Recording messaging and bill notifications) and engagement with community and consumer organisations.</p>	Ongoing with six monthly reporting	Prompted awareness % (measured six monthly via the Commission's Customer Satisfaction Survey)
<b>R2024.1b</b>	<p><b>Ensure accessibility</b></p> <p>Ensure that all groups have equal access to and usage of the scheme. This should be monitored through capture of socioeconomic and demographic data of complainants.</p>	Ongoing with first report by July 2025	Makeup of scheme users versus national population (six monthly reporting to the Commission)
<b>R2024.2</b>	<p><b>Improve reporting</b></p> <p>To ensure good consumer experience and gather insight for systemic issues, TDR should monitor and report on complaints that are closed, resolved or withdrawn after referral to the Scheme Member, including collection and analysis of granular issue categorisation and complaint outcomes.</p>	Bi-annual reporting with first report by July 2025	Six monthly reporting to the Commission

<sup>105</sup> 2024 CRK Expert Report page 34- 36.

Reference	Recommendation	Timing	Measurement
R2024.3	<p><b>Ensure compliance</b></p> <p>Develop an appropriate compliance programme to ensure Scheme Members are complying with their obligations to promote TDR.</p>	By December 2025	Annual reporting to the Commission on compliance
R2024.4	<p><b>Improve practice management</b></p> <p>To ensure that guidance materials are useful and of high quality, periodically check in with stakeholders and consumers on the value, utility and accessibility of guidance materials.</p>	Ongoing with annual check in	Annual reporting to the Commission
R2024.5	<p><b>Improve identification of Systemic Issues</b></p> <p>Prioritise the identification and analysis of systemic issues to identify root causes of complaints affecting consumers to drive improvements in industry and consumer outcomes.</p>	Ongoing with first report by July 2025	Six monthly reporting to the Commission
R2024.6	<p><b>Increase membership.</b></p> <p>Reduce the number of consumers without access to the scheme by carrying out regular engagement activities with non-members to encourage them to join TDR and to address barriers preventing them from joining.</p>	Ongoing	<p>% increase in total membership (measured six monthly by TDR)</p> <p>% of consumers not covered (measured six monthly via the Commission)</p>
R2024.7a	<p><b>Improve complaints handling process</b></p> <p>Ensure timely completion of all disputes by reporting on completion rates within 30 and 60 working days to better track timeliness improvements.</p>	Ongoing with first report by July 2025	Six monthly reporting to the Commission
R2024.7b	<p><b>Improve complaints handling process</b></p> <p>Conduct annual external independent periodic reviews of closed case files and jurisdiction decisions sampling for fairness settings.</p>	Ongoing	Annual reporting to the Commission
R2024.8	<p><b>Increase budget independence</b></p> <p>Conduct a review of the budget setting process to mitigate any risk to TDR's financial and budgetary independence and</p>	By July 2026	Reporting to the Commission on changes

Reference	Recommendation	Timing	Measurement
	ensure that TDR is fully funded to carry out all its duties including awareness and engagement.		
<b>R2024.9</b>	<b>Reduce exclusions</b> Improve accessibility of consumers to TDR by reviewing remaining exclusions, including network coverage and broadband performance exclusions, and amending or removing these exclusions.	By July 2025	Reporting to the Commission on changes

230. The TDR Board and, by extension, TCF in its budget approving capacity must ensure that appropriate resources and budget are available in order to deliver these recommendations and to meet the requirements of a successful disputes resolution scheme. While some submissions have noted that historically the industry has demonstrated no resistance to approving funding for TDR in the past,<sup>106</sup> we note that implementing these recommendations may require additional funding for initial set up while processes are being established as well as ongoing costs. While addressing these funding needs will be a matter for TDR Board (and TCF) to address, we will be monitoring this situation closely to ensure that governance processes do not unduly constrain TDR's ability to implement these recommendations or maintain effective self-governance.
231. Submitters cautioned that changes to the new governance arrangements may be premature,<sup>107</sup> and that TDR should instead focus on more urgent matters while allowing the governance of TDR to evolve over the longer term.<sup>108</sup> TDRL acknowledges that, while historically industry has not resisted approval of TDR budget, the further changes we have recommended align with international best practice.<sup>109</sup> We agree that governance should continue to evolve but believe that part of that evolution will be to bring TDR into line with international best practice. We have extended the timeframe to conduct a review of budget setting process to July 2026 from December 2025 to allow more time for the governance to develop while this review takes place.

<sup>106</sup> TCF Submission on TDR Review dated 29 November 2024; TDRL Submission 2024 Review of the TDRS dated 29 November 2024.

