

DECISION

Background

- 1 The complainant, Mr H, first made a complaint to the Tolling Customer Ombudsman (TCO) on 7 June 2012, as follows:¹

"I'm having a difficult time dealing with citylink, and now they have past this onto civic compliance.

The issue is city link, failed to read our roam tag, subsequently they sent us a bill to the incorrect address which omitted both the street name and number, they sent the bill to "U2 [suburb]".

They are not taking ownership of the error, and continue to push the blame onto us for having incorrect information in the national database. However civic compliance was able to get the information correct.

What I ask is that citylink resolve this issue directly with civic compliance, and take ownership of the error.

*The 2 fines we have are;
Obligation no. ****348
Infringement notice no. ****568*

*Obligation no. ****332
Infringement notice no. ****987"*

- 2 On 8 June 2012 the TCO acknowledged receipt of the complaint and forwarded it to CityLink for response.
- 3 On 28 June 2012 CityLink provided the TCO with a copy of its response to Mr H. This letter was as follows:

¹ All parties' submissions used in this Decision are quoted verbatim

“Thank you for your enquiry dated 7 June 2012. Please accept my apologies for the inconvenience caused by this matter and for the delay in our response.

I understand your concern relates to Infringement Notices received for travel made on CityLink with a Roam e-TAG device.

As stated in your email, it would appear the Roam e-TAG device was not detected at the relevant Toll Points. In most instances an e-TAG will be detected, however this will not always be the case. This is a characteristic of e-TAG-based electronic tolling. On Melbourne’s Toll roads, it is a requirement to have the vehicle linked to a tolling account. This prevents a Late Toll Invoice being issued as the toll will charge to the account via the vehicle Licence Plate Number if the e-TAG is not detected.

Of note, you have stated you were using a Roam e-TAG device and Account. Our records indicate the vehicle [Licence Plate Number (LPN)] (QLD) was not linked to a Roam Account on the dates of travel.

I have checked the Roam e-TAG Account Customer Service Agreement which states:

2. Linking Vehicles to your Account and the Roam Register

You must provide us with details of each vehicle that you wish to have linked to your Account before using that vehicle on any Eligible Toll Road or up to 48 hours after using that vehicle on Westlink M7.

*I further understand the Late Toll Invoice was not received as it was issued to an incomplete address. I acknowledge the street number and name are not present on Late Toll Invoice number ****845.*

I confirm Late Toll Invoices are issued to the registered owner of a vehicle utilising information obtained from the local vehicle registration authority. The omission of the street number and name indicates this information was not provided to CityLink.

As Infringement Notices have been received, the opportunity for CityLink to intervene in this matter has passed. In order to dispute an Infringement Notice, a written application for an Internal Review must be submitted directly to Civic Compliance Victoria (CCV) by the recipient of the Infringement Notice or a person acting on their behalf. This should be mailed to PO Box 1916, Melbourne VIC 3001. Alternatively, CCV may be contacted by telephone on (03) 9200 8111 with any queries or for additional information. You may wish to provide a copy of this email with the dispute.

It is important to include the Obligation and Infringement Notice numbers for each Infringement Notice. Any disputes which do not contain this information will not be considered by CCV.

Thank you again for your enquiry and for the opportunity to respond to your concerns. Should you wish to discuss this matter further, I may be contacted via return email or on [number]."

4 Following receipt of this response, Mr H emailed the TCO:

"Thank you for your help so far with having my issue addressed, below is my response to the response given by transurban since you got involved. I can confirm that the response is no different then what they have given in the past. and continue to not take ownership of the issue.

I'm at a loss as to what to do next, CityLink make it clear that they are not at fault, but provide no information as to who's at fault but continue to make reference to a "national database" which makes no sense if CCV is able to contact me.

I expected a better outcome, a simple acknowledgment that they are at fault and that they would resolve this issue and charge the correct tolls to my account."

Email from Mr H to "Resolve" dated 28 June 2012:

*"My roam account number: ****209 and was in the car when we went on your roads. This is not my concern, as I spoke to both Roam and City Link, they advised us if there was any problems that we would receive an invoice and we could follow that up with them and link it back to our roam account. you could maybe even check your phone records if you keep any.*

The concern is that CityLink is not taking any responsibility in this matter, the late tolling notice was sent to an "invalid" address, which is different from an incorrect address, everything after the "," was omitted and omitted by CityLink systems only. if this is incorrect please provide evidence otherwise.

