

## DECISION

### Background

- 1 The complainant, Ms L, first made a complaint to the Tolling Customer Ombudsman (TCO) dated 20 March 2012, received on 22 March 2012, as follows:<sup>1</sup>

*"I, [Name of Ms L], of [address], am the driver of the vehicle with Victorian Registration Number [number] and am the Applicant in this matter ("the Applicant"). This is a complaint in relation to several alleged Infringement Notices, received by me, from CityLink. Attached to this complaint are the following:*

- 1. Detailed Chronology;*
- 2. List of Annexures (A-K), and the documents referred therein; and*
- 3. Payment Schedule.*

*Since approximately May 2011, I have become a customer of CityLink ("CL"). I have been making regular payments to CL throughout the duration of my use of the tolling service (please refer to the attached Payment Schedule).*

*On or around 13 September 2011, I received a phone call from a representative of CL, advising me that my Account was suspended, and requesting that I make immediate payment. I was unaware that my CL Account was suspended, and as soon as this had been brought to my attention, and following my conversation with CL, I made immediate payment of \$200 into my CL Account. I paid this amount to cover all outstanding late invoices and put my CL Account into credit and considered the matter sorted.*

*In light of my discussions with CL I believed on reasonable grounds that at the time the offences were alleged to have been committed that my vehicle was covered by my CL Account and that it was not suspended at the time the offences are alleged to have been committed, pursuant to Section 73(3)(b) of the Melbourne City Link Act 1995.*

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

*I reasonably believed that the payment of \$200.00 into my CL Account paid for the late Toll Invoices and topped up my Account, pursuant to Section 73(3A)(b) of the Melbourne City Link Act 1995.*

*Subsequently, I received 15 alleged Infringement Notices. As I had been making regular payments into my CL Account and given my conversations with CL and the assurances and representations made I had no idea that my CL Account was suspended. I believed that all late Toll Invoices were paid. I have made several attempts to resolve this matter internally with CL, and also with Civic Compliance Victoria, but to no avail.*

**What happened following your complaint to the tolling business:**

*Since 3 January 2012, I have provided both CL and Civic Compliance Victoria with written notification of my dispute, and have not received an adequate response to my reasonable requests.*

*Both CL (and its agents) and Civic Compliance Victoria, have made representations to me, assuring me that the alleged Infringement Notices would be withdrawn on account of my already having paid my CL account several months beforehand. I have acted in accordance with those representations, it appears to my detriment. Pursuant to Section 18 of the Competition and Consumer Act 2010 ("the Act"), I have been misled to believe that the Notices would be withdrawn, simply by writing to the Penalty Review Board, who would refer the matter back to CL. This was not the case.*

*Further, pursuant to Sections 20 and 21 of the Act, both CL and Civic Compliance Victoria have acted unconscionably, in that I am required to comply with conditions that are not reasonably necessary for the protection of the legitimate interests of the supplier (CL) (Section 21(2)(6)). I have 15 Infringement Notices, which total over \$1,800.00. These Notices were issued over 3 months after my Account with CL was paid. Pursuant to Section 22(2)G(i), both CL and Civic Compliance Victoria have not contacted me to either negotiate or resolve this matter. I have acted in good faith at all times.*

*I have received extremely poor service from both CL and Civic Compliance Victoria, despite my repeated attempts at negotiation, and resolution of, this matter. I have experienced serious anxiety and stress as a result. The emotional and physical toll has disrupted my work and home life, and I am at a loss as to why CL will not respond to either my telephone or written requests for a review, and why Civic Compliance will not acknowledge my request for an extension, both in writing and by telephone, whilst this matter is being reviewed by CL Head Office.*

**What do you want to happen for your complaint to be resolved:**

*I require all alleged Infringement Notices to be withdrawn immediately, pursuant to Section 18(2)(a) and Section 18(2)(c) of the Infringements Act 2006.*

