

# **PORTFOLIO COMMITTEE NO. 2 – HEALTH AND COMMUNITY SERVICES**

**At Macquarie Room, Parliament House Sydney, on Tuesday, 11 April 2017**

## **INQUIRY INTO ROAD TOLLING**

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**CORRECTED PROOF**

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**The Committee met at 9:00 am**

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### **MEMBERS**

The Hon. G. Donnelly (Chair)

The Hon. M. Faruqi

The Hon. J. Graham

The Hon. T. Khan

The Hon. Dr P. Phelps



**The CHAIR:** Good morning, and welcome to the first hearing of Portfolio Committee No. 2—Health and Community Services—inquiry into road tolling. The Committee will inquire into a range of matters relating to tolling regimes in New South Wales, including how tolling contracts are negotiated; the processes for determining how tolls are set, varied and scrutinised; and the opportunity to increase assurances to the public that tolling arrangements represent the fairest possible outcome. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of this land and I pay my respects to elders past and present of the Eora nation and extend that respect to other Aboriginals who may be present today or joining us on the internet. Today is the first of three hearings for this inquiry. Today we will hear from the toll road operator Transurban, representatives from several Government agencies, the Transport Workers Union, the Tolling Customer Ombudsman and Toll Redress. I need to clarify absences from the hearing today. A schedule of attendees was published on Friday, which stated that Mr Dennis Cliche, chief executive officer of the Sydney Motorway Corporation, would be present today. He confirmed his acceptance to give evidence on 4 April. However, on 10 April at 11.59 a.m., I received a letter from him cancelling his attendance at today's hearing, so Mr Dennis Cliche will not be available to give evidence today.

Before I commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. We are expecting a large number of people in the public gallery today. I ask members of the audience to respectfully observe the discussions today. Please be aware that today's hearing is not an open forum for comment from the floor. Audience interruptions make it difficult, particularly for witnesses, to communicate with the Committee. If there are interruptions from audience members, I may stop the hearing and ask for quiet or for those making a noise to please leave the room.

In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, so I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through the Committee secretariat. To aid the audibility of this hearing, I remind Committee members and witnesses to speak into their microphones. In addition, several seats have been reserved near the loud speakers in the public gallery for persons who may have hearing difficulties. Finally, could everyone turn their mobile phones to silent or off for the duration of the hearing.

**ANDREW HEAD**, Group General Manager, New South Wales Business, Transurban, and

**HENRY BYRNE**, General Manager, Investor Relations and Corporate Affairs, Transurban, sworn and examined:

**The CHAIR:** I begin with some apologies. Two Committee members are unavailable and another participating member is not here today. Today on the Committee we have representatives from the Government, the Opposition and the crossbench. It has been agreed that the respective groups of members will ask questions in twenty-minute blocks. I note that we have received Transurban's submission, submission no. 100, and it has been published on the inquiry's website. This morning the Committee has also been given a copy of a map contained in that submission, which has been reproduced to a larger scale to make reading easier. Would either of you like to make a brief opening submission?

**Mr HEAD:** I do not intend to reiterate what is in the submission but I want to say three quick things. The first is about toll road benefits, which is at the top right-hand side of the page that has been handed to the Committee. The second is to acknowledge that some of the things I am going to refer to are the result of a bipartisan achievement. The third is to try—and this is very much new material on the right-hand side of the document—and put toll roads into the broader context of New South Wales Government service provision. Firstly, life is significantly easier for Sydneysiders as a consequence of the roads that have been delivered over the past 25 to 30 years. Every day 155,000 hours of time is saved by Sydneysiders who use the motorway network. In doing so, \$14 billion worth of benefits have been derived over the past 10 years in economic and social areas and, just as importantly, in environmental areas.

