

DECISION

Background

- 1 The complainant, Mr WT, made a complaint to the Tolling Customer Ombudsman (TCO) on 5 January 2016, as follows:¹

"I have tried unsuccessfully to obtain some gratification from GoVia in regard to this matter and have taken the liberty of attaching all correspondence with GoVia and [Name] car Hire to clarify this saga. The latest response from GoVia only adds fuel to the arrogance and negligence of the company and they have totally failed in their duty of care towards me in this instance.

Please note my action commenced against GoVia after my return to Australia on June 02, 2015 in regard to an unrelated matter.

BACKGROUND

We were travelling through Europe to give my wife's younger sister a dream trip of a lifetime in a vehicle we rented in Barcelona, Spain. We had already taken her on a cruise and were showing her a world she only ever dreamed of seeing. ([T] was a 54 year old cancer victim and had never travelled out of her city, [City], [Country]) On May 23 we were mugged outside of Venice, Italy. We had to have the car shipped back to Barcelona, Spain due to the fact I had my Drivers Licence stolen. We cancelled all prepaid travel and flew back to Helsinki. My wife then took her sister home. I left for Australia arriving on the morning of June 02 to replace my cancelled credit plus debit cards and drivers Licence. It was my pre-planned intention to fly back on my return existing ticket back to Europe on the 12 June 2015.

THE SITUATION WITH GoVia:

I arrived in Australia on June 02 and on June 04, 2015 I received an invoice from GoVia for an unpaid toll fee demanding a payment of \$12.66 this offence took place on May 29 when I was flying from Barcelona to Helsinki.

I contacted GoVia and spoke to a person of East Asian extraction who told me he was in Adelaide. He also advised me that GoVia had a Statutory Declaration that I had supplied to GoVia admitting I was the driver of the vehicle. I explained that it was not possible as I have been out of Australia since April this year? Due to Privacy Laws the person would not divulge to me the make, model or owner of the vehicle. In his eyes he had the statutory Declaration I had submitted and if I did not pay the fine it would increase substantially and I would be listed with Spurs and my licence and registration would be cancelled.

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

Due to the severity of these ever increasing charges and being listed with Spurs and loss of licence and my car registration if I did not solve this matter urgently.

I then wrote a letter to the CEO of GoVia and a copy to Toll Roads Australia, CEO including a copy of my arrival date back into Australia and departure dates, I had no replies.

On 08 June I received another Invoice for a further offence that took place on the 05 June. I contacted GoVia again, this time it was a lady I spoke with also of East Asian descent who advised me basically word for word of my previous encounter with the GoVia call centre.

I wrote another letter to GoVia and received no reply. My departure date back to Europe was nearing; I felt I could not depart as planned with this shadow over my head. I felt that if I departed now we would have massive fines by November, unable to use our car or drive a vehicle with severe future consequences in regard to my driver's licence and vehicle registration. Plus I was advised if I hired a vehicle in Europe and my licence was cancelled I would have to face severe penalties if I had an accident.

I cancelled my prepaid flights, rental car and accommodation in Europe to try to sort this out. Some was refunded and I am claiming that which was not from GoVia.

On July 03, I received another unpaid toll notice for vehicle [1***N]. Again I wrote to GoVia requesting a scanned copy of the statutory declaration, no response.

On June 22, I contacted a lawyer and explained my situation and was advised to request the original demand notice. The lawyer took the details and contacted GoVia. He called me back and advised I would receive the original demand notices (They were never sent in the first place) I received them both on the same day June 30. I now understood that it was a vehicle owned by [Name] Car Hire. I then contacted [Name] Car Hire who I rented a car from in early April 2015 prior to our departure overseas.

Prior to my departure they requested a Statutory Declaration for the dates I used the vehicle in April as I had used the toll road but no invoices had arrived.

Again I contacted GoVia and again spoke with a person with an East Asian accent and after explaining my situation for the third time I was told that [Name Car Hire] had submitted a false declaration and my issues were with them, as far as GoVia were concerned I still owed the toll charges and extra costs.

I then contacted [Name Car Hire] by Fax and again by email the following day July 03, I received a reply on July 06, from [JM], Manager who undertook to supply the information I requested.

I also received an email an hour later from [Ms LS] I faxed her all the toll charges I had received and all correspondence to date with GoVia, hoping their intervention would resolve the issue.

On July 08 I received another email from [Ms LS] with the reply she received from [P], GoVia admitting that they had made an internal error? But they did not contact me to apologize.

On July 09, I wrote to [P] at GoVia and explained by situation requesting if the charges had been removed, still no apology. I spoke with the solicitor again who advised me that I should proceed back to Europe and enjoy my vocation and leave everything as the matter was resolved as far as GoVia was concerned and had been settled with [Name Car Hire] and to follow it up in November on my return.

On my return on November 06 I had received no correspondence from GoVia during my absence. On November 13, I contracted the call centre and was told it seemed there were still outstanding fines I told the person that this was cleared up in July? They said they would look into it and contact me. I had no feedback.

