



25 July 2017

Mr Mark Fitt  
Committee Secretary  
Senate Economics References Committee

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir,

### **Inquiry into operations of existing and proposed toll roads in Australia**

I acknowledge receipt of your letter via email requesting a response to a submission that, amongst other things, was critical of the role of the Tolling Customer Ombudsman, now the TCO Tolling Customer Ombudsman.

The submission, a copy of which you have provided, is an incomplete and misleading picture of the operations of the TCO Tolling Customer Ombudsman and its predecessor in title, the Tolling Customer Ombudsman. The submission maker is aware of this as a result of information previously provided by the Tolling Customer Ombudsman.

I draw attention to the fact that the Tolling Customer Ombudsman and the submission maker also provided submissions to the NSW Legislative Council Parliamentary Committee into Tolling and were subject to examination by the Committee.

Further in 2016, the submission maker, without any discussion with the established Tolling Customer Ombudsman or the toll operators, registered the Tolling Customer Ombudsman as a business name and created a website in competition to the established Tolling Customer Ombudsman service. It offered a dispute resolution service which had no arrangement with the toll operators or authority to make decisions that were binding on the toll operators.

The situation was not satisfactory as there was potential for some toll road users and toll operator customers to be confused, and this proved to be the case. This was significant as toll operators were bound under its contract with the established Tolling Customer Ombudsman to advise users or customers of the existence of the established Tolling Customer Ombudsman scheme and the fact that they would be bound by the Tolling Customer Ombudsman's decisions.

Legal action was taken with the ultimate outcome that the established Tolling Customer Ombudsman changed its title to the current title TCO Tolling Customer Ombudsman to prevent ongoing disruption and confusion. The TCO Tolling Customer Ombudsman has continued to use the acronym of TCO, its email address and logo to assist customers with complaints.

## The System

The TCO Tolling Customer Ombudsman (TCO), as were its predecessors in title the CityLink Customer Ombudsman, the Transurban Customer Ombudsman and the Tolling Customer Ombudsman, is a voluntary alternate industry dispute resolution system designed to assist the toll road users and customers of toll operators that agree to be bound by the Ombudsman's decision.

The changes in title coincided with expansion of the Ombudsman's jurisdiction and coverage throughout Australia since its inception in 2004. Currently CityLink, EastLink, E-way/M5 South-West Motorway, Go Via, Roam and Transurban Linkt tolling operations throughout Australia fall within the jurisdiction of the TCO.

Importantly, toll road users or customers who have complaints are not bound to use the TCO system and can access other avenues for relief, where applicable, such as Federal regulatory authorities, State, Ministers of Transport, Parliamentary representatives, Courts, State Ombudsmen and State Consumer Affairs Departments.

If they choose to use the TCO, as in all industry dispute resolution schemes, it is at no cost. Similarly to all Ombudsman schemes such as the Financial Ombudsman Service or the Credit Ombudsman Service, the members of the Ombudsman scheme fund the operations of the service to enable them to be free to consumers. Accordingly, the toll operators fund the TCO service so that it is free of charge to customers and there is no call on the public purse.

The TCO is contracted, through an ABN compliant company Lorimax Pty Ltd, to provide a legally qualified impartial person, experienced in the law and alternative dispute resolution, to seek to resolve complaints fairly and efficiently, having regard to the law and good industry practice. I have held the role since inception.

The complaints may be resolved by way of conciliation, mediation or arbitration and the parties may negotiate a settlement at any stage. The vast majority of matters are resolved by conciliation.

The TCO will provide written decisions on unresolved complaints upon request. TCO decisions are binding on the toll operators but not the toll road users or customers, who retain all legal rights. Customers can pursue all the other alternative avenues as outlined above to seek relief.

Each complaint received is processed in an orderly way so that it can be dealt with on its merits and in a manner that is fair to both the customer and relevant tolling business. Before the TCO can deal 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.

Each complaint is responded to promptly by the TCO by email or mail. The aim is to have a response to a complaint within 24 hours of receipt. Concurrent with this response, each complaint is immediately transmitted to the toll operator so the customer and toll road operator have the immediate opportunity to resolve the dispute by way of negotiation.

