Review of the Telecommunications Dispute Resolution Scheme

Prepared for the Telecommunications Dispute Resolution Council

PS... Services

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Executive summary

1. The Telecommunications Dispute Resolution (TDR) Scheme’s Terms of Reference (TOR) require the TDR Council to instigate a review of the Scheme two years from the date of implementation, with a view to the Scheme being established under an entity independent of the Telecommunications Carriers’ Forum (TCF). However, it was agreed by the TDR Council and the TCF that a wider view of the Scheme’s operation and effectiveness is necessary to inform this decision.

2. The TDR Council and TCF commissioned PS... Services to undertake this independent review. The terms of reference for this review (Appendix A) posed a series of questions in relation to internationally recognised standards of best practice\(^1\), and identify the following four main questions:

   - Is the Scheme meeting internationally recognised standards of best practice?
   - Is the Scheme meeting the needs of New Zealanders and their telecommunications carriers with a demonstrably independent, effective and efficient resolution process for the resolution of disputes between carriers and their customers?
   - Is there a need to establish the Scheme under an entity independent of the TCF?
   - Are there alternative models that would better deliver the Scheme’s purpose?

3. A qualitative approach has been adopted for this review. This has involved a review of documentation associated with the Scheme, key informant interviews with a wide range of key stakeholders and interested parties (listed in Appendix C), and a comparison with how two alternative industry/consumer dispute resolution schemes have addressed the key issues arising.

Summary conclusions

4. The TDR Scheme goes some way towards meeting the best practice standards of dispute resolution schemes described in the Australian benchmarks but there are still some areas for improvement. These principally include:

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\(^1\) These are the benchmarks described in “The Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes” (the Australian benchmarks).
• Accessibility – raising awareness of the Scheme with appropriate promotional activities by the Scheme and scheme members.

• Independence – concerns around the independence of the governing bodies from the decision-maker, noting that while it is not currently considered a priority to establish the Scheme as a separate entity from the TCF, this should be re-visited once some of the key fundamental issues to improve the effectiveness and coverage of the Scheme have been addressed. However, there are some interim steps that can be taken to enhance aspects of independence in the meantime.

• Fairness – the impact of the time limits and process for adjudication (in particular) on principles of natural justice.

5. For those New Zealanders whose telecommunications service providers are members of the TDR Scheme, the Scheme appears to be meeting their needs for an effective and efficient resolution process for the resolution of disputes. Questions of independence are not perceived to be an issue for the general public and customers using the Scheme.

6. A key issue is the lack of coverage in the telecommunications industry, and the concern that just nine out of potentially more than 50 telecommunications service providers are members of the Scheme (albeit that the nine members cover an estimated 90% of eligible consumers). To this extent the Scheme is not currently meeting the needs of those consumers that have their services with non-member companies. The number of enquiries to the Scheme from customers of non-member companies doubled from 2008 to 2009.

7. From the perspective of telecommunications service providers, there are a number of concerns about issues that are not necessarily inconsistent with the Australian benchmarks of best practice, but do impact on their views of the efficiency and effectiveness of the Scheme. Their critical concerns are:

• the fee structure and basis for allocating the operating cost or overhead of the Scheme

• that the escalation process is at the discretion of the customer

• jurisdictional concerns around the obligation on the Scheme Agent to log complaints raised with the TDR by customers as a “first resort” as Level 1 complaints (thereby incurring a share of the monthly operating costs), and an inability of the Scheme Agent to consider whether a “reasonable offer” has been made in accepting a complaint

• the need for four levels of dispute resolution, and the requirement to pass through them sequentially.

8. To some extent, the fee structure is clouding perceptions around these issues. However, these issues are also considered major barriers to companies joining and factors in scheme members leaving the Scheme, with the critical issue among these being the fee structure. If these can be addressed in a reasonable way, a number of non-members have indicated they are willing to join
9. Another key issue affecting the effectiveness of the Scheme is the relationship between the TDR Council and the Scheme Agent, Dispute Resolution Services Ltd (DRSL), and the different perceptions, understandings and expectations of their respective roles. To some extent, this may reflect the business model that has been established, and also the definition of role of the Council and of representatives on it, different cultures and personal styles and experience of the representatives of both parties. The business model alone should not, however, be a barrier to having an effective, constructive and mutually satisfying relationship.

10. As noted above, while there are some concerns around the independence of the structure of the Scheme, it is not currently considered a priority to establish the Scheme as a separate entity from the TCF. The industry needs to address a number of issues that affect the effectiveness of the Scheme, particularly in relation to extending the membership of the Scheme within the industry; making fundamental changes to the fee structure; and considering fundamental changes to the Scheme’s TOR.

11. It is considered that leadership from an entity such as the TCF, which has the role of facilitating co-operation among telecommunication carriers, and engagement from the industry will be required to achieve the changes. This will best be served if the TDR Scheme continues to be sponsored by the TCF. Once these issues have been addressed, and any changes are “bedded down”, the independence of the Scheme from the TCF should be revisited.

12. However, there are some concerns that can and should be addressed within the current structural arrangements to improve perceptions of independence, and which move the TDR towards greater independence of the TCF while still being sponsored and supported by it.

13. Two alternative schemes have been considered in some detail as part of this review: the Electricity and Gas Complaints Commissioner (EGCC) scheme and the Australian Telecommunications Industry Ombudsman (TIO) scheme. Also, guidelines published by the Ministry of Consumer Affairs for the establishment of a dispute resolution scheme for Financial Service Providers have been considered; these are likely to reflect the standards for a scheme that Government would want to see if the industry cannot address the issues itself.

14. Considerable work has already been done to analyse and assess the impact of adopting much of the TIO scheme. This work continues to be valid. The processes, definitions and approaches used will address many of the issues and concerns identified by the industry. It is a “tried and true” scheme, having been established in 1993. DRSL concluded in its assessment and analysis of the TIO scheme that it is unlikely that there would be any detrimental effect on the integrity of the TDR scheme if the TIO’s processes were to be adopted.

15. It is noted, however, that the philosophical approach underpinning the TIO scheme is far different to that which underpins the TDR. In particular, the TIO plays an active decision-making role throughout the process, making judgements on the merits of both the member’s and customer’s positions when investigating and conciliating complaints. The TDR’s focus is to emphasise the
parties reaching an agreed solution, thus leaving that control with the parties. A more substantial investigatory role is necessary for the TIO approach than is the case with TDR. Nor it is considered appropriate to “pick and choose” the elements of the TIO approach that appeal to scheme members (for example, empowering the Scheme Agent to decide whether a customer’s response or complaint is reasonable and not applying the same standard to a member’s position/offer). The risk then would be to lose the integrity of a process and, if the changes made are too “one-sided”, lose credibility with consumer groups.

16. In terms of independence and governance models, the EGCC scheme structure has some merit (although it is not too dissimilar from the TIO). The EGC Commission is more or less equivalent to the TDR Council and the EGC Commissioner is equivalent to the Scheme Agent, although the duties, powers and responsibilities of the EGC Commission appear more extensive than those of the TDR Council.

17. The EGC Commission comprises two consumer and two industry representatives, plus an independent chairperson. Industry representatives must be capable of understanding the viewpoints and concerns of consumers, and persons in whom consumers and consumer organisations can have confidence. In acting in their role as Commission Members, they must also have regard to the interests of all EGCC scheme members. The size and structure of the EGC Commission is favoured over the TIO model due to there being relatively a few scheme members and companies in the telecommunications industry. The responsibility of the industry appointees for representing the interest of all scheme members is also a desirable feature. It is considered that a reduced size of the Council, and the requirement that industry representatives represent all scheme members’ interests, will also encourage a more strategic, governance focus on the interests of the Scheme.

18. In summary, this report identifies a range of issues in relation to the terms of reference for this review, and a range of recommendations to address these (see *Summary of key issues and recommendations*). However, the key issues impacting on the Scheme’s operation and effectiveness (actual and perceived) are:

- the lack of coverage of the telecommunications industry in terms of membership of the Scheme
- the fee structure and basis for allocating overhead, seen as a major barrier to companies joining the Scheme
- concerns that customers have the ability to escalate issues though the dispute levels of the Scheme irrespective of the merits of their complaint
- a lack of jurisdiction for the Scheme Agent to exclude complaints to the TDR that have not been first raised with the customer’s provider or where a “reasonable” offer has been made by a company
- the necessity of having four sequential levels of dispute resolution
- a general lack of awareness of the Scheme
issues to do with perceptions of independence, and the possibility for conflicts of interest

tensions in the relationship between the TDR Council and DRSL, and the different perceptions and expectations of their respective roles.

19. The key recommendations to address these issues are that:

- both members and non-members of the Scheme (within and outside the TCF) be consulted over proposed changes to the Scheme and fee structure, with a particular emphasis for non-members on how proposals address the concerns they have identified

- the Scheme not be established as an entity independent of the TCF at this stage, but that this be reviewed again in 12 months time with consideration to the progress (or lack of progress) in addressing issues identified in this review

- the composition of the Council be changed to comprise two consumer representatives, two industry representatives and an independent chairperson

- the industry representatives appointed to the Council be persons who are capable of understanding the viewpoints and concerns of consumers, and in whom consumers and consumer organisations can have confidence; be persons in whom scheme members can have confidence; and are required to have regard to the interests of all scheme members

- industry representatives be sufficiently removed from dealing directly with internal complaints for their company, and from dealing directly with the Scheme Agent in relation to a dispute that the Agent is managing for that representative’s company

- the definition of non-relevant enquiry be extended to include “or relates to a complaint that has not yet been raised with the customer’s telecommunications provider” so that these are not logged as Level 1 disputes

- the Scheme’s TOR be amended to provide the Scheme Agent with the jurisdiction to decline to accept a complaint if it appears to the Scheme Agent on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint

- it be noted that both the current TDR process (subject to changes to jurisdiction/scope of Level 1 disputes, and timeframes and processes for adjudication) and the TIO scheme process have integrity, and that issues relating to the customer escalation process and jurisdiction to exclude complaints where the Scheme Agent considers a “reasonable” offer has been made are not inherently unfair to customers or members

- there be further debate with scheme members and non-members around the implications that moving to the TIO scheme’s process and a more active decision-making role for the Scheme Agent would have on the underlying philosophy of the Scheme, and the operating cost implications (including a greater investigatory role by the Scheme Agent earlier in the process)
subject to other changes being adopted (eg, the TIO process), where settlement is not achieved by the end of the Level 2 process, the Code be amended to provide for the TDR Manager to determine whether a conciliation or adjudication would be the most appropriate mechanism for resolving a dispute after consulting with the parties and in the assessment/recommendation of the investigating officer, and to refer the case appropriately.

if conciliation is the preferred mechanism and at the end of the conciliation process a settlement has not been achieved, the conciliator be empowered to prepare and issue a determination in accordance with the adjudication process (subject to changes to the adjudication process suggested).

a critical priority is to resolve the Scheme’s fee structure and basis for allocating the overhead operating cost of the Scheme to be more equitable and predictable for members (a number of principles have been proposed for consideration when reviewing the fee structure).

it be noted that a different profile of Level 1 to 4 cases could develop due to changes in the fee structure, the Scheme’s TOR and/or the Code generating different behaviours; therefore, an agreed mechanism is required to address different impacts (eg, outside agreed tolerances) on the Scheme Agent’s cost structure and revenue streams.

a reconciliation process is required that involves frank discussions around the issues raised in this review to gain clarity and agreement about the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations for the current and ongoing relationship.
Introduction

Background to the Telecommunications Dispute Resolution Scheme

1. The Telecommunications Dispute Resolution (TDR) Scheme was established in November 2007. Its purpose, as defined in its terms of reference, is to:
   - encourage scheme members to resolve customer complaints effectively themselves
   - provide prompt, independent resolution of disputes, having regard to the Customer Complaints Code and the service it sets out, as well as relevant legal requirements
   - educate the industry about systemic issues arising from disputes and determinations.

2. The Scheme is governed by a council of eight members, four representing the interests of industry and four representing the interests of consumers. The chair is elected from the consumer representative council members. The Council oversees the operation of all aspects of the TDR Scheme, except the overall level of funding and determination of fees and levies for the Scheme, which must be approved by the Telecommunications Carriers’ Forum (TCF). The Council’s role is to provide independence and ensure industry and public confidence in the Scheme.

3. The operation of the Scheme is contracted to an independent Scheme Agent, Dispute Resolution Services Ltd (DRSL). The Scheme Agent’s primary responsibilities are to investigate valid disputes in accordance with the Customer Complaints Code (the Code) and manage the Scheme, including promoting and reporting on the operation of the Scheme.

4. The TCF sponsors the Scheme. The TCF is an incorporated society established as a requirement of Telecommunications Act 2001. The TCF’s role is to facilitate co-operation among telecommunication carriers to provide efficient services for the benefit of New Zealand consumers.

5. Membership of the Scheme is voluntary, and open to all providers of telecommunications services. These providers need not be members of the TCF, and nor must members of TCF be members of the TDR Scheme. By the end of its first full year of operation, the Scheme had 16 member companies. However, at the time of this report, this has declined to nine member companies, with several having withdrawn from the Scheme.

The purpose and scope of this review

6. When establishing the Scheme, the Scheme’s Terms of Reference (TOR) required the Council to instigate a review of the Scheme two years from the date of implementation, with a view to the Scheme being established under an entity independent of the TCF. However, it was agreed by the TDR Council and the TCF that a wider view of the Scheme’s operation and effectiveness is necessary if the answer to the independence question is to be firmly founded.

7. Therefore, the overall aim of this project is to provide an independent review of the operation and effectiveness of the TDR scheme and whether the current model is sufficiently independent of the TCF. The terms of reference for this review (see Appendix A) identify four main questions for the review:

- Is the Scheme meeting internationally recognised standards of best practice?
- Is the Scheme meeting the needs of New Zealanders and their telecommunications carriers with a demonstrably independent, effective and efficient resolution process for the resolution of disputes between carriers and their customers?
- Is there a need to establish the Scheme under an entity independent of the TCF?
- Are there alternative models that would better deliver the Scheme’s purpose?

8. Internationally recognised standards of best practice reflect the benchmarks described in “The Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes” (the Australian benchmarks). These benchmarks were used as the guiding principles in the development of the TDR Scheme. They cover:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness

9. The terms of reference for this review set out a series of questions to be addressed under each benchmark area. However, due to budget constraints for the review, some elements of the work outlined in the original terms of reference have been reduced in scope with the focus being to emphasise performance against the benchmarks as these may relate to questions of independence of the Scheme.
Approach to review

10. A qualitative approach has been adopted for this review. This has involved a review of documentation associated with the Scheme, and key informant interviews with a wide range of key stakeholders and interested parties. In particular:

- an initial briefing on the TDR scheme to identify and discuss access to key documents to be reviewed, and confirm key stakeholders to be contacted and consulted
- the development of assessment framework – key questions and criteria to guide the assessment process, and identify the sources of information (see Appendix B)
- a review of the following documentation:
  - TDR Council meeting minutes
  - DRSL reports to the TDR council
  - internal policy and process documents
  - publicity and information material
  - complainant survey reports, and scheme member surveys
- key informant interviews with stakeholders representing the following interests:
  - TCF Board and Forum Administrator
  - TDR Council members
  - the Scheme Agent
  - scheme members
  - non-member companies
  - the Ministry of Consumer Affairs
  - consumer and special interest groups
- a review of how two alternative industry/consumer dispute resolution schemes have addressed the key issues arising.

11. Appendix C provides a full list of the key informants interviewed.

12. The alternative industry/consumer dispute resolution schemes that were identified for comparison (in conjunction with the TDR Administrator) are the Electricity and Gas Complaints Commission (EGCC) scheme and the Australian Telecommunications Industry Ombudsman (TIO) scheme. Reference has also been made to the Ministry of Consumer Affairs’ guidelines for the Financial Service Providers approved dispute resolution scheme (FSP guidelines), which also include examples of how various other schemes have addressed issues.

13. This report presents the key findings in relation to the terms of reference questions for each of the benchmarks. A summary of conclusions and the key issues arising is presented at the beginning of each section, followed by a discussion of the views of various key informants and other sources of information and comparisons with how alternative schemes address these issues. At the end of each benchmark section, recommendations for addressing the issues are provided. The report concludes with by listing all the key issues identified and the
recommendations for addressing them, followed by summary conclusions in relation to the four key questions for the review.

14. The identity of key informants making specific comments has generally been withheld in reporting, other than to identify them as consumer representatives (both Council representatives and non-Council consumer groups, including the Ministry of Consumer Affairs), industry representatives (either Council members or TCF personnel), Council members (when referring to both consumer and industry representatives), scheme members and non-members. Otherwise, the term “key informant” may be used when it is considered that a comment may be attributed to a particular individual or organisation, including the Scheme Agent.

15. Interviews have been analysed thematically, and those themes are presented to highlight key concerns and different perspectives. The key findings represent our summation of responses to the areas of questioning to provide a critical, balanced analysis of the key issues identified. They will necessarily include our judgement of what is relevant to the fundamental nature of an industry/consumer dispute resolution scheme. Issues may not have been identified by a majority of informants – even a single person’s view may be referred to if it relates to an issue that is important to consider in the context of the purpose of the review.

Limitations

16. In considering this report, there will be a number of limitations that should be borne in mind. Findings are based on qualitative methods, in particular the views and perspectives of key people within the respective organisations with an interest in the TDR Scheme. In some cases, these key informants may not have a detailed knowledge or understanding of the detail of the Scheme’s operation. They may have erroneous perceptions based on limited experience with the Scheme, anecdotal comments that they have heard, or experience before changes to the Scheme have been made. Also, not all key informants were asked all questions, as some were not in a position to have an informed opinion (see assessment framework at Appendix B for targeting of review questions).

17. There has been no independent consideration of the quality of DRSL’s decision-making or dispute resolution process (eg, by auditing files or the process), due mainly to the budget constraints.

18. There have been limited comparisons with alternative models for dispute resolution processes, due again to the budget constraining the scope of what was possible. These comparisons focus on how other schemes have addressed the key issues arising for the TDR Scheme.

19. The questions posed in the terms of reference for the review do not address all aspects of the Australian benchmarks, and although areas of possible conflict with benchmark processes may have been noted throughout this report.

20. The review has not involved (or required) legal or expert telecommunications analysis of issues and documentation governing the Scheme. Our expertise is in pulling together diverse views to present a critical overall analysis of issues.
Key findings

21. This section presents key findings in the application of benchmarks described in *The Australian Benchmarks for Industry-Based Customer Dispute Resolution Schemes* (“the Australian benchmarks”), addressing questions posed in terms of reference for this review.

22. Each part will identify the principle and purpose of the Australian benchmark, followed by a summary of our conclusions and the key issues arising; a discussion of the views of various key informants in relation to the review questions along with information from other sources, including comparisons with how alternative schemes address these issues; and recommendations for addressing the identified issues.

Accessibility

23. The benchmark principle of accessibility is that a scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers. The purpose of this principle is to promote customer access to the scheme on an equitable basis.

Summary conclusions and key issues arising

24. The TDR Scheme is considered accessible once consumers know about it, and if they are customers of a telecommunications company (telco) that is a scheme member. However, there is a low general awareness of the Scheme, which is less than the awareness of other dispute resolution schemes, and it does appear to rely on an internet presence that may not always be accessible to some demographic groups.

25. The Scheme is known by key consumer agencies and is considered to typically cover all telecommunications services. The exclusions from scope are generally considered reasonable by key informants. However, the Scheme does need to be alert for issues arising that should be in scope, as telecommunications is a fast-moving sector, with convergence of technologies and product and market developments.

26. The key concern is the number of telcos that are not members of TDR – this means the Scheme is not accessible for those customers.

27. It is generally considered that more can be done to promote awareness of the TDR Scheme – by the Scheme Agent and by scheme members.

28. The key issues identified, therefore, include:
   - non-membership of the Scheme by a substantial number of telcos
• low general public awareness

• the level and nature of promotion of TDR by the Scheme (via the Scheme Agent) and scheme members.

29. Other issues include:

• the reliance on internet access

• the re-alignment of jurisdictional limits with those of the Disputes Tribunal ($20,000) and maintenance of this benchmark

• extension of coverage to land complaints from owners or occupiers of land that may not be direct customers of a scheme member.

Key informant views and discussion

Publicity and promotion of the Scheme

30. Generally, there is a low level of public awareness of the TDR Scheme, as highlighted in research conducted in August 2009 on behalf of DRSL. This research shows only 11% of respondents were aware that a telecommunications dispute service is available to them, and that only one person could name TDR as the provider in unprompted awareness. When asked if they had heard of TDR, 9% of respondents said that they had. This is substantially and significantly lower than the proportions that had heard of the Insurance and Savings Ombudsman (29%), the Banking Ombudsman (54%) and/or the Electricity and Gas Complaints Commission (32%).

31. There is some dissatisfaction expressed around the publicity about and promotion of the Scheme. The general view held by consumer groups and representatives, and by some industry members, was that more needed to be done to promote awareness of the Scheme, by both the Scheme (via the Scheme Agent, DRSL) and by scheme members. One person commented, “You cannot access a scheme that you do not know about”; another commented that “once you get there, it’s accessible, but finding out about it is not easy”.

32. A number of Council members believe DRSL could be doing more to promote the Scheme, but some question whether it has the skills and capabilities, initiative, or the budget to do this. Some have commented that DRSL needs to be smarter, more “creative” and “proactive” – for example, using free publicity channels to generate information, stories and awareness, and/or joining with other dispute schemes to jointly promote their services. A couple of Council members also commented that the responsibility for promoting the Scheme should perhaps be removed from DRSL and managed directly by the Council via another provider.

