

DECISION

Background

- 1 The complainant, Mr AW, first made a complaint to the Tolling Customer Ombudsman (TCO) on 16 April 2016 as follows:¹

"I've had a Breeze account since 23/06/2009 and never had an issue until this year when I received not one, but **eight infringement notices** with alleged offence dates spanning from **27/07/2015 - 03/09/2015**. Despite such a vast timeframe that crossed over several statement quarters these letters arrived to me on the same date and all contained the same alleged offence of "**Drive un-registered vehicle in toll zone Melbourne City Link Act 1995**". This is puzzling to me as all my vehicles are correctly fitted with E-Tags and also have their registration details registered with Breeze.

Upon calling Breeze they informed me this must be an administrative error with their system and that CityLink data may take several days to synchronise with EastLink (Breeze). They also informed me that the issue was now out of their control as the alleged offences had already been passed onto the infringement authority. The fact the issue had even escalated to this point is beyond me as my Breeze account has always been paid in full. There may have been brief periods (24 - 48hrs) where the account has been in debit awaiting payment as I've since learned that the delay between CityLink data synchronising with EastLink was both consuming my recent payment as well as incurring additional account fees and charges.

This delay in account balance updating is something I became aware of mid last year as occasionally within days of topping up \$200 - 300 I would receive an email suggesting my account was suspended. Puzzled by this I phoned Breeze each time and queried what was happening. Each time it appeared that a bulk lot of EastLink toll charges had been applied shortly after my topping up. Each time I topped up a further \$200 - 300 and asked the Breeze operator if anything further was required to balance the account. Each time they informed me no further action was required.

My only option at this point (30/01/2016) was to request for an internal review with Civic Compliance. Unfortunately, evidence was not available to prove my innocence and it seems that the officer reviewing that matter was simply satisfied with whatever the toll company provided him. I'm curious to see what evidence they provided as I'm yet to see a single piece of evidence that suggests I've done anything wrong or

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

that matches the alleged offence. However, what I have found is that Breeze has acted with great misconduct.

I've since learned that Breeze have withdrawn late payment fees from my Breeze account balance, without my consent, throughout 2015 several times with a total of \$158.26 in unwarranted charges. It seems also possible that the account was suspended due to such fees. The officer chose to replace only one of the alleged offences with a warning despite all offences being received as one and the same.

At no point have I received any debt collection notices, account closure notices or any correspondence prior to suggest I might receive an infringement. I'm a tax paying citizen, infrequent user of the toll roads and have always paid my toll account in full. There is no merit to their claims or for me to accept fault in Breeze's own administrative incompetencies and misconduct. There is certainly no sense in me paying a further \$912 worth of infringements when **I've already paid \$4000 in standard toll fees**. Note that deposits were made for both the July and August/September batches of alleged offences making the case for unpaid account charges at this time impossible (see Appendix A and B).

This matter should be reported to the highest level and Breeze should be held accountable for their misconduct that must affect a great many more toll commuters than just myself. It's an insult to the Australian taxpayer that these toll companies may even operate and a disgrace that they attempt to fill their greedy pockets further and a great waste of time for Victorian Police.

Please have the **infringement notices withdrawn**, late fees refunded and consider if any administrative charges for my time are applicable.

Yours sincerely,

...

Appendix A. List of alleged offences

27/07/2015 09:18 — Southern Link, between Glenferrie Rd & Burnley St
28/07/2015 18:46 — Southern Link, between Glenferrie Rd & Burnley St (East Bound)
29/07/2015 09:15 — Southern Link, between Glenferrie Rd & Burnley St
30/07/2015 09:08 — Southern Link, between Glenferrie Rd & Burnley St
31/08/2015 12:04 — Southern Link, between Glenferrie Rd & Burnley St
01/09/2015 08:58 — Southern Link, between Punt Rd & Western Portal of Domain Tunnel
02/09/2015 08:49 — Southern Link, between Glenferrie Rd & Burnley St
03/09/2015 09:26 — Southern Link, between Punt Rd & Western Portal of Domain Tunnel

Appendix B. List of relevant payments

10/07/2015 — \$200
15/07/2015 — \$200
27/07/2015 — \$200
06/08/2015 — \$100
18/08/2015 — \$200
03/09/2015 — \$200
07/09/2015 — \$200"

- 2 On 18 April 2016 the TCO referred the complaint to the customer relations teams at EastLink and CityLink for investigation and response.

3 On 19 April 2016 EastLink responded directly to Mr AW, copied to the TCO, as follows:

“As you are aware, the Tolling Customer Ombudsman has forwarded your complaint to EastLink’s Customer Relations team for resolution.

Your EastLink reference number is CRT [6***8].

We have investigated your complaint and would like to advise you of the outcome.

The Eastlink Account Number [10***96] has been in suspension on multiple occasions due to payment not been received to ensure account maintains a credit balance to stop suspension of your account.

We can confirm that account suspension warnings and account suspended notices were sent to your postal address: [address] in both of the above instances of suspension (see attached).As a result of suspension Licence Plate Number [S***7] / VIC was not covered for travel on CityLink during these periods resulting in Invoices been issued.

Your EastLink account was suspended for dates of travel which occurred whilst your account was suspended which is why you received CityLink Toll Invoices which have since progressed to Infringements due to non-payment of the Toll Invoices. The dates of suspension area as follows:

- 25/07/2015 - 07/08/2015
- 28/08.2015 - 08/09/2015

Please draw your attention to section 3.7 of our customer service agreement (see attached)

“3.7 Keeping your account balance positive a) You must keep at least the Minimum Balance in your account at all times. b) If at any time the balance of your account is less than the Minimum Balance, you must restore your account balance to at least the Minimum Balance by paying the required amount into your account. If the required amount is less than the Top Up Amount, you must pay at least the Top Up Amount. c) If you’ve authorised automatic top up payments, we’ll top up your account by debiting your bank account or credit card with a single payment equal to the minimum number of multiples of the Top Up Amount required to restore your account balance to at least the Minimum Balance. d) If you haven’t authorised automatic top up payments, we’ll notify you when you need to top up your account. e) If at any time your account does not have a positive balance, this will be a Trigger Event and we may suspend or close your account in accordance with clause 9.1. Clauses 9.3 and 9.4 explain the effect of suspension or closure of your account.”

One of the services we offer to our customers to stop EastLink Toll Invoices progressing to Infringement is to transfer the Toll Invoice to your account. In doing so, we do not charge the Vehicle Look Up Fees of \$1.54 per trip which is normally applied to our toll Invoices sent independent of your account.

