

## DECISION

### Background

- 1 The complainant, Mr JH, first made a complaint to the Tolling Customer Ombudsman (TCO) on 10 January 2014, as follows:<sup>1</sup>

"I have only yesterday learned that \$197.68 is due to Qld Motorways/ go via for using their roads a total of 7 times. **SHOCK!**

**These tolls should have only amounted to \$43.33.**

I have been told that this is because that due to my account not being in credit for a matter of days/ week, my account was temporarily suspended.

Despite logging into the web Payment portal for GoVia and paying and applying credit to my account, somehow another department has picked up fares not applied to my account, apparently a department that's not Govia? I don't quite follow?

Apart from clearly improving your bottom line and labeling me as some petty "thief", why "suspend" it anyway?

My situation is that I live on the Gold Coast and travel interstate regularly. I could use the roads consecutively over a couple of weeks, I could also not use them for 6-12 months.

I am also told that I was notified of such a "suspension"..WRONG. I have not been informed of a suspension whatsoever.

Just because you send emails, doesn't mean I am going to read it. You spam me with enough unsolicited emails so don't assume I am going to drop what I am doing and read each and every one of them. I work and it's the real world. So don't assume so and don't tell me that I have signed your terms and conditions which apparently says I need to read them as your team leader said today because I have never signed anything with your company.

You should just make the call and tell us in plain English why your system operates the way that it does. A point to note, is that I actually tried phoning you and your wait times of in excess of 10 minutes from a mobile don't exactly make it economical

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<sup>1</sup> All parties' submissions used in this Decision are quoted verbatim

when all we should be dealing with are amounts of a few dollars, ***so if you don't answer, that's your fault.***

I have had a proposed deduction to \$109.48 by [N]-team leader of your company offered to me. **Not Acceptable.**

My response is very simple, is that fair...No! It's not right, not fair and certainly not reasonable.

I already pay almost double the costs due to the fact my vehicle is a ute. (why this is still remains a mystery)

***I am not going to pay \$197.69 or \$108.48 for 7 fares. Let's put things into perspective here, I can fly to Tokyo for less!***

How can admin costs total nearly triple the amount anyway ???? Is this legal? Have I logged on to YOUR system to pay YOUR bill... YES! Does my online balance reflect "all is paid?" YES.

**How can I possibly be in the wrong?**

Somebody with half a brain can clearly see that a hardworking, tax-paying individual with no criminal record such as myself is trying to go about and make a living when large, greedy corporations such as GO VIA are trying to "take advantage of the little guy" and label us as thieves, scum who need their accounts suspended over a few dollars in order to increase their revenue. If common sense does not prevail, I will take this up with the ACCC, or even further.

**I have no issue paying what is rightfully due but I do not wish to be "blatantly ripped off".**

I would also like to know who is in charge of the "Tolling Ombudsman" of whom's details have been provided to me. Is this a "Non-partial" organisation operated by the Government?"

- 2** The TCO acknowledged receipt of the complaint on 13 January 2014 and referred same to Queensland Motorways (QML) for response. Mr JH responded to the TCO as follows:

"Thank you Michael,

I am getting sick and tired of Go Via's "bullying practices". It seems every person has a gripe with this business and the unethical way it treats and takes advantages of its customers.

I am doing nothing wrong here. Why I should even waste my time typing emails to offer a "defense" is ridiculous in its own right. Can I send Go Via an invoice for my time? My normal charge out rate is \$95.00 per hour.

I appreciate your assistance and will certainly fill out the documentation if it is unresolved."

3 On 14 January 2014 QML responded to Mr JH's complaint:

"Thank you for your email.

I acknowledge that there was some discussion regarding the demand notices for the registration number [6\*\*\*\*S] (QLD)

**Go via account [\*\*\*\*061]**

All **go via** accounts are a pre-paid service. This means that at any time if your account does not meet the credit terms, we may reject the trip and send you an infringement notice.

The terms and conditions of your **go via** account state that the account is to have a credit balance at all times and the account holder has the responsibility to inform us of any changes to their account details.

When a vehicle travels despite the suspension warnings, the 4 beeps of the tag and the negative balance on the tax invoice statements, it is considered as travelling without a valid account/pass. The tolls that cannot apply to the suspended account are billed to a NO ARRANGEMENT TRAVEL (NAT) account and unpaid toll notices are sent to the registered owner (separate to your **go via** account). There are administrative fees involved with this and cannot be associated with your **go via** account, because at the time of the trips the account was not valid.

The credit history of your account shows that it has failed to meet the credit terms for the following time periods.

13/12/2012 – 20/12/2012  
19/08/2013 – 02/09/2013  
06/09/2013 – 15/10/2013

The following suspension notifications were sent out to the email address [address].

Date	Description
02.10.2013	ACCOUNT SUSPENDED notification email alert
30.09.2013	Suspension Warning SMS Sent
26.09.2013	Suspension warning email alert sent
24.09.2013	Low balance email alert sent
03.09.2013	ACCOUNT SUSPENDED notification email alert
20.08.2013	Suspension warning email alert sent
16.08.2013	Low balance email alert sent
30.06.2013	Suspension warning email alert sent
20.06.2013	Low balance email alert sent
17.02.2013	Suspension warning email alert sent

Due to state privacy legislation, we do not have access to vehicle ownership details. Queensland Motorways has had to refer to the Department of Transport and Main Roads (DTMR) to bill the registered owner for failing to make arrangements for tolls within the required 3 days. We incur costs in this process for DTMR to forward these notices.

**No Arrangement Travel (NAT) reference [\*\*\*\*155] for [6\*\*\*\*S]**

All tolls since your account was suspended were billed separately to a NAT account and you have been issued notices.

An invoice with only a \$7.56 fee for the bulk of the tolls is then sent following the toll recovery process. Should no payment be received according to the invoice, further demand notices are then sent, and this includes a \$22.05 fee for each toll.

All unpaid toll notices and final overdue notices clearly state;

*“There may be two reasons why you are receiving this notice:*

- *You have travelled through toll points on our road network without making appropriate arrangements for payment*
- *Your **go via** account has been suspended. If this is the case, you must pay this notice in full.*

The following notices were sent out to the registered owner of the vehicle

08/10/2013 Unpaid toll notice - Total owed \$19.89  
22/10/2013 Overdue toll notice – Total owed \$54.12  
05/11/2013 Demand notice – Total owed \$84.72  
29/11/2013 Overdue toll notice – Total owed \$26.52  
13/12/2013 Demand toll notice – Total owed \$112.96

The contact centre has generously offered a goodwill waiver of 4 demands leaving the total amount owing \$109.48

I am happy honour the waiver once full payment is made.

**Total payment required \$109.48 (includes tolls and remaining fees).**

To make payment you may choose from the following options;

- credit card payment online at <http://www.govia.com.au> - to make payment please [click here](#) and use the reference number [\*\*\*\*155] 0001 and registration plate [5\*\*\*\*H]
- credit card payment over the phone with a **go via** representative on 13 33 31

Please send a payment confirmation otherwise no adjustments can proceed.