33. DRSL indicated that the budget for promotional activity is relatively small, and doing more promotional activity becomes a resource issue for them. In response to concerns it does not have the skills and capabilities, DRSL indicated it would and does engage specialist communications and marketing people to assist it in its broader business. DRSL has also recently participated in a joint
road show with other schemes. DRSL also considers that it is the most appropriate entity to undertake the promotion of the Scheme on behalf of the Council, rather than the Council engaging a range of independent services. Comments from some Council members suggest, however, that they may not have sufficient confidence in DRSL to agree to increase their budget in this area, at this time.

34. In terms of promotion of the Scheme by members, all current scheme members identify the availability of the TDR Scheme on their websites. Varying degrees of detail are provided about how the Scheme fits with their complaint handling practices, and the placement of information occurs in a variety of locations. The Ministry of Consumer Affairs FSP guidelines suggest that a scheme requires its members to have accessible internal processes, such as a clearly labelled “complaints” section on their websites, either on the home page, or one click away.

35. One company advises that the TDR logo is also on its bills. A number of members said that they will also advise customers of the TDR when they reach deadlock with complaints, although this has not been tested. One Council member felt the Scheme Agent could be doing more to monitor what members are doing.

36. In this respect the EGCC scheme undertakes a survey of member call centres by conducting a ‘mystery shopper’ exercise. Its 2009 Annual Report noted that the call centre survey found only 22% of those spoken to volunteered information about the EGCC scheme, and in 41% of cases incorrect information was given. This included giving contact details for the wrong organisation or saying there was no independent complaints resolution process available.

37. Various consumer group representatives considered that scheme members could and should do more to promote the Scheme, such as identifying the availability of the TDR scheme on their bills, as people are really only concerned about the scheme when they have a problem, and most problems have to do with billing. Members of the EGCC who directly invoice consumers must include on any invoice advice that the member has a free internal complaints process at no extra charge, with relevant contact information and information about the existence, nature of, and contact details for the EGCC Scheme.

38. However, some scheme members consider that promoting the TDR Scheme more actively will encourage customers to complain. One scheme member thought that promoting the TDR Scheme upfront would encourage customers to go straight there, to only be told that they need to talk with their service provider in the first instance. This seems to ignore the possibility that the “upfront promotion” can also be used to reinforce the requirement to give the company an opportunity to resolve any issue in the first instance. Another member’s concern was that customers approaching the Scheme may be disappointed because the TDR Scheme is limited in what issues it can assist customers with. One non-member commented that:

“If it’s a free scheme and there’s no consequence for using it [in terms of customers’ ability to escalate issues], then advertising it is potentially a self-fulfilling prophecy. ... You can only raise awareness if you’ve got a scheme that works.”
39. On the other hand, several consumer representatives considered that members need to “embrace” the Scheme more, and use it as a positive feature of customer service and confidence in their customer service and complaint handling processes.

40. There may be some sensitivity to using the term, “promote the Scheme”. The expectation should be that scheme members inform customers of the existence of the Scheme, not to recommend it. By taking a more active role in raising awareness of the Scheme, it is noted that scheme members could use the opportunity to clarify the process and what the Scheme does and does not cover; promote giving the company the opportunity to resolve issues first; and explain that if the company cannot resolve the issue satisfactorily then the TDR is available. (Later proposed changes around the jurisdiction of the Scheme Agent to not log “first resort” contacts from customers wishing to lodge a complaint as Level 1 disputes may also address some companies’ concerns.)

41. Other concerns, suggestions or points made by various key informants in relation to promotion and raising awareness include:

- that complaints can/should be seen as part of a company’s quality systems and can lead to improvements in efficiency and effectiveness when they are addressed

- that there is an apparent contradiction in requiring the Scheme Agent to do more to promote the Scheme, but not providing a budget to do so or agreeing to and resourcing specific targets to achieve, and resistance to members promoting the Scheme themselves

- that Government be encouraged to contribute to the cost of promoting the Scheme, or all the various dispute resolution schemes

- industry members could take more of a marketing stance and put their marketing people to promoting the Scheme

- raising general awareness of the Scheme may result in increased numbers of non-members’ customers contacting DRSL.

42. The importance of raising awareness of the TDR Scheme is illustrated in results from the Ministry of Consumer Affairs National Consumer Survey 2009. The second most common type of problem encountered by consumers was when dealing with a power, gas, water or phone company (17%). This is one of the highest proportions of problem experiences (21% of purchasers have had a problem, third equal highest proportion). Some 15% of New Zealanders who encounter a problem when dealing with a power, gas, water or phone company “just put up with it”, while 78% went to the seller, and 2% went to a third party (4% “did something else”). Almost half of those contacting the seller (46%) indicated the seller would not cooperate.

43. A significantly higher than average proportion “put up with a problem” when dealing with a utility company because they felt they would not get any satisfaction (18%). Other main reasons include “couldn’t be bothered” (22%), time factors/too busy to go back (14%) and feeling there was no other option (11%).
44. It is noted that these findings refer to a range of types of utility companies, and that telecommunications companies cannot be isolated from the summary report available. However, they provide a strong indication that substantial numbers of consumers who experience problems with a utility’s service do not get a satisfactory resolution if they do go to the service provider, and also tend to put up with the problem for various reasons, which could be addressed if there was greater awareness of the options for doing so.

Awareness among consumer advisory agencies

45. The Scheme is generally regarded as being known and understood by consumer advisory agencies such as community organisations and relevant government agencies. One consumer representative felt that consumer organisations could do more to make the Scheme more visible, however. Another noted that it was important to ensure that consumer organisations know how to find out information about the Scheme, and that people at the front-line could access the resources about the Scheme.

46. DRSL advised that it has participated in a joint road-show with the dispute resolution schemes, presenting to a forum targeting Citizen Advice Bureaux, community law centres and similar sorts of community organisations. A number of consumer representatives considered this was a useful approach. DRSL also contacts these organisations every couple of months to check on and replenish supplies of brochures.

Accessibility and ease of use

47. The Scheme is generally considered to be accessible and easy to use for those consumers who know about it and belong to scheme members. There is no cost to consumers. DRSL provides brochures in a range of languages and is able to provide an interpretation service if required. However, there appears to be a heavy reliance on the TDR website (and scheme members’ websites) to provide information about the Scheme, when many people in the community are not computer literate and so they may not be able to access these resources. As one key informant identified, these people are going to have to rely on secondary providers like community and church groups to provide this information, and that this is a problem for a range of services, not just TDR.

48. The biggest issue in terms of accessibility, however, are that not all telecommunication companies ("telcos") belong to the Scheme, which means it is not accessible for those customers; and that it is only accessible if people know about it (discussed above). There are currently nine telcos that are scheme members, with an estimate that these cover around 90% of consumers. The TCF identifies at least another 43 potential members of the Scheme. The number of Non-Relevant Enquiries (NREs) in respect of telcos that are not members of the scheme has also doubled from around 90 in the period from 30 November 2007 to 27 January 2009 to 179 in the year to December 2009.
49. Some consumer representatives consider that membership of the Scheme should be mandatory, as do some scheme members, particularly for TCF members. However, the TCF constitution provides that compliance with any of its codes is voluntary.

50. In order to encourage a greater level of voluntary membership of the Scheme, it is suggested that non-members be actively engaged and consulted about any proposed changes that address perceived barriers to joining the Scheme.

51. Unfortunately, it is likely that regulation will be the only way to get full coverage of the telecommunications industry. Any such regulation is likely to require that telecommunications service providers belong to an approved dispute resolution scheme, which may or may not be the TDR. Such a scheme is only likely to be “approved” if it meets standards identified by the Ministry of Consumer Affairs. It may also mean that more than one scheme could be established for the industry.

**Alternative schemes**

52. Effective from 1 April 2010, the EGCC Scheme is the sole approved consumer complaint resolution scheme for electricity and gas complaints. The provisions of the Electricity and Gas Acts make membership of the approved scheme mandatory for electricity and gas retailers and distributors.

53. In Australia providers or resellers of telephone, mobile or internet services to small business or residential customer are required by law to be a member of the TIO Scheme.

**Coverage of telecommunication services**

54. Most industry members considered that the Scheme does cover those telecommunication services that give rise to consumer complaints, and that the exclusions to scope are reasonable. However, some consumer representatives identified the lack of coverage of all telcos in this context. Others identified issues that they did not think were covered by the Scheme, including that:

- those that supply call cards should be covered by the Scheme, although it was acknowledged that it would be unlikely to get these companies to become members

- water damage to and the insurance of mobile phones were telecommunication service issues that should be covered by the Scheme, even if they were not technically a telecommunications service, as they are bones of contention for consumers who should be able to have their “day in court” with the TDR Scheme.

55. One other consumer representative commented that there is increasing convergence between telecommunications and computer technology, and that as these come together there may need to be protocols or closer links with other bodies, such as the Domain Name Commission. Another consumer representative also commented that with technology changing so rapidly, it would be difficult to cover every possibility, and that the Scheme should be alert to any upsurge in complaints on issues that are not covered, and address these accordingly.
56. DRSL has not observed any issues relating to the scope of services covered, but feels there is a need to keep an eye on the definition of telecommunications services for future impacts.

57. One scheme member voiced a concern about the application of a cut-off time to complaints and remedies. In particular, where customers have found billing errors (such as double billing for the same product on two different accounts), it appears to this scheme member that the responsible company (other scheme members) will only reimburse back-payments to correct data back to the commencement of the Scheme. If this is not the case, then this scheme member thinks this needs to be clarified, in terms of putting right mistakes for the sake of public confidence in the telecommunications industry.

Land complaints

58. Complaints regarding access to private land, or damage or inconvenience caused to owners or occupiers of land by actions of telcos do not appear to be covered in the scope of the Scheme. They may be covered by another TCF code – this is unclear. Also, such complaints might be covered by the Customer Complaints Code if a complainant is also a customer of the telco whom the complaint is against, but not otherwise.

59. Both the EGCC and the TIO schemes have explicit references to land complaints, although the EGCC scheme only applies land complaints to lines companies and Transpower, and has a number of specified exclusions. The TIO scheme is more general, specifying that the TIO may investigate and facilitate the resolution of complaints from owners or occupiers of land where there is a failure by a carrier to give notice of its intention to exercise its statutory rights regarding access; there is a failure to take all reasonable steps to cause as little detriment, inconvenience and damage as reasonably practicable; and inadequate compensation where compensation is required by any applicable statute or contract to be paid. While New Zealand is likely to have different statutory requirements (if any), the principle is relevant.

Financial limits

60. One or two key informants questioned the ongoing validity of the $12,000 limit on the value of a dispute. It was thought that this may have originally related to the limits applicable in the Disputes Tribunal, which have been adjusted since the Code was established. The Dispute Tribunal limit on the value of claims that could be heard was increased in 2009 from $7,500 (or $12,000 if both parties agree) to $15,000 and $20,000 respectively.

61. The EGCC scheme provides for jurisdiction for claims to be considered for up to $20,000 in value, which can be extended to $50,000 by agreement with the member. The TIO scheme provides for the TIO to make binding determinations up to $A30,000 in value, and may make further recommendations up to a value of $A85,000. The TIO Council is required to review the financial limits on the determinative and recommendatory powers of the TIO every 12 months.
Recommendations

62. It is recommended that:

- both members and non-members of the Scheme (within and outside the TCF) be consulted over proposed changes to the Scheme and fee structure, with a particular emphasis for non-members on how proposals address the concerns/barriers they have identified;

- the Scheme’s Code be changed to require that members who directly invoice consumers must include on their invoice advice at least quarterly that the member has a free internal complaints process at no extra charge, with relevant contact information and information about the existence, nature of, and contact details for the TDR Scheme;

- the Scheme Agent be required to monitor compliance with this requirement, and also that members are fulfilling their responsibilities to inform customers of the existence of the Scheme when dealing with their complaints, using a variety of means (including, for example, mystery shopper surveys);

- the Scheme Agent continue to utilise opportunities for speaking to community groups and organisations, together with the Dispute Investigators Group and independently, including those that are non-mainstream groups (eg, ethnic councils or groups, church groups, budgeting services, etc);

- a suitable budget be approved for the increased promotional activity, with a specific action plan to be provided by DRSL (the action plan might be developed by a sub-committee of Council including DRSL, or co-opting industry representative’s resources for short-term assistance);

- the TDR Council approach Ministry of Consumer Affairs, in conjunction with other dispute resolution schemes, to encourage the Ministry to support general awareness-raising initiatives with funding;

- jurisdictional financial limits be aligned with those of the Disputes Tribunal ($20,000 by agreement of the parties) and that this be maintained as the benchmark;

- the scope of the Scheme be extended to cover land complaints (eg, non-compliance with any applicable statutory or code requirement, or failure to take reasonable steps to cause as little detriment, inconvenience and damage as reasonably practicable by a scheme member or agent working on their behalf/instruction) from owners or occupiers of land that may not be direct customers of a scheme member.
Independence

63. The benchmark principle of independence is that the decision-making process and administration of a scheme are independent from scheme members. The purpose of this principle is to ensure that the processes and decisions of a scheme are objective and unbiased, and are seen to be objective and unbiased.

Summary conclusions and key issues arising

64. While there are some concerns about perceptions of structural independence of the Scheme, the dominant view is that it is important to “fix” the Scheme first, before re-visiting the issue of establishing it as a separate entity. One of the key issues is to achieve substantially greater or complete coverage of the industry, and it is considered that this may be better achieved if the TCF is assisting and engaged in promoting this.

65. It is a generally held view that the public are not concerned about the perceived independence of the Scheme – there is a general lack of awareness of the Scheme anyway, and the bigger issue for them is the lack of industry coverage. However, there are some steps that can and should be taken to promoting perceptions of greater independence, short of structural separation.

66. The extent of separation of operational and governance roles is perceived to be an issue by non-industry informants. The people involved as industry representatives are recognised to be competent and committed practitioners, and their understanding of companies’ complaint processes has been useful for the establishment and early development of the Scheme. However, there are concerns at the potential for conflicting interests, and that the strategic/governance focus necessary for the Scheme is not always provided. With the Scheme up and running it may be an appropriate time for these roles to step out and more senior strategic roles to come in to develop and promote the Scheme as a more strategic option for the industry.

67. With regard to the composition of the Council, its structure and responsibilities, it is considered desirable that there be an independent Chairperson. There also needs to be some clarification of expectations regarding the TDR Council’s role in the governance of the Scheme and the interests that Council members represent. There are mixed perceptions and expectations around the role of the Council and its members, and how it functions, among Council members and vis-a-vis the Scheme Agent.

68. The key issues are:

- the establishment of the Scheme as an entity independent of the TCF is not currently a priority at this stage, given a need to address some key fundamental issues to improve the effectiveness of the Scheme, including attracting greater coverage of the industry; however, once changes are made and “bedded down”, this issue should be re-visited

- there are steps that can and should be taken to improve perceptions of independence short of structural separation to address the following:
the conflicts of interest that arise from having Council members that are involved in and responsible for their companies’ internal complaint handling processes and dealing with the Scheme Agent managing the dispute resolution process and decision-making

concerns that the consumer representative appointed to be the independent Chairperson is constrained in any debate and from expressing “the consumer perspective” by having to fulfil the chairperson’s role as facilitator and manager of the debate and meeting proceedings

the overlap between Council and TCF Board members, and the Administrator function

the lack of separation of operational and governance roles of Council members

greater clarity and understanding around what the governance role is, and the role of Council members in representing the interests of the Scheme, rather than the scheme member they have been appointed by

achieving a higher, more strategic focus on the Scheme at the level of the TDR Council.

Key informant views and discussion

Structure of the Scheme

69. At a structural level, while there are a few concerns from various key informants about the perceived independence of the TDR Scheme from the TCF and scheme members, it is generally not considered a priority to establish the Scheme as a separate entity from the TCF at this stage. This is because people see there are problems with the Scheme that are important to “fix” first, and that this will require engagement from the industry itself. It was considered that this engagement would best be served through an industry body such as the TCF, although not all telcos are members of the TCF for various reasons. It has also been noted earlier that not all members of the TCF are members of the TDR Scheme. The TCF has been described as, and appears to be, committed to and supportive of the Scheme and provides stability for it.

70. A consumer representative who views the Scheme as sufficiently independent commented that:

“As a consumer advocate I want the companies on board. You can’t have a scheme unless you can convince the companies to be on board and so you need to create a scheme that the companies themselves have confidence in.”

71. Another consumer representative felt that the TCF was a “natural home for ad hoc industry institutions like TDR”.

72. One other consumer representative did feel there needed to be greater independence from the TCF, as there was “too much chat around the Council about what TCF thinks” even though other consumer representatives did not consider the TCF interferes or tries to influence the Council. However, this person also believed that this is not the right time to proceed with separating the
TDR as an independent entity because “they need to get it sorted first ... because [what’s] going at the moment could cause more damage to the reputation of the scheme”.

73. It is a generally held view that the public are not concerned about the independence of the Scheme. A consumer representative commented:

“I don't think there's an issue around independence because I just don't think it's well known enough. I guess [part of] the problem is that TCF doesn't represent all the players either. I do think this does need to be resolved. I honestly don't think that consumers would care that it was the TCF service but I think they do care that not all of the players are there.”

74. Customer surveys by DRSL tend to confirm that those respondents have no concerns – 89% agreed or strongly agreed the service provided by TDR was independent (MMResearch, January 2009). One consumer representative commented also that the fact that the Scheme Agent is an independent contractor and a government-owned company also contributes to the perception of independence.

75. A key issue is to attract greater coverage of telcos in the sector, and in order to do this a number of barriers to them joining need to be addressed (these are described in later sections). If the perceived barriers to joining the Scheme can be addressed and coverage of the sector improved, then it would be appropriate to re-visit the issue of structural independence of the TDR in the future – perhaps in another 12 months.

76. Despite a view that structural independence of the Scheme is not a priority at this point, it is important to recognise concerns that some informants (consumer and industry representatives) have expressed. Not all of these relate directly to the Scheme, but do affect perceptions of its independence. They include:

- Council members that are also TCF Board members described as exercising too much influence at times, and reporting back to the TCF Board (reports to the TCF Board should perhaps be the responsibility of the TDR Council Chairperson)
- the contractual relationship for the Scheme Agent is with the TCF, although it reports to the TDR Council
- the TDR Scheme Administrator is also the TCF Forum Administrator
- responsibility for the rules, and the ability to change these, lying solely with the industry and scheme members, and that there is a risk that the industry will only take account of or make changes that it is interested in, rather than the interests of consumers
- that the TCF is dominated by large telcos with the resources to be able to dominate the process, at the expense of views of smaller telcos that do not have the resources
- scepticism about the ability of the industry to regulate itself
• whether there is a need for a specialised telecommunications industry dispute resolution body at all, as many disputes are not particularly specific to the industry (eg, everyday billing), and why not rely on the Disputes Tribunal

• that there should be one agency to enforce/resolve disputes for all the TCF codes, not one for each code

• making it mandatory for members of TCF to belong to the Scheme, and that it is all right for the TCF to have oversight of the Scheme if the TCF has good, comprehensive coverage of the industry.

Alternative schemes

77. The structure of the TIO is designed to ensure its independence. The TIO is governed by a Council and a Board of Directors, and is managed by an independent Ombudsman appointed by the Board on the recommendation of Council. The Council is comprised of five TIO member representatives and five consumer representatives, and an independent chairperson. While the Ombudsman has responsibility for the day to day operations of the scheme, the Council provides advice to the Ombudsman on policy and procedural matters. The Board has corporate governance responsibilities including financial management of the scheme and ensuring compliance with the Memorandum and Articles of Association and the Constitution. With the exception of the independent chairperson, who is appointed by the Board itself, directors are appointed by the TIO membership.

78. The structure of the EGCC scheme includes:

• a Council, which consists of member companies and whose role is to provide industry support for the scheme. The member companies are represented by a Board, which acts as the link between the Commission and the industry, and makes industry appointments to the Commission

• the EGC Commission, which appoints the EGC Commissioner, audits the scheme and monitors the rules. There are four Commission members, two each from industry and consumer backgrounds respectively, and an independent chairperson; the Commission chairperson has a casting vote in the event that voting on an issue is tied

• the EGC Commissioner, who has established an office to handle complaints and is responsible for receiving, investigating and facilitating the resolution of complaints, including making decisions that are binding on member companies where the matter cannot be resolved by agreement.

79. FSP guidelines suggest schemes should aim for a governance structure that avoids industry-capture by interest groups, and prohibits industry from vetoing decisions made by the governance
board. It also notes that ASIC\(^3\) guidelines state that the principle of independence means that a scheme should be a legal entity in its own right: that is, it should be an incorporated entity.

### Separation of operational and governance roles

80. The separation of operational and governance roles of industry council members is perceived to be an issue by non-industry representatives. While the people involved are acknowledged as dedicated and committed practitioners, there are concerns at the potential for conflicting interests, and that a strategic/governance focus is not always provided.

81. Conflicting interests arise due to the role that a number of Council industry representatives have in managing customer service and internal complaint functions within their respective companies. These operational responsibilities for their companies can sometimes bring them into contact with and involve them in disputes being considered by the Scheme Agent. At times there is disagreement with an interpretation or view held by the Scheme Agent in respect of a dispute.

82. While the industry representatives concerned feel that they can separate these roles in their own minds, these situations do cause the Scheme Agent some difficulty and discomfort. Some have suggested this is more of a problem of the Scheme Agent’s perceptions, and that the way in which the Scheme Agent has responded (ie, “refusing” to talk to some Council industry representatives about cases) could have been better handled and has not helped relationships between DRSL and the Council. Also, it may be the case that (some) companies are too small to entirely separate and resolve potential conflicts and overlaps of personnel on different industry bodies. However, it is considered that conflicts of interest do arise, and need to be addressed for perceptions of independence of the Scheme.

