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Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
Brisbane Qld 4000
Email: tollroads@parliament.qld.gov.au

Dear Madam/Sir,

I acknowledge receipt of your email and the Parliamentary Terms of Inquiry which provides for a consultative process into matters that affect the operation of the TCO Tolling Customer Ombudsman (TCO). I am pleased to be part of the consultative process and to assist I have made this submission to the Inquiry.

The TCO has operated under a number of different banners or titles that catered for its expanding toll operator coverage since its inception. For the sake of simplicity the title of TCO shall be used in this submission except where there is specific reference to previous entities.

I note that the TCO was represented, in my absence, at a briefing meeting by its General Counsel, who provided a background to the TCO operations. I also note that the TCO has provided statistical information in relation to complaints made to it.

By way of amplification, the TCO is a voluntary (for consumers) industry dispute resolution system designed to assist consumers and the customers and toll road users of CityLink, EastLink, E-way/M5 South-West Motorway (Interlink Roads), Linkt Brisbane (Go Via,) Linkt Sydney (Transurban Linkt) and Roam tolling businesses, throughout Australia. Relevant to your Inquiry are the toll roads the responsibility of Linkt Brisbane, an entity of Transurban Queensland.

The specific roads are:

- AirportlinkM7
- Clem7
- Gateway Motorway
- Go Between Bridge
- Legacy Way, and
- Logan Motorway.

For the purposes of this submission, customers and toll road users referred to above shall be described as customers.

The TCO provides a low cost alternative dispute resolution system that allows the opportunity for the resolution of tolling disputes without the stress of litigation or the need to access any Government services in the first instance. The toll operators fund the TCO service so that it is free of charge to customers.

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. As with similar Ombudsman schemes, prior to the TCO dealing with a complaint the customer must have:

- (a) first lodged a formal complaint with the relevant toll operator 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.

Complaints received with the authority of a customer referred from Members of Parliament, State Ombudsmen or Consumer Affairs agencies are processed in the same manner. The TCO has dealt with in excess of 8,700 complaints overall, including in excess of 3,200 in Queensland since inception. The completed files are retained in the Cloud since its advent.

The TCO also deals with privacy complaints raised by tolling customers. In 2013 the TCO sought, and was granted, recognition by the Office of the Australian Information Commissioner (OAIC) as an external dispute resolution scheme for the purposes of privacy related complaints.

This recognition requires the TCO to adhere to the core benchmarks of industry-based EDR schemes – Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness. The OAIC recognition is indicative of the fact that the TCO met these requirements at the time.

Independence

The hallmark of any alternative dispute resolution body must be its independence and impartiality. Safeguards must be put in place not only to guarantee that independence, but to provide confidence to those who bring a dispute to the body of that independence. This particularly applies to industry dispute resolution schemes where the decision-maker is remunerated by the industry.

Safeguarding can be done by, amongst other things, having a transparent process and the agreement with the decision-maker, which expressly provides for that independence and sets out the terms of engagement. Such an agreement should include a fixed term of tenure of three years at a fixed fee, in my view.

Each contract agreement between my consultancy company, Lorimax Pty Ltd, and I provided that I be a consultant and independent contractor and sets out the terms of engagement. Each toll operator has a separate confidential remuneration agreement.

Irrespective of the safeguards put in place, independence depends upon the integrity of the process and the decision-maker. This can only be assessed by past performance and judged by the quality of the decisions made.

Having been involved in the law for about 40 years and in industry based dispute resolution schemes as a decision-maker since 1997, I was conscious of concerns that some customers had about the potential conflict of interest. I was particularly concerned in relation to the establishment of a fledgling scheme like the TCO.

Accordingly, the holding of concurrent positions as the National Panel Chair of the Financial Services Ombudsman, a Financial Services Ombudsman or a Consultant meant that I was not dependent on remuneration from the toll operators in my role as the TCO for my livelihood. I believed that this was important as far as the community perception of the independence of the TCO was concerned.

The TCO Role

In keeping with industry dispute resolution schemes, the TCO decision-maker must be an independent, impartial, legally qualified person, experienced in alternative dispute resolution, who seeks to resolve complaints fairly and efficiently. The TCO's curriculum vitae is at **Annexure 1** to this submission.

The TCO does not advocate for either party in the resolution of enquiries or complaints. Its obligation is to act fairly and impartially with both the customer and the relevant toll operator. After receiving an enquiry or complaint, the TCO will:

- review details of the enquiry or complaint
- refer the enquiry or complaint to the relevant toll operator for investigation and response
- request and examine appropriate records as authorised by the complainant from the relevant toll operator
- facilitate discussions between the complainant and the toll operator
- propose mediation or conciliation, if appropriate
- make a decision or recommendation
- issue a formal decision or "Determination".

There is no internal appeal from a TCO decision, but the complainant is not prevented from exercising his/her legal rights in any way.

Philosophy

The TCO requires that any enquiry or complaint should be resolved promptly and fairly wherever possible, initially between the toll operator and its customer, without referral to the TCO. The TCO, when a matter is not so resolved, will provide every opportunity in processing the matter to enable the parties to settle their issues without a TCO decision.

The TCO, in the event a matter is not resolved, shall make a decision on the material provided by the parties and inform the parties expeditiously.

