

13 April 2023

Submitted via: submissions@tcf.org.nz

TDRS Review
Telecommunications Forum Inc
Auckland

Re: Review of the Telecommunications Dispute Resolution Scheme Public Consultation

Access to essential services necessary for the health, wellbeing and social participation of whānau in Aotearoa should be guaranteed. An effective mechanism is needed for accessing a fair outcome where relevant telecommunications services would instead put a whānau at risk of hardship.

FinCap welcomes the opportunity to comment on the Telecommunications Dispute Resolution Limited (TDRL) Overview, TDRL Constitution, TDRL Terms of Reference and Telecommunications Forum (TCF) Customer Care Code as part of the Telecommunications Dispute Resolution Scheme Public Consultation. Financial mentors too often report issues with contacting whānau they are helping due to insufficient funds to keep phones connected, harmful debt collection originating from telco debt or irresponsible lending towards accessing a mobile phone.

While telecommunications services are not homogenous, some form of them is increasingly an essential service for whānau in Aotearoa. We support further development of the Telecommunications Dispute Resolution Service to ensure accessible and independent dispute resolution is available when needed.

However, the proposed Customer Care Code needs to be expanded and adjusted. Doing so could give us more confidence that, when needed, whānau and their financial mentor will have a clear pathway away facing hardship due to going without essential telecommunications service or incurring avoidable debt that can spiral from such services.

We expand on these comments further in our submission below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 190 local, free financial mentoring services across Aotearoa. These services support more than 70,000 people in financial hardship annually. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

General comments on drafted documents

Currently the telecommunications sector lags behind other commercially provided essential services such as the energy sector and lending sector in the assistance it consistently offers whānau who are having difficulty paying. This reform to meet the recommendations of the Commerce Commission's review is an opportunity to improve on this much more than currently proposed.

Financial mentors often report having issues contacting telecommunications providers to confirm a debt is legitimately owed, let alone having any confidence in fair assistance being offered to a whānau who simply are unable to pay. We also hear of irresponsible lending in the industry, particularly in the way mobile phones are sold,¹ as well as the industry being the source of unaffordable debt that leads to debt collectors causing harm in the community.²

The following recommended changes to each proposed document are an opportunity to address these issues. We also would also welcome the TCF convening a forum between telco providers, relevant regulators and consumer groups to explore how debt issues are consistently addressed as a matter of retail service quality.

Proposed TDRL Constitution

- If not stated otherwise on top of the objective of ‘recovering costs’ at 6.1 we’d recommend that levies are set in a way that discourages non-compliance with industry standards or other unfair actions from members that lead to complaints.
- FinCap would welcome being involved in the appointment of ‘A directors’ alongside the other community focused organisations mentioned at 9.3 in the Proposed TDRL Constitution. We believe this will be for the benefit of the TDRL as we bring a perspective focused on the experiences of whānau with challenges to their financial wellbeing.

Proposed TDRL Terms of reference

- At 3.1 we recommend that an additional primary purpose of the TDRL should be to identify and seek to prevent ongoing or emerging systemic issues in the telecommunications industry that are causing harm to whānau.
- If not addressed otherwise the principle of transparency proposed at 3.2 (c) should eventuate in regular public reporting of complaints against each member relative to their market share, the outcomes of those complaints as well as systemic issues identified by the organisation and what has been done towards resolving such systemic issues.
- We are concerned that whānau might be left with no avenue to resolve legacy issues if a telco provider exits the scheme 60 working days after not providing telecommunications services. We have seen examples of telecommunications debts still being pursued that originate towards the end of this centuries’ first decade and other debts going back as far as a purchase in 1997. Whānau should not be left exposed without access to effective independent dispute resolution, especially where they are experiencing vulnerability.

In addition, at 4.9, the drafted requirement of notification that a member is leaving the scheme of 20 working days’ notice and this just being on their website, will be very unlikely to reach those who need to know this the most. These requirements need reconsideration with good outcomes for whānau facing vulnerability in mind.