Please refer to the below table showing such Toll Invoices that were transferred to your account:

Toll Invoice	LPN	Trip Date and time	Amount	Administration Fees
[11***66]	[S***7]	08.07.2015 - 08:53 08.07.2015 - 18:52 09.07.2015 - 07:44 09.07.2015 - 18:33 10.07.2015 - 08:41 10.07.2015 - 18:41	\$19.60	\$5.36
[11***36]	[S***7]	27.07.2015 - 08:56 27.07.2015 - 09:29 28.07.2015 - 09:03 28.07.2015 - 09:02 29.07.2015 - 08:53 29.07.2015 - 19:15 30.07.2015 - 08:43 30.07.2015 - 08:41	\$26.08	\$5.36
[11***44]	[X***0]	30.07.2015 - 16:51 30.07.2015 - 21:37 31.07.2015 - 17:03 31.07.2015 - 22:43	\$17.54	\$5.36
[11***76]	[S***7]	31.08.2015 - 11:43 31.08.2015 - 08:58 01.09.2015 - 08:22 01.09.2015 - 20:53 02.09.2015 - 08:20 02.09.2015 - 09:03 03.09.2015 - 08:46 03.09.2015 - 09:07	\$26.32	\$5.36
			TOTAL	\$21.44

We are unsure where the suggested amount of “unwarranted charges” of \$158.25 have been applied to your account as the Invoices in the above table are the only Invoices to be applied in this way to prevent the Toll Invoices progressing to Civic Compliance Victoria for trips on EastLink.

We would also like to draw your attention to the below table provided by CityLink relating to the invoices that were issued to 4/4 CLAUDE STREET, BAYSWATER, VIC 3153.

Toll Invoice	Trip Date	Issue Date	Due Date	Paid	Overdue Notice	Issue Date	Due Date	Paid	Progressed to CCV	Amount Outstanding
66-53	27, 28 & 29 July 2015	29 August 2015	12 September 2015	\$0.00	Yes	17 September 2015	3 October 2015	\$0.00	Yes	N/A
40-47	30 July 2015	29 August 2015	12 September 2015	\$0.00	Yes	17 September 2015	3 October 2015	\$0.00	Yes	N/A
12-25	31 August 2015, 1 & 2 September 2015	15 September 2015	29 September 2015	\$0.00	Yes	4 October 2015	20 October 2015	\$0.00	Yes	N/A
7-91	3 September 2015	16 September 2015	30 September 2015	\$0.00	Yes	5 October 2015	21 October 2015	\$0.00	Yes	N/A
									Total	

We acknowledge that you contacted Eastlink on the following date:

- 26/09/2015 – An email was received by yourself as to why you were receiving Toll Invoices from CityLink

- 28/09/2015 – We attempted to contact you on 0433933977 regarding your enquiry and a voice mail message was left. An email confirmation was also issued to you advising we attempted to call and to contact us to discuss your enquiry further.
- 21/10/2015 – You called regarding a debt collection letter you had received. At this point you were advised of the delay in payments made via BPay.

We have been advised by CityLink as part of our investigation that you contacted CityLink's Contact Centre on the following dates:

- 21/10/2015 – You called CityLink and requested to have all fees waived from the Toll Invoices you had received which was declined by them as they found no error on their behalf hence Toll Invoices were payable in full.

We can confirm that CityLink contacted you on the following dates:

- 20/11/2015 – Attempted to contact you however the call was unsuccessful.
- 23/11/2015 – An email was issued from CityLink advising that payment for the Toll Invoices was required and an extension of time to pay was applied until the 11 December 2015.

However you state that:

“At no point have I received any debt collection notices, account closure notices or any correspondence prior to suggest I might receive an infringement.”

The above notes clearly suggest that you were in receipt of toll Invoices issued by CityLink and have failed to action them within the timeframe available to you to avoid them escalating to Civic Compliance Victoria resulting in infringements been issued. CityLink emailed yourself offering an extension to make payment on the Toll Invoices which you could of arrange to dispute or make payment within a reasonable amount of time.

Unfortunately, we are unable to assist you any further with the Civic Compliance Victoria Infringement Notifications once they have been issued.

Should you require any assistance with your Infringement Notice(s) you should contact Civic Compliance Victoria directly on 03 9200 8111 to discuss this matter further.”

4 Mr AW replied to EastLink the same day:

“Thank you for your assistance with this matter.

Why did Breeze send all 8 infringements notice on the same day?

Had the infringement notices been issued sequentially according to each date of the alleged offence I would have been alerted to the issue sooner and been able to resolve any allegedly unpaid invoices.

When I recently closed my account with Breeze I was given a final figure to pay to make the closure. I paid this and on the same day created an account directly with CityLink to ensure any future trips no longer funnelled through the unreliable and outdated Breeze tolling system. However, when I recently requested a copy of my quarterly statements and confirmation that there was no money owing I was told otherwise. To my surprise, there is now an outstanding balance of \$22.31.

**How many more retrospective charges can I expect from Breeze?
Will there be more infringement notices backdating to prior periods of suspension?**

It's unnecessarily difficult to check this information due to the delay in your data synchronisation between EastLink and CityLink. Even you state that you are perplexed by the admin charges I listed.

"We are unsure where the suggested amount of "unwarranted charges" of \$158.25 have been applied to your account..."

For your information, this figure was obtained from the Breeze account quarterly statements sent to me on 12/04/2016. It's the sum of all "**Fees, charges and adjustments**" for the calendar year of 2015. These are unwarranted charges as I've always made payments when my account was low on balance or when prompted by a suspension warning email. This was confirmed **when I closed the account as my account balance was zero and not in debit.**

I thank you again for your investigations but I'm unsatisfied with your seemingly biased methods and lack of presumption that I'm in fact innocent.

- You've presented several tables of information that is not available to me either as an open or closed account holder.
- You've presumed my receipt of phone calls, letters and emails despite my recollection of never receiving such communications.
- You've only presented suspension letters that lack the required term "Final Notice". This, like much of the Breeze correspondence, is confusing and misleading since you seem to intend for such letters to be the final correspondence before debt collection.

Shortly after the two periods of suspension in question, I've made payments of \$200.

In the suspension warning letter issued **18/07/2015** the outstanding balance was listed as \$48.43. Then in the suspension letter issued 25/07/2015 the outstanding balance was increased to \$204.86. The toll charges listed in the quarterly statement suggest that there should have only been an increase of \$77.26 and not \$156.43. **Where does this larger figure come from and how are there even toll charges listed if my account was suspended as suggested?**

In the suspension warning letter issued **21/08/2015** the outstanding balance was listed as \$23.16. Then in the suspension letter issued 28/08/2015 the outstanding balance was increased to \$166.87. The toll charges listed in the quarterly statement suggest that there should have only been an increase of \$91.77 and not \$133.27. **Where does this larger figure come from and how are there even toll charges listed if my account was suspended as suggested?**

Please continue your investigation and answer the pressing questions above."

5 On 21 April 2016 EastLink responded to Mr AW as follows:

“Thank you for your prompt response to my email. To assist with your enquiry I have provided explanations to the direct questions associated with your complaint.

I hope the responses provided clarify in further detail how EastLink accounts work, particularly with reference to management of Toll Invoices incurred during suspension periods.