83. In recognising that Council industry representatives have the best interests of the scheme at heart, they are also highly committed to their companies and involved with managing their company’s internal complaints schemes. These representatives generally consider that they are able to “wear two hats” as a Council member in a governance role and as the company officer responsible for the internal complaints schemes. However, several informants commented that even with the best intentions operational biases tend to come through and at times there has been an insufficient focus on strategic issues for the Scheme and too much focus on operational issues for the Scheme. To some extent, this latter issue is a result of dissatisfaction with aspects of DRSL’s business performance (although not in managing disputes) and concerns about DRSL’s business capabilities and sustainability/viability as the Scheme Agent, with these concerns also shared by consumer representatives on the Council.

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\(^3\) ASIC: The Australian Securities and Investment Commission, which has an equivalent function to the Minister of Consumer Affairs in approving consumer dispute resolution schemes in the financial sector.
84. It has also been recognised that this operational perspective has been useful in getting the Scheme established and up and running. However, a number of the issues now facing the Scheme are key strategic ones for the industry, and it may be an appropriate time for these roles to step out and more senior roles with governance experience to come in to develop and promote the Scheme as a more strategic option for the industry.

85. Some informants are concerned that more senior executives from the industry are not represented on the TDR Council, as is the case in some other New Zealand dispute resolution schemes, and that this reflects a lower level of commitment to the Scheme from the industry, a lower status of the Scheme, and it being treated as a compliance cost.

86. There are also concerns that there is not a full understanding of and clarity about the governance role of Council members. One consumer representative commented:

“In a governance situation your first responsibility is to the scheme, the workability of the scheme, and not to protect the interests of your company. ... The point of [governance] is to get the scheme to work properly.”

87. This person commented further that it is not the company representatives’ role to protect their company’s interests; it is to go out and advocate for compliance with the rules.

88. However, the Scheme TOR define the role of the industry representatives as being “to represent the views and interests of the Scheme Members the Industry Representative has been appointed to represent; [and to] vote according to the mandates authorised by the Scheme Members the Industry Representative has been appointed to represent” (clause 13.7 (a) and (b)).

89. This clause and requirement tends to work against the ability of the TDR Council to operate as a governance board for the Scheme, which may impact on the understanding of respective roles and relationships that will be discussed in later sections. It also suggests industry representatives are not empowered to make decisions that are necessarily in the best interests of the Scheme. Also, it has been noted that industry representatives have a practice of meeting together outside of Council meetings to discuss and agree positions on issues, which are then reflected in Council meetings and reinforce perceptions of domination of the Scheme by industry interests.

Composition of the TDR Council, its structure and responsibilities

90. The composition of the TDR Council is, in summary:

- four consumer representatives – one appointed by the Ministry of Consumer Affairs and three appointed by senior representatives of the Consumers Institute and TUANZ
- four industry representatives – two representing Tier One members of the TCF (Telecom, Vodafone and TelstraClear), and two representing all other scheme members
- one of the consumer representatives is elected as the Chairperson.
91. In addition, the TCF supplies the Forum Administrator to organise meetings and relevant documentation, elections and other functions as required.

92. An issue that key informants were almost evenly split on was whether there should be an independent chair for the Council, which is the case in a range of other schemes. Most industry representatives were comfortable with the current arrangements, commenting that the current Chairperson does a good and effective job in managing the meetings and ensuring everyone’s views are heard. One member considered that the personality/style of the Chairperson made it work, but conceded that structurally an independent chair may be more sensible going forward. However, it may also be noted that while the current Chairperson appears to have the skills and experience to manage this “dual” role, this may not always be the case with a chairperson appointed from among the consumer representatives.

93. Among consumer representatives, a slight majority felt that an independent chair would be more appropriate. It was considered that appointing a consumer representative as the Chairperson limited that person’s role and contribution to the debate, because as Chairperson the person can be more focused on facilitating and managing the debate than in contributing to it. Other consumer representatives were comfortable with the current arrangement – that it was good and important that the Chairperson was appointed from among the consumer representatives, and that it wasn’t an issue of having balanced numbers in the debate at the level of the TDR Council. One consumer representative referred to comments about the role of governance – that a Council member is not at the table as a consumer advocate but to act in the interests of the Scheme and drawing on experience and understanding of consumer issues to inform the decision-making.

94. An unanswered and untested question is the voting power of the consumer representative appointed as Chairperson. In the Scheme TOR the Chairperson does not have a casting vote, but is this person entitled to vote as a consumer representative?

95. As noted earlier, the equivalent bodies to the TDR Council – the EGC Commission and the TIO Council – both have independent chairpersons. The FSP guidelines suggest there be an independent chairperson.

96. In terms of the appointment of industry representatives, there are rules in place for the rotation of representatives from the three Tier One telcos. When the Scheme was first established it was suggested that such arrangements were put in place because the larger telcos didn’t trust each other, and also that they were the main funders of the Scheme.

97. The Council has apparently had difficulty in attracting representatives to fill one of the Tier Two roles available on the Council, and it has turned out that one of the three Tier One telco representatives has fulfilled this role in rotation. Smaller members generally did not have a problem with this, having not had much to do with the Scheme. One member commented that:

“Within the industry there are so many forums and so many things going on that we are struggling for resources to participate, [so we have to pick] particular issues for us to participate in. We
[would need] a team of a dozen people that are solely dedicated to participating in industry forums if we were to be represented [in all of them]."

98. There has been a view expressed, however, that it is unfair that Tier 2 and 3 members have two seats at the Council “given they don’t turn up and contribute”, and also that all the Tier 1 companies should be represented because they are covering the vast majority of the costs of the Scheme. It is considered that these types of sentiment reinforce concerns about the perceived independence of the Scheme, and reflect a concern for individual members’ interests rather than the interests of the Scheme itself.

99. Another Council member has suggested that the number of Council members and the frequency of meetings are high, and one scheme member also felt that “smaller and slimmer was better”. Indeed, one way to gain a higher, more strategic focus on the Scheme at the level of the TDR Council would be to reduce the number of Council members.

100. Reducing the number of meetings could also be a factor in encouraging more senior executives to become engaged – are six-weekly meetings required, or are these too frequent? The Scheme TOR provides for at least quarterly meetings.

101. The TDR Administrator also acts as the TCF Forum Administrator. There has been some comment from a small number of key informants that because this person played a prominent role in the establishment of the Scheme and has a detailed knowledge of it, and fulfils similar roles for both the TCF and TDR Council that this may generate some influence with the Council. It is understood that the incumbent person in this role is changing, and there will be different people fulfilling these roles in future (although supplied by the same contracting company). This is considered a sensible approach, to provide a more “arm’s length” relationship and protect the independence of the Scheme from perceptions of undue influence from the TCF.

102. Generally, people did not identify issues with the responsibilities of the Council, although the discussion in the preceding section around perceptions of its governance role (and the extent to which this really exists), and the desire from some informants for more senior executive representation on the Council, does reflect some concerns about these.

103. The Council’s role, as defined in the Code, is to provide independence and ensure industry and public confidence in the Scheme, and to oversee the operation of all aspects of the TDR Scheme, except the overall level of funding and TDR review. This role does not appear to encompass the notion of governance, at least as it appears to be understood and desired by several key informants. This is an area in which the intent of the TCF could be clarified. A greater role in and responsibility for the governance of the Scheme would also help reinforce perceptions of independence, as a step towards separation from the TCF.

**Alternative schemes**

104. TIO Council members are selected for their knowledge of consumer interests and customer service issues within the context of the telecommunications industry. The Council has prime responsibility for policy matter and oversight of the TIO scheme’s operation. The TIO has
responsibility for the day to day operation of the TIO scheme and the resolution of individual complaints.

105. The EGCC scheme requires that both consumer and industry representatives are persons who are capable of understanding the viewpoints and concerns of consumers, and in whom consumers and consumer organisations can have confidence.

106. The FSP guidelines also suggest industry representatives are persons in whom consumers and consumer organisations can have confidence, and are drawn from top levels of management of the FSP members. The Minister is required to consider whether a scheme’s directors and senior managers are competent to manage a dispute resolution scheme.

Recommendations

107. It is recommended that:

- the Scheme not be established as an entity independent of the TCF at this stage, but that this be reviewed again in 12 months time with consideration to the progress (or lack of progress) in addressing issues identified in this review

- the structure of the Council be changed to become two consumer representatives and two industry representatives:
  - one consumer representative to be appointed by the Ministry of Consumer Affairs, and one by agreement between the NZ Consumers Institute and TUANZ, plus any other national consumer organisation deemed relevant
  - two industry representatives appointed by the TCF Board – one representative from a Tier One member and one representative of other members

- industry representatives be persons who are capable of understanding the viewpoints and concerns of consumers, and in whom consumers and consumer organisations can have confidence; persons in who scheme members can have confidence; and must have regard to the interests of all scheme members

- industry representatives be sufficiently removed from dealing directly with internal complaints for their company, and from dealing directly with the Scheme Agent in relation to a dispute that the Agent is managing for that representative’s company

- an independent chairperson be appointed to the Council (agreed by the consumer and industry representative members, in consultation with the TCF)

- where possible, TDR Council and TCF Board members should not overlap roles; if not possible (New Zealand is a small place), there should be clearly identified formal communication link between the TCF and TDR Council Chairperson
• the frequency of meetings of the TDR Council be reduced to once every 8-10 weeks (ie, 5-6 times pa) – although noting that they may be required to continue at current frequency to develop proposed changes to the Scheme.

108. The purpose of these changes is to address concerns about independence issues, and also to encourage the TDR Council to operate at a strategic governance level that is expected and desired.

**Fairness**

109. The fairness principle means the Scheme observes the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based. The purpose of this principle is to ensure that the decisions of the scheme are fair and are seen to be fair.

**Summary conclusions and key issues arising**

110. The change to the new method of random sampling of customers that have used the Scheme, rather than a self-selection approach, should provide a more robust measure of the perceived fairness of the Scheme. However, due to the relatively low numbers passing beyond Level 1, consideration should be given to over-sampling those customers proceeding to Levels 2, 3 or 4 or even surveying all of these given the low numbers involved.

111. In terms of scheme members, only small numbers are surveyed, and these surveys target those members of companies that DRS has day-to-day dealings with, which is appropriate for their knowledge and understanding of operational issues regarding the effectiveness of the Scheme. However, these roles may not necessarily see the “bigger picture” in the purpose of the Scheme (eg, including addressing the power imbalance between companies and individual consumers) which can/will colour their perceptions of what’s “fair” to companies.

112. A number of concerns have been expressed by various key informants in relation to the fairness and effectiveness of the Scheme’s TOR and Code. They include the ability of the Scheme Agent to decline to investigate or continue to investigate complaints that are frivolous, vexatious or without merit; where a “reasonable” offer has been made to settle it; and the ability for customers to escalate complaints through the dispute levels. There are also concerns about a dispute being able to be logged as a Level 1 complaint (and thus incurring a share of monthly overhead/operating expenses) when it has not been considered by the scheme member. The Scheme Agent has identified some concerns about the fairness of time limits and processes at Level 3 conciliation and Level 4 adjudication.

113. Other than the points made in respect of Level 3 and 4 time limits and processes, the current TOR and rules of the Code are considered fair for consumers. On the other hand, changing the Scheme to give the Scheme Agent a more active role in decision-making could also be fair for consumers,
providing that safeguards were put in place (such as greater investigatory powers for the Scheme Agent and a right of review of a decision to exclude a complaint). This is a model that is adopted in other schemes.

114. The current process is not considered manifestly unfair for scheme members. It can be unfair if there is some malicious intent on the part of the customer to cause a member maximum cost and inconvenience, or “game” the member into offering a settlement to avoid paying higher scheme fees. Realistically, however, there cannot be many customers that fit this category. It can appear unfair when a customer is being “unreasonable” (eg, refusing to see “reason” and may be someone who has a particular grievance about the way their case has been handled), or a member believes a customer’s complaint is vexatious, frivolous or trivial and this is not supported by the TDR.

115. Many of these cases will be within the ability of the company to influence through their initial dealings with a customer and subsequent handling of a complaint. The numbers of cases proceeding to Levels 3 and 4 are relatively low. In order for the Scheme Agent to make a decision anyway, a case will most likely to have been logged as a Level 2 dispute.

116. A change to the Scheme to give the Scheme Agent a more active decision-making role could address these situations. Such an approach can also be fair, credible and consistent with the benchmark standards for dispute resolution schemes. However, it would involve a shift in the philosophy of the Scheme in terms of members giving up some control over the outcomes, and will incur a cost that will be borne by scheme members, both one-off and ongoing. Litigious or difficult customers are likely to make use of a right of review anyway, which will mean a cost to the member concerned.

117. Other changes to the Scheme may also moderate the number and impact of these situations, without fundamentally changing the basis of it.

118. Key issues include:

- the (new) sampling procedure in customer satisfaction surveys may not adequately capture the views of customers that work through Levels 2 to 4 of the TDR, insufficient ability to distinguish between satisfaction of scheme members with different levels of TDR staff, and a concern about the appropriateness of asking scheme members about the cost effectiveness of the Scheme

- that the escalation process is at the discretion of the customer, with alternative views expressed regarding appropriateness of this

- exclusions on jurisdiction – whether these should include consideration of whether a “reasonable offer” has been made

- the implications of giving the Scheme Agent a more active decision-making role in respect of either one of the above issues
• the definition of non-relevant enquiry, and extending this to include complaints that have not been raised with a scheme member so that these are not logged as Level 1 disputes

• the impact of the time limits and processes for conciliation and adjudication on scheme efficiency and effectiveness, and principles of natural justice.

Key informant views and discussion

Comprehensiveness of surveys

119. The method by which consumer satisfaction surveys are conducted has recently been changed from a paper-based, self-selecting approach to a telephone-based survey that minimises self-selection bias and reduces the barriers to participation. A random sample of 250 customers per year is to be surveyed, with progressive sampling of 10 telephone interviews per fortnight. As a result, it is considered that this approach will ensure a fairer representation of customer views – both those that have been “successful” and “unsuccessful” – and allow greater probing of responses to gain a better understanding of the reasons for views where there is some dissatisfaction.

120. Although only one question is asked around fairness of the Scheme, it is difficult to argue that more attention should be paid to this issue alone, particularly where the survey asks for reasons when there is disagreement.

121. Generally speaking, key informants had few concerns regarding the comprehensiveness of the customer survey. One industry representative considered, however, that the majority of survey results are Level 1 complaints, which have little to do with the actual dispute resolution process. This informant considered the starting frame needs to be those customers that have gone beyond the initial contact, when there is minimal level of dispute resolution. It is noted from the recent report on customer satisfaction (MMResearch, January 2010) that TDR initially planned to send questionnaires out to those customers whose dispute outcome (resolution) was reached at Level 2, 3 or 4. However, for various reasons (mainly the low numbers of cases beyond Level 1; 68 resolved at these levels in 2009) it was decided to expand the survey to include all customers, regardless of the level at which their dispute outcome was finalised.

122. The industry representative’s point has some merit, as customers that exit the Scheme at Level 1 are unlikely to have enough experience/understanding of the dispute resolution process to provide and informed opinion of the whole process, beyond the initial contact with DRSL. However, it should also be noted that the experience of the Level 1 contact may also be a source of satisfaction with customers, and the way in which they are treated by the Scheme Agent at this point will and does have an impact on perceptions of the TDR.

123. In relation to the survey of scheme members, only small numbers are surveyed, and it is understood that these surveys target those members of companies that DRSL has day-to-day dealings with. This would seem appropriate for their knowledge and understanding of operational issues regarding the effectiveness of the Scheme. However, these roles do not necessarily see the
“bigger picture” in the purpose of the Scheme, which can/will colour their perceptions of what’s “fair” to companies. Also, some of the questions appear to more appropriate for company personnel in policy or more senior management positions (eg, questions concerning cost effectiveness of the Scheme and support for changes to bring it into line with the TIO model). Despite these reservations, the surveys do provide useful feedback around the operating effectiveness of the Scheme at a practical level.

124. There are two questions asked around fairness of the Scheme: “TDR staff are fair and impartial in dealing with complaints”; and “TDR can be trusted to be impartial, professional and fair”. Disagreement with these statements is explored through follow-up questions asking for reasons. These seem sufficient, although it may be difficult for some respondents to differentiate between the two (they are asked in different sections).

125. One industry representative had a concern about the cost-effectiveness question, indicating that the Scheme had not been set up to be cost-effective in resolving complaints, at the complaint level.

126. Another issue that has arisen is the different views about different levels of staff, (eg, frontline TDR staff vs. conciliators/adjudicators) and ensuring the survey can capture these distinctions. Options may be for interviewers to probe for reasons why respondents are not completely satisfied/strongly agreeing with an aspect of the TDR, or they are “less than satisfied with” or “neutral” about a statement, so that reasons for neutral answers or ‘niggles’ that prevent complete satisfaction, are captured and provide more complete information.

Fairness and effectiveness of the Scheme

127. In general, the consumer representatives regarded the Scheme TOR as fair and effective for consumers, although some recognise that industry members have concerns with some degree of validity. Particular points mentioned included:

- the ability of the Scheme Agent to “weed out” complaints that are clearly frivolous or vexatious, or are “unreasonable”

- the ability for consumers to keep escalating the complaint resolution process

128. In addition to these main areas of concern about the fairness of the Scheme from their perspective, some telcos identified concerns with jurisdictional decisions and acceptance of complaints into the Scheme, which then initiates the high fee structure. This included concerns that:

- customers could “leapfrog” the company’s internal complaint process and go straight to the Scheme without having gone to the company first

- a need for the Scheme Agent to more thoroughly assess whether a complaint has been resolved first, before it accepts it at Level 1, or not accepting it at “face value”.

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**Review of the Telecommunications Dispute Resolution Scheme**
129. DRSL conciliators and adjudicators have also identified a number of issues with regard to the fairness and effectiveness of the Code. These include the time limits within which they have to work; and, for adjudicators, the process defined in the Code for them to follow. These issues have an impact on the effectiveness of the process and quality of decision-making, and also implications for principles of natural justice.

Vexatious, frivolous or trivial complaints

130. The Code provides that a grievance is not a complaint if it is vexatious, frivolous or trivial, and excludes this from the scope of the Scheme. The Scheme Agent must ensure, however, that a bona fide complaint from a complainant who is regarded by a scheme member as vexatious because of his or her previous dealings with the scheme member is dealt with appropriately under the TDR Scheme. Clause 1.11 of Annexure I of the Code notes that a presumption will exist that a complaint is within jurisdiction unless the Scheme Agent can readily identify that it is not.

131. The Australian benchmarks identify that best practice includes a scheme excluding vexatious and frivolous complaints at the discretion of the decision-maker. The EGCC scheme provides that the EGC Commissioner does not have the jurisdiction to consider a complaint that is being pursued in a manner that is trivial, vexatious or was not made in good faith. The FSP guidelines use the term “unmeritorious” instead of “frivolous”, and suggest these complaints should be identified at early stages in the dispute resolution process. These guidelines also suggest a scheme may wish to consider having a process for responding to complainants who are abusive or unreasonable, in order for the scheme to remain effective and efficient, as unreasonable complainants may absorb resources that could be used for meritorious cases. They add, however, that unreasonable complainants should not be confused with complainants who require sensitivity, for instance in areas of mental capacity.

132. In relation to these types of complaints, the Scheme Agent has adopted the policy of the TIO, which provides that:

“When considering whether or not a complaint should by nature be classified as frivolous or vexatious, the TIO has regard to the reasonableness of the complaint in all the circumstances while considering the intention of the complainant. In practice, the TIO rarely classifies complaints as frivolous or vexatious. However, the TIO might exercise its discretion to classify a complaint in this way where:

- It is clear that the complainant’s intention in raising the matter is to be of annoyance to the Member and/or the TIO; or
- The complaint is so obviously untenable or manifestly groundless as to be hopeless.”

133. Just one complaint has been deemed vexatious, frivolous or trivial by the Scheme Agent in the 2009 year. It is not clear what the term “trivial” is intended to mean in addition to “vexatious and frivolous”. It may be that scheme members need to have this policy communicated to them more clearly, and it be suggested that if they consider a complaint to be vexatious, frivolous or trivial appropriate evidence to that effect should be provided for the Scheme Agent to consider.
A couple of non-members of the Scheme suggested that there be a “user-pays” approach taken, where customers pay a fee to make a complaint, or the Scheme Agent is able to make an award of costs against a customer if a complaint is deemed unjustified. However, these concepts are inconsistent with the principles of a dispute resolution scheme, and are discounted.

Jurisdiction to consider complaints where a “reasonable” offer has been made

It is unlikely that a failure to accept a “reasonable” offer will fit within the scope of the vexatious and frivolous policy. DRSL notes in its assessment of the impact of adopting the Australian TIO scheme model that, in ombudsman schemes and the Courts, this jurisdictional exclusion is applied in a very small number of cases because it tends to label the complainant as the problem rather than focus on the substantive merits of the complaint. It would be risky to attempt to extend the definition of what may be considered vexatious, frivolous or trivial beyond that which applies in common law as that could compromise the integrity of the Scheme and principles of fairness.

The EGCC scheme addresses this as a jurisdictional issue. The EGC Commissioner does not have the jurisdiction to consider a complaint if it appears to the EGC Commissioner that on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint.

The TIO scheme provides TIO Officers may exercise discretion not to investigate, or not to investigate further, at any stage during the consideration of a complaint if they decide that the complaint does not have sufficient merit or importance to warrant investigation. The reasons why the TIO would consider that a matter does not warrant further investigation include, but are not limited to, the following:

- there is insufficient evidence available for the TIO to make a judgment about the merits of either party’s case
- based on the balance of probability, the member’s version of events is considered to be more likely
- evidence presented by the member clearly supports a view that the complaint has no merit
- the TIO considers that a resolution proposed by a member is reasonable in all the circumstances.