The Toll Operator's Obligations

The TCO expects that toll operators must have a high standard, responsive customer relations or complaints resolution service, committed to early resolution of enquires and complaints.

The TCO requires toll operators to produce and provide written material, together with information on their website, for customers and road users about the existence and operation of the TCO. Toll operators must clearly and immediately inform persons dissatisfied with the response to an enquiry or complaint of the existence and means of contacting the TCO.

If a matter is not resolved, the TCO will express an opinion with a recommendation as to the likely outcome. If not accepted by the customer and a written decision is requested, it will be provided.

The TCO Decisions are Binding on Toll Operators

The TCO has the power to make recommendations and decisions regarding a customer's enquiry or complaint that falls within its jurisdiction under its contract with the toll operators. The toll operators covered by the scheme have agreed that TCO decisions are binding on them. The TCO will refer matters outside of its jurisdiction to a toll operator for consideration but will advise the customer on the limitation of its powers in respect to making recommendations or decisions.

The TCO Decisions are Not Binding on Customers

There is no obligation on a customer to participate in the TCO scheme. Importantly, customers still maintain their rights.

It is important to note that although the TCO decisions are binding on the toll operators but not the customers, who retain all legal and other rights, if the customer is dissatisfied with a TCO's decision they are not bound to accept it and may pursue other avenues of complaint or dispute resolution open to them.

The TCO System

The TCO is an impartial national dispute resolution system which provides services to private toll operators and customers in the States of Victoria, New South Wales and Queensland. It is free to customers. The TCO maintains a networked electronic communication system and 1800 telephone messaging number for the TCO to have seven day visibility of the complaints made to it. The TCO is supported when required by a Personal Assistant, General Counsel/IT specialist and another Administrative Officer.

The TCO operates in shared facilities in Melbourne Docklands in which I perform Ombudsman duties. As indicated by General Counsel, the TCO does not have a stand-alone office. Due to the level of complaints and the lack of customer demand together with the electronic communication and dispute lodgment system then put in place, the TCO has not operated from a stand-alone office since 2004.

In addition to the operation at Docklands, the TCO's networked system is connected to the home offices of my personal assistant and myself, with linkages to computers, the mobile telephone and other devices to facilitate the seven day visibility. A history of the TCO's operations is detailed later in this submission.

As with all Ombudsmen services, the TCO provides multiple avenues for the lodgment of complaints by customers. Complaints can be made online, by mail, by fax or at an appointment. Assistance can be provided over the telephone for the lodgment of complaints.

The TCO has maintained a dedicated website that enables the lodgment of complaint and privacy form by email. The website, when first created in 2004 for the TCO, was based on the Financial Industry Complaints Service (FICS) model and was subsequently adapted to meet the TCO's expanded toll operator coverage and introduce more modern settings. Although not as detailed as other Ombudsman sites because of the narrower breadth of the TCO jurisdiction, it reflects the same information they provide on their websites.¹

¹ Commonwealth Ombudsman, Australian Financial Complaints Authority, Queensland Ombudsman, New South Wales Ombudsman, Superannuation Complaints Tribunal, the Victorian Ombudsman and others

The website relevantly provides information about:

- Process
- Contacting the Ombudsman
- Reports and Decisions
- TCO Tolling Customer Ombudsman profile
- News and Information
- Privacy.

With ever increasing use of the internet, the TCO, like other Ombudsman websites, emphasises that written complaints can be lodged online. The online process is now the avenue for 96 / 97% of complaints.

The TCO has a free 1800 telephone number to enable contact by customers, both inside and outside normal working hours. The messages left on this number are monitored seven days a week, with out-of-hours messages returned the next working day unless urgent. Since the death of the person who was specifically contracted to monitor the telephone and messages (the late Mr A Hilton) in 2017, I have taken responsibility for answering the telephone.

If a call is not answered immediately there is a recorded message which explains the TCO process and makes provision for leaving a message and contact number. Return calls are made by the TCO usually on the same day or as promptly as possible.

Perhaps I misunderstood, but I note that a comment was made in the briefing meeting that having such a process which has a recorded message setting out the process and explaining how a complaint could be lodged was not best practice.

This matter can be clarified in the Inquiry, but it is my belief that all Ombudsmen have some form of message for after hours or unanswered calls that explains its dispute resolution process to assist in the lodgment of complaints. This facility has been of great value to the TCO dispute resolution and the feedback from customers has been positive.

The TCO also maintains a Post Office Box which enables complaints to be lodged by mail or fax. Although currently rarely used by customers, the fax line is maintained to enable those who have such a facility but cannot access the internet.

I note again that there was a comment in the briefing meeting which appeared to question the efficacy of having complaints lodged using the fax. Licensed post office operators must go through a suitable personal assessment and training, have arrangements to protect a client's property and are subject to privacy principles. I have always been satisfied that the post office operator understood the obligations to its customers and the documentation received was secure.

The lodgment of complaints by fax, in addition to the mail at the post office, is an efficient method as it enables one point of call for collection of complaints lodged by customers. This communication is now collected by my personal assistant or myself following the death of Mr Hilton.