Civic Compliance Victoria (CCV) however did not omit any of this information when they sent the infringement notice and so far CityLink will not acknowledge any wrong doing and they continue to hide behind "its someone else's fault" this is not good enough.

As this is not good enough I will continue to follow this up with the ombudsman until this matter is resolved, to state that because an infringement notice has been issued that you cannot act upon this is absurd. You have miss represented this information to obtain an infringement to CCV based on false information, which you hide behind as someone else's fault.

What I request is that if this is not CityLinks fault for sending an invoice to an invalid address, and as stated in a previous correspondence that I need to "update the national database" who's fault is it? how do I contact the national database and why is it that your organisation has a different information from a national database then CCV.

If you also cast your eyes over the last correspondence you will also notice that it was addressed to [Given name of Mr H] and [Name], CityLink then continue to state that we informed you that our address was "U2, 13 [Suburb], QLD [postcode] " which again is incorrect. and again the street name was omitted, was this human error? you cant blame this on someone else as the information as advised in the correspondence come directly from myself, for your reference the correct address is as follows.

U2, 13 [Street name], [Suburb], Qld [postcode]

As you can expect this never ending comedy of errors from CityLink just aggravates the situation and that you hide behind some falsehood that its someone else's fault.

we have 2 posible outcomes here;

- 1. You charge the tolls to my Roam account and everything is finalised.*
- 2. You continue to say its not your fault and that I'm to deal with CCV directly about this matter I need hard evidence about what the issue is, how am I to convince CCV or the LAW when you cant even convince me.*

You have 5 working days to respond, sooner would be awesome as its already been 21 days, 15 of them working."

5 On 29 June 2012 CityLink provided the TCO with a copy of its response to Mr H:

"Thank you for your email.

In response to your concerns, I reiterate and note the following:

*Late Toll Invoices are issued utilising information obtained from the local vehicle registration authority. The omission of the street number and name on Late Toll Invoice number ****397 indicates this information was not provided to CityLink.*

CityLink are unable to comment on the processes taken by Civic Compliance Victoria to obtain the details of a vehicle's registered owner.

I have reviewed the CityLink letter issued on 29 June 2012 which states "We understand you have informed us of the previous correct address: U 2, 13 [Suburb], QLD [postcode]." This information was based on the records logged by the CityLink representative you spoke with on 18 May 2012. Unfortunately the representative did not record the street address. I apologise for this

omission by a CityLink representative and appreciate you providing the correct address for our reference.

I note you have suggested for CityLink to charge the tolls to your Roam Account. Unfortunately as the matter has been referred to Victoria Police, this is no longer possible.

In order to dispute an Infringement Notice, a written application for an Internal Review must be submitted directly to Civic Compliance Victoria (CCV) by the recipient of the Infringement Notice or a person acting on their behalf.

If you are not satisfied with our response, you may want to contact the Tolling Customer Ombudsman as follows:

*Address: PO Box 7095
Hawthorn North VIC 3122*

Telephone: 1800 145 009

Fax: (03) 9853 7782

Email: admin@tollingombudsman.com.au

Website: www.tollingombudsman.com.au

- 6** Later on 29 June 2012 Mr H wrote to the TCO and provided a copy of his correspondence in response to CityLink's email as follows:

"As you can see by the continued dialog I'm getting nowhere with [Name] from CityLink, [Name] continues to run circles around the real issue that is that somewhere between "local vehicle registration authority" and the CityLink mailing system, an address line has been completely omitted, and an entire line rendering it completely invalid for delivery.

CityLink maintain they are not at fault that it is how they recived the infromation from "local vehicle registration authority" and continue to not provide any details as to how they obtain this information or to provide any resolution to the problem.

The simple fact is CityLink sent a Late Toll Invoice and subsequently lodged a Infringement Notice with Victorian Police based on non-payment of an invoice CityLinks system failed to address correctly, that we never received. They continue to hide behind the fact that CityLink is not at fault and that I should now contact the Ombudsman if I'm not happy.

What I expect is a full explanation as to why and how CityLink managed to get the address completely wrong, if this is a simple system or human error, I

expect the outcome to be provided in writing so that this matter can be resolved.”

Email from Mr H to CityLink:

“City Link still have not provided the information with regards to who's at fault, as to provide these details to CCV to have the infringement notice reviewed.

City Link continues to hide behind "local vehicle registration authority" let me be clear.