On November 25 I wrote to [P] at Assist GoVia and on November 26 received a reply where he stated that they acted on a legal Statutory Declaration and that I have to take this matter up with the [Name] Car Hire? [Name Car Hire] has denied any wrong doing and they were under the impression GoVia removed all charges related to me; apparently from the GoVia reply on November 26 they have not?

This matter is now very serious and is involving at this time a small amount of solicitor's time and cost. I hope that it can be settled with your intervention to avoid any litigation.

My listed claims from Go Via are for the following financial losses I suffered due to the delay of my departure through being falsely charged for unpaid tolls:

Attachment: A Police record of robbery in Italy May 23, 2015 to show the reason I returned to Australia

Attachment: B Change of departure dates from June 12, to July 11; it cost \$907.98 to change my ticket departure dates from an shoulder peak ticket to a peak ticket also with seats at a premium due to the World Rugby Cup in the UK.

Due to changes of our plans I was unable to fly to Barcelona and then Barcelona to St Petersburg instead I flew from Brisbane to Dubai with my new ticket to fly direct to Moscow. This original ticket was lost at a cost of \$865.00. They were return tickets by the Outward bound sector had to be used before we could use the return sector.

[Attachments C to T – copies of various documents: accommodation, toll notices, correspondence, photographs, airline tickets]

At this time I am claiming a total amount from GoVia of A\$2932.55 to cover my financial losses due to the extra time I stayed in Australia to solve these issues that were totally due to the incompetence of GoVia's staff and management.

I look forward to an early settlement of my claim and hope that this matter does not extend into a civil action matter in the courts."

- 2 The TCO acknowledged receipt of the complaint and forwarded same to go via for investigation and response.

3 On 6 January 2016 Mr WT clarified his dispute as follows:

“This complaint is not about Road Toll fees it is about the way that I was treated and even after supplying proof to GoVia that I was not in the country at the time the tolls were charged and the first offence took place.

When I spoke to Go Via I was accused by the person of East Asian descent of being untruthful. He told me they had a Statutory Declaration that I was in charge of the vehicle at the time of the infringement and it was in front of him.

I wrote to GoVia and also Road Tolls Australia by phone and by letter to the CEO to sort this out so I could return to Europe.

It was not until I spoke with a local lady in GoVia office who agreed to send the photographic proof of the first infringement of the vehicle to me by post. It was on sighting this photo that I contacted [Name] Car Hire who eventually advised me it was sorted out and yet it wasn't.

I had no apology from GoVia or any response from them, that is why I contacted you on advice from a Solicitor.

There is procedures to follow in these matters according to the Solicitor and that is why I sent you my complaint and request for re-imbusement of my financial lose from GoVia.

I look forward to a speedy resolution to this matter.”

4 The TCO outlined the complaint process in place:

“Your email is acknowledged and its contents noted. The TCO process requires the relevant tolling business to put in writing to me their response to your complaint and to give you the further opportunity to comment on it. This means there is no misunderstanding.

I will await Go Via's response to your complaint.”

5 On 8 January 2016 go via responded directly to Mr WT, copied to the TCO:

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

I have investigated your concerns and can confirm that there is a **go via** generated account number [91***02] in the name of [Mr WT] created from a Statutory Declaration received from [Name] Car Hire for the registration number [1***N] (QLD).

In order for me to investigate this matter further, due to the age of the claims i.e. June 2015, I will need time to gather all relevant information as most of the documentation will have been achieved..

Once documentation has been received if it is still available, I will be able to respond to you with more detail.

Please accept my sincere apologies that the level of service you experienced did not meet your expectations. It was disappointing to learn of your experience and that your concerns were not addressed.

I wish to apologise for the delay and for any inconvenience you may have experienced.”

6 On 9 January 2016 Mr WT responded to go via:

“Thank you for your email. I had requested from [Name Car Hire] the Statutory Declaration that I handed into [Name] Car Hire on my solicitors advice that was for a prior rental and have had no feedback. I also requested that same Statutory from GoVia and to date I have had no response as that Statutory Declaration clearly shows that it was in no way related to the Demand Invoices for the same vehicle but registered against that vehicle whilst I was in Europe. GoVia never sent out any photo of the vehicle just demand notices that I received from GoVia on my return to Australia.

In regard to the East Asian who was supposedly based at a call Centre in Adelaide he made the threats to me that the invoices if left unpaid would rise substantially, my car registration and or license could be cancelled if I did not pay the fines. I think in all probability I could have surmised from this that he did mean SPURS?

What I am really angry about is the fact we had to cancel my wife's sister's visit to Venice from [Country] well she was still healthy enough to travel.

It was my hope in returning to Australia, obtain my replacement license and card then return back to Europe on the 13th June and carry on with our vocation. We feel we failed my wife's sister and in late October she passed away aged 57. It is hypothetical now and only if I did not have these false accusations and invoices We could have continued our journey instead of staying back to clear the mess up. Why didn't GoVia respond when I sent all documentation including copies of passport, tickets etc. and canceled this fiasco?

It wasn't as if they only went to GoVia, my solicitor carried out an investigation and advised me to also correspond with Toll Roads Australia according to him they are the parent company of GoVia.