Appointments can be made for customers, who cannot otherwise lodge complaints with the TCO, to make complaints in all States in relation to matters within its jurisdiction upon request. It is not apparent from their respective websites whether the Commonwealth Ombudsman, Financial Ombudsman Service or the Superannuation Complaints Tribunal, which similarly have cross-border dispute resolution operations like the TCO, make appointments. It, however, has always been an option offered by the TCO. There has been

virtually no demand for appointments due to the efficiency of the TCO dispute resolution system.

The TCO's aim is to acknowledge receipt of a complaint from a customer within less than 24 hours and to forward it to the toll operator simultaneously. Following this, there is a prompt response expected from the toll operator (7-10 days), which is immediately forwarded to the customer.

There is an exchange of information between the parties directed to ensuring either both parties have an understanding of their respective positions or the complaint is resolved within 30 days. Further correspondence can follow to address issues of concern. Unresolved matters can be dealt with by a TCO recommendation or decision.

History

The Tolling Ombudsman system was first established in Victoria in 2004 as the CityLink Customer Ombudsman (a Transurban entity) following an approach by CityLink after the construction of the first private toll roads in that State by Transurban.

I had previously held alternative dispute resolution positions and was then the National Panel Chair of the Financial Industry Complaints Service (FICS).² FICS was situated in Queen Street in the Melbourne CBD and provided a national industry dispute resolution service in respect to financial disputes involving financial advisers, stockbrokers and life insurers.

I drafted Terms of Reference for the CityLink Customer Ombudsman. I was then offered and accepted the position as the CityLink Customer Ombudsman (CCO). My role in the establishment of this Ombudsman service was done with the consent of the FICS Board, which was keen to encourage access to justice programs through industry dispute resolution schemes that were free of charge to consumers.

The CCO was to be a distinct and separate organisation from FICS, but I could act as the Ombudsman in conjunction with my other dispute resolution responsibilities provided there was no conflict or impact upon responsibilities as the FICS Ombudsman.

FICS officers had been involved in the development of the Australian New Zealand Ombudsman Association (ANZOA) principles for the operation at the time. I established the CCO based as closely as was possible on these principles.

Because of the anticipated number of toll disputes I did not make an application to become a member of ANZOA due to the need to meet certain of its corporate requirements at that point. This judgement proved to be correct because the level of complaints were initially relatively low, and even by as late as mid-2011 the TCO was still only receiving about six disputes a week.

The Office

The TCO, when first put into operation in 2004 as the CCO, established a website, an email address, a 1300 telephone number and a fax number. It operated in serviced offices in Southbank, which abuts the Melbourne CBD. Consumers could make contact or attend the office by appointment to make a complaint.

² FICS was to become a part of the Financial Ombudsman Service (FOS) in 2008.

Complaint and privacy forms had been drafted together with standard correspondence that explained the TCO system processes and how to lodge a complaint. Complaints were made by mail and occasionally by fax, which were scanned and forwarded to the relevant toll operator. Most customers rather used the online service to lodge complaints by emailing the complaints to the TCO email address. These complaints were immediately emailed to the toll operator.

Files were created by my personal assistant so they could be processed with the toll operators online and were visible to her and me on our respective computers. Return correspondence to customers who did not have the internet was by mail or fax.

Following the establishment of the CCO there were discussion between Transurban related toll operators in New South Wales, EastLink (a non-Transurban toll road) in Victoria and myself about the operations of the then CCO with a view to their taking up a similar Ombudsman service. Agreements were subsequently reached to provide the services.

This required a commitment that appointments could be made with customers in NSW if required. It was pointed out that as the Financial Services Ombudsman I travelled interstate to NSW to make decisions in respect to disputes and used serviced offices for the purpose. Similarly, such offices could be independently used at the expense of the Tolling Customer Ombudsman for any appointments.

The Ombudsman role was then performed under the banners of the Transurban Customer Ombudsman followed by the Tolling Customer Ombudsman to reflect the coverage of these other private toll roads in New South Wales and Victoria. The contracts with all the companies were to be subsequently renewed each three years.

After its presence for three years it had become apparent that customers did not want to make use of the office. During the period some 333 complaints (approximately 2-3 a week) were received and there were about 5-6 telephone contacts. There were no customer requests to attend the office for an appointment.

It was because of this small workload and a security incident at the office, a decision was made that the office should be closed. Consideration was given to contracting space in my former legal office of Arnold Thomas and Becker, which was then situated in the same CBD precinct as FICS. This did not eventuate because of the previous lack of customer interest in the use of the office.

Post 2007- A System to Better Meet Customers' Needs

Based on my experience in alternative dispute resolution I had a view that due to the nature and relative lack of complexity of the toll complaints, that a more personal TCO team system should be put in place. Moreover, although the tolling complaints may have not been as complex as financial industry disputes, they were often seen by customers as stressful and urgently requiring attention. Rightfully prompt action should have been available of the Ombudsman.

The aim was to have an electronic and telephone system that was attuned to customers' expectations and communication needs of the time. This required, as a minimum, an innovative approach so that toll operator customer complaints could be:

- lodged simply and efficiently
- responded to directly and quickly
- forwarded to a toll operator promptly upon receipt
- addressed in personal appointments when required
- not hampered by bureaucratic process

- visible to the TCO at all times, and
- monitored both inside and outside normal working hours.

