

## DECISION

### Background

- 1 The complainant, Mr X, first made a complaint to the Tolling Customer Ombudsman (TCO) on 24 December 2014 as follows:<sup>1</sup>

“We apparently drove through 2 Toll roads in Brisbane.  
We're not from Brisbane and unaware of even driving on the Toll roads.

The Australian constitution advises the following;

#### **COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT - SECT 115**

##### **States not to coin money**

A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

We would be happy to pay the Tolls in gold or silver coin as per Australian Constitution, without any administration fees.

As we have not been given this opportunity, both tolls were paid by Bpay, minus the administration fees.

We continually receive letters stating the toll hasn't been paid - yet they have been paid, minus the unnecessary admin fees.

Can you please correct this matter for us.

Infringement Notice – [\*\*\*647] (Department of Main Roads)  
Infringement Number: [\*\*\*775] (Brisbane City Council)”

- 2 On 29 December 2014 the TCO acknowledged receipt of the complaint and forwarded same to go via for response.

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

3 That same day go via responded to Mr X, copied to the TCO, as follows:

“Thank you for your email, forwarded to **go via** from the office of the Tolling Customer Ombudsman (TCO).

I am grateful for an opportunity to now address the concerns that you have raised;

1. **S115 of the Australian Constitution**

Your enquiry references S115 of the Commonwealth of Australia Constitution Act being;

***States not to coin money***

*A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.*

While I accept your interpretation of s115, it was included in the Constitution to prevent different States from making their own currency.

There is no barrier for you to make payment of your debt in gold and silver coin if you wish; we have two service centres along our Gateway and Logan Motorway that will be happy to process your payment.

Further to that, if paying in gold and silver coin within 3 days of your trip, we have over 600 retailers in the region such as petrol stations that will accept your payment. In future, simply look for the **go via** signs at these stations. Alternatively, our full comprehensive list of retailers is available on [govia.com.au](http://govia.com.au).

Our toll notices can also be paid the same way at all Australia Post offices before the due date of the notice.

Contrary to unverified media reports, **go via** remain lawful in our undertakings, and failing to pay your toll simply on the belief that our operations are unconstitutional, will result in enforcement against the registered owner of a vehicle. If you believe that it is a matter for the courts to decide, you should consider legal advice.

Based on the reference numbers included in your email, it appears that you are now in receipt of Penalty Infringements Notices issued by the State tolling offence Unit and the Brisbane City Council.

Neither **go via** nor the TCO have jurisdiction on the matters of State and local governments, and cannot assist with your Infringements.

It is recommended that you refer directly to the Infringement issuer should you feel that the reasons you have outlined below is sufficient for the withdrawal of your Infringements.

I appreciate that my response may not be one you were seeking, however I hope I was able to clarify the matter.

Should you have any further questions relating to tolling, do not hesitate to contact **go via.**”

4 On 6 January 2015 Mr X wrote to the TCO:

"I have sent numerous letters of complaint to both groups - Brisbane City Council, as well as Department of Main Roads. Hence now contacting yourself.

I am out of the country at present and no longer have access to postal mail.

I am hoping you can process this and sort this out in my absence."

5 The TCO responded as follows, seeking Mr X's comments:

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

Go Via responded directly to you under cover of email dated 29 December 2014. In case you have not received this due to your absence overseas, this is quoted below in its entirety:"

This letter is quoted in paragraph 2 above.

6 On 10 January 2015 Mr X responded:

"Thankyou for your email.

Please find bank statement attached showing that the 2 tolls in question were paid approx 7 months ago.

I have received numerous letters stating that no payment has been received- however as you can see, payment has been made.

The QLD Motorway email forwarded to me a couple days ago has advised that there is a service centre located somewhere along the toll road.

This service centre is obviously not sign-posted very well, and doesn't promote payment being made there, otherwise payment would have been made on the day.

Advising of a service centre 7 months after the incident doesn't help. There needs to be clear signage advising you can make payment at the time of travel.

I have a family member who works for QLD Motorways - she has advised that payment of admin fees is waived under certain circumstances.

I would request that the admin fees be waived on these particular tolls, and that the payment has already been made in full."

7 The TCO sought comment from go via on the issues raised. On 12 January 2015 go via responded directly to Mr X, copied to the TCO:

"Further to your email and attachment, I wish to clarify the two Infringements you supplied;

*Infringement Notice – [\*\*\*647] (Department of Main Roads)*

This trip was not incurred on **go via's** toll road network, and was not referred to the Department of Main Roads by **go via**.

