

DECISION

Background

- 1 The complainant, Mr R, first made a complaint to the Tolling Customer Ombudsman (TCO) on 7 August 2012 under cover of two emails, as follows:¹

"My name is [Full name of Mr R] of [Address]. My phone number is [Number] and email is [Email]. I am writing in the hope of being able to resolve a long outstanding issue with GO VIA. This is an issue for the last 2 weeks on a number of occasions I have called to resolve, continue to be advised I will receive a call back with no further information. I am advised the Team Leader dealing with my file has been sick, or "she is a fiery red head doing all she can for you," as per a conversation with consultant [Name]. I have been dealing with [Name] Team Leader.

*My issue is there is a DVO out for my partners ex, as he was stealing our mail, a change of address for me also occurred and I never received notices for the toll usage so none were paid. My partner has since called and registered our vehicles and set up accts. We were told of a balance of approximately \$3,000 for me, and \$1000 for [partner]. My rego details are : [7***W]. [Partner's] vehicle is [2***D] is attached to my acct now or vice versa. We contacted Go Via a number of times where we were told these figures and a payment arrangement was made. We have adhered to the arrangement to have a reduction from \$3,000 to \$1328 and \$1000 to \$100.00. we made payments of \$50.00, \$20, \$20, \$20 and \$20.00 to my acct as asked and 4 x \$20.00 to [partner's] acct as asked. Go Via have allocated these payments to other toll uses and said we didn't adhere. They also advise we never set up cards to use the tolling which is incorrect and I hope they have rectified these outstanding.*

We agreed to this to resolve the issue. Go Via after a number of calls confirming balances then advised of a further acct their back office made for no reply. This acct is worth approx another \$3000.00. We were not told about this and on a number of occasions now calling told these can be forwarded to SPER which will incur another \$140.00 per tolling offence.

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

I have waited 2 weeks nearly for a call back and have not received after being advised my acct would be taken to the tolling accts team. I want a resolution as I adhered to the arrangement, and have in cash the \$1328 and \$100.00 available to pay to resolve the issue today. I have had these funds for over a week and advised as per case notes.

It wasn't until I asked for my case notes the team at Go Via started to work with me.

Ideally I would like my accts and [partner's] accts waived for the time effort and stress this has caused."

and:

*"My Apologies, my rego is [6***W] for Red Mitsubishi Lancer.*

Today I have contacted Go Via again to be told I would receive a call back and a reduction of my account to \$1600 total, and [partner's] still at full price of \$1,000. This issue has put considerable strain emotionally on myself and my partner in time and has affected us quite seriously. I have now asked for a copy of the notes on both vehicles after today being told there is a major mix up and for the 3rd time provided my email address and contact number. With all the issues, time and strain this has put on me and my partner, I am requesting a waiver on both rego's, or dramatically reduced to as low as possible in the hope we can afford to pay the account and finalise the dispute. I would request we do this at the amount of \$500.00 and both parties amicably agree so there is no further angst, issue and I have tolling accounts now set for both cars."

- 2 The complaint was acknowledged by the TCO on the same day and referred to Queensland Motorways Limited (QML) for investigation and response.
- 3 On 8 August 2012 the TCO received copy of QML's email response addressed directly to Mr R as follows:

"Thank you for your email, a copy of which has been forwarded to me by the Tolling Customer Ombudsman.

There are a number of signs along the road network to advise motorists that they are travelling on a toll road. Signs at each entry and exit advise that the road is a toll road. There are signs prior to each toll point advising Toll Point 1KM ahead, there are signs at the toll point detailing the toll point name and additional signs after the toll point to advise motorists of their obligations to pay the toll. There are also additional signs along the road network providing contact details for go via.

When a vehicle passes the toll point without prior arrangements to travel on the road, an image of that vehicle is taken for the purpose of toll recovery. An invoice is then issued to the registered owner of the vehicle. As you and your partner had outstanding tolls invoices have been issued to you both. Each invoice attracts an administration fee which covers the costs to Queensland Motorways, associated with issuing the invoices.

I have undertaken an extensive review of your circumstances. To clarify the situation, there are currently 4 separate reference numbers relating to vehicles operated by your partner and yourself. I will address each below separately.

Vehicle [2*D] – Reference [5680***] (No Arrangement Travel Account)**

I understand that this vehicle is operated by your partner. There is currently an outstanding balance of **\$223.89** for this vehicle for tolls and charges dating back to 02/03/2012.

A number of notices have been issued to your partner in relation to these unpaid tolls as follows:-

Unpaid Toll Notice issued	05/04/2012
Final Notice issued	17/04/2012
6 Demand Notices issued	11/05/2012
Unpaid Toll Notice issued	05/06/2012
Final Notice issued	19/06/2012
10 Demand Notices issued	03/07/2012
Final Notice issued	06/08/2012

To date we have received payments as follows:-

\$20.00 paid 06/07/2012
\$20.32 paid 16/07/2012
\$20.32 paid 28/07/2012

There is a further reference number for this vehicle being [5988*] (Change of Ownership Account)**

There is currently an outstanding balance of **\$102.84** under this reference, for tolls and fees, incurred by vehicle [2***D] between 31/03/2012 and today's date.