It was then determined, because of the low level of complaints, that an arrangement would be made with FICS for me to use my office to maintain a CBD presence to monitor TCO complaints and attend any appointments, when and if required. This was done on the basis that operations did not affect or place any cost burden on FICS.

This suited my flexible work practices as, in addition to attending the CBD office, I had access via a VPN to enable me to do FICS work from my home office in Hawthorn in or outside normal working hours. It meant that I could have a system that made both FICS and TCO disputes visible to me at all times.

A number of steps were taken to immediately put in place an electronic communication and dispute resolution strategy. This was to supplement the existing services that the TCO provided through its website, email address and the 1300 telephone number. My personal assistant was contracted to provide TCO support services. She again created files so they could be processed with the toll operators online immediately and were visible to her and me on our respective computers.

The process allowed contact both in and outside normal working hours. In the event, for example, of an engaged or not answered call, the number had a message that detailed the TCO dispute resolution process and had provision for the customer to leave a message for a return call.

Further steps included the taking of a Post Office Box at the Hawthorn Post Office and arranging for the post office to receive and store TCO communication, including the faxes, in the Post Office Box.

There was a purpose to utilising a Hawthorn Post Office rather than a CBD one. In addition to the post office being near my home office, a retired former CEO of Red Cross Victoria and neighbour, the late Andrew Hilton (decd), was operating a consultancy business in the vicinity of the Hawthorn Post Office.

In view of his professionalism and the responsibility exercised in his previous position, he was contracted to monitor and answer the telephone within normal working hours and outside of them if he considered the call urgent. If calls were not answered in normal working hours, return calls were made on the same day or as promptly as possible.

In responding to calls, he would discuss the customer's problems and explain the TCO process. He could assist in the completion of a complaint and privacy form. If the customer did not have access to the internet he would arrange for forms to be mailed to the customer for completion and return.

He was also required to attend the post office daily to collect correspondence in the form of letters and faxes. He would then telephone the complainant to acknowledge receipt and arrange for the correspondence to be scanned and forwarded to the relevant toll operator. He would refer any matters to me that required special attention.

I must make a special tribute to the late Mr Hilton, who did his work tirelessly until his unfortunate demise in early 2017. He had spoken and provided service to many toll road customers, including those in Queensland, over the years. It would not be unusual for him to respond to a distraught telephone call on a Sunday afternoon to provide assurances that the caller's concerns were being addressed.

In addition to these measures, the previous system continued so that the customers could continue to make appointments with the TCO in all States.

The TCO operated from offices in Queen Street until shifting to Bourke Street in Melbourne Docklands in 2009. The revamped TCO process proved a success in the efficient way the complaints were handled. In the four years between 2007 and before a Queensland toll operator became part of the scheme in 2011, in excess of 1,000 complaints were handled in that period. The numbers were increasing at the end of this period, but experience had allowed the process to be refined to deal with higher numbers of complaints.

Queensland History

Relevant to this Inquiry, due to the standard of the TCO system I was approached in early 2011 by the Queensland Government through the then:

- Acting Chief Operating Officer, Queensland Motorways Limited, Department of Transport and Queensland Motorways Limited, and
- Executive Director Road Business Strategy, Queensland Department of Transport and Main Roads, together with the
- Tolling & Information Systems Manager, BrisConnections in 2011

to provide Ombudsman services for disputes in respect to toll roads for which they were responsible in Queensland.

This contact was followed by these representatives coming to Melbourne to obtain a detailed explanation of the operation of the TCO system. This meeting was followed by my travelling to Brisbane, where I re-met with the Queensland Departmental representatives and others I recollect as being ministerial staff.

In the course of these meetings we discussed a range of matters, which included interoperability issues in relation to the respective toll roads in all States and the value of a single national Tolling Customer Ombudsman system for consistency of decisions and economies of scale.

Amongst other things, there was a discussion about the TCO's operational process and a need for an office in Queensland. I explained about the lack of demand for the use of such an office over my previous seven years as an Ombudsman. There had been no requirement of any appointments in Victoria. There had only been two appointments since the Ombudsman services had been provided to NSW toll operators.

I further pointed out that as the Financial Services Ombudsman, I travelled interstate to Queensland to make decisions in respect to disputes and used serviced offices. Such offices could be independently used at the expense of the TCO for any appointments to make tolling complaints.

I pointed out that I would come to Brisbane at least three times a year to travel the toll roads for familiarity purposes or for any liaison requirements. It was agreed, however, that the demand for appointments would be monitored.

It was recognised that special arrangements may need to be made for customers who travelled from a regional area to Brisbane and had a complaint. This reflected the arrangement that had been originally agreed with the NSW toll operators which had worked satisfactorily.

A meeting was also held with representatives of BrisConnections during which the above and other issues relevant to the AirportlinkM7 toll road were discussed.

Following these meetings, contracts were subsequently entered into between Queensland Motorways Management Ltd in respect to Queensland Motorways Ltd (go via) operations and BrisConnections (AirportLinkM7). The contractual process involved each party being bound by the original tolling agreement with Transurban to ensure there was no differentiation in the TCO process of resolving their disputes.

The Inquiry should have access to the initial contract entered into by Queensland Motorways Management Ltd and subsequent extensions.

Following these arrangements complaints could be lodged online, by mail to a post office box in Queensland, a fax line maintained in the post office in Victoria or by appointment. Experience was to show that most complaints were lodged online.