If payment is not received, we are under a contractual obligation to notify the Tolling Offence Unit of the Department of Transport and Main Roads that the demand notices have remained unpaid. They may then issue a Penalty Infringement Notice in excess of \$154 for each outstanding toll.

I appreciate that this may not be the response you were seeking, however I hope I was able to provide an explanation on the matter.

In the event that you still seek redress on the matter, you can raise your enquiry with the Tolling Customer Ombudsman (TCO).  
For more information on the TCO process visit <http://www.tollingombudsman.com.au>”

**4** To which Mr JH replied:

“It seems as though you are used to replying to the same kind of issues judging by your "copy and paste" reply.

Whilst you may sit there and happily send the same response to your unhappy customers, take the time to carefully read the points raised and reply accordingly.

This ridiculous "NAT" title you give to me makes no sense nor is it legal. Where in the constitution does it state I need to make pre-arrangement to travel your roadway. Where does it say in law that I need my account pre-paid. Send me a copy of the legislature which says so.

I confirm that no such suspension notices were received. Send me a copy of proof of receipt.

The following comment makes absolutely no sense and if it were true, you are in breach of privacy legislation: "Due to state privacy legislation, we do not have access to vehicle ownership details. ".

You have my details, therefore why are you even sending such notices through DTMR? Why would you not just post the notices yourself or as per my previous email, phone me?? After all, this is what I as a business owner do for my customers? Why should you do any differently? What makes your business so special that it can operate in such an unethical manner?

In regards to the \$7.56 fee, please detail what this is for.

Also, please explain in full why a \$22.05 admin fee is applied to each toll. I request a copy from applicable legislation to justify this outrageous fee. Keep in mind a letter in the post is only 60 cents and these letters were put in the same envelope. Even if this was lawful, why would it need to be applied 7 times??

Also explain why the same business is not applying credit from online deposits into the same account. If your system had applied my payment as it should have, your ridiculous fees wouldn't have been applied in the first place.

Your response makes no mention of this as per my email.

Please read my previous email and respond accordingly.”

**5** QML emailed Mr JH on 15 January 2014 as below:

“Good afternoon [Mr JH]

You are not required by law to keep your Go Via account in credit. As a Go Via customer, you agreed to the terms and conditions of the account when it is agreed that your pre-paid account is kept in credit at all times. If your account is not kept in credit then the account is suspended, but not before email notifications are sent to you. The email address we have on file for you is the same email address that we are using to correspond with you now. Your Go Via tag will also beep 4 times every time you pass a tolling point to alert you to your negative balance. It is the

customer's responsibility to ensure that their account is kept in a credit balance at all times.

When a Go Via account is suspended, it is no longer valid for travel on Australian toll roads. This is when No Arrangement Travel (NAT) accounts are created for the purpose of billing customers. If payment is not made within three days, an unpaid toll notice is issued with a \$7.71 administration fee. If the unpaid toll notice is not paid within the specified time frame, an overdue toll notice is issued which does not carry an administration fee. Only then, is a Demand Notice issued for each outstanding toll with a \$22.05 fee for each outstanding toll.

The Queensland Government has the constitutional authority to impose tolls on State-controlled roads, franchised roads or State toll road corridor land pursuant to section 93 of the Transport Infrastructure Act 1994 (Qld). Under a road franchise agreement with the State of Queensland, Queensland Motorways operates the Gateway and the Logan and Gateway Extension Motorway toll roads, and is entitled to collect the tolls and administration fees for non-paid tolls as gazetted by the State of Queensland.

All toll prices and administration fees are set by the State of Queensland and published in the annual Gazette, in newspaper publishing and are always available on our website <http://www.govia.com.au>.

Please note that the charges listed on unpaid toll notices and demand notices are determined by the State of Queensland, and are published in the Annual Gazette. This covers the administrative costs of sending the notices as privacy legislation prevents Queensland Motorways from viewing the registered owner's details. We rely on the Department of Transport and Main Roads to forward this on our behalf based on their records.

As advised, you were notified by email of the outstanding balance on your Go Via account. Following the suspension of your account the account is invalid and we do not use these details to pursue outstanding charges. A No Arrangement Travel account is always used for all unpaid travel and was correctly created in this instance. We do not have access to vehicle ownership details and the Department of Transport and Main Roads (DTMR) do issue unpaid notices to the registered owner of the vehicle. We are not privy to this information unless there is an ongoing dispute where we can request confirmation of information from DTMR if shown that it is necessary to attempt to resolve an ongoing complaint."

6 On 17 January 2014 Mr JH emailed QML as follows:

"How about I "copy and paste" this point brought up and *unanswered* for the third time:

Also explain why the same business is not applying credit from online deposits into the same account. If your system had applied my payment as it should have, your ridiculous fees wouldn't have been applied in the first place.

In regards to the rest of your email, "You are not required by law to keep your Go Via account in credit." - Thank you for confirming that.

"As a Go Via customer, you agreed to the terms and conditions of the account when it is agreed that your pre-paid account is kept in credit at all times." - Never agreed.

The email address we have on file for you is the same email address that we are using to correspond with you now.

Thank you for confirming that you have my email details for payments of tolls.

*We do not have access to vehicle ownership details* and the Department of Transport and Main Roads (DTMR) do issue unpaid notices to the registered owner of the vehicle. We are not privy to this information unless there is an ongoing dispute where we can request confirmation of information from DTMR if shown that it is necessary to attempt to resolve an ongoing complaint.

So is the above quote from your email just a little "contradiction"? You do not have access to vehicle ownership details? Really?? I am pretty sure you have confirmed that you have my details. You can also check everyone of my emails to Govia where you will find my mobile phone number at the bottom. Here is another idea, how about checking your own system where you will find all of the ownership details under my account. Is that a good idea?

**"We are not privy to this information unless there is an ongoing dispute ..."** Was there ever a dispute? I certainly was unaware of anything so how can there have been a dispute and warrant your entitlement to contact DTMR?

So in the "unlikely" event that somewhere in your system it recognized that we were (for dreaming purposes) having a dispute for the grand sum of \$44.33 you requested my "ownership details" from DTMR, why would you request it 7 times at a cost of \$22.05 x 7 totaling \$154.35? Come to think of it, I am quite sure you have charged me this ridiculous "illegal" fee in the past to collect the same "ownership details". Doesn't make sense and you know it.

I know what makes sense, "greed" and "illegal practices".

The Queensland Government has the constitutional authority to impose tolls on State-controlled roads, franchised roads or State toll road corridor land pursuant to section 93 of the Transport Infrastructure Act 1994 (Qld).

Agreed and never questioned. I also agree and instruct you to deduct \$43.33, the total for tolls from my account. This amount was deposited into your account three months ago."