Please refer to Airportlink for more information. You may be interested to note that Airportlink are also subscribed to the TCO service.

*Infringement Number: [\*\*\*775] (Brisbane City Council)*

This Infringement relates to a trip made on the 6<sup>th</sup> of June 2014 on the Clem 7 tunnel.

Flow Tolling (who were the Toll Road Operator at the time of the trip) confirmed a toll invoice was issued on the 8<sup>th</sup> of July 2014, and due the 22<sup>nd</sup> of July 2014. Later a Notice of Demand was issued on the 5<sup>th</sup> of August 2014 and due the 4<sup>th</sup> of September 2014.

Your attached payment date is for the 16<sup>th</sup> of June 2014 and predates the invoice. Hence the payment was not intended for this invoice.

Additionally, it has been confirmed that no payment was received for this trip on the 6<sup>th</sup> of June 2014, and the Infringement correctly enforced.

**Go via** cannot assist in the matter, as neither Infringement was referred by us.”

**8** Go via also notified the TCO as follows:

“For your information, *Infringement Notice – [\*\*\*647] (Department of Main Roads)* was for a trip incurred on Airportlink's roads.

I recommend that they are forwarded [Mr X's] comments for clarification.”

**9** On that day Mr X emailed the TCO:

“I have received the below correspondence from QLD Motorways.

As far as I was aware there was only 2 tolls which were being questioned. Is there more than 2, and has this correspondence been directed to the correct groups involved?

I paid the 2 tolls I was aware of - wasn't aware of a 3rd.”

**10** The following exchange of correspondence took place on 13 January 2015:

Mr X enquired of the TCO:

“I haven't as of yet received a response to the email I sent through the other day. Are you still working on this?”

To which the TCO responded:

“From my records in my response to your email on Saturday 10 January 2014 I copied you into my email of the same date forwarding your email to go via for attention.

Please advise if you received that email?”

Mr X replied:

“I sent you the below email on 12/1/15. Did you receive this, and has it been acted on?”

The email referred to is quoted in paragraph 9 above.

TCO to Mr X:

“Examining the course of correspondence over the last few days I understood that go via had responded to this issue in its response.

TCO to Mr X:

“Go via only makes reference to tolls relating to AirportLinkM7 and Flow Tolling. Could you clarify what you believe the third?”

Mr X to TCO:

“I was going by the fact that they said "This trips was not incurred on **go via's** toll road network", so I assumed there must have been another toll or provider? I am not from Brisbane and unsure how the tolling system works.

In my opinion I have paid the 2 tolls- not the admin fees as there was nowhere clearly sign-posted advising where we could pay the toll on day of travel.

I believe it is your job to provide a solution. Can you please advise what you have determined.”

**11** The TCO notified Mr X on 19 January 2015 as follows:

“I have reviewed your complaint and Go Via's response.

It is apparent from the negotiations that there is not going to be an outcome with which you will be satisfied. Accordingly, I will make a written Decision.”

- 12** On 21 January 2015 the TCO responded to Mr X's email of 13 January 2015, copied to AirportlinkM7:

"I acknowledge receipt of your email and confirm that your dispute in regard to Infringement Notice – [\*\*\*647] has been forwarded to AirportlinkM7 for response.

I advise that the TCO does not have jurisdiction to deal with matters in relation to the Brisbane City Council/Flow Toll prior to when the Flow toll payment options integrated with Go Via from 1 October 2014. Go Via was not responsible for same in the period in which the matter arose."

- 13** Mr X replied:

"Thanks for response Michael.

One of these tolls in question were referred to SPER. Could you advise which of these tolls, the one you can deal with, or the other toll you can't deal with, is seeking payment?

What am I supposed to do about toll you can't make a decision on?"

- 14** On 25 January 2015 the TCO emailed Mr X as follows:

"I can only deal with toll operators over whom I have jurisdiction which includes Airportlink M7. I have no jurisdiction when matters are referred to SPER. Contact in that regard must be made to SPER."

- 15** On 29 January 2015 AirportlinkM7 responded directly to Mr X, copied to the TCO, as follows:

"Thank you for your Tolling Customer Ombudsman enquiry, received on 21 January 2015. The above Case has been created for your reference.

I refer to our email sent to you on 4 July 2014. As was advised, if the AirportlinkM7 notice remained unpaid, upon expiry it would escalate through our enforcement process and a PIN would be issued. A copy of this email chain has been attached for your reference.

To avoid this matter escalating further, I recommend that you arrange payment for the outstanding PIN as soon as possible. To make payment for this notice, please phone 132 390."