An Unpaid Toll Notice was issued on 05/06/2012, followed by a Final Notice. When payment in full was not received by the due date 4 Demand Notices were issued on 03/07/2012.

There is currently a total outstanding balance of **\$326.73** for vehicle [2***D].

Vehicle [6*W] – Reference [5892***] (No arrangement Travel Account)**

I understand that this is your personal vehicle. There is currently an outstanding balance of **\$4,284.76** for this vehicle for tolls and charges dating back to 12/10/2011.

A number of notices have been issued to you in relation to these unpaid tolls as follows:-

Unpaid Toll Notice issued	20/10/2011
Unpaid Toll Notice issued	28/10/2011
Unpaid Toll Notice issued	07/11/2011
Final Notice issued	29/11/2011
Demand Notice issued	16/12/2011
3 Demand Notices issued	20/03/2012
6 Demand Notices issued	02/04/2012
Final Notice issued	08/05/2012
Unpaid Toll Notice issued	08/05/2012
Final Notice issued	22/05/2012
Final Notice Issued	25/05/2012
77 Demand Notices issued	05/06/2012
45 Demand Notices issued	06/07/2012
48 Demand Notices issued	03/08/2012

A total of 188 separate notices have been issued to you in relation to these unpaid tolls. To date, the following payments have been received:-

\$13.28 paid 23/09/2011
\$19.28 paid 07/10/2011
\$50.00 paid 29/06/2012

There is a further reference number for this vehicle being [5979*]
(Change of Ownership Account)**

There is currently an outstanding balance of **\$2,963.24**, under this reference, for tolls and fees incurred for this vehicle between 04/11/2011 and today's date.

An Unpaid toll notice was issued on 08/05/2012 followed by a Final Notice. When payment in full was not received by the due date notices were issued as follows:-

4 Demand Notices issued	19/06/2012
120 Demand Notices issued	05/06/2012

A total of 126 separate notices have been issued to you in relation to these unpaid tolls. To date the following payments have been received:-

\$20.00 paid 06/07/2012
\$20.32 paid 14/07/2012
\$20.32 paid 28/07/2012

When a vehicle travels on our network without a payment arrangement Queensland Motorways are not aware who the registered owner of that vehicle is. The vehicle registration details are sent to the Department of Transport and Main Roads (DTMR) who provide the ownership details. The invoices are then issued to the address that you have listed with DTMR. Whilst I appreciate that you may have moved properties it is your responsibility to ensure that you have the correct details registered with DTMR.

When a Demand Notice is not paid by the due date Queensland Motorways are obliged, by legislation, to notify the Tolling Offence Unit (TOU) at DTMR. A Penalty Infringement Notice (PIN) may then be issued for each unpaid toll. This notice attracts an administration fee of \$140.00 for each notice issued. I would recommend that you contact TOU to ensure that you do not have further monies outstanding to them.

Your vehicles have been travelling extensively on the Gateway and Logan Motorways with no tolling arrangement in place. I note that on 13/06/2012 you did open account [5992***]. A payment of \$25.00 was received on 30/06/2012 followed by a further payment of \$60.00 on 05/07/2012 and this account currently has a credit balance of \$72.18. Any tolls incurred by your two vehicles from 13/06/2012 will be charged to your go via account, whilst the account remains in credit.

In summary, the following amounts are currently outstanding to Queensland Motorways:-

Vehicle [2*D]**

[5680***]	\$223.89 this is made up of \$29.79 in tolls and \$194.10 in administration fees
[5988***]	\$102.84 this is made up of \$16.44 in tolls and \$86.40 in administration fees
Total outstanding	\$326.73

Vehicle [6*W]**

[5892***]	\$4,284.76 this is made up of \$399.80 in tolls and \$3,884.96 in administration fees
[5979***]	\$2,963.24 this is made up of \$319.56 in tolls and \$2,643.68 in administration fees
Total outstanding	\$7,248.00

Total outstanding \$7,574.73

When you travel on a toll road you are obliged to pay the associated tolls and therefore I am unable to offer any reduction in the outstanding tolls, however, as a gesture of goodwill I am willing to offer the following waivers in relation to the administration fees:-

[5680***] waiver of **\$106.50** in administration fees leaving a remaining balance of **\$117.39**
[5988***] waiver of **\$43.20** in administration fees leaving a remaining balance of **\$59.64**
Total outstanding \$177.03 to be paid

Vehicle [6*W]**

[5892***] waiver of **\$1,942.48** in administration fees leaving a remaining balance of **\$2,342.28**
[5979***] waiver of **\$1,321.84** in administration fees leaving a remaining balance of **\$1,641.40**
Total outstanding \$3,983.68 to be paid

Whilst I appreciate that this may not be the response that you were hoping for I hope that I have been able to explain to you why these notices have been issued. Your vehicles have travelled extensively along the toll roads without payment being received within the 3 day payment window. As a result notices have been issued to you.

It is important that you contact Queensland Motorways to arrange to make payment of the outstanding amount and avoid any further unnecessary fees and charges. If your tolls remain unpaid beyond the due date they may escalate to a Penalty Infringement Notice being issued to you for each unpaid toll. This notice attracts an administration fee of \$140.00. Our Customer Service team can be contacted on 13 33 31. Our Contact Centre is open between 7.00am and 10.00pm every day.

