

DECISION

Background

- 1 The complainant, Mr MC, made a complaint to the Tolling Customer Ombudsman (TCO) on 23 August 2016 via the online complaint form:¹

“Please give details of your complaint:

Change of vehicle classification of my Falcon ute. Eastlink have determined that it’s an LCV according to the highest government body yet the near identical commodore ute is not. This is false. Vehicle standard (Australian Design Rule-Definitions and Vehicle Categories) 2006: 4.5.5 classify both Falcon & Commodore as Category NA.

What happened following your complaint to the tolling business?

I complained in person and was fobbed off by 3 staff sighting the classification has been incorrect since 1998. An internal review was raised – see attached. The Cab is not detachable from the chassis on a Falcon ute.

What do you want to happen for your complaint to be resolved?

Return the Falcon to its correct classification ie: same as Commodore ute.”

- 2 On 24 August 2016 the TCO acknowledged receipt of the correspondence and advised Mr MC as follows:

“I acknowledge receipt of your email.

The Tolling Customer Ombudsman (TCO) is an impartial person appointed to help customers of CityLink, EastLink, E-way, Go Via, M5 South-West Motorway, Roam and Roam Express tolling businesses, which fund the TCO service, resolve complaints fairly, efficiently and free of charge. The complaints may be resolved by way of conciliation, mediation or arbitration and the parties may negotiate a settlement at any stage. TCO decisions are binding on these toll operators but not the customers, who retain all legal rights.

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 your complaint, you must have:

- (a) first lodged a formal complaint with the relevant internal customer resolutions group;
- (b) (i) have either received a negative response to that complaint; or

¹ All parties’ submissions used in this Decision are quoted verbatim

- (ii) allowed the complaint to be resolved through the relevant internal customer resolutions group.

However, I must point out that I do not have jurisdiction over the classification of vehicle and the level of fees charged by toll operators as a consequence of the classification, as they are fixed in consultation with the State.

The tolling classifications have not changed but the toll operator is correcting the class that has been previously assigned from Cars to Light Commercial. Relevantly, the use of a vehicle for commercial or personal purposes does not determine the classification of the vehicle. Details of classifications can be found in the State Gazette.”

3 Mr MC responded that day:

“There seems to be some sort of misunderstanding. I am fully aware that Transurban are allegedly “rectifying” a pre-existing classification issue, I have also supplied the email chain to and from Transurban. This issue is in regards to the classification of the Ford Falcon Ute built post 1998 and nothing else you have raised.

Once again, the change is factually incorrect. I have supplied you with the relevant information from the peak Governing Body of Australia which clearly identifies both the Holden Commodore ute and the Ford Falcon ute as being in the same “goods Carrying’ class, clearly identified by the NA classification given to both vehicles to comply with Australian Design Rules (photos supplied). This has not changed at any point, meaning Transurban have no reasonable grounds to alter the classification.

To clarify any further confusion, my complaint is only in respect to the classification of the vehicle and no other potential issue you have raised in your reply.

I wish to have this matter escalated to your superior.”

4 On 25 August 2016 Mr MC again emailed the TCO:

“There seems to be some sort of misunderstanding. I am fully aware that Transurban are allegedly “rectifying” a pre-existing issue, I have also supplied the email chain to and from Transurban. This issue is in regards to the classification of the Ford Falcon Ute built post 1998 and nothing else.

Once again, the change is factually incorrect. I have supplied you with the relevant information from the peak Governing Body of Australia which clearly identifies both the Holden Commodore ute and the Ford Falcon ute as being in the same “goods Carrying’ class, clearly identified by the NA classification given to both vehicles to comply with Australian Design Rules (photos supplied). This has not changed at any point, meaning Transurban have no reasonable grounds to alter the classification.

To clarify, any confusion, my complaint is only in respect to the classification of the vehicle and no other potential issue you have raised in your reply.

If you are not in a position to successfully mediate, I want the matter referred to your superior immediately.”

5 On 26 August 2016 the TCO advised Mr MC as follows:

“I acknowledge receipt of your email.

As I have indicated the classification of vehicles it is not within my jurisdiction.

CityLink has explained the situation to you in respect to the re-classification as it is required to do from my perspective.

You may take the matter up further with your local Member of Parliament or the Minister of Transport for clarification.”

6 To which Mr MC replied:

“I’m fully aware the classification of vehicles is not within your jurisdiction, this does not exempt you from dismissing the fact that the classification of both the Holden Commodore Ute and Falcon ute as per Federal Government regulations is identical. It is simply irrefutable.

Certainly Eastlink not Citylink have attempted to explain their justification, sighting vehicle classifications are based on Federal Government categories, namely compliance or ADR legislation. I have proven to you unequivocally that both vehicles are in the identical category. Once again, irrefutable fact.