**7** On 22 January 2014 Mr JH again emailed QML as follows:

"To whom it may concern,

Can you please confirm \$43.33 for tolls has (finally) been debited from my GoVia account and \$154.35 for for DTMR fees + admin fees has been removed.

Please advise so I can cancel any further action."

**8** QML responded on 24 January 2014:

"Thank you for your reply.

I can confirm that your Go Via account currently has a credit balance of \$36.56 which is not sufficient to pay the outstanding balance of \$197.68. We are unable to transfer unpaid charges from a No Arrangement Travel (NAT) account. As previously advised, your Go Via account was suspended during the time you have accumulated this outstanding balance and your Go Via account cannot be used to pay for these charges. Each unpaid toll notice issued to you contains separate payment information to be used for the outstanding balance.

You have made 4 separate payments since the No Arrangement Travel account was first created on 8 April 2013.

24 July 2013 – a payment of \$100 was made by yourself by the Self Service Portal. The Self Service Portal allows you to make direct payments via our automated telephone service or our website. Our contact centre did not take this payment and you chose to make this into your Go Via account. We received no instruction for this payment to be made towards your outstanding balance on the NAT account.

15 October 2013 – payment of \$200 made as above. No instructions received and credit was used for travel on your Go Via account, and there is still \$36.56 remaining from this payment.

You spoke to one of our contact centre representatives on 10 September 2013 who took a payment of \$104.03 on your Go Via account. In the same phone call, you also made a payment of \$20.97 which at that time cleared the balance owing on the NAT account.

During this phone call the contact centre representative explained the account suspension process to you and you expressed your dissatisfaction. Since that phone call, the outstanding balance of \$197.68 was accumulated under the same circumstances.

[Name] has already advised you of the of the 10 separate email and SMS messages sent by Queensland Motorways to notify you of your account balance. Toll notices were sent to you on 5 separate occasions since 8 October 2013.

Queensland Motorways have acted entirely within the law and are not obliged to offer any goodwill gesture.

If we receive notification that you have made payment of **\$109.48** by **Wednesday 29 January 2014** we will honour the generous goodwill gesture of writing off 4 Demand Notices.

If you have any other information which has not been taken into account, please advise. Alternatively, if you are not satisfied with this response our gesture of goodwill offer will be withdrawn and we will refer to the Ombudsman to make a recommendation on this complaint.

To make payment you may choose from the following options;

- credit card payment online at <http://www.govia.com.au> - to make payment please [click here](#) and use the reference number [\*\*\*\*155] 0001 and registration plate [5\*\*\*\*H]
- credit card payment over the phone with a **go via** representative on 13 33 31”

9 That same day Mr JH wrote to the TCO:

"I would like to formalise my dispute with the Tolling Ombudsman regarding GoVia.

I do not have a criminal record. I have never before not paid my tolls prior to this greedy business taking over the management of toll roads.

This claim totals \$197.68 due to Qld Motorways/ Govia for using their roads a total of 7 times. These tolls should have only amounted to \$43.33.

I have today contacted [Name] from Go Via (email below) in response to his email. This is a considerable waste of my time and I thought it would be far more practical to once again express my dis-satisfaction in regard to the fees and speak directly about the inadequate response to my queries raised.

Since the phone call and on further inspection to his email, it has given me extra confidence in my opinions of how this company has mis-treated myself and attempted to charge me high fees on their own terms. This will continue unless I do something about it.

***I am writing to your office to seek further assistance to the matter and request that you investigate and represent me and my disputes.***

The conversation today with [Name] was "un-fruitful" and my previous emails still remain un-answered to my satisfaction. The reply thus far as been "copied & pasted" and an unwillingness to admit fault in their own system. It is very clear to me by the phone call with [Name], and the emails from [Name] that there really is no way they can explain my legitimate questions.

The points to note in my complaint are as follows:

- It is claimed that my account incurred tolls (7 in total) from the 2nd of October to the 9th of October. It has been confirmed that a deposit by me was made into GoVia's account on the 15th of October for \$200.00. Today, [Name] confirmed to me that there is only "1 business" acting for payments therefore, I have complied by paying into their one and only account and applied credit (approx) \$150 above the tolls of \$43.33. IT IS NOT MY BUSINESS HOW GOVIA TREATS MY DEPOSITS. I MADE MY DEPOSIT INTO THEIR ACCOUNT. END OF STORY. He confirmed to me that Qld Motorways and Go Via are the same company.
- I received an email from [Name] who states that a \$22.05 admin fee applied to each of my 7 tolls during this period was for "Disputed Accounts" & for the collection of "ownership details"(refer to previous emails). Firstly, I never had a dispute to warrant the fee. My first knowledge of these tolls was via mail over the Christmas period. In fact the mail is dated the 13th of December 2013. **I confirm that no other letter was received from Govia/ Qld Motorways.** Secondly, if "ownership details" is the (legitimate) reason for the fee: 1. they have charged me this in the past therefore they should know who owns the vehicle. 2. Why do they require it 7 times (all of the notices arrived in one envelope!). 3. If they correctly searched my account for

"ownership details" they would find it is under the company name of [Name of company A].

- Collection notices should be sent to [Name of company A]. Not me! Care of [address] (they should have found these details out if they had correctly searched for "ownership details". They charged me 7 times for this.
- Why I should waste my time answering these emails and disputing something which is wrong.
- Suspension of accounts?? Why do this??

Govia have their own internal systems to collect money which are only advantages to them. They are unethical and their business practices are extremely questionable regarding ATO requirements. Why should this system operate any different to my own business.

In order to improve their own revenue, further "questionable" business practices are listed below:

1. No display of pricing.
2. No invoices.
3. A charge for postage of invoices.
4. A poor telephone services which makes paying small tolls expensive over the phone.
5. Payments in advance. Services not received therefore payments should not be required.
6. Terms & Conditions. It is claimed I have agreed to the their terms and conditions. Where is possible to "not agree"? Why do I have to agree to their terms?
7. Unfair admin fees dis-proportionate to the services provided.
8. "Copy & Paste" reply of emails.
9. Threat of "collection" services of amounts relating to admin fees and not tolls.

I would also like to seek further actions in putting an end to such practices.”

**10** On 28 January 2014 the TCO responded to Mr JH:

“I acknowledge receipt of your email of 24 January 2014 and note its contents.

You have raised issues that go to the operation of the system as a whole in response to Go Via’s explanation of your liability for your account.

I would recommend that you take advantage of Go Via’s discounted offer by tomorrow, Wednesday 29 January 2014.

I will address your particular points in due course.”

**11** Mr JH replied to the TCO:

“Thanks Michael,

They cannot keep "**bullying**" us because of their "**operation of the system as a whole**". It is theft, unethical, greedy, illegal and an out-right shame on those that are literally taking advantage of 100's and thousands of people.

If the "**operation of the system as a whole**" is the issue (and clearly it is), then please act on our behalf and force them to change the "**operation of the system as a whole**".