Secondly, I mentioned it was a bipartisan achievement. The map shown in the middle of the handout references the hard work and the difficult decisions that have been made—Labor Governments have delivered five of these projects, and Liberals-Nationals Governments have delivered four of these projects. The question that it is important for us to consider, particularly via the first speaker at this inquiry today, is: Why have governments decided to take this course of action? As the first speaker I thought it was important to try and put that into context, and this is what the right-hand side of this document attempts to do. Governments have very difficult budget allocation decisions to make; they only have taxes, asset sales and user-pays models to deliver services. Unfortunately for all of us, there is no silver bullet here. The alternative, if we are to do nothing in terms of provision of infrastructure via user-pays, is that the city will slowly congest, productivity will fall and the opportunity for citizens will diminish.

To try and illustrate this point we have put forward a fictitious example—and I stress that it is a fictitious example to try and explain the industry. We start with the first column, which assumes that the State Government has a budget of \$100. Governments have to make decisions about how to allocate those funds. The only way to expand that pool of funds is to increase taxes or asset sales. In our fictitious example, the next column proposes \$20 of that \$100 budget is put forward for public transport and roads. In our example we just split that down the middle—half goes to public transport and half goes to roads. Then you get to the roads portfolio, which is the next column. Of that, the Government has to decide how much of the \$10 that has been allocated should go to maintaining existing roads and how much should go to new roads. The only other alternative is available to them is to go back to the original budget allocation of \$100 and argue for more, at the behest of other services, or to consider a user-pays approach, and that is where the last column comes in. Again, we have just put forward a fictitious example to illustrate the point.

In our fictitious example this is where the private sector comes in via a user-pays model. The opportunity here is to leverage the State budget further and to deliver more services. In our fictitious example we assume that \$9 of the \$10 is for construction costs and \$1 is for a return for the private sector for putting that money in and taking the risk. The risks are real. Many of us would remember that the Cross City Tunnel and the Lane Cove Tunnel went into receivership—the Cross City Tunnel twice. Many investors have lost a lot of money. So how do we determine what is an appropriate return? That question is answered by the global capital markets. So investors think about whether they want to invest in ANZ, Woolworths, BHP or Transurban. In the case of Transurban, our investors are predominantly superannuation fund investors—70 per cent of the people who invest in Transurban do so via their superannuation. I would hesitate to guess that more than half of the people in this room are probably investors in Transurban through their superannuation fund.

So how do the funding requirements for the \$10 get met? Basically three decisions need to be made. The first is: What is the opening day toll price? The second is: How fast should the toll go up? The third is: For how long should the toll be charged? When those decisions are made and the \$10 is fully funded, you get the

result shown in the bottom right-hand corner—a fully funded pie chart. If you choose to reduce the toll, if you choose to reduce the rate at which it goes up or if you choose to reduce the time in which you are allowed to pay it, the Committee will see that there is an emerging dark green on the pie chart just to the left of that fully green one. The consequence of that is a government contribution. So we end up going back into the \$100 pool, which is why we have drawn an arrow going up, and the Government then needs to make those difficult decisions again about how it would allocate funds across the finite \$100 it has.

I am hopeful that that provides a very quick introduction about how the sector works, and I think it will be illustrative in answering some of the questions from the Committee. Just to very quickly close, families and citizens of New South Wales benefit from these infrastructure projects being delivered much, much earlier, but the private sector does take a risk. Sometimes those risks materialise and money is lost—as the Committee has just heard from me—more often than not it is in superannuation money. Finally, there is no silver bullet. There is just a series of really difficult decisions here and every one of those decisions impacts upon the budget of New South Wales. I hope that provides a reasonable opening statement. Mr Byrne and I are very happy to answer any questions.

**The Hon. JOHN GRAHAM:** According to the Transurban 2016 annual report, Scott Charlton, the chief executive officer of Transurban, earned \$6,279,037 in 2015-16. Could you confirm for the Committee that that is correct?

**Mr HEAD:** I will have to take your word for it. If you are referencing a document that is publicly available and we are a listed company—

**The Hon. JOHN GRAHAM:** That is correct.

**Mr HEAD:** Then, yes. Mr Byrne, do you wish to add anything?

**Mr BYRNE:** That is right. That is a matter of public record.

**The Hon. JOHN GRAHAM:** Can you outline the funding for the NorthConnex project for the committee?

**Mr HEAD:** Yes. The NorthConnex project was put forward by Transurban as an unsolicited proposal. The way that we are proposing to fund it is via tolls on the new link, and because the tolls on the new link did not cover the full capital cost—if I refer you back to my example on the one-page handout on the right-hand side—further government contribution was required. One of the things that was considered as an alternative to that to fund it to try and get to a point where you have more green in the pie at the bottom—

**The Hon. JOHN GRAHAM:** I just want to confirm the specific funding. Your media release of 2 February says the total project cost is \$2.9 billion.