As I stated earlier, I wish this matter passed on to your superior if it beyond your capacity. In fact, it’s impossible to dismiss the fact you are not truly independent when you are funded by the toll operators.

Once again, please refer the matter to your superior for review immediately.”

7 On 27 August 2016 the TCO emailed Mr MC:

“I have your email. Let me make the following points.

Firstly the TCO is independent body funded by toll operators, which agree to be bound by its decisions within its powers and jurisdiction, so services can be provided free of charge to toll road customers like yourself.

Secondly I am the TCO and have no superior within the organisation.

Thirdly the fact that the TCO does not have jurisdiction over the issue you raise does not deprive you of any legal or other right to pursue your complaint in other forums.

I have advised you of my recommended course for your assistance and I cannot take the matter further.”

8 Mr MC replied the same day:

“Which of the following TCO obligations have you achieved successfully and completed? I believe you’ve performed less than 50% of your required obligations.

The TCO's approach

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 tolling operator.

After receiving an enquiry or complaint and privacy consent form (if applicable), the TCO will:

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

9 On 28 August 2016 the TCO emailed Mr MC:

“The TCO has performed its obligations, in the limited circumstances in which it does not have jurisdiction to deal with this matter. Similar to a court, a tribunal or any dispute resolution body, which has limits on its jurisdiction, I cannot invest myself with powers outside of my jurisdiction

I will provide a written decision on the issues, if you require.”

10 Mr MC replied to the TCO:

“I still don’t understand how this is considered a ‘limited circumstance’ as you describe it. I’ve provided enough evidence to prove the fact that two near identical vehicles, which in fact are Categorised by Federal Government as being the same for registration purposes are deemed different by Transurban for tolling purposes.

You’ve not provided and transcripts between the TCO and Transurban on this matter to date.

I do require a formal response from the TCO. All communications and formal decisions are required as supporting evidence.”

11 On 29 August 2016 the TCO sought a response from CityLink:

“Customer Relations,

Can you please provide a formal response in this matter?”

12 CityLink replied to TCO:

“Can you please forward copies of the original correspondence that [Mr MC] sent through to you in relation to this matter on 23 August 2016, as I am unable to locate an account in this customer’s name.”

13 On 30 August 2016 CityLink advised the TCO as follows:

“Thank you for providing the attached copy of the e-mail with the attached documents.

It appears that [Mr MC] is a Breeze customer and EastLink have already responded to the customer, as per their e-mail sent to [Mr MC] on 15 August 2016, as attached.”

14 Subsequently, the following exchange of correspondence took place:

TCO to Mr MC:

“I have endeavoured to explain to you I cannot go beyond the limits of my jurisdiction. I cannot go outside of them any more than I have.

I understand that you are an EastLink, not CityLink customer and the have provided a response to you on the issues you have raised.”

Mr MC to the TCO:

“Please provide an official response on a TCO letter head and signed. You have already asked once and not supplied said document.

Your replies will form crucial evidence in the matter.”

TCO to Mr MC:

“I will provide a formal decision.

My decisions are always signed in order for them to be decisions.

I understand from my investigations that you are a customer of Breeze and EastLink has provide you with a substantive response to your complaint. Could you confirm this and explain why your complaint is about CityLink, if this is the case.”

Mr MC to the TCO:

“Please re-read my initial complaint.

You introduced Citylink into the conversation, clearly there is confusion. My complaint as I initiated and provided a chain of emails to was with **Eastlink**. Did you not read my initial attachments?”

Discussion

15 The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators, which fund the TCO, and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to

look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.

- 16 This is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the Customer Service Agreement, on a toll road operator's website or in other material that is available to customers, whilst the applicable legislation can be accessed through Government websites.
- 17 The TCO is not a judicial body and does not have punitive powers. The TCO, when making a decision, does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. It must act within the limits of its jurisdiction in doing this.
- 18 The TCO only has jurisdiction over the conduct of toll road operators within the terms of the agreement between toll operators and the TCO. It cannot determine matters in relation to allegations against other outside bodies, such as Government agencies like SPER or Civic Compliance Victoria.
- 19 There has been correspondence between EastLink and Mr MC. I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.
- 20 I have explained to Mr MC that the TCO cannot determine matters in relation to the classification of motor vehicles, which determines the tolls payable for such vehicles travelling on toll roads. The TCO would be acting outside of the power that it has within the agreement with toll road operators to make decisions in respect to the fixing of tolls or fees.
- 21 EastLink has explained the rationale for the current classification change to Mr MC. I also have attempted to explain same to him. I cannot take the matter any further and advised Mr MC of the alternative options available to him.

Determination

- 22 I cannot uphold Mr MC's complaint but reaffirm that my decision is not binding on him and that he can seek relief in any other forum.

Michael Arnold
Tolling Customer Ombudsman

Dated: 22 September 2016