It does not matter how big they are, they need to operate their business just like everybody else; legally and within the rules of the ATO.

**As you can see in my email, clearly the charge of \$22.05 is un-justified (7 times so). Also, I paid \$200 into their account within days of the 7 trips they are seeking the costs for. I HAVE DONE NOTHING WRONG.**

What is clear, are the methods they are using to penalise me more than 5 times the actual cost. **IT IS CRIMINAL.**

How many people are they doing this to?? **This and the other items I have listed should be bought to the public's attention.**

**Also, as the vehicle is in a company name, I suggest they use their "ownership details" for which they apparently paid DTMR for and adjust the notices accordingly.**

I appreciate your assistance."

**12** On 30 January 2014 QML emailed Mr JH in the following terms:

"Thank you for your reply.

I have confirmed receipt of your payment of \$200 on 15 October 2013. As this payment was made via the automated telephone system using your go via account payment details, none of this payment was allocated to the outstanding balance on the No Arrangement Travel (NAT) account.

We did not receive any contact via email or telephone instructing us to have any portion of this \$200 allocated the outstanding balance you had incurred while your account was suspended.

Queensland Motorways had already sent two unpaid toll notices and two overdue toll notices with the payment details for the outstanding balance on the NAT account. When you spoke to our customer service representative on 10 September 2013 you made two payments, one for your go via account and a separate payment clearing the NAT balance at that time. During this phone call, account suspension process was explained to you by our customer service representative.

To refresh the other points of our conversation, demand notices carrying a \$22.05 fee per outstanding toll were only issued after the following notices which carried a **total** administration fee of \$7.71:

02.10.2013 ACCOUNT SUSPENDED notification email alert  
30.09.2013 Suspension Warning SMS Sent  
26.09.2013 Suspension warning email alert sent  
24.09.2013 Low balance email alert sent  
03.09.2013 ACCOUNT SUSPENDED notification email alert  
20.08.2013 Suspension warning email alert sent  
16.08.2013 Low balance email alert sent

30.06.2013 Suspension warning email alert sent  
20.06.2013 Low balance email alert sent  
17.02.2013 Suspension warning email alert sent  
08/10/2013 Unpaid toll notice  
22/10/2013 Overdue toll notice  
29/11/2013 Overdue toll notice

While we have made no error in allocating your payment of \$200 to your go via account as instructed, I understand that you have made an effort to pay the outstanding balance and I feel that is fair for us to maintain our offer of writing off four of the seven demand notices issued to you, as a gesture of goodwill, even in the event that a decision by the Tolling Customer Ombudsman is made in our favour.

I recommend that you contact the Department of Transport and Main Roads if you feel that the vehicle is incorrectly registered in your name. We are unable to investigate why they have you listed as the registered owner of this vehicle as we do not have access to their systems or information.

If you have any further questions, please advise. Queensland Motorways will not extend their gesture of goodwill unless instructed to do so by the Tolling Customer Ombudsman. In the meantime, I recommend that you pay the outstanding charges to avoid receiving Penalty Infringement Notices from the Tolling Offence Unit of Queensland Government, which carries a penalty upwards of \$154 per toll."

**13** To which Mr JH responded:

"Thank you [Name],

I do not believe your email justifies the points raised by me whatsoever. It may explain how your system works, but your system is the problem and challenges requirements by ATO and Australian Consumer Law.

I have attached a copy of the registration certificate for the vehicle further clarifying who owns the vehicle.

I do not need to contact DTMR to verify this as it is quite clearly written on the attachment. This further proves your fees (7 of them) of \$22.05 for VEHICLE OWNERSHIP DETAILS (apparently necessary for times of DISPUTES - I can not recall any disputes??) are UNJUSTIFIED. Once again, please remove the fees.

I will wait on further instruction from the Tolling Ombudsman."

**14** On 4 February 2014 the TCO emailed Mr JH as follows:

"I refer to your email of 28 January 2014 and note its contents.

It is my role to resolve individual disputes between toll operators and their customers, taking into account respective contractual obligations. I can recommend improvement to a toll operator's systems in my six-monthly Review but the operation of the system as a whole is a matter for the State Government and Queensland Motorways.

I understand that you have received further material from Queensland Motorways evidencing the warnings and notices prior to your account suspension and subsequent unpaid toll notices. The fees in relation to same are fixed in consultation with the State Government and I cannot alter them.

I believe in the circumstances that you consider the payment of the reduced charges by way of compromise.”

15 On 24 February 2014 Mr JH emailed QML and the TCO:

“Please be advised that I await confirmation of the removal of fees and acknowledgment that the practices of Go Via have indeed been unlawful.

My last communication to you was on the 30th January and I have not received a response.”

16 On 25 February 2014 QML emailed Mr JH as follows:

“Thank you for your further email.

We have not responded to your email on the 30<sup>th</sup> of January 2014 as you specified that you “*will wait on further instruction from the Tolling Ombudsman.*”

The TCO has since attempted conciliation and responded to you on the 4<sup>th</sup> of February, copying Queensland Motorways. (*attached*)

You have not responded since hence we have not corresponded further. You will not be receiving “*acknowledgment that the practices of Go Via have indeed been unlawful*” as your statement is baseless.

The due date of our offer as provided to you by [Name] on the 24<sup>th</sup> of January 2014 has lapsed:

*If we receive notification that you have made payment of \$109.48 by **Wednesday 29 January 2014** we will honour the generous goodwill gesture of writing off 4 Demand Notices.*

*To make payment you may choose from the following options;*

- *credit card payment online at <http://www.govia.com.au> - to make payment please [click here](#) and use the reference number [\*\*\*\*155] 0001 and registration plate [5\*\*\*\*H]*
- *credit card payment over the phone with a **go via** representative on 13 33 31*

I am happy to extend the offer to Friday the 28<sup>th</sup> of February 2014.

Please make payment to avoid further fees and charges otherwise, as we are not obliged under the circumstances to provide a goodwill reduction, the offer will be rescinded on this date.”

17 On 26 February 2014 the following correspondence ensued between Mr JH and QML.

Mr JH to QML:

"Firstly, who are you ? My email was addressed to [Name]?"

Secondly, (whomever you are) an educated response would be to adequately respond to each and every point raised in previous emails (which I have lost count of now). This has not been done despite several "copy and paste" replies from your office. Particularly important before you make an "un-educated assumption" that my statement is baseless.

Do you want me to "copy and paste" the emails for you?? Would you like me to personally deliver the **factual** flaws in your system to you or my solicitor. I am also happy to distribute it online before I contact a journalist or two.

You or [Name] didn't respond to my email because you had no answer. You cannot keep hiding behind your illegal business practices and use "pre-written" comments to try and defend them.

If you so believe my statement is baseless, then once again here is your opportunity to defend your actions. How about starting with clear justification of the 7 x \$22.05 "Vehicle Ownership Verification - DTMR" fees for times of DISPUTES. Please also provide details of disputes.