If you have any further queries please do not hesitate to contact Queensland Motorways.”

4 Mr R responded to QML as follows:

“Thank you for your prompt response. I look forward to working with you in resolving the issue at hand. I appreciate the time and effort you have undertaken in writing to me and detailing the information you have provided. I appreciate the information has been supplied by you to the Ombudsman as well. I would like to point out I am still awaiting the notes on both files as it was explained to me yesterday by consultant [Name] (who was fantastic) there were major errors in the notes left on the accounts. I would like the opportunity to review the notes and for the Ombudsman to do the same.

I would also like to advise I am still yet to hear back from even the Team Leader [Name] after 2 weeks in regards to this issue. Can you advise how many call backs were sent, and your time frame on call backs? I understand that this is a difficult case, but I was assured on multiple occasions that I would receive a call that day, or within 2 days only to continually be let down.

I would also like to point out the time I have spent trying to sort these issues out, and the wait time for a consultant, when speaking to a consultant, and the disrespect I felt from consultant [Name] and also the lady I was speaking to in Monday night 06.08.2012 who was extremely rude after I advised I was really frustrated I continually had to call.

[Name] I offered to make a payment throughout this process of \$1500 to clear the accounts. This is the absolute maximum I am able to pay to clear the accounts. The reason I am requesting a waiver is due to the poor service I have received. I would also like to point out, whilst not your fault, I did not receive any notices from you due to a DVO that was issued to my partners ex to which I can substantiate, who was stealing our mail.

I appreciate this is a really difficult case. This has caused undo distress on my worklife, personal life and my relationships. I have now set up accounts with Go Via to utilise and I am still writing to request a waiver of the accts, or at best to be able to pay an amount of \$500.00 to clear the accts, Yesterday I was advised for my acct I would only need to pay \$1620.00. I can make this payment of \$500.00 today by credit card, and both parties can move on. Ideally I would like this resolved today and I think out of goodwill this is an appropriate outcome.

I write to you to be compassionate and assist in what is a traumatic time in both mine and [partner's] life, as we try to build a relationship and work towards our dream of owning our own home one day. Again, I apologise to the issues and work I have created for Go Via, but I believe what is required is excessive, would be passed on to the state penalties enforcement unit which would then cause us the utmost strain and take away the ability to create our dreams.

I do appreciate your time e, and look forward to perusing the notes, and hopefully making payment to resolve what I can today."

5 QML replied to Mr R:

"Thank you for your response.

I understand that you and/or [partner] have contacted Queensland Motorways on a number of occasions. I can clearly see that you made contact as follows:-

*18/07/2012
26/07/2012
30/07/2012
31/07/2012
01/08/2012
07/08/2012*

and I apologise if the service you received at the time of those contacts was not to an acceptable level. We certainly do not expect customers to be treated disrespectfully and I apologise if you feel that you were. Unfortunately I am not at liberty to provide you copies of the account notes.

This however, does not change the fact that both your vehicle, and partner's] have been making extensive use of the toll roads without making payment of your tolls within the required timeframes.

I understand that circumstances in your personal life may have resulted in you not receiving some of your mail, but Queensland Motorways can not be held responsible for this. Queensland Motorways have issued you in excess of 300 separate notices for these two vehicles.

At any time during the period that you were making use of the toll roads, you could have made payment, but unfortunately did not. As a result Queensland Motorways have incurred costs in producing and issuing those invoices to you. These are legitimate fees, and whilst I appreciate your offer of \$1,500.00 to clear the full outstanding balance, this is not sufficient to cover the outstanding tolls and the costs incurred by Queensland Motorways.

After further consideration of your request I am further willing to reduce our administration fees as outlined below but regret that I am unable to consider any further reduction:-

Vehicle [2*D]**

*[5680***]*

*waiver of **\$106.50** in administration fees leaving a remaining balance of **\$117.39***

*[5988***]*

*waiver of **\$43.20** in administration fees leaving a remaining balance of **\$59.64***

Total outstanding \$177.03 to be paid

Vehicle [6*W]**

*[5892***]*

*waiver of **70%** of our administration fees, being a waiver of \$2,719.47 leaving a remaining balance of \$1,165.49 + tolls of \$399.80 = **\$1,565.29***

*[5979***]*

*waiver of **70%** of our administration fees, being a waiver of \$1,850.58 leaving a remaining balance of \$793.10 + tolls of \$319.56 = **\$1,112.66***

Total outstanding \$2,677.95 to be paid

*This leaves a total outstanding balance for both vehicles of **\$2,854.98**. This is a total waiver of \$4,719.75 which is a substantial reduction and as previously stated I regret that I am unable to consider any further reduction in these administration fees.*

As advised previously, when a Demand Notice remains unpaid after the due date Queensland Motorways are obliged, by legislation, to notify the TOU. A

number of the Demand Notices will already be past their due date and may already have escalated to TOU, and subsequently SPER.

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

6 Mr R then wrote to the TCO as follows:

“I would like to supply the following information as you would have received from Go Via. I would like to direct you to the offers made to me to resolve my accounts. Whilst the reductions are extremely generous, I have been made these offers before, and declined as I was offered another arrangement which go via has advised I did not follow. The correspondence from [Name] indicates this as we made payments as to what we believed the payment arrangement to be.