I await your further correspondence”

7 On 12 January 2016 go via addressed Mr WT's concerns in the following terms:

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

I have investigated your concerns and can confirm that there is a **go via** account number [91***02] in the name of [Mr WT] which has had the vehicle registration number [1***N] (QLD) added as a Statutory Declaration.

I have now listened to the voice recording between yourself and our Manila Customer Service Representative (CSR) on 11 June 2015.

- You advise you have received a Tolling Invoice for registration number [1***N] and that you do not know the vehicle registration number provided as [1***N] on Invoice number [32***84].
- You queried the date of the toll 29 May 2015, as you were flying between Barcelona and Helsinki and it could not have been you driving the vehicle..
- You advised that this could be seen from your passport.
- The Customer Service Representative asked you to provide **go via** with a copy of your passport to show this.
- You advised that as you had been robbed overseas that you had only just replaced your driver's licence.
- You also advised that you would have to post the documentation to you had many items including your laptop stolen

- The CSR took some time and came back to advise you the address a P O box in Mansfield to post the documentation back to.
- There was no mention of a Statutory Declaration or cancellation of a driver's license
- There is also no mention of the call centre being in Adelaide.
- The call ended with you advising that you would send proof that it was not your toll debt.

I have checked your account further and there has been no more interaction with **go via** staff and yourself since this date.

We have no records of any phone call or of any access to your vehicle registration number [1***N] or account [91***02] since 11 June 2015.

Staff cannot access any invoice or account without leaving a "system footprint", to gain access to view anything on the system will result in a unique ID footprint
The photograph of the vehicle is always sent on a Demand Notice this was generated automatically and not sent from any contact with **go via** staff.

Action has been taken on the account in Australia only to credit incorrect details on the Statutory Declaration and send you the emails attached below.

Statutory Declarations are not available, to the third party or recipient they remain the property of **go via**.

I understand you are requesting compensation for your time and whilst we absolutely appreciate your feedback, I regret that we are unable to agree to any monetary compensation at this time.

I appreciate this may not be the response you were hoping to receive, however I hope I was able to clarify the matter.

To make payment you can call **go via** on 13 33 31 between 7am to 7pm daily."

8 On 13 January 2016 Mr WT emailed go via as follows:

"I have sent my reply of your email with my response written under each of your replies in red. Please read them. I have also sent a copy to the Tolling Customer Ombudsman (TCO).

I presume you will be sending your reply to him as it seems you wish to take no further action in this matter.

If you could kindly forward to me a copy of your final response to the TCO.

Yours sincerely

[Mr WT]

I have investigated your concerns and can confirm that there is a **go via** account number [91***02] in the name of [Mr WT] which has had the vehicle registration number [1***N] (QLD) added as a Statutory Declaration.

That was confirmed to [P] that the vehicle [1***N] was listed by [Name Car Hire] for a period of hire from 18 -29 April 2015 Confirmed to [Name Car Hire] by your CSR [P] that GoVia made an error (Read email sent by [P] to [Name Car Hire] on 08 July 2015

I have now listened to the voice recording between yourself and our Manila Customer Service Representative (CSR) on 11 June 2015.

When I telephoned on two occasions I was advised on the two occasions that GoVia had no overseas Customer Service Centres.

You advise you have received a Tolling Invoice for registration number [1***N] and that you do not know the vehicle registration number provided as [1***N] on Invoice number [32***84].

I received from go via The following Toll Invoices dated 30/05. [32***15] dated 05/06 [36***72] dated 28/06 When I finally contacted GoVia in Brisbane I was sent the two Demand Notices for Non Payment of Road Tolls for vehicle [1***N]: Yr. Ref. [24***34] on 25/06 I received another for the same vehicle [1***N] Yr Ref. [26***77] On receipt of the photo offence I could see the vehicle belonged to [Name] Car Hire and contacted them. After a few days [Name Car Hire] advised me that the matter had been resolved. I did not have any notification from GoVia stating this matter had been resolved?

You queried the date of the toll 29 May 2015, as you were flying between Barcelona and Helsinki I could not have been you driving the vehicle.[1***N] on the 29/05 as stated on Yr.Invoice: [32***84] I sent copies of my passport that clearly showed my departure and entry stamps from 29 April onwards until I came back to Australia on 01 June, airline tickets and a copy of the Police report, items stolen in Italy that did not include my passport as it was not stolen.

You advised that this could be seen from your passport. Your CEO's at GoVia and Toll Roads Australia would have both received copies of this information showing dates I left Australia and the date I returned

The Customer Service Representative asked you to provide go via with a copy of your passport to show this. Excuse me, I told your both Customer Service employees based in the Philippines who both stated they operated out of Adelaide. I told them both I would send my airline tickets, boarding passes and dates that were relevant in my passport which I did and had no reply.

You advised that as you had been robbed overseas that you had only just replaced your driver's licence .I returned to Australia to replace my credit cards and Drivers Licence and was booked to fly back to Europe on 10/06 which I missed this flight (No refund) to sort this fiasco out. My travel insurance did not cover any loss within Australia so it was a total loss and I had to purchase a new ticket.