Once again, I have attached a copy of the registration certificate further clarifying who owns the vehicle - not me. Do you want me to spell out to you again why the \$22.05 fee is wrong?? I will anyway **N-O-T M-Y V-E-H-I-C-L-E**. Now tell me where the 7 x \$22.05 fees are going because quite clearly they are not being used for "vehicle ownership verification".

**Since you are new to this conversation [Name], it might pay to review the many previous emails and stop wasting my time."**

QML to Mr JH:

"Thank you for your email which has been forwarded to me as both [Name] and [Name] Manager.

To summarise, having read all previous correspondence, I understand that you are in receipt of a number of Demand Notices which relate to unpaid tolls for vehicle [6\*\*\*\*S].

You currently hold a pre-paid go via account, the terms of which require you to maintain the account in a positive balance. When there are insufficient funds on your go via account to pay the tolls invoices are issued in respect of those unpaid tolls.

A number of notices have been issued to you both by email and SMS, to the contact details provided by you for us to issue such correspondence. You have further been provided with Tax Invoice Statements which outline all transaction on your go via account and confirm your account balance. Notices issued to you are as follows:-

21/06/2012      Suspension warning email

24/10/2012	Account suspension notification email
27/11/2012	Email received from [Mr JH] regarding account suspension
28/11/2012	Response email issued
11/12/2012	Low balance warning email
13/12/2012	Suspension warning email
06/02/2013	Low balance warning email
17/02/2013	Suspension warning email
20/06/2013	Low balance warning email
30/06/2013	Suspension warning email
16/08/2013	Low balance warning email
20/08/2013	Suspension warning email
03/09/2013	Account suspension notification
10/09/2013	Call received from [Mr JH] regarding his account suspension
24/09/2013	Low balance warning email
26/09/2013	Suspension warning email
30/09/2013	Account suspension warning SMS
02/10/2013	Account suspension notification email
10/10/2013	Referral to collection agency warning SMS
08/01/2014	Call received from [Mr JH] regarding notices

As advised previously, when there are insufficient funds on your go via account notices are issued to the registered owner of the vehicle. Whilst I note that the registered owner of vehicle [6\*\*\*\*S] is [Name of company A] a business is not a legal entity (as confirmed to me by the Department of Transport and Main Roads) for the purpose of registering a vehicle. A vehicle can be registered in a Company name, by providing an CAN of a legal entity. In the case of vehicle [6\*\*\*\*S] , which the vehicle is registered to [Name of company A] you are listed as the legal entity and as such the following notices have been issued to you:-

09/09/2013	Unpaid Toll Notice
08/10/2013	Unpaid Toll Notice
22/10/2013	Final Notice
05/11/2013	3 Demand Notices with a due date of 05/12/2013
29/11/2013	Final Notice
13/12/2013	4 Demand Notices with a due sate of 12/01/2014

Each notice issued attracts an administration fee which covers the costs to Queensland Motorways associated with issuing the notices. The administration fees are detailed on our website [www.govia.com.au](http://www.govia.com.au), have been gazetted and approved by the State Government. These are legitimate administration fees which could have been avoided had sufficient action been taken upon receipt of the various notices issued to you.

As a gesture of goodwill we have offered to waive 4 administration fees however there remains an outstanding balance of \$197.68 for vehicle [6\*\*\*\*S].

You will note that the due date for Demand Notices issued to you has now passed. When a Demand Notice remains unpaid after the due date Queensland Motorways are obliged, by legislation, not notify the Department of Transport and Main Roads who may choose to escalate the matter further and issue Penalty Infringement

Notices (PINs) for each unpaid Demand Notice. Each PIN attracts an administration fee of \$154.00.

I strongly recommend that you make payment of the outstanding balance to avoid any further unnecessary fees and charges.

Whilst I appreciate that this may not be the response that you were hoping for I hope that I have been able to clarify the situation.

This email is in no way intended to be threatening, rather providing you with the information to be able to make a considered decision.

If you have any further queries or if I can be of any further assistance to you please do not hesitate to contact me."

Mr JH to QML:

"Thanks for your email. We are going around circles here. Your reply looks very similar to the first email I sent to your department.

Please expand on this:

As advised previously, when there are insufficient funds on your go via account notices are issued to the registered owner of the vehicle. Whilst I note that the registered owner of vehicle [6\*\*\*\*S] is [Name of company A] a business is not a legal entity (as confirmed to me by the Department of Transport and Main Roads) for the purpose of registering a vehicle. A vehicle can be registered in a Company name, by providing an CAN of a legal entity. In the case of vehicle [6\*\*\*\*S], which the vehicle is registered to [Name of company A] you are listed as the legal entity and as such the following notices have been issued to you:

Despite what you or your gazette say, this statement here is unjustified, particularly being charged 7 times at a fee of \$22.05 for amounts which should only be a few dollars.

Each notice issued attracts an administration fee which covers the costs to Queensland Motorways associated with issuing the notices. The administration fees are detailed on our website [www.govia.com.au](http://www.govia.com.au), have been gazetted and approved by the State Government. These are legitimate administration fees which could have been avoided had **sufficient action** been taken upon receipt of the various notices issued to you.

"Sufficient action"? I deposited \$200 into Go Via's account on the 15th of October 2013?

I would like to draw your attention to a similar case involving banks (<http://www.heraldsun.com.au/news/anz-late-payment-fees-are-illegal-federal-court-rules/story-fni0fiyv-1226818321031>). **"Justice Gordon found the late fees charged were "extravagant, exorbitant and unconscionable..."** Sound familiar?

I await your reply."

QML to Mr JH:

“Thank you for your email.

The initial SMS and email notifications issued to you attract no administration fees despite Queensland Motorways incurring costs to send them to you.

The initial written correspondence, being an Unpaid Toll Notice attracts a \$7.71 fee. The Final Notice also attracts no fee, however when no payment is forthcoming Demand Notices are issued for each unpaid toll, each attracting a \$22.05 administration fee.

Whilst I understand that you made a payment of \$200.00 to your pre-paid account in October 2013 this returned your pre-paid account to a positive balance, it did not however, address the notices which had been issued to you in relation to the unpaid tolls. As these unpaid tolls remained unpaid further invoices were issued to you.

Whilst I understand your concerns regarding the administration fees, these are legitimate fees, applied in accordance with our terms and conditions and clearly outlined on our website. Had your account operated within terms, and you had maintained a positive balance the administration fees incurred could have been avoided.”

18 On 4 March 2014 the following emails were exchanged:

Mr JH to QML:

**“Please, in the nicest possible way- HAVE SOME RESPECT & READ MY EMAILS.**

I asked you to:

Please expand on this:

As advised previously, when there are insufficient funds on your go via account notices are issued to the registered owner of the vehicle. Whilst I note that the registered owner of vehicle [6\*\*\*\*S] is [Name of company A] a business is not a legal entity (as confirmed to me by the Department of Transport and Main Roads) for the purpose of registering a vehicle. A vehicle can be registered in a Company name, by providing an CAN of a legal entity. In the case of vehicle [6\*\*\*\*S], which the vehicle is registered to [Name of company A] you are listed as the legal entity and as such the following notices have been issued to you:

Despite what you or your gazette say, this statement here is unjustified, particularly being charged 7 times at a fee of \$22.05 for amounts which should only be a few dollars.