Also I was advised on the phone we had done this as per the notes, hence my request to read the notes. I would ask if I am unable to request a copy, the Ombudsman requests a copy and assists in investigating this issue further. I am continually told different information, I am told I can have a copy of case notes if I put my request in writing, here I am told I cannot have this. I am told they are sorry for the service and incorrect information provided, and sorry that an account was set up by their back office, and not disclosed to me on a number of occasions contacting Go Via and discussing. These instances often end up being hour long waits to reach a consultant, and consistent holds to read and understand a file, which is why I requested a Team Leader. The team leader then never called me back, after I was advised I would be called in 2 days. I followed up on at least 4 occasions and the final time she was there, but relayed info through her consultant that the investigation was ongoing.

I appreciate the ombudsman is busy, and ask this is a unique case with many factors, from a DVO out on my partners ex stealing our mail, financial difficulty which has changed my course of life substantially. I am asking the ombudsman to take all factors into consideration including financial detriment which would be absolutely devastating to myself and my partner if these infringements are referred to SPER. We have had umpteen discussions with the tolling offence unit who have been very helpful with us for tolling offences already sent to them, but there is simply nothing they can assist with if they are not referred to by Go Via.

I appreciate we need to take some responsibility and wish to make a contribution to the accounts. We are happy to pay our entire savings which came from my tax return this year. We were hoping to open an account to continue building towards our dream of buying a house with these funds, hence my desperation to have the accounts waived due to incorrect information continually advised, extreme frustration and anxiety between us

almost to the brink of breaking us up on numerous occasions. I know the Ombudsman may not be able to take this emotional side into consideration.

The financial burden this being referred and adding \$140.00 to each infringement would be catastrophic and put us in a position of unending financial detriment. We for further assistance in the hope we can have this issue resolved and waived, or at worst pay the amount I have offered of \$500.00 and close the complaint and both parties move forward. There is just simply no way I can pay \$2,854.98 in time. I request if this is the final amount the Ombudsman and Go Via look at as an option we be granted a payment arrangement with Go Via to clear the debt that we can substantiate absolute minimum funds being available to pay. We have currently just done this with SPER accounts and been granted community service.

Any help you can provide us would be fantastic.”

7 On 9 August 2012 Mr R wrote to the TCO in the following terms:

“Following on from this email I would ask the Ombudsman to request all credit management or distribution of any offences with Go Via be held and not sent away until a resolution is reached.”

8 On 14 August the TCO emailed Mr R as follows:

“I acknowledge receipt of your email of 8 August 2012 and note its contents.

Please advise why you travelled on go via’s roads without making appropriate arrangements with go via for the payment of tolls.”

9 The TCO also wrote to QML as follows:

“Below is copy of email received from [Mr R], together with my response, for your consideration.

*In reference to your email to [Mr R] of 8 August 2012, I ask that you clarify how, in respect of vehicle [6***W], almost \$6,500 in administration fees were incurred in respect of approximately \$720 in toll fees.”*

10 QML immediately responded to the TCO:

“When [Mr R] commenced travel we first issued him with Unpaid Toll Notices. These notices attract an administration fee of \$7.56 (today – was previously \$7.46). When these invoices remained unactioned and no payment was received we issued Final Notices. These notices don’t attract a fee but do state that failure to pay will result in Demand Notices being issued.

When no payment was received we then commenced issuing Demand Notices. Each Demand Notice attracts an administration fee of \$21.32. We

issued these simultaneously, over a period of time, but [Mr R] still did not make any payments. He continued to travel extensively without paying, and so we continued to issue notices. In total we have issued over 300 notices to him before he has taken any action. Each of these were a call to action for [Mr R].

Each notice issued attracts an administration fee which covers the costs to QML. We have to pay to obtain ownership details, forward to the mail house, we have costs associated with producing and issuing the notices and the postage. The administration fees were approved by the State Government and are legitimate fees.

If [Mr R] had contacted us to make payment of his tolls, within the 3 days, he could have avoided these fees.

As a gesture of goodwill I have agreed to waive 70% of our administration fees but [Mr R] has still made no payment since his payment of \$50.00 on 29/06/2012. Unfortunately [Mr R's] offer of \$500.00 does not cover the toll costs alone and makes no contribution to our administration costs.

When a Demand Notice is not paid by the due date (30 days after issue) then QML are obliged by legislation to notify Tolling Offence Unit (TOU) at Department of Transport and Main Roads (DTMR). It is very likely that a large number of these invoices may have escalated to a Penalty Infringement Notice. This notice attracts an administration fee of \$140.00 for each notice issued. Whilst [Mr R] continues to not make payment, more of these invoices will escalate.”