You also advised that you would have to post the documentation to you had many items including your laptop stolen Can you please clarify what you mean in this question in regard to documentation I would post from myself to myself?

The CSR took some time and came back to advise you the address a P O box in Mansfield to post the documentation back to.This also needs to be clarified when who contacted who by telephone and the dates? I found the GoVia address myself And on investigation discovered a relationship between GoVia and Toll Roads Australia.

There was no mention of a Statutory Declaration or cancellation of a driver's license This is a blatant lie I asked the male and on my second call the female from CSR where they were and they both stated Adelaide quite clearly. I then asked the male

what is Adelaide famous for, he said he just arrived there? The lady told me it was wine? I also had a witness to these two conversations.

There is also no mention of the call centre being in Adelaide. This is another blatant lie and I should be entitled to a copy of both conversations to see if I have a mental illness such as dementia or parts of those conversations were removed from the recording? When I spoke the male at your CSR I had a witness with me who was house sitting for us during our extended trip overseas and who will be a witness to that conversation in regard to what I had said. .

The call ended with you advising that you would send proof that it was not your toll debt. I did and those letters were sent on 10/06 to GoVia and Toll Roads Australia (Duplicate letters and attachments) I also sent another letter to the CEO of GoVia on 02/07 with relevant copies of my prior letter and attachments attached

I have checked your account further and there has been no more interaction with **go via** staff and yourself since this date. Another blatant lie I was in correspondence with [P] and he was also in contact with three people at [Name] Car Hire up until the 11 July. All [Name] Car Hire and [P's] emails are now with my solicitor so I am unable to supply the dates at this time but will obtain them tomorrow.

We have no records of any phone call or of any access to your vehicle registration number [1***N] or account [91***02] since 11 June 2015. Are you really serious with this or just playing some game? This was NEVER my vehicle [1***N] is the property of [Name] Car Hire and I rented it from them from April 18 -29. 2015 I will not withdraw my claim against GoVia as I have proof that the actions of GoVia caused me stress and illness when I had to delay my return to Europe and thus caused personal loss to my wife. Further my account [91***02] is for my 2007 Chrysler Sebring.

Staff cannot access any invoice or account without leaving a “**system footprint**”, to gain access to view anything on the system will result in a unique ID footprintThe photograph of the vehicle is always sent on a Demand Notice this was generated automatically and not sent from any contact with **go via** staff. Again, I find this tactic questionable, are you telling me employees cannot obtain access to your computer? , if this was generated automatically why it was not sent to me on the date of the first offence of 29 May2015. If I am lying how come the Demand Notices were sent on 24-25 June 2015 when they should have been sent to me automatically after the offences took place?. I spoke to your Marsden Office to a lady who advised me she would send the photo invoices to me as up to this date CSR both employees told me that the vehicle registration and name of owner was confidential information, this should also be clearly stated on the recordings.

Action has been taken on the account in Australia only to credit incorrect details on the Statutory Declaration and send you the emails attached below. This is not clear can you clarify it please?

Statutory Declarations are not available, to the third party or recipient they remain the property of **go via**. What are you talking?!, I am not the third party I gave that email (MY WRITTEN EMAIL) to [Name] Car Hire so how can I be the third party and at the end of the day it is still my legal property?

I understand you are requesting compensation for your time and whilst we absolutely appreciate your feedback, I regret that we are unable to agree to any monetary compensation at this time. I am not asking for any compensation at this time. I am only asking for reimbursement of my financial loss caused by GoVia in this matter of an innocent person accused of offences unrelated to him. This matter would and could have been resolved prior to June 10, 2015 I then would have been able to depart Australia and rejoin my wife and continue our journey.

I appreciate this may not be the response you were hoping to receive, however I hope I was able to clarify the matter. Sorry In some ways you have given some fair comments which I will pass onto my solicitor for his input. Basically I have been called a liar, indirectly of course and if you refer to one of [P's] emails he clearly states GoVia have no overseas based call centres, is he a liar also?

To make payment you can call **go via** on 13 33 31 between 7am to 7pm daily **Make payments for toll charges related to [1***N]. Why I owe nothing?"**

9 On 18 January 2016 go via responded to Mr WT:

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

Firstly I acknowledge the paperwork you sent **go via** for your claim of \$2932.55 payment for having to rebook travel back to Europe, due to the stress caused by **go via** in issuing a Statutory Declaration, for an [Name] Car rental registration number [1***N] (QLD), on a date that you were not in the country. Can you please confirm the dates and times that you hired this vehicle and travelled through a toll with no payment being received within three days of travel.

I note your concerns regarding the call recording initially and a Statutory Declaration from [Name] Car Hire, and will address each of them for you.

- **I have now listened to the only voice recording between yourself and our Manila Customer Service Representative (CSR) a gentleman on 11 June 2015 at 12:09.**

There is only one access to your **go via** account number [91***02] outside Brisbane with **go via's** call centre based in Manila. There are not two as mentioned with call centre staff outside Australia.