- 1. In light of my conversations with CL, I believed on reasonable grounds that at the time the offences were alleged to have been committed that a) my vehicle was covered by my CL Account and b) that my CL Account was not suspended at the time the offences were alleged to have been committed, pursuant to Section 73(3)(6) of the Melbourne City Link Act 1995.*
- 2. Following my conversation with CL on 13 September 2011 I paid \$200.00 into my CL Account which I reasonably believed paid for the late Toll Invoices and topped up my Account, pursuant to Section 73(3A)(b) of the Melbourne City Link Act 1995.*

*In the interim, I require an urgent extension of time within which to pay the alleged Infringement Notices with Civic Compliance Victoria, pursuant to Section 47(2)(b) of the Infringements Act.”<sup>2</sup>*

**2** Additionally, Ms L emailed the TCO on 21 March 2012 at 11.20PM as follows:

*“I refer to my Complaint dated 20 March 2012, which you confirm has been received by your office, and attach the following for your reference:*

- 1. Email from CityLink to me, dated 20 March 2012 (below); and*
- 2. My letter of today to CityLink (attached).*

*Further, I have sent another letter to Civic Compliance today, following receipt of 13 Penalty Reminder Notices yesterday, 20 March 2012.*

*You will note that CityLink's email of 20 March 2012 confirms that I had made a payment into my City Link account on 14 September 2011 before any Late Toll Invoices (the subject of the Infringement Notices) were sent to me.*

*Thank you for your assistance and If you require any further information please contact me on 0402 858 143.”*

Email from CityLink to Ms L – 20 March 2012:

*“Thank you for your recent enquiry regarding Infringement Notices you have received. Rather than speaking, it's usually more helpful providing this type of information in writing.*

*As an Infringement Notice has been issued, you're no doubt aware the opportunity for CityLink to intervene has now passed. Infringement Notices*

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<sup>2</sup> All attachments are on file

are issued by Civic Compliance Victoria (CCV), therefore CCV handle any enquires about their status or disputes you may have.

Having said that, Citylink's systems indicate the following. You may already know some of this information, so apologies for any repetition:

- Account [\*\*\*17] was suspended from the 21/08/11 to 14/09/11 and the offence dates fall within the suspension period
- Account mail was sent to: [Ms L], [business address]
- Late Toll invoices (LTis) were issued to you for the travel made when your account was suspended
- LTis were issued using the VicRoads data base to you at [home address]
- CityLink has no record of contact or payment whilst the LTis were within the payment terms. Accordingly, they were then forwarded to CCV. I note CityLink received a payment for your account on the 14/09/2011 however the disputed LTIs were not issued until after this time.

You indicated both CityLink and CCV advised you to dispute the infringements and they would be withdrawn. I'm sorry you believed this to be the case. CCV undertake their own investigation once infringements have been disputed so no-one can provide you with this advice prior to you lodging your dispute.

You also indicated you had paid your account into credit and believed all matters had been resolved at that point. Unfortunately this was not the case. Paying your CityLink account covers all future travel but does not cover any travel undertaken when the account is suspended.

Thank you again for your enquiry and for the opportunity to respond to your concerns. I apologise we are unable to assist you further.”

Letter from Ms L to CityLink – 21 March 2012:

“Thank you for your email of 20 March 2012.

I wish to clarify some of the points raised in your email, as follows:

- You claim that my CL Account was suspended from 21/08/2011 to 14/09/2011 and the alleged offence dates fall within this suspension period. I note that payment of \$200 was made by me on 13 September 2011 and the CL Account should have reactivated on 14 September 2011.
- You acknowledge that “CityLink received a payment” for my CL Account on the 14/09/2011 and that the disputed Late Toll Invoices were not issued until after this time. I have advised your office on previous occasions that payment of \$200 was made by me to into my CL Account on 13 September 2011 and you confirmed that your office

*received such payment the following day, being 14 September 2011. This payment clearly related to my suspended CL Account, and accordingly, the Late Toll Notices (“LTN”) should not have been issued in the first instance.*

