



Date: 18 June 2024

To: communicationspolicy@mbie.govt.nz

From: secretariat@tdr.nz

**TDRL Submission to
the Ministry of Business, Innovation and Employment (MBIE)**

Re: Discussion document: Enhancing telecommunications regulatory and funding frameworks

Introduction

1. Thank you for the opportunity to comment on MBIE's *discussion document Enhancing telecommunications regulatory and funding frameworks*.
2. This submission is provided by Telecommunications Dispute Resolution Limited (TDRL), the industry dispute resolution scheme that has been established under Part 7 of the Telecommunications Act 2001 (the Act).

Response to questions for stakeholders regarding consumer access to dispute resolution

3. *Do you consider that the lack of mandatory requirement for telecommunications service providers to belong to an industry dispute resolution scheme is a problem that needs to be addressed?*
 - 3.1 Yes, the current lack of mandatory membership to a disputes resolution scheme is a problem for the following reasons:
 - Many consumers, including small businesses, do not currently have guaranteed consistent access to an independent, efficient, fair, prompt and effective means of resolving disputes with their telecommunications provider. Moreover, many consumers are unaware of this fact. This leaves consumers with the option of either dropping their unresolved complaint or seeking resolution through the Disputes Tribunal (a more costly and inefficient option, especially for low value complaints which are the norm in the telecommunications industry).
 - Telecommunications providers face an uneven playing field if some providers are able to opt out of the costs of providing independent, external dispute resolution if membership is not mandatory. Consumers may be unaware that they are engaging with a provider who is not part of an external disputes resolution scheme.
 - A non-mandatory environment is destabilising for the external dispute resolution scheme – service providers that choose to opt out, or do so after joining, undermine the scheme's ability to operate with confidence, risking financial instability. Loss of a large participant, e.g., could risk losing up to around 30% of a scheme's revenue.

- 3.2 We note that Australia and the United Kingdom have made it mandatory for telecommunications providers to be members of a single industry dispute resolution service.
4. *What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?*
- 4.1 TDRL prefers option 2: Making membership to an industry dispute resolution scheme mandatory. However, we consider that this option should be modified to require membership to the one industry dispute resolution scheme that has already been established under Part 7 of the Act, the Telecommunications Dispute Resolution scheme (the TDRS).
- 4.2 The most effective way to achieve consumer access to dispute resolution is to have a single dispute resolution service specialising in telecommunications disputes. Multiple schemes risk confusion, inconsistency in approaches and duplication of administrative costs which are ultimately passed on to consumers by members. Competition between schemes might also incentivise telecommunication providers to join the cheapest scheme, the one more likely to find in favour of the industry member and the one that is the most difficult for consumers to access. These incentives are likely to reduce access to justice. A single scheme provider has the advantage of delivering more efficiency, more consistency and less confusion.
- 4.3 Having more than one scheme is destabilising for the scheme itself and risks undermining impartial decision-making. Further, having more than one scheme prevents the provision of a whole of industry perspective on the complaints that exercise consumers. This, in turn, reduces the ability for identification of systemic issues along with opportunities to lift industry standards, ultimately undermining consumer confidence in the industry.
- 4.4 The concern that a mandatory scheme will expose smaller telecommunications providers to unaffordable membership fees is unfounded. Careful development of a fair fee allocation model can ensure fee levels that take into account member size.
- 4.5 Statements that some (usually smaller) members are more customer-focused and able to resolve disputes in-house similarly miss the point. Any organisation can be blind to the underlying causes of complaints or become locked into disputes that are best resolved by an independent, external party. Consumers typically have more confidence in the opinion of external experts.
- 4.6 For consumers to have confidence in an industry they must all be able to access independent dispute resolution, not just some consumers. Access to dispute resolution should not be a point of competitive advantage, it should be every consumer's right.

Conclusion

- 5 We thank you for this opportunity to comment on the MBIE discussion document and trust you find the above suggestions helpful in developing a disputes resolution scheme that truly meets the best practice dispute resolution requirement to be independent, accessible, accountable,

efficient, effective and impartial, and that ultimately leads to improvements in industry practice, more knowledgeable and empowered consumers and greater consumer and regulatory confidence in the telecommunications industry.

- 6 If you have any questions regarding this submission, please contact Barry Jordan Chair@tdr.nz.