As advised staff cannot access any invoice or account without leaving a "**system footprint**", to gain access to view anything on the system will result in a unique ID, this is not an individual computer access but a system generated access.

- **You advise you have received a Tolling Invoice for registration number [1***N] and that you do not know the vehicle registration number provided as [1***N] on Invoice number [32***84].**

I acknowledge that **go via** sent the following invoices to you namely [38***24] for registration number [1***N] travelling through Kuraby North on 18 April @11:32:22, for the amount of \$10.47 which was Bpay on 03 June 2015 [32***84] for registration number [1***N] travelling through Murarrie South on 29 May 2015 @ 22:11:23 for the amount of \$12.66 [32***15] for registration number [1***N] travelling through Murarrie South on 04 June 2015 @08:11:31 for the amount of \$12.66.

[24***34] a Demand Notices as the toll on 29 May 2015 was unpaid by the due date for \$26.99

[26***77] a Demand Notices as the toll on 4 June 2015 was unpaid by the due date for \$26.99

[36***72] for registration number [1***N] travelling through Kuraby North on 27 June 2015 @14:56:19 and Murarrie South on 27 June 2015 @\$15.08 the for the amount of \$15.62.

Please find a table below:

Posted date	Due date	Invoice Number	Text	Amount
27.06.2015	11.07.2015	[36***72]	Toll Invoice	\$15.62
25.06.2015	25.07.2015	[26***77]	Demand Notice	\$26.99
24.06.2015	24.07.2015	[24***34]	Demand Notice	\$26.99
04.06.2015	03.06.2015		Payment Received Thank-you	-\$10.47
04.06.2015	18.06.2015	[32***15]	Toll Invoice	\$12.66
29.05.2015	12.06.2015	[32***84]	Toll Invoice	\$12.66
20.05.2015	03.06.2015	[38***24]	Toll Invoice	\$10.47

I wish to apologise for the incorrect Invoices which were sent to you, they were generated by **go via** from a legal document – the Statutory Declaration requested by the registered owner of [1***N] (QLD) [Name] Car Hire, as the toll was not paid within three days of travel, I also confirm that the tolls from the Statutory Declaration should have been cancelled earlier, however a clerical error, left it open until 27 June 2015, this was remedied on 29 June 2015 and credits for the incorrect charges were given. I apologise that there does not appear to have been an apology from **go via** regarding this matter.

- **You queried the date of the toll 29 May 2015, as you were flying between Barcelona and Helsinki.**

It has already been established that you are not liable for the tolls used between 29 May 2015 and 27 June 2015.

- **You advised that this could be seen from your passport.**

You were asked to send in a copy of your passport and documentation for proof that you were not in the country at the time of travel.

- **The Customer Service Representative asked you to provide go via with a copy of your passport to show this.**

As above

- **You advised that as you had been robbed overseas that you had only just replaced your driver's licence.**

You also advised that you would have to post the documentation as you had many items stolen including your laptop.

- **The CSR took some time and came back to advise you the address, a PO Box in Mansfield, to post the required documentation back to.**

Our records indicate that you rang us as noted above on 11 June 2015 at 12:09 this is the voice recording I am discussing.

- **There was no mention of a Statutory Declaration or cancellation of a driver's licence being cancelled in this conversation.**

There was no mention of a Statutory Declaration or any cancellation of a driver's licence in this conversation.

- **There is also no mention of the call centre being in Adelaide.**

Go via's call centre has been based in Manila since 01 April 2015, there are no **go via** call centres in Adelaide or India.

- **The call ended with you advising that you would send proof that it was not your toll debt.**

This has been received you were not charged for the incorrect toll.

- **I have checked your account further and there has been no more interaction with go via staff and yourself since this date**

I apologise this is for calls to our Manila based call centre only and does not include emails attached below for you to see from **go via**.

- **We have no records of any phone call or of any access to your vehicle registration number [1***N] or account [91***02] since 11 June 2015.**

This does not include emails sent or work done in the Brisbane office to amend and correct your account, an image of the vehicle may have been sent out during this time. These interactions are foot printed. **Go via** is well aware that the registration number [1***N] is registered in the name of [Name] Car Hire as they sent the Statutory Declaration naming you as the driver. As **go via** is separate and private entity to the Department of Transport and Main Roads (DTMR); we were unaware of what vehicle is registered to who, the address and name of the registered owner is the information supplied by them..

- **Action has been taken on the account in Australia only to credit incorrect details on the Statutory Declaration and send you the emails attached below.**

Please see email trail attached below for your information. **Go via's** call centre as mentioned above is based in Manila, emails and back of house work is actioned in Brisbane.

- **I understand you are requesting compensation for your time and whilst we absolutely appreciate your feedback, I regret that we are unable to agree to any monetary compensation at this time.**

Go via are unable to agree to any monetary compensation at this time for this financial loss in this matter of an innocent person accused of offences unrelated to him..

- **I appreciate this may not be the response you were hoping to receive, however I hope I was able to clarify the matter.**

[P's] email below states that **go via** have no call centres in India.