The TCO produces six-monthly reports that detail statistics of complaints relating to the individual toll operators as well as issues of concern raised by customers. Toll road operators have picked up and implemented change over the years in response to these reports. Information relevant to the toll operators in each State is contained in such reports. For further information please refer to the TCO website: [www.tollingombudsman.com.au](http://www.tollingombudsman.com.au).

## **The History and Process**

The Ombudsman system was first established in Victoria in 2004 as the CityLink Customer Ombudsman following the construction of the first private toll roads in that State by Transurban. The system had the normal serviced offices facilities in the Melbourne CBD that included office support, contact arrangements by appointment, telephone, mail, fax and online facilities.

The system, as indicated, was subsequently expanded to cover private toll roads in Victoria, New South Wales and Queensland under the various titles until its current banner of the TCO Tolling Customer Ombudsman.

The system, in the course of its history, has provided dispute resolution services to Transurban and non-Transurban toll operators - ConnectEast (EastLink), Interlink Roads (E-Way/M5 South-West Motorway), Queensland Motorways Limited and BrisConnections, prior to the latter two toll road operations being acquired by Transurban.

The TCO is assisted by a Deputy, General Manager and administrative arrangements responsible for telephone contact on a free 1800 number and mail and fax collection. The TCO has post box addresses in Victoria and Queensland.

Personal appointments in each State can be made if required but only a handful of such appointments have ever been sought over the years. Experience has shown that matters are resolved without the necessity of appointments after a complaint form has been lodged and exchanged with the toll operator.

The TCO receives well in excess of 90% of complaints by email, with the balance by mail or fax from customers who do not have access to the internet. The TCO receives referrals from State Ombudsmen and Consumer Affairs Departments on behalf of toll road users and assists Legal Aid bodies. The Ombudsman has handled approximately 7,000 complaints since inception.

Tolling operators, by way of regulatory or administrative arrangements, utilise State Government motor vehicle registration agencies for the purpose of establishing the ownership of vehicles and other bodies, such as SPER (Qld) and Civic Compliance (Vic), for the purpose of outstanding toll collection.

The conduct of such bodies is subject to the particular State Ombudsman and not the TCO, which does not have jurisdiction over State Government agencies. However, the TCO will consider complaints where a toll operator has been at fault and this led to unfairness in the toll collection process by the agency.

The TCO also does not have jurisdiction over the level of tolls or administrative fees charged by toll operators fixed in consultation with the State Government. However, the TCO does accept complaints in respect to charges and can assist by negotiating a reduction in instances of hardship or where there may have been some fault on the part of the toll operator.

## **ANZOA and Independence of the TCO**

### **ANZOA**

By way of a preliminary background to these issues, as indicated, the TCO was established in 2004 as the CityLink Customer Ombudsman Victoria. I was the National Panel Chair of the Financial Complaints Service (FICS) (a predecessor of the Financial Ombudsman Service) at the time and was

approached by representatives of Transurban to set up an independent dispute resolution service for CityLink.

The FICS Board was not opposed to my providing a scheme and service as it was part of the philosophy of establishing alternative dispute resolution bodies. I continued my role as the TCO under its various titles until I retired as Ombudsman from the Financial Ombudsman Service in mid-2016.

I, as National Panel Chair of FICS, was well aware of ANZOA's existence charter. FICS was an early member of ANZOA. ANZOA is not a regulatory body but a grouping of Ombudsmen that sought to set standards for Ombudsman schemes following its establishment in 2003. It is not obligatory to be a member of ANZOA.

I decided that due to the narrowness of the jurisdiction, the CityLink Customer Ombudsman should not be established as an ANZOA compliant body at the time.

Despite this, the ANZOA principles informed the basis of the CityLink Customer Ombudsman scheme. The principles have continued to inform the operation of the TCO as a voluntary dispute resolution scheme, funded by the toll operator, to assist toll road users or customers have their complaints resolved fairly, efficiently and free of charge.

### ***Independence of the TCO***

Independence is the hallmark of any Ombudsman scheme. Currently all private toll operators in Australia contract with the TCO for it to provide an independent service in which it was guaranteed that there be no conflict of interest in decision-making. The arrangements involve an omnibus contract with all the toll operators to ensure uniformity together with compliance with mutual obligations and individual contracts between the TCO and each toll operator.