- You claim that I indicated that I had paid my account into credit and believed all matters had been resolved at that point, and that “unfortunately this was not the case”. I strongly disagree with your comments that paying my CL Account covers all future travel but does not cover any travel undertaken when the account is suspended. Why would I make payment for future travel when my account was allegedly in arrears and suspended? It was your office who contacted me for payment of the suspended account, therefore, under the circumstances, I was led to believe that payment would rectify the suspension of my CL Account. Following my conversation with your office on 13 September 2011 I paid \$200 into my CL Account which I reasonably believed paid for the LTN’s and topped up my Account, pursuant to Section 73(3A)(b) of the Melbourne City Link Act 1995.*

*For the reasons outlined above I strongly maintain that your office is responsible for advising Civic Compliance Victoria to withdraw the alleged infringements in circumstances where you confirm a payment was made on 14 September 2011 into my CL Account before the LTN’s were issued.*

*You have advised that you are unable to assist me further. Unfortunately, I have had no other alternative than to refer this matter to the Tolling Ombudsman, who will be in contact with you shortly.”*

- 3** On 22 March 2012, the TCO made telephone contact with Ms L and advised she had to apply to Civic Compliance Victoria (CCV) for an extension as it was outside the jurisdiction of the TCO.
- 4** This was followed up on 23 March 2012 with the following email:

*“Thank you for your complaint letter and email together with attachments.*

*The Tolling Customer Ombudsman is an independent person appointed to help customers of Breeze<sup>®</sup>, CityLink<sup>®</sup>, EastLink<sup>®</sup>, go via<sup>®</sup>, Hills M2<sup>™</sup>, Roam<sup>®</sup> and Roam Express<sup>®</sup> tolling businesses 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.*

*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 Tolling Customer Ombudsman 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.

*As I pointed out in my telephone conversation with you on 22 March 2012, I have no jurisdiction to deal with individual infringement notices once they are issued by Civic Compliance Victoria. However, I advised that you should apply to Civic Compliance for an extension whilst the matter is being investigated by CityLink. I have forwarded a copy of your complaint to the Transurban customer resolutions group at [resolve@transurban.com.au](mailto:resolve@transurban.com.au) for response.”*

**5** On 11 April 2012 Ms L sought an update in relation to the matter. The TCO responded on 12 April 2012 confirming enquiries will be made from CityLink as to the progress of the complaint.

**6** On 19 April 2012 CityLink responded as follows:

*“Thank you for forwarding [Ms L’s] response to my previous correspondence. I have read the response from [Ms L] have addressed all the issues that she has raised in my previous correspondence and it appears we have nothing further to add.”*

**7** The TCO conveyed this to Ms L under cover of email dated 24 April 2012.

**8** Ms L wrote to the TCO on 26 April 2012 as follows:

*“Thank you for your email of 24 April 2012.  
Could you please provide a written decision in this matter.*

*In the interim, please don’t hesitate to contact me if you require any further information.”*

**9** On 8 May 2012 the TCO wrote to Ms L as follows:

*“The TCO is preparing his Decision in this matter.*

*He notes that you were advised that your account was suspended on or about 13 September 2011. Could you please advise the reason that you were given for the suspension of your account at the time and the amount that was said to be owing. The TCO has also sought the basis of the suspension from CityLink.*

*The TCO also asks that you provide copies of any suspension warnings and/or Late Toll invoices you received from CityLink, both prior and*

*subsequent to on or about 13 September 2011. Again, this information has been sought from CityLink.”*

**10** On the same day the TCO wrote to CityLink as follows:

*“[Ms L] has requested that the TCO prepares a written Decision in this matter.*

*The TCO needs a fuller explanation to the background of this matter from CityLink’s perspective. I request that you provide the history that led to the suspension of [Ms L’s] account by August 2011. Please supply copies of any suspension warnings or Late Toll notices prior to that date and to on or about 13 September 2011.*

*The TCO asks that you clarify the paragraph in your email to [Ms L] of 20 March 2012, which reads:*

*“You also indicated you had paid your account into credit and believed all matters had been resolved at that point. Unfortunately this was not the case. Paying your CityLink account covers all future travel but does not cover any travel undertaken when the account is suspended.”*