- 5.3 should increase the likelihood that those who most need independent dispute resolution are aware of the option. We recommend also specifically requiring members to ensure all public facing staff receive training on vulnerability, how to identify and properly refer a dispute or complaint where someone may not be saying the ‘magic words.’ It should also more explicitly require promotion of the scheme at all ‘touch points.’
- The list at 9.1 should also include instructions for the scheme agent to identify emerging or ongoing systemic issues or breaches and report these to relevant regulators. Breaches of the

¹See our commentary on pages 2 and 3 here: <https://www.fincap.org.nz/wp-content/uploads/2021/12/211215-SUB-MB-BNPL-lending.pdf>

²See p.8: <https://www.fincap.org.nz/wp-content/uploads/2021/09/Debt-collection-in-Aotearoa-from-the-perspective-report.pdf>

Customer Code should go to the team responsible for monitoring retail service quality at the Commerce Commission.

- The list at 9.1(e) should also instruct the scheme agent to convene a community feedback panel for finding what likely systemic issues are not making it to dispute resolution and how this is best resolved. FinCap is a member of such a group at the Banking Ombudsman Scheme who have fed back they value the insights they receive which they would not be aware of and act on otherwise.
- We are aware that other dispute resolution providers in Aotearoa have specific policies on fast tracking complaints or providing extra service in order to prevent hardship compounding or improve accessibility for potential complainants who are experiencing vulnerability. We therefore recommend that needing to consider the circumstances of a complainant who is facing hardship or vulnerability when actioning fairness should also be noted at 19.2.
- At 21.2 we are unsure whether the list would enable the Scheme Agent to award a payment for non-financial loss. We would welcome there being a clear signalling that this is within the powers of the Scheme Agent. We do so because the flow on impact of issues of access or hardship in relation to essential telecommunications services, whether from subsequent financial issues with a third party, or significant detriment to health or mental health could be mitigated in part by appropriate compensation from the Scheme Member at fault.
- If not addressed elsewhere we recommend additional requirements at 22 or elsewhere for the Scheme Agent to take holistic consideration of a whole issue and work alongside other relevant schemes where the dispute relates to bundled services. We are increasingly seeing telco services bundled with electricity or tied up in consumer finance or debt collection issues. We've also been told that some dispute resolution schemes are looking at memorandums of understanding with other schemes at least in part to better enable fair outcomes across complex disputes.
- We strongly support that the Provider make prompt payment to the Complainant where a third party is liable and then pursue the third party at 23.4.
- After reading 24 we again recommend that systemic issues and breaches still be able to be reported to the relevant regulator by the Scheme or a Complainant and that drafting here should not prevent this.
- 25.2 allows the Scheme Agent to refer an unfair contract term to the Commerce Commission after the Scheme Member has not amended it for 40 working days. Instead, we recommend the Commerce Commission immediately be notified of the unfair contract term when it is identified and then receive regular reporting on any further steps taken. The Commerce Commission is the appropriate regulator who should have visibility as soon as possible of any potential systemic issue.
- Schedule 4,3. excludes complaints about network coverage. However, we are concerned this might mean a whānau has no access to dispute a misleading claim about network coverage and recommend it clearly be stated that such complaints relevant to Fair Trading Act requirements not be excluded.
- Schedule 4,5. excludes complaints about issues already in courts. We recommend instead that the Scheme Members be required to pause any legal action or not commence legal action while a complainant has the ability to have access to justice through the scheme. Financial Services Complaints Limited has such a requirement,³ as do some utilities focused overseas schemes that FinCap is aware of.
- Schedule 4,9(b). excludes complaints where a Complainant has not responded to a resolution offered by a Scheme Member for six weeks. We encourage there to be a caveat on this exclusion allowing the scheme to waive this where it is likely the complainant was facing vulnerability or hardship. This exclusion also seems at odds with a Commerce Commission recommendation.

