

## DECISION

### Background

- 1 The complainant, Mr AW, first made a complaint to the Tolling Customer Ombudsman (TCO) on 11 August 2013, as follows:<sup>1</sup>

“Hello,my name is [A] and I have been a loyal customer for go-via for nearly 5yrs,to my dismay I have recently been informed by GV that I have incurred an \$800+ bill of which 90% seems to be just in late penalties.I have been on centrelink for some time and early in the year I was fortunate enough to land some part time work at Inala,and then that flowed onto some more casual work at Ascot.Unfortunatley because of the hours of which I have to work and then having to rush back to the Gold Coast to pick up my son from his carers before 4pm so I don't receive hefty after hours penaltys, means that sometimes just getting to a post office to pay my GV account is nigh impossible.Also I don't have the savings to be able to pay too much in advance.I spoke to a representative of GV over the phone on 8/8/2013 and told him my story,although he did praise me on not losing my temper like he said was the norm from customers with these same complaints he did seem rather aloof to my plight,he did however after speaking to his supervisor offer me an \$8 discount which was another kick in the guts from GV.I also assumed which was silly of me that everytime I could make some kind of payment that GV would immediately extract any funds owed to them,instead like the predators they are let the penalties mount so as to reap maximum profit from a good customer.The advice given to me was to first go through the right channels(you being one),also send a similar letter to my local MP,and being an election year might help,and also to speak to the producers at A Current Affair of which I have and they told me they are currently compiling yet another story on GV and that to be a part of it first I have to send a letter to the Ombudsman and await your response.I am also now because of my disgust in this company shall go out of my way to never use a GV tollway again,i have sort an alternative route to my workplace and although it has added 10mins to my journey and I will at times incur penalties from my sons carers, it does appease my principles.GV have made me feel like I am a criminal for trying to do the right thing by everybody,i hope the heirachy there don't believe in Karma as I do.”

- 2 The TCO acknowledged receipt of the complaint on 13 August 2013 and forwarded same to Queensland Motorways Limited (QML) for response.
- 3 On 15 August 2013 QML responded to Mr AW, copied to the TCO, as follows:

---

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

“Thank you for your email, forwarded to Queensland Motorways from the Tolling Customer Ombudsman (TCO).

To firstly address your enquiry, it is necessary to explain the account suspension procedure.

You are a *pre-paid go via* account holder. This means that you are to maintain credit on your tolling account at all times and should not travel on toll roads (which are also a pre-paid service) when you do not have sufficient funds on your tolling account. All motorists have an option of seeking an alternative toll free route.

When you do so, despite the 4 beeps of your tag, the low balance alerts, the suspension warnings, and the suspension alert, and debit balances on your tolling statements, you do not permit us to apply the toll to your blacklisted account. Any vehicle travelling without a valid account (ie blacklisted or does not have an account) on toll roads will be sent a toll notice for all overdue tolls. All toll notices attract administrative fees.

Specific to your enquiry, your **go via** account [\*\*\*001] failed to maintain credit most recently during the following periods:

08.12.2012 – 12.12.2012  
06.02.2013 – 14.02.2013  
16.04.2013 – 05.06.2013  
07.06.2013 – 25.06.2013  
26.06.2013 – 23.07.2013  
30.07.2013 - **CURRENT**

You included that your personal circumstances do not permit you to access an Australia Post outlet to top up your account after hours. I do not accept this to be a valid reason for failing to maintain credit on your account, as the periods of which the account remained in debit are extended.

Before Australia Post payments were available to **go via** account holders, you made your top ups at our **go via** retailers. You are aware our retailers are mostly 24 hour petrol stations or convenience stores. There are over 50 retailers in the Gold Coast area alone, most of which are accessible after hours.

When the vehicle travelled during the above periods, we have issued toll notices as part of the toll recovery process.

A total of 38 notices have been issued to the registered owner of the vehicle since the 17<sup>th</sup> of December 2012, over a course of 9 months. We have not received a single payment to date, which is the reason why a bulk of these notices include Notices of Demands.

The current outstanding balance at the time of my response is **\$867.13**.

We are due to issue a further 16 Demands Notices if payment is not made in full, adding a further **\$352.80** to the balance.