- How does CityLink computers systems receive this information.*
- Is this information input into your system by the same CityLink representative that ommised the information the second time.*
- Is it at all possible that the import of the data from "local vehicle registration authority" into your system and subsequent mailing system to have omitted the data due to a "comma" in the address line.*
- Queensland License and Registration have the correct registration information, so either you get the information from a 3rd party or there is some human/system error involved. please provide more details as to how you obtain this information and from who.*

What I'm getting at is this a system error or human error. As its quite clear by the correspondence that CityLink continue to have human error with regards to street addresses and even first names as my wife's name is not [Name], would you not agree.

If this is a system error then I would like to know what system is misrepresenting the information to CityLink as Queensland License and Registration have the correct registration information, if CityLink is accusing "local vehicle registration authority" then I would like them to at least have the same opportunity that you have to respond to that accusation.

Please provide full contact details as to where and how you obtain this information as to appropriately log an application for review.”

7 On 3 July 2012 the TCO wrote to Mr H, copied to CityLink, in the following terms:

“I acknowledge receipt of your emails of 28 and 29 June 2012 and have referred same to CityLink to clarify issues you have raised.

In the meantime, you should make arrangements to deal with the Civic Compliance Victoria Infringement Notices if that has not yet been done. You may use the correspondence from CityLink and the TCO in support of your application.”

8 Mr H responded promptly to the TCO, copied to CityLink, as follows:

"I don't understand why I need to make arrangements with Civic Compliance Victoria Infringement Notices when clearly I have not received the original invoices from CityLink, or an explanation as to who is at fault to support my claim.

What I ask is details of whos is at fault for this addressing issue that I can use to support my claim, currently CityLink is taking no responsibility and in the 2 occasions you suggest I use to support my claim, push blamed either onto myself for having invalid details with the registration authority or the registration authority for supplying invalid information, so far have not supplied any evidence to support this claim.

Attached is the information for the registration on the vehicle. Clearly has a full address.

(Image of Registration Certificate (Motor Vehicle) provided to TCO)

9 On 4 July 2012 the TCO responded to Mr H, copied to CityLink:

"The Civic Compliance Victoria Infringement Notices and proceedings are for driving on the toll road whilst not authorised to do so. It is not for failing to respond to a late toll notice. The toll fee should have been paid before the issue of a late toll notice as toll payments are not dependent on receipt of the late toll notice.

There would have been no issue with Civic Compliance Victoria because of incorrect address details if the toll fee had been paid in accordance with the terms and conditions of the usage of the toll road.

Leaving that aside, CityLink cannot control the Civic Compliance Victoria proceedings so you should take steps to avoid any further costs pending the outcome of your complaint with CityLink."

10 Mr H firstly responded to the TCO, copied to CityLink:

"I think you have a confusion of issues here.

1. I have an etag, it was registered to my car in NSW, we moved to QLD and did not move the etag from the old registration. I understand this is my fault and take full responsibility for this. As such I phoned CityLink the day I was on the road (and have phone records) was advised if there was a problem I would get a late toll invoice, I could then follow that up. I received nothing from CityLink as they had an incorrect address, which they deny is there fault.

2. If I was to deal with civic compliance directly why was it that CityLink sent an invoice prior to the infringement notice? Stating that if I don't pay, I'll get an infringement? I never got the late toll invoice. Why?

From the website. There is no mention that I would receive an infringement notice prior to a late toll invoice. Which is what has happen.

Why have I received an LTI?

Late Toll invoices are issued if a vehicle is not registered for travel on CityLink. Registration can be either via an active CityLink account, Pass, or an account with an alternate Tolling provider.”

11 And immediately after:

“All I'm asking for is evidence to state my claim that CityLink failed to provide a "late toll Invoice" as that stated they would via the phone and via there website.

They also state that I can pay a late toll invoice with another account. However I was never give this option as CityLink failed to send a LTI to a valid address.

Can I have the LTI transferred to my CityLink account?
Yes, please contact CityLink on 132629 to arrange this.

Can I have the LTI transferred to another tolling company's account?
Yes, please contact CityLink on 132629 to arrange this.”

12 On 4 July 2012 CityLink responded to the TCO. The TCO forwarded this response to Mr H:

“I acknowledge receipt of your emails of today’s date. CityLink has responded to me as follows:

“I acknowledge Mr [H's] concerns and respond as follows:

*While Late Toll Invoice number ****845 was issued to an incomplete address, this does not indicate [Mr H] has provided incorrect or incomplete information to Queensland Transport. I apologise for any previous CityLink correspondence which may have implied this was the case.*

Details of a registered vehicle owner are obtained electronically. They are not manually entered into CityLink’s systems by a CityLink representative.

