

GOVERNMENT INFORMATION (PUBLIC ACCESS) AMENDMENT (SYDNEY MOTORWAY CORPORATION) BILL 2016

Bill introduced on motion by Ms Jodi McKay, read a first time and printed.

Second Reading

Ms JODI MCKAY (Strathfield) [12.27 p.m.]: I move:

That this bill be now read a second time.

The object of this bill is to amend the Government Information (Public Access) Act 2009 to provide that information held by the Sydney Motorway Corporation may be accessed under that Act. Whilst I am pleased to introduce this bill I thank the shadow Attorney General for his assistance on this important matter. It is shameful that the Government has forced Parliament into this situation. It signifies a Government that is prepared to do whatever it takes to avoid public scrutiny of the largest project in New South Wales, paid for by taxpayers—WestConnex. The bill seeks to address the disturbing situation in which the Parliament and the people of New South Wales find themselves unable to ask fundamental questions about a project that is expensive, controversial, and subject to budget blowouts and cost overruns.

<16>

In establishing the Sydney Motorway Corporation as a so-called "private corporation", the Government places it beyond the scrutiny of a regular government agency and, therefore, beyond the parameter of the *Government Information (Public Access) Act*—or *GIPA Act*. To try to conceal a \$17 billion project from public scrutiny is a perilous path that sets a dangerous precedent for New South Wales and this Government. Parliament must act swiftly against such measures, and this legislation will ensure that the WestConnex project remains accountable to the people of this State. The "Report on the Operation of the Government Information (Public Access) Act 2009—2014-2015" was released yesterday. This report from the Information and Privacy Commission slams the Government for the declining rates of release of information. This Government has been the least transparent in years. The Information Commissioner states:

In 2014/15 total information release rates declines to 69% from 80% in 2010/11. The IPC is examining the factors affecting this decline.

In reference to applications for information made by members of the public, the Information Commission also stated:

There has been an overall decline in information release in response to applications.

That is not all. Increasingly, the applications that are granted provide only partial information. The Information Commissioner states:

In 2014/15, 27% of all outcomes granted access in full, a decline from a high of 55% in 2010/11... This gap between access granted in full and in part outcomes, is attributable to the government sector.

WestConnex is the largest infrastructure project in Australian history, and is being built by a government with the worst record on accountability and transparency. This bill will help hold the Government to account, will ensure best practice in governance, and will make sure that every public dollar spent on this project delivers the maximum benefit to the people of New South Wales. In amending the GIPA Act, the Australian Labor Party will bring the Sydney Motor Corporation in line with public expectations about transparency and scrutiny of the projects for which the people of New

South Wales are paying. The Labor Party is on the side of communities of interest that have a stake in the WestConnex project, from the daily commuters in Western Sydney, to the residents and businesses of the inner west and inner city, and to the taxpayers of this State, who are footing the bill. Labor will not tolerate the shadowy scheming of the Baird Government.

Members are no doubt familiar with the nasty, brutal and short history of the Sydney Motorway Corporation and its relationship to WestConnex and the WestConnex Delivery Authority. The WestConnex Delivery Authority was established to oversee the construction and delivery of the project, while the Sydney Motorway Corporation, which was in receipt of government money, was responsible for organising its finance. On 3 June 2015 the media reported that the financing body was attempting to influence the planning of the project, and the WestConnex Delivery Authority found itself increasingly unable to exercise sovereignty in its operations. Of course, a bureaucratic turf war erupted between the money men, who are unaccountable to the public, and the WestConnex Delivery Authority, which—despite its failures and inadequacies—still had to account for its actions to the people of New South Wales. The Government's solution was a purge of the WestConnex Delivery Authority, and a coup delivered all power and control to the shadowy and secretive Sydney Motorway Corporation.

