

29 November 2024

Commerce Commission

Email: market.regulation@comcom.govt.nz

Confidential

Re: Review of the Telecommunications Dispute Resolution Scheme

Independent dispute resolution schemes provide immense value by assisting consumers and companies resolve their complaints without unnecessary complications or legal hurdles.¹ Delivered well, they provide value for money, build consumer trust and improve services by highlighting systemic issues. Utilities Disputes Limited – Tautohetohe Whaipainga (UDL) recently commissioned a study of its role and found that savings of up to 4.2 million a year can result from an effective dispute resolution scheme.²

Against this background UDL makes these key points in response to the draft *Review of the Telecommunications Dispute Resolution Scheme 2024* (the review). In UDL's opinion the review lacks detail and data in a number of important areas, including:

- 1) The Telecommunications Dispute Resolution's (TDR) governance and management model and how it is applied practically to ensure TDR has sufficient independence and resources to deliver effective dispute resolution to telecommunication consumers and providers.
- 2) TDR's performance in managing the complaints and inquiries it receives, and how this compares to the traditional ombudsman type model where a central decision-maker is assisted by staff who have extensive subject matter knowledge and are ultimately responsible to the decision maker.
- 3) A breakdown between complaints and queries TDR receives, resolves and details of the assistance it provides to consumers in relation to both categories.
- 4) Why TDR appears to remain an outlier in terms of the low level of complaints it receives.

The report acknowledges TDR should invest more in its outreach activities and focus on vulnerable consumers. UDL strongly supports this view.

¹ See *Contact v Moreau*, CIV 2017-485-962 [2018] NZHC 2884, paras 99-115.

² See New Zealand Institute of Independent Research, *Independent Dispute Resolution*, Report to UDL, 12 November 2024, 18, <https://www.udl.co.nz/assets/About-us/2024-Research-Reports/UDL-and-NZIER-2024-report.pdf>

The overall impression gained from reading the review was while admirable progress has been made since the 2021 review, a number of issues remain, and these were not reviewed to the same standard of the 2021 review.

Role of UDL

UDL makes these points as an experienced, not for profit, provider of dispute resolution services.

UDL provides the government approved Electricity Gas and Complaints Scheme. UDL also provides voluntary water complaints schemes and the Broadband Shared Access Disputes Scheme.

UDL also offers a voluntary telecommunications complaints resolution scheme. Contact Energy is presently the only member of this scheme³.

Commentary

The review makes some observations about the low number of complaints TDR receives and by *comparison*, refers to UDL's Energy Complaints Scheme which is said to have 3 times the volume than TDR.⁴ This comparison is not accurate in our view and more data analysis is required for the following reasons:⁵

1. TDR fails to publicly differentiate between the number complaints and queries (which appear to be termed service requests) it receives, instead combining these under the heading of total contacts.⁶ UDL has raised this issue previously and confirmed previous Complaint and Query numbers have been combined and retrospectively rebranded as Complaints in TDR's annual reporting.

This is not best practice in our view and does not allow for a proper assessment of the issues telecommunications consumers experience or the resources TDR applies in response.

There are longstanding and widely used definitions for a '*complaint*'. UDL and other dispute resolution providers define a '*complaint*' as an expression of dissatisfaction where response or a resolution is explicitly or implicitly expected. A query is typically where a consumer simply requires more information about a product or service their utility company provides. In our experience complaints require more time and resources to resolve.⁷

³ The scheme is not an industry dispute resolution scheme under part 7 of the TA 2007

⁴ See *Review TDRS*, para 58.

⁵ The analysis of statistics is provisional, as more information is needed to fully understand the numbers provided in the materials.

⁶ See *Review TDRS*, para 56.

⁷ This is accepted way of characterising complaints see Energy Complaints Scheme, pg 11 (Definitions); further examples include but are not limited to Financial Markets Conduct Regulations 2014, cl 229(f); Credit Contracts and Finance Regulations 2004, cl 5A(2); New Zealand Law Society, "Running an Effective Internal Complaints Process",

Combining these as 'total cases' is inadequate in our view and fails to present the total work undertaken.