Toll evasion is an offence, and as you have not responded to our toll notices, you may now receive further Infringement Notices from the State Government in excess of \$154 for each outstanding demand notice. This may lead to the further suspension of your driver's licence.

It is recommended that you make payment to ensure the toll recovery process does not proceed further and avoid additional fees and charges.

To make payment of **\$867.13** 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 reference [\*\*\*001] and registration plate number [5\*\*\*\*W]
- credit card payment over the phone with a **go via** representative on 13 33 31
- by Cheque sent to Queensland Motorways PO Box 2125 Mansfield Queensland 4122 with the detached portion from the notice
- BPay using biller code 10306 and reference [\*\*\*011]
- Payment at Australia Post outlets with a copy of the notice before the due date
- Cash at our service centres located at Heathwood and Murrarie."

**4** That same day Mr AW emailed the TCO:

"i have received my reply from GV,there is absolutely no compassion shown toward my case and indeed are being threatened with hundreds of dollars more if I don't hurry and pay,what great customer relations,i also let them know that my beeper only beeps when it wants to and the card they sent me only works at post offices.I now realise that I needed to take more care with my GV account but that said how can a company charge what seems to be between 500 & 600% in penalties over a 12 week period ?.I have let GV know that I am currently unemployed and are awaiting my next dole payment,therefore I have no choice at all other than to let this run its course and hope that a court judge may be more of a human than those peanuts at GV.I am also compiling a letter to send to Campbell Newman and am asking him to justify this extortion.I realise you cant do much to help me now but thankyou anyway"

**5** On 16 August 2013 QML wrote to Mr AW, copied to the TCO, as follows:

"I confirm receipt of your attached email.

The top up card you currently have can be used at all retailers, and come with the added barcode so you may **also** top up at Australia Post outlets. This is not a card exclusive to Australia Post, and we wrote to our account holders when the new card was issued to explain the wider range of options to now top up your **go via** account.

It is important to note that all of our fees and charges are approved by the State government and included in the Annual Gazette. Toll road operators cannot impose charges on motorist that is in excess of the administrative costs incurred to us.

I will be happy to address your same enquiry from any office, as they will also need to refer to myself on the matter. Please feel free to include our below correspondence with the TCO in your future enquiry.

Only payment can resolve your enquiry, and I look forward to further discussions on the matter. It is recommended however that you do not delay on your payments to

the outstanding debt and also to your **go via** account, as I have now provided you information on the toll recovery process.”

Attachment (dated 15 August 2013):

“You sent me a new card which can only be used at a post office and I had already discarded my old one, and to compound all this my beeper would only beep sometimes, I still firmly believe your billing and especially penalties added are an absolute farce, we all know how we feel about banks and what you are trying to extort from me is an absolutely unfair, yes I do admit now I know the process a little better I should have taken more care with my gv account but that does not excuse gv for inexplicable penalties. I am currently unemployed again and so don't have any money at all until I get my next unemployment payment, hence I shall have to let this go all the way to court and hope at least the Judge may be more humane than you lot. And like one of the producers at channel 9 said "it is not the fact that I was complacent with my gv payments, it is being able to warrant the penalties you lot try to impose. Hopefully I get my day in court and on TV to expose your employer yet again. [Mr AW] REG [5\*\*\*\*W].

PS I have written a letter to Campbell Newman and also my local MP so I hope you don't mind me quoting your name [Name].”

6 On 19 August 2013 QML emailed Mr AW, copied to the TCO:

“I confirm receipt of your email (attached).

My recommendation to you is if you are unable to make the payment up front, you should make as much payment as possible as soon as you can.

I understand that your financial situation may not be favourable at the moment; however the fees were legitimately issued for reasons we have discussed stemming from you failing to operate your tolling account in an acceptable and agreed manner.

My response will not differ regardless of the office it is received from, as you have not provided grounds and valid reasoning to support why you were travelling without a valid account.

It is recommended that you make payment to ensure the toll recovery process does not proceed further and avoid additional fees and charges.