- 16** The following exchange of emails between Mr X, AirportlinkM7 and the TCO followed:

Mr X to AirportlinkM7:

"Thankyou for your email.

This email has also been forwarded to TCO.

The Toll in question was paid by BPAY. It was only the admin fee which wasn't paid as there was nowhere clearly identified to pay in gold/silver coin to comply with Australian Constitution. In fact there was nowhere clearly identified to pay anywhere, whether it be in state issued currency, or gold/silver coin.

I even offered to pay your postage fees, but this was denied. I have tried my best to sort this matter, and **in my opinion the toll in question has been paid.**"

TCO to Mr X:

"I refer to your email to AirportlinkM7 and recommend that you pay the administrative fees now to avoid further costs,

I can assure you that there is no requirement in the Australian Constitution that requires payment of business or commercial accounts in Australia in silver or gold. You are required, as are all who receive services to pay accounts in terms that are allowed under Commonwealth legislation in respect to legal tender."

Mr X to TCO:

"What dollar amount are they asking me to pay at this point in time? Is it the \$15 or so, or have they already increased this with further admin fees?"

Mr X to TCO:

"Australian Constitution advises the following;  
"The state shall not coin money nor make anything but gold and silver coin a legal tender in payment of debts."

If provided with the opportunity to pay the original admin fee (approx \$15 from memory) in gold or silver coin to comply with Australian Constitution, I will pay this amount. I was never given this opportunity in the first place."

TCO to Mr X:

"What you outline is correct from the Australian Constitution is correct the State cannot make currency as legal tender except in silver or gold ( this enables places like the Royal Mint to produce commemorative coins) as it is the Commonwealth Government's responsibility to produce legal tender not the State of the Commonwealth.

The Commonwealth and State Government were given separate powers under the Australian Constitution and the power to produce a common legal tender for use throughout the whole of Australia was given to the Commonwealth.

I again recommend that you contact with AirportlinkM7 to confirm the exact amount owing to them and you make payment of all the outstanding amounts to avoid further costs.”

17 On 30 January 2015 the following exchange of correspondence took place:

Mr X to TCO:

“You advised some weeks back that you would provide a written decision on this matter- I am yet to receive this written decision.

It appears Airport Link have finally realised they are ripping people off and have now decided to charge a \$3.13 purchase fee.

It is a shame they didn't charge reasonable rates in the past.

You also advised in a recent report that you wrote (on the website) that interstate & regional visitors to the city are still unsure of procedures. It would be nice if you took this into account when making your decision.”

Mr X to TCO:

“I have just phoned Airport Link and they have advised that there is nothing owing on my account.

It sounds like you (or they) have sorted this matter. If you have sorted this, thank-you for your help.”

TCO to AirportlinkM7:

“Please find enclosed from [Mr X]. Could you please clarify the situation about what is owing.”

AirportlinkM7 to TCO and Mr X:

“I would just like to clarify that at the point (18 August 2014) that the expired notice was escalated to the Department of Transport and Main Roads (TMR), [Mr X] no longer had any outstanding debt with AirportlinkM7. Penalty Infringement Notice [\*\*\*647] was issued by TMR, as such the debt is with them. I would recommend [Mr X] make contact with TMR directly to discuss any outstanding debt.”

Mr X to TCO:

“It would be appreciated if you would make your written decision on this matter.”

TCO to Mr X:

“I acknowledge receipt of your email and advise that a written decision will be made in this matter.”

## Decision

- 18** 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. The TCO decisions are binding on toll road operators but not on customers, who retain all legal rights.
- 19** 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.
- 20** 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.
- 21** Mr X incurred tolls for travel on toll roads operated by the Brisbane City Council and AirportlinkM7. I do not have jurisdiction over Brisbane City Council as a toll operator but, from the information provided to me, he did not pay the tolls and any related fees within the time prescribed by either AirportlinkM7 or the Brisbane City Council.
- 22** Accordingly, the collection of tolls and fees were subsequently escalated to the Department of Transport and Main Roads (DTMR). AirportlinkM7 forewarned Mr X this may occur in respect of its tolls and fees on 4 July 2014 and as he did not pay the outstanding amounts they were referred by AirportlinkM7 on 18 August 2014 to DTMR.
- 23** I am accordingly satisfied that Mr X incurred the tolls charged by the relevant toll operators and had the opportunity to pay same within the period allotted. Mr X has raised questions about the quantum of administrative fees charged by toll operators. The fixing of such fees does not fall within my power to affect.
- 24** Such fees are required to reflect the administrative work involved and not impose a penalty. They are a matter to be negotiated between the toll operators and the State Government. As a consequence, Mr X is required to pay the administrative fees charged by the toll operators.