**Mr HEAD:** Yes.

**The Hon. JOHN GRAHAM:** The Federal and State governments are contributing \$810 million.

**Mr HEAD:** That is correct.

**The Hon. JOHN GRAHAM:** So is it correct that Transurban then is contributing \$2.09 billion? I just want to confirm that.

**Mr HEAD:** It is roughly \$2.1 billion, which is coming not just from Transurban but from two other investors. So we only own 50 per cent of the NorthConnex project. There are three investors in total: us at 50 per cent, Canada Pension Plan and Queensland Investment Corporation.

**The Hon. JOHN GRAHAM:** And in return for that \$2.09 billion, or \$2.1 billion, Transurban is to receive tolls from the NorthConnex to 2048, extension of the Westlink M7 concession to 2048 and an increase in the Westlink M7 truck toll?

**Mr HEAD:** That is correct.

**The Hon. JOHN GRAHAM:** All up, how much will Transurban make on this deal?

**Mr HEAD:** We are going back to the example that we put forward here to try and illustrate how this sector works. It is a \$3 billion project and we need to recoup the original capital cost of that and then make an appropriate return for the investors. So the funding equation essentially does that. It is no more complex than that. We have tried to illustrate it through this fictitious example, but the principles of NorthConnex and any other project that either side of government has delivered over the last 25 to 30 years, are exactly the same.

**The Hon. JOHN GRAHAM:** I want to talk about this specific project. How much in tolls will Transurban receive as a result of the NorthConnex?

**The Hon. Dr PETER PHELPS:** Surely that is a function of how much volume of traffic goes through, is it not?

**The CHAIR:** Order!

**The Hon. Dr PETER PHELPS:** If there are no cars they will receive nothing.

**Mr HEAD:** I have not calculated exactly how much the tolls will be over that period of time, but I think it is really important at this point—

**The Hon. JOHN GRAHAM:** You must have modelled this deal very closely in coming to the total.

**Mr HEAD:** Absolutely we have, and one of the principles that we look into when we are doing it is the time value of money. So essentially what we have got to do is invest a very large sum of money—\$3 billion—today and most of the returns that come through to recoup that capital investment come through over a 40-year period. So it takes a very long time to get back the original capital investment let alone make a return on it—we are talking a couple of decades. It is a function of the financial modelling and basically what happens is—

**The Hon. JOHN GRAHAM:** I am asking about that financial modelling. I just want to have an understanding of how much profit Transurban is forecasting comes out of this deal.

**Mr BYRNE:** If I could just come in. One way to think about it, and this is certainly how we talk about these projects in general terms, is that the tolls off the new link itself will represent about one-third of the value of the project, which leaves a deficit of two-thirds. Then if you go back to the components you described earlier, a little bit less than one-third will then come from the government contribution and then the residual amount here is related to the M7 concession adjustments that you described earlier.

**Mr HEAD:** And in terms of the profit, the profit is a good question to ask, because there is such a large capital investment upfront and very little cash flow—for the first four years there is no cash flow at all; we are just constructing. So you have a large capital investment with no revenue and so it is not unusual for the first decade or two that these projects make no profit, and that will be the same for NorthConnex.

**The Hon. JOHN GRAHAM:** You must expect this to be profitable otherwise you would not have invested—you have modelled that.

**Mr HEAD:** Yes.

**The Hon. JOHN GRAHAM:** Really it goes to the question about what motorists are allowed to know about what they are paying for this project. That is really the key question.

