

# TCO Tolling Customer Ombudsman

## Terms of Reference

### Part A – Preliminaries

#### Introduction

- 1 The Tolling Customer Ombudsman scheme (TCO) is an independent external dispute resolution scheme for the Toll Road Operators identified in Schedule 1 and their customers.
- 2 The TCO is operated by a not-for-profit public company, limited by guarantee, called Tolling Customer Ombudsman Limited (TCOL). The operations of the TCO are overseen by the Board of Directors of TCOL and the costs of the scheme are met by the Toll Road Operators. The Board of Directors is responsible for the financial management of TCOL, including ensuring that the TCO scheme has sufficient funding to meet its stated objectives.
- 3 These Terms of Reference describe how the TCO will deal with Disputes lodged by an Applicant in relation to one or more Toll Road Operators.
- 4 In all circumstances, Disputes will be dealt with in a manner that:
  - (a) maintains the independence and impartiality of the process;
  - (b) is efficient, transparent and fair;
  - (c) is respectful to all parties involved;
  - (d) is free to the Applicant; and
  - (e) proceeds with a minimum of technicality and formality.

#### Decision-makers

- 5 The directors of TCOL:
  - (a) will appoint an Ombudsman for a minimum fixed term of 3 years, to consider and handle Disputes, make Jurisdictional Decisions and Determinations. In doing so, they will have regard to the impartiality and independence of the role, as well as to the necessary skills and experience.
  - (b) delegate to the Ombudsman the authority to manage the day-to-day affairs of the TCO in accordance with the Constitution, strategic direction and budget established by the directors from time to time.
  - (c) authorise the Ombudsman to exercise all powers and authorities conveyed on the TCO under these Terms of Reference. The Ombudsman may also subdelegate any or all of his or her functions to an employee or contractor, other than making Jurisdictional Decisions and Determinations.
- 6 The Ombudsman and all other TCOL personnel are required to comply with the TCO's Conflict of Interest Policy, as amended from time to time, in all circumstances when carrying out their duties under these Terms of Reference. The Conflict of Interest Policy will be made available on the TCO website.<sup>1</sup>

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<sup>1</sup> A current version of the Conflict of Interest Policy is available at <<https://tollingombudsman.com.au/wp-content/uploads/2021/03/TCOL-Conflict-of-Interest-Policy.pdf>>.

## Part B - Jurisdiction

### Opportunity to resolve

- 7 Prior to accepting any Dispute, the TCO must be satisfied that:
- (a) the Applicant has notified the relevant Toll Road Operator(s) of the Dispute, either verbally or in writing; and
  - (b) all relevant Toll Road Operators have had an opportunity to respond to the Dispute.
- 8 If the Toll Road Operator has not responded to the Applicant within 45 days, or if the Applicant is dissatisfied with the Toll Road Operator's response, the Applicant may lodge a Dispute with the TCO.

### Who can lodge a dispute?

- 9 An Applicant must:
- (a) be a natural person or organisation that is a legal entity able to sue and be sued in its own right;
  - (b) commit to engaging with the TCO process in a cooperative and open manner;
  - (c) establish, on a preliminary basis:
    - (i) the identity of the correct responding Toll Road Operator(s); and
    - (ii) that the Applicant has undertaken, will be undertaking or is undertaking, a trip on an Eligible Toll Road, or is alleged to have done so.
- 10 The relevant Toll Road Operator may also refer a Dispute to the TCO after being provided with an opportunity to respond, but may only do so with the express consent of the relevant Applicant.

### When can a dispute be lodged?

- 11 Disputes must relate to conduct of the Toll Road Operator which occurred within the six years prior to the date of lodgement, except where the Toll Road Operator provided a written response to the Applicant in respect of the Dispute.
- 12 If a written response was provided by the Toll Road Operator, then the Dispute must be lodged within two years of the date of that response.

### Scope of the TCO jurisdiction

#### *What can the TCO assist with?*

- 13 With the exception of the matters listed in Clause 15 below, or excluded by operation of these Terms of Reference, the TCO can consider any complaint by an Applicant which has been unresolved by the relevant Toll Road Operator. Common complaints relate, but are not limited, to:
- (a) account management, including the decision to refer non-payment matters to state authorities;
  - (b) billing and tolling;
  - (c) customer service;

- (d) damage caused to an Applicant's vehicle while travelling on an Eligible Toll Road; and
- (e) incorrect information provided via the relevant Toll Road Operator's websites.