Why did Breeze send all 8 infringements notice on the same day?

EastLink is not responsible for issuing the Infringements. The Infringements were issued as a result of the CityLink Toll Invoices not been paid. If Invoices are not paid then they progress to an Infringement. Infringements are issued by Civic Compliance Victoria.

CityLink Provided an extension of time to pay the Toll Invoices until the 11 December 2015 at this point, as no payments were made for the Toll Invoices were then referred to Infringement. This would have resulted in the Infringements been issued by Civic Compliance Victoria around the same time.

Will there be more infringement notices backdating to prior periods of suspension?

EastLink have issued no Toll Invoices for the Licence Plate Number in question. For further information regarding any other outstanding Infringements you would need to contact Civic Compliance Victoria.

How many more retrospective charges can I expect from Breeze?

Once we put an account into closure as advised in our email sent to you on the 11 February 2016 it takes two weeks to finalise the account. This allows time for any pending travel to be allocated. Below is a table which shows the dates you traveled and the dates that travel was applied to your account.

Start Date and Time	Gantry Description	Bass Toll Value	Image Fees	Date Applied
11.02.2016 18:31:31	Burnley Tunnel to Monash Fwy/T'rak Rd	6.75	0	17.02.2016 11:31:10
09.02.2016 09:39:09	Monash Fwy/T'rak Rd to Domain Tunnel	6.76	0	14.02.2016 11:35:54
09.02.2016 18:24:27	Burnley Tunnel to Monash Fwy/T'rak Rd	6.75	0	14.02.2016 11:35:54

** The figures quoted above are pre GST

Unfortunately you misunderstood my perspective on the charges on your account I was simply quoting you when I referred to “unwarranted charges” as no such unwarranted charges have been applied.

To provide clarity on this, the charges applied to your account during the suspension period include trip costs plus an additional administration fee. This is broken down in the table provided in my original response. In short the additional costs incurred are \$21.44 not \$158.25

The additional charges you are referring to are image processing fees. Image processing fees are incurred when your tag is not detected. The reasons for your tag not being detected are as follows:

- Incorrect position - your Tag should be installed to the windscreen of your vehicle behind the rear vision mirror.
- Metallic Windscreen - the metallic film that is coated on some windscreens interferes with the communication between the Toll point and EastLink Tag.
- If your Tag is installed correctly, and your vehicle doesn't have a metallic windscreen, your Tag may need to be replaced.

We can confirm that travel on CityLink can take longer to be applied to your account. EastLink and CityLink are operated by separate companies, so we must wait for the information regarding your Toll travel to be received before we can apply this to your account.

Bearing this in mind please draw your attention to the below table showing the travel that was applied to your account between the periods on 18 July 2015 and 25 July 2015.

Start Date and Time	Gantry Description	Bass Toll Value	Image Fees	Date Applied	LPN / Tag Number
06.07.2015 18:26:58	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0	18.07.2015 11:26:55	Tag: 12 [REDACTED] 07
07.07.2015 09:22:32	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0	19.07.2015 11:35:44	Tag: 12 [REDACTED] 07
07.07.2015 18:24:53	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0	19.07.2015 11:35:44	Tag: 12 [REDACTED] 07
08.07.2015 09:21:55	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0	20.07.2015 11:26:43	Tag: 12 [REDACTED] 07
08.07.2015 18:31:26	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0	20.07.2015 11:26:43	Tag: 12 [REDACTED] 07
09.07.2015 08:06:58	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0.68	21.07.2015 12:40:08	LPN: S [REDACTED] 7
09.07.2015 18:17:04	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0.68	21.07.2015 12:40:08	LPN: S [REDACTED] 7
10.07.2015 09:01:09	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0.68	20.07.2015 13:18:46	LPN: S [REDACTED] 7
10.07.2015 18:26:18	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0.68	20.07.2015 13:18:46	LPN: S [REDACTED] 7
13.07.2015 09:26:51	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0.68	23.07.2015 12:30:41	LPN: S [REDACTED] 7
13.07.2015 14:32:08	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0.68	23.07.2015 12:30:41	LPN: S [REDACTED] 7
14.07.2015 09:04:29	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0.68	24.07.2015 12:43:26	LPN: S [REDACTED] 7
14.07.2015 18:46:03	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0.68	24.07.2015 12:43:26	LPN: S [REDACTED] 7
15.07.2015 09:01:20	Monash Fwy/Trak Rd to Domain Tunnel	6.59	0.68	25.07.2015 14:01:16	LPN: S [REDACTED] 7
16.07.2015 18:16:36	Burnley Tunnel to Monash Fwy/Trak Rd	6.59	0.68	25.07.2015 14:01:16	LPN: S [REDACTED] 7
17.07.2015 18:30:36	Burnley Tunnel to Monash Fwy/Trak Rd	6.58	0.68	24.07.2015 12:43:26	LPN: S [REDACTED] 7
17.07.2015 18:47:06	Police/Wellington to BurwoodHwy/Boronia	2.34	0	18.07.2015 00:20:00	LPN: S [REDACTED] 7
20.07.2015 08:45:17	Boronia/BurwoodHwy to Wellington/Police	2.34	0	20.07.2015 14:20:00	Tag: 12 [REDACTED] 07
20.07.2015 19:19:23	Police/Wellington to BurwoodHwy/Boronia	2.34	0	21.07.2015 00:20:00	Tag: 12 [REDACTED] 07
21.07.2015 08:58:42	Boronia/BurwoodHwy to Wellington/Police	2.34	0	21.07.2015 14:20:01	Tag: 12 [REDACTED] 07
21.07.2015 18:56:47	Police/Wellington to BurwoodHwy/Boronia	2.34	0	22.07.2015 00:20:02	Tag: 12 [REDACTED] 07
22.07.2015 07:50:27	Boronia/Canterbury to Melba Tunnel	3.2	0	22.07.2015 13:20:01	Tag: 12 [REDACTED] 07
22.07.2015 20:13:37	Mullum Mullum Tunnel to Canterbury/Boronia	3.2	0	23.07.2015 01:20:01	Tag: 12 [REDACTED] 07
23.07.2015 08:41:32	BurwoodHwy/HighStRd to Wellington/Police	1.98	0	23.07.2015 14:20:05	Tag: 12 [REDACTED] 07
23.07.2015 19:58:36	BurwoodHwy/Boronia to Canterbury/Maroondah	1.08	0	24.07.2015 01:20:01	Tag: 12 [REDACTED] 07
23.07.2015 20:45:46	Maroondah/Canterbury to Boronia/BurwoodHwy	1.08	0	24.07.2015 02:20:01	Tag: 12 [REDACTED] 07
24.07.2015 08:51:49	Boronia/BurwoodHwy to Wellington/Police	2.34	0	24.07.2015 14:20:02	Tag: 12 [REDACTED] 07
24.07.2015 18:34:30	Police/Wellington to BurwoodHwy/Boronia	2.34	0	25.07.2015 00:20:04	Tag: 12 [REDACTED] 07
25.07.2015 11:07:23	Boronia/BurwoodHwy to Wellington/Police	1.87	0.25	25.07.2015 16:20:00	LPN: X [REDACTED] 0
25.07.2015 16:28:15	Ferntree/HighStRd to BurwoodHwy/Boronia	1.01	0.25	25.07.2015 21:20:04	LPN: X [REDACTED] 0

**** The figures quoted above are pre GST**

We acknowledge the payment made on your account on the 28 July 2015 of \$200.00 however, this was not enough to cover the amount of debit as clearly stated on the Account Suspended Notification dated the 27 July 2015 the amount owing was \$204.86. Therefore your account did not reactivate and remained in a state of suspension until the payment of \$100.00 was received on the 7 August.

