

TCO REVIEW

1 September 2014 – 28 February 2015

**Michael Arnold
Tolling Customer Ombudsman**

TOLLING CUSTOMER OMBUDSMAN REVIEW

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Introduction

This is the 21st edition of the Tolling Customer Ombudsman (TCO) six-monthly Review. Those wishing to access previous Reviews dating back to 2004 will find same on the TCO website www.tollingombudsman.com.au. In view of recent publicity and submissions made about the role of the TCO, it is important to reflect upon its history and power.

The TCO was established in 2004 as a voluntary independent dispute resolution scheme to assist customers of tolling operators or business, which funded the TCO, to resolve complaints fairly, efficiently and free of charge to customers. Although the toll operators also maintain its website as a service, the contract under which the TCO operates provides that it be independent and there be no conflict of interest.

The TCO, as a consequence, since inception has operated from a secure capital city office and maintained its own staff but with technology can work from virtual offices in Sydney, Melbourne and Brisbane.

The TCO's process and jurisdiction is set out on its website. It provides an information service to customers who contact it and the records show that it has handled in excess of 4,000 formal complaints since inception. The website also has statistics in relation to the complaints dealt with by the TCO as well as de-identified copies of written Decisions made by the TCO.

The TCO scheme operates on the basis that the initial complaint is made in writing. The emphasis is on responding to a written complaint promptly by telephone or email upon receipt and then immediately transmitting the complaint to the relevant toll operator for attention. Experience has shown this provides greater certainty in respect of the issues raised and a more timely resolution of complaints. Further telephone contact is made, if necessary, after complaints have been lodged and the customer and toll road operator have had the opportunity to resolve the dispute. Appointments can be made to see the TCO in circumstances where he believes it is necessary to resolve a complaint.

Customer complaints may be resolved by way of conciliation, mediation or arbitration. The customer and toll operator could negotiate a settlement of a complaint at any stage. Decisions made by the TCO are binding on toll operators but are not binding on customers, who retain all their legal rights.

Complaints may be lodged in respect to fees but the TCO does not have jurisdiction over Government agencies that issue Infringement Notices or seek to recover tolls and fees. It also cannot deal with disputes over the level of tolls or administration fees, which are fixed in consultation with State Governments.

Customers' understanding of toll invoices and notices

Complaints have been raised in respect to toll operators' tolling invoice processes. These often come from customers who travel without an account or who do not make payment of tolls within three days of travel on a toll road. The failure to have such arrangements will lead to the issuing of toll invoices for payment within a specified time, with additional administration fees.

Despite warnings in the documentation, these invoices are often not met within the specified time or alternatively will be paid in part, sometimes without the fee. A customer will occasionally restore a suspended account but not pay the outstanding invoice. This will lead to further invoices being issued with again additional administration fees. If these are not met there can be Final Notices or Demand Notices which, if not met, can be forwarded to Government agencies which issue Infringement Notices that include penalties.

Such Final or Demand Notices include warnings of large penalties that may be imposed if there is non-compliance. There are only limited opportunities to have Infringement Notices waived.

Toll operators would prefer to have their customers pay the tolls without the imposition of unnecessary penalties. It is not in the interests of toll operators to have their customers penalised or to have the tolls and fees recovered through this infringement process as usually they will only recover a small portion of the tolls and fees, if at all.

go via enhances customer experience

During the period of this Review, go via has refreshed its account statements and toll invoices to provide clearer communication with and better service to its customers. Customers are encouraged to acquaint themselves with the changes as this should limit the number of complaints. Many of the complaints coming to the TCO are as a result of customers not maintaining their accounts in good order.

The invoices that customers receive will speak for themselves in relation to payment requirements but for further information access can be had to the website <https://www.govia.com.au/via/home/Whats+new/Media+centre/go+via+statement+refresh+enhances+customer+experience>

Go via's initiative in this regard is a welcome commitment to improving customer service.

Constitutional Matters

There continue to be issues raised about constitutional validity of the method of payment of tolls by other than State produced gold and silver coins. I have dealt with this previously but it is useful to include a finding I made in a recent decision about the issue of legal tender.

Legal tender, in simple terms, is the medium of payment recognised by Australian law to be a valid method of paying debts or meeting financial obligations in Australia. Australia's law and constitutional arrangements in relation to legal tender and the payment of debts was put in place at the Federation of the States (colonies) in 1901.

Prior to Federation into the Commonwealth of Australia, the States produced their own currency which could be used as legal tender. One of the reasons for Federation was the need for uniformity of laws across all of Australia, as a developing nation, in respect to financial matters such as tariffs, banking and currency for administrative convenience and consistency.

Upon Federation, under the separation of powers arrangements, certain powers previously held by the States were conferred upon the Commonwealth of Australia, whilst the States retained certain residual powers. Under this arrangement, Section 51 of the Australian Constitution conferred exclusive powers on the Commonwealth Government to make laws for the peace, order and good government of the Commonwealth in respect to, amongst other things, the currency, coinage and legal tender.

The Commonwealth Government subsequently made laws in respect to currency and legal tender including the Reserve Bank Act 1959 and Currency Act 1965, which establish Australian banknotes and coins as having legal tender status. This legislation has set the framework for commercial transactions and the meeting of financial obligations that is recognised and used throughout the country. Other methods are prescribed for payment.

The States are specifically excluded from this power under section 115 of the Constitution, which provides that States shall not coin money nor make anything but gold or silver coin a legal tender in payment of debts. With one possible limited exception, Western Australia. No State produces gold or silver coins that would be commonly regarded as legal tender. Accordingly there is no sustainable argument that tolls are required to be paid by State produced gold and silver coins.

Change of Ownership details

There have been changes of State Government administration in both Queensland and Victoria in recent times. It would be timely for consideration again of a link between the relevant motor vehicle registration agencies and toll operators to automatically record change of ownership details. This would avoid problems arising from tolls being incurred by customers after they had sold motor vehicles but not advised the toll operator.

Conclusion

Below is a table showing the number of complaints and outcomes for the reporting period.



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AirportlinkM7
CityLink
EastLink
Go Via
Roam
Roam Express

Category	Sept 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15
Account Management		1	2			1
	14	30	14	13	7	10
	5	3	5	3	1	1
	25	14	25	23	14	22
	4	7	1	2	2	3
		3	2	2	2	
Billing/Tolling	5	4	8	6	4	10
	12	10	6	4	4	2
	2	3	3	4	3	5
	15	10	13	12	10	24
	3		4	1	4	4
	3	2			3	6
Service			1			
		2	1	1		1
			1			
	1					1
	1					
Damage to Vehicle		2				
Infrastructure/ Traffic Management				1		
	1					
Vehicle Classification						
	1					
Website						
			1			
TOTAL	5	5	11	7	4	11
	26	44	21	18	11	13
	7	6	9	7	4	6
	43	24	39	35	24	47
	7	7	5	3	6	7
	4	5	2	2	5	6

Category	Sept 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15
Resolved/Closed by Customer Resolutions	5	5	11	7	4	11
	26	44	21	18	11	12
	7	6	9	7	4	6
	43	24	39	35	24	47
	7	7	5	3	6	7
	4	5	2	2	5	6
Pending						
						1