*The TCO cannot understand this point as, on the face of it, it would mean that a person endeavouring to pay amounts outstanding would have funds allocated to future travel and not the debt.*

*If this was the case, was this explained to [Ms L] and the reason why.*

*In this regard, please advise the amount that was owing to CityLink when the \$200 was paid and whether the payment took it out of suspension, as this would not appear to be the case on the material before the TCO.”*

**11** On 22 May 2012 Ms L responded to the TCO’s email of 8 May 2012 as follows:

*“In response to the queries the Tolling Customer Ombudsman has raised please note:*

*1. I cannot recall the reason why my account was suspended on or about 13 September 2011 or the amount that was said to be owing. As stated in my Application, as soon as I became aware of the suspension I made the immediate payment of \$200 to bring my account back into credit. I was led to believe that payment would rectify the suspension of my account. I also note that City Link has emailed me on 20 March 2012 confirming that they sent the suspension warnings and/or Late Toll invoices after the date my account was suspended. Following payment I reasonably believed that by making payment for the suspended account that I topped up my account, pursuant to Section 73(3A)(b) of the Melbourne City Link Act 1995.*

2. *I did not receive any suspension warnings and/or Late Toll invoices prior to 13 September 2011 as the address City Link had for me was my work address at [address]. There was an issue with receiving mail at my work's building and I have lost and not received numerous mail. I had also requested an e-tag device which was not delivered to my work address. I had to contact city Link and request another e-tag device as the first one was returned to City Link (City Link's records will confirm this). For this reason I requested that all notices and correspondence from City Link be sent to my residential address at [address].*

*Notwithstanding the above, and given that I did not receive any suspension warnings and/or Late Toll invoices prior to 13 September 2011, I believed on reasonable grounds that at the time the offences were alleged to have been committed that my vehicle was covered by my City Link Account and that it was not suspended at the time the offences are alleged to have been committed, pursuant to Section 73(3)(b) of the Melbourne City Link Act 1995."*

12 This was acknowledged by the TCO on 24 May 2012 and forwarded to CityLink for comment on the same day.

13 On 29 May 2012 CityLink responded to the TCO:

*"Thank you for forwarding [Ms L's] response dated 22 May 2012 to me for further investigation.*

*In the email dated 22 May 2012 [Ms L] has asked the following questions. The text in quotation marks is [Ms L's] question. My response to these questions are in italics.*

1. *"I cannot recall the reason why my account was suspended on or about 13 September 2011 or the amount that was said to be owing. As stated in my Application, as soon as I became aware of the suspension I made the immediate payment of \$200 to bring my account back into credit. I was led to believe that payment would rectify the suspension of my account. I also note that City Link has emailed me on 20 March 2012 confirming that they sent the suspension warnings and/or Late Toll invoices after the date my account was suspended. Following payment I reasonably believed that by making payment for the suspended account that I topped up my account, pursuant to Section 73(3A)(b) of the Melbourne City Link Act 1995."*

*The reason the account was suspended was due to the account not having sufficient funds for travel on toll roads .The account was suspended from the 21/08/2011 to 14/09/2011. In my previous response to [Ms L] dated 18/05/2012, it was explained in detail that a payment made to a suspended account does not cover past travel. A prepaid account needs to be in a credit balance at all times. [Ms L] is completely correct in saying she was advised*



*“the payment would rectify the suspension on her account.” The payment activated the account, thus allowing travel undertaken from the date of payment to be charged to the account.*

2. “I did not receive any suspension warnings and/or Late Toll invoices prior to 13 September 2011 as the address City Link had for me was my work address at [address]. There was an issue with receiving mail at my work’s building and I have lost and not received numerous mail. I had also requested an e-tag device which was not delivered to my work address. I had to contact city Link and request another e-tag device as the first one was returned to City Link (City Link’s records will confirm this). For this reason I requested that all notices and correspondence from City Link be sent to my residential address at [address]”.