CityLink’s systems allow for commas and a second address line. As such, the presence of a comma is not a likely cause for the omission of the street number and name.

I apologise for the previous CityLink correspondence addressed to [Name] instead of [wife’s name].

To clarify, Section 73 of the Melbourne City Link Act (Vic) 1995 ("the Act") makes it an offence to drive a vehicle in a toll zone that is not registered, or exempt from registration, with CityLink.

*While the Late Toll Invoice number ****845 may not have been received due to an incomplete address, CityLink's records indicate vehicle [LPN] (QLD) was not registered for travel on CityLink on the dates of travel specified on the Late Toll Invoice. This is the matter which has been referred to Victoria Police.*

In order to dispute the Infringement Notice, [Mr H] must follow the internal review process with Civic Compliance Victoria."

Without making any adverse findings against either CityLink or yourself in respect of this complaint, I am satisfied that there could be reasonable grounds to believe that you did not receive the toll invoices and were disadvantaged as a consequence. As I have previously advised, you must pursue the Civic Compliance process and you may use this correspondence in support of the application."

13 Mr H responded to the TCO that day as follows:

"Now that we have established that I was not responsible for providing incorrect or incomplete information to Queensland Transport.

Why has my right to receive a "Late Invoice" not upheld? Not only was I advised on the day of travel via phone, but also the VicRoads website indicates the introduction of a Late Invoice system allowing road users to pay applicable tolls plus an administrative fee was introduced on the 17th of June 2004. is this currently still not in place or has it been revoked?

From the information provided, City Link failed to not only provide a Late Invoice, but also failed to provide it to a Valid Address. simple error checking based on "valid postal address" should have be established if an electronic system is to be used to provide invoices. or even a system in place before the Infringement notice of \$100.00 is issued.

Would you not agree that currently there is no incentive for CityLink to provide a Late Invoice to a valid address? and currently there is no ramification for doing so as they will just pass the problem onto Vic Police and wash there hands of the issue. resulting in the Road User having to pay not only the Toll + Admin Fees but also \$100 on top of each infringement that they did not receive based on no fault of the road user.

<http://www.vicroads.vic.gov.au/Home/Moreinfoandservices/RoadManagementAndDesign/TypesOfRoads/CityLink/>

"On 17 June 2004, VicRoads became responsible to the Minister for Transport for management of contractual arrangements in relation to City Link.

Major achievements include:

Introduction of "Late Invoices" that allow motorists, who use the City Link without making prior arrangements, to pay the applicable toll plus an administrative fee (currently \$12.00 rising to \$21.50 for a second invoice), rather than face an Infringement notice of \$100.00;"

Secondly the other issue is I currently do not have a "Late Toll Invoice" addressed to my name, currently I only have an Email Copy of a Late Toll Invoice that was address to the incorrect address to someone who was not driving the vehicle. However, I have an Infringement Notice which has been issued and addressed to my current postal address and name, which your advising I must pursue directly with Civic Compliance due to City Link not providing an Invoice which as far as I'm aware are required to do."

14 On 5 July the TCO received further correspondence from Mr H:

"After reading a number of your reports, and a number of your previous cases, it's becoming more apparent that I'm fighting a lost cause. Really, City Link (transurban) is a large organization that services millions of "unregistered" vehicle infringements a month, which entitles them to \$12 per offender. why would they care if they are issuing Late Toll Invoices to "invalid" address any more then any of the other accuracy issues The Tolling Ombudsman has presented in its findings over the years. Such as, phone conversation, registration authorities, NEVDIS even license plates. if someone fails to pay an invoice they never receive, they get even more money, \$21.50 all carefully orchestrated as to have no ramifications for Transurban.

In a response from CityLink to the "TRANSURBAN CUSTOMER OMBUDSMAN REVIEW 1 March 2011 – 31 August 2011, CityLink made the following known.

"In the instance that a vehicle is not registered for travel on CityLink and the vehicle is not from Victoria, NEVDIS will be utilised to obtain the details of the registered owner. Occasionally, this information will not be the most current which is unfortunately out of Transurban's control. In the instance of a Late Toll invoice being issued to the previous or incorrect owner, a nomination or dispute can be lodged with us, which typically will mean the customer then does not have to pay the toll and associated fees."