In order to resolve this matter I have applied a Good will credit on your account of \$21.31 which now bring your balance to zero.

Please do not hesitate to contact me with any further questions you may have.”

6 On 26 April 2016 Mr AW responded to EastLink in the following terms:

“Thanks for your detailed response.
However, there's still one unanswered question:

Where does this larger figure come from and how are there even toll charges listed if my account was suspended as suggested?

Or to rephrase,
How can I be both charged and invoiced for the same trips?

The Breeze account statements clearly show my travel charges were registered and deducted from my prepaid credit balance during the alleged offence dates. But then you're suggesting I should have paid separate invoices and essentially paid for these trips again.

What's also clear from the Breeze account statements is that I've been charged admin fees for the account suspension and these too have been deducted from my prepaid account balance. Was I supposed to pay these fees twice as well?

Again, thank you for your cooperation. I'm sure we'll get to the bottom of the matter soon.”

7 A subsequent email of the same date from Mr AW to EastLink said:

“Thanks for your call this morning.

It seems we can't come to an agreement with who's at fault.

EastLink/Breeze claim that I've been unable to keep my account balanced and that the infringements are valid.

I claim that I've always kept my account balanced.

The occasions claimed to be in debit are a result of bulk charges consisting of delayed CityLink toll trips and account fees. Furthermore, the debit suggested by [C] on one of these occasions was less than \$5 (which is nothing compared to the \$4000 I've spent with Breeze in 2015 alone). As it stands today, my account is fully paid and closed to avoid further misunderstandings.

[C] has suggested there is some grace period for payment but it's a grey area and dependent on the time of day. It's unfair to expect an account be in credit every second of everyday.

Please see this context as a final bid to demonstrate my innocence. I'm a father of two and at the time of the alleged offences I was working and studying full time and my youngest son [X] was in and out of hospital with severe respiratory problems. My wife, who also studies full time, and I were struggling to stay on top of the everyday tasks in between all night hospital visits and staying home with our son as he was

too sick for daycare. I'm grateful for the health we do have but even at the best of times it can be difficult to read and understand every word of a companies terms and conditions. Breeze has never made this easy. The policies and correspondence is confusing and operators have provided conflicting information regarding the required actions for a suspended account. Even [C] was unable to provide written clarity and had to resort to the phone "because it's easier". Unfortunately, I still don't understand how I'm in the wrong and can be fined with not having a toll account. I do have a toll account, and did, and regrettably back then it was with Breeze – a company who has avoided all responsibility and ruthlessly pursued fines against charges of less than \$5 despite charging and receiving late fees for this amount and also receiving the total amount in general. Worse still, multiple fines for the same alleged debit amount have been issued.

It's clear the Breeze grace period is invalid. No where else, for no other company, is there 3 day payment terms. Let alone terms that result in being charged with multiple infringements and finally, as seems will occur, taken to court. Breeze should either remove the prepaid option entirely or extend the payment terms to a more reasonable amount. Breeze was paid what it was owed and then some. Please cease pursuing this matter and consider accepting some responsibility for the broken system which Breeze itself put in place.”

8 On 27 April 2016 EastLink wrote to Mr AW:

“As per our phone call on the 26 April 2016 please find the below additional information as requested.

The table provided in our last email to you displays all travel applied to account between the periods of the 18 July and the 25 July.

Please see the following table for the travel applied to your account between the periods of 21 August and the 28 August:

Start Date and Time	Gantry Description	Bass Toll Value	Image Fees	Date Applied
28.08.2015 17:17:45	Police/Wellington to BurwoodHwy/Boronia	2.34	0	28.08.2015 22:20:01
28.08.2015 08:51:35	Boronia/BurwoodHwy to Wellington/Police	2.34	0	28.08.2015 14:20:00
23.08.2015 14:25:29	Exhib'n st Extn to Monash Fwy/T'rak Rd	6.58	0.68	28.08.2015 14:11:15
23.08.2015 10:23:00	Monash Fwy/T'rak Rd to Exhib'n St Extn	6.58	0.68	28.08.2015 14:11:15
20.08.2015 09:08:12	Monash Fwy/T'rak Rd to Domain Tunnel	6.59	0	28.08.2015 11:36:08
20.08.2015 18:51:45	Burnley Tunnel to Monash Fwy/T'rak Rd	6.58	0	28.08.2015 11:36:08
21.08.2015 09:12:18	Monash Fwy/T'rak Rd to Domain Tunnel	6.59	0	28.08.2015 11:36:08
27.08.2015 11:03:18	Mullum Mullum Tunnel to Canterbury/Boronia	3.2	0.25	28.08.2015 00:20:02
27.08.2015 18:42:31	Police/Wellington to BurwoodHwy/Boronia	2.34	0	28.08.2015 00:20:02
27.08.2015 09:51:33	Boronia/Canterbury to Melba Tunnel	3.2	0.25	27.08.2015 16:20:01
27.08.2015 07:34:54	Boronia/BurwoodHwy to Wellington/Police	2.34	0	27.08.2015 13:20:01
19.08.2015 09:00:52	Monash Fwy/T'rak Rd to Domain Tunnel	6.59	0.68	27.08.2015 12:44:04
18.08.2015 19:05:11	Burnley Tunnel to Monash Fwy/T'rak Rd	6.58	0.68	27.08.2015 12:44:04
19.08.2015 18:55:03	Burnley Tunnel to Monash Fwy/T'rak Rd	6.58	0	27.08.2015 11:20:02
26.08.2015 16:40:38	Mullum Mullum Tunnel to Canterbury/Boronia	3.2	0.25	27.08.2015 02:20:01
26.08.2015 19:39:28	Police/Wellington to BurwoodHwy/Boronia	2.34	0	27.08.2015 01:20:03
26.08.2015 14:08:38	Boronia/Canterbury to Melba Tunnel	3.2	0.25	26.08.2015 23:20:01
26.08.2015 08:52:09	Boronia/Canterbury to Canterbury/Maroondah	0.72	0.25	26.08.2015 17:20:00
26.08.2015 08:44:10	Boronia/BurwoodHwy to Wellington/Police	2.34	0	26.08.2015 14:20:00
25.08.2015 20:49:43	Police/Wellington to BurwoodHwy/Boronia	2.34	0	26.08.2015 02:20:01
25.08.2015 08:53:03	Maroondah/Canterbury to Wellington/Police	3.06	0	25.08.2015 14:20:00
17.08.2015 09:20:40	Monash Fwy/T'rak Rd to Domain Tunnel	6.59	0.68	25.08.2015 12:42:11
17.08.2015 18:36:19	Burnley Tunnel to Monash Fwy/T'rak Rd	6.58	0.68	25.08.2015 12:42:11
24.08.2015 19:12:07	Police/Wellington to BurwoodHwy/Boronia	2.34	0	25.08.2015 00:20:01
23.08.2015 14:45:47	Police/Wellington to BurwoodHwy/Boronia	1.87	0.25	24.08.2015 19:20:00
24.08.2015 09:48:31	Ferntree/Wellington to Wellington/Police	1.08	0	24.08.2015 15:20:00
24.08.2015 08:50:18	Boronia/BurwoodHwy to Wellington/Police	2.34	0	24.08.2015 14:20:00
23.08.2015 14:45:47	Police/Wellington to BurwoodHwy/Boronia	1.58	0.25	23.08.2015 22:20:01
23.08.2015 10:03:08	Boronia/BurwoodHwy to Wellington/Police	1.87	0.25	23.08.2015 21:20:00
21.08.2015 18:04:41	Police/Wellington to Canterbury/Maroondah	3.06	0	21.08.2015 23:20:01
21.08.2015 08:50:18	Boronia/BurwoodHwy to Wellington/Police	2.34	0	21.08.2015 14:20:01
14.08.2015 09:09:42	Monash Fwy/T'rak Rd to Domain Tunnel	6.59	0	21.08.2015 11:45:06
20.08.2015 19:07:25	Police/Wellington to BurwoodHwy/Boronia	2.34	0	21.08.2015 00:20:00