14 In performing functions or exercising powers under these Terms of Reference, the TCO may also, where relevant, share information and liaise with other individuals, bodies or organisations that may have jurisdiction over Disputes referred to the TCO. For example, the TCO may share information with applicable State ombudsman in relation to decisions made by government departments or agencies regarding enforcement of unpaid tolls.

#### *What can't the TCO assist with?*

15 The TCO cannot consider a Dispute:

- (a) About an infringement notice or fine that has been issued by an Authority, even though the infringement notice or fine relates to travel on one of the toll roads covered by this scheme
- (b) About facts or circumstances relating to a decision which is pending before, or has been determined by, any court
- (c) In relation to which the Applicant commenced legal proceedings before the Dispute was lodged except where the legal proceedings have been discontinued
- (d) Where the same Applicant brings a Dispute about the same events and facts as a Dispute previously dealt with by the TCO
- (e) About the level of tolls, fees or charges fixed by Toll Road Operators, except where these have been applied incorrectly by the relevant Toll Road Operator
- (f) About the classification of vehicle types, except where a toll, fee or charge has been applied incorrectly by the relevant Toll Road Operator
- (g) In relation to:
  - (i) Roam and Roam Express (now Linkt) that arose before 1 August 2006
  - (ii) go via (now Linkt) that arose before 1 October 2011
  - (iii) E-Way and M5 South-West Motorway that arose before 12 April 2016
  - (iv) accounts with any toll road operator that is not a member of TCOL (including Eastlink or RMS e-Toll tolling accounts)

16 The TCO cannot make recommendations or Determinations that would put a Toll Road Operator in breach of:

- (a) the applicable terms and conditions relating to use of the toll road,
- (b) its concession deed or project deed (or other contractual agreements) with an Authority; or
- (c) any laws.

#### **Jurisdictional assessments**

17 Eligibility of an Applicant and the jurisdiction of the TCO, will be determined by the TCO at its sole discretion, subject to a party's right to request a review of the decision under clause 18.

- 18 Where a party wishes to raise a challenge about the jurisdiction of the TCO (either in favour of, or in objection to, the TCO handling a Dispute), the party must provide written reasons and supporting evidence to the TCO for the objection.
- 19 The TCO will review the objection within 7 days of receipt, providing the other party with 14 days to respond. The response will be provided to the objecting party for its information.
- 20 The TCO may also decline to handle a Dispute at its discretion but must give written reasons to the parties for doing so.
- 21 Without limiting clause 20 above, the TCO may decide that it is inappropriate for a Dispute to be handled, irrespective of whether the Dispute is otherwise within jurisdiction, for instance if the Dispute:
- (a) is frivolous, vexatious or lacking in substance; or
  - (b) has already been dealt with by a court or tribunal in a manner which provided an outcome on the merits of the complaint.
- 22 In either event, the TCO will advise both parties of the outcome of the jurisdictional assessment within 28 days of the objection being received or the appropriateness being queried by the TCO. This final advice will be known as a **Jurisdictional Decision**.
- 23 Notwithstanding any other clause of these Terms of Reference, the TCO may handle a dispute between an Applicant and a Toll Road Operator if both parties and the TCO all agree.
- 24 If, following a jurisdictional assessment, the TCO determines that it cannot consider or handle a Dispute, it may in its sole discretion:
- (a) refer the Applicant to a person, body, or organisation that it thinks may have jurisdiction to handle the Dispute. The TCO will advise both parties of its decision to do so in writing in the Jurisdictional Decision; and
  - (b) where the Applicant provides the TCO with express consent to do so, assist the Applicant to ask the other person, body, or organisation to consider or handle the Dispute by providing any relevant documents and information on the Applicant's behalf.

## Part C - Dispute Resolution process

### Timeframes

- 25 A Dispute lodged with the TCO will be acknowledged by the TCO promptly but no later than 2 Business Days after receipt of the original Dispute and an Applicant will be advised of progress within 21 days. In the absence of the need for a Jurisdictional Decision, the TCO will proceed to assess the Dispute.
- 26 In most circumstances, a Dispute will be resolved within 45 days of lodgement. The TCO will advise all parties to the Dispute of the resolution of that Dispute, and any reasons, in writing.

### Process

#### Information gathering

- 27 The Applicant or a referring Toll Road Operator (as applicable) must provide the TCO with written details of the Dispute as set out in the Dispute Form available on the TCO website.<sup>2</sup> All

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<sup>2</sup> The Dispute Form contains an authorisation that supports that the Dispute will be regarded as coming under the permitted general situation of alternate dispute resolution for the purposes of the *Privacy Act 1988* (Cth) so as to

parties to the Dispute will be given a reasonable opportunity to put forward their position(s) to the TCO.