The Government obviously liked the Sydney Motorway Corporation because it was placed beyond the normal checks and balances of government agencies. A merchant banker or a corporate lawyer wrestling with a private investment no doubt would have liked it also. Its structure is designed to frustrate attempts by the Parliament, the press, ordinary members of the public and other interested parties to hold the Government to account with regard to this enormous public project. Therefore, we had the disturbing situation in which the Government—which did not have a business case for WestConnex and which had a budget blowing out week to week—decided to shut down transparent government and throw out the rule book when it came to accountability. All members should be aware of the deficiencies of this project and why transparency is so important.

Just last week, the City of Sydney released a report from SGS Economics and Planning entitled "Strategic Review of the WestConnex Proposal: Final Report". It is a scathing report, which states that the business case is "confused and contradictory". It rightly identifies that, despite the widening of the M4 occurring and approval being granted for work to proceed on the M4 East, the project is still not rated by Infrastructure Australia "as ready to proceed". Then of course we have the M4 East tunnel, which will now be constructed under more than 500 houses in my electorate of Strathfield. The Government promised that the tunnel would run under Parramatta Road. It also indicated that it would not be moved to support high-rise development on Parramatta Road. However, the environmental impact statement released last year clearly states that the tunnel location will allow development and increased population growth. In addition to this, we have the Government's promise that traffic on Parramatta Road will be reduced. However, the environmental impact statement indicates that traffic will increase on many parts of the road.

This project is riddled with inexplicable and counterintuitive modelling, with overestimated benefits and underestimated project and broader societal costs. Anyone interested in how a government should not go about building infrastructure in Australia should read the SGS Economics and Planning report, which was released this month. A reasonable person would think a government faced with these ongoing problems of poor planning, amateur delivery and shonky figures would at least try to be upfront with the people of New South Wales. Not this Government: The Baird approach is to lock away the truth, to conceal the facts, and to do whatever it takes to privatise and hide the proper functioning of government from public oversight. Some of the most senior members of this Government—the Premier, the Treasurer and the Minister for Roads, Maritime and Freight—decided that their decisions, their actions and their structures are best placed beyond reproach and scrutiny.

I have witnessed some shocking undertakings in this State, but the moment one realises that an entity responsible for spending \$17 billion of public money is now beyond the reaches of public accountability, it rocks one to the core. The desperation, the secrecy and the arrogance should not and cannot be tolerated by this Parliament. This act by the Baird Government reflects its arrogance and contempt for the public. The Minister for Roads, Maritime and Freight—a stranger to the inner west and the communities affected by this project—epitomised this approach by implying that the concerns of constituents are "illegitimate" and held by, as the Minister called them, "latte-sipping elites", and passing off this bill as a piece of political expediency. It is this arrogance that has

contributed to the gross mismanagement of WestConnex and well-documented failures that I have referred to in this place many times. It is precisely because the Government's delivery of this project has been so riddled with flaws that the maximum amount of information must be available for scrutiny. That is what is at stake and what is addressed in this bill: the ability of the media, the community and Parliament to hold this Government to account and to ensure the best possible outcome for the people of New South Wales.

With a project of this size and cost, and given this Government's appalling track record in project management, scrutiny and transparency are of the utmost importance. When former Premier Nathan Rees introduced the Government *Information (Public Access)* Bill in this place in 2009, he made clear the intent of the legislation. It was designed to ensure that information could be withheld if, and only if, there was an overriding public interest against disclosure. The public interest test in the case of WestConnex is overwhelmingly in favour of disclosure. In introducing the bill, Premier Rees declared that the "public's right to know must come first". He stated:

Agencies that engage private sector contractors to provide public services on their behalf must ensure that they, and therefore the public, have a right to access relevant information about the delivery of those services.

Indeed, the public does have a right to know. The communities that the construction and operation of WestConnex will impact—that is, residents and homeowners in my electorate of Strathfield, and the electorates of Prospect, Granville, Londonderry, Blacktown, Mount Druitt, Kogarah, Sydney, Balmain, Newtown, Summer Hill, Drummoyne, Heffron, Parramatta and Rockdale—have a fundamental right to know.