So as it appears both TCO and CityLink are aware of issues with the accuracy of the data provided by NEVDIS, and even call center operators

which has been both in my case, but continue to utilize the data as its the currency CityLink trades in, which entitles them to more administration fees.

What happens if I don't pay the LTI?

A final notice will be issued with additional administration fees. If this is not paid within the payment terms, details of the travel will be referred to the Victoria Police who may issue an Infringement Notice for each date of travel.

CityLink is financially rewarded each time they send an invoice to a customer (\$12), even more when its based on invalid information as they are able to charge yet another administration fee (\$21.50) for an invalid address invoice, and then hand ball the problem to the Vic Police to deal with, washing there hands of the problem forever. Never having to deal with the customer complaint or even knowing there is a problem as its all automated and becomes a Civic Compliance issue.

I think its questionable that they can continue to charge an administration fee for an invoice, when clearly I had not received due to an incomplete address, and clearly disadvantaged as a consequence.

*“While the Late Toll Invoice number ****845 may not have been received due to an incomplete address, CityLink’s records indicate vehicle [LPN] (QLD) was not registered for travel on CityLink on the dates of travel specified on the Late Toll Invoice.” – CityLink*

“I am satisfied that there could be reasonable grounds to believe that you did not receive the toll invoices and were disadvantaged as a consequence” - Tolling Ombudsman.”

- 15** On 13 July 2012 Mr H requested an acknowledgement of his email of 5 July. A member of staff at the TCO’s office wrote to Mr H on 17 July 2012:

“I acknowledge your email below together with your emails of 4 and 5 July. I refer you to the TCO’s email of 4 July in which he recommended “...you must pursue the Civic Compliance process and you may use this correspondence in support of the application”.

Michael Arnold is currently on leave, returning to office on 16 August.”

- 16** Mr H responded:

“There is nobody that can continue his work while on leave? Or do I have to wait.

The issues I raised are around my right to not have to follow up with civic compliance which was afforded to me by the minister for transport. This right

was denied due to the miss handling of information which in the corresponds TCO agreed disadvantaged me.

As a result i would like an outcome outside of civic compliance, as that fails to address the root cause of this issue. Which is citylink failed to address the invoice correctly, are aware of issues with inaccurate data supplied by 3rd parties. But continue to do business and profit from their mistakes, then wipe their hands of the issue by passing on the problem they created to civic compliance with no ramifications.

I'm also charged invoicing fees for invoices I did not receive at no fault of my own.

As my fine is due on the 8th of Aug, I will need to now get an extension until this is addressed.

17 The staff member responded on 19 July 2012:

"I acknowledge receipt of your email and note its contents.

I refer you to previous correspondence and advise that the TCO cannot control the conduct of Civic Compliance Victoria and therefore has no jurisdiction over the matter once it is referred to CCV."

18 Mr H emailed the TCO on 19 July 2012 under cover of two separate emails as follows:

"You have control over decisions made to cotylink, they have control over the fees that are charged prior to it being sent to ccv, I'm asking that it's been acknowledged that I was disadvantaged by not receiving the invoice yet the chargers for these invoices still stand. Is this correct? Why can the charges for the invoices not be removed considering I did not receive them at no fault of my own.

is it because citylink is profiting from the mistakes that are well within their power to resolve but have no incentive to as they are profiting from these mistakes."

and:

"lets put this simply.

<http://www.vicroads.vic.gov.au/Home/Moreinfoandservices/RoadManagementAndDesign/TypesOfRoads/CityLink/>

"Introduction of "Late Invoices" that allow motorists, who use the City Link without making prior arrangements, to pay the applicable toll plus an administrative fee (currently \$12.00 rising to \$21.50 for a second invoice), rather than face an Infringement notice of \$100.00;"

Invoice Fee 1. \$12, I did not receive this invoice at no fault of my own, it has been established by TCO that I was disadvantaged.

Invoice Fee 2. \$21.50 I did not receive this invoice at no fault of my own, it has been established by TCO that I was disadvantaged.

CCV Infringement notice of \$100.00 - This has been established that I need to work with CCV to resolve this.

I ask that TCO to review the practice of sending invoices to invalid address and charging fees, considering the invalid address is at no fault of the road user, the car was registered correctly, however City Link obtain the information from a 3rd party which does not have accurate information. CityLink are well aware that the information is inaccurate but continue to do nothing about it as there is no ramification for them to resolve this issue, rather they make a profit from it.”