By way of example, UDL's Energy Complaints Scheme (including *gas and electricity*) received 8,136 queries and 6,694 complaints in the last reporting year, meaning total contacts amounted to 14,830.

In the same period TDR received 3,460 contacts. This indicates UDL received 4 times the number of contacts. However, failing to differentiate between the number of complaint and queries in the TDR total means this comparison could be misleading. It may also lead to an inaccurate comparison of the issues consumers are raising with telecommunications and energy, and the resources TDR and UDL are dedicating to resolve them.

Of the 7,023 total complaints UDL received for all of its schemes in the last year:⁸

- 5,650 were resolved by our First Contact Team at the earliest stage.
- 953 were resolved by our Early Resolution Team in an average of 23 days. These are resolved deadlocked complaints, as they are complaints the provider has already had an opportunity to resolve but has been unable to do so.
- 162 were resolved by our Conciliation and Investigation Team. These are typically the more complex and entrenched complaints that require more investigation and often result in a decision by our Commissioner.

This is the type of detail we expected in the review. It's important in terms of assessing the value a scheme is providing to consumers and providers. Within these figures a number of complaints were also fast tracked where the consumer may be facing serious harm, such as a potential disconnection. We would expect all of these details to be confirmed in an independent review.

In response to the 7,023 total complaints we received, we produced over 2,064 Complaint Summaries⁹ for consumers. This is a succinct, effective written summary of a complaint that is sent both to the provider and complainant when a complaint is not resolved immediately. There is little discussion about this type of service being provided by TDR, despite it being common for ombudsmen type organisations. There is commentary, however, about TDR directing complainants to put their complaints in writing and more detail could be provided on this approach.

<https://www.lawsociety.org.nz/professional-practice/practice-briefings/running-an-effective-internal-complaints-process/>; and Commerce Commission, "Complaints about the Commerce Commission", <https://comcom.govt.nz/about-us/our-policies-and-guidelines/complaints-about-the-commerce-commission>.

⁸ UDL, *2023-2024 Annual Report*, 8.

⁹ These documents pre and post acceptance or registration appear to have a different purpose than the TDR "Complaint Summary" see Cameron, Ralph, Khoury, *Expert Report, Telecommunications Dispute Resolution*, October 2024, (*Expert Report*) para 81.

2. While not clear the review appears to confirm around 4% of TDR’s total contacts result in accepted complaints.¹⁰ From the materials this appears to be about 269 complaints:¹¹ These are broken down in the following way:

2023-2024

| | |
|-----------------|------------|
| Abandoned | 84 |
| Adjudication | 50 |
| Early Settled | 26 |
| No jurisdiction | 51 |
| Settled | 39 |
| Withdrawn | 19 |
| Total | 269 |

From these figures TDR appears to have around the same number of accepted complaints as UDL. However, if the abandoned, withdrawn and no jurisdiction figures were removed the number reduces to 115. This manner of review also is based on the 2022-2023 TDR Annual Report which states: *“This year, 3501 complaints were resolved or closed. Of those, TDR formally assisted in resolving 88 complaints. 30 complaints were resolved through our collaborative facilitation and mediation process, and 58 were resolved through adjudication.”*¹²

This analysis, albeit based on limited information, suggests that the complaints that TDR actually considers is low and they may not reach the level of seriousness and complexity that might be expected of such an important utility as telecommunications.

This raises questions as to what practical resources TDR is applying to resolve complaints. The Commerce Commission will be aware of submissions that have highlighted this issue.¹³ In the last reporting year TDR’s accepted contacts decreased, which appears to make it an outlier when compared to sectors and dispute resolution schemes in this country including the Banking Ombudsman Service (BOS) and Energy Complaints Scheme and overseas equivalents. We have provided a breakdown of UDL’s and BOS below:

¹⁰ See *Review TDRS*, para 60.

¹¹ See *Expert Report*, para 69.

¹² TDR, *Annual Report 2022-2023*, 10.