<17>

Not only affected communities but also the motorists of Western Sydney, who will be slugged toll after toll after toll just to use the road, have a right to know. What many people do not realise is that this Government intends to implement a toll on the M4 within the next 12 months that would see Western Sydney drivers pay more than \$2,000 a year for a road that is currently free—and that toll will be in place until 2060. Under the change, motorists using the M4 will have to pay up to \$4.21 each way to drive on the M4 between Parramatta and Homebush. That equates to \$42 a week and \$2,189.20 a year for motorists travelling to and from work each day.

In addition, a toll of up to \$3.65 will be imposed on the M4 East from Homebush to Haberfield when it is completed in 2019. Even worse, the toll will increase by at least 4 per cent a year, which is well above inflation rates. It is important to note that NSW Labor abolished the previous \$2.75 M4 toll in 2010. Now it is coming back. We know that many motorists will choose to use the un-tolled Parramatta Road as an alternative to the tolled M4 and M4 East. This is called toll avoidance, and it is something the Government does not like to talk about. The recently released business case indicates the average weekday traffic on Parramatta Road will be greater on five of the 14 sections of the road. Also of concern is the manner in which this Government is going about the acquisition of property required for the WestConnex project. For the M4 East tunnel alone, more than 180 properties are being acquired and many of these matters are ending up in the Land and Environment Court.

The compulsory acquisition process as it stands—and I have said this publicly a number of times—is fundamentally flawed. Labor will have more to say on this issue in coming weeks in this place. The SGS report also makes the point that a fundamental aim of WestConnex is to improve access to the airport and the port. We have seen in recent weeks why improving access to the airport is important. However, the Government has admitted that it has no idea how the so-called "Sydney gateway" will work. While the enabling works will be constructed, there is no explanation as to how the Sydney gateway will reach the airport or the port. In fact, the Government has gone completely silent on this issue. The only time it wants to talk about airport traffic is on the radio or in the newspaper when it has to defend its lack of action on this issue.

By establishing the Sydney Motorway Corporation in the manner that it has, the Government is stating one of two things: either it does not believe the public has a right to know or it has something to hide. Perhaps, at worst, it is both of those things. But I do not arrive at this conclusion on my own. The Minister for Planning, the member for Pittwater—a man I respect and consider to be thoroughly

decent—once quoted in this place the great philosopher Jeremy Bentham, who said:

Secrecy, being an instrument of conspiracy, ought never to be the system of regular government.

If this Government gets an appetite for this sort of behaviour, which of its other projects will disappear into the hands of "private" corporations—corporations that are in every sense of the term "public" but that have been shielded from scrutiny by this trick of regulation? For instance, are we to have a "NSW Police Force Corporation", a "NSW Health Corporation" or a "NSW Schools Incorporated"? Will the entirety of the organs of government be made private and, by stealth, immune to examination? This may well become the system of regular government under members opposite—a government of "all inside and no outside", to quote another muse of the member for Pittwater. Members are well entitled to ask: Where will it end? The placement of the Sydney Motorway Corporation beyond the parameters of the GIPA Act has serious repercussions for the culture of Government in New South Wales. Why else then would the member for Willoughby during the passage of the GIPA Act in 2009 declare:

It is in the interests of every member of this Parliament to accept the importance of the intent of the law, not just the black and white letter of the law. Who knows on which side of the House they will be sitting in the future?

It is shameful that Parliament now needs to remind the Treasurer of her words and sentiments expressed in this House. Indeed, while the Treasurer may have pondered at the time on which side of the House she may sit in the future, I wonder whether she ever considered what she would do if it was put to her that she could control an entity beyond public scrutiny. Her decision reflects someone now willing to connive with the Premier and the Minister for Roads, Maritime and Freight not just to defy the letter of the law but to grievously wound its spirit. The Treasurer, speaking in this place in 2009, sought to take the moral high ground with the passage of the GIPA legislation. She resounded with lofty words and sentiment. The Treasurer stated:

It is not enough simply to change the law; the Government must change the culture.