- 25** Mr X's argument for non-payment of the administrative fees is based upon his view of what legal tender is in Australia. Legal tender, in simple terms, is the medium of payment recognised by Australian law to be a valid method of paying debts or meeting financial obligations in Australia. Australia's law and constitutional arrangements in relation to legal tender and the payment of debts was put in place at the Federation of the States (colonies) in 1901.
- 26** Prior to Federation into the Commonwealth of Australia, the States produced its own currency which could be used as legal tender. One of the reasons for Federation was the need for uniformity of laws across all of Australia, as a developing nation, in respect to financial matters such as, tariffs, banking and currency for administrative convenience and consistency.
- 27** Upon Federation, under the separation of powers arrangements, certain powers previously held by the States were conferred upon the Commonwealth of Australia, whilst the States retained certain residual powers. Under this arrangement, Section 51 of the Australian Constitution conferred exclusive powers on the Commonwealth Government to make laws for the peace, order and good government of the Commonwealth in respect to, amongst other things, the currency, coinage and legal tender.
- 28** The States were specifically excluded from this power under section 115 of the Constitution, which provided that States shall not coin money nor make anything but gold or silver coin a legal tender in payment of debts. With one limited exception: States do not produce silver or gold coins.
- 29** The Commonwealth Government subsequently made laws in respect to currency and legal tender including the Reserve Bank Act 1959 and Currency Act 1965, which establish Australian banknotes and coins as having legal tender status. This legislation has set the framework for commercial transactions and the meeting of financial obligations that is recognised and used throughout the country. Other methods are prescribed for payment.
- 30** Firstly, in relation to Mr X's arguments, it would not be reasonable to accept that Mr X does not understand the operation of this legal tender system and its requirements in Australia. He, like all consumers in Australia, would have used it regularly throughout his life in attending to payment of bills and financial obligations. Mr X has produced no evidence or suggested he has paid other accounts by way of gold or silver coins in a way that he requires AirportlinkM7 to accept.
- 31** Secondly, Mr X argues that he is not required to pay his obligations under the assumption that section 115 of the Australian Constitution required AirportlinkM7 to accept payment of tolls by way of silver or gold coins. Leaving aside that contention, there is no evidence that Mr X had made arrangements to make payment for the tolls by such a method prior to his travel on the toll roads or in fact tendered silver or gold coins as legal tender for payment of the tolls after he had travelled on the toll road. Any method of payment is not considered to be legal tender until it is in fact tendered.

- 32** Thirdly, it again would not be reasonable to accept that Mr X understood that section 115 of the Constitution would relieve him of his obligation to pay his tolls or any other financial obligations. States, like the State of Queensland, do not coin money or make gold or silver coins as legal tender. The provision does allow for the Perth Mint, owned by the Western Australian Government, to produce gold and silver coins such as the Australian Gold Nugget and the Australian Silver Kookaburra.
- 33** These coins are regarded as having legal tender status but they are almost never circulated or used in payment of debts and are considered bullion coins. Again, in any event, there is no suggestion that Mr X sought to tender such coins to AirportlinkM7 in payment of tolls and fees.
- 34** Fourthly, even accepting Mr X's assertion that States can make gold and silver coins as legal tender, this does not impact upon his liability to pay his financial obligations, whether it be to AirportlinkM7 or any other commercial enterprise. There is no correlation between whether or not the State can produce such legal tender and a consumer's liability to pay a debt or financial obligations.
- 35** There are terms and conditions for the use of the toll roads which have legislative backing and publicised to the road users. If Mr X's arguments were to be upheld and taken to a logical conclusion, it would mean that one could utilise services or acquire products and then refuse to pay for them on the basis that there was a potential but unavailable legal tender that may be used for payment. Such a situation would be untenable and is not supported by law.
- 36** I have noted the fact that Mr X has stated that he was unfamiliar with Brisbane but I am satisfied that toll operators have gone to additional lengths to provide sufficient signage and publicity of terms and conditions of usage of toll roads over recent years.
- 37** I am satisfied that AirportlinkM7 has acted appropriately in this matter and that a consequence of Mr X's failure to pay tolls and fees properly, it referred the collection of outstanding monies to DTMR. Mr X should attend to the payment of outstanding monies.
- 38** I do not uphold Mr X's complaint.

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

**Dated: February 2015**