

29 November 2024

Tristan Gilbertson

Telecommunications Commissioner

By email: market.regulation@comcom.govt.nz

Tēnā koe Tristan

2024 Review of the TDRS – TDRL feedback to draft report.

General comments

Telecommunications Dispute Resolution Limited (**TDRL**) welcomes the opportunity to provide feedback on the draft 2024 Review of the Telecommunications Dispute Resolution Scheme (**2024 Report**). We are committed to continuing to evolve the Telecommunications Dispute Resolution Scheme (**TDRS**) and are eager to get to work on developing an appropriate response plan to the Commerce Commission's (**Commission**) recommendations.

We are very pleased to see the recognition in both the 2024 Report and that of its expert evaluator, cameron.ralph.khoury (**CRK**), of the significant work that has been undertaken following the 2021 review. In particular we note that almost all of the recommendations from the 2021 review have been fully implemented, and in some areas such as around independence the efforts surpassed the 2021 recommendations.

The 2024 Report contains a number of recommendations, most of which are aimed at further supporting the TDRS's maturity. Noting the comments below, TDRL is broadly supportive of the direction of the 2024 Report, particularly noting the focus on awareness, accessibility, and the appropriate identification and treatment of systemic issues.

We have commenced work on the development of a more detailed response plan, which we will discuss with the Commission in the new year once the 2024 Report has been finalised. In developing this plan, we will be focussed on identifying the actions that will have the most material impact towards the overall goals set out by the TDRL Board, and largely echoed by the Commission. Once the planning work has been completed, we will be in a better position to outline the activity, sequencing, and expected resourcing implications in more granular detail with the Commission.

In the interim we note that many of the recommendations (such as ones around awareness and systemic issues) will take time to implement and then deliver the desired outcomes. We will need to ensure realistic expectations are set around progress over the three years before the next review in 2027. This is particularly important noting the limited resources of TDRL, and the need to ensure that members and consumer stakeholders are properly consulted as we undertake this work.

In addition to the general comments made above, TDRL has a number of more detailed comments which we outline below. While many of them do not necessarily require any amendments to the 2024 Report, they are important as they will inform our approach to the response plan.

Specific feedback

Systemic issues

TDRL acknowledges the comments in the 2024 Report around systemic issues, including the feedback regarding the slower than expected progress in response to the 2021 review. TDRL notes Fair Way has improved reporting and data collection which will help in the identification, analysis and escalation of systemic issues to the Telecommunications Forum (**TCF**) and members. However, we acknowledge more work is needed to fully implement the reporting recommendations of R12 from the 2021 Report.

We support the continued focus on systemic issues, and this has been acknowledged by the Board, with this being one of the core focus areas for the CEO. We note that this is an area, however, that will require careful implementation, including reviewing the processes for assessing and investigating potential systemic issues to ensure that we have a proper evidentiary basis prior to escalating issues.

Reporting

The recommendations in the 2024 Report include requirements for significant additional reporting to the Commission. TDRL is committed to working together to ensure the Commission has appropriate information and reports to meet its monitoring and oversight functions, while balancing this against the increased operational and administrative burden.

As already discussed, we would like to have a holistic discussion with the Commission about reporting, which may impact the content, form, and frequency of reporting delivered in response to the 2024 recommendations. We cannot, at this stage, commit to achieving the proposed timeframes.

Compliance with Codes

We note the comments in the report proposing TDRL takes on a greater role in monitoring member compliance with various codes. While we accept that in specific areas (discussed below) TDRL has a role, the organisation is not equipped nor mandated to carry out more generalised industry compliance assurance. We note that the more general mandate for compliance assurance sits, appropriately, with TCF and it would be unusual for a consumer dispute resolution body to have a mandate that includes such a role.

TDRL has a role in ensuring that members are meeting their requirements to help drive consumer awareness of TDRS, and this is already being considered as part of work to improve consumer awareness. Furthermore, TDRL would from time to time assess compliance as part of complaints or systemic issue investigations, but this would not be in the form of regular compliance assurance.

Membership

As the Commission is aware, we are fully supportive of increasing membership, noting the strong consumer and industry value in universal membership of TDRS. In this regard we are also pleased to see that the question of compulsory membership is being considered by MBIE as part of its policy work.

As discussed with the Commission, we will continue to do all we can, including through our review of funding structures (currently underway) and through engagement with non-members. Nonetheless, TDRL has no formal levers to force membership, and we note that to achieve the desired universal membership position we are likely to require support from both policy makers and the Commission.

Independence

TDRL notes the comments in the report around independence and acknowledges that the further changes recommended align with international best practice. We note, however, that while we accept the conflict in theory, there have not historically been industry resistance to appropriate funding for the TDRS. Noting that implementation of the recommendations will require some investment, we would expect the industry to continue to be supportive of the ongoing work by TDRL.

In terms of the feedback on the close out of the 2021 recommendations, we suggest that the assessment around Recommendation R20 is revised from 'Amber' to 'Green', noting that the recommendation was not only implemented in full, but also exceeded due to the creation of a separate legal entity. While we do not object to the new recommendation, we feel strongly that the assessment of the 2021 recommendation should be revised.

Exclusions

We note the comments around jurisdictional exclusions and the potential impact on consumer accessibility, including the new recommendation R2024.9. TDRL agrees with the importance of ensuring that exclusions are appropriate and is already committed to periodic reviews of the exclusions to ensure that the scheme's jurisdiction continues to reflect the types of complaints arising in the sector.

Nonetheless we feel that the report somewhat underrepresents the impact of the changes to the exclusions that were made in response to the 2021 report. In particular we note the number of excluded complaints has fallen from 52% in 2021 to ~22% year to date. Furthermore, there has not been any indication that the exclusions are materially impacting consumer access to the TDRS at this time (noting that we will continue to monitor this).

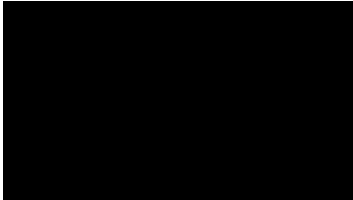
Usage of TDRS

We note the specific reference in paragraph 58 of the 2024 Report to the scheme usage, with comparative figures for both TIO and UDL. The CRK report notes that those figures are based on data collected for the 2021 review, and their report makes it clear that an updated assessment was not carried out in 2024. We also note that these numbers reflected scheme usage in 2020, which was significantly lower than current scheme usage.

Next steps

We are grateful for the chance to provide feedback on the draft report. As stated above, we will be engaging with the Commission in the new year around our response plan. In the interim, if you would like to discuss either this response or anything else further, please feel free to contact our CEO, Herman Visagie, directly.

Nāku iti noa, nā



Barry Jordan
Chair & Independent Director
Telecommunications Dispute Resolution
Limited