- **To make payment you can call go via on 13 33 31 between 7am to 7pm daily.**

No payment is required by you.

Please be advised **go via** is a private entity owned by Transurban Queensland, it is not a part of the Queensland State Government or Toll Roads Australia.

I trust this addresses all your concerns.

For your reference, the Tolling Customer Ombudsman receives a copy of all emails sent between **go via** and yourself.”

10 On 19 January 2016 Mr WT emailed go via as follows:

“I notice that you go on about the 'Foot Print' and maybe the lady I spoke with at GoVia didn't have anything to do with the sending of the two Demand Notices for two offences. They were not sent to me until 10 days at least after I contacted GoVia office in Mansfield and spoke to her. If these had of been sent earlier, around the 29 May, well before the 10th June the situation could have been rectified and I could have returned to Europe on time.

It is my belief that between GoVia and myself it is nothing more then buck passing and excuses therefore I think you have made your final decision so there is no need not to pass this matter onto the TIO, he operates from the same building, doesn't he?”

11 Go via responded that same day to Mr WT:

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

I note your concerns, about computer “footprints” **go via's** Toll Invoices and Demand Notices are generated and sent automatically.

There is as stated previously only one *incoming* contacts made to **go via** it is not possible to ring our back of house” area based in Eight Mile Plains, Brisbane.

All emails once referred from the Tolling Customer Ombudsman (TCO) must be referred back to him, so that he is advised of **go via's** decision, he can make a final decision to override anything a tolling company may have stated.

All details regarding his role can be found at the website www.tollingombudsman.com.au, as he is an independent impartial person appointed to assist customer and covers nationwide tolling dispute, he does not operate from the same building as **go via**.

Please read his email below which states;

The Tolling Customer Ombudsman (TCO) is an impartial person appointed to help customers of AirportlinkM7, CityLink®, EastLink®, Go Via®, Hills M2™, Lane Cove Motorways, Roam® and Roam Express® tolling businesses, which fund the TCO service, resolve complaints fairly, efficiently and free of charge. The complaints may be resolved by way of conciliation, mediation or arbitration and the parties may negotiate a settlement at any stage. TCO decisions are binding on these toll operators but not the customers, who retain all legal rights.

Each complaint received is processed in an orderly way so that it can be dealt with on its merits and in a manner that is fair to both the customer and relevant tolling business. Before the TCO can deal with your complaint, you must have:

(a) *first lodged a formal complaint with the relevant internal customer resolutions group;*

- (b) (i) have either received a negative response to that complaint; or
(ii) allowed the complaint to be resolved through the relevant internal customer resolutions group.

We appreciate your comments as it enables us to improve our service levels. As such, I have forwarded your feedback to the appropriate Manager for their review.

12 On 21 January 2016 the following exchange of correspondence took place:

Mr WT to go via:

"I am still waiting for a response to my last email? Will I be sent a recording of the only conversation you hold between myself and the Manila Office?
The other question GoVia are now totally admitted liability that GoVia are aware as you stated; I was not driving the vehicle on the dates in question that I wasn't the driver. This makes my travel plans and any other documentation that **I WAS OUT OF THE COUNTRY INMATERIAL**. What is of a material nature is the fact that I had to delay my departure overseas to clear up the mess of false accusations by GoVia against me'. That is the case I will pursue through the TCO and further if satisfaction is not forthcoming."

Go via to Mr WT:

"Thank you for your email, sent to my personal email address please be advised any further emails need to be sent to customerralations@transurban.com no further response will be replied to from my personal email address.

The response to your last email was sent to you on 18 January 2016. Please read the email trail below;

Go via's voice call recording are kept for training and development purposes and internal use only, as such they are unavailable outside the company.
I have in the email of 12 January 2016 documented the content of call for you which are:-

- You advise you have received a Tolling Invoice for registration number [1***N] and that you do not know the vehicle registration number provided as [1***N] on Invoice number [32***84].
- You queried the date of the toll 29 May 2015, as you were flying between Barcelona and Helsinki and it could not have been you driving the vehicle..
- You advised that this could be seen from your passport.
- The Customer Service Representative asked you to provide **go via** with a copy of your passport to show this.
- You advised that as you had been robbed overseas that you had only just replaced your driver's licence.
- You also advised that you would have to post the documentation as you had many items including your laptop stolen
- The CSR took some time and came back to advise you the address a P O box in Mansfield to post the documentation back to.
- There was no mention of a Statutory Declaration or cancellation of a driver's license

- There is also no mention of the call centre being in Adelaide.
- The call ended with you advising that you would send proof that it was not your toll debt.

I have included the Tolling Customer Ombudsman(TCO) in my response and will await for his ruling should it differ from **go via's**, which is as stated below:

Go via are unable to agree to any monetary compensation at this **time** for this financial loss in "this matter of an innocent person accused of offences unrelated to him".

Had the tolls used for rental car registration number [1***N], been paid within three days of travel as is legally required and documented on the roadside, no Invoice or Statutory Declaration would have been generated.

I trust this addresses you concerns."