** The figures quoted above are pre GST

To clarify, once a payment is received and your account is activated the system will back date any travel within the last 72 hours to the account.

The trips applied to your account are for different dates and times of travel in comparison with the dates and times on the CitLink Toll invoices issued. At no point have you been double charged by EastLink.

As previously advised, as an additional services to our EastLink customers to prevent Toll Invoices escalating to Civic Compliance for EastLink travel, we transferred EastLink trips that resulted in Toll Invoices directly to your account as advised in the Toll Invoices issued from EastLink.

EastLink have a process as follows for at what point we escalate Toll Invoices to the next level to allow the customer to pay any outstanding invoices owing prior to them been escalated to Civic Compliance Victoria. This occurs 62 days after the initial Toll Invoice is issued to the customer.

Dunning Level	Action	Days
0	Toll Invoice Issued	1
1	Final Demand Notice Issued	20
2	Invoice sent to CCV	62

As advised previously, CityLink issued Toll Invoices for travel made whilst your account was suspended. As per your call with CityLink on 21st October 2015 in which you requested for all fees to be waived. Further to this CityLink contacted you via email to advise that the Toll Invoices were payable and had extended the payment date to 11th December 2015 in which no follow up was completed hence the trips escalated to Civic Compliance Victoria.

Whilst we empathise with your personal situation as advised during the past 12 months, it is critical that you follow up any notifications you receive in a timely manner to manage your account to prevent Toll Invoices escalating to Civic Compliance Victoria. To manage this we strongly advise our customers to manage their accounts with an automatic top up via your bank account or credit card. This alleviates the risk of your account becoming suspended as it triggers a payment when your account reaches a balance of \$13.40 or a nominated amount that suits the customer. If you choose to top up manually as you had, it is critical that you check your balance on a consistent basis and also listen to the tag beeps whilst you are driving which advises you when to contact us.

If the CityLink Toll Invoices had been paid then they would not have progressed to Civic Compliance Victoria.”

9 To which Mr AW replied:

“Thank you for this information.

This table clearly shows that I was bulk charges for the dates of the 27th and 28th which dramatically changed the amount owed and resulted in an under payment of less than \$5 as suspected. That much it seems we can agree on. The infringements are a result of less than \$5 despite that \$5 and more being paid within 2-3 business days.

I'd been a Breeze customer for 7 years. Always paid my toll fees. Throughout that time I've always followed up on any correspondence received and never had any issues. The majority of the time my account has operated as pre-paid despite continuous harassment from Breeze to handover direct access to my money. This is something I will never do with such an untrustworthy company. Even today your answer for a broken system is for me to handover my bank details.

I never received the final notice letter your suggesting as part of the Breeze escalation process. To my recollection, the last correspondence with a rather condescending operator was that nothing more needed to be done after adding credit to the account. Which I did. Several times in fact. Nothing changes the fact that I've paid every dollar to date.

How is the failure to send a final notice not an issue with Breeze?

Might I remind you, that yesterday you said on the phone that if it was an issue with

Breeze then the infringements could be recalled by Breeze.

It truly baffles me the extent you'll go to not accept any sort of responsibility. I'm ready to negotiate and accept the mistake of choosing Breeze as my tollway service but you refuse to participate in any sort of compromise.

If Breeze is incapable of effectively transferring CityLink toll charges then it should be denied access to operate within CityLink tollways. I will not rest until the errors of your system are exposed for what they are.

Will you answer for these errors or will the Ombudsman organise a formal review of your connection with CityLink and expose how many other customers you've attempted to rort?"

10 On 29 April 2016 the following exchange of correspondence took place:

EastLink to the TCO:

"In response to the email below. We wish to provide you with a final response from EastLink in relation to [Mr AW] complaint.

We have provided responses to [Mr AW] clearly explaining what has happened with his EastLink account in his last email below he advises that EastLink is incapable of effectively transferring CityLink Toll Charges. We refute this allegation as we have always accepted travel from CityLink whilst his account has been active. The Toll Invoices that have been generated by CityLink are due to the account been suspended hence these charges were not accepted by EastLink as per our standard practice.

I have attached a timeline of [Mr AW's] account and notifications issued to him as a result of him wanting to manage his account manually by making top up payments via BPAY. In all the correspondence issued it clearly advises that additional payments are required to the account to cover trips made and Toll Invoices that were transferred to his account. All correspondence is attached above.