11 Mr R responded to the TCO's email of even date as follows:

“Thank you for acknowledging receipt of my request. The reason I travelled on go via toll roads without making arrangements is a long winded affair. The basis is I found myself in financial trouble after undergoing surgery in August 2011. I moved from my property located in [F] as I fell behind in rent, electricity and gas to my parents place in [Y] and I was struggling to attend my work position in [C] by paying for fuel costs as well as costs for the toll Rd. I found myself falling more and more into arrears with financial companies to the point where I was forced to hand over most of my possessions to avoid recovery actions. I have by the skin of my teeth been able to keep my car. I am currently in an arrangement after struggling for 12 months to make monthly repayments for 3 months solid to show I can keep my vehicle. I utilised the toll rds as this was the best way for me to keep my job, travel to work and attempt to keep up with all my accounts. I failed at this.

I can show supporting evidence if required of all of the debts I have accumulated and am required to pay back. This effectively shows the level of debt I am in, also shows the dispersment of my pay, as I have had to supply

this information to the state penalties enforcement agency to have community service for other fines and reduce my outgoings to be able to afford to continue in life. I have now moved with my partner in December of 2011 in [T]. I was travelling from [T] to [C] on some of the trips whilst trying to set up our new life until I started work in [D] in June 2012.

My concern is I didn't receive the appropriate mail. I contacted QLD motorways and updated my details with no information provided to me. Infact, I have done this twice and still notification of my address change has not happened. I did receive the other day further threatening letters of my account being referred to SPER and inducting further costs of \$140.00 per infringement. I would like to state I am happy to pay for the usage on the account. I did not receive notification of the fines due to my partners ex, stealing our mail. This occurred for approximately 6 months and we have documented DVO's advising this is the case. Therefore I received no notification. When I updated my address details, I supplied my phone details also. I am curious why I was never called?

As I have advised Mr Arnold I am prepared to pay for the usage charges. I believe for both vehicles this would be in the \$800.00 range. The figures I keep receiving from Go Via, including last Tuesday 07/08/2012 when I was advised by consultant [Name] my debt would be brought down from \$1614.11. I have this noted. He was then to call back with Team leader [Name] to discuss [partner's] car. I advised again, I could make a payment of only \$500.00. Previously as per the notes was continuously told, [partner] was offered an arrangement to reduce our payment to \$1328.00 for my car and \$101.00 for her car if we kept to an arrangement. This was explained to me to be detailed heavily in the notes on the accounts.

Mr Arnold, I have the figures written down from conversations with [Name], [Name] and [Name] and this is why I asked for notes to discuss a resolution. Whilst the toll rds were used, and I am happy to pay for usage fees, I can organise payment immediately, any additional fees I believe should be waived. I did not receive documentation and I have supporting evidence for this, I contacted Qld Motorways and updated my details and nothing further was discussed, and when we did call to make arrangements for my vehicle we were advised continually a figure of \$1328.00. Then on the 4th or 5tgh call, we were advised of a back office account that was additional.

Another concern on top of no contact, is financial over commitment. I am aware that Go Via say they attempted to advise me, but considering a party could build up an account that accumulate infinitely and quickly, with no cap, what is reasonable? Again, any usage which I believe is:

Vehicle [2***D]
[5680***]

waiver of \$106.50 in administration fees leaving a remaining balance of \$117.39

[5988***] waiver of \$43.20 in administration fees leaving a remaining balance of \$59.64
Total outstanding \$177.03 to be paid

Vehicle [6***W]
[5892***] tolls of \$399.80
[5979***] tolls of \$319.56 =
Total outstanding \$719.36.

I am more than happy to make this payment today for \$719.36 + \$177.03 = \$896.39 to resolve the account. This is usage costs, and as [partner] and I are finally making a fist of our lives together, paying off all of our debt, working off our SPER debts through community service and our outgoing wages still being higher than our incoming for the next 12 months, I believe this to be an offer I can commit too. We would not be able to afford what Go Via have advised otherwise and would end up with further Debts with SPER exceeding \$300,000.00.

Thank you for your assistance.”

12 On 27 August 2012 Mr R wrote to the TCO:

“I am writing to follow up on the process and review of my application to you for tolling offences. I have received further notices from Go Via after requesting for a hold on the accounts until a resolution can be reached. These notices continue to cause issues and even more levels of anxiety and depression and I would like this to stop until the issue at hand is resolved.

Are you able to advise the process and possible timeframes of potential investigation, as at current, I haven't received any information or correspondence since writing the below response on 14.08.2012.

I do appreciate your assistance in resolving my matter, and understand that the Ombudsman is extremely busy dealing with these companies and issues.

Thank you for your time.”

13 The TCO responded as follows:

“Thank you for your email of 27 August 2012 and would refer you to [Name's] email attached.”

14 The email attached is re-quoted below:

“When [Mr R] commenced travel we first issued him with Unpaid Toll Notices. These notices attract an administration fee of \$7.56 (today – was previously \$7.46). When these invoices remained unactioned and no payment was

received we issued Final Notices. These notices don't attract a fee but do state that failure to pay will result in Demand Notices being issued.

When no payment was received we then commenced issuing Demand Notices. Each Demand Notice attracts an administration fee of \$21.32. We issued these simultaneously, over a period of time, but [Mr R] still did not make any payments. He continued to travel extensively without paying, and so we continued to issue notices. In total we have issued over 300 notices to him before he has taken any action. Each of these were a call to action for [Mr R].

Each notice issued attracts an administration fee which covers the costs to QML. We have to pay to obtain ownership details, forward to the mail house, we have costs associated with producing and issuing the notices and the postage. The administration fees were approved by the State Government and are legitimate fees.