A key driver of the concerns for scheme members is the fee structure and allocation of operating costs based on a compliant being logged as a Level 1 dispute which, if addressed, may help allay industry members’ concerns.

Logging referral of customers to scheme members as Level 1 disputes

When a customer initially contacts TDR, the Code provides that the Scheme Agent must assess whether deadlock has been reached. If it has not, the Scheme Agent refers the customer back to the scheme member for the complaint to be resolved through the member’s internal complaints.
process, but still logs the customer’s concerns as a Level 1 dispute. This leads to the concern that a customer can “leapfrog” a member’s internal complaints process and log a complaint with TDR, as a result of which the allocation of operating costs is incurred.

140. The Scheme Agent has indicated that it will make some effort to inform smaller companies that a customer has been in contact with them to give the company an opportunity to resolve the complaint, before logging the complaint as Level 1. However, this is not provided in the Code and may lead to some inequities.

141. Whereas the TDR defines non-relevant enquiries, the TIO scheme defines an “Enquiry” as a matter that a complainant does not intend to be an expression of complaint or grievance, or is a matter that cannot be accepted as a complaint by the TIO. A matter is determined to be an Enquiry if it is (among other things) a complaint that has not yet been raised with a provider (a ‘first resort’ complaint).

142. The EGCC scheme identifies a contact from a person as an enquiry when the matter raised is clearly outside jurisdiction (for example, purely about the cost of electricity or about a non-member) or where the person is seeking information but not wanting to make a complaint.

143. It is noted that a change to the definition of non-relevant enquiry was proposed in/about August 2008, adding “do not appear to have been previously raised by the customer to their scheme member” to the current definition, although this wording seems somewhat ambivalent.

**Timeframes and processes for conciliation and adjudication**

144. The Scheme Agent presented a paper to the TDR Council’s 5 November 2009 meeting proposing Code amendments relating to Level 3 and Level 4 procedures. These addressed the following concerns:

- that the 5-day limit on the time to achieve a conciliated settlement mitigates against settlement, particularly when parties are not available to discuss their dispute during this time and where additional information is needed, or new information or submissions from the parties are provided after receipt of the conciliator’s recommendation

- the availability of customer account information and ability of conciliators to share that with customers when it is provided to the conciliator by a scheme member, and the availability of point of sale and promotional information/documentation

- evidential difficulties due to adjudications being an “on-the-papers” exercise, particularly where conflicts in the evidence arise, and due to the adjudicator looking at issues from a different (more legalistic) perspective, which may require further/different information to be provided

- the lack of a clear statement of current position from each of the parties, and having to rely on the dispute file and conciliator’s assessment when the parties may have developed or amended their positions after this has been made available
the current service standard for a final determination to be issued is considered unrealistic – it is 16 days from when the dispute file is provided to the adjudicator, within which:

- the adjudicator must review the papers and prepare the draft determination and forward it to the adversely affected party (time not specified)
- provide the party 5 days to respond
- finalise the determination and forward it to both parties (time not specified)
- the customer has 10 days to respond
- send a follow-up letter if no response, and allow another 5 days for the customer to respond.

145. This process also raises questions about procedural fairness. The Australian benchmarks include the following practices:

- Fairness: both parties can put their case to the decision-maker – in the TDR process it is the Scheme Agent that summarises the case for the decision-maker (the adjudicator)
- Fairness: both parties have the opportunity to rebut the arguments of, and information provided by, the other party – this does not currently feature in the consideration of the adversely affected party’s response to the draft determination by the other party, nor if any new or additional information or representations are provided to the adjudicator by the parties
- Efficiency: the scheme has reasonable time limits set for each of its processes which facilitate speedy resolution without compromising quality decision-making – the time limits imposed are border-line reasonable and risk compromising the quality of decision-making and principles of natural justice.

146. The TIO scheme has a Key Performance Indicator for complaint resolution times for Level 4 complaints of 90 days (expressed as average number of days).

147. The EGCC scheme does not appear to place time limits on the decision-maker (the Commissioner) in issuing determinations. If an agreed settlement is not achieved, the Commissioner may, at the request of the complainant or member, make a recommendation for settlement or withdrawal of the Complaint. The EGC Commissioner must give the complainant and member concerned 15 working days notice of their intention to make such recommendation, during which time the parties may continue to try and reach a settlement. If no agreement has been reached at the end of the period of notice, a recommendation may be made and the parties have 15 working days to accept it.

148. If the Scheme Agent’s recommendations in relation to the adjudication process and timeframes were adopted, they would enhance the fairness of the process, and bring it more into line with the benchmark practices.

149. In relation to concerns about the conciliation timeframes it is noted that the current service level indicators provide for Level 3 disputes to be closed within 50 days of the complaint being
received, and for Level 2 is to be closed within 32 days. This provides a “margin” of 18 days, when the formal Code requirements add up to 11 days:

- within 2 days of receipt of the customer’s response and escalation of the dispute to Level 3, the Scheme Agent prepares a Summary of Dispute
- the Scheme Agent will contact the parties within 5 days to discuss the resolution of the dispute
- the Scheme Agent pursue a negotiated settlement for up to 5 days
- if after 5 days from receipt of the Summary of Dispute by the parties the Scheme Agent has not been able to achieve a negotiated settlement (this time is presumed to include the time to contact the parties, and the time to pursue a negotiated settlement), the Scheme Agent will prepare an Assessment of Dispute and forward it to all parties (time to prepare Assessment not specified)
- the Scheme Agent telephones all parties to the dispute within 4 days of posting/releasing the Assessment of Dispute to discuss whether or not a negotiated settlement can be reached
- if not, the Scheme Agent notifies all parties in writing that the dispute is classified as a Level 4 dispute, prepares a copy of the dispute file, and submits the file to the Adjudicator with a Request for Determination.

150. This suggests there is some inconsistency between the Code and service level indicator requirements, and that some greater flexibility is envisaged and possible, including perhaps reaching some middle ground between the current and recommended timeframe. It is considered, however, that the recommendation that the conciliator should be sole judge of when the process is completed is not appropriate as there should be some expectation of drawing the process to a close.

151. An alternative is that the service level standard of 50 days from receipt of the complaint could serve as the reference point and the Scheme Agent manage the process to that timeframe. There should, however, be specific times set for parties to respond to instructions/reports from the conciliator. Regard will need to be had for the costs of this level. However, the fee paid for conciliation can be limited to an amount, but the time involved is spread over a longer calendar period (eg, 5 days work spread over two weeks instead of one week).

The equity of complaint escalation steps to consumers and scheme members

152. This concern is principally about whether the complaint escalation steps are equitable to scheme members. There are mixed views about this issue, among consumer representatives and industry members.

153. It is not entirely clear what the reasons were for the industry to provide this complaint escalation mechanism in the first place. There is some suggestion that industry members did not want to pass the responsibility for making a decision to some other agency, particularly an unknown and
untested one such as the Scheme Agent. They wanted to ensure they had every opportunity to resolve complaints directly with their customers on their own terms – retaining control of the process. One industry representative sees the Scheme Agent’s key role as assisting the consumer to engage with telcos.

154. One consumer representative who supports the ability of the customer to escalate their complaint comments that:

“Companies don’t seem to acknowledge the enormous power imbalance. The reason you have a scheme is because the individual consumer ends up in a most disadvantageous position where they are trying to advocate for themselves to a very large company with lawyers and experts and all sorts of people who make the rules in terms of delivering service to avoid fault. The point of having a scheme is to try and address the power imbalance that exists between the individual consumer and the company and, therefore, the power imbalance must always, under the scheme, fall in favour of the customer. So the ability to escalate I think is entirely appropriate because a good provider, if they are taking things seriously, will be able to reduce the incidence of that by the way in which they respond.”

155. Another consumer representative also commented that it is appropriate for the customer to be able to escalate their complaint if it is not resolved as long as a complaint is not vexatious, it fits within the Code and all avenues have been done to try and resolve it at a lower level. A scheme member was also in favour of this approach, commenting that:

“If it wasn’t able to be escalated by the complainant the telco can basically stonewall it so the complainant goes nowhere .... It forces the telcos to act.”

156. On the other hand, some consumer representatives saw some validity to the industry’s concerns. One suggested that there should be an opportunity for the Scheme Agent to review what the company has done and to say that it is a fair offer and the Scheme cannot help the customer any further.

157. Reasons for the telcos’ concerns about the fairness of the customer being able to escalate complaints include:

- a view that it is unfair for one party to a dispute to have an advantage over the other – if customers can escalate, so should a member be able to escalate a dispute if they do not accept a grievance is legitimate, and want it to go straight to an adjudication stage without spending time and money at the earlier stages and producing two or three sets of documentation

- the ability for customers to push the complaint through the levels multiplies the cost to the Scheme Member, potentially deliberately so (and in the context of individual complaints typically having relatively low values)

- a need for a safety mechanism, which provides that the justification for escalating a complaint is reviewed by the Scheme Agent.
158. In essence, those key informants that are concerned about the ability of the customer to escalate their complaint through the levels would like the Scheme Agent to be able to decline to pursue it further if a “reasonable” offer is made to resolve it or if a complaint does not have merit/is “unreasonable”. DRSL advises that they do tend to try and “nudge” the customer to accept an offer or withdraw a complaint if the situation merits it. However, they have no power to insist or compel this and it would appear to be a relatively subtle nudge to avoid the Scheme Agent compromising the formal process they are required to follow by the Code, their independence and service standards for fairness.

Alternative schemes

159. As noted above, the TIO scheme provides discretion for the TIO to not investigate, or not investigate further, a complaint where it considers that a resolution proposed by a member is reasonable in all the circumstances. The EGCC scheme also provides that the EGC Commissioner does not have the jurisdiction to consider a Complaint if it appears to the EGC Commissioner that on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint. This presumably applies throughout the process, although is not included in specific grounds for considering or continuing to consider a complaint.

Implications of giving the Scheme Agent a more active decision-making role

160. A change to give the Scheme Agent a more active decision-making role will change the current philosophical basis for the Scheme: that the parties currently have the power and opportunity to resolve their own dispute (up to the point of a Level 4 determination). Further, if the Scheme Agent is given a role to decide whether it is reasonable for the customer to pursue the complaint, it would be appropriate that they are also able to advise the customer and the scheme member that the member’s offer is not reasonable (as is the case in the TIO scheme). This will be implied anyway if the Scheme Agent does not rule a customer out of the Scheme, with the potential for the customer to “hold out” for a larger settlement.

161. It would also change the dynamics between the parties, by shifting the focus of the conflict from between the scheme member and customer parties, to between the scheme member and the Scheme Agent. The risk is that the industry and Scheme Agent relationship becomes more litigious. Disagreements about jurisdiction and other things become differences of opinion between the Scheme Agent and the scheme member, rather than issues to be resolved between the member and the customer as is the case now.

162. There are other implications in adopting this approach. These are identified in DRSL’s assessment of the impact of adopting the Australian TIO scheme, which includes this type of provision. They include:

- less pressure from telcos on the Scheme Agent to classify complaints as vexatious, frivolous or trivial
- potentially more cases proceeding to higher levels, if a scheme member is less inclined to settle them in reliance of the Scheme Agent deciding a case has no merit
- allowing customers a right of review of decisions that are unfavourable to the customer, including a decision that a case is without merit or a reasonable offer has been made – this will involve an investigation and consideration of a decision by a review officer.

- greater powers for the Scheme Agent to investigate and come to an informed decision on the merits of a case, potentially requiring a higher and/or different skill set to be applied earlier in the TDR process, and the ability to require more documentation from a telco at an earlier point in the dispute.

- cost implications arising from a need to change work management systems and databases, develop new policies and practices, change document templates and promotional material (including website), training and/or recruitment of higher/different skills or redefined roles (eg, investigatory officer, review officer), communication of changes to members, external stakeholders and interested parties.

163. It is also possible that other changes to the Scheme may also moderate the number and impact of these situations, without fundamentally changing the basis of it. These include:

- a change to the fee structure and allocation of operating costs that reduces concerns due to the current high financial impact of a complaint being accepted by the Scheme.

- greater clarity around what are vexatious and frivolous complaints, and how these are addressed.

- extending the definition of “non-relevant enquiry” to include complaints that have not been raised with a scheme member.

- incorporating a jurisdictional requirement that the Scheme Agent does not have the jurisdiction to consider a Complaint if it appears to that on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint.

- perhaps strengthening the advisory role at Level 2, to make more formalised, non-binding recommendations.

- greater flexibility in the use of different dispute resolution mechanisms, for example the Scheme Agent recommending conciliation or adjudication to fit better the case.

**Recommendations**

164. It is recommended that:

- the sampling procedure for surveys of customer satisfaction include over-sampling, or preferably surveying all customers proceeding to Levels 2, 3 or 4 (up to half the total sample) and reporting these results separately.
- in the scheme member survey, the question regarding satisfaction with the cost-effectiveness of the Scheme be changed to ask about the Scheme’s effectiveness in resolving disputes

- in customer and scheme member surveys, reasons for a lack of satisfaction are explored (ie, when respondents are neither satisfied/agree nor dissatisfied/disagree, or are dissatisfied/disagree)

- the definition of non-relevant enquiry be extended to include “or relates to a complaint that has not yet been raised with the customer’s telecommunications provider” so that these are not logged as Level 1 disputes

- the Scheme Agent’s policy and practice with regard to vexatious, frivolous or trivial complaints be clearly communicated to scheme members, and that if members consider a complaint to be vexatious, frivolous or trivial appropriate evidence to that effect should be provided for the Scheme Agent to consider

- the Scheme’s TOR be amended to provide that the Scheme Agent does not have the jurisdiction to consider a complaint if it appears to the Scheme Agent that on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint

- it be noted that both the current TDR process (subject to changes to jurisdiction/scope of Level 1 disputes, and timeframes and processes for adjudication) and the TIO scheme process have integrity, and that issues relating to the customer escalation process and jurisdiction to exclude complaints where the Scheme Agent considers a “reasonable” offer has been made are not inherently unfair to customers or members

- there be further debate with scheme members and non-members around the implications that moving to the TIO scheme’s process and a more active decision-making role for the Scheme Agent would have on the underlying philosophy of the Scheme, the operating cost implications (including a greater investigatory role by the Scheme Agent earlier in the process)

- subject to any other changes to Levels 3 and 4 of the dispute resolution process, recommendations made in the Scheme Agent’s paper to the TDR Council’s 5 November 2009 meeting proposing Code amendments relating to Level 3 and Level 4 procedures in relation to the adjudication and conciliation processes, including access to information, be adopted; however, there should continue to be a limit on the time allowed for conciliation processes, which may be expressed as either a fixed (but extended) number of days, or provide the Scheme Agent to manage flexibly within the service level standards that have been established (the latter is preferred).
Accountability

165. The principle of accountability requires that the Scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems. The purpose of this principle is to ensure public confidence in the Scheme and allow assessment and improvement of its performance and that of scheme members.

Summary conclusions and key issues arising

166. Most consumer representatives and industry members are happy that there is sufficient accountability within the Scheme, through the reporting structures and among its constituent parts.

167. Accountability to participants’ customers is achieved through reporting of determinations, and statistical and other data about the performance of the Scheme.

168. There are some differences in views regarding the naming of scheme members and identifying the numbers of complaints they attract, and this has come in for some detailed consideration by the Council. It has been decided not to publish these at this time, for what appear to be good arguments.

169. The Australian benchmark practices do provide that the names of those scheme members which do not meet their obligations as members of the scheme (eg, do not provide information as and when requested, do not comply with a determination made under the scheme) should be published where the scheme’s terms of reference permit this. The TDR Scheme’s TOR does not include this in the list of matters to be published in the TDR annual report.

170. The Scheme Agent should not be required to broaden its focus on systemic issues to predicting future issues. It is considered that the telecommunications industry, technology, and product development is too fast changing and DRSL are not experts in telecommunications. It is considered more important to get the current scheme and any changes made as a result of this review bedded in first.

171. Concerns that Council members have had about the level and appropriateness of monthly operational and financial reporting by the Scheme Agent appear to have been largely resolved with the current reporting provided.

172. There is a concern, however, about the impact that these issues have had on the relationship between DRSL and the TDR Council, which flows into concerns about the appropriateness of the support and feedback that the Scheme Agent receives from the TDR Council, and the strained relationship that has developed.

173. Some Council members have expressed frustration and concerns about the management capability of and support provided to it by the Scheme Agent. There is also some concern that these frustrations may be spilling over into perceptions about DRSL’s skills as a dispute resolution
service provider, which has largely not been the case to date, and more widely its credibility within the industry.

174. DRSL is perhaps uncomfortable with the Council delving into what it sees as operational issues, protective of its autonomy as an independent organisation, and feels “under attack”. It has also recently received independently assessed recognition for its business processes and practices (the Vero award), and so is confident in its business capabilities, making ongoing criticisms difficult to reconcile.

175. Some of the issues appear to relate to the business model adopted for the Scheme – ie, TCF has contracted a service provider to deliver the functions of the Scheme as opposed to employing dedicated staff – and different understandings, perceptions and expectations of respective roles and relationships. Some Council members expect DRSL to be driving and showing more commitment and ownership of the Scheme than they perceive is the current case. DRSL regards itself as a contractor delivering a specific range of services to a client, and is its own autonomous organisation with other major clients.

176. There appears to be a clash of different cultures. There are different expectations about the role of the Council as a governance board, and whether it is empowered to act as one by virtue of the defined role of representatives. If it is intended that it act as the governance board for the Scheme, there is a question about whether the right roles are represented on it, and whether DRSL have the right capabilities/personality representing it at a Board (equivalent) level.

177. If the clarity of roles and expectations for the relationship between the various parties cannot be worked out, there is a risk of irreconcilable breakdown and termination of the relationship. While the contract provides transitional arrangements, developing or engaging a new organisation will be difficult/expensive, take time, and once on will need to develop its own experience and capabilities in the telco industry.

178. The key issues with regard to accountability include

- tensions in the relationship between the Council and DRSL
- a need for greater clarity and definition of the desired and expected role of and relationships between the Council and Council members, the Scheme Agent and (because it provides oversight and contracts with DRSL) the TCF.

Key informant views and discussion

Accountability of the Scheme

179. Most consumer representatives and industry members are happy that there is sufficient accountability within the Scheme. One consumer representative suggested there was “more than enough, [and] almost too much reporting”. Representatives from the Ministry of Consumer Affairs also feel they have some level of oversight of the Scheme, with regular contact and reporting
from their appointed representative to the Council and meetings as necessary, which are considered part of the accountability function.

180. Scheme members also generally consider the reporting to be useful and that there is accountability through the information provided as to the number and types of complaints, and nature of issues. One scheme member, however, expressed a concern that there is no obligation on TCF members to comply with Code or be members of the Scheme. Another scheme member considered that while the reports show that the Scheme appears to be managed in a professional and transparent way, there should be more transparency around which telcos are attracting complaints. This informant went on to say that by not doing so there is a risk to the perception of independence that perhaps the Council does not want to “step on any of the carriers’ toes”.

181. The issue of whether to publish a “league table” that identifies the numbers of complaints against members (and non-members) was raised by a small number of other key informants, and has been discussed and considered by Council. It has been decided not to publish these at this time, for what appear to be good arguments. It may also be too early in “life” of scheme, and in light of need to extend coverage to more telcos. However, this is an issue that should be revisited periodically, particularly if members (and/or non-members) persist in having avoidable complaints logged with the Scheme.

182. It is noted that the Australian benchmarks do not identify this as a key practice. The benchmarks do say that the names of those scheme members which do not meet their obligations as members of the scheme (e.g., do not provide information as and when requested, do not comply with a determination made under the scheme) should be published where the scheme’s terms of reference permit this. The TDR Scheme’s TOR does not include this in the list of matters to be published in the TDR annual report, although at this point there no concerns have been indicated that suggest non-compliance is an issue.

**Alternative schemes**

183. The EGCC scheme does not name members with statistics relating to complaints against them, although does report, for example, that x number of members have had 11-20 complaints. However, it is required to publish in its annual report a list of Council Member breaches of the Scheme rules.

184. The TIO publishes member specific complaint statistics for all members who have received 25 complaints or more during the course of the financial year. Readers are cautioned to bear in mind the varying size of the TIO’s member organisations in order to avoid making inaccurate comparisons. The TIO does not standardise its member-specific complaint statistics.

**Accountability to participants’ customers**

185. The Australian benchmarks provide that accountability to participants’ customers is achieved through regular reporting of determinations, and statistical and other data about the performance of the Scheme, including:
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- information about how the scheme works
- the number and types of complaints it receives and their outcome
- the time taken to resolve complaints
- any systemic problems arising from complaints
- examples of representative case studies
- information about how the scheme ensures equitable access
- a list of scheme members supporting the scheme, and any changes
- information about new developments or key areas in which policy or education initiatives are required.

186. These areas are covered in the TDR Annual Report and on its website.

Appropriateness of monthly operational and financial reporting

187. There have been concerns from Council members about the level and appropriateness of monthly reporting by the Scheme Agent, but these appear to have been largely resolved with the current reporting provided.

188. Essentially, these concerns arose because DRSL “surprised” the TDR Council with a report that its costs had significantly exceeded the budget, towards the end of the first year of the Scheme. The budget had been predicated on a case mix across the different dispute levels of the Scheme that proved inaccurate in practice, and there was no apparent mechanism for addressing this unanticipated variation. The Council’s response has been to require more detailed financial reporting from DRSL, due to concerns about the ongoing sustainability and viability of DRSL’s role as Scheme Agent if it was losing money, and a lack of confidence and mistrust in DRSL’s administrative capabilities. It also held DRSL to the contractual terms of payment for its services.