³ See para 57: <https://fsc.org.nz/wp-content/uploads/2022/08/FSCL-Terms-of-Reference-1-March-2022.pdf>

- As above we recommended in relation to 21.2 that there should be ability for claims for compensation to be in scope and we recommend Schedule 4,10. Is deleted.
- We recommend that Schedule 4,12. instead align with the statute of limitations and allow 6 rather than 3 years for a complainant to raise a complaint from when they first become aware of the matter.
- Otherwise, if not covered in the proposed Terms of Reference we also recommend it is clearly stated that the Scheme limit the time a Scheme Member has to resolve an issue to 3 days before an investigation is opened by the Scheme or immediately where it relates to escalating hardship or disconnection. Deadlock should also be assumed where a Scheme Member has not responded or has repeatedly refused to change their position. If disconnected from essential telecommunications services a whānau may only have one opportunity to connect and make a complaint and will be up against increasingly challenging circumstances. So too if they are experiencing escalating hardship. We have also had many reports from financial mentors of access to justice through dispute resolution schemes in Aotearoa being blocked by businesses either refusing to respond, acknowledge issues or acknowledge deadlock.
- We also have not spotted any drafting that would require the Scheme Provider to provide an early assistance mechanism as is best practice for access amongst dispute resolution schemes in Aotearoa. We recommend this explicitly be required.

Proposed TCF Customer Care Code

- We are keen to clarify if 7.4 means complaints about products like handsets and modems that are rented or sold are excluded from complaints? If so, we recommend these are instead in scope. Financial mentors have reported issues with irresponsible lending in the provision of phones for deferred repayment, bundled with ongoing services and sometimes insurances with high exit fees. We also recommend generally that somewhere in this code requires Scheme Members to make sufficient attempts to sell products and services that are fit for purpose.
- We assume the exclusion of 'identification and registration of Vulnerable End Users' at 7.5 is there to not duplicate a separate code and recommend such code is sign posted if so or that this exclusion be removed otherwise.
- As the provision of some of the products and services covered by the code are essential telecommunications services, we recommend that the code is instead made into a 'consumer care code' and scheme members instead be required to develop and publish a 'consumer care policy' under the drafting at 8 as well as updates to all other drafting accordingly.

While a customer has a direct billing relationship, the actions of Scheme Members can also cause significant harm to consumers such as the customer's dependents or partners also relying on the essential telecommunications service. The Electricity Authority has very deliberately extended protections to consumers not just customers in their Consumer Care Guidelines⁴ for such reasons and we strongly recommend this code follows suit.

- In general, the Minimum standards of practice under 10 in the proposed code are too high level. As a result, it would give a whānau working with a financial mentor less confidence that making a complaint about completely unfair conduct is low risk and worthwhile. We generally recommend firmer principles in the code that outline expected outcomes and prescription where necessary to give clear expectations of what should be happening and when.

⁴ See 7.c. here: <https://www.ea.govt.nz/documents/2093/Consumer-Care-Guidelines.pdf>

- At 10.2.3 we would welcome 'such as a financial mentor' being added as is the case in the responsible lending code.⁵ Financial mentors often report difficulty in working constructively as they are not being appropriately recognised by a telecommunications provider.
- As previously discussed, we recommend that the requirement at 10.2.5 be expanded to include a requirement that providers make sufficient attempts to sell products and services that are fit for purpose.
- Relevant to 10.2.12 is some financial mentors reporting whānau they work with encountering price discrimination due to past issues with debt impacting their credit score. We welcome credit checking processes being transparent but encourage the code to go further along the lines of recommendations in 24 and 25 of the Electricity Authority's Consumer Care Guidelines.⁶
- We also recommend that what is required in the disclosed credit management policy and processes at 10.2.13 and actions in response to payment difficulty at 10.2.15 be greatly expanded so that the proposed 'care code' better resembles conventions around what 'care' guidelines or codes involve in other industries.

For instance, the following is a list of better practice payment difficulty assistance practices that show evidence of actually helping people facing challenged access to essential services:

- That there are as few barriers as possible to accessing assistance and anyone disclosing payment difficulty is believed rather than evidence being required for assistance.
- That providers must proactively reach out and offer the support available when there are signs that whānau may be facing payment difficulty (either through struggling to make payment or struggling to make payment on time)
- That providers' staff receive appropriate training on identifying and respectfully assisting people experiencing, family violence, hardship and/or vulnerability.
- To have a specific family harm policy
- That all whānau have the right to access payment plans that are flexible to their unique situation including a right to be offered a complete pause for any payment recovery where there is simply no capacity to pay.
- That whānau facing payment difficulty are continuously helped despite previous repayment plans not being met and being unsuccessful.
- That late payment charges are always waived where any consumer in the home has a community services card.
- That late payment charges are otherwise waived where payment difficulty or financial hardship is disclosed by any consumer in their home or by their representative (such as a financial mentor).
- Referrals are made to Work and Income for relevant assistance where appropriate.
- That all whānau who are facing payment difficulty be offered a referral to community supports (including financial mentors) but this is not a conditional requirement nor a barrier before receiving assistance.
- That no whānau receiving assistance due to payment difficulty have services disconnected and that disconnection is not the default where a whānau is having trouble keeping up engagement with their provider.
- That whānau in payment difficulty are offered support to identify whether there are opportunities to change to an appropriate lower cost service without penalty.