*The address CityLink sent the account mail to was provided by [Ms L]. If that address was inappropriate then perhaps her work address was not the address she should have provided. Additionally the address the Late Toll invoices (LTis) were issued to was not to her work address but to [Ms L’s] home address, as provided by Vic Roads as being the address of the registered owner of the vehicle.*

3. “Not withstanding the above, and given that I did not receive any suspension warnings and/or Late Toll invoices prior to 13 September 2011, I believed on reasonable grounds that at the time the offences were alleged to have been committed that my vehicle was covered by my City Link Account and that it was not suspended at the time the offences are alleged to have been committed, pursuant to Section 73(3)(b) of the Melbourne City Link Act 1995.”

*Our records indicate the account was suspended with all appropriate mail issued by CityLink. The address [Ms L] elected to use for this mail was her work address. It would be unreasonable to expect CityLink to be aware that mail sent to her work address was not being delivered to her. As explained previously, the LTis were issued correctly for travel that occurred during her account suspension. These LTis were not paid during the payment terms and correctly progressed to enforcement, with the Victoria Police issuing Infringement Notices.*

*I appreciate [Ms L] may have believed on reasonable grounds the travel was covered by her account at the time of the offences, however our records indicate otherwise. This is something [M L] may choose to discuss with a Magistrate in Court, as CityLink is unable to withdraw Infringement Notices.”*

14 This response was forwarded to Ms L on the same day for comment.

15 Ms L responded to the TCO on 6 June 2012 as follows:

*“Thank you for your response to my email.*

*I note CityLink's response and comment as follows:*

*Save that CityLink accepts that I believed on reasonable grounds that the travel was covered by my account at the time of the alleged offences, they have failed to demonstrate how their alleged records indicate otherwise.*

*The simple fact is that CityLink provided me with an amount that would bring my account back to \$0.00 from being in arrears. I made an immediate payment of \$200.00, to pay the outstanding amount, and to bring my account further into credit.*

*Further, I seek clarification, or copies of the Late Toll Invoices, referred to by CityLink in their response to Paragraph 2 of my email.*

16 On 8 June 2012 the TCO emailed Ms L as follows:

*“I acknowledge receipt of your email and confirm I will request CityLink to provide copies of the relevant Late Toll invoices as per its response to paragraph 2 of your email of 22 May 2012.”*

17 CityLink replied on 8 June 2012:

*“As requested, I have attached copies of the requested Late Toll invoices which were sent to the registered owner's address listed with VicRoads.*

*Just to clarify one point, I note [Ms L] states “Save that **CityLink accepts** that I believed on reasonable grounds that the travel was covered by my account at the time of the alleged offences”. I know this may appear to be pedantic, but it is not CityLink's role to determine whether the defence in the Melbourne CityLink Act of “reasonable grounds” was met. Our previous response simply acknowledged [Ms L] **may** have believed on reasonable grounds her travel was covered. Obviously, this would be left to a Magistrate to determine.”*

18 The contents of CityLink's email together with attachments were forwarded to Ms L on 12 June 2012.

19 On 29 June 2012 Ms L emailed the TCO as follows:

*“My apologies for not having responded to you sooner.*

*I refer to the attached Final Notices, and note that I have never received any of those Final Notices. I would distinctly remember receiving 11 Final Notices, and advise that these never arrived at either my home or work address, despite what CityLink has alleged.*

*Had I received those Notices, I would have queried them immediately, and attended to payment if and as necessary.*

*Please note, I will be overseas from 6 July 2012 to 10 August 2012, but will have access to my email should you need to contact me.”*

**20** On 4 July 2012 the TCO wrote to Ms L as follows:

*“The TCO advises that he now has sufficient information from you in respect to your complaint against CityLink.*

*As previously advised, the TCO does not have jurisdiction over Civic Compliance Victoria and it was recommended that you seek an extension of time in respect of any proceedings that they may have on foot. This was to enable the TCO to make enquiries of CityLink about the issues you raised.*