If [Mr R] had contacted us to make payment of his tolls, within the 3 days, he could have avoided these fees.

As a gesture of goodwill I have agreed to waive 70% of our administration fees but [Mr R] has still made no payment since his payment of \$50.00 on 29/06/2012. Unfortunately [Mr R's] offer of \$500.00 does not cover the toll costs alone and makes no contribution to our administration costs.

When a Demand Notice is not paid by the due date (30 days after issue) then QML are obliged by legislation to notify Tolling Offence Unit (TOU) at Department of Transport and Main Roads (DTMR). It is very likely that a large number of these invoices may have escalated to a Penalty Infringement Notice. This notice attracts an administration fee of \$140.00 for each notice issued. Whilst [Mr R] continues to not make payment, more of these invoices will escalate."

15 Mr R responded promptly, copied to QML, as follows:

"Thank you Mr Arnold for responding so quickly to today's email. I would like to reiterate again the fact that Go via continue to ignore the fact that I have documented proof through the form of a Domestic Violence Order which was won in court twice for [partner's] ex partner stealing our mail over a substantial period, this is the reason no notices were received. Whilst I was driving on the tolls and acknowledge I was doing this, in my naivety and silliness other matters were more important on a personal level.

This is the sole reason no action was taken. We had no correspondence from Go Via due to our mail being stolen and yes there is substantial signage on the Rds, but when you are going through something like this in life (Domestic Violence being handled by police and courts), coupled with extreme financial hardship, a medical condition of anxiety and depression,

also required surgery (May I also state I had to draw from my superfund as it is deemed life threatening) this issue becomes an afterthought.

Mr Arnold, again we believe we adhered to the original arrangement set with Go Via, which was a payment arrangement on both accounts. I have asked for the notes on the accounts as I have been advised by consultants on the phone, [Name], [Name] and [Name] this was correct we did adhere hence the investigation by Team Leader [Name] and her request to take my account to their billing team (and if recordings of the conversations were listened to you would hear them advise the arrangement was adhered too and then cancelled by Go Via.) I would really like the notes, or the ombudsman to read the notes, as there is all this contradicting information.

I would also like to point out I was advised not to pay any money to my account by the consultants whilst it was being investigated in case I paid a shortfall or over amount. I still maintain the usage figure I can pay today. I have been saying this for a long time now, that I can pay a figure to which I am met, not till the investigations are complete. I can do this amount of \$896.39 right now. I have held all this money from my tax cheque so I can rectify this issue and make payment. But I was advised not to make any payment, so how can I then be penalised for not making a payment. And if an account is in dispute with the Ombudsman should it not be held until the ombudsman makes a ruling? Do I pay this amount today I can pay, in the hope that things don't escalate? I am confused. No one from Go Via has rung me to advise anything further hence continually seeking the ombudsman. I really would like this resolved as soon as possible.

With this email sent by [Name] is the Ombudsman still investigating because I didn't receive any corro after I sent the email to the ombudsman on 14.08.2012.

Any help would be fantastic."

16 QML emailed the TCO on 27 August 2012 as follows:

"I understand that [Mr R] may have been through some challenging personal circumstances recently, however Queensland Motorways can not be held responsible for this.

[Mr R] states in his email, that he was aware that he was travelling on a toll road, he saw the signs. He was also aware that his partners ex was stealing his mail and still did not make arrangements to pay his tolls.

As discussed with you previously, we do not have an option to make payment arrangements with road user for No Arrangement Travel (NAT). We are obliged, by legislation, to notify the TOU when a Demand Notice remains unpaid after the due date.

I have waived 70% of our administration fees which is very generous.

I strongly recommend that [Mr R] make payment to avoid any further unnecessary fees and charges. I further recommend that [Mr R] contact SPER to ensure that there are no further outstanding amounts owing to them. If there is a debt outstanding to SPER they may have issued a notice to suspend [Mr R's] driving licence."

- 17 This correspondence was forwarded to [Mr R] on 28 August 2012. [Mr R] responded as follows:

"Thank you again for your response. I do appreciate the time [Name] has put into my account and the dispute. I have been in constant contact with SPER in regards to this account as well as the tolling offence unit. I appreciate Queensland Motorways cannot be held responsible for me not receiving post. I did have extenuating circumstances but I can see that Qld Motorways will not move on the fact that this was the case.

I did state on the email I was aware I was using the toll rds. I am happy to pay for the usage. I will make the payment for my account and [partner's] account to the amount of \$896.39 today. Can I ask [Name] to supply payment details so I can do this today.

[Name] advises the tolls were used approximately 300 times. I have no proof to say this is correct. I have asked for copies of the notices as I didn't receive them. I am told I will incur a fee of approximately \$20.00 per offence. I accept this and take Go Vias word this figure of usage to be correct, as I do not have the means to pay the fees.