¹³ See Devoli, *2024 Review of the Telecommunications Dispute Resolution Scheme*, 23 May 2024, 2,

| | Contacts 2022-2023 | Accepted/Considered 2022-2023 | Contacts 2023 -2024 | Accepted/Considered 2023-2024 |
|---------------------------------------|---|--|--|--|
| TDR¹⁴ | 3,725 | 264 | 3,460 | 269 |
| Banking Ombudsman¹⁵ | 2,161 enquiries 3,513 complaints Total =5,590 | 160 disputes | 2,408 enquiries 3,704 complaints Total = 6,054 | 209 disputes |
| Energy Complaints Scheme | 9,665 queries 4,468 complaints Total = 14,135 | 131 accepted | 8,136 queries 6,694 complaints Total = 14,830 | 169 accepted |

There will of course be variance on how these classifications are arrived at from scheme to scheme. The general trend shows a large number of complaints steadily increasing. However TDR's complaints appear to have stalled in the year 2023-2024.¹⁶ Reasons accounting for this are made out in the review. These may need to be tempered considering the present economic situation where increased costs of living usually drives-up complaints.¹⁷

3. Redacted.

¹⁴ See *Review TDRS*, para 56 & *Expert Report*, para 69.

¹⁵ See Banking Ombudsman, *Banking Ombudsman Scheme Annual Report 2023*, 3-4, and *Banking Ombudsman Scheme Annual Report 2024*, <https://bankomb.org.nz/about-us/media-releases/2024-media-releases#:~:text=Customers%20complained%20in%20record%20numbers,the%20scheme%20started%20in%201992.>

¹⁶ *Review TDRS*, para 56.

¹⁷ See discussion, albeit in the electricity sector, *Independent Dispute Resolution*, Report to UDL, ii-iii.

Redacted.

Redacted.

4. The report also contains green and amber ratings are set for TDR's success in creating increased consumer awareness.²⁹ However the apparent scaling back of the budget for this work is of concern.³⁰ It is important that budgeting be robust and predictable to help ensure a complaints scheme is independent, performs its core functions, and can plan. UDL's model of yearly fees (based on market share), coupled with further fees for each complaint accepted, ensures it can perform its functions.³¹ UDL notes the Commerce Commission's expectations regarding future budgeting.³²
5. The Commerce Commission also notes: a) while there is no specific deadline for the engagement with certain identified groups such as consumer organisations and Māori, it will actively monitor performance,³³ and b) the need for ongoing resourcing to reach groups who are rarely using TDR.³⁴

UDL supports these comments and affirms its previous submission that outreach to such groups, while often considered at the end of a review period, can be an indicator of the overall success of a scheme. UDL has found in its community outreach that groups which have poor contact with dispute resolution services would benefit most from them.³⁵ UDL also affirms the value of customer surveys, noted in its first submission, in assessing performance.³⁶

UDL in its submission on the constitution of TDRL and its other founding documents noted the then expectation of the MBIE Government Centre for Dispute Resolution³⁷ that dispute resolution schemes demonstrate a commitment to Te Tiriti o Waitangi and its principles.³⁸ Some further reflection, on this issue may help TDRL (and the scheme agent) in its outreach to wider New Zealand and in particular Māori. Employing staff with community contacts and the ability to network on the ground may increase TDR visibility among groups who most need TDR's services.

²⁹ See *Review TDRS*, pages 32-37.

³⁰ See *Expert Report*, paras 38-39.

³¹ See *Energy Scheme Rules*, Appendix One, cl 1.8-1.10.

³² See *Review TDRS*, para 21.

³³ See *Review TDRS*, paras 113-118, 229 R2024.1b.

³⁴ *Ibid*, paras 123-125.

³⁵ See UDL, *2024 Review of Telecommunications Dispute Resolution Scheme*, 23 May 2024, page 4.

³⁶ *Ibid.*, 3.

³⁷ Now disestablished.

³⁸ See UDL, *UDL Submission on the Telecommunications Dispute Resolution Scheme*, 17 April 2023, 2.

I thank the Commerce Commission for the opportunity to comment on the draft *TDRS Review*. If the Commerce Commission requires further clarification please contact Paul Byers, Legal and Policy Officer, paulb@udl.co.nz

A handwritten signature in black ink, appearing to read 'Neil Mallon', with a stylized flourish at the end.

Neil Mallon
Toihau Commissioner
Tautohetohe Whaipanga: Utilities Disputes Limited