There was ready acceptance of the services provided by the TCO in Queensland. Ninety complaints (go via) were lodged in the first five months, followed by 135 complaints (go via) in the following six months. This was followed by an additional 124 complaints (15 AirportlinkM7 and 109 go via) in the next six months.

This trend continued with:

- 166 complaints (AirportlinkM7 16 and go via 150) received from March to August 2013
- 218 complaints (AirportlinkM7 39 and go via 179) received from September 2013, and
- 221 complaints (AirportlinkM7 26 and go via 195) received from March 2014.

The TCO provided services for Queensland Motorways Ltd (go via) and BrisConnections (AirportlinkM7) until the acquisition of their toll road operations by Transurban under tender processes. It should be noted there were no appointments required of the TCO in this period.

The TCO was then contracted by Transurban to continue to provide Ombudsman services for the roads that became its responsibility. There was an increased workload in this period in respect to complaints. Many of these related to the period in which the previous toll operators had responsibility for the toll roads.

A number of the complaints were, in fact, outside of the TCO jurisdiction as they were made in response to Notices from the Department of Transport and Main Roads (DTMR) or the State Penalties Enforcement Registry (SPER). Under the legislative regime that existed at the time, there was quite a strict legislative requirement for toll operators to promptly forward unmet final demands for tolls to DTMR, which then issued Penalty Infringement Notices (PIN). Nevertheless, as some customers contended these complaints were intertwined with the conduct of the toll operator, they were forwarded to the toll operator for response.

The increase in work was accommodated by the fact that I had altered my contractual arrangements with the FOS, which allowed me to maintain my CBD office but reduced my workload; my personal assistant became part-time in her similar employment; and a Deputy Tolling Customer Ombudsman was contracted. appointed. A General Counsel/IT specialist was later appointed under contract. This allowed complaints to be handled in a timely manner.

Statistics have been provided to the Inquiry in respect to the complaints, including a breakdown of complaints, received by the TCO since these acquisitions. Copies of these are at **Annexure 2** to this submission.

By way of a snapshot, in the latest report covering the six months to February 2018, 192 complaints were received against go via (approximately 30 per month or one per day):

- 112 of 192 (~60%) of complaints about go via / Linkt Brisbane were in relation to Account Management, i.e. customer service issues:
 - the wrong car
 - incorrect details
 - poor customer service - delays and inconsistency in responses
 - broken tags, etc.
- 78 of 192 (~40%) of complaints about go via / Linkt Brisbane were in relation to Billing / Tolling issues. These are focused on:
 - the additional charges levied on the initial toll
 - incorrect billing
 - issues relating to changes in driver or registrations.
- The remaining two were in respect of complaints about poor infrastructure signage and incorrect vehicle classification.

Relevant to this Inquiry, the TCO statistical information indicates go via (now Linkt Brisbane) had fallen from over half of the complaints made to the TCO from all States from March 2016 to February 2017 to 34% in the following 12 months. The complaints in this period fell from 281 to 192. This downward trend has continued, with 109 complaints from March to 30 June 2018, approximately the same proportion of complaints.

Interlink Roads

Subsequent to the TCO providing dispute resolution services to Queensland, M5 South-West Motorway and E-way in NSW contracted with the TCO in early 2016 for the TCO services under the same terms and conditions as all other toll operators in Victoria, New South Wales and Queensland. These services continue to be provided to date. Statistical information for the complaints in the TCO reports is now classified under Interlink Roads.

Reporting

The Ombudsman since its inception, for the sake of transparency, has produced six-monthly reports that detail statistics of complaints relating to the individual toll operators, as well as discussing issues of concern raised by customers. Information relevant to the toll operators in Queensland since the TCO appointment is contained in such reports.

Relevantly, I have identified possible measures to continue to improve customer service standards:

- Appropriate resourcing of customer service and complaints management departments.
- Continued development of consistency of approach across the whole of the Transurban business.
- Regular monitoring of gantry and LPN recognition systems.
- Fully implemented financial hardship policies.
- Continuing enhancement of the contact process with customers through a range of means to advise of toll issues in a timely manner.
- Additional attempts to verify customer details where initial contact details are unsuccessful.
- Endeavouring to remove the stress from the customer's situation, rather than adding to it.
- Greater emphasis on allowing customers to refer issues to the TCO, rather than referring non-payment to debt collectors or pushing the matter through to a PIN via Demand Notices.

- Ensuring that where a matter is referred to an agent (such as a debt collector), the debt collector applies the organisation's policies accurately and fairly.
- Continued provision of information to customers.

I note that Transurban, in consultation with the State Government and otherwise, has addressed many of these issue and this would account for the fall of the number of complaints in recent times.

There has been one particular issue that I have raised over a number of years. I would describe this as the interconnectivity between toll operators and State Motor Vehicle Registration branches. Many complaints arise because of the fact the motor registration details are not up-to-date.

This can be because the purchaser of a vehicle does not notify the branch of a change of ownership and the vehicle remains in the name of the previous owner for toll road travel recognition purposes. The previous owner potentially becomes liable for the tolls incurred by the purchaser of the vehicle whilst travelling on toll roads.