Mr Arnold I have continued to refer to a payment arrangement we set up and was noted on our accounts. Consultants have advised this. Are the notes being reviewed by yourself as I am unable to request them for myself? [Name] has advised that she is not at liberty to provide mine or [partner's] account notes to me. WHY? [Name] has asked me to pay a total of \$3,000 approximately. I have no evidence where this figure comes from except through Go Via. And why, if I travelled on the tolls, when they say (" Each notice issued attracts an administration fee which covers the costs to QML. We have to pay to obtain ownership details, forward to the mail house, we have costs associated with producing and issuing the notices and the postage. The administration fees were approved by the State Government and are legitimate fees.") and I have travelled 300 aprox times according to Go Via with the same licence plate, and rego number and vehicle did my details need to be searched 300 times.

I would also like to know what is in place for Go Via to stop customers getting themselves into over financial commitment with Go Via. I am sure I am not the only customer in this predicament. They are saying a balance of \$3,000.

If I don't pay now, it will be sent to SPER with \$140.00 PIN note. Totalling \$300k.

Mr Arnold, finally I ask about the offers made to me on the phone which I haven't changed since discussing with you. Options were given to me that came closer to resolving this, than what [Name] has said. Mr Arnold, I clearly state I cannot pay \$3,000. I have the funds to pay the usage now, which I will do, the other \$2,000 odd I can confirm will be sent to SPER if this is the case (and multiply to \$250k odd as there are no payment options, which I could do something with if possible) , and GO Via have not assisted in anyway resolving my dispute. I am happy to negotiate. I was offered on my last phone discussion my account dropped to \$1600 total and [partner's] still at \$200.00 odd. I am willing to negotiate if they will come to the party. I can pay the usage, can an offer be made similar to what I have been offered and an arrangement to pay off the balance. Surely there must be something in extenuating circumstances.

I wish to work with QLD Motorways and get this off my plate. I will do everything I can, I just physically don't have \$3,000, I have no proof of the 300 travel times, and this is going to escalate to give me a ridiculous figure owed to SPER. The offer that was made originally and first made was to reduce the figure to \$1328 for my account and \$177.03 to be made for [partner's], why can this not be honoured. We did our part. I will work with you both and pay what I can, minus what we have already paid, to clear the balance. This is pretty much everything I have, and if this is not accepted, I will pay the usage anyways and the rest will have to be sent to SPER. This is absolutely everything I have and can commit to.

Mr Arnold, I still ask, why the notes of my account have not been supplied to me, or yourself. They will back up my complaint."

- 18** On 30 August 2012, a further email was received by the TCO from Mr R, copied to QML:

"I am following up so I can make payment for my account for the usage and have not heard in regards to the BPAY details to make payment.

Is there any further information available regarding my complaint or details so I can organise payment of \$177.03 for [partner's] car and \$719.36 for my vehicle.

I will make this payment immediately and advise the reference numbers for the payments."

- 19** QML provided the following information directly to Mr R, copied to the TCO:

"The Bpay details are available on the invoices issued to you.

For vehicle [2***D] the details are as follows:-

Biller code 10306

Ref. [4171*]**

For vehicle [6***W] the details are as follows:-

Biller code 10306

Ref. [4141*]**

Whilst I strongly recommend that you make payment of what you can, please note that whilst there remains an outstanding balance due this matter will continue to escalate through the enforcement process."

20 To which Mr R responded:

"Thank you for responding [Name],

Can I confirm as per the offers made below by paying the amount you indicated for [partner's] vehicle being \$177.03 to finalise the account for her vehicle?

I will then make payment and continue working through the dispute process with my vehicle after paying \$719.36 today."

21 QML confirmed:

*"I can confirm that a payment of \$177.03 will finalise the account for vehicle [2***D]."*

22 Mr R wrote to the TCO on 30 August 2012, in the following terms:

"I would like to supply evidence of the BPAY payments made today for the usage amounts on the tolls. For your consideration:

[Payment details provided]

Thank you."

23 This was acknowledged by the TCO and forwarded to QML on 7 September 2012. QML responded to the TCO as follows:

"I am aware that [Mr R] has made a payment. The payment on [partner's] account has cleared this matter, however there still remains a substantial outstanding balance for [Mr R's] vehicle, as per my previous emails."

24 On 10 September 2012 the TCO responded to QML, copied to Mr R, as follows:

"I understand that there is an ongoing aspect to the complaint. Last material sent by [Mr R] was provided for information purposes only."

25 Mr R responded:

"I look forward to receiving the ombudsman's resolution and hope to close and resolve this complaint and issue."

26 On 12 September 2012 the TCO wrote to Mr R and QML as follows:

"I understand that you cannot reach an agreement with go via regarding the balance of your complaint. If this is the situation I can make a written decision."

27 Mr R responded:

"I am unable to come to a resolution with Go Via as they keep changing what has been said to me previously. I just wish to have the outcome set as to pay the toll usage for all vehicles, which I have done now after being instructed on numerous occasions by GO Via staff to not make payment.

Have you had the opportunity to peruse the notes on my file? I am still unsure why I cannot request these? I was advised different information by different people and just wish to clarify what I was advised? As I was told by each operator the notes advise conflicting information.

I am happy for you to make a written recommendation, but I would hope you have read the notes on file and abide to what I was told in those notes.

I do wish to resolve this a quickly as possible, but I unable make further payments as I have no funds."