NOTIFICATION	ACCOUNT STATUS
18/07/2015 Account Suspension Warning	Account Active
18/07/2015 TI [11***66] transferred to account	Account Active
25/07/2015 Account Suspended Notice	Account Suspended 25/07/2015 – 07/08/2015
27/07/2015 Payment Received \$200.00	Account Suspended
07/08/2015 Payment Received \$100.00	Account Active
08/08/2015 TI [11***44] Transferred to account	Account Active
08/08/2015 TI [11***36] Transferred to account	Account Active
18/08/2015 Payment Received \$200.00	Account Active
21/08/2015 Account Suspension Warning	Account Active
28/08/2015 Account Suspended Notice	Account Suspended 28/08/2015 – 08/09/2015
04/09/2015 Payment Received \$200.00	Account Suspended
08/09/2015 Payment Received \$200.00	Account Active
12/09/2015 TI [11***76] Transferred to account	Account Active

We acknowledge that [Mr AW] contacted Eastlink on the following date:

- 26/09/2015 – An email was received by yourself as to why you were receiving Toll Invoices from CityLink
- 28/09/2015 – We attempted to contact you on [04***77] regarding your enquiry and a voice mail message was left. An email confirmation was also issued to you advising we attempted to call and to contact us to discuss your enquiry further.
- 21/10/2015 – You called regarding a debt collection letter you had received. At this point you were advised of the delay in payments made via BPAY.

As part of our investigation we have been advised by CityLink that you contacted CityLink's Contact Centre on the following date:

- 21/10/2015 – You called CityLink and requested to have all fees waived from the Toll Invoices you had received which was declined by them as they found no error on their behalf hence Toll Invoices were payable in full.

We can confirm that CityLink contacted you on the following dates:

- 20/11/2015 – Attempted to contact you however the call was unsuccessful.
- 23/11/2015 – An email was issued from CityLink advising that payment for the Toll Invoices was required and an extension of time to pay was applied until the 11 December 2015.

In [Mr AW's] email below he states that Eastlink failed to issue him a final notices in relation to the invoices that progressed to Civic Compliance. The travel for which [Mr AW] received Infringements was for travel on CityLink and the Invoices were issued by CityLink. We are unable to confirm their actual process in sending out Toll Invoices.

EastLink did not have to issue Second Demand Notices as all invoices issued by EastLink were transferred directly to his account to avoid the possibility of progressing to Civic Compliance.

As a result of [Mr AW] failing to follow up on the invoices that were issued by CityLink they have progressed to Civic Compliance Victoria. The only action we have received is once the customer has received the Infringements.

If we believed there were grounds for the Infringements to be withdrawn we would be happy to accommodate the customer. However, clearly given [Mr AW] has failed to follow up as requested by CityLink we are unable to assist any further.

We have also been advised by Civic Compliance that his dispute has been investigated and they are upholding the Infringements that have been issued. If the customer wishes to dispute further he will need to contact Civic Compliance Victoria to explore his options."

TCO to Mr AW:

“For your information and response.”

Mr AW to EastLink and the TCO:

“Once again Miss [C] has attempted to dismiss my rights as a consumer to defend my innocence and once again Miss [C] has drawn inaccurate conclusions from her investigations.

Clearly, I never received invoices from CityLink as suggested since my account at the time was with Breeze (EastLink) and not CityLink. Clearly CityLink did not have the correct details to contact me. And clearly EastLink failed to meet their role as a tollway operator. Hence, Breeze should have their contract with EastLink revoked as they are unable to effectively communicate both indirectly using automated systems and directly with the customer.

Had I been contacted regarding a request for payment of less than \$5 I would have clearly paid the invoice as I have done for the past 7 years.

Miss [C] seems to be having a hard time swallowing her pride and accepting some responsibility. It's truly very tragic and a great disservice to a once loyal customer.

We're not getting very far here with negotiating a resolution and clearly the courts time is going to be wasted when they dismiss such unjust infringements.

Will Breeze not offer a fair retraction of at least some of the fines that total a significant sum of \$1216?”

Mr AW to EastLink and the TCO:

“Also, could you please provide copies of all recorded telecommunications, account statements, CityLink - EastLink transfer statements, CityLink correspondence, email and letter correspondence for the past 7 years?”

Since you have supplied a biased subsection of information to date I believe this taxonomy of data will help remove such biases. If I've not received this information by COB Wednesday this will be seen as a sign of further misdirection and possibly warrant charges against you for obstructing a legal investigation.”

- 11** Following a reminder email from Mr AW on 3 May 2016 to EastLink in the following terms: “Still waiting on your response to compromise and supply requested data.”, on 4 May 2016 EastLink emailed the TCO with the following information:

“As per the customer’s request, we have attached copies of the relevant documents and correspondence that the customer had been issued.

This information is being sent in 4 emails due to the size of the attachments:

Email 1: This contains copies of [Mr AW’s] Quarterly Statements and Suspension letters. (January 2015 – February 2016)

Email 2: This contains copies of [Mr AW’s] Suspension letters (2009 – 2014)

Email 3: This contains copies of correspondence from EastLink to [Mr AW].

(EastLink Administration responses and Customer Relations responses)

Email 4: This contains copies of CityLink Toll Invoices issued to [Mr AW] and an email correspondence from CityLink.

Please note that we are unable to provide the customer with call recordings as this would breach our internal privacy policy.”

12 Additionally, EastLink released four call recordings for the TCO’s review only, with the note that: “A fifth call was detected but due to technical difficulties, we were unable to recover its content.”

13 Subsequently, Mr AW referred to the TCO the most recent correspondence received from EastLink:

“As per your conversation with an EastLink operator today:

- We confirm that your complaint with EastLink has been referred to the Tolling Customer Ombudsman as per your original request.

Please be advised that we are awaiting further advice from the Ombudsman in relation to your data request and a response will be issued in due course.”

14 On 5 May 2016 the TCO advised Mr AW as follows:

“As advised by Eastlink, I have been provided with the information you have sought in your emails of 29 March 2016. [sic – April]

I will get back to you once I have reviewed same, including the call recordings.”

15 On 9 May 2016 the TCO provided Mr AW with the

“Further to email below, the information sought and provided by EastLink is being forwarded to you in four emails, (due to the size of the attachments) pending the TCO’s assessment of the telephone call recordings.”

16 On 18 May 2016 the TCO advised Mr AW:

“I have listened to four of five conversations that you had with Breeze. The fifth was not available due to a technical reason with quality.

In all of the conversations Breeze operators endeavoured to explain to you that you travelled on EastLink whilst your account was suspended. Following non-payment of all outstanding tolls and administration fees, collection of outstanding tolls was referred to Civic Compliance Victoria (CCV). You query the process, but there was no agreement by Breeze that it would approach CCV to have them withdraw its infringement notices.”

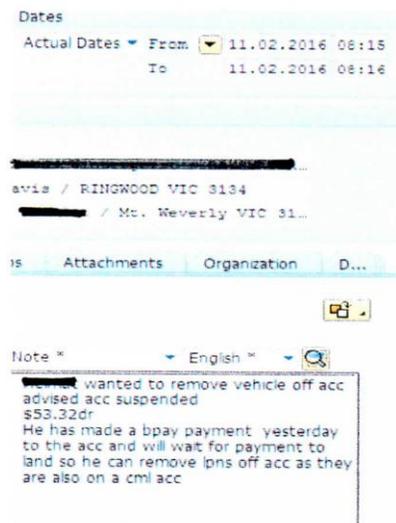
17 To which Mr AW responded:

“Thanks for your help.