I understand that toll operators have a statutory declaration system that enables the previous owner to nominate the name of the purchaser of the vehicle, but this is not always effective. It also can be a source of aggravation to customers.

I have advocated that there should be an obligation on both the seller and the purchaser of the vehicle to complete a notice of disposal and acquisition of a vehicle and lodge it with the relevant State Motor Vehicle Registration branch. This would allow a seller of the vehicle to be certain that the correct motor vehicle registration details are in place.

There is a related issue. Despite the information provided by toll road operators to their toll road account holders, some account holders do not always advise the toll road operators of the sale of a vehicle and it remains on the account. Some incorrectly believe that the toll operator's system is inter-related with the State Motor Vehicle Registration branch and the toll operator will be advised.

Because this was not the situation the toll operators continued to charge the account holder, but the charges were often not picked up by the account holder. Sometimes, in complaints that came to the TCO, the charges were not picked up for years. I understand steps may have been taken to alleviate this problem, but I believe it would be of assistance if there was a capacity in the State Motor Vehicle Registration system to automatically notify the toll operator of the change of the registered ownership of a vehicle.

Jurisdiction

There are limits on the jurisdiction of the TCO due to arrangements between the State Governments. For further information please refer to the TCO website:
www.tollingombudsman.com.au.

Basically it is intended that the TCO does not trespass into Government policy issues or Departmental operations. The terms of operation specifically provides:

“Where the TCO is unable to help

The TCO cannot:

- *consider any grievances related to infringement notices issued by authorities, even though the infringement may have happened on one of the toll roads covered by this scheme;*

- *consider the level of tolls or fees fixed by tolling operators in consultation with state governments;*
- *consider disputes about vehicle classifications;*
- *consider grievances in relation to Roam and Roam Express/Transurban Linkt that arose before 1 August 2006, go via that arose before 1 October 2011, or E-Way and M5 South-West Motorway that arose before 12 April 2016;*
- *make decisions that would put a tolling operator in breach of its Customer Service Agreement or its Concession Deeds with a state government; and*
- *make binding decisions that require tolling operators to pay monetary compensation in some instances.”*

I highlight that the TCO does not have jurisdiction over the level of fees charged by toll operators fixed in consultation with the State Government.

There are matters that are raised with the TCO that generally cannot be resolved to the satisfaction of customers. These include:

- political matters
- complaints that tolling and the collection of tolls offend the Australian Constitution
- that as motorists pay motor vehicle fees and excise duties they should not be charged tolls
- that a toll operator should not have a monopoly, and
- the TCO must be biased as he is paid by toll operators.

These complaints are responded to and there is a lengthy TCO decision on its website in respect to the Australian Constitution issues, but they continue to be raised. It is my view that there should be information provided by the State Government and Transurban to increase community understanding of the benefits of the construction of toll roads for a State and the importance of independent dispute resolution.

The Existing Relationship between the TCO and the Queensland Ombudsman

The TCO is an industry disputes resolution body whilst the Queensland Ombudsman is a statutory authority. They have no relationship but both organisations will refer relevant matters to the other when necessary.

The TCO has contractual authority over the toll operators only and so can deal with authority with matters up to and including the issuing of a Demand Notice by a toll operator. The TCO does not have jurisdiction over Government agencies that issue Infringement Notices (PIN) or Enforcement Orders, and that collect monies owing under such notices.

The Queensland Ombudsman deals with agencies that include the DTMR, the Brisbane City Council and the SPER. It is important to note that a PIN is issued by the Department or the Council for failure to comply with a Demand Notice and as such is an administrative decision by the relevant agency, not a matter which falls within the authority of the TCO.

Although the TCO does not have jurisdiction once matters have been taken over by State Government agencies such as the DTMR or the SPER, if however there is a complaint that the matter came to these agencies because of the toll operator's fault, the TCO will refer it to the toll operator for examination and response. If the toll operator is found not to be at fault and that there may be an issue about an agency, a customer will be advised to make a complaint to the Queensland Ombudsman.

Outreach

The TCO attends both industry and consumer forums in any State upon request. It also have liaised with State Governments and been part of working groups in Victoria established to improve the customer experience.

The TCO has previously provided submissions to other Parliamentary inquiries (Australian Senate and NSW) and responded to State Government and its Departments requests for information about its operations. The TCO processes since inception and its independence have not been subject to adverse criticism as a consequence of these inquiries.

There also has not been any complaint to the TCO by a State Ombudsman or Consumer Affairs agency in respect to any matters such a body referred to the TCO or otherwise.

The TCO supports Launch Housing Victoria, a project for the homeless in Victoria, and FareShare, a charitable food bank and distribution body. FareShare is currently expanding its services into Brisbane.

Future Changes

The TCO is currently seeking membership of ANZOA. An application has been made and discussions are taking place in respect to facilitation of membership. Such discussions may impact upon the operation of the TCO.

Irrespective of the outcome of these discussions, it is intended to upgrade the TCO website to further assist in the lodgment of complaints.

Further, following the establishment pursuant to Commonwealth legislation of the Australian Financial Complaints Authority (AFCA) in 2018, AFCA requires occupancy of the offices in which the TCO has shared offices. I will perform my role as an AFCA sessional Ombudsman in the offices, but it has been decided that the TCO operations be moved to a near to adjacent serviced office in Docklands. Due to the diminishing numbers of complaints being received by mail or fax, the use of the current Post Office Box will be monitored and a decision may be made for such communications to be received at the serviced offices.