⁵ See 2.9 here: <https://www.mbie.govt.nz/dmsdocument/26304-responsible-lending-code-april-2023#:~:text=The%20Regulations%20provide%20detailed%20obligations,is%20prescribed%20in%20the%20Regulations.>

⁶ See 24-25 here: <https://www.ea.govt.nz/documents/2093/Consumer-Care-Guidelines.pdf>

- That any fee charged is reasonable and justified.
- The above comments on 10.2.13 and 10.2.15 are also relevant to 10.2.14 and 10.2.16. While we understand there is a separate code for disconnection, it is noted as voluntary where this code is proposed as mandatory. That code also provides very limited protection for people who will be significantly harmed for simply being unable to pay.
- We also recommend 13 be expanded to require all public facing staff to have training on how to identify a potential complaint or dispute despite the consumer or customer in contact not having used the 'magic words' so that records are more likely to be accurate.

A complaints dashboard like that established by the Banking Ombudsman Scheme could also be of great benefit in building trust in the industry and incentivising improved outcomes. If so, a requirement to report complaints here might be needed.

- As with other schemes we recommend the expansion of the requirement at 14.2 so that it clearly requires a pause on collections processes while a complaint is open, especially if that complaint relates in any way to payment difficulty.

Responses to consultation questions

Is there consistency across the documentation?

Please see our above recommendations, especially in relation to there being a 'consumer care code' rather than a 'customer care code.'

Have the changes made to the documentation met the recommendations made by the Commission?

We note key Commerce Commission recommendations include 'at a minimum' and generally recommend the TCF and their members do go further to greatly improve outcomes for whānau, especially those facing payment difficulty. Some specific points FinCap makes relevant to the list of Commerce Commission Recommendations⁷ are as follows:

- Recommendation R3b recommends minimising the number of exclusions preventing consumers utilising the scheme. We have made recommendations above in relation to the schedule of exclusions.
- Recommendation R5 recommends increased disclosure by providers of access to the scheme. Please see our recommendations above about strengthening requirements to do so.
- Recommendation R6 is effectively copied in proposed drafting of the Terms of Reference. Please see our above comment recommending a community insights group for the scheme.
- Recommendation R7 recommends outreach initiatives and we have not spotted drafting which would require the scheme to employ a community engagement specialist. This is better practice and more likely to achieve the outcome the Commerce Commission recommendation is seeking.
- Recommendations R11 and R12 point to more explicit work on systemic issues. We have made numerous recommendations towards this in our comments above.
- Please see our above comments in relation to opening investigations and proactively recognising deadlock as relevant to Recommendations R13 and R14.
- It is unclear whether aspects of Recommendation R16 will be achieved from the consultation documents.
- Please see our above comments on pausing collections and court action in the context of Recommendation R17.
- R24 recommends that complainants have more than the six-week limit to consider an offer of a resolution before a complaint is closed, but the six-week limit appears to remain in Schedule 4,9(b) of the Terms of Reference as we've made a recommendation on above.

⁷https://comcom.govt.nz/data/assets/pdf_file/0020/270083/Report-to-the-New-Zealand-Telecommunications-Forum-on-recommendations-for-improvements-to-the-TDRS-11-November-2021.pdf

Are there any additional key principles relating to best practice customer care that are missing from the Customer Care Code?

Please see the relevant commentary above, especially around better practice for assisting whānau facing payment difficulty with an essential service.

Please contact senior policy advisor, Jake Lilley on jake@fincap.org.nz or via 027 278 2672 to discuss any aspect of this submission further.

Ngā mihi,

A handwritten signature in black ink, appearing to be 'Moana Andrew', written in a cursive style.

**Moana Andrew – Kaihautū Deputy CEO
FinCap**