Mr WT to go via:

"Sorry but I sent that email to the email address on your correspondence. Please refer this matter to the TCO, I have no further discussion with you on this matter as I can see it is a waste of time with no outcome. I will however fax you the correspondence you requested. I am waiting for these to be faxed to me by my solicitor."

Go via to Mr WT:

"Thank you for your email.

All the emails between **go via** and yourself have all been referred to the Tolling Customer Ombudsman (TCO), and will await for his ruling should it differ from **go via's**.

Any ruling received from the Tolling Customer Ombudsman(TCO) will be addressed to us both.

I appreciate this may not be the response you were hoping to receive, however I hope I was able to assist you regarding **go via's** position in this matter."

Mr WT to the TCO:

"I was requested by GoVia to forward a copy of my passport and other relevant correspondence to them. I contacted GoVia this morning and as the matter is now in your hands and as an independent arbitrator do you require these documents? The copies arrived today from my solicitor this morning, he holds all originals."

TCO to Mr WT and go via:

"I will provide a written Decision for the parties in this matter."

13 On 28 January 2016 Mr WT wrote to the TCO:

"Dear TCO

I am writing to explain what I see as vital evidence that has just come to hand of the situation between GoVia and myself.

Firstly I would like to say that the 23rd May 2015 the day we robbed day we were expecting my wife's sister to arrive from Siberia, Tanya was terminally ill and had a Bucket List we wanted to fulfil for her. Sadly Tanya passed away in November 2015 without fulfilling her dreams.

On the 29 May 2015 we sent Tanya back to Russia from Helsinki, then she caught a flight via Moscow onto Siberia and we returned to Australia cancelling all our pre-arranged plans until the 11 June 2015. On my arrival in Australia we were both stressed and filled out many Statutory Declarations for the Insurance, Banks etc. I was under the assumption when I was told by the call centre employee on the 10th June that I had sent the Statutory Declaration for the offence of May 29, 2015. When the call centre employee stated he had a Statutory Declaration naming me as the driver for the first offence of May 29 and on into June when the other offences took place. According to [Name] Car Hire and their records the offence I was liable for the hire of vehicle [1***N] from the 13th - 19th April 2015. Apparently there is confusion in relation to the attitude of GoVia who have never apologised for their attitude towards me but did admit they made error.

GoVia and apologies I tried to convince them by mail, telephone calls and emails but they were adamant I was the driver. According to the information from [Name] Car Hire the Statutory Declaration sent to them clearly stated that I hired the vehicle from 13 April to 19 April 2015. That is the situation according to [Name] car Hire and if GoVia had realized their error I could have flown out as planed on the 11th June 2015. We would settled this matter prior to my cancellation of our tickets back to Europe I would have carried on with our plans with no further loss of pre-paid travel but to clear this matter up I stayed here until July 11, 2015 when I was advised by [Name] Car Hire that the matter was resolved. Then on my return in November I found this was not the case, I understood that it was still an issue."

14 On 8 February 2016 the TCO responded to Mr WT as follows:

"I am presently examining this complaint. I note that you travelled on go via toll roads between 13 and 19 April. Please advise if you paid the tolls for such travel within the time required for payment. If you did not do so, could you explain the reason for this."

15 To which Mr WT replied:

"On my return to Australia I had received a letter from the car hire Company during my absence for an unpaid toll of \$10.47. On the 2nd June I contacted [Name Car Hire] who gave me the invoice details to pay the amount outstanding, \$10.47 I paid this via BPay and it went through to Govia. If there were any other outstanding invoices for the period of the car hire between 13 - 19 April 2015 I was not contacted by GoVia or [Name Car Hire]. I did receive from GoVia further outstanding invoices that you are aware were not mine, hence my claim against GoVia. Again I

must stress that the call centre person I spoke with did tell me I was the driver of the vehicle at the time of these offences?

I would also like to add I have requested from my telephone service provider on the recommendation of my solicitor (landline) for the records which give the length of time, date of calls and the actual calls I made and I spoke with the GoVia call centre employees plus Govia.

Looking forward to your final response.”

16 On 11 February 2016 the TCO again wrote to Mr WT:

“I note your response to my email but I ask you to clarify why the tolls were not paid by you within the time required after the travel on the toll roads.”

17 And Mr WT responded:

“I have explained this to GoVia in the past. I was told by [Name Car Hire] that I could use my GoVia Tag from my vehicle and the tolls would register to my account. Apparently when I used the toll road on the 19th April they neve did register. On my return to Australia I had received a letter from the car hire Company during my absence for an unpaid toll of \$10.47. On the 2nd June I contacted [Name Car Hire] who gave me the invoice details to pay the amount outstanding, \$10.47 I paid this via BPay and it went through to Govia. If there were any other outstanding invoices for the period of the car hire between 13 - 19 April 2015 I was not contacted by GoVia or [Name Car Hire]. I did receive from GoVia further outstanding invoices that you are aware were not mine, hence my claim against GoVia”

18 On 15 February 2016 the TCO emailed Mr WT, copied to go via, as follows:

“I refer to the previous correspondence between yourself go via and the Tolling Customer Ombudsman. After considering all the issues I must advise that I cannot award the compensation that you seek.