- 28 The TCO may require that a party:
- (a) provide, or procure for, the TCO documentation and information (irrespective of the media in which that information is held) that is reasonably necessary for the resolution of the Dispute.
  - (b) suspend any legal proceedings they, or their agents, may be taking whilst a complaint relating to the subject matter of the proceedings is being dealt with by the TCO ombudsman.
- 29 In the event that a party refuses a reasonable request for relevant information without reasonable excuse, the TCO will either discontinue the complaint, or draw any adverse inference it considers appropriate about the failure to comply with the request.<sup>3</sup>
- 30 The TCO will ensure that all parties to the Dispute are provided with sufficient information to understand the position(s) being put by other parties to the Dispute. All parties to the Dispute will be given reasonable opportunity to rebut the position put forward by the other parties in the Dispute.
- 31 All information provided during the course of the Dispute is provided on a 'without prejudice' basis. The TCO shall keep all information received private and confidential and will not disclose the information to any other party (including the Applicant and/or Toll Road Operator) without the consent of the disclosing party.

#### *Dispute resolution*

- 32 Whilst not bound by any rules of evidence, the TCO will afford procedural fairness to all parties to the Dispute.
- 33 In resolving Disputes, the TCO may:
- (a) utilise shuttle negotiation between the parties;
  - (b) hold a conciliation conference (either in person or via telephone);
  - (c) hold an oral hearing;
  - (d) provide a non-binding recommendation; or
  - (e) issue a Determination.
- 34 Where a conciliation conference or oral hearing is conducted, an Applicant may have a support person present if the TCO agrees it is necessary, but legal representation is generally unnecessary and is not encouraged.
- 35 In resolving Disputes, the TCO will be available to meet as required in either Sydney, Melbourne or Brisbane.

#### **Determinations**

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allow for the collection, use and disclosure of personal and sensitive information for the purposes of a confidential alternative dispute resolution process.

<sup>3</sup> For example, a Toll Road Operator may reasonably refuse to provide information based on obligations of privacy or of confidentiality owed by the Toll Road Operator to a third party.

- 36 In making Determinations, the TCO will do what it considers is fair and reasonable in all the circumstances, having regard to:
- (a) relevant legal principles and law;
  - (b) good industry practice; and
  - (c) consistency with prior decisions and approaches (although it will not be bound by these).
- 37 If the TCO issues a Determination, it will be binding on a Toll Road Operator so long as the Dispute was handled in accordance with these Terms of Reference and is accepted by the Applicant within 28 days of it being issued.
- 38 The Toll Road Operator may ask the TCO to require the Applicant to provide a binding release from all liability in respect of the matter that is the subject of the Dispute (**Release**). Any Release shall be in substantially in the form that has been approved by the Board of TCOL and will subject to the discretion of the TCO to include necessary amendments. For clarity, the Board of TCOL will not approve the content of any individual Determination or Release.
- 39 If the Applicant does not accept the Determination, or fails to provide the binding release, the Determination will not be binding on either party.
- 40 Determinations will be published in a de-identified format on the TCO website.

#### *Remedies*

- 41 Most disputes are resolved through agreement between the parties, or through both parties accepting a non-binding recommendation from the TCO.
- 42 Where a Determination is issued, the TCO may direct a Toll Road Operator to:
- (a) take an action, such as issue an apology or discontinue legal proceedings brought by the Toll Road Operator or its agents;
  - (b) refrain from taking an action;
  - (c) reinstate or rectify a contract;
  - (d) forgive or vary a debt; or
  - (e) pay a sum of money (subject to the limitations set out below).
- 43 The TCO cannot require a Toll Road Operator to make payment of monies in excess of the lesser of:
- (a) the direct loss or damage suffered by the Applicant in relation to tolls and fees or property damage cause by the Toll Road Operator (excluding consequential loss, economic loss, loss of profit or punitive damage, interest or reasonably professional costs incurred in bringing the Dispute) in relation to the Dispute; and
  - (b) \$10,000 per Dispute.
- Any payment awarded under this clause should not be factored into the compensation caps set out in clauses 44, 45 and 46.
- 44 Where the TCO requires a Toll Road Operator to pay a sum of money, it may award interest on that sum. Any amount of interest must not exceed \$2,000 per Dispute. Any payment

awarded under this clause should not be factored into the compensation caps set out in clauses 43, 45 and 46.