What date was the call that is unavailable? There was a call late last year where I requested to speak to the manager to discuss the matter further but the operator refused to do so. He then conceded to enquire with his manager on my behalf, placed me on hold and returned to state everything was in order and nothing more needed to be paid. If you've not listened to this call then I find it most suspicious that there is a missing call and you've not been able to hear this most important correspondence.”

18 Following a request from the TCO, on 19 May 2016 EastLink provided the TCO with information regarding the fifth telephone call. This was provided to Mr AW.

“We confirm that the unavailable call occurred on 11 February 2016. Please view the note left by our operator below on the day.



19 On 3 June 2016 Mr AW replied as follows:

“This isn't the call from late last year where the male operator from Breeze clearly stated on his manages behalf that there was no further amounts to be paid other than the ones I had just made. He also clarified that invoices do not need to be paid as long as the account is eventually balanced.

The operators from Breeze now investigating the infringements are stating the opposite and that both the balance and toll invoices must be paid. Again, this is requesting payment twice for the same service.

What are the next steps in having this matter resolved?”

20 The TCO sought further comment from EastLink on the issues raised by Mr AW. On 6 June 2016 EastLink advised:

“As noted in the conversation with [Mr AW] on date 21 October 2015 there were no outstanding amounts owing to **EastLink** at the time of this a call.

The Toll Invoices that have progressed to infringement were sent to you by a different Toll Company called **CityLink**. EastLink have no access or visibility of any amounts owing to CityLink, as we are two separate entities.

We have previously advised in the email responses provided of the interaction between [Mr AW] and CityLink, to which no action was taken by [Mr AW], resulting in the infringements been issued by Civic Compliance Victoria.

In closing, our position remains unchanged since our last response.”

21 On 7 June 2016 Mr AW responded:

“Be that as it may, EastLink is the entity who issued the infringements and have stated have the power to withdraw them. In my mind that makes it an EastLink issue. No doubt CityLink will reiterate this stance as they've mentioned it before.

FYI, CityLink and I are in good standing. I've not had a single issue since opening my account with CityLink and closing the EastLink account earlier this year. Certainly good to know there's at least one toll company who knows how to operate.”

22 On 21 June 2016 CityLink addressed [Mr AW's] complaint:

“Thank you for your enquiry. I understand your concerns relate to Infringement Notices you have received for travel on CityLink.

I confirm the following:

- EastLink have advised us that your Breeze account was suspended between the 25th July 2015 – 7th August 2015, and 28th August 2015 – 8th September 2015.
- As vehicle [S***7] (VIC) travelled on CityLink while not linked to an active Account or pass, the below Toll Invoices were issued to [Name and address of Mr AW]

Toll Invoice	Date/s of Travel	Issue Date	Due Date (extended)
[66***53]	27 th July 2015 28 th July 2015 29 th July 2015	29 th August 2015	11 th December 2015
[40***47]	30 th July 2015	29 th August 2015	11 th December 2015
[12***65]	31 st August 2015 1 st September 2015 2 nd September 2015	15 th September 2015	11 th December 2015
[71***91]	3 rd September 2015	16 th September 2015	11 th December 2015

- You contacted us on the 21st October 2015 regarding these Toll Invoices. The due dates were extended. CityLink replied via email on the 23rd November 2015 (attached) requesting payment and advising extended due date.

- As we didn't receive payment of the Toll Invoices within the payment terms, the invoices were referred to the Victoria Police, as required by legislation, who may issue an Infringement Notice for each date of travel. CityLink can no longer intervene once an Infringement Notice is issued.

If you wish to dispute your Infringement Notices, you will be required to submit a written application for an Internal Review direct to Civic Compliance Victoria (CCV). This can be done via email at enquiries@civiccompliancevictoria.com.au, via the CCV website of <http://online.fines.vic.gov.au> or in writing to GPO Box 1916, Melbourne VIC 3001. If you require further details about this dispute process, please contact CCV on (03) 9200 8111.

Thanks again for your enquiry. Should you require any further assistance, please contact me via return email. I note the Ombudsman has been copied in to this email.

23 Mr AW responded that same day as follows:

“As I've discussed when I finally reached a CityLink department willing to speak on this matter earlier this month, I've already spoken at length with Civic Compliance and applied for an Internal Review. They have informed me to contact the infringement issuer (CityLink) and have them withdraw the infringements. Contrary to CityLink's continued rhetoric of it not being their problem, this issue starts and ends with them. It is their responsibility to correct the mistake in their system. I had and have a toll account that is fully paid and the infringements imposed are unwarranted.

CityLink must seek to save the taxpayers money and work toward resolving this matter out of court as instructed by Civic Compliance. Please notify me when CityLink has agreed to withdraw the infringements.

It should be noted that the customer service provided on these matters is insufficient. I never received the contact regarding these matters as CityLink is suggesting. Now that the matter has escalated to an infringement they seek to assume no responsibility and have trained call centre staff to disconnect the call as soon as the word infringement is mentioned. This is a classic case of a system failing an honest citizen and it's truly an embarrassment that this system is run by a commercial company.”

24 On 27 June 2016 the following exchange of correspondence took place:

TCO to Mr AW:

“I refer to previous correspondence and your most recent email.

I advise that toll operators are private sector businesses that are separate from Government agencies like Civic Compliance. Accordingly they do not have the power to direct the conduct of Civic Compliance once Infringement Notices are issued.

However in circumstances where a toll operator believes that they may have been at fault they can notify Civic Compliance and request that Civic Compliance not enforce

the Infringement Notice. The decision still remains with Civic Compliance whether to waive enforcement or not.

In respect to your complaint the toll operators do not that they were at fault and, as a consequence, not required to request Civic Compliance to waive enforcement of the Infringement notices.”

Mr AW to the TCO:

“Thanks for the clarification.

It is a very biased system then to have the a very large company holding the individual customers at ransom. Where is the judicial mediation and control over a system that so easily fails? If anything the law is furthering their ability to abuse power and not protecting innocent members of society such as myself.”

TCO to Mr AW:

“There is a judicial system that provides protection. You can have the matter processed through the Magistrates Court , if you are not satisfied with the free TCO process.”

Mr AW to the TCO:

“Thanks again Michael.

Based on the findings to date it would appear my chances in winning at court would be very slim. There has been no change in the establishments stance on the presumption of my innocence or tangible admission of any possibility of an error. This would have me believe their same stance would be displayed in court and put me in a position where I would be unable to defend myself as the accusers are holding all the critical and relevant personal data. Evidence they have only partially disclosed to the ombudsman as a third party and refused to supply such data directly to me. By doing so they have withheld my own private property without my consent to do so.

It is clear Mr Arnold that the system has failed.