Conclusion

The TCO is an impartial national dispute resolution system which provides services to private toll operators and customers in the States of Victoria, New South Wales and Queensland at no cost to the State Government. The system enables consistency of decision-making in respect to the complaints of customers who travel on toll roads, both intrastate and interstate.

The TCO system provides a number of avenues for contact and the lodgment of disputes, with an integrated electronic communication and telephone system. Importantly for toll road customers who want immediate attention to their complaints, the TCO system allows for seven day visibility of complaints.

Customers who can be stressed because of the issues in dispute should have a dispute resolution system that enables complaints to be:

- lodged simply and efficiently
- responded to directly and quickly
- forwarded to a toll operator promptly upon receipt
- addressed in personal appointments when required
- not hampered by bureaucratic process

- visible to the TCO at all times, and
- monitored both inside and outside normal working hours.

The TCO has successfully operated such a system. Statistics provided to the Inquiry indicate that the TCO has handled in excess of 8,700 complaints, including more than 3,200 Queensland complaints, since its inception.

I am, as indicated, available to give evidence to the Inquiry upon request. For further information, have no hesitation in contacting me to obtain it. In the spirit of the consultative process it would be of assistance, if any further information is required, that it be requested prior to my attendance at the Inquiry so that it can be made available at the time.

Yours sincerely,



Michael Arnold
Tolling Customer Ombudsman

TCO Tolling Customer Ombudsman
PO Box 7095 Hawthorn North Vic 3122
PO Box 2615 Mansfield Qld 4122
Email: admin@tollingombudsman.com.au
T: 1800 145 009 Fax: (03) 9853 7782

ANNEXURE 1

MICHAEL ARNOLD, LLB Dip Pub Pol

CURRICULUM VITAE

- University of Melbourne - Graduate of Law
- Barrister and Solicitor of the Supreme Court of Victoria
- Foundation Partner – Arnold Thomas & Becker (Solicitors)
- Former Attorney, Solicitor and Proctor of the Supreme Court of New South Wales
- Member of the Legislative Council of the Victorian Parliament – 1982 to 1988
- Legal Consultant to Arnold Thomas & Becker (Solicitors) and Holding Redlich (Solicitors) – 1988 to 1990
- State Government Consultancies – Intellectual Disability Services, the Fishing Industry and the Mining Industry – 1988 to 1990
- Judge and Deputy President of the Accident Compensation Tribunal in Victoria – 1990 to 1992 until abolition.
- Federal Government Consultancy – Alcohol and Related Violence – 1993 to 1995
- Legal Consultant to Arnold Thomas & Becker (Solicitors) and Arnold Dallas & McPherson (Bendigo) (Solicitors) – 1992 to 1996
- National Referee, Alternate Panel Chair and Adjudicator – Insurance Ombudsman Service – June 1996 to November 2003
- Part-time Legal Member of the Medical Practitioners Board – 2001 to 2008
- TCO Tolling Customer Ombudsman – September 2004 to present
- National Panel Chair – Financial Industry Complaints Service – November 2003 to June 2008
- Ombudsman – Financial Ombudsman Service – July 2008 to June 2016
- ASIC Approved Independent Expert – Life Insurance Claims Assurance Review – July 2016 to November 2017
- Ombudsman – Financial Ombudsman Service – December 2017 to present

Other positions held amongst others:

- Board Member, UNICEF
- Director, Yooralla Society
- Director, Playbox Theatre
- Board Member, Victorian Health Promotion Foundation
- Delegate, Australian Constitution Convention
- State Chairman, Freedom from Hunger Campaign and Community Aid Abroad
- Member, Melbourne University Council
- Member, University of Melbourne, Law School Post-Graduate Education Committee
- Director, Australian Landscape Trust
- Board of Management of Australian Institute of Public Safety
- Disciplinary Committee Member, Victorian Amateur Football Association
- Chair, Disciplinary Committee, Fitzroy Junior Football Club
- President and Secretary St Bernard's Old Collegians Football Club

Memberships:

- Carlton Football Club
- Melbourne Cricket Club
- Kew Golf Club
- Victoria Racing Club
- RACV
- National Gallery of Victoria
- Malthouse Theatre

Life Memberships:

- Law Institute of Victoria
- Australian Labor Party
- St Bernard's Old Collegians Football Club (Victorian Amateur Football Association)

Hall of Fame inductee:

- St Bernard's College

ANNEXURE 2

Linkt Brisbane (go via) – Stats – July 2017 to June 2018

Category	July 17	Aug 17	Sept 17	Oct 17	Nov 17	Dec 17	Jan 18	Feb 18	Mar 18	April 18	May 18	June 18
Account Management	21	23	23	22	11	19	19	16	19	11	19	14
Billing and Tolling	10	16	9	10	13	14	15	17	20	8	8	9
Damage to Vehicle	-	-	-	-	-	-	-	-	-	-	-	
Infrastructure/Signage Traffic Management	-	-	1	-	-	-	-	-	1	-	-	
Vehicle Classification	-	-	-	-	-	-	-	1	-	-	-	
Website	-	-	-	-	-	-	-	-	-	-	-	
TOTAL	31	39	33	32	24	33	34	34	40	19	27	23
Resolved / Closed by Toll Road Operator	31	39	33	31	24	33	34	33	40	19	27	23

Email: 19 July 2018

Dear Ms Jeffrey,

In response to questions on notice, please find attached copies of the TCO Review showing complaint statistics for the past four years:³

- March 2014 to August 2014
- September 2014 to February
- March 2015 to August 2015
- September 2015 to February
- March 2016 to August 2016
- September 2016 to February 2017
- March 2017 to August 2017
- September 2017 to February 2018

Please advise if you require any further information.