- 45 The TCO may also award additional compensation for reasonable professional costs incurred in bringing the dispute (including translation services), but only up to a maximum of \$2,000 per Dispute. Any payment awarded under this clause should not be factored into the compensation caps set out in clauses 43, 44 and 46.
- 46 The TCO has no power to make binding monetary compensation awards for consequential loss, economic loss, loss of profit or punitive damages. However, the TCO may recommend payment of appropriate compensation where it is fair in the circumstances up to a maximum of \$2,000 per Dispute. Any payment recommended under this clause should not be factored into the compensation caps set out in clauses 43, 44 and 45.

### **Response to Determination**

- 47 Parties should receive outcomes in goodwill. However, it is acknowledged that in a dispute context, parties may not obtain the outcome they were seeking. Whilst an accepted Determination is binding on the parties, where a claimant does not accept the Determination (or any other outcome), neither the claimant nor the Toll Road Operator is bound by the outcome and retain all legal rights to pursue or defend the matter in another forum.
- 48 Unless specified otherwise in the Determination, a binding decision must be complied with within 28 days of the date that the Toll Road Operator was provided with written notice that the Applicant had accepted the Determination.

### **Complaints about the TCO**

- 49 Any person may make a complaint about the service they have received from the TCO. Complaints should be addressed for the attention of the Ombudsman, but if the complaint is about the conduct of the Ombudsman, should be marked for the attention of the Board of Directors.

## **Part D – Reporting and Review**

### **Reporting to Toll Road Operators**

- 50 The TCO is required to collect and report on all aspects of its operations and will establish indicators to evaluate and measure the performance of the TCO.
- 51 The TCO will provide Toll Road Operators and the Board of TCOL with a monthly report summarising enquiries and complaints received and providing details of any Disputes. This report will be provided by no later than 10 Business Days after the end of the month.
- 52 Customer enquiries which are received by the TCO but that have not met the criteria under these Terms of Reference to be accepted as a Dispute (for example if an Applicant has not previously contacted the Toll Road Operator to resolve the matter, or the dispute is not about a member of the scheme) will be recorded as enquiries and not included in the TCO's measure of volumes of complaints received.

### **Systemic issues**

- 53 Where the TCO identifies a systemic issue, it will report that issue to the Board and to the relevant Toll Road Operator and will work with that Toll Road Operator to try to resolve the issue. A systemic issue is an issue that may affect a significant number or particular type of consumers. If the TCO thinks the systemic issue remains unresolved following such consultation, the TCO may share information about the systemic issue with any relevant policy agencies or Government Department.

### **Annual report**

- 54 The TCO will publish an annual report detailing the results of the TCO's operations and summarising reporting required under this Part D, including time taken to resolve complaints, systemic issues (as set out in clause 53) and case studies. The annual report will be made available online.

### **Bi-Annual Meeting with Toll Road Operators**

- 55 On a bi-annual basis, the TCO shall facilitate a meeting with the Toll Road Operators for the purpose of advising them on their internal complaints handling processes dealing with Disputes (whether or not the TCO would have jurisdiction under these Terms of Reference to consider the Dispute). In doing so, the TCO shall:
- (a) comply with its obligations on privacy, confidentiality and disclosure under clause 31; and
  - (b) maintain its independence through only providing evidence-based information to Toll Road Operators and publishing a summary of the meeting in the next quarterly report to provide transparency to stakeholders.

### **Independent Review**

- 56 The Board of TCOL will commission an independent review of the complaints handling process and the operations of the TCO at least once every five years or sooner if required by the Board of TCOL. This review will be undertaken in consultation with stakeholders and will include a review of:
- (a) the office's progress towards meeting the ANZOA Benchmarks and the Benchmarks for Industry Based Customer Dispute Resolution;
  - (b) whether the scope of the office is appropriate;
  - (c) participating organisation and complainant satisfaction with the office;
  - (d) assessing whether the dispute resolution process used by the office are just and reasonable;
  - (e) the degree of equitable access to the office; and
  - (f) the effectiveness of the statute, charter, terms of reference or other document establishing the office, its jurisdiction, functions, rules and procedures.
- 57 The Board of TCOL will commission an independent review of the effectiveness of TCOL governance at least once every five years or sooner if required by the Board of TCOL.
- 58 The reviews undertaken under clauses 56 and 57 must be presented to the Board of TCOL in the form of a written report of findings and recommendations and may include recommendations about improvements to any aspect of the complaints handling process, the operations of the TCO or TCOL's governance.
- 59 An appropriate summary of any recommendations made under clauses 56, 57 or 58 must be published on the TCO's website within a reasonable time following the presentation to the Board of TCOL under clause 58.
- 60 The results of the reviews under clauses 56 and 57 and any written report of findings and recommendations under clause 58 must be made available to relevant stakeholders.