<sup>107</sup> TCF Submission on TDR Review dated 29 November 2024; Chorus, Enable Tuatahi Joint Submission dated 29 November 2024.

<sup>108</sup> TCF Submission on TDR Review dated 29 November 2024.

<sup>109</sup> TDRL Submission 2024 Review of the TDRS dated 29 November 2024.

232. Despite the targeted scope of this year's review, the Commission may provide recommendations on any matters relevant to TDR in our next review. In reviewing TDR, we consider the entirety of its development beginning with insights and recommendations from the first review in 2021 and extending through subsequent assessments including this second review. This comprehensive approach ensures that we build on past findings and continually assess TDR's ability over time to meet its statutory purpose and achieve the key principles of a successful dispute resolution scheme under the Act.

#### **How we intend to monitor implementation**

233. The Act requires us to review TDR at least once every three years. We anticipate starting our next review of TDR in the last quarter of 2026 or the first quarter of 2027. However, we may conduct reviews before then as needed.
234. We will 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.
235. We will monitor progress of implementation of the recommendations by seeking written updates from TDR and through periodic reports. These updates should set out the progress TDR and the Scheme Agent have made towards implementing each of the recommendations while the periodic reports should include the information required and by the dates noted. We may also require updates from time to time on progress specific issues between reporting periods.
236. TDR and the Scheme Agent should also provide public notification on the TDR website that they have implemented the recommendations set out in this report.
237. If we consider that 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.

## Appendix 1: 2021 Review Recommendations

1. The 24 recommendations contained within the 2021 report following a phased approach for implementation.
  - 1.1 Phase 1 contained recommendations that we understood could be made relatively quickly or fast-tracked, focusing on urgent changes with any necessary formal codification being made over a longer period. These recommendations were due to be implemented by 24 December 2021.
  - 1.2 Phase 2 contained recommendations which we understood needed more substantial changes that required additional time and planning including a full review of the governing documents and improvements to systemic issue reporting. These recommendations were due to be implemented by 1 August 2022.
  - 1.3 Phase 3 contained recommendations that we understood would need an 18-month or longer implementation period such as some of the awareness and reporting recommendations.

### Review the Customer Complaints Code, Scheme Terms of Reference 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

Reference	Recommendation	When
<b>R3b</b>	<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"> <li>• Clause 18.1.4</li> <li>• Clause 18.1.6</li> <li>• Clause 18.1.21.</li> </ul>	Phase 2

### Awareness

Reference	Recommendation	When
<b>R4</b>	<p>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.</p>	Phase 1
<b>R5</b>	<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"> <li>• 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.</li> <li>• 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.</li> </ul>	Phase 2
<b>R6</b>	<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

<b>R7</b>	<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"> <li>ensuring consumers are made aware of the TDRS at the beginning of the complaints process;</li> <li>reaching consumers from groups that are rarely using the TDRS; and</li> <li>continuing to build general awareness of the TDRS.</li> </ul>	Phase 3
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### Position Statements and Case Studies

Reference	Recommendation	When
<b>R8</b>	<p>Undertake a review of topic-specific guidance to:</p> <ul style="list-style-type: none"> <li>update current position statements to ensure they are fit for purpose;</li> <li>identify and fill coverage gaps in guidance; and</li> <li>develop topic-specific guidance in the form of recurring issues articles and news articles into position statements.</li> </ul> <p>The review and (re)publication of position statements should occur by 24 December 2021.</p>	Phase 1
<b>R9</b>	<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
<b>R10</b>	<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

### Systemic Issues

Reference	Recommendation	When
<b>R11</b>	<p>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).</p>	Phase 2
<b>R12</b>	<ul style="list-style-type: none"> <li>Continue the work to improve the categorisation and reporting of complaints and enquiries to allow better identification of systemic issues.</li> <li>Within 18 months of the publication of this report, public reporting should include data on systemic issues and root causes.</li> </ul>	Phase 3

## Complaints Handling Process

Reference	Recommendation	When
<b>R13</b>	Amend the Customer Complaints Code to reset the deadlock period for the TDRS from six weeks to 15 working days (see R1).	Phase 2
	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"> <li>the TDRS should display sufficient independence from Scheme Members by proactively deadlocking complaints where the complaint has not been resolved within the deadlock period;</li> </ul>	
<b>R14</b>	<ul style="list-style-type: none"> <li>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</li> <li>the Scheme Agent should put processes in place to ensure that the deadlock period is tracked and reported upon.</li> </ul>	Phase 1
<b>R15</b>	Improve the complaints handling process to ensure that consumers' complaints that involve Wholesale Scheme Members are resolved quickly and efficiently (see R1).	Phase 2
	<ul style="list-style-type: none"> <li>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.</li> </ul>	
<b>R16</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>	Phase 1
<b>R17</b>	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
<b>R18a</b>	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"> <li>revising the TDRS' internal processes to provide consumers with an opportunity to respond to the Complaint Summary;</li> </ul>	Phase 1