189. It took some time to develop reports to the Council’s satisfaction. Part of this was due to DRSL’s financial system being tied up in its parent ACC financial system, and that the TDR Scheme had not been established as a separate cost centre within DRSL. This made it difficult to report on costs allocated to the Scheme. This situation has been assisted with DRSL’s appointment of their own finance manager, and establishing their own stand-alone financial system.

190. There are concerns that the level of detail required to be reported by DRSL is excessive. However, it is felt by a number of informants that to some extent this was brought on DRSL by itself. Some concerns reflect the view that some Council members are too operationally focused. Industry representatives acknowledge that DRSL has probably been given a “hard time”, but this is because they come from commercial organisations that would not stand for one of their business units operating in a similar fashion.

191. A broader concern, however, is the impact of these issues on the relationship between DRSL and the TDR Council, and on the Council’s views about the credibility/capability of DRSL. This is discussed further below, under the appropriateness of feedback and support for the Scheme Agent, and in the impact of this relationship on the effectiveness and development of the Scheme under the Effectiveness section.
Broadening the requirement for the scheme agent to predict systemic issues

192. There has been some tension around the Scheme Agent’s identification and publication of systemic issues in the past, although again this seems to have been resolved. Some key informants reported that industry representatives have been resistant to the idea, and there was a lack of agreement as to the definition of what is a systemic issue, that issues should be called “systemic”, or that the Scheme Agent should be telling companies their business. Industry representatives were concerned about the wording of reports and how they are presented publicly, and that issues attributed to one telco are presented as an industry systemic issue. The way in which the Scheme Agent has presented systemic issues in its recent annual report, and identified what consumers can do as well what members can do may have helped to allay concerns.

193. In terms of broadening the requirement for the Scheme Agent to be more active in predicting issues that might arise in the future there was little support for this. Generally, informants felt that it was too early, and that the Scheme Agent did not necessarily have the skills and telecommunications expertise to be able to predict future issues in a fast changing telecommunications environment.

Scheme Agent receives appropriate support and feedback from the TDR Council

194. Feedback from DRSL is that it feels that the level of support and feedback it gets from the TDR Council is too operationally focussed and not strategic enough. It would like to see more support and leadership in terms of the vision for the Scheme, and the development of a strategy to get there. There is a concern that the Council is primarily interested in the bottom line of the Scheme, and how much it is going to cost. Also, it appears to DRSL that either the Council does not fully trust DRSL or their business capability; industry representatives have to report back in detail to their companies (and therefore need to “arm themselves” with all the facts); or there is a lack of understanding of the role of governance and the role of the Council.

195. TCF representatives (in a difficult position by also being members of the TDR Council) do not have concerns about the interaction between the Council and Scheme Agent. The TDR Administrator appears to have limited contact with the Scheme Agent’s representative; this is confined to exchanging Council papers, although this role did work with DRSL to develop the business plan for the TDR Council.

196. It is clear from the feedback from a number of Council members that there is frustration at the current state of affairs. They were concerned at the level of financial acumen shown by DRSL that led to the budget over-run, the time taken to understand where the money had been spent, and the length of time to get the financial reporting to a point they are relatively happy with. Council members have commented variously that the DRSL representative does not come to meetings prepared and knowing answers; that there is a lack of proactivity and initiative in identifying and tackling key issues; and a lack of leadership and strategic focus from them.
197. There appears to be different perceptions of the respective roles and relationships of the TDR Council and the DRSL – what is expected/desired and what is demonstrated – and a disconnect between the parties. To some extent this is bound up in the business model that has been adopted, where the TCF has contracted DRSL as a service provider.

198. DRSL perhaps sees itself as a contractor delivering the services required by the Scheme TOR and Code. It is an autonomous organisation, and has its own board governance relationships. The TDR Scheme is one of its clients for its services, and not even its most significant client. It has a contract (with TCF) to deliver these services, to specified service standards. DRSL has something of a transactional relationship with the Scheme and the Council.

199. On the other hand, the Council appears to want to operate as a governance board and deal with DRSL as its subordinate employee organisation, with the right (and role) to delve into operating structures and mechanisms. The Council seems to expect DRSL to “own” the Scheme and drive it as if they were the business organisation responsible for and dedicated to it. One key informant comments:

“[DRSL] are the Scheme. This is their baby and they need to be saying, “We’re doing our bit and here’s the bit you [the Council] are supposed to be doing” ... They see the Council as driving the Scheme; the council sees them as driving it. ... The Council [thinks DRSL] should be constantly thinking about, “how can we improve this thing and what do we need to be doing?” [But] all they do is operate [the Scheme] and ... they’re very reactive.”

200. There are cultural differences also. Industry representatives on the Council are typically employed in middle management positions in an industry that changes rapidly, is performance oriented and somewhat entrepreneurial. DRSL comes from a quite different environment and culture (ACC bureaucracy), and operates in an entirely different industry – dispute resolution, conciliation, considered decision-making based on rules.

201. As noted in the discussion on independence and the separation of operational and governance roles (page 27) it is not clear that the TDR Council, and particularly the industry representatives, are actually empowered to operate as a governance board and make decisions in the best interests of the Scheme. It is also questionable whether the right capabilities/experience is represented at the board (equivalent) level, on either the Council or from DRSL.

202. An option is to appoint industry representatives to the Council that have a more senior executive, governance perspective provided by the industry, and for DRSL to also have a similar perspective reporting to the Council operating as a governance board (in essence the Chief Executive).

203. The lack of clarity and agreement around the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations, and the strained relationship that exists, poses a risk to the Scheme. That risk is an irreconcilable breakdown and termination of the relationship between DRSL as the Scheme Agent and the Scheme. While the contract appears to provide transitional arrangements, developing or engaging a new organisation will be difficult and expensive, take time, and will need to develop its own experience and capabilities in the
telecommunications industry. An alternative is that a more contractually-based relationship develops, based on the letter rather than the spirit, which neither parties appear to want.

**Recommendations**

204. It is recommended that:

- the TDR Scheme’s TOR be amended to permit the names of those scheme members which do not meet their obligations as members of the scheme (eg, do not provide information as and when requested, do not comply with a determination made under the scheme) to be published in the TDR annual report

- the Scheme Agent’s role in identifying systemic issues not be broadened to be more active in predicting issues that might arise in the future, at this stage

- a reconciliation process is required that involves frank discussions around the issues raised in this review to gain clarity and agreement about the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations, for the current and ongoing relationship

- when considering the recommended changes to the composition of the Council, the TCF endeavour to appoint senior executive roles as industry representatives to provide a more strategic, governance perspective

- if the parties expect the relationship to be one of a governance board – management nature, DRSL’s reporting relationship to the Council should be the Chief Executive reporting as if to a governance board.

**Efficiency**

205. The benchmark principle of efficiency means that the Scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance. The purpose of this principle is to give customers and scheme members’ confidence in the Scheme and to ensure the Scheme provides value for its funding.

**Summary conclusions and key issues arising**

206. There are different aspects to the notion of efficiency of structure and service. Generally these relate to cost efficiency and efficiency of process. Cost efficiency can be viewed on a “per complaint” basis, or as the cost to provide the Scheme structure. A number of informants noted that it was never intended or expected that the Scheme would or could be cost-efficient in terms of cost per complaint. It is pointed out that the overall cost of alternative schemes is a
substantially higher. They also note, and it is agreed, that it is inappropriate to focus on cost efficiency on a cost per complaint basis.

207. Despite this, there are some concerns at the cost to resolve what are essentially low value disputes, particularly from non-members, as many do take a “cost focus” rather than looking at the value (often intrinsic) of having a scheme. Perceptions may be improved if there is more transparency around the make-up of the cost, and clarity around the basis/assumptions involved (eg, basis for budget items). A potentially complicating factor is the nature of the business model, and the fact that DRSL is paid a fee to be the Scheme Agent and is its own autonomous organisation. As noted elsewhere, it is considered that this dimension has clouded perceptions of respective roles and relationships.

208. The Scheme does appear to provide an efficient service to customers, although there are areas that could be changed to further improve the timeliness and effectiveness of the Scheme.

209. The organisational structure of the Scheme Agent is considered efficient and able to cater for the fluctuating nature of the caseload. However, it does appear to be operating at the minimum levels to meet the service standards required, and cater for the relatively low numbers of complaints. Its structure and basis for engaging staff would enable it to cope with fluctuations in caseload that are in excess of this minimum level. It also reflects the rules of the Scheme and the four-level approach to dispute resolution.

210. The general view of key informants is that the Scheme Agent’s front-line staff are well-qualified and trained, and that this has improved as they are exposed to more issues. Some scheme members have expressed concerns regarding the skill/understanding of the telecommunications industry by conciliators/adjudicators. However, it is not considered that these roles need a detailed understanding of telecommunications and the industry, although some familiarity with the key Codes in the industry (such as customer transfer procedures, disconnections) would probably be useful. Otherwise, this experience will come with time and the numbers of complaints handled.

211. There is also some concern at a dispute having to pass through three people – the Level 2 facilitator, Level 3 conciliator and Level 4 adjudicator. This may be addressed by looking at the levels available and more flexible application of conciliation and adjudication functions (which will require changes to the Code).

212. The key issues are:

- the necessity or desirability for four sequential levels of dispute resolution
- the familiarity of conciliators and adjudicators with key codes of practice in the telecommunications industry that impact or have a bearing on causes for customer complaints, and telco responses.
Key informant views and discussion

Efficiency of the Scheme’s structure and service to consumers

213. Views about whether the Scheme is efficient in its structure were split among consumer representatives, and among industry members. Consumer representatives that had doubts about the efficiency of structure reflected on costs to resolve disputes. Other key informants also commented on the cost to have the infrastructure in place to deal with the relatively low numbers of claims and/or a high level of service standard, or noted that in other schemes the conciliation and investigation roles are more intertwined.

214. Industry informants expressed concerns about the level of overhead for the Scheme, that it was “a little too gold-plated”, or about the time, costs and resources required for their own staff to respond to a complaint going through the TDR process. Both members and non-members expressed concern at the cost to resolve what are seen as essentially low value disputes. Many of these informants take a “cost focus” rather than looking at the value (often intrinsic) of having a scheme, and the broader interests of the industry. One industry representative commented that some smaller telcos operate a different business model that is based on low cost and limited customer service; one non-member commented that a factor in deciding to join the Scheme would be the cost-benefit return or the added value that joining the Scheme would give their company.

215. Other key informants indicated the Scheme was never intended to be cost-efficient. However, there was some question about the need for four levels of dispute resolution and having three different people looking at a case at each of the Levels 2, 3 and 4.

216. Key informants who considered the Scheme structure was efficient referred to the cost of the Scheme compared with other models or with the external legal environment, or just said it was “fundamentally OK”.

217. In terms of the efficiency of service to customers, the majority of all informants felt the Scheme was efficient. One consumer representative said they expected resolutions of cases to take longer than they did, and thought they were being dealt with very expeditiously. Others noted that they had not heard any complaints about the efficiency and timeliness of the service. One scheme member that agreed the Scheme provided an efficient service for customers commented that it had been quite rapid in solving customers’ complaints when they have had trouble getting responses from other telcos. Another commented that

“It is incredibly efficient just to tell the customer that it exists and then take the evidence to the [offending telco]. Nine times out of 10 the telco doesn’t want to go through the TDR if they can avoid it.”

218. More broadly, the structure of the Scheme’s business model does appear to be efficient. A service provider is contracted to be the Scheme Agent. Instead of the cost of establishing and maintaining stand-alone facilities, the Scheme is operating in an established business, sharing corporate resources and overheads, and in that way can provide an efficient structure. The discussion in previous sections about the perceived role of the Scheme Agent vis-a-vis the Council suggests this
can lead to other issues that need to be resolved, and ultimately there may be less flexibility to accommodate changes in a relationship that is governed by a contract for services.

219. Perceptions may be improved if there was more transparency around the make-up of the cost of the Scheme, identifying the basis/assumptions involved (eg, the basis for budget items), and the requirements to meet the service level standards met.

Four levels of dispute resolution

220. At the Scheme process level, the Code provides for four levels of dispute resolution, and different people are involved at Levels 2, 3 and 4. There is some question about whether four levels are necessary, or that a dispute must pass through all four levels sequentially.

221. Alternative schemes have more flexible approaches. In the TIO scheme, complaints can be classified as Level 1, Level 2, Level 3 and Level 4 complaints. However, these classifications relate to several factors:

- the type of issue they involve
- the time spent (or predicted time spent) by the TIO on handling the complaint
- the extent to which the complainant has attempted to resolve a matter directly with the member prior to seeking the TIO’s assistance, or the number of opportunities the member has already had to resolve the complaint
- the length of time that the TIO believes the member will require to investigate and respond to the complaint
- the circumstances surrounding the complaint, its complexity, the length of time the complaint has been ongoing, and the amount of money in dispute.

222. Level 3 and 4 complaints cannot be logged as such unless they have been logged and considered at Level 2 and 3 respectively. There is guidance around the circumstances a complaint can be escalated from one level to the next. While the TDR process is strictly sequential, and relates to different dispute resolution processes (Level 2 is facilitated negotiation, Level 3 is conciliation and Level 4 is adjudication), the TIO has greater discretion in the way cases are managed. For example, conciliation can be used at all levels in the context of an investigation process.

223. In the EGCC scheme, the process is not defined in levels. Once a file is deadlocked, the EGCC tries to facilitate a settlement based on essentially an initial review of information provided. If this is not possible a more detailed investigation takes place, and opportunities to facilitate an agreement may arise during this process. The parties may agree to waive the facilitation stage and go to the investigation stage without the EGC Commissioner attempting to mediate or facilitate a settlement. If a settlement cannot be achieved, the EGC Commissioner will give the complainant and member concerned a notice of intention to make such recommendation, during which the parties may continue to try and reach a settlement. If no agreement has been reached at the end of the period of notice, a recommendation can be made by the Commissioner and the parties have 15 working days to accept it.

224. Subject to any other changes that are made, options to improve the efficiency of the TDR structure at current Levels 3 and 4 could include:
• at the end of the Level 2 process, consulting with the parties about whether conciliation or adjudication would be the most appropriate mechanism for resolving a dispute, and a decision being made by the TDR Manager to refer the case appropriately, based on the views of the parties (greater weight could potentially be given to the interests of the customer in the event of disagreement) and the assessment/recommendation of the investigating officer

• the conciliation and adjudication functions be merged, in that if at the end of the conciliation a settlement has not been achieved the conciliator prepares and issues a determination (this may apply to the first option of conciliation also).

225. To preserve the concept of natural justice, a key point to have regard for is that the investigating officer is not the person making the determination. See also the discussion and recommendations made in respect of conciliation and adjudication procedures.

226. Either one of these changes is considered feasible by the TDR Manager. Such a change would reduce the number of steps to go through, and the number of new people that need to know and understand the material. It would be quicker for the customer and potentially less onerous for the scheme member. The total fees paid by a company may also reduce.

Efficiency of the organisational structure of the scheme agent

227. The organisational structure of the Scheme Agent appears well capable of handling fluctuations in their caseloads. They have three staff facilitators who answer calls, and if there is a spike and all are tied up, then overflow calls can be diverted to DRSL’s parent ACC corporate call centre, which acts as a message service, and the facilitators call back the callers. The Scheme Agent also has an ability to shift resources from its other business to cater for peaks and troughs in case loads, which is one of the key advantages it has.

228. In terms of conciliators and adjudicators, the Scheme Agent contracts these as required from a pool of six conciliators and two adjudicators. If required the Scheme Agent can also call on ACC reviewers to conduct adjudications and ACC mediators for conciliations. Again, this service is scalable for peaks and troughs in workloads.

229. The Scheme Agent advises, however, that it is currently running at the minimum staffing level it needs to meet the service level standards it is required to meet.

230. More concerns have been expressed about whether the Scheme Agent is adequately resourced and has the right person/people in performing the other management and administrative functions to support the Scheme and meet the expectations of the Council. These functions include relationship management and communications with the Council and individual scheme members; promotional activities for the Scheme and to attract new members; business planning; policy development; and management reporting.
Staff are appropriately qualified and trained

231. The general view is that front-line staff are qualified and trained, and that this has improved as they are exposed to more issues. However, some scheme members have concerns about the level of understanding of the telecommunications industry among conciliators and adjudicators. One industry representative commented that these latter roles need to have an understanding of how the industry works, and the key codes, such as the transfer code. Another industry representative commented that scheme members are regularly asked to provide technical or industry information that is not pertinent to an actual complaint.

232. Another key informant commented that the application of general principles and common sense at a higher level is delivered appropriately – “your average judge dealing with a dispute between a motor mechanic and a car manufacturer doesn’t necessarily know a lot about the internal combustion engine but can still make a sensible decision”. This person would be more concerned about the skill and understanding of people at the lower levels who have to make quick, “in-and-out” types of decisions, which doesn’t seem to be an issue – potentially because this is not a discretion the Scheme Agent has under the Code. Another scheme member also did not believe the conciliator or adjudicator needed to be a technical person – just someone who can take a pragmatic, practical, common sense approach.

233. The Scheme Agent accepted that they are on a learning curve in respect of the industry knowledge. Front-line staff have learned on the job and have been through a training course on the industry. However, conciliators and adjudicators have not been on the same telecommunications industry courses as front-line staff have been on. The Scheme Agents’ service model is to contract these as roles as required and they are spread throughout the country. While the pool of people used is small, the numbers of cases going to these levels is also small, and it will take time for them to develop familiarity with the industry, which they will do over time. However, it is still a more efficient structure than having dedicated personnel.

234. There have been discussions about running further industry training for staff of the Scheme Agent, and industry representatives are willing to contribute to this. It is understood that this has now been arranged.

235. Some informants expressed concern about having to deal with three different people in the course of a dispute – a facilitator at Level 2, a conciliator at Level 3, and an adjudicator at Level 4. This results in a lack of continuity of understanding about a case, and three different people having to get to grips with the case documentation and issues. The option of adopting a more flexible approach to referring a dispute to conciliator or an adjudicator as required, and/or to merge these roles, would help address this issue. As noted earlier, however, it is appropriate that the investigating officer (facilitator equivalent) remains separate from the decision-maker from a natural justice perspective.
Budgeting and financial reporting provides the correct detail

236. Concerns about the state of financial reporting have been identified earlier, and the format of the current reports appears to have satisfied these concerns. For one or two Council members, however, there is too much detail being reported. There is also some concern that so much time is spent at Council meetings delving into the variance on cost details in what is essentially a fixed price contract to do the job.

Efficient and timely resolution of customer complaints

237. Some mixed views are expressed about whether the Code’s processes are delivering efficient and timely resolution of customer complaints. One industry representative considers there can be delays around the timing of when a complaint’s resolved, and that too much time can be allowed for the customers to respond to resolution proposals. This person also felt that the Scheme Agent allows customers to introduce new issues that are separate from the initial complaint, which adds to time. They considered the Scheme Agent needed to take more control of the process of defining the complaint, and require the customer to stick to that.

238. A consumer representative considered it good that there were timeframes around telcos having to respond to complaints, even though “they squeal” that they are too tight. This person did not see that the time allowed to a customer to respond to issues stopped the company from doing anything significant, and the stay of proceedings against a customer when a complaint involves a billing issue while the dispute resolution process works through is not going to break the company.

239. Another informant felt that six weeks for a company to address a complaint before it reached “deadlock” was excessive. The Scheme Agent’s review of the TIO scheme indicates that it provides a maximum of 14 days for members to resolve Level 1 or 2 complaints that have been referred to them, and 48 hours for an “urgent” complaint.

240. The TDR Annual Report 2009 reveals that 93% of Level 2 complaints are resolved within the service level standard of 32 days (target is 75%) and 87% of Level 3 complaints within 50 days (target is 75%). At Level 4, 69% were resolved within the standard of 16 days (target is 100%). However, at Level 4 and as noted earlier, there are concerns about the impact of this service standard timeframe on the adjudication process, with the potential compromise in the quality of decision-making and principles of natural justice if the service standard is strictly adhered to.

241. Despite concerns raised by some members, the Scheme Agent is generally meeting the service level standards set for it. There has been no suggestion that these be reduced, although it has been proposed that the Level 4 standard be extended. Some efficiencies could be gained by reviewing the number of dispute levels and the requirement to move through all of them sequentially. Options have identified earlier, and are supported by a number of informants.
Recommendations

242. It is recommended that:

- subject to the possibility of other changes being adopted (eg, the TIO process), where settlement is not achieved by the end of the Level 2 process, the Code is amended to provide for the TDR Manager to determine whether a conciliation or adjudication would be the most appropriate mechanism for resolving a dispute after consulting with the parties and in the assessment/recommendation of the investigating officer, and to refer the case appropriately

- if conciliation is the preferred mechanism and at the end of the conciliation process a settlement has not been achieved, the conciliator prepares and issues a determination in accordance with the adjudication process (subject to changes to the adjudication process suggested)

- the Scheme Agent continue with arrangements for conducting industry training for staff (including conciliators and adjudicators) with scheme members, and that the training include improving staff’s familiarity with key codes of practice in the telecommunications industry that impact or have a bearing on causes for customer complaints, and telco responses (if not already being addressed).

Effectiveness

243. The benchmark principle of effectiveness means that the Scheme has appropriate and comprehensive terms of reference and periodic independent reviews of its performance. The purpose of this principle is to promote customer confidence in the Scheme and ensure that the Scheme fulfils its role.

Summary conclusions and key issues arising

244. There are a number of limitations in the Scheme’s TOR and Code affecting the effectiveness of the Scheme, which have been discussed earlier. These are listed below in the summary of key issues. One of these, the ability of customers to escalate complaints at their discretion, is perceived as an issue by a number of key informants, including some consumer representatives. There are, however, a number of implications in addressing this issue that have been discussed under the principle of fairness (page 40). It is, however, seen as one of the key barriers to getting more telcos to join the Scheme.