*The TCO is not aware of the current state of those proceedings. The TCO believes, however, that in view of your advice that you will be overseas between 6 July and 10 August 2012, you should be advised that a Decision in respect of your complaint against CityLink will not be in your favour.*

*The written reasons for this Decision will follow.”*

## **Decision**

- 21** The objective of the TCO is to seek to resolve complaints, which fall within its jurisdiction, between toll road operators and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer.
- 22** 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 legislation such as the Melbourne CityLink Act 1995 / Transport Infrastructure Act (1994) can be accessed through Government websites.
- 23** The TCO is not a judicial body and does not have punitive powers. When making a decision it does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. Any statement expressed in relation to the law is opinion only and its decisions are not binding on customers who make complaints.
- 24** I only have jurisdiction over the conduct of CityLink and cannot determine matters in relation to allegations against CCV or other outside bodies. Despite not having

jurisdiction to deal with matters before CCV, it has been the practice of the TCO to refer such matters to the relevant toll operator in order to get background information for customers like Ms L. The objective is to obtain information that may assist customers in submissions to CCV for relief. The TCO adopted this course in this matter.

- 25** Ms L's complaint relates to CCV Infringement Notices she received in respect of unpaid tolls incurred during the period between 21 August 2011 and 14 September 2011. An examination of the history of this complaint indicates that Ms L, who is a legal practitioner, had a prepaid account with CityLink with the account address for service of notices recorded as that of her legal office during this period.
- 26** It is a requirement of CityLink that a prepaid account be in credit at all times. Ms L provided a history of payments to CityLink showing monthly payments to CityLink presumably made in response to accounts sent to that address up until 3 August 2011. There was a further payment on or about the 14 September 2011, by which time her account had been suspended on the basis that it was no longer in credit.
- 27** Ms L's principle contention is that she believed that a payment of \$200 made on 14 September 2011 following a telephone call from a representative that lifted her account from suspension also covered outstanding tolls and put her account in credit. She states that she believed that this payment would cover all the Late Toll Invoices. She argues that by making this payment she believed that she had topped up her account and was entitled to the benefit of defences under sections 73(b) and 73(3A) of the Melbourne City Link Act 1995.
- 28** CityLink maintains that Ms L travelled on the toll road whilst her prepaid account was not in credit and was suspended. She accordingly became liable to pay tolls and administration fees for this past travel. Further, once the prepaid account was suspended there was a requirement for it to be put in credit before it again became operational.
- 29** Looking at issues raised, Ms L has stated that she did not know how her account had come to be suspended or that it was suspended at the time she was using it in August and September 2011. She said, however, that she had been having difficulty with the delivery of mail to her legal office in a period in 2011.
- 30** She has intimated that her previous history of payments indicate that she would have made payments to CityLink if she had received any requests for payment or invoices. Ms L has also contended that she did not receive subsequent Late Toll Invoices or Final Notices in respect of the tolls and that if she had she would have contacted CityLink to query them and make immediate payment. Ms L has said that she had directed CityLink to send further notices to her home address after 14 September 2011.
- 31** CityLink states that requests for payment for the tolls incurred whilst her account was suspended had been sent to her recorded address in the relevant period. It also has indicated that the Late Toll Invoices for the unpaid tolls had been sent to her

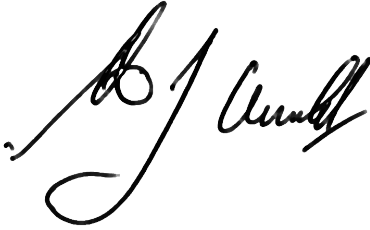
home address after September 2011 based on the registration details of her vehicle obtained from VicRoads.