First EastLink wrongly assumed responsibility only to waste precious time in having this matter resolved before incurring further penalties. Then both EastLink and CityLink have denied my innocence and used the strong arm of the law to force me into submission despite my willingness to cooperate all along. I never received the correspondence to notify me of any invoices being escalated to Civic Compliance. Had I received such notification I would have paid the invoices the same as I do all of my bills — in full and on time. The fact still remains that I've paid all dues owing to EastLink/CityLink for the accused periods of transit and the infringements are unwarranted. The very fact there are several for the same accused offence is unjust and a total abuse of the power through Civic Compliance. The infringement itself does not hold up either as it suggests to have driven an unregistered vehicle in a toll zone. I can assure you, my vehicles are both registered with a toll company and VicRoads.

It's a disgrace that there is not an avenue for an individual to defend themselves outside of the court.

Please provide a formal outcome of this case for my records. I'll be sure to find you when this absurd abuse of power is demolished and it is ruled for any money paid to be retrospectively refunded.”

Mr AW to the TCO:

“Furthermore, I've taken another close look at your website and can see a case exactly like my own.

<http://www.tollingombudsman.com.au/Claim%20re%20mismanagement%20of%20account%20and%20service%20provided%20-%20June%202014.pdf>

Here it states the customer changed address and was never notified by CityLink of the pending infringement as EastLink did not update the address with CityLink. This happened to me as well. I did not receive the notifications as I had moved. Why are my infringements not being retracted?”

25 On 28 June 2016 the TCO advised Mr AW:

“I acknowledge your email and note its contents. I can provide you with a formal written decision, which is not binding on you. if you require or you can take the matter to the Magistrates Court where you will get a fair hearing.”

26 Mr AW responded:

“Please provide a formal written decision. I'm curious to see how my case differs to those published on the Tolling Customer Ombudsman website. I trust you'll apply the same just and fair judgement as you suggest the Magistrates Court will. Unless you're insinuating your decision won't be fair? In which case, I must ask again why my case is so irregular that it does not bear the same errors that countless other customers have raised?”

Discussion

- 27** The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO, 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.
- 28** 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.
- 29** 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. It cannot take evidence on oath and in certain circumstances it is more appropriate to have disputes determined judicially.

- 30** The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against Civic Compliance Victoria (CCV) or other outside bodies, such as Government agencies.
- 31** It is important for a customer to understand that TCO Decisions are binding on toll operators who are part of the TCO scheme but not on customers, who retain all their legal rights.
- 32** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation. This is a matter in which two toll operators have provided documented material to Mr AW.
- 33** I have recited the information provided to me by the parties in the body of this Decision and it is not necessary to be reproduced. EastLink, in particular, has painstakingly responded to all the queries raised by Mr AW in detail and provided documented evidence in support of its position in respect to the suspensions of Mr AW's account at different times. Mr AW has not accepted their explanations and attributed blame to the toll operators' systems.
- 34** Mr AW had an account with Breeze (EastLink) since 23 June 2009 and said that he had not had difficulty with his account until 2015. The account payments to keep his account in credit within the terms of his account was then not supported by automatic deductions from a credit provider, but was managed by Mr AW personally topping up his account.
- 35** This, according to the evidence presented to me, led to a situation of his account being suspended on multiple occasions due to payments not being received on time to ensure the account maintained a credit balance to prevent suspension of the account.
- 36** It was Mr AW's responsibility to maintain his account in good order to avoid the suspension of his account. According to Eastlink's records, account suspension warnings and account suspended notices were sent to Mr AW's postal address.
- 37** Payments necessary to avoid or lift suspension were not made in response to these notices in a timely manner. As a consequence of Mr AW's travel on CityLink or EastLink toll roads whilst his account was suspended he did not pay tolls, some of which subsequently became the subject of CCV Infringement Notices.
- 38** Mr AW complained about EastLink charging \$158.25 in unwarranted fees to his account when it was in credit. EastLink pointed out that this was a service it provided to prevent a customer's unpaid tolls being progressed to CCV and consequently becoming the subject of CCV Infringement Notices. It provided a table setting out details of the unpaid toll invoices and the administration fees that showed that \$158.25 had not been charged for fees in this regard.

- 39** Mr AW also stated that he had not received any debt collection notices, account closure/suspension notices or any prior correspondence to suggest that he might receive an Infringement Notice. This is despite the evidence provided that such notices were sent. Posted notices were for delivery through Australia Post, which produces statistics that it delivers 97% of its mail.
- 40** Moreover, in response to this assertion, EastLink has provided details of telephone contacts with CityLink and EastLink, indicating that Mr AW had made requests for the waiver of administration fees and extensions of time for payment following the posting, which were not subsequently met.
- 41** It is apparent from his own evidence that Mr AW paid amounts of money into his account on an ad hoc basis without any reference to individual outstanding toll invoices or notices on a number of occasions. This resulted in insufficient monies being in his account to bring it into credit in accordance with his account terms. The account accordingly remained in suspension.
- 42** In addition to my considering the information provided by the toll operators and Mr AW's submissions, I listened to four telephone conversations between Mr AW and EastLink, as well as being provided with some details of others. As I explained, those conversations supported EastLink's position rather than Mr AW's own position. Mr AW states that there was a further conversation but EastLink has no record of this.
- 43** Mr AW argues that the toll operators should reach some compromise in relation to the outstanding CCV Infringement Notices, which they have refused to do on the basis that there had been no errors on their part. This is the usual practice of toll operators.
- 44** Toll operators cannot control the conduct of a Government agency such as CCV, but in instances in which they believe they acted in error and the customer was entitled to relief they can inform CCV. It is then in CCV's discretion to withdraw an Infringement Notice. The toll operators do not believe that this is the situation in this matter.
- 45** Mr AW complains that the arguments put forward by the toll operators are given more credence than his submissions. The reason for this is that the toll operators can provide documentation as supporting evidence, whereas Mr AW relies on unsupported recollections which are contradicted, in some instances, by EastLink's evidence as indicated above.
- 46** I do not doubt the sincerity of Mr AW's beliefs about his assertions, but I cannot speculate, without some supporting evidence as to the accuracy of Mr AW's assertions in the face of the evidence provided by EastLink. There is no reason for EastLink or CityLink to provide evidence that is false. Both toll road operators get no benefit once the unpaid tolls are referred to CCV and Infringement Notices are issued.

- 47** I had advised Mr AW that he had the opportunity to have the matters dealt with in the Magistrates Court in which sworn evidence could be provided and tested on the issues, but he preferred not to take that course.
- 48** Having considered all the material provided by the parties, for the reasons set out above I cannot uphold Mr AW's complaint.

Determination

- 49** I do not uphold Mr AW's complaint.
- 50** I reaffirm that my Decision is not binding on Mr AW and that he can seek relief in any other forum. My Decision does not deprive him of any of his existing rights.

Michael Arnold
Tolling Customer Ombudsman

Dated: 19 July 2016