19 On 3 August 2012 Mr H emailed the TCO:

“Do I get an acknowledgement or are we still waiting for someone to come back from holidays to make a decision. It seems this issue is being brushed aside, along with all the issues the ombudsman has raised previously with regards to data integrity in its reports.”

20 On 5 August 2012 Mr H emailed the TCO:

“I guess I should have just paid this stupid fine, I missed the due date it was actually the 3rd.

Thanks for the complete waste of my time and effort to get this resolved.”

21 On 16 August 2012 the TCO wrote to Mr H:

“I refer to your emails following the TCO’s advice as to the limits of its power once matters have been referred to Civic Compliance Victoria (CCV) and the recommendation that you deal with CCV using the correspondence from the TCO. This was again confirmed in emails of 17 and 19 July 2012.

It would be of assistance if you could advise what steps you took in this regard.”

22 Mr H responded to the TCO:

“None, I missed the deadline of the infringement so im now awaiting the outcome of that.

TCO have mentioned a number of times the limited power over CCV, my issue is related to CityLink of which the TCO does have power over but still continue to allow them to profit from mistakes they are in control of fixing, and at no fault of the road user.

Road users are entitled to use the road and given an invoice to pay, which has been established by TCO I did not receive before being sent to ccv. As a result of not receiving the invoice I again request these fees be revoked which are applied by CityLink which is within the powers of TCO, is this correct?"

23 On 21 August 2012 the TCO wrote to Mr H:

"I acknowledge receipt of your email of 16 August and regret that you overlooked the deadline of the Infringement Notice.

According to CityLink, your vehicle [LPN] (QLD) was not linked to a Roam Account at the time of your travel. Therefore, you are liable for the toll and the administration fees incurred in checking the vehicle's ownership details. Accordingly, you are liable to pay these fees.

There is an issue about any additional fees incurred by CityLink for Late Toll invoices as you maintain that the Late Toll invoice was not delivered by Australia Post due to an incomplete address. This issue will be addressed in the context of a withdrawal of the Infringement Notice by CCV."

24 Mr H responded to the TCO:

"Again let me make this clear,

The invoice fee plus toll fee, are required based on the process. I accept that this was explained to me on the phone while I was driving on the road and I called the number on the signs posted. we have established this already.

There is an issue about any additional fee incurred by CityLink for Late Toll invoices that I maintain that the Late Toll invoice was not delivered by Australia Post due to an incomplete address, this additional fee was put on by CityLink, prior to sending it to CCV. this is the fee I'm asking to be removed.

CCV put on an additional fee after CityLink put on 2 additional fees the first was due to the car [LPN] not being registered for the road, the second was due to me not paying a late invoice that was not delivered due to no fault of my own, and the TCO has already established this.

A 3rd fee was due to CityLink then referring this infringement to CCV due to an incomplete address, which I need to now resolve with CCV once the additional fee is removed by CityLink.

When will TCO be able to resolve the additional fee placed on me due to an incomplete address on the invoice which the TCO have already deemed as being inconvenient but continue to let CityLink to practice in this way without ramification.

what I request is that CityLink acknowledge the mistake and remove the additional fee that was charged due to an incomplete address which is fully within the control of CityLink and continue to do nothing about it.

if you look back at the TCO reports, the validity of the information CityLink uses to send invoicing has been put in question before yet nothing was done about it. Why are CityLink allowed to continue to operate with invalid registration information and then hide behind it by sending off the "problems" to CCV to deal with, but first attaching a number fee and then having no method to resolving the issue other than raising it with TCO.

I now have a new deadline of the 22nd of Sept."

25 On 24 August 2012 the TCO emailed Mr H as follows:

"I acknowledge receipt of your email of 21 August 2012 and note its contents. I can only reiterate that this issue will be dealt with in the context of the Civic Compliance outcome. In this regard I have sought information from Australia Post as to their mail delivery protocols. I have sought clarification as to why a letter in the Name of "[Surname]" addressed to U2, 13 [Suburb] Qld [Postcode] would not have been delivered to U2, 13 [Street], [Suburb] , Qld [Postcode] despite the absence of the name of the street.

As I have previously indicated I can assist toll operators' customers in their dealings with Civic Compliance, as I have sought to do with you by providing a response to a complaint, that could be considered as part of a submission to Civic Compliance seeking relief. Civic Compliance is a State Government Agency, however, and I cannot interfere with its processes whilst they are in train."