Compensation for the damages you seek are only payable if they were as a result of the toll operator’s conduct and were reasonably foreseeable in the circumstances. Further the law requires that a person claiming such damages must have taken steps to mitigate such loss.

There is no evidence that go via could have foreseen that because of any delay involved in your dispute you would have led to the losses in respect to the travel costs you claim. It was not on notice that such a loss may have incurred.

In addition you could have taken steps to mitigate your loss by authorising a third party, even your solicitor, to resolve the issue whilst you were overseas. I understand that you were under pressure in relation to other matters but the step of cancelling your prepaid trip in such circumstances was out of proportion to the issues involved with go via.

I believe that in the circumstances a modest ex gratia payment by go via would only be in order.”

19 On 18 February 2016 go via wrote to Mr WT:

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

I refer to the email attached below from the Tolling Customer Ombudsman that says “in view of the circumstances a modest ex gratia payment by **go via** was in order”.

In view of this decision, a credit of \$40.00 has been applied to your **go via** account number [91***01] for vehicle registration numbers [9***N] (QLD).

I wish to apologise that incorrect Invoices were sent to you, they were generated by **go via** from a legal document – the Statutory Declaration request from the registered owner of [1***N] (QLD) [Name] Car Hire, as the toll was not paid within three days of travel,

I also confirm that the tolls from the Statutory Declaration should have been cancelled after you had returned the vehicle, however a clerical error left it open, this was remedied on 29 June 2015 and credits for the incorrect charges were applied.

Had the tolls used for rental car registration number [1***N], been paid within three days of travel as is legally required and documented on the roadside, no Invoice or Statutory Declaration would have been generated.

Please accept my sincere apologies that the level of service you experienced did not meet your expectations. It was disappointing to learn of your experience and that your concerns were not addressed.

Go via aim for the highest standard of customer service and it is disappointing to learn we have failed to meet this target on these occasions.

I hope this now addresses your concerns.”

20 Mr WT responded to go via, copied to the TCO:

“Sorry not acceptable.

I am waiting for further advice from my solicitor, unless you are prepared to pay his fee's to date?

I have also received from my Telco all calls and made to Govia and lady I asked you for a copy of the initial telephone conversation I had with your Call Centre or a transcript but this is not available, does your email text to me and the actual conversation differ?

Today, You finely have the audacity to make an apology to me, when it should have been made back in July.”

21 On 19 February 2016 go via wrote to Mr WT, copied to the TCO:

“Thank you for your email which I have also referred to the Tolling Customer Ombudsman for his information.

As mentioned previously call recordings are not available to our customers as they are kept for training and development purposes only. I have accurately documented every detail in the call.

I understand you there may have been several calls made to **go via**, however there has only been is only one incoming call where your account has been accessed.

Once again I wish to apologise that the level of service you experienced did not meet your expectations.”

Discussion

- 22** 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. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal and any other rights if they are dissatisfied with a TCO decision.
- 23** 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.
- 24** 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.
- 25** The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against other outside bodies, such as Government agencies like SPER. Decisions are binding on toll operators but not customers, who retain all their legal and other rights if they are not satisfied with a TCO decision.
- 26** I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 27** This is a matter in which there is no complaint about the actual tolls or the level of tolls charged by go via, but rather, the service provided by go via in the handling of a complaint in respect of tolls for which Mr WT should have not been charged. This conduct followed toll demands being directed to Mr WT in respect to the use of a hire car owned by [Name] Car Hire. The invoices had been sent in error to Mr WT, but they were subsequently withdrawn and all fees charged were reversed. Go via has apologised in this regard.
- 28** Interaction between Mr WT and go via became complicated because Mr WT had his passport, laptop and other items stolen whilst he was overseas. This meant that Mr WT could not respond immediately to requests for certain information from go via.

- 29** There appears to have been some confusion in respect to the communication Mr WT had with go via and other agencies in this dispute. His recollection of details of the conversation with go via is not correct. I have listened to the only telephone recording of a conversation on 11 June 2015 between go via and Mr WT, the transcript of which has been provided by go via. I can confirm that the contents of the transcript, as provided by go via, are correct. I can also confirm that go via does not have a call centre in Adelaide.
- 30** There is no doubt that go via exhibited poor service in the handling of Mr WT's complaint. It would, however, not be fair to award the compensation that he claims in view of the limited amount of money involved in respect of the wrongly charged tolls and the fact that go via did rectify the situation – although not as efficiently as it should have between June and July 2015.
- 31** Mr WT did seek assistance from his solicitor. I point out that toll road customers are not required to obtain legal assistance in making a complaint to the TCO, which is designed to be a free service to consumers.

Determination

- 32** Go via has provided an apology and a \$90 credit to Mr WT's account. I believe that this action is fair in the circumstances.
- 33** I reaffirm that my decision is not binding on Mr WT and he can seek relief from go via in any other forum.

Michael Arnold
Tolling Customer Ombudsman

Dated: 4 April 2016