245. The TDR Scheme’s fee structure and basis for allocating the overhead costs of the Scheme is a major deterrent to companies joining the Scheme, and a reason for previous scheme members to leave. The key concerns are the unpredictability of fees for members, month to month; bill shock, particularly for smaller telcos that are faced in having to pay a share of the monthly overhead charge for a single complaint; the share of the monthly overhead charge typically grossly exceeds the value of the customer’s complaint.
246. A better balance between fixed and variable fees is required. It needs to be recognised that the large majority of the Scheme’s costs are fixed, numbers of complaints logged by the Scheme are relatively low, and there are great disparities between the size and capacity of telcos to pay. A model that allocates Scheme costs based predominantly or solely on demand (numbers of complaints) will lead to inequitable situations and a sense of unfairness among smaller industry members particularly. This is manifested in a focus on the cost vs. value of a complaint, and encourages undesired behaviours, up to and including leaving the Scheme because it is not seen as value for money.

247. It is understood that discussions are taking place on the fee structure, and proposals are being developed. The discussion of the fee structure includes some suggested principles for consideration based on the views of various key informants, and having regard for the key issues that the Scheme must address.

248. There should be an ongoing emphasis on encouraging good complaint handling practises, with the Scheme Agent offering feedback to scheme members, reinforcing the Code, publishing case studies and being available for scheme members to consult. The budget for providing this level of service needs to be realistic.

249. It is considered that the relationship between the TDR Council and DRSL is affecting effectiveness of the Scheme, and particularly the opportunities to advance and promote the Scheme for the benefit of consumers and members. There is also a risk to the overall confidence in the Scheme.

250. Many of the concerns appear to stem from different perceptions, understanding and expectations of the respective roles of, and relationship between, the TDR Council and DRSL as the Scheme Agent. There also appears to be a clash of cultures and of personality styles.

251. It is considered important that steps are taken to improve and enhance the relationship. The discussion below sets out potential steps that may be taken. The risk is that there is an irreconcilable breakdown in the relationship, which may lead to its termination. This may lead to an alternative business model for the Scheme or re-tendering the contract for the Scheme Agent (which may or may not result in a more appropriate provider). Another option may be the separation of responsibility for management and support functions of the Scheme from the dispute resolution services required.

252. Key issues include:

- limitations in the Scheme’s TOR and Code:
  - the ability of customers to escalate complaints at their discretion
  - the jurisdiction for the Scheme Agent to decline to accept a complaint on the basis that there is no merit to it, or to decline to take a case further if a reasonable proposal is considered to have been made to settle a complaint (connected with complaint escalation)
  - the four dispute levels, and the requirement to pass through them sequentially
the time constraints and process for conciliation and adjudication

– the potential limitation that claims must be for less than $12,000 and the impact of this particularly for small businesses covered by the Scheme

– defining the roles of industry representatives as representing and to vote according to the views and interests of the scheme members they have been appointed to represent rather than the interests of the Scheme

• resolving the Scheme’s fee structure and basis for allocating the overhead cost of the Scheme to be more equitable and predictable for members

• the current state of the relationship between the TDR Council and DRSL, and the need for steps to be taken to clarify misconceptions and expectations around the respective roles and relationships.

Key informant views and discussion

Appropriateness of limitations in the Scheme’s TOR and Customer Complaints Code

253. The key limitations in the Scheme’s TOR and Customer Complaints Code affecting the effectiveness of the Scheme, as identified by a range of key informants, have all been discussed previously. They are:

• the ability of customers to escalate complaints at their discretion (page 40)

• the jurisdiction for the Scheme Agent to decline to accept a complaint on the basis that there is no merit to it (page 35), or to decline to take a case further if a reasonable proposal is considered to have been made to settle a complaint (connected with complaint escalation, page 40)

• the four dispute levels, and the requirement to pass through them sequentially (page 54)

• the time constraints and process for conciliation and adjudication (page 36)

• the potential limitation that claims must be for less than $12,000 and the impact of this particularly for small businesses covered by the Scheme (page 20).

254. In addition to these, the Scheme’s TOR define the roles of industry representatives as representing and to vote according to the views and interests of the scheme members they have been appointed to represent, rather than the interests of the Scheme. This impacts on the role of the TDR Council and may also be affecting the effectiveness the Scheme (page 27).

255. As noted, these points have been discussed earlier, and this discussion is not repeated here. However, it may also be noted that jurisdictional issues around accepting complaints considered “unreasonable” and the ability of customers to escalate complaints are, along with fee structures, more commonly identified as barriers to joining the Scheme by non-members.
Measurement of user satisfaction as an indication of effectiveness

256. The discussion on the comprehensiveness of surveys (page 32) has addressed this issue. The revised approach of selecting and telephone interviewing a random sample of customers will be a more robust approach than customers self-completing a paper-based or online survey. As was noted, however, consideration should be given to over-sampling customers utilising Levels 2, 3 or 4 of the process or even surveying all of these to give a more robust indication of the effectiveness of the scheme to individual complainants. In addition a question about scheme members’ satisfaction with the cost-effectiveness of the scheme should also be changed to ask about its effectiveness in resolving disputes.

The Scheme’s fee structure

257. It is no surprise to the Council that the Scheme’s fee structure (including the level of fees and the allocation to scheme members) is very much considered a deterrent to companies joining the scheme and a factor in other companies electing to leave. It is also a major concern for continuing scheme members, and results in some undesirable behaviours. These behaviours include:

- members feeling compelled to settle at complaints at almost any cost to avoid a complaint being logged with the Scheme
- a suggestion (unconfirmed) that some customers “game” the system, knowing that companies may be willing to settle a dispute on far more favourable terms than warranted to avoid a complaint going to the Scheme
- the Scheme Agent making extra efforts to inform smaller companies that a customer has been in contact with them to give the company an opportunity to resolve the complaint, before logging the complaint as a Level 1 dispute.

258. In addition, it is considered that many of the concerns expressed about the Scheme are coloured by concerns about the fee structure and the allocation of fixed overheads, including jurisdictional decisions made or not made by the Scheme Agent, the “value” of what the Scheme Agent does at Level 1, and to some extent the escalation process.

259. The fee structure has been the focus of much discussion and debate within the Scheme and with non-members when approached to join the Scheme. There has been one change to the fee structure made that addressed some concerns, but not the fundamental ones, particularly for smaller telcos. These are:

- the unpredictability of fees for members, month to month
- bill shock, particularly for smaller telcos that are faced in having to pay a share of the monthly overhead charge for a single complaint – an issue particularly because of the low numbers of complaints
that the share of the monthly overhead charge typically grossly exceeds the value of the customer’s complaint.

260. The fee structure is very much predicated on providing an incentive to companies to resolve complaints internally. Some key informants (large companies in particular) believe that the scheme costs should be recovered predominantly on the basis of consumer complaints as this will encourage service providers to address their customers concerns – no complaints equals no cost to the company. While some scheme members have been successful in keeping any complaints away from the Scheme, it is also considered that this has led to some unwelcome behaviours (as above), and led to companies leaving or being reluctant to join the Scheme.

261. Particular difficulties in the New Zealand context are the relatively low numbers of complaints over which to spread the fixed overhead of having a scheme, the small number of telco members and the size difference between those members. The current numbers of complaints (64 for the March 2010 YTD) means that if one “slips through” a company will be up for a minimum of 4-5% of the monthly fixed overhead, or between $2,320 and $2,900, for having a complaint logged as a Level 1 dispute, which may only involve referring the customer back to the scheme member. This is before any additional fees should the complaint proceed to Levels 3 and 4.

262. The primary issue is trying to allocate what is essentially a fixed cost scheme (under 3% of scheme billings are Level 3 and 4 user pays fees that bear little relation to the cost of providing service at these levels) on a completely variable or demand-driven basis.

Alternative schemes

263. The experiences of other schemes do not help much on this issue. The TIO scheme is massive in comparison to the TDR: 1,125 members; $26 million in complaint handling fees; 262,000 “contacts”, including 230,000 complaints, of which 208,000 were resolved by referral back to the service providers (TIO Annual Report 2008/09).

264. As with the TDR Scheme, a TIO member is charged fees only if the TIO receives a complaint from one of the member’s customers. During 2008/09, only 18% (198) of the 1,125 members were charged for complaints. Members are invoiced quarterly, based on an estimate of costs to be incurred in the following quarter. Each quarter, actual and estimated charges are reconciled. The TIO has a policy whereby the first four Level 1 complaints and the first Level 2 complaints each quarter are free to members.

265. Complaints attract a direct fee that varies according to the level to which the complaint is escalated by the TIO. In 2008/09 these were:

<table>
<thead>
<tr>
<th>Complaint Level</th>
<th>Cost (excl GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>$31</td>
</tr>
<tr>
<td>Level 2</td>
<td>$260</td>
</tr>
<tr>
<td>Level 3</td>
<td>$475</td>
</tr>
<tr>
<td>Level 4</td>
<td>$2,250</td>
</tr>
<tr>
<td>Level 4 (Land Access)</td>
<td>$2,650</td>
</tr>
</tbody>
</table>
266. Enquiries ($31) and reviews ($500) are funded as part of operating costs.

267. The TIO allocates a share of its overall budget for the quarter to members on the basis of the proportion of complaints, and then subtracts the member’s complaint volume fees (based on the above table) to give the members contribution to the TIO’s operating cost (overhead). Based on an indicative quarterly invoice on the TIO website (total quarterly budget of $7.93 million, and complaint numbers of 69,658 assumed to be realistic), a member with 5 complaints should attract a quarterly fee of around $113 (first 4 complaints are “free”), comprising $31 direct fee and $82 for that share of the quarter’s operating costs.

268. In the EGCC scheme, a 63% share of the EGCC’s costs are funded by fixed levies allocated on a proportional basis, with 60% of funding raised from retailers on market share of consumer ICPs, and 40% from lines companies. The remaining 37% of EGCC costs is covered by determining the percentage share of all complaints reaching the various stages of resolution, with different rates for the complaints, facilitation, investigation and rulings stages (“complaint levies”). Transpower has a separate arrangement.

269. The amounts of the complaint levies are calculated before the beginning of each financial year based on an estimate of the likely number of complaints to reach each stage in the following year. Members are then invoiced each quarter on the basis of their proportionate share of complaints reaching each stage in the previous quarter. At the end of each financial year the EGCC will reconcile the amounts paid by each member for the actual numbers of complaints reaching each stage with the average levy raised by the EGCC in charging for complaints reaching each stage. An adjustment is made to bring the cost per complaint either up or down to the average levy rate for each stage of complaint.

Re-designing the fee structure

270. It is considered that the fee structure and the basis for allocating the operating costs of the Scheme needs to be re-designed to be more equitable, and recognise there is value to the whole industry in having the Scheme that all members should contribute to the fixed cost of having it. There is also merit in providing some incentive for members to resolve complaints in-house, but it is considered that this should not be unduly punitive, particularly on smaller member companies. It is not considered that this should be a basis for allocating what are essentially the fixed costs of having an industry scheme. The incentive should be more consistent with the marginal costs of providing an increasing level of service in resolving disputes through the increasing dispute levels – this would provide members the incentive to resolve a dispute rather than allowing it to escalate.

271. It is understood that discussions are taking place on the fee structure, and proposals are being developed. However, some suggested principles for consideration based on the views of various key informants, and having regard for the key issues that the Scheme must address, include:

- establish a base fee to belong to the Scheme – there may be 3-4 bands or tiers, but large telcos will need to accept the lion’s share of costs
• consider what would be a reasonable fee for the smallest telcos to be members of the scheme and receive 2-3 “free” Level 1 referrals to the scheme (subject to other changes) – this may be membership fee of (say) $1,500 pa

• scale this up to the largest telcos, for example, based on market share of telecommunications connections (mobile, fixed line, internet⁴), revenues or number of complaints in the previous year. For example, the largest telco may have 20x the number of customers/connections – its fee would then be $300k pa, and other bands allocated accordingly

• some weighting of fees based on numbers of complaints could be considered, even within bands or tiers, to provide an incentive to keep numbers of complaints down. This would introduce a level of complexity, however, when it may be more sensible to keep it simple. Also, any weighting should be based on the total complaints for (say) the previous year to set the following year’s fees to provide certainty and predictability, and not be an “all or nothing” fee

• a base fee for new members joining the scheme would need to be set, until they built a full year’s history that can be applied to a weighting

• in principle, charging a Level 1 fee to refer a customer back to their telco to work through a telco’s process seems unreasonable, particularly if it’s through no fault of the telco that the customer has contacted the TDR directly. This aspect is objectionable to many members and is a source of concern about a number of the jurisdictional issues. Options to avoid these issues include:
  – incorporating the Level 1 service level into the fixed fee paid by scheme members
  – setting the fee for Level 1 at a level that is relatively commensurate with the cost of this aspect of the service
  – re-defining “non-relevant enquiries” to include the referral of customers approaching the TDR as a first resort back to their companies

• it is typically at Levels 2, 3 and 4 that the “real” work of the Scheme Agent starts, and scheme members have had the opportunity to resolve the complaint. The Level 2 fee should reflect this, and also start to build in the disincentive aspect for not resolving the complaint at Level 1. Similarly there is an escalation or compounding effect in the fees for Levels 3 and 4 (but see also recommendations around reducing the number of levels) that encourages the member to resolve disputes at Level 2 or in conciliation.

• the scale of membership fees may need to be adjusted to reflect the budget required for the Scheme Agent to deliver the service – an issue here is what level of service is encompassed by the fixed fee (overhead) paid to the Scheme Agent, and what mechanisms need to be put in

place for variations to assumptions. For example, a different profile of Level 1 to 4 cases could develop due to changes in the fee structure, the Scheme’s TOR and/or the Code generating different behaviours – this is what happened in the first year of the Scheme, with all sorts of ramifications. The mechanism would need to address how the Scheme Agent is compensated for caseloads that exceed budget tolerances, and how any additional costs are recovered from members (the user pay fees may not be sufficient to cover the real cost of providing these service levels).

**Encouraging companies to develop good complaints handling practices**

272. Those that commented on whether greater emphasis should be placed on encouraging companies to develop good complaints handling practices indicated that either there should be greater emphasis, or that this was happening anyway as a result of the Scheme. A small number of key informants felt the need for this may lie more with smaller companies that are less well-resourced than the large telcos.

273. One consumer representative indicated that encouraging good complaints handling practices should be an objective of any scheme, and that there needed to be more feedback provided to companies. This person commented that a recent proposal from the Scheme Agent to publish cases studies to provide feedback and examples so they can see what is going on, and benchmark themselves against others in the industry, was received well by the Council. Another said that companies might be trying to adopt good practices but could do more because the still had complaints ending up at the TDR.

274. One industry representative noted that some companies operate on a different business model – some provide low cost services that do not put the same emphasis on customer service.

275. The Scheme Agent did feel they could do more in this regard. It was noted that the Code does set out in some detail the principles for these processes and the steps that need to be put in place. Adjudicators do monitor these in preparing determinations, but with limited numbers of complaints reaching this level, and limited resource to investigate/monitor these further, the Scheme Agent has limited information coming to them about internal complaints processes.

**The relationship between the TDR Council and Scheme Agent**

276. It is considered that the current state of the relationship between the TDR Council and DRSL is affecting the effectiveness of the Scheme overall. The impact of relationship tensions is not so much on the effectiveness of the dispute resolution processes, although if tensions are ongoing this may lead to reduced confidence in these aspects as well. Rather it is the advancement and promotion of the Scheme for the benefit of consumers and members, and the risk to overall confidence in the Scheme that is of concern.
277. Council members (particularly industry representatives) are looking for:

- greater ownership of the Scheme, and more direction and leadership from the Scheme Agent
- more initiative and proactivity around how the Scheme can be improved and promoted – coming up with proposals and action plans rather than asking what the Council wants
- ongoing reassurance that the Scheme Agent has the business capability and competence to be a sustainable and viable “partner” for the industry in delivering the TDR Scheme
- greater reliability in terms of the Scheme Agent doing what they say they’re going to do, on time, or timely communication of the reasons why not
- evidence of greater understanding of how the telecommunications industry works, and what are practical options for it and the Scheme
- greater flexibility and application of common sense in applying the Code – wanting to be able to “tweak” and improve the Scheme quickly and without “hassle”, rather than the Scheme Agent “merely” abiding by the rules.

278. The Scheme Agent’s concerns include:

- wanting more direction and leadership at a “strategic” level from the Council
- that the nature of the relationship is more contractual and positional than collaborative and participatory, which is the Scheme Agent’s more natural (and preferred) style
- the level of demands placed on a limited (fixed cost) resource
- being seen as “stand-offish” and not engaging, because it does not want to compromise its independence in its dispute resolution functions, and the lack of understanding of this important principle
- that holding to the view that it is required to interpret and apply the rules of the Scheme as they are written, and not interpret and change them to reflect the intentions of the writers of the rules, is making it seem inflexible and unreasonable
- decisions not to recognise the cost-overrun resulting from the different profile of cases to what the contract was based on in the first year, the imposition of performance criteria and a withheld performance payment, and the payment of less than the full amount, with no contractual mechanism compromising the relationship it prefers to have with the Council.

279. It is considered there are flaws in some of both parties’ perspectives and/or approaches. For example, continually “tweaking” and adjusting the Scheme is inappropriate, as is expecting the Scheme Agent to reinterpret the Scheme on the basis of intentions rather than the rules written. If the words of the rules do not reflect the intent of the designers, scheme members have the opportunity to correct this situation through the rule-changing process, and should not expect the Scheme Agent to “flexibly” apply them. There is very little room in the rules and process for the
Scheme Agent to exercise the discretion that seems to be expected of them. One Council member commented:

“[We] are a fast-moving industry. If we want to make a change, somebody will work out how to do that because that’s what we need to do. ... I think we’ve both got very different perceptions of how we make a change, so it becomes quite formal which I think is frustrating telcos, but it gives comfort to the agent because that’s how they’re used to deal with it.”

280. It is also noted there have been proposals to change the Code made or developed by the Scheme Agent that address a number of the concerns raised by various key informants that have not been implemented.

281. There are concerns about the ability of some Council members to maintain a strict independence, but how the Scheme Agent has responded to these issues has also not been particularly constructive (eg, “not talking” to Council members), and some structure or process could have been put in place or proposed to avoid compromising independence.

282. One Council member commented that the Scheme Agent “hasn’t done itself any favours” with the lack of warning and communication around the first year’s cost over-run. This perhaps showed a lack of business acumen in not foreseeing the possibilities of a substantially different caseload profile and agreeing a mechanism for making appropriate adjustments to the contract price. DRSL has also had difficulties in responding to requests for financial information. These issues have clearly dented the confidence of Council members in the business capabilities of the Scheme Agent.

283. Despite these issues and perceptions, by other standards DRSL is a successful and capable business: it has been operating for over ten years; it is ISO 9001 accredited; it achieved a net surplus of $1.245 million (almost 12% of total income) reported in its audited accounts; and it recently won its second Vero Excellence in Business award, for the launch and development of TDR. This latter award follows DRSL winning the Vero Excellence in Business award in the Business ($5-10m Turnover) category in 2007. The Vero awards follow independent assessments of processes, policies and practices by the NZ Business Excellence Foundation.

284. It is considered that the underlying bases for the concerns that have been expressed primarily involve different perceptions and expectations of respective roles, including the governance vs. operational focus, from both Council members (and to some extent, the TCF) and DRSL; how those roles have been resourced (including the level, experience and personal styles of the position-holders); and a clash of different cultures.

285. The different perceptions of the respective roles and relationships of the TDR Council and the DRSL have been discussed earlier at page 49. As a further illustration of the difference in perspectives, one Council industry representative commented:

“The whole point to this [Scheme and arrangement] was that [the Scheme Agent was] going to become independent at some point .... [T]hey were going to stand-alone, ... run their own business, it was going to be an independent disputes resolution service, [and] we would no longer be tied in and running it for them.”
286. Both parties are looking to the other to provide more strategic direction and leadership for the Scheme. On the one hand, at least some Council members see the Council as having a limited role and life span, and that the Scheme Agent would take over full responsibility for the Scheme. Therefore, they expect it should be demonstrating more ownership of and commitment to the Scheme. It is certainly not clear that everyone in the industry or on the Council shares this view, and is a point of clarification required.

287. On the other hand, the Scheme Agent is the service provider that is contracted to provide dispute resolution services to the industry, but that the Scheme is owned by the industry – it sets the rules, sets the fees, has the power to change them or not, and so on. The Scheme Agent has appointed what may be called a transactional manager to report to the Council, which reflects its view of the relationship as more a transaction in providing services rather than “owning” the Scheme. (Circumstances may have contributed to this situation through the previous relationship manager having to step aside.) The Council would prefer a leader or more strategic role to be in this position. One member commented that:

“This comes back to that understanding of each other’s worlds. I see the agent relationship manager being that bridge because they live in a world of ombudsmen [which is] almost academic and is very structured, [and] we are very bendy flexi, fast-moving, having to pay Peter with Paul’s money.”

288. Some discussion between the Council, TCF and Scheme Agent on the vision for the Scheme and the expectations for different roles appears to be needed and communicated to all the relevant stakeholders.

289. There is clearly a range of options available, with different advantages or implications. These may include:

- taking steps to improve/enhance the relationship, which might include
  - discussions between the Council, TCF and Scheme Agent to gain a shared understanding and agreement on the vision for the Scheme and the respective relationships desired/expected between the parties
  - capturing this understanding in a Memorandum of Understanding, and/or in amendments to the contract of engagement and/or Scheme TOR
  - more frequent/regular contact between the TDR Council Chairperson and senior executive(s) of DRSL
  - a change of personnel in representing DRSL at the Council (eg, the CEO to reflect more of a management-board reporting relationship)
  - facilitated discussions to resolve lingering issues between key executives from DRSL and the TDR Council
  - implementing the recommended changes in the structure, responsibilities and composition of the TDR Council may also have a positive impact

- pursue an alternative service delivery model – for example, the Scheme employing its own service staff, merging with another Scheme
• re-tendering the contract for a Scheme Agent when it’s due
• the TDR Council directly employing an Executive Officer role, to fulfil the management functions in lieu of DRSL and manage DRSL as the Scheme Agent/provider of dispute resolution services.