Yours sincerely,

[Name] / Assistant to TCO Tolling Customer Ombudsman

³ <http://tollingombudsman.com.au/reports-and-decisions/>

Email: 23 July 2018

Ms Jeffrey,

Transport and Public Works Committee

I refer to the recent set of statistics in relation to TCO complaints over the past four years sent by Michele Foulds. I have done a brief analysis of the statistics that could assist the Committee in interpreting same for the purposes of the Inquiry.

By way of background the TCO, following contact by the Queensland Government, was contracted by Queensland MotorWays Management Limited to provide Ombudsman services in relation to complaints about Queensland MotorWays Limited (go via) tolling operations from September 2011. Following this the TCO contracted with BrisConnections to provide services in respect to the AirportLinkM7.

During the period between September 2011 and March 2014, the commencement date of the statistics analyzed below, go via and AirportLink M7 complaints formed about 40% of the complaints received by the TCO from all the States.

It will be noted that the set of statistics provided by Michele Foulds are divided into types of complaints and colour coded in respect of all toll operators in Australia.

To assist in making State comparisons for all toll operators over the years, please note the following:

Victoria --CityLink and EastLink

New South Wales--Roam, Roam Express, Transurban Linkt, E-Way, M5 South-West Motorway and Interlink

Queensland--go via and AirportLinkM7

The analysis of complaints is in respect to the period between March 2014 and February 2018. The statistics, to enable a comparative analysis until 31 August 2018 are, of course, not available but figures to 30 June 2018 will be provided.

By way of assistance there have been 109 complaints lodged in respect to go via between March 2018 and 30 June 2018. Further data will be provided as it becomes available.

	1/3/14-31/8/14	1/9/14-28/2/15		1/3/14-28/2/15
AirportLinkM7*	26	43		
CityLink	132	133		
EastLink	44	39		
go via*	195	212		
Roam	37	35		
Roam Express	23	24		
Total	457	486		943
Qld Total*	221	255		476
Qld Percentage	48.35%	52.46%		50.47%

	1/3/15-31/8/15	1/9/15-28/2/16		1/3/15-28/2/16
AirportLinkM7*	43	58		
CityLink	143	163		
EastLink	49	54		
go via*	389	464		
Roam	56	52		
Roam Express	38	31		
Total	718	822		1540
Qld Total*	432	522		954
Qld Percentage	60.16%	63.5%		61.94%

	1/3/16-31/8/16	1/9/16-28/2/17		1/3/16-28/2/17
AirportLinkM7*	26			
CityLink	111	89		
EastLink	50	50		
E-way	7	12		
go via*	370	281		
M5South West Motorway	5	9		
Roam	58	61		
Roam Express	60	49		
Total	687	551		1238
Qld Total*	396	281		677
Qld Percentage	57.64%	50.99%		54.68%

NB: The AirportLinkM7 statistics became part of go via's for the period 1/9/16-28/2/17.

NB: The TCO commenced providing Ombudsman Services to E-way and M5 South West Motorway for the period between 1 March 2016-31 August 2016.

	1/3/17-31/8/17	1/9/17-28/2/18		1/3/17-28/2/18
CityLink	78	93		
EastLink	71	80		
E-way	6			
go via*	218	190		
M5South West Motorway	15			
Interlink Roads		35		
Roam	140	130		
Roam Express/Transurban Linkt	61	81		
Total	589	609		1198
Qld Total*	218	190		408
Qld Percentage	37.01%	31.19%		34.05%

NB. Interlink Roads statistics replaced E-Way and M5 South-West Motorway statistics.

Taking into account these statistics and the complaints received between 2011 and 2014, the TCO has dealt with over 3200 Queensland complaints since the commencement of the provision of its services in 2011.

Michael Arnold
Tolling Customer Ombudsman

Email: 25 July 2018

Dear Ms Jeffrey,

Further to previous correspondence please find attached information as requested.

I advise that the proportions of complaints State by State are:

Qld. 34.16%

NSW 38.55%

Victoria 27.27

The figures have been provided to Transurban for its records for the purposes of the Enquiry.

Please advise if I can assist with any further information you may require.

Yours sincerely,

Michael Arnold
TCO Tolling Customer Ombudsman

**TCO Complaints per Toll Road Operator
March to June 2018**

Toll Road Operator	March 2018	April 2018	May 2018	June 2018	TOTAL
CityLink	13	9	14	10	46
EastLink	18	4	11	8	41
Interlink Roads	9	7	9	9	34
Linkt Brisbane	40	19	27	23	109
Linkt Sydney	5	9	8	10	32
Roam	7	16	16	18	57
					319