- 32** CityLink, at Ms L's request, has provided copies of 11 Final Notices or Late Toll Invoices in respect of the unpaid tolls sent to Ms L's home address for the period between 21 August 2011 and on or about 14 September 2011. Despite this, Ms L has maintained that she did not receive them
- 33** Firstly, in considering the issues I am satisfied that Ms L's prepaid account was suspended between on or about 22 August 2011 and 14 September 2012. Although Ms L states that she did not understand why it was suspended, I find that it was due to her failure to keep the account in credit during this period. Ms L had the obligation to maintain the account in credit and whether or not she received the requests for payment at her legal office does not affect this responsibility.
- 34** It is my opinion that the defence under section 73(3)(b) is not open to Ms L on the material before me but this is an issue that could have or may be raised in any CCV proceedings.
- 35** Secondly, in relation to the payment of \$200 it is apparent, from her submissions, that there is an issue about Ms L's understanding of the impact the payment of \$200 had on her account. She believed that it had discharged all her previous debts and reactivated her account whilst CityLink points out that the topping up of the account to take it out of suspension applied for future travel after the account had been put into credit and did not payout the pre-existing invoices for tolls and fees.
- 36** I have no record of the details of any conversation that took place between CityLink's representative and Ms L on or about 14 September 2011. I have Ms L's recollection of the conversation and an email of 14 September 2014 from CityLink recording a topping up of the account. This document makes no reference to the discharging of obligations in respect of previous tolls and fees.
- 37** I reiterate that Ms L had an obligation to maintain her prepaid account in credit and should have clarified the situation with CityLink on 14 September 2011 to establish whether she was paying the outstanding tolls and fees rather than reactivating the suspended account and putting it into credit.
- 38** It is my understanding that the unpaid tolls would have incurred fees by 14 September 2011 and a payment of \$200 on 14 September 2014 would not have both covered the outstanding tolls and fees at that time and taken the account out of suspension by putting it in credit for future travel.
- 39** Leaving aside Ms L's obligation under her prepaid account to keep her account in credit, there is a third issue in relation to the service of Late Toll Invoices and Final Notices. CityLink has provided evidence that Late Toll Invoices and Final Notices were forwarded to Ms L at her home address. Ms L has confirmed that this is the address to which they were meant to be forwarded.

- 40** Ms L had an obligation to have a delivery address available to which CityLink notices in respect of unpaid tolls and Late Toll Invoices could be delivered and received. According to Ms L's submissions it would appear in this regard that the addresses of her legal office and her home that she supplied to CityLink did not receive these notices at the relevant times. It would appear, however, that the CCV Notices were delivered to the home address after the date the Late Toll Invoices were sent to the same address.
- 41** Any problem caused by the non-delivery of the original notices and the Late Toll Notices was not the fault of CityLink and it is trite to say that had Ms L kept her account in credit thus avoiding suspension and she had received the notices prior to 14 September 2011 and the subsequent Late Toll Invoices she would not be in the position in which she finds herself.
- 42** I cannot make a ruling in Ms L's claimed defence under section 73 (3A)(b) in her favour based on the fact that she had reasonable grounds to believe that she had paid the tolls on the information before me. It is an issue that could have or may be raised in any CCV proceedings
- 43** Fourthly, Ms L has made detailed submissions in relation to conversations and discussions she had with representatives of CityLink and CCV. I cannot make any judgement in relation to the conduct of the CCV representatives.
- 44** Although there is no documentary evidence from CityLink, I am satisfied that Ms L and CityLink representatives would have discussed the CityLink review process together with the avenues open to Ms L and the processes available once the tolls and charges were referred to CCV. They most likely canvassed the possibility of CCV granting Ms L some relief if it was satisfied with her submissions on the issues in contention and what steps CityLink would take in the circumstances.
- 45** CityLink representatives, however, cannot give undertakings or make representations on behalf of CCV in respect of its decisions on Infringement Notices. I am not persuaded on the evidence before me that such undertakings or representations were made.
- 46** Moreover, I am satisfied that Ms L would be aware as a legal practitioner that a representative of CityLink could not, in the course of any discussions, make a statement on behalf of a State Government Agency such as CCV or could make any binding statement or representation on behalf of CCV as to its future actions in respect to the Infringement Notices.

**Determination**

The complaint against CityLink is not upheld.

A handwritten signature in black ink, appearing to read "Michael Arnold". The signature is written in a cursive style with a large initial "M" and "A".

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

**Dated: 29 August 2012**