To make payment of **\$867.13** 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 reference [\*\*\*\*001] and registration plate number [5\*\*\*\*W]
- credit card payment over the phone with a **go via** representative on 13 33 31
- by Cheque sent to Queensland Motorways PO Box 2125 Mansfield Queensland 4122 with the detached portion from the notice
- BPay using biller code 10306 and reference [\*\*\*011]
- Payment at Australia Post outlets with a copy of the notice before the due date
- Cash at our service centres located at Heathwood and Murrarie”

Attachment (dated 18 August 2013)

"Again like I said in earlier e-mails [Name],i am not employed,i have no savings left,and I am going to get to the bottom of these 500% + extortional overcharges via a courtroom and letters to the right people,it is the only option I have,and there goes my planned holiday to sentosa island....bugger."

- 7 On 5 February 2014 the TCO was copied into correspondence between QML and Mr AW as follows:

"I confirm receipt of your email received on the 4<sup>th</sup> of February 2014 in response to my email sent the 19<sup>th</sup> of August 2013.

I have previously advised that payment is to be made, and as a result of your non-payment, the toll recovery enforcement has continued.

It is recommended that you take necessary action to protect your interests, and I will be happy to provide information to the courts should you pursue that option. Before you do so I would also recommend that you research the State legislation on tolling, and your liability under State law to make payment for tolls and all fees.

You will also be in receipt of Penalty Infringement Notices that may affect your driver's licence. I suggest that you do not ignore these notices.

The collections agency will be able to discuss your payment options with you further."

[Mr AW's] email to QML dated 4 February 2014:

"What a load of rubbish,1st I wrongly assumed that even if I got in arrears every time I got the chance to top up my account that gv would take off any moneys owing first then credit any balance to my account,no ofcourse gv wouldn't do this as they could miss out on collecting irrational fees,2nd my pager,buzzer or what ever you call it chose when it would beep and the position it use to be in never changed,3rd I have a couple of friends who have given me permission to use there names when we get to court whom also found themselves in this debacle were indeed told by the gv rep on the phone if they paid the true toll they would waive the penalties,so who picks and chooses who gets hammered by these ridiculous fees.Anyway I told the debt collection agency that called me on your behalf I need to let this go all the way to a court and surely any rational judge will judge all the evidence on its merits.And because of this insane attempt at ripping off a once regular customer of gv you will see that I have never used your toll roads again.I also perused the internet to see if gv had angered any others WOW,you have pissed a lot of hard working people off haven't you,just look for yourself."

- 8 On 7 February 2014 QML responded to Mr AW's email of 5 February 2014, copied to the TCO:

"Your email contains much information that is unrelated to the main issue of toll evasion.

You have an obligation as a motorist to make payment for your tolls and when you have not done so within 3 days, are liable for all fees and charges. We are at no time

obligated to provide a waiver of fees, and if we have done so, it is solely for the purpose of goodwill. All cases are reviewed for its individual merits.

You and I cannot come to a mutual agreement because of your insistence that you will not pay any fees. I have included, at the risk of repeating myself, that you are liable for the fees in addition to the tolls.

If you are unable to make payment, we are entitled to continue recovery action. In your admission you have limited financial capacity, therefore you should take necessary action to take responsibility for your debt.

I have now exhausted my advice to you and will request that the TCO provide commentary.”

[Mr AW's] email to QML dated 5 February 2014:

“Like I have previously mentioned zell I am absolutely flat broke,i have no job,no savings and have some clothes and shoes to my name,and I cant read well at all and generally have to rely on others to read letters and type e-mails etc for me.Maybe this is the way people are treated in singapore or some other asian countrys but this is Australia and surely someone would have some compassion when they look at the whole picture which includes being supplied with a faulty buzzer,and I also have a couple of blokes who use to ride with me to my old job who im sure would testify for me when I showed them how your piece of dodgery equipment would work when it felt like it.Also how are you going to explain to the judge that you obviously depending on what person you deal with at gv can have the penalties waived ? and you best believe I have proof of this as you will see.My old paint rep is one of these persons and he told me his bill after talking to a reasonable person at gv went from \$600+ toll and penalties to a little over \$100,where is the consistency at your workplace. Any way when your karma comes and keeps coming you can look back at the way you treat people and attempt to grab every cent possible from people whom really are bewildered by all this.Dont take this the wrong way I am not foolish enough to wish you or your workmates ill will as I believe it will all come back to me but in this instance all I was trying to do was get to work with which I now realise was a faulty piece of gv equipment,and because I couldn't/didn't read the fine print on your contract wrongly assumed that your company would be more humane and subtract monies owing with my topups.I never had any intention of letting my account go so much in the red or quitting gv or its roads but I am so frustrated as to where it all went wrong for me.If I cant find work within the next month I have absolutely no option but to return to New Zealand where at the very least will be able to get an unemployment benefit if I cant find regular work,i will not be running away from this as I with some luck could be back but I need money to survive and pay my bills.So if the court case comes up before the end of Feb I will deal with it before I go,otherwise I hopefully will be able to sort it when I get back.”