290. Any changes that involve replacing DRSL in the role of Scheme Agent risk higher costs being incurred, including establishment and ongoing costs; a loss of telecommunications industry dispute resolution skills and experience, and time to re-develop this with any change in provider; and no guarantee that similar issues will not re-surface.

291. It is noted that the EGCC scheme provides that the Commission must appoint a person to act as Secretary to the Commission. The appointment may be an employee of or party contracted to the Commission. The EGC Commission may vest in the Secretary any powers, duties and authorities it considers appropriate and the Secretary must accept all such powers, duties and authorities subject at all times to the control of the Commission. The Secretary must attend all annual and other meetings of the Commission but is not required to attend committee meetings unless he or she is a member of the committee. The Secretary may be heard on any matter.

Recommendations

292. It is recommended that:

• it be noted that the limitations identified in the Scheme’s TOR and Code have been addressed in previous recommendations
• a critical priority is to resolve the Scheme’s fee structure and basis for allocating the overhead operating cost of the Scheme to be more equitable and predictable for members
• the following principles be considered when reviewing the fee structure
  - establish a base, or membership fee to belong to the Scheme, with 3-4 bands or tiers for different-sized telcos
  - set a reasonable fee for the smallest telcos to be members of the scheme and receive 2-3 “free” Level 1 referrals to the scheme (subject to other changes) and scale this up to the fee paid by the larger telcos based on some rational criteria
  - ensure the total membership fee pool from members covers the large majority of the Scheme’s operating costs
  - consider incorporating the Level 1 service level into the fixed fee paid by scheme members to, or alternatively setting the fee for Level 1 at a level that is relatively commensurate with the cost of this aspect of the service (this assumes also that “non-relevant enquiries” are re-defined to include the referral of customers approaching the TDR as a first resort back to their companies)
– begin to build the disincentive element into fees for Levels 2, 3 and 4 (but see also recommendations around reducing the number of levels/process for conciliation/adjudication) to continue to promote resolution of disputes by scheme members

• it be noted that a different profile of Level 1 to 4 cases could develop due to changes in the fee structure, the Scheme’s TOR and/or the Code generating different behaviours, and that an agreed mechanism for adjusting the fees payable to DRSL is required should the caseloads that exceed expectations or budget tolerances

• a reconciliation process be undertaken to address and resolve tensions in the relationship between the Council and DRSL that impact on the effectiveness of the Scheme, with a view to gaining clarity, agreement and renewed commitment around the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations, for the current and ongoing relationship.
Summary of key issues and recommendations

293. The following summarises the key issues that have been identified under each of the benchmark principles, and the recommendations that have been made in respect of each area.

Accessibility

294. The key accessibility issues identified include

- non-membership of the Scheme by a substantial number of telcos
- low general public awareness
- the level and nature of promotion of TDR by the Scheme (via the Scheme Agent) and scheme members
- the reliance on internet access
- the re-alignment of jurisdictional limits with those of the Disputes Tribunal ($20,000) and maintenance of this benchmark
- extension of coverage to land complaints from owners or occupiers of land that may not be direct customers of a scheme member.

295. The recommendations for addressing these issues are that:

- both members and non-members of the Scheme (within and outside the TCF) be consulted over proposed changes to the Scheme and fee structure, with a particular emphasis for non-members on how proposals address the concerns/barriers they have identified
- the Scheme’s Code be changed to require that members who directly invoice consumers must include on their invoice advice at least quarterly that the member has a free internal complaints process at no extra charge, with relevant contact information and information about the existence, nature of, and contact details for the TDR Scheme
- the Scheme Agent be required to monitor compliance with this requirement, and also that members are fulfilling their responsibilities to inform customers of the existence of the Scheme when dealing with their complaints, using a variety of means (including, for example, mystery shopper surveys)
- the Scheme Agent continue to utilise opportunities for speaking to community groups and organisations, together with the Dispute Investigators Group and independently, including those that are non-mainstream groups (eg, ethnic councils or groups, church groups, budgeting services, etc)
• a suitable budget be approved for the increased promotional activity, with a specific action plan to be provided by DRSL (the action plan might be developed by a sub-committee of Council including DRSL, or co-opting industry representative’s resources for short-term assistance)

• the TDR Council approach Ministry of Consumer Affairs, in conjunction with other dispute resolution schemes, to encourage the Ministry to support general awareness-raising initiatives with funding

• jurisdictional financial limits be aligned with those of the Disputes Tribunal ($20,000 by agreement of the parties) and that this be maintained as the benchmark

• the scope of the Scheme be extended to cover land complaints (eg, non-compliance with any applicable statutory or code requirement, or failure to take reasonable steps to cause as little detriment, inconvenience and damage as reasonably practicable by a scheme member or agent working on their behalf/instruction) from owners or occupiers of land that may not be direct customers of a scheme member.

Independence

296. The key issues for the independence of the Scheme include:

• the establishment of the Scheme as an entity independent of the TCF is not currently a priority at this stage, given a need to address some key fundamental issues to improve the effectiveness of the Scheme, including attracting greater coverage of the industry; however, once changes are made and “bedded down”, this issue should be re-visited

• there are steps that can and should be taken to improve perceptions of independence short of structural separation to address the following:

  – the conflicts of interest that arise from having Council members that are involved in and responsible for their companies’ internal complaint handling processes and dealing with the Scheme Agent managing the dispute resolution process and decision-making

  – concerns that the consumer representative appointed to be the independent Chairperson is constrained in any debate and from expressing “the consumer perspective” by having to fulfil the chairperson’s role as facilitator and manager of the debate and meeting proceedings

  – the overlap between Council and TCF Board members, and the Administrator function

  – the lack of separation of operational and governance roles of Council members

  – greater clarity and understanding around what the governance role is, and the role of Council members in representing the interests of the Scheme, rather than the scheme member they have been appointed by
achieving a higher, more strategic focus on the Scheme at the level of the TDR Council.

297. The recommendations for addressing these issues are that:

- the Scheme not be established as an entity independent of the TCF at this stage, but that this be reviewed again in 12 months time with consideration to the progress (or lack of progress) in addressing issues identified in this review
- the structure of the Council be changed to become two consumer representatives and two industry representatives:
  - one consumer representative to be appointed by the Ministry of Consumer Affairs, and one by agreement between the NZ Consumers Institute and TUANZ, plus any other national consumer organisation deemed relevant
  - two industry representatives appointed by the TCF Board – one representative from a Tier One member and one representative of other members
- industry representatives be persons who are capable of understanding the viewpoints and concerns of consumers, and in whom consumers and consumer organisations can have confidence; persons in who scheme members can have confidence; and must have regard to the interests of all scheme members
- industry representatives be sufficiently removed from dealing directly with internal complaints for their company, and from dealing directly with the Scheme Agent in relation to a dispute that the Agent is managing for that representative’s company
- an independent chairperson be appointed to the Council (agreed by the consumer and industry representative members, in consultation with the TCF)
- where possible, TDR Council and TCF Board members should not overlap roles; if not possible (New Zealand is a small place), there should be clearly identified formal communication link between the TCF and TDR Council Chairperson
- the frequency of meetings of the TDR Council be reduced to once every 8-10 weeks (ie, 5-6 times pa) – although noting that they may be required to continue at current frequency to develop proposed changes to the Scheme.

298. The purpose of these changes is to address concerns about independence issues, and also to encourage the TDR Council to operate at a strategic governance level that is expected and desired.
Fairness

299. The key issues in relation to the fairness of the Scheme include:

- the (new) sampling procedure in customer satisfaction surveys may not adequately capture the views of customers that work through Levels 2 to 4 of the TDR, insufficient ability to distinguish between satisfaction of scheme members with different levels of TDR staff, and a concern about the appropriateness of asking scheme members about the cost effectiveness of the Scheme

- that the escalation process is at the discretion of the customer, with alternative views expressed regarding appropriateness of this

- exclusions on jurisdiction – whether these should include consideration of whether a “reasonable offer” has been made

- the implications of giving the Scheme Agent a more active decision-making role in respect of either one of the above issues

- the definition of non-relevant enquiry, and extending this to include complaints that have not been raised with a scheme member so that these are not logged as Level 1 disputes

- the impact of the time limits and processes for conciliation and adjudication on scheme efficiency and effectiveness, and principles of natural justice.

300. Recommendations for addressing these issues are that:

- the sampling procedure for surveys of customer satisfaction include over-sampling, or preferably surveying all customers proceeding to Levels 2, 3 or 4 (up to half the total sample) and reporting these results separately

- in the scheme member survey, the question regarding satisfaction with the cost-effectiveness of the Scheme be changed to ask about the Scheme’s effectiveness in resolving disputes

- in customer and scheme member surveys, reasons for a lack of satisfaction are explored (ie, when respondents are neither satisfied/agree nor dissatisfied/disagree, or are dissatisfied/disagree)

- the definition of non-relevant enquiry be extended to include “or relates to a complaint that has not yet been raised with the customer’s telecommunications provider” so that these are not logged as Level 1 disputes

- the Scheme Agent’s policy and practice with regard to vexatious, frivolous or trivial complaints be clearly communicated to scheme members, and that if members consider a complaint to be vexatious, frivolous or trivial appropriate evidence to that effect should be provided for the Scheme Agent to consider
the Scheme’s TOR be amended to provide that the Scheme Agent does not have the jurisdiction to consider a complaint if it appears to the Scheme Agent that on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint

it be noted that both the current TDR process (subject to changes to jurisdiction/scope of Level 1 disputes, and timeframes and processes for adjudication) and the TIO scheme process have integrity, and that issues relating to the customer escalation process and jurisdiction to exclude complaints where the Scheme Agent considers a “reasonable” offer has been made are not inherently unfair to customers or members

there be further debate with scheme members and non-members around the implications that moving to the TIO scheme’s process and a more active decision-making role for the Scheme Agent would have on the underlying philosophy of the Scheme, the operating cost implications (including a greater investigatory role by the Scheme Agent earlier in the process)

subject to any other changes to Levels 3 and 4 of the dispute resolution process, recommendations made in the Scheme Agent’s paper to the TDR Council’s 5 November 2009 meeting proposing Code amendments relating to Level 3 and Level 4 procedures in relation to the adjudication and conciliation processes, including access to information, be adopted; however, there should continue to be a limit on the time allowed for conciliation processes, which may be expressed as either a fixed (but extended) number of days, or provide the Scheme Agent to manage flexibly within the service level standards that have been established (the latter is preferred).

Accountability

The key issues for the accountability within the Scheme include:

- tensions in the relationship between the Council and DRSL
- a need for greater clarity and definition of the desired and expected role of and relationships between the Council and Council members, the Scheme Agent and (because it provides oversight and contracts with DRSL) the TCF.

Recommendations

Recommendations for addressing these issues are that:

- the TDR Scheme’s TOR be amended to permit the names of those scheme members which do not meet their obligations as members of the scheme (eg, do not provide information as and when requested, do not comply with a determination made under the scheme) to be published in the TDR annual report
- the Scheme Agent’s role in identifying systemic issues not be broadened to be more active in predicting issues that might arise in the future, at this stage
Review of the Telecommunications Dispute Resolution Scheme

- a reconciliation process is required that involves frank discussions around the issues raised in this review to gain clarity and agreement about the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations, for the current and ongoing relationship

- when considering the recommended changes to the composition of the Council, the TCF endeavour to appoint senior executive roles as industry representatives to provide a more strategic, governance perspective

- if the parties expect the relationship to be one of a governance board – management nature, DRLS’s reporting relationship to the Council should be the Chief Executive reporting as if to a governance board.

Efficiency

303. The key issues for efficiency of the Scheme include:

- the necessity or desirability for four sequential levels of dispute resolution

- the familiarity of conciliators and adjudicators with key codes of practice in the telecommunications industry that impact or have a bearing on causes for customer complaints, and telco responses.

304. Recommendations for addressing these issues are that:

- subject to the possibility of other changes being adopted (eg, the TIO process), where settlement is not achieved by the end of the Level 2 process, the Code is amended to provide for the TDR Manager to determine whether a conciliation or adjudication would be the most appropriate mechanism for resolving a dispute after consulting with the parties and in the assessment/recommendation of the investigating officer, and to refer the case appropriately

- if conciliation is the preferred mechanism and at the end of the conciliation process a settlement has not been achieved, the conciliator prepares and issues a determination in accordance with the adjudication process (subject to changes to the adjudication process suggested)

- the Scheme Agent continue with arrangements for conducting industry training for staff (including conciliators and adjudicators) with scheme members, and that the training include improving staff’s familiarity with key codes of practice in the telecommunications industry that impact or have a bearing on causes for customer complaints, and telco responses (if not already being addressed).
Effectiveness

305. The key issues relating to the effectiveness of the Scheme include:

- limitations in the Scheme’s TOR and Code:
  - the ability of customers to escalate complaints at their discretion
  - the jurisdiction for the Scheme Agent to decline to accept a complaint on the basis that there is no merit to it, or to decline to take a case further if a reasonable proposal is considered to have been made to settle a complaint (connected with complaint escalation)
  - the four dispute levels, and the requirement to pass through them sequentially
  - the time constraints and process for conciliation and adjudication
  - the potential limitation that claims must be for less than $12,000 and the impact of this particularly for small businesses covered by the Scheme
  - defining the roles of industry representatives as representing and to vote according to the views and interests of the scheme members they have been appointed to represent rather than the interests of the Scheme

- resolving the Scheme’s fee structure and basis for allocating the overhead cost of the Scheme to be more equitable and predictable for members

- the current state of the relationship between the TDR Council and DRSL, and the need for steps to be taken to clarify misconceptions and expectations around the respective roles and relationships.

306. Recommendations for addressing these issues are that:

- it be noted that the limitations identified in the Scheme’s TOR and Code have been addressed in previous recommendations

- a critical priority is to resolve the Scheme’s fee structure and basis for allocating the overhead operating cost of the Scheme to be more equitable and predictable for members

- the following principles be considered when reviewing the fee structure
  - establish a base, or membership fee to belong to the Scheme, with 3-4 bands or tiers for different-sized telcos
  - set a reasonable fee for the smallest telcos to be members of the scheme and receive 2-3 “free” Level 1 referrals to the scheme (subject to other changes) and scale this up to the fee paid by the larger telcos based on some rational criteria
  - ensure the total membership fee pool from members covers the large majority of the Scheme’s operating costs
– consider incorporating the Level 1 service level into the fixed fee paid by scheme members to, or alternatively setting the fee for Level 1 at a level that is relatively commensurate with the cost of this aspect of the service (this assumes also that “non-relevant enquiries” are re-defined to include the referral of customers approaching the TDR as a first resort back to their companies)

– begin to build the disincentive element into fees for Levels 2, 3 and 4 (but see also recommendations around reducing the number of levels/process for conciliation/adjudication) to continue to promote resolution of disputes by scheme members

• it be noted that a different profile of Level 1 to 4 cases could develop due to changes in the fee structure, the Scheme’s TOR and/or the Code generating different behaviours, and that an agreed mechanism for adjusting the fees payable to DRSL is required should the caseloads that exceed expectations or budget tolerances

• a reconciliation process be undertaken to address and resolve tensions in the relationship between the Council and DRSL that impact on the effectiveness of the Scheme, with a view to gaining clarity, agreement and renewed commitment around the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations, for the current and ongoing relationship.
Summary conclusions

307. The purpose of this review is to provide an independent view of the operation and effectiveness of the TDR scheme and whether the current model is sufficiently independent of the TCF. The four main questions for the review are:

- Is the Scheme meeting internationally recognised standards of best practice?
- Is the Scheme meeting the needs of New Zealanders and their telecommunications carriers with a demonstrably independent, effective and efficient resolution process for the resolution of disputes between carriers and their customers?
- Is there a need to establish the Scheme under an entity independent of the TCF?
- Are there alternative models that would better deliver the Scheme’s purpose?

Meeting best practice standards

308. The TDR Scheme goes some way towards meeting the best practice standards of dispute resolution schemes described in the Australian benchmarks but there are still some areas for improvement. These principally include:

- Accessibility – raising awareness of the Scheme with appropriate promotional activities by the Scheme and scheme members
- Independence – concerns around the independence of the governing bodies from the decision-maker, noting that while it is not currently considered a priority to establish the Scheme as a separate entity from the TCF, this should be re-visited once some of the key fundamental issues to improve the effectiveness and coverage of the Scheme have been addressed. However, there are some interim steps that can be taken to enhance aspects of independence in the meantime
- Fairness – the impact of the time limits and process for adjudication (in particular) on principles of natural justice.

Meeting the needs of New Zealanders and their telecommunications service providers

309. For those New Zealanders whose telecommunications service providers are members of the TDR Scheme, the Scheme appears to be meeting their needs for an effective and efficient resolution process for the resolution of disputes. Questions of independence are not perceived to be an issue for the general public and customers using the Scheme. These are more concerns identified
by consumer organisations and representatives who are experienced in the construct and operation of equivalent schemes.

310. The larger issue is the lack of coverage in the telecommunications industry, and the concern that just nine out of potentially more than 50 telecommunications service providers are members of the Scheme (albeit that the nine members cover an estimated 90% of eligible consumers). To this extent the Scheme is not currently meeting the needs of those consumers that have their services with non-member companies. The number of enquiries from customers of non-member companies doubled from 2008 to 2009.

311. From the perspective of telecommunications service providers, there are a number of concerns about issues that are not necessarily inconsistent with the Australian benchmarks of best practice, but do impact on their views of the efficiency and effectiveness of the Scheme. Their critical concerns are:

- the fee structure and basis for allocating the operating cost or overhead of the Scheme
- that the escalation process is at the discretion of the customer
- the jurisdiction of the Scheme Agent and a lack of ability to conclude whether a “reasonable offer” has been made in accepting a complaint
- that complaints raised with the TDR by customers as a “first resort” are logged as Level 1 complaints, when the process should be encouraging the customer to raise the issues with their telco in the first instance
- the need for four levels of dispute resolution, and the requirement to pass through them sequentially.

312. To some extent, it is considered that the fee structure issue is clouding perceptions around these issues. It is a consequence of the basis on which fees are allocated that jurisdictional issues become a major concern, with any Level 1 disputes attracting a proportionate share of that month’s overhead operating costs, which is particularly significant for smaller members when there are relatively low numbers of disputes. Customer escalation is particularly an issue because the customer has the discretion to escalate a dispute if they are not satisfied with a proposal to resolve it, which costs the company additional fees.

313. These issues – fee structure, customer escalation, jurisdiction – are also considered major barriers to companies joining and factors in scheme members leaving the Scheme, with the critical issue among these being the fee structure. If these can be addressed in a reasonable way, a number of non-members have indicated they are willing to join (re-join) the Scheme, which will enhance its effectiveness for consumers and existing scheme members alike.

314. A further critical issue affecting the effectiveness of the Scheme is the relationship between the TDR Council and the Scheme Agent, DRSL, and the different perceptions, understandings and expectations of their respective roles: the Council as a governance body; and DRSL’s status an independent provider contracted to provide the TDR Scheme service. To some extent, this may
be a result of the business model that has been established, but also reflects on the defined role of the Council and of representatives on it, different cultures and personal styles and experience of the representatives of both parties. The business model alone should not, however, be a barrier to having an effective, constructive and mutually satisfying relationship.

315. The impact of this relationship on the effectiveness of the Scheme includes, among other things, decisions on advancing and improving the Scheme being deferred or proposed changes not being implemented due to mistrust; openness of communications is compromised; the impact on the credibility of and the industry’s confidence in DRSL as the Scheme Agent; and proposals for change becoming contractual issues to be litigated. If the relationship breaks down completely, there is a risk that the Scheme Agent withdraws or the contract is terminated, losing the institutional knowledge and industry-specific experience of dispute resolution process and issues, and no assurance that any alternative provider will be more capable and proficient.

**Need to establish scheme as an entity independent of TCF**

316. As noted above, while there are some concerns around the independence of the structure of the Scheme, it is not currently considered a priority to establish the Scheme as a separate entity from the TCF. The industry needs to address a number of issues that affect the effectiveness of the Scheme, particularly in relations to extending the membership of the Scheme within the industry; making fundamental changes to the fee structure; and considering fundamental changes to the Scheme’s TOR.

317. It is considered that leadership from an entity such as the TCF, which has the role of facilitating co-operation among telecommunication carriers, and engagement from the industry will be required to achieve the changes. This will best be served if the TDR Scheme continues to be sponsored by the TCF. Once these issues have been addressed, and any changes are “bedded down”, the independence of the Scheme from the TCF should be revisited, and there are a number of models that represent desirable options.

318. If it appears that the TCF is unable to make headway on these issues, it is likely that the alternative option will be regulation, and making it mandatory for telecommunications service providers to be members of a dispute resolution scheme, which may or may not be the TDR. While there is the possibility that the TDR will be the “default” scheme, a feasible and potentially more likely alternative is that the Ministry of Consumer Affairs runs a similar process to that which it is running to select a dispute resolution scheme for Financial Service Providers.