Each notice issued attracts an administration fee which covers the costs to Queensland Motorways associated with issuing the notices. The administration fees are detailed on our website [www.govia.com.au](http://www.govia.com.au), have been gazetted and approved by the State Government. These are legitimate administration fees which could have been avoided had **sufficient action** been taken upon receipt of the various notices issued to you.

Now with this (again pointless) email you have written to me:

The initial written correspondence, being an Unpaid Toll Notice attracts a \$7.71 fee. The Final Notice also attracts no fee, however when no payment is forthcoming Demand Notices are issued for each unpaid toll, each attracting a \$22.05 administration fee. ONCE AGAIN - REFER TO MY PREVIOUS EMAILS. **DO YOUR JOB AND READ THEM.**

Whilst I understand that you made a payment of \$200.00 to your pre-paid account in October 2013 this returned your pre-paid account to a positive balance, it did not however, address the notices which had been issued to you in relation to the unpaid tolls. As these unpaid tolls remained unpaid further invoices were issued to you.

I have made this point countless times in my many emails to you, I DON'T CARE WHERE YOU PUT THE MONEY - THAT IS YOUR BUSINESS. I MADE ONE DEPOSIT INTO YOUR ONE ACCOUNT. END OF STORY. WHERE YOU PUT THE MONEY IS YOUR BUSINESS - NOT MINE. I have better things to do then waste my time calling your office to tell you where you allocate funds to. Go and check the LAW.

**STOP WASTING MY TIME AND ACKNOWLEDGE I HAVE DONE NOTHING WRONG. YOU ARE NOW GETTING TO THE POINT OF HARASSMENT.**

**THIS IS GETTING RIDICULOUS AND YOU ARE JUST EMBARRASSING YOURSELF.**

**DOES ANYBODY HAVE AN EDUCATION IN YOUR OFFICE?????????????"**

QML to Mr JH:

"I myself, and a number of my colleagues, have attempted to explain the situation to you a number of times. The facts of the matter are that you did not operate your pre-paid account within terms. As a result a number of invoices were issued to you. These invoices each included payment details. To date those invoices remain unpaid.

Whilst I accept that you did make a payment of \$200 to your pre-paid account in October 2013 it is not reasonable of you to expect Queensland Motorways to allocate part or all of these funds to pay tolls for a vehicle which, in your email of 26 February 2014 you stated was not your vehicle

"Do you want me to spell out to you again why the \$22.05 fee is wrong?? I will anyway **N-O-T M-Y V-E-H-I-C-L-E.**"

In relation to your comments regarding harassment, I strongly disagree. Queensland Motorways have simply responded to your email requests.

It is evident that we are not going to be able to reach a mutually agreeable outcome and therefore I shall leave this matter with Mr Arnold for consideration.

It is however worth noting that the due date on the Demand Notices issued to you has passed some time ago. If payment of these notices is not forthcoming please be

advised that this matter may escalate to the Department Of Transport and Main Roads, who may issue you with Penalty Infringement Notices (PINs) which attracts additional administration fees.”

Mr JH to QML:

“You and your fellow pen-pushers have never adequately explained the situation thank you very much. It's like dealing with a brickwall. Simple question, do you think it is fair, reasonable and ethical to charge \$22.05 7 times for an account to be 6 days out of credit to collect the same information which by the way is wrong anyway??? Do you think the reasons for charging this fee are fair, reasonable and ethical? You know the answer. Your company is misleading the public on a number of levels.

There is more than \$200 in my Govia account. Take the money out of that. This does not imply an admission of acceptance. I have better things to do with my time. I still await further advice from the Tolling Ombudsman, ACCC & Office of fair trading.

I will when the time comes, follow this up further and reserve my right to refunds and compensation for my time and any legal costs incurred.

For the record, I standby all the comments I have made thus far and emphasise to you and the Ombudsman that your operations are misleading the public. On that basis, I state once again that I do not agree to any of your terms and conditions.

Please forward invoices as required made out to the correct owner of the vehicle: [Name of company A].

In future:

- contact me via phone or post: [Name and address of company A]
- do not spam me
- do not text me
- display pricing where/ when it concerns me
- do not charge my account any fees without contacting me first”

**19** On 5 March 2014 QML responded to Mr JH:

“This email is to clarify the situation so that you can make an informed decision.

I note your requests below and will address each one individually:-

There is more than \$200 in my Govia account. Take the money out of that Queensland Motorways cannot transfer the credit from your account to pay the invoices. I recommend that you make payment of the outstanding balance of \$197.68 to avoid any further unnecessary fees and charges.

In future:

- contact me via phone or post: [Name and address of company A]
- do not spam me
- do not text me

- display pricing where/ when it concerns me
- do not charge my account any fees without contacting me first

Queensland Motorways contact account holders by SMS or email and will continue to provide account status updates as such. I have updated your preference to email so that future updates will be provided to your email address. Where no arrangement to travel exists invoices are issued to the registered owner of the vehicle.

Any invoices for vehicle [6\*\*\*\*S] will be issued to the registered owner. As previously advised you are listed as the legal entity, at the Department of Transport and Main Roads (DTMR) under which this vehicle is registered and therefore any future invoices would be issued to you. If you wish to register the vehicle under a company, rather than a business, DTMR advise that you can do so at DTMR by providing an ACN.

Toll pricing is displayed at each toll point along our network. All fees and charges are detailed on our website [www.govia.com.au](http://www.govia.com.au)

When you accepted our terms and conditions you agreed that any tolls, fees and charges would be applied to our pre-paid account. It is not possible to contact you prior to applying these to your account.”

**20** Mr JH replied to QML on 6 March 2014:

“Are you serious???

\$109.48 to be applied from my account.

Stop being difficult.

The car is registered in the legal entity that I sent you. Look at the registration certificate I sent you. I am not a legal entity and I do not own the vehicle. What can't you understand here???

Read my emails.

When you accepted our terms and conditions you agreed that any tolls, fees and charges would be applied to our pre-paid account. It is not possible to contact you prior to applying these to your account.

I do not agree to the above terms thank you.

Seriously, stop wasting my time.”

**21** That same day the TCO emailed Mr JH as follows:

“I refer to the continued exchange of emails between Queensland Motorways and yourself, copied to the TCO.

Queensland Motorways has now advised me as follows:

“Queensland Motorways have attempted to explain the situation to [Mr JH] on a number of occasions. I cannot articulate the situation to [Mr JH] any more clearly. The facts of the matter are that [Mr JH] did not maintain his pre-paid account within

terms. As a result he was issued with a number of invoices which, to date remain unpaid. I acknowledge that [Mr JH] has made a \$200.00 payment to his pre-paid account, returning the account to a credit balance, however he has not addressed the outstanding tolls.