<b>R18b</b>	<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"> <li>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).</li> </ul>	Phase 2
<b>R19</b>	<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>	Phase 1

## Governance

Reference	Recommendation	When
<b>R20</b>	<p>Ensure that governance responsibility for the TDRS sits with the TDRS Council, to ensure:</p> <ul style="list-style-type: none"> <li>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.</li> <li>The Scheme Agent is accountable to the TDRS Council, enabling the TDRS Council to: <ul style="list-style-type: none"> <li>set and manage the terms of the Scheme Agent's contract;</li> <li>set KPIs and assess the Scheme Agent's performance; and</li> <li>either (a) set the budget for the scheme; or (b) make recommendations to the TCF for the scheme budget.</li> </ul> </li> </ul>	Phase 2
<b>R21</b>	<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"> <li>having an independent chairperson, with equal numbers of consumer and industry representatives, and a simple majority required to pass a resolution; or</li> <li>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.</li> </ul>	Phase 2

<b>R22</b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	Phase 2
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## Jurisdiction

Reference	Recommendation	When
<b>R23</b>	<p>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.</p>	Phase 2
<b>R24</b>	<p>The Customer Complaints Code should be amended (R1) to ensure that:</p> <ul style="list-style-type: none"> <li>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.</li> <li>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).</li> <li>The compensation limits keep pace with those of the Disputes Tribunal, and the remedies available are consistent with those available at the Disputes Tribunal.</li> </ul>	Phase 2

## Appendix 2: Legal Framework for the Review

1. 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:
  - 1.1 can make informed choices about retail telecommunications services;
  - 1.2 can expect service quality at competitive levels that reflect consumer demands; and
  - 1.3 have access to efficient and responsive complaint and dispute resolution procedures if problems arise.
  
2. Part 7, section 246(1) requires the Commission to review each industry dispute resolution scheme at least once every three years. 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.<sup>110</sup> These matters include:
  - 2.1 the purpose of the industry dispute resolution scheme;
  - 2.2 the Scheme Provider;
  - 2.3 the dispute resolution provider for the scheme;
  - 2.4 the purpose of the dispute resolution provider for the scheme;
  - 2.5 the effectiveness of the scheme in resolving complaints by consumers against service providers;
  - 2.6 whether the scheme rules comply with the principles of accessibility, independence, fairness, accountability, efficiency, and effectiveness;
  - 2.7 the adequacy of the scheme rules;
  - 2.8 the procedures that are used for receiving, investigating, and resolving complaints;
  - 2.9 how promptly complaints are dealt with;
  - 2.10 whether any recommendations for improving the scheme have been implemented.
  
3. 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

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<sup>110</sup> Telecommunications Act 2001, s 246(2).

- (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.
4. The Act uses the term “dispute resolution provider” whereas the TOR use the term “Scheme Agent”. For the purposes of this review, we use the terms interchangeably.
  5. As part of this review, the Commission intends on reporting to the Scheme Provider on its assessment of the implementation of the recommendations made in 2021, and any further recommendations for improving the Scheme.
  6. Where our report makes further recommendations, we must specify timeframes for the Scheme Provider to implement further recommendations.<sup>111</sup>
  7. 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:
    - 7.1 our recommendations for improving the industry dispute resolution scheme;
    - 7.2 whether, in our opinion, those recommendations have been implemented; and
    - 7.3 whether we consider that either:
      - 7.3.1 the industry dispute resolution scheme fails to achieve the purpose set out in s 247; or
      - 7.3.2 the dispute resolution provider for the industry dispute resolution scheme fails to achieve the purpose set out in s 248.<sup>112</sup>
  8. 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.<sup>113</sup>
  9. 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.<sup>114</sup> The statutory consumer complaints system under Part 4B would become the dispute resolution

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<sup>111</sup> Telecommunications Act 2001, s 246(4).

<sup>112</sup> Telecommunications Act 2001, s 246(5).

<sup>113</sup> Telecommunications Act 2001, s 246(6).

<sup>114</sup> Section 240(1)(b). Refer to s 54, 156S, 156T of the Telecommunications Amendment Act (No 2) 2006.

scheme responsible for Commission-led RSQ matters (for example, Commission RSQ codes and 111 Contact Code).<sup>115</sup>

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<sup>115</sup> Section 240(1)(b). Refer to s 54 and Part 4B of the Telecommunications Amendment Act (No 2) 2006.