319. However, there are some concerns that can and should be addressed within the current structural arrangements to improve perceptions of independence, and which move the TDR towards greater independence of the TCF while still being sponsored and supported by it.
Alternative models that would better deliver the Scheme’s purpose

320. Two alternative schemes have been considered in some detail as part of this review, the Electricity and Gas Complaints Commissioner scheme and the Australian Telecommunications Industry Ombudsman scheme. Also, guidelines published by the Ministry of Consumer Affairs for the establishment of a dispute resolution scheme for Financial Service Providers have been considered; these are likely to reflect the standards for a scheme that Government would want to see.

321. Considerable work has already been done to analyse and assess the impact of adopting much of the TIO scheme. This work continues to be valid. The processes, definitions and approaches used will address many of the issues and concerns identified by the industry. It is a “tried and true” scheme, having been established in 1993. DRSL concluded in its assessment and analysis of the TIO scheme that it is unlikely that there would be any detrimental effect on the integrity of the TDR scheme if the TIO’s processes were to be adopted.

322. It is noted, however, that the philosophical approach underpinning the TIO scheme is far different to that which underpins the TDR. In particular, the TIO plays an active decision-making role throughout the process, making judgements on the merits of both the member’s and customer’s positions when investigating and conciliating complaints. The TDR’s focus is to emphasise the parties reaching an agreed solution, thus leaving that control with the parties. A more substantial investigatory role is necessary for the TIO approach than is the case with TDR.

323. It is not considered appropriate to “pick and choose” the elements of the TIO approach that appeal to scheme members. The risk then would be to lose the integrity of a process and, if the changes made are too “one-sided”, lose credibility with consumer groups.

324. In terms of independence and governance models, the EGCC scheme structure has some merit (although it is not too dissimilar from the TIO). The EGC Council comprises all EGCC scheme members and is more or less equivalent to the TCF; the Board of the EGC Council is equivalent to the TCF Board; the EGC Commission is equivalent to the TDR Council; and the EGC Commissioner is equivalent to the Scheme Agent. The duties, powers and responsibilities of the EGC structure will differ from the TDR structure, and there is greater separation between the EGC Board and Commission responsibilities.

325. The structure of the Commission is two consumer and two industry representatives, plus an independent chairperson. Industry representatives are appointed by the EGC Board, but must be capable of understanding the viewpoints and concerns of consumers, and persons in whom consumers and consumer organisations can have confidence. In acting in their role as Commission Members, they must also have regard to the interests of all council members.

326. The size and structure of the EGC Commission is favoured over the TIO model due to there being relatively a few scheme members and companies in the telecommunications industry. The responsibility of the industry appointees for representing the interest of all scheme members is also a desirable feature. It is considered that a reduced size of the Council, and the requirement
that industry representatives represent all scheme members’ interests, will also encourage a more strategic, governance focus on the interests of the Scheme.

327. In summary, this report identifies a range of issues in relation to the terms of reference for this review, and a range of recommendations to address these (see Summary of key issues and recommendations). However, the key issues impacting on the Scheme’s operation and effectiveness (actual and perceived) are:

- the coverage of the telecommunications industry in terms of membership of the Scheme
- the fee structure and basis for allocating overhead
- concerns that customers have the ability to escalate issues though the dispute levels of the Scheme irrespective of the merits of their complaint
- a lack of jurisdiction for the Scheme Agent to exclude complaints to the TDR that have not been first raised with the customer’s provider or where a “reasonable” offer has been made by a company
- the necessity of having four sequential levels of dispute resolution
- a general lack of awareness of the Scheme
- issues to do with perceptions of independence, and the possibility for conflicts of interest
- tensions in the relationship between the TDR Council and DRSL, and the different perceptions and expectations of their respective roles.

328. The key recommendations to address these issues are that:

- both members and non-members of the Scheme (within and outside the TCF) be consulted over proposed changes to the Scheme and fee structure, with a particular emphasis for non-members on how proposals address the concerns they have identified
- the Scheme not be established as an entity independent of the TCF at this stage, but that this be reviewed again in 12 months time with consideration to the progress (or lack of progress) in addressing issues identified in this review
- the composition of the Council be changed to comprise two consumer representatives, two industry representatives and an independent chairperson
- the industry representatives appointed to the Council be persons who are capable of understanding the viewpoints and concerns of consumers, and in whom consumers and consumer organisations can have confidence; be persons in whom scheme members can have confidence; and are required to have regard to the interests of all scheme members
- industry representatives be sufficiently removed from dealing directly with internal complaints for their company, and from dealing directly with the Scheme Agent in relation to a dispute that the Agent is managing for that representative’s company
• the definition of non-relevant enquiry be extended to include “or relates to a complaint that has not yet been raised with the customer’s telecommunications provider” so that these are not logged as Level 1 disputes

• the Scheme’s TOR be amended to provide the Scheme Agent with the jurisdiction to decline to accept a complaint if it appears to the Scheme Agent on the basis of the facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint

• it be noted that both the current TDR process (subject to changes to jurisdiction/scope of Level 1 disputes, and timeframes and processes for adjudication) and the TIO scheme process have integrity, and that issues relating to the customer escalation process and jurisdiction to exclude complaints where the Scheme Agent considers a “reasonable” offer has been made are not inherently unfair to customers or members

• there be further debate with scheme members and non-members around the implications that moving to the TIO scheme’s process and a more active decision-making role for the Scheme Agent would have on the underlying philosophy of the Scheme, and the operating cost implications (including a greater investigatory role by the Scheme Agent earlier in the process)

• subject to other changes being adopted (eg, the TIO process), where settlement is not achieved by the end of the Level 2 process, the Code be amended to provide for the TDR Manager to determine whether a conciliation or adjudication would be the most appropriate mechanism for resolving a dispute after consulting with the parties and in the assessment/recommendation of the investigating officer, and to refer the case appropriately

• if conciliation is the preferred mechanism and at the end of the conciliation process a settlement has not been achieved, the conciliator be empowered to prepare and issue a determination in accordance with the adjudication process (subject to changes to the adjudication process suggested)

• a critical priority is to resolve the Scheme’s fee structure and basis for allocating the overhead operating cost of the Scheme to be more equitable and predictable for members (a number of principles have been proposed for consideration when reviewing the fee structure)

• it be noted that a different profile of Level 1 to 4 cases could develop due to changes in the fee structure, the Scheme’s TOR and/or the Code generating different behaviours; therefore, an agreed mechanism is required to address different impacts (eg, outside agreed tolerances) on the Scheme Agent’s cost structure and revenue streams

• a reconciliation process is required that involves frank discussions around the issues raised in this review to gain clarity and agreement about the respective roles of the Council, Scheme Agent (DRLS) and the TCF, and the parties’ respective expectations for the current and ongoing relationship.
Appendices

Appendix A: Terms of Reference for Review

Terms of Reference for an Independent Review of the Telecommunications Dispute Resolution Scheme

Introduction

The Telecommunications Dispute Resolution Scheme (TDR) was established in November 2007. Its purpose, as defined in its terms of reference, is to:

- encourage scheme members to resolve customer complaints effectively themselves;
- provide prompt, independent resolution of disputes, having regard to the code and the service it sets out, as well as relevant legal requirements; and
- educate the industry about systemic issues arising from disputes and determinations.

The scheme is governed by a council of eight members, four representing the interests of industry and four that of end-users. The chair is elected from the end-user council members. The council’s role is to provide independence and ensure industry and public confidence in the scheme.

The council oversees the operation of all aspects of the TDR, except the overall level of funding and the TDR review, which for the first two years must be approved by the Telecommunications Carriers’ Forum (TCF).

The operation of the scheme is contracted to an independent Scheme Agent. The agent’s prime responsibility is to investigate valid disputes in accordance with the Customer Complaints Code. The present scheme agent is Dispute Resolution Services Ltd, a subsidiary trading company owned by ACC.

The TCF sponsors the scheme. It is an incorporated society established as a requirement of Telecommunications Act 2001. The TCF’s role is to facilitate co-operation among telecommunication carriers to provide efficient services for the benefit of New Zealand consumers.

The scheme is similar to other industry/consumer self-regulatory dispute resolution systems. However, it differs from other New Zealand schemes in that there is not an ombudsman or commissioner. The scheme agent is a surrogate for the role. A significant difference between an ombudsman scheme and TDR is the autonomy given to telecommunication consumers to drive complaints through the escalation path.
The review
Under clause 6.1(o) of the scheme’s terms of reference the Council must:

*Instigate a review of the Scheme two years from the date of implementation, with a view to the Scheme being established under an entity independent of the TCF.*

While a test of the desirability of independence from the TCF is the primary objective of the prescribed review, the TDR council and the TCF have agreed that a wider view of the scheme’s operation and effectiveness is necessary if the answer to the independence question is to be firmly founded.

It has been decided that the scheme should be measured against the six benchmarks established in 1997 by the Australian Department of Industry Science and Tourism in its publication, “Benchmarks for Industry-Based Customer Dispute Resolution Schemes”. These benchmarks are Australasian industry best practice and were used as the guiding principles in the development of the TDR.

They cover:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness

While the review should be as comprehensive as possible, there are some elements of the scheme that may not need to be reviewed in depth, and also some that may need particular attention.

Overall, the four main questions for the reviewer are:

- Is the scheme meeting internationally recognized standards of best practice?
- Is the scheme meeting the needs of New Zealanders and their telecommunications carriers with a demonstrably independent, effective and efficient resolution process for the resolution of disputes between carriers and their customers?
- Is there a need to establish the scheme under an entity independent of the TCF?
- Are there alternative models that would better deliver the scheme’s purpose?
Application of the benchmarks

1. Accessibility

Is the TDR scheme sufficiently accessible to those who may need its services? In particular:

- Are publicity materials and promotional activities undertaken by the scheme adequate and appropriate?

- Are the publicity and promotional activities undertaken by the scheme members adequate and appropriate?

- Is the scheme known and understood at all customer contact points and by managers of customer contact staff in participating telecommunication companies?

- Is the scheme known and understood by consumer advisory agencies such as community organizations, legal professional, relevant government agencies and the like?

- Is the scheme accessible to and easy to use for consumers regardless of their location, resources (intellectual and material), literacy, language skills, health state and other personal circumstances?

- Does it cover all telecommunication services which may give rise to a consumer complaint?

2. Independence

The question of independence needs to be addressed beyond the direct relationship between the TDR and the TCF.

- Is the existing structure of the scheme sufficient to ensure both the independence of the TDR and public perception of independence?

- If not what changes should be made and if so, what can be done to enhance the perceptions of independence?

- Is there sufficient separation of operational and governance roles of industry council members?

- Is the composition of the council, its structure and its responsibilities effective?
3. Fairness

Fairness is a key attribute for both consumers and industry participants. Customer research supports a general acceptance of fairness by consumers. However, some scheme members are expressing concern about fairness of processes.

- Are surveys conducted to establish consumer and scheme members’ views on fairness comprehensive enough?
- If not what more should be done?
- Are the terms of reference and the rules of the customer complaints code fair and effective? In particular, are the complaint escalation steps equitable to both consumer and scheme member?

4. Accountability

Does the scheme through its terms of reference, policies and practices provide adequate accountability by its constituent parts (TCF, TDR, scheme participants and scheme agent) to each other and by so doing to users of the scheme? In particular:

- Does the monthly operational and financial reporting by the scheme agent provide appropriate information to allow the TDR to monitor the scheme and make policy decisions?
- Should the requirement for the scheme agent to identify systemic issues be broadened to make the reporting process more active in predicting issues that might arise in the future?
- Is the TDR council providing the scheme agent with an appropriate level of support and feedback?
- Is the scheme sufficiently accountable to participants’ customers?

5. Efficiency

Is the scheme efficient in its structure and does it provide an efficient service to consumers? In particular:

- Is the organizational structure of the scheme agent efficient in view of the fluctuating nature of the caseload?
- Are staff appropriately qualified and trained for their roles?
- Is the budgeting and financial reporting providing the correct detail to allow for the efficient operation of the scheme?
- Are the customer complaint code’s processes delivering efficient and timely resolution of customer complaints?
6. Effectiveness

There are two measures of effectiveness to be reviewed. The first is the service that is offered by the scheme agent to customers of participant companies, and the second is the rapport between the three-way relationship of the TDR council, the industry and the scheme agent. In particular:

- Are the current limitations imposed by the scheme’s terms of reference and the customer complaints code still appropriate or do they require amendment to make the scheme more effective?
- Is the measurement of user satisfaction sufficiently robust to give a true indication of the effectiveness of the scheme to individual complainants?
- Is the scheme’s fee structure a deterrent to companies joining the scheme or others electing to leave? If so, what opportunities are there to revise the fee structure to better reflect the value of the scheme to telecommunication carriers?
- Should greater emphasis be placed on encouraging companies to develop good complaints handling practices?
- Is the relationship between the TDR council and the scheme agent affecting the effectiveness of the scheme?

The review process

It is expected that the reviewer will consider:

- Investigation files
- Council meeting minutes
- Administration files
- Scheme agent reports to the TDR council
- Internal policy and process documents
- Publicity and information material
- Complainant survey reports
- Constitutions, structures and processes of similar dispute resolution schemes.

It is also expected that the reviewer will consult with the following people and organizations. In the interests of efficiency and timeliness, discussion groups may assist the review:

- Scheme agent including staff
- TCF board
- Scheme participants
- Companies who are not members or have resigned from membership
- Relevant government departments and agencies.
- Consumer and special interest groups
- Similar industry/consumer dispute resolution schemes in NZ and overseas.
It is expected that the reviewer will report on the criteria set out above and in doing so will:

- Critically analyse issues raised by those consulted during the review process
- Test assertions made by those consulted by seeking reasoning and supporting evidence
- Provide a balanced analysis of the key issues identified during the review
- Make recommendations that are in keeping with the fundamental nature of an industry/consumer dispute resolution scheme
- Supply a record of issues raised that were not covered by the criteria set out in these terms of reference

The review will commence early in the New Year (2010). A draft report will be discussed with the TDR council in early March 2010. A final report will be presented on 31 March 2010.

David Russell
16 Sept 2009

Revised scope

It is noted that, in the first round of responses to the Request for Tender, proposals did not meet the budget available, and that a request for revised proposals was made. In response it was recognised that, to remain within the budget available, elements of the work asked for in the Terms of Reference would have to be reduced in scope while still providing an answer to the fundamental reason for the review, namely, to test the possibility of the TDR scheme gaining its independence from the TCF.

PS... Services’ revised proposal noted that its focus would shift to emphasise performance against the benchmarks as these may relate to questions of independence of the scheme. A review of investigation files was not conducted, and the number of comparable schemes considered was reduced.
## Appendix B: Assessment Framework

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<th>Application of benchmarks</th>
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<td>Consumer groups, reps</td>
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<td>Government agencies</td>
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<tr>
<td>1. Accessibility</td>
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<tr>
<td>• Are publicity materials and promotional activities undertaken by the scheme adequate and appropriate?</td>
<td>✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓</td>
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<tr>
<td>• Are the publicity and promotional activities undertaken by the scheme members adequate and appropriate?</td>
<td>✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓</td>
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<td>• Is the scheme known and understood by consumer advisory agencies such as community organizations, legal professional, relevant government agencies and the like?</td>
<td>✓ ✓ ✓</td>
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<tr>
<td>• Is the scheme accessible to and easy to use for consumers regardless of their location, resources (intellectual and material), literacy, language skills, health state and other personal circumstances?</td>
<td>✓ ✓ ✓</td>
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<tr>
<td>• Does it cover all telecommunication services which may give rise to a consumer complaint?</td>
<td>✓ ✓ ✓ ✓ ✓ ✓ ✓</td>
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<td>2. Independence</td>
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<td>• Is the existing structure of the scheme sufficient to ensure both the independence of the TDR and public perception of independence?</td>
<td>✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓</td>
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<td>• Is there sufficient separation of operational and governance roles of industry council members?</td>
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<td>• Is the composition of the council, its structure and its responsibilities effective?</td>
<td>✓ ✓ ✓</td>
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<td>3. Fairness</td>
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<td>• Are surveys conducted to establish consumer and scheme members’ views on fairness comprehensive enough?</td>
<td>✓ ✓ ✓</td>
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### Application of benchmarks

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<th>Sources of information</th>
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<tr>
<td>Are the terms of reference and the rules of the customer complaints code fair and effective?</td>
<td>✓</td>
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### 4. Accountability

- Does the scheme through its terms of reference, policies and practices provide adequate accountability by its constituent parts (TCF, TDR, scheme participants and scheme agent) to each other and by so doing to users of the scheme?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Does the monthly operational and financial reporting by the scheme agent provide appropriate information to allow the TDR to monitor the scheme and make policy decisions?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Should the requirement for the scheme agent to identify systemic issues be broadened to make the reporting process more active in predicting issues that might arise in the future?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Is the TDR council providing the scheme agent with an appropriate level of support and feedback?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Is the scheme sufficiently accountable to participants’ customers?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓

### 5. Efficiency

- Is the scheme efficient in its structure and does it provide an efficient service to consumers?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Is the organizational structure of the scheme agent efficient in view of the fluctuating nature of the caseload?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Are staff appropriately qualified and trained for their roles?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Is the budgeting and financial reporting providing the correct detail to allow for the efficient operation of the scheme?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
- Are the customer complaint code’s processes delivering efficient and timely resolution of customer complaints?  
  - ✓ ✓ ✓ ✓ ✓ ✓ ✓
## Application of benchmarks

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<th>6. Effectiveness</th>
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<td>Governing body (TOG)</td>
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<td>Are the current limitations imposed by the scheme’s terms of reference and the customer complaints code still appropriate or do they require amendment to make the scheme more effective?</td>
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<tr>
<td>Should greater emphasis be placed on encouraging companies to develop good complaints handling practices?</td>
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<td>Is the relationship between the TDR council and the scheme agent affecting the effectiveness of the scheme?</td>
<td>✓</td>
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## 7. General

<table>
<thead>
<tr>
<th>General</th>
<th>Sources of information</th>
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<tr>
<td></td>
<td>Governing body (TOG)</td>
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<td>Governing body (TDR Council)</td>
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<td></td>
<td>Constitutional documents</td>
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<td>Administrative documents, websites</td>
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<td></td>
<td>Scheme agent staff</td>
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<tr>
<td></td>
<td>Scheme members</td>
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<td></td>
<td>Scheme non-members</td>
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<td>Consumer groups, reps</td>
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<tr>
<td></td>
<td>Government agencies</td>
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<tr>
<td>What are the reasons for/advantages of joining the TDR scheme?</td>
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<tr>
<td>What are the barriers to joining/reasons for leaving the scheme?</td>
<td>✓</td>
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</table>
Appendix C: Key informants interviewed

PS... Services thanks the following stakeholders and interested parties for their participation in and contribution to this review.

<table>
<thead>
<tr>
<th>Name</th>
<th>Company/Organisation</th>
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<tbody>
<tr>
<td><strong>TDR Council members</strong></td>
<td></td>
</tr>
<tr>
<td>David Russell</td>
<td>Chairperson</td>
</tr>
<tr>
<td>Bill Bevan</td>
<td>Whitireia Community Law Centre</td>
</tr>
<tr>
<td>Ernie Newman</td>
<td>TUANZ</td>
</tr>
<tr>
<td>Shelley Dew-Hopkins</td>
<td>Consumer advocate</td>
</tr>
<tr>
<td>Tanja Jujnovich</td>
<td>Vodafone</td>
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<tr>
<td>Toni Rasmussen</td>
<td>TelstraClear</td>
</tr>
<tr>
<td>Tania Shackleton</td>
<td>Telecom</td>
</tr>
<tr>
<td>Susie Stone</td>
<td>Kordia</td>
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<tr>
<td><strong>TDR Scheme Members</strong></td>
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</tr>
<tr>
<td>Daniel</td>
<td>Airnet NZ Ltd</td>
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<tr>
<td>Andrew Cushen</td>
<td>Vodafone</td>
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<td>Dennis Gheerkins</td>
<td>Communitel</td>
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<tr>
<td>Blair Stewart</td>
<td>Digital Island</td>
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<tr>
<td>Steven Kho</td>
<td>Snap Internet</td>
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<tr>
<td>Brett Dennerly</td>
<td>TNZ</td>
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<tr>
<td><strong>Scheme agent – Dispute Resolution Services Ltd</strong></td>
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<tr>
<td>Neil McKellar</td>
<td>Chief Executive</td>
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<tr>
<td>Derek Pullen</td>
<td>TDR Manager</td>
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<tr>
<td>Anne Scragg</td>
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<tr>
<td>Paul King</td>
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<tr>
<td><strong>Telecommunications Carriers’ Forum</strong></td>
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<tr>
<td>Susan Wells</td>
<td>TCF &amp; TDR Administrator</td>
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<tr>
<td>David Stone</td>
<td>Chief Executive</td>
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<td></td>
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<td><strong>Consumer interest groups</strong></td>
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<tr>
<td>Sue Chetwin</td>
<td>Consumer NZ</td>
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<tr>
<td>Kerry Dalton/Louise May (written advice)</td>
<td>NZ Association of Citizens Advice Bureaux</td>
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<tr>
<td>Pat Hanley</td>
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<tr>
<td><strong>Government</strong></td>
<td></td>
</tr>
<tr>
<td>James Ryan &amp; Evelyn Cole</td>
<td>Ministry of Consumer Affairs</td>
</tr>
<tr>
<td>Name</td>
<td>Company/Organisation</td>
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<tr>
<td><strong>Non-Members</strong></td>
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</tr>
<tr>
<td>Paul Clarkin (&amp; Kevin and Marcia)</td>
<td>WorldxChange</td>
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<tr>
<td>Graham Walmsley &amp; Kathryn Adams</td>
<td>CallPlus</td>
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<td>Richard Fry</td>
<td>Woosh Wireless</td>
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<td>Mark Frater</td>
<td>Compass Communications</td>
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<td>Tony Baird &amp; Henry Mascarena</td>
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<td>David Ware</td>
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<td>Jamie Cairns</td>
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