[Mr JH's] last email refers to harassment on the part of Queensland Motorways, which I do not believe to be the case. We are simply responding to [Mr JH's] emails.

At this stage I do not feel that we will be able to come to a mutually agreeable resolution with [Mr JH].”

## 22 Mr JH replied to the TCO:

“I received this email to. I told them to take the money out of my account and I will follow this up with the Department of Fair Trading.

It seems now they find this difficult to understand to. Despite having a balance of more than \$200, she wants me to phone up and pay on top of this. It's ridiculous.

Mate, I have been emailing these idiots since January. They are ignorant and they know they have done the wrong thing.

They want to charge me \$197.68 for 7 tolls. I put \$200 into their account within 6 days of the last toll. **These tolls should have only amounted to \$43.33.**

### **It's criminal.**

I do not agree with any of their comments and can tell you now that my queries have not been satisfactorily answered. There is no justification. I receive "copy and paste" emails.

I sincerely thought that by now, I would have some sort of advice from your office regarding this situation.

This email from you doesn't tell me anything??

For the record, I believe this company is misleading the public by charging administration fees of \$22.05 per toll that has not been paid within 3 days of the date of motorway use. I have absolutely no recollection of accepting any terms and conditions which permit GOVIA to charge a fee 5 times the costs of the service despite attempts to pay the fee. In my circumstance and unbeknownst to me, my account was out of credit for a period of approx 6 days and 7 trips were made during this time. Despite attempting to pay via phone (eventually running out of patience due to long wait times) and making an online \$200 deposit within 6 days of this, it has been made apparent to me now that I needed to contact GOVIA to explain how to allocate my funds - in this case to the 7 trips. I was never made aware of this adequately.

Apparently, this and the ability to charge me almost double the tolling fee due to my [make of vehicle] being a light commercial vehicle is acceptable because it is advertised on a gazette - somewhere?

I find that GOVIA has completely misled me with the costs of tolls and their ability to charge a \$22.05 admin fee for a toll which should only cost a few dollars. I do not recall seeing this anywhere and believe they have unethically hidden this information in attempts to increase their own revenue.

I have not signed any terms and conditions which give permission to do so. Having clicked on a button to register my details to have invoices posted to me is unavoidable. If such fees are legal, I certainly believe they are not displayed correctly and having to register and accept their conditions via the click of a button is misleading me by (apparently) accepting their ability to illegally and unethically trade via unknown fees.

I have my own business and I cannot force my customers to accept any terms that permit me to charge an admin fee of 5-6 times the costs of my services due to a 6 day late payment. In this case, it seems I am "forced" to accept their terms and conditions via the click of a button. It has not been my intention to do so.

I have queried the \$22.05 fee and their reasons are that they are able to do so in times of disputes and for the collection of ownership details from the Department of Main Roads. Well they have done this 7 times, put it into the one envelope and have also managed to get those details wrong anyway. It took over two months to be made aware of this. I don't even recall a dispute??

I have spent many hours trying to get a reasonable answer from GOVIA. They claim I have accepted the terms. For the record, I was completely unaware of such fees. I cannot find it anywhere on their website - it appears to be a hidden fee.

I would like to request a choice to use a government owned road, and not be forced into agreeing to misleading terms and conditions via the click of a button. What other options do I have other than registering my details on their website and unknowingly accepting their terms and conditions in an attempt to receive invoices - which by law, they are required to provide?

As the ombudsman, can you honestly tell me that being charged ..."

**23** On 7 March 2013 QML corresponded with the TCO:

"[Mr JH] has advised in his below email that he does not accept the terms and conditions of his **go via** account.

At this stage, we are naturally obliged to close his **go via** account if both parties do not agree to the same terms and conditions.

We are not comfortable in agreeing to [Mr JH's] request to transfer credit from his **go via** account to a vehicle he advises is not his vehicle per his email dated 26<sup>th</sup> February 2014;

"Do you want me to spell out to you again why the \$22.05 fee is wrong?? I will anyway **N-O-T M-Y V-E-H-I-C-L-E.**"

It is our preference that the registered owner (which [Mr JH] advises is not him) settle the toll notices directly, otherwise, we can close his account, refund all credit

after all our tags are returned, and it is the decision of the account holder on how he wishes to proceed with the credit.

I seek your assistance in mediation as we are not progressing in the resolution process with [Mr JH] based on his responses.”

**24** On 17 March 2014 Mr JH despatched the following emails:

To QML:

“Please confirm payment has been deducted from my account.”

To the TCO:

“Any luck helping me out with this mate? I know I didn't finish the email, but this is all getting very repetitive now so excuse me for the typos etc.”

**25** On 19 March 2014 QML responded to Mr JH's email:

“I confirm receipt of your email below.

As per previous correspondence with our office, we are unable to transfer the credit from your **go via** account for toll notices for a vehicle you since advised is not your vehicle.

I have referred the matter to the TCO for his advice, and confirm that the toll notices are still outstanding.”

**26** On 2 April 2014 QML forwarded, for the attention of the TCO, the following exchange of correspondence between it and the Queensland Office of Fair Trading-Department of Justice & Attorney-General:

“1 April 2014

**The Manager**

Govia

7 Brandl St Eight Mile Plains Qld 4113

Dear Sir/Ma'am

The Office of Fair Trading has received a complaint from [Mr JH] regarding the administration fees. A copy of the complaint is enclosed for your reference.

You may be aware that the *Fair Trading Act 1989* requires the Office of Fair Trading (the Office) to receive and consider complaints from consumers. It would therefore be appreciated if you could provide information which may assist in bringing about a resolution of this matter.

In particular, please advise whether the information provided by the consumer is correct or whether you dispute the basis of the complaint. In the latter case please

provide adequate details to support your contrary position. If you do not dispute the basis of the complaint please advise what redress, if any, you are prepared to offer.

The Office of Fair Trading operates the [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) website, which outlines the rights and responsibilities of traders under the *Fair Trading Act 1989* and the *Australian Consumer Law (Queensland)*. It also provides general information and advice in relation to conducting business in Queensland. You may wish to consider the information on this website before providing your response.

Please direct your response to the Office for my attention by letter, e-mail or facsimile and if possible within 5 working days of the date of this letter. You may also wish to forward a copy directly to [Mr JH].

Do not hesitate to contact me on (07) 5430 8942 during office hours if you wish to seek clarification of the issues raised before providing your response.

Thank you for your assistance in this matter.”

...

Dear [Name],

Further to our telephone conversation earlier today please find attached copies of correspondence between [Mr JH] and Queensland Motorways in relation to his complaint.

[Mr JH] has also raised the matter with the Tolling Customer Ombudsman (Michael Arnold) and the matter is currently with Mr Arnold for consideration.