26 To which Mr H responded:

"Why are you avoiding the issue that citylink use data from a 3rd party source that has already been established to have inconsistency issues by the TCO with that of the local registration authority. This is the real issue here. They use data knowing that it is inconsistent and as a consequence are able to continue to do so at the inconvenience of road users and charge fees for undelivered mail."

27 And the TCO further responded:

"I acknowledge receipt of your email and note its contents. I will address all issues when my enquiries are complete."

28 The TCO corresponded with Australia Post on its delivery policy and practices in relation to incorrectly addressed mail and received a response.

29 Following receipt of a response from Australia Post, the TCO wrote to Mr H on 3 October 2012 in the following terms:

“Further to my last email, I have received a response from Australia Post. I wrote to Australia Post and said, in particular:

*“I am writing for assistance on the particular issue of the delivery of mail with an incorrect address. I currently have a complaint in relation to the alleged non-delivery of a toll road operator’s mail which was incorrectly addressed because it did not contain **the street** address.*

*The name of the addressee, the unit number of the apartment, the street number, the suburb, the State and the postcode were all correct, it was just the **street name** that was omitted. I have not included the customer’s name or the actual address in this correspondence for privacy reasons.*

I understand that it is the addressor of a letter’s responsibility to correctly address the mail and I do not expect you to investigate the individual instance that took place last year.

It would be of assistance, however, if you could advise what processes would be followed in an endeavour to effect delivery of mail to the addressee in the above circumstances.”

I relevantly received the following in response:

“I refer to your recent letter concerning policies for delivering insufficiently addressed articles.

At the outset, please note that Australia Post makes every effort to ensure all articles are delivered correctly as per our customers’ expectations. It is however, the responsibility of the sender to ensure that a letter is addressed accurately to enable Australia Post to deliver to the intended recipient.

Australia Post has an obligation to deliver mail as addressed – regardless of the name on the article, except where it is sent via the Person-to-Person service. Nevertheless, where an article’s address is not clear, delivery staff will attempt to determine the correct particulars for the article by seeking advice from other staff or consulting the White Pages or Electoral Roll. Such items should be endorsed “Try” and opened in the presence of Australia Post staff if possible. While it is not possible to be certain what occurred with your article – as it was sent via a non-trackable service – it is our belief that this would have occurred. Where it is not possible to identify the intended party, the item is Returned to Sender.”

I do not know the situation in relation to your electoral roll registration but I presume that Australia Post has previously delivered mail to your address.

In these circumstances, on the information provided to me, Australia Post should have delivered the notices to you on the information that they had."

30 On 4 October 2012 Mr H responded to the TCO as follows:

"It is however, the responsibility of the sender to ensure that a letter is addressed correctly to enable Australia Post to deliver to the intended recipient"

As expected its the responsibility of the sender to address it correctly would you not agree?

Regardless, the correct information is available from the registration authority of each state, citylink use a 3rd party that has been proven previously to have incorrect information and are allowed to continue to use this information, why?"

31 On 18 October 2012 Mr H emailed the TCO:

"Are TCO still investigating this issue? It seems poor to conclude this issue would come down to as simple as the registered owner of the car is registered to vote. Considering the registered owner is not a citizen of this country and not required to vote, what's the next answer?"

Why is it not as simple as citylink is required to use valid data before it sends out reminder notices or even infringement notices? How us it CCV is able to get it right, but citylink is not. This is not the first time the data citylink uses has come into question, and im sure it's not that last.

Are you powerless to make a change?"

32 The TCO responded:

"Your email is acknowledged. The TCO is currently preparing a written decision in respect of your complaint that will address all the issues raised."

33 The TCO, in these circumstances, has prepared this Decision.

Discussion

34 The TCO is not a judicial body and does not have punitive powers. When making a decision it 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. I only have jurisdiction over the conduct of CityLink and cannot determine matters in

relation to allegations against Civic Compliance Victoria (CCV) or other outside bodies.

