



7 August 2018

Mr Shane King MP
Chair
Transport and Public Works Committee
Parliament House
George Street
Brisbane QLD 4000

By email: TPWC@parliament.qld.gov.au

Dear Mr King

Inquiry into the operations of toll roads in Queensland

I refer to your letter of 19 June 2018 inviting me to make a submission to the Committee's inquiry into the operations of toll roads in Queensland. I thank the Committee for the opportunity to make a submission, which I will restrict to terms of reference c) to e) as outlined in your letter. I will deal with each separately.

Background

The Queensland Ombudsman (the Office) has jurisdiction to investigate complaints about the administrative actions of public sector agencies, including state government departments and local governments. As outlined to the Committee in my testimony at the public briefing held on 17 July 2018, the Office has held differing positions on its jurisdiction to investigate complaints about toll road operators in Queensland. The following summary sets out the positions over time:

- Between May 2015 and 28 February 2017 the Office treated complaints about toll road operators as within jurisdiction, based on legal advice at the time.
- Further legal advice received by the Office in February 2017 demonstrated that toll road operators are out of the Office's jurisdiction. As a result, from 1 March 2017 all complaints about toll road operators are dealt with as being out of jurisdiction and complainants are referred to the Tolling Customer Ombudsman (TCO).
- The Office has never considered that it has jurisdiction to investigate complaints about the TCO.
- The Office has always had, and continues to have, jurisdiction to investigate complaints about the administrative actions of the Department of Transport and Main Roads (DTMR), Brisbane City Council (BCC) and the State Penalties Enforcement Registry (SPER), including those about enforcement action taken as a result of an unpaid toll.

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c) The operation of the existing complaint process and current statistics

Complaint and out of jurisdiction matter statistics

In summary, the complaints related to 'tolling' received in the Office over recent years are as follows:

- Complaints (treated as in jurisdiction) received about toll road operators by financial year and entity:

Entity/FY	2017-18	2016-17	2015-16	2014-15	2013-14
Transurban (GoVia/Linkt)	0	162	5	0	0
QML	0	0	296	12	7

- In 2017-18, 118 out of jurisdiction matters were received where toll road operators or TCO were identified as the subject entity.
- Between 1 March 2017 and 30 June 2018, the Office referred 161 complaints about toll road operators to the TCO.
- In 2017-18, the following are the approximate numbers of complaints received about BCC, DTMR and SPER that related to a tolling matter:

Agency	Case count
BCC	9
DTMR	7
SPER	33

The existing complaints process

As outlined above, complaints about toll road operators are outside the Office's jurisdiction. Members of the public who contact the Office with a complaint about a toll road operator (Transurban, GoVia, Linkt) are referred to the TCO, with no further follow up.

The Office may investigate the administrative actions of the DTMR, BCC and SPER. However, as all state agencies and councils must have a complaints management system, the Office generally requires complainants to first exhaust the complaints management system of an agency before it will consider investigating the complaint.

Complaints about the actions of authorities that issue an infringement notice (DTMR or BCC) stemming from tolling matters can be made to the Office. However, disputes about liability for an offence are not generally investigated and are usually declined on the basis that the Magistrates Court is the proper forum to dispute the matter.

Complaints about enforcement actions taken by SPER can be made to the Office. In these cases the underlying debt may relate to tolling offences (or partially relate to tolling offences). However, the Office's assessment of such complaints relates only to SPER enforcement action and administrative processes. Complaints regarding SPER in respect of tolling issues fall into the following broad categories:

- claims that the ultimate debt is disproportionate to not paying the toll (this is often coupled with a lack of understanding that the debt is not related to the toll amount but is the total of a penalty for an offence and related administration costs)
- claims that the person did not receive the infringement notice from the issuing authority and therefore did not have an opportunity to respond or pay the fine before referral to SPER
- claims that the enforcement action (frequently licence suspension) is unfair or unreasonable.

Overall, it is clear from the interactions between the Office and complainants that the public is confused about the operation of the tolling complaints system. The Office therefore has guidance about making tolling complaints on its website <https://www.ombudsman.qld.gov.au/how-to-complain/the-complaints-process/common-complaints/toll-matters>.

e) The existing relationship between the Tolling Customer Ombudsman and the Queensland Ombudsman

There is no relationship between the Tolling Customer Ombudsman and the Queensland Ombudsman. The TCO is not an agency within the Office's jurisdiction, nor is it considered a related integrity agency that requires regular liaison (e.g. to avoid duplication of investigative effort).

The Office advises members of the public that complaints about the actions of toll road operators are out of jurisdiction and refers them to the TCO as the appropriate complaints forum for toll-related complaints. The Office does however seek to ensure advice to members of the public is correct and may liaise with the TCO from time to time in this effort.

d) Possible measures to continue to improve customer service standards

The operation of toll roads, particularly the collection of tolls from road users, seems to be highly dependent on the prospect of enforcement action by either DTMR or BCC and, ultimately, debt collection by SPER. Even if the toll road operator foregoes tolling revenue when enforcement action is taken, the threat of enforcement action is clearly a significant motivator in encouraging road users to act responsibly. It also, in my view, leads to the impression that DTMR, BCC and SPER are enforcing tolls. The public's lack of understanding of the difference between tolls payable to the toll road operator and penalties, with associated administrative costs payable to the State, exacerbates the already frustrating need to make a complaint in the first place.

Complaints to the Office by toll road users suggest that the complaints process across all stages of toll, penalty or debt collection is less streamlined than the process for transferring users between toll road operators and DTMR or BCC for the purposes of proceeding with an offence.

Because of the critical relationship between toll road operators and 'enforcement' agencies, it may be appropriate, if not already in place, to consider applying public sector agency complaints management standards to the initial complaint handling process within the toll road operator and the TCO, as it is within DTMR and BCC. In broad terms, this requires a complaints management system that complies with *AS/NZS 10002:2014 – Australian and New Zealand Standard, Guidelines for Complaints Management in*

Organizations. This standard is used as a basis for auditing public sector agency complaints management systems by the Office. In addition, Queensland public sector agencies are required to publish complaints statistics on their website at least annually, including the number of complaints received, upheld and rectified. This step assists in monitoring complaints management within the agency and between comparable agencies.

In my view, the management of complaints should be an element of regular monitoring between the toll road operator and the respective public sector agency. As is the case with many industry ombudsman offices, this process could also include appropriate performance standards. It is also important that information (trends and themes) drawn from complaints to DTMR and BCC relating to tolling matters is used to ensure that the practices of toll road operators are in accordance with the franchise agreement and any service standards set out in such an agreement.

From reviewing tolling complaints over time, it is apparent that the forwarding of information between the toll road operators and BCC or DTMR for the purposes of enforcement action is substantially automated and involves limited, if any, additional information about unresolved disputes about the respective toll. It is important that enforcement action is not taken by BCC or DTMR when there is a genuine dispute about the liability for the unpaid toll and there has been no reasonable attempt to investigate or resolve the dispute. There may be a variety of mechanisms by which this can be achieved.

Where a complainant is enmeshed in the enforcement process, the ability of the toll road operator and BCC or DTMR to coordinate complaint responses with enforcement action is essential to the efficient operation of the system and customer satisfaction.

I trust this information will assist the Committee with its inquiry.

Yours sincerely



Phil Clarke
Queensland Ombudsman