In short, [Mr JH] has a pre-paid go via account which was not maintained in accordance with terms. The account fell into a debit balance and a number of warnings were issued to the account holder, as detailed in the attached correspondence.

When a number of tolls remained unpaid invoices were issued to the registered owner of the vehicle (details provided by The Department of Transport and Main Roads – DTMR).

[Mr JH] disputes that he is the registered owner of the vehicle. I have contacted DTMR who have confirmed that the vehicle has been registered to [Name of company A], which is a business. DTMR have further confirmed that a vehicle must be registered with an ACN (not an ABN) or a legal entity, and that [Mr JH] is the legal entity for this vehicle, hence the notices have been issued to [Mr JH].

We have had extensive correspondence with [Mr JH], however the tolls remain unpaid.

I have further explained to [Mr JH], that when a Demand Notice remains unpaid after the due date Queensland Motorways are obliged, by legislation, to notify DTMR who may choose to escalate the matter and issue Penalty Infringement Notices (PINs). As these Demand Notices are well past the due date these matters may further escalate. I recommend that [Mr JH] make payment of the outstanding balance to avoid any further unnecessary fees and charges.

You will see from the attached correspondence that [Mr JH] has requested that funds be transferred from his pre-paid go via account to cover the outstanding balance, however [Mr JH] has been advised that he needs to make payment separately (especially since [Mr JH] advises that he does not own this vehicle).

If you require any further assistance please do not hesitate to contact me.”

**27** On 21 April 2014 Mr JH emailed QML, copied to the TCO, as follows:

“I would like to remind all parties that I am waiting on the ombudsman to offer review in this matter.

In the interim, I remind you that a goodwill payment is offered until such time the ombudsman offers their review and you:

A: reissue invoices to the correct owner of the vehicle

B: clearly detail how payments are made since you state I cannot pay with this account.

I reserve my right to a refund at all times.”

**28** The TCO responded to both parties:

“As the matter remains unresolved, I will make a written decision.”

**29** On 22 April 2014 QML notified the TCO:

“Further to the recent correspondence from [Mr JH], there is little more I can do to resolve this situation.

In relation to point A, I have explained to [Mr JH] on a number of occasions why the invoices have been issued to him. They have been correctly issued and I am unable to re-issue them to his company.

In relation to point B, I have explained to [Mr JH] that he needs to make payment as outlined on the invoices issued to him.

As such, Queensland Motorways will not be responding to this correspondence.”

## Decision

- 30** The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer.
- 31** This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the Customer Service Agreement, on a toll road operator's website or in other material that is available to customers, whilst the applicable legislation can be accessed through Government websites.
- 32** The TCO is not a judicial body and does not have punitive powers. The TCO, when making a decision, does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against other external bodies such as the Department of Transport and Main Roads.
- 33** This is a matter in which there is considerable correspondence involving Mr JH, Go Via and the TCO, as set out earlier in the body of this Decision. It is not necessary to repeat it in any detail, save as to say Mr JH's complaint did expand during the passage of the correspondence. Issues were raised about the level of tolls for his [vehicle] as a commercial vehicle and the ownership of the vehicle.
- 34** Mr JH's original complaint to the TCO related to the fact that his Go Via account had been suspended without his receiving notice and as a consequence he incurred tolls and administration fees of \$196.69. He had discussions with Go Via, which had offered to reduce the amount owing to \$108.48. He did not accept this offer as he found the fees exorbitant and believed that he should only be liable to pay the tolls of \$43.33.
- 35** During the processing of this complaint Go Via explained and detailed the notices leading to the suspension of Mr JH's account, why the fees were incurred and how the fees were fixed in consultation with the State Government. The details of the notices sent to Mr JH are set out above in the Go Via correspondence. In particular, Go Via further explained:
- "Each notice issued attracts an administration fee which covers the costs to Queensland Motorways associated with issuing the notices. The administration fees are detailed on our website [www.govia.com.au](http://www.govia.com.au), have been gazetted and approved by the State Government. These are legitimate administration fees which could have been avoided had **sufficient action** been taken upon receipt of the various notices issued to you."
- 36** Despite the information provided, Mr JH was not sufficiently satisfied with these explanations and the matter was not resolved. He subsequently paid \$200 into his

pre-paid Go Via account to bring it into credit but did not specifically deal with the outstanding amount owing.

**37** Mr JH also raised the issue of the legal ownership of vehicles and asked that invoices be reissued. In this regard Go Via, through a representative, explained:

“I have contacted DTMR who have confirmed that the vehicle has been registered to [Name of company A], which is a business. DTMR have further confirmed that a vehicle must be registered with an ACN (not an ABN) or a legal entity, and that [Mr JH] is the legal entity for this vehicle, hence the notices have been issued to [Mr JH].”

**38** It would appear that Mr JH was the legal entity responsible for the vehicle but, leaving that aside, he was the account holder with Go Via. He opened the account in his name and took responsibility for the relevant vehicle’s travel on the toll road. He was responsible to maintain the account in good order and was liable for the tolls and administration fees incurred for the use of the toll roads by the vehicle. Go Via is accordingly not required to issue the toll invoices.

**39** Mr JH has complained that toll costs and administration fees were hidden from him in the Go Via documentation. This is not the case as the toll fees for his vehicle can be obtained from Go Via information on the level of tolls charged for vehicles classified as commercial vehicles. Further information as to Go Via’s administration fees are also available on its website.

**40** Mr JH complained that he was forced to accept Go Via’s conditions with the click of a button on Go Via’s online system but again this not correct. He had the opportunity to read all of Go Via’s terms and conditions before signing up as a customer and opening an account. If he was not satisfied with them he was not obliged to open the account.

**41** The evidence indicates that Mr JH had a pre-paid Go Via account which was not maintained in accordance with the terms of such an account. The account fell into a debit balance and a number of warnings were issued to the account holder, as detailed in the attached correspondence.

**42** I am satisfied that the notices provided by Go Via were adequate and conveyed to Mr JH by a method designated by him. The fees charged were in accordance with the gazetted fees fixed in consultation with the State Government. Despite this fact Mr JH did not pay the tolls.

**43** Go Via then acted as required as a number of tolls remained unpaid. Invoices were issued to Mr JH as the registered owner of the vehicle in accordance with details provided by the Department of Transport and Main Roads.

**44** I am satisfied that Go Via acted fairly and reasonably in this matter after Mr JH raised his complaint. It made an offer to reduce the administration fees payable to \$108.48, so effectively Mr JH was being charged \$65.15 for the seven notices it was required to issue. Moreover, it put him on notice that further fees may become

payable to the Department of Transport and Main Roads which it would not have under its control.

- 45** I do not uphold Mr JH's complaint but recommend that Go Via maintains its goodwill offer to accept a payment of \$108.48 in discharge of the amount due to it for the outstanding tolls and administration fees.

**Michael Arnold**  
**Tolling Customer Ombudsman**

**Dated: 5 May 2014**