- 35** 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.
- 36** 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.
- 37** This complaint had its genesis in Mr H's failure to pay tolls for his usage of a toll road. The reason for this being that his vehicle [LPN] (QLD) was not linked to his Roam account at the time of travel. Mr H, as a consequence, became liable for administration fees incurred in checking the vehicle's ownership details and the issue of Late Toll Invoices in addition to the tolls.
- 38** However, the complaint was made because Mr H maintains that he did not receive the Late Toll Invoices in respect of the tolls due to an incomplete address on the Late Toll Invoices. Mr H states that this resulted in an additional fee being charged by CityLink and the collection of the debt being forwarded to CCV. The referral to CCV led to the imposition of its charges and the matter being taken out of the control of CityLink.
- 39** The matter having been referred to CCV also affected the power of the TCO to fully resolve the complaint as the TCO does not have jurisdiction to oversee the conduct of CCV. The TCO did take steps to assist Mr H.
- 40** Mr H, after he had received Infringement Notices from CCV, was directed by both CityLink and the TCO on several occasions to take the issue of their charges up with CCV directly. The TCO in fact provided correspondence on 4 July 2012 to Mr H which he could have used in an application to CCV to seek relief from its charges.
- 41** Mr H did not take this opportunity and advised on 5 August 2012 that he had missed the due date for the payment of the Infringement Notices. This was unfortunate as an intervention prior to this stage would most probably have seen him obtaining relief. CCV could have withdrawn the Infringement Notices on his application supported by the letter from the TCO.
- 42** Mr H seeks a refund of the Late Toll Invoice charges in respect of the tolls. There is no argument that tolls were incurred, not paid and additional fees were charged. There is also no argument that the Late Toll Invoices or Notices were incorrectly addressed. This is evidenced by Mr H's vehicle's [LPN] Queensland Registration Certificate. CityLink stated that it relied on the national motor vehicle registration

data base (NEVDIS) to obtain details of the registered owner and address for vehicle [LPN]. It says that it received the details electronically.

- 43** The TCO had previously reported on the possible lack of currentness of the details provided by NEVDIS in a six-monthly Review. This issue was discussed in the course of the complaint but I am not satisfied that the NEVDIS details were not up-to-date at the time CityLink obtained them. They may have been inaccurate, which is a different issue upon which the TCO reported in the Review. It is my understanding that CityLink is currently reviewing its access arrangements to NEVDIS to avoid problems in the future.
- 44** Irrespective of the cause of the incorrect address, Mr H contended that he did not receive any Late Toll Invoices or Notices because of the incomplete address. It was for this reason that the TCO sought information from Australia Post as to its policy and procedures in regard to the delivery of incompletely addressed mail.
- 45** This was done because the TCO believes it was reasonable to assume that a postal article which had the correct names of the addressees, the correct unit number of their home and the correct suburb could be delivered despite the absence of the street number.
- 46** The response, as detailed earlier, from Australia Post to my request for such information would indicate that their enquiries should have led to the delivery of the Late Toll documentation to Mr H despite the incomplete address. Australia Post's response was put to Mr H, who did not address whether his address was recorded in the White Pages or Electoral Roll at the relevant times. The issue of the delivery of the Notices remains an open one.
- 47** Mr H has also questioned the level of the administration fees charged by CityLink. CityLink's administration fees must only cover the cost of administration and charges incurred and not generate a profit. Such fees are subject to Government scrutiny to ensure this is the situation. They are published so that toll road users know the level of the fees that apply.
- 48** CityLink, in any event, points out that the Late Toll Invoice fees have not been charged to Mr H. It says that when it issues the initial Late Toll Invoice it requests payment of \$11.51 administration fee. If it remains unpaid it then issues a reminder notice with an additional fee of \$10.95. This makes the fee \$22.46 in total.
- 49** If the reminder notice is not paid within the payment terms, CityLink cancels the Late Toll Invoice and reminder notice in its system together with the fees and forwards the data to CCV (through Victoria Police).

Decision

- 50** This dispute would not have arisen if Mr H had his vehicle correctly linked to his Roam account. If he had done so the toll fees would have been paid through his normal payment system. His failure to do so led to a range of circumstances which resulted in his complaint that he did not receive Late Toll Notices/Invoices and as a consequence suffered additional costs as a result of Infringement Notices being issued.
- 51** I am satisfied that if Mr H had taken, firstly, the advice provided by CityLink and, secondly, the assistance provided by the TCO, he may well have had the CCV Infringement Notices withdrawn and avoided the additional fees.
- 52** I am further satisfied that CityLink has cancelled the administration fees attached to the Late Toll Invoices and as a consequence Mr H has not been charged for same.
- 53** Mr H, however, may use this Decision in any further application he may wish to make to CCV to seek relief from fees paid to CCV in respect of the Infringement Notices. Further, CityLink should provide to CCV any relevant information required by it in its consideration of such an application.

Michael Arnold
Tolling Customer Ombudsman

Dated: 12 November 2012