28 This matter has been resolved in part by the payment of Mr R's partner's account of \$177.36. Mr R paid a further \$719.36 at the same time into his account, leaving an amount owing of \$1,958.59 after waiver of 70% of administration fees. Mr R has indicated that he is not in a position to pay this amount.

29 I have concluded that the matter of Mr R's account is ready for Decision based on the material I have received.

Discussion

30 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.

- 31** 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.
- 32** This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. The relevant terms for toll road usage 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.
- 33** I am satisfied from the evidence that I have received that Mr R has used the QML toll roads a considerable number of times and not paid the tolls required for the use of this toll road. Mr R provided a reason for this usage when he said:

"Thank you for acknowledging receipt of my request. The reason I travelled on go via toll roads without making arrangements is a long winded affair. The basis is I found myself in financial trouble after undergoing surgery in August 2011. I moved from my property located in [F] as I fell behind in rent, electricity and gas to my parents place in [Y] and I was struggling to attend my work position in [C] by paying for fuel costs as well as costs for the toll Rd. I found myself falling more and more into arrears with financial companies to the point where I was forced to hand over most of my possessions to avoid recovery actions. I have by the skin of my teeth been able to keep my car. I am currently in an arrangement after struggling for 12 months to make monthly repayments for 3 months solid to show I can keep my vehicle. I utilised the toll rds as this was the best way for me to keep my job, travel to work and attempt to keep up with all my accounts. I failed at this."

- 34** I note that Mr R has queried QML's numbers in respect of his toll road travel but this is done principally on the basis that he had not received notices from QML because they had been stolen from his mail box. He said in this regard:

*"... My issue is there is a DVO out for my partners ex, as he was stealing our mail, a change of address for me also occurred and I never received notices for the toll usage so none were paid. My partner has since called and registered our vehicles and set up accts. We were told of a balance of approximately \$3,000 for me, and \$1000 for [partner]. My rego details are : [7***W]. [Partner's] vehicle is [2***D] is attached to my acct now or vice versa."*

- 35** There is no evidence that Mr R took steps to otherwise secure the delivery of his mail. Mr R has further submitted that he had entered into arrangements with QML to make repayments for his outstanding debts and met these arrangements. He has said in this regard:

“We contacted Go Via a number of times where we were told these figures and a payment arrangement was made. We have adhered to the arrangement to have a reduction from \$3,000 to \$1328 and \$1000 to \$100.00. we made payments of \$50.00, \$20, \$20, \$20 and \$20.00 to my acct as asked and 4 x \$20.00 to [partner’s] acct as asked. Go Via have allocated these payments to other toll uses and said we didn’t adhere. They also advise we never set up cards to use the tolling which is incorrect and I hope they have rectified these outstanding.”

- 36** Mr R has also raised a number of matters in relation to QML’s service and made requests for notes of conversations between QML and him in respect of repayment of the outstanding debts. There are no notes available because QML does not record such conversations.
- 37** This is a situation that should be rectified in the future as it would provide the means of clarifying assertions made by customers in relation to the content of such conversations and, as a consequence, limit matters in dispute. This is an issue that does not affect Mr R’s liability to pay toll road and administration fees as I am satisfied that Mr R has incurred the fees as claimed by QML. I note that QML has taken into account service issues in reducing administration fees.
- 38** I have concerns that there had been such an escalation in debt in this matter. The tolls incurred by Mr R were in fact approximately \$720 but by the time QML’s administration fees relating to its Demand Notices were added the debt became \$7,250.
- 39** I understand QML’s explanation in respect of the fees and I accept that they are Government authorised legitimate charges. I further understand that when a Demand Notice is not paid by the due date there is a legal obligation to notify the Tolling Offence Unit at the Department of Transport and Main Roads.
- 40** Despite this, I believe consideration should be given to future installing of a “red flag” system at both QML and the Tolling Offence Unit at the Department of Transport and Main Roads that identifies a systemic problem with a customer, such as Mr R. A process could then be developed for a manageable payment arrangement in conjunction with an arrangement for future payments for toll road usage. There is no doubt that although no fault of QML, Mr R was borne down by the weight of personal and financial difficulties that led to his incurring much of the debt in this matter.
- 41** I note that QML has substantially reduced the administration fees charged in respect to the failure to pay the tolls in an endeavour to meet Mr R’s financial situation. The debt was reduced by an amount in the region of 60%. QML was sympathetic to Mr R’s financial situation but it was not of its making. The reduction in the fees also was in response to the issues he has raised about QML’s handling of his complaint. I find that QML’s reduction of the administration fees was reasonable in the circumstances.

- 42** Irrespective of these matters, the complaint revolves around the payment of the existing debt. In this regard, Mr R should have been conscious of the fact that he had used the QML toll road without making appropriate arrangement for payment, which ultimately led to the debt. It is my understanding that he continues to use the toll road without any arrangement to pay.
- 43** Mr R has indicated that he presently does not have the funds to meet the outstanding debt to QML but I cannot further absolve him from the debt he has incurred for the use of the toll roads and his failure to pay for same. I am satisfied that QML has made adequate concessions in this regard to Mr R.

Decision

- 44** I find that QML is entitled to recover the outstanding tolls and fees from Mr R.

Michael Arnold
Tolling Customer Ombudsman

Dated: 27 November 2012