The contracts provide a guarantee of independence, a fixed tenure and a set payment schedule that is not dependent on the volume of complaints brought to the scheme. I have also always abided by the practice of not being solely dependent on the income derived from the TCO to curb any criticism on grounds that there is a bias in favour of toll operators.

Ultimately the actual independence of any Ombudsman depends on the integrity of the person holding the position. However, I am cognizant of the perception that there still may be a bias and so there is a need for change to meet community expectations.

The TCO is currently changing its governance structure to bring it akin to the recommended ANZOA structure. However, from my experience as an Ombudsman in an ANZOA approved body, this will not eliminate accusations of industry bias from persons who are not satisfied with an outcome from such Ombudsman schemes.

### **The Future**

The toll operation industry will continue to require an independent Ombudsman system that provides an efficient, fair and effective dispute resolution service for toll road customers and users, free of charge and at no cost to consumers or Government.

There currently is an issue in relation to the impact that the collection of unpaid tolls is having on the administration of certain State Courts and persons in hardship, which needs attention.

This may require an expansion of the role and jurisdiction of the TCO. The TCO could accommodate this but it would have to be done within its charter of being fair to both parties to a complaint. This would require an examination of all the circumstances be done within the understanding that the overwhelming majority of toll road users comply with payment obligations and, other than in exceptional circumstances, it is not essential for motorists to use toll roads for travel and incur toll fees.

In this context, toll operators should examine their tolling systems and debt recovery processes. It is my understanding that Transurban has already commissioned an independent process examining issues arising from debt recovery.

I have attached copy of my CV and of a PowerPoint presentation I recently made at the NeTC 2017 Conference by way of information.

Please do not hesitate to contact me for further information.

Yours sincerely,



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

Attachments:

- Michael Arnold – CV
- NeTC 2017 Presentation



## **MICHAEL ARNOLD, LLB Dip Pub Pol**

### **CURRICULUM VITAE**

- Barrister and Solicitor of the Supreme Court of Victoria
- Foundation Partner – Arnold Thomas & Becker (Solicitors)
- 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
- 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
- Part-time Legal Member of the Medical Practitioners Board of Victoria – 2001 to 2008
- National Referee, Alternate Panel Chair and Adjudicator – Insurance Ombudsman Service – June 1996 to November 2003
- National Panel Chair – Financial Industry Complaints Service – November 2003 to June 2008
- National Panel Chair/Ombudsman – Financial Ombudsman Service – July 2008 to June 2016
- TCO Tolling Customer Ombudsman – September 2004 to present
- Independent Claims Assurance Expert – July 2016 to present

#### Other positions held:

- 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, Calperum Trust
- Board of Management of Australian Institute of Public Safety

July 2017



# **Independent Resolution of Toll Road Disputes**

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

May 2017



# The TCO Tolling Customer Ombudsman

- What is an Ombudsman?
- What is an Industry Ombudsman?
- History of the TCO Tolling Customer Ombudsman
- Role of the TCO Tolling Customer Ombudsman
- Six-monthly Reviews





## Recent TCO Tolling Customer Ombudsman Statistics

Year	Bris-Connections	CityLink	EastLink	Interlink Roads	Go Via	Roam	Roam Express	TOTAL
2014	63	295	87	-	390	76	41	952
2015	99	289	91	-	799	108	69	1455
2016	43	209	97	25	681	100	105	1260
2017 TD	-	59	41	15	175	37	30	357

\* Figures taken from TCO Tolling Customer Ombudsman website



## **Common TCO Tolling Customer Ombudsman Complaints**

- Account management
- Billing and tolling
- Service
- Damage to vehicles
- Infrastructure/traffic management
- Vehicle classification
- Website



# TCO Tolling Customer Ombudsman Issues

- Communication
- Efficient and user friendly technology
- Motor vehicle registration
- Relationship with law enforcement agencies
- Account problems
- Customers with financial difficulties



## The Future

- Cost efficient travel
- Modes of toll road travel
- Methods of communication and payment