### **Definitions**

- 61 The following words have the following meanings when they appear in these Terms of Reference:

*Applicant* means a person who has a Dispute that has been lodged with the TCO and is eligible to use this dispute resolution scheme in accordance with these Terms of Reference;

*Authority* means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;

*Determination* means a decision by the TCO about a Dispute, which is binding in accordance with these Terms of Reference;

*Dispute* means an expression of dissatisfaction with a Toll Road Operator, related to its tolling related products or services or the complaints handling process itself, where a response or resolution is expected;

*Jurisdictional Decision* has the meaning given to it in clause 22; and

*Release* has the meaning given to it in clause 37.

*Toll Road Operator* means a member of this dispute resolution scheme as identified in Schedule 1.

# Schedule 1 – Supplementary Information

1 Disputes may be brought to the TCO about:

- (a) CityLink Melbourne Limited under the brand Linkt;
- (b) Tollaust Pty Ltd under the brand Linkt;
- (c) Queensland Motorways Management Pty Ltd under the brand Linkt;
- (d) Interlink Roads Pty Ltd under the brand E-way; and
- (e) the Transurban Group members that operate the Eligible Toll Roads set out in paragraph 3 below

**(“Toll Road Operators”)**

2 For the purpose of this Schedule:

(a) **Transurban Group** means:

- (i) Transurban International Limited (ACN 121 746 825), Transurban Holdings Limited (ABN 86 098 143 429) and Transurban Holding Trust (ARSN 098 807 419) by its responsible entity Transurban Infrastructure Management Limited (ACN 098 147 678), but only while the securities of those entities remain stapled securities (together the Stapled Entities);
- (ii) each company in which the Stapled Entities, whether individually or collectively, own (directly or indirectly) 50% or more of the voting shares;
- (iii) each company which is for the purposes of section 50AA of the Corporations Act 2001 (Cth) under the “control” of the Stapled Entities, whether individually or collectively; and/or
- (iv) iv. each entity forming part of the WestConnex Group.

The entities that make up the Transurban Group may change from time to time.

(b) **WestConnex Group** means:

- (i) WCX AHT Pty Ltd (as trustee of the WCX Asset Hold Trust) and WCX PHT Pty Ltd (as trustee of the WCX Project Hold Trust) (together the WCX Entities);
- (ii) each company in which the WCX Entities, whether individually or collectively, own (directly or indirectly) 50% or more of the voting shares; and/or
- (iii) each company which is for the purposes of section 50AA of the Corporations Act 2001 under the “control” of the WCX Entities, whether individually or collectively.

The entities that make up the WestConnex Group may change from time to time.

3 Further information on relevant internal dispute resolution mechanisms can be found below:

Name	Website	Phone	Eligible Toll Road(s)
Linkt Melbourne (previously CityLink)	<a href="https://www.linkt.com.au/melbourne">https://www.linkt.com.au/melbourne</a>	132629	CityLink
Linkt Brisbane (previously go via)	<a href="https://www.linkt.com.au/brisbane">https://www.linkt.com.au/brisbane</a>	132629	Gateway Motorway Logan Motorway AirportlinkM7 Clem7 Go Between Bridge Legacy Way
Linkt Sydney (previously Roam Express)	<a href="https://www.linkt.com.au/sydney">https://www.linkt.com.au/sydney</a>	132629	Cross City Tunnel Eastern Distributor Hills M2 Lane Cove Tunnel WestlinkM7 WestConnex NorthConnex (from date of opening)
E-way	<a href="http://www.tollpay.com.au">www.tollpay.com.au</a>	1300 555 833	M5 South-West Motorway

Each Toll Road Operator, and its agents (including debt collection agencies) must include in any notices and other communications to debtors clear and plain information about a debtor's entitlement to lodge a dispute with the TCO. For example, information about the TCO's services should be provided on the Toll Road Operator's website and on all correspondence with debtors. This information should also be made available to debtors whenever the Toll Road Operator responds to a complaint (including when the Toll Road Operator is refusing to deal with a complaint).