- 9 QML subsequently wrote to the TCO dated 7 February 2014, referring to the exchange of correspondence set out in clause 8 above, as follows:

“As contained in the below correspondence, [Mr AW] has been advised that he has incurred tolls, fees and charges due to his continued travel on our toll roads without a valid account/pass.

Based on his limitations he should make payment as much as possible as soon as possible.

I cannot assist him further in this respect as he refuses to negotiate or assume responsibility for the accrued fees from his action.

QML has not been provided valid grounds to waive any fees.

I seek your comments on the matter.”

- 10** On 10 February 2014 QML provided the TCO with correspondence received from Mr AW dated 8 February 2014, as follows:

“Sweet,have to let it go to court and hopefully if I lose sper will let me pay it at a very reasonable rate,[S] my paint rep has since told me there were no special circumstances for him and his fine relief only that he got a reasonable person on the phone.As the ANZ bank and all other institutions are about to repay tens of millions back to their customers for unacceptable fees charged,i can only imagine gv will have to do the same in the near future,i would like to know how much it actually costs to send out a few bits of paper and push a few buttons and then relate that to what seems to be an extortionate company.If your penalties had been of a reasonable rate then I may have been in a position to borrow some money and fix the problem without having to deal with a person like yourself,but my principles with regards to the way I have been treated and the faulty piece of equipment you supplied me with means when I get back from NZ i will plead my case in court.You cannot get away with these ridiculously sized penalties and if the banks are about to have their bottoms kicked im sure a company like yours that hides in the shadow of Brisbane city council will no doubt suffer the same fate.Anyway im not getting anywhere talking to the sausages I need to talk to the butcher himself,so if and I doubt you do need to correspond any more to me please could it be someone with a little more integrity than you and with a little more experience in customer relations,good luck with your Karma and think of what you have put people like myself through when it comes.”

- 11** On 12 February 2014 the TCO wrote to Mr AW, copied to QML, advising that as it appears this matter will not be resolved by conciliation, a formal written Decision will be made.

- 12** To which Mr AW responded:

“Thankyou Michael for your reply,as you can probably tell via my correspondence with gv I am just getting angrier by the minute,it just seems there is such a money grab in our society at the minute especially to those who can least afford it.I obviously hope that you rule in my favour and can see that I have made an honest mistake by not reading all the fine print or getting someone to explain it better to me and realised too late that I did in fact have a faulty buzzer,but that said I am willing to fight this in court probably using legal aid as I cant afford a lawyer.So if indeed you cant rule in my favour I know you would have done your best and thankyou either way.”

## **Decision**

- 13** 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.
- 14** 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.
- 15** 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 outside bodies.
- 16** The factual background to this dispute is adequately set out in this document and I do not intend to recite it as both Mr AW and QML understand the issues in dispute.
- 17** Whilst appreciating Mr AW's position, he had the obligation of keeping his Go Via account in good order during the time he was using the toll roads. He was aware of those obligations, being a customer of Go Via for five years. I note that Mr AW says he had difficulty accessing places or methods of topping up his Go Via account but there were a range of options open to him to make payment.
- 18** Go Via acted in accordance with its procedures and rights under its agreement with Mr AW in the administration of his account when seeking to recover its tolls. Mr AW has raised the issue of the quantum of the fees charged. It has been explained that the administration fees charged are fixed in consultation with the State Government. I cannot review such fees.
- 19** I recommend that Mr AW makes arrangements to pay the outstanding monies.

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

**Dated: 6 March 2014**