They were grand words but now, six years later, Parliament is forced to try to hold her and the Government to account over one of the most sinister shifts in transparency and accountability that this State has ever seen. And so I turn now to the specifics of the bill. The Government Information (Public Access) Act 2009 does not currently make provision for a request to be made for information for a private company, and justly so. The Sydney Motorway Corporation is currently construed as a private company, but members on this side of the House know that that is a furphy. Its sole shareholders are the Treasurer and the Minister for Roads, Maritime and Freight. It is in receipt of gigantic sums of public money. It is delivering a public service, a project of the Government of New South Wales. It is, for all intents and purposes, a government agency. Yet the Government has schemed and devised so that the Sydney Motorway Corporation is now immune to the ordinary scrutiny expected of a public agency. This bill will quickly right that wrong. It will do so simply and should not tax the intelligence or moral compasses of members opposite. The bill inserts, after clause 2 (1) (f) of schedule 4 of the Act, the phrase:

the Sydney Motorway Corporation Pty Ltd and any of its subsidiaries, or

This simple amendment—12 additional words—will restore democratic accountability and public scrutiny to the entire WestConnex project. It is extraordinary that the Opposition and Parliament are required even to consider this bill. It is a result of the Government's characteristic arrogance and secretiveness over WestConnex. The machinations behind the establishment of the Sydney Motorway Corporation and the internal coup that stripped a public agency of power and control over delivery of the project betrays a government that believes it is beyond public reproach and accountability.

This Government has treated the public with contempt. It is of grave concern that it thinks it can

engineer entities that subvert well-established democratic principles, and it is something this Parliament should never, ever accept or tolerate. Information is power. Any government that deliberately seeks to withhold information for no public benefit betrays the confidence of the people and tramples upon hard-fought democratic principles underpinning society. The Government's sneakiness and its furtive machinations in transferring control of public money to a private entity outside the GIPA Act places us on a slippery slope, and it needs to stop right now. It is a dangerous viewpoint immersed in arrogance but betraying a lack of confidence in the merits and the management of the project.

<18>

Above all, it is a dangerous precedent that attempts to privatise the functioning of government and its accountability to the people. Before members in this House were made Ministers, parliamentary secretaries, chairs of committees or shadow office bearers and the like, we were members of Parliament who were elected to represent constituents and, importantly, to ask questions of government and about expenditure of the public purse. The ability to ask questions, to have free press and citizenry, is a fundamental tenet of our democracy. I remind everyone in this House that if the public cannot ask simple questions about the direction, decisions and expenditure of public moneys, we weaken democratic principles and betray the confidence of the people who have elected us to represent them in this Parliament.

WestConnex is a vast project; it is the largest in New South Wales and it is impacting the lives and futures of many residents. As shadow Minister for Roads, Maritime and Freight and as the member who represents many of those people, I believe I should be able to ask basic questions about the WestConnex project. Providing information to people, whether or not they like the content, treats them with respect and gives them some sense of control and understanding as members of our democratic society. But if I, the press, or any other member of the public cannot access any information about public projects other than Government spin, we cannot help those people. We cannot know what our constituents must know and the Baird Government would appear to be content to hide it from us.

This simple legislative change will throw open the doors of the Sydney Motorway Corporation and its Baird Government sponsors to the sunlight of scrutiny and accountability. This bill is an opportunity for the Baird Government to acknowledge that it got it wrong and to easily and quickly put it right. If the Coalition truly believes this, each of its members will vote for this bill. They will vote for this bill if they think the member for Davidson was truthful in debating the Government Information (Public Access) Act in 2009 when he said:

The ... Coalition believes that the community has the right to openness, accountability and transparency when it comes to government decision making and information.

Labor members back the bill because we believe in a government that is open, transparent and accountable. We believe in a government that is willing to stand up for the interests of its constituents and one that will defend its actions because it knows what it is doing is right. If the Government fails to pass the bill, its conspiracy to conceal crucial information will be made plain and members opposite will be exposed for rank hypocrisy. I commend the bill to the House.

Debate adjourned on motion by Mr Chris Gulaptis and set down as an order of the day for a future day.