**Mr HEAD:** That probably goes back to the question around transparency. There is a really important section of our submission on page 32, which I think really clearly articulates the process that was followed to assess the questions that you are referring to. If you go to page 32 you can see that there are very clear guidelines of the New South Wales Government, clear steps around consistency of approach, rigour, transparency and value. Then there is a probity adviser involved, and that probity adviser is charged with the responsibility of monitoring and reporting on those activities, those discussions, to the Chair of the steering committee. The steering committee consists of intergovernmental department heads from Treasury, INSW, Department of Premier and Cabinet, and in our case Transport and Roads, in this space; then their recommendation, with the probity adviser's advice, goes up to the infrastructure committee of Cabinet; then the infrastructure committee of Cabinet makes a recommendation to the Cabinet—so there is a number of very senior elected officials and public servants who consider all of these issues—and then, finally, after the deal is agreed and supported by Cabinet, a contract summary is published on the Treasury website, and often times after that the Auditor-General does a review.

**The Hon. JOHN GRAHAM:** So one of the issues with the process you are describing is that many of the people around that table are agencies involved in the process and they will appropriately take the view that there is no-one independent who will take a step back and assess is this a good deal for the public. What attitude would Transurban take having someone at the table in that way, such as, for example, IPART, looking at the deal and saying this is in the public interest.

**Mr HEAD:** Thank you for the question. Governments of many persuasions over many, many years have considered these opportunities to provide more infrastructure using the user-pays model. They are challenging decisions and governments are elected, as we understand it, to represent the people, to make those

decisions on their behalf. The process has worked very, very well and delivered amazing outcomes for the people of Sydney. I referenced 155,000 hours per day of travel time savings. These things have been developed and delivered as a consequence of these decisions made by government.

In terms of the question around IPART, IPART, as we understand it, is a regulatory body that is charged with the responsibility of regulating prices for things like water. Water, if it were not regulated by IPART, would be a true monopoly asset because any one of us who wants to access water has only one opportunity to do so: you turn the tap on in Sydney and it is delivered by Sydney Water. If they had unfettered access to price increases, then they would have what we call a monopoly. They do not; they are regulated by IPART. Companies like Transurban who have toll road concessions are regulated through an entirely different mechanism.

So we have a concession deed that was agreed by that government process I tried to articulate upfront, and all of the pricing arrangements for those toll roads are very tightly prescribed at the day the deal is signed; there is no ambiguity about what will happen and how those prices will increase. As I drew to your attention, the process, in the early part of this presentation, there is—

**The Hon. JOHN GRAHAM:** But there is also no-one at the table who can say this is a good deal for the public. We are really relying on the word of the government—governments of either persuasion; this is not a partisan point—or the word of Transurban or whatever company is involved; we are not clear on how much profit is being produced; there is no-one independent who takes a step back and says, "We've looked at the deal, we've looked at the details, this is a good deal for the public".

**The Hon. Dr PETER PHELPS:** Why is government not independent?

**The CHAIR:** Order!

**The Hon. Dr PETER PHELPS:** Why are you making a decision that government is not independent, unless you are asserting a pecuniary interest?

**The CHAIR:** Order!

**Mr HEAD:** The person who is sitting in that process, I guess, other than the elected representatives, who, in a Western democracy are elected to represent the people—and I think they do a very good job of it, those on both sides of Parliament and the crossbench—that is their role, in our view; there is also the custodian of the process, that being the probity adviser. That person is independent, that person is required to opine on the appropriateness of the process, that person gets to observe—

**The Hon. JOHN GRAHAM:** That is about the process not the value. Where do we get to the value of these deals? The process you are describing for NorthConnex was not competitive; it was an unsolicited bid—that is appropriate through the process—you have put in what you regard as a powerful unsolicited bid but it is not competitive. Who looks at that process and says it is good value for money, and what attitude would Transurban take having some more independence in the process—IPART or someone else if there is another alternative?

**Mr HEAD:** We are reluctant to provide advice to government about what they think is the best process. Our role is to follow the policy of the government of the day and to implement our ideas or at least propose our ideas within the rules that are prescribed by government. I would be reluctant to provide too much advice on what the best thing is for government to do, and it is not one side of government or the other, it is all government. That is probably a question best put to government. I go back to the point about assessing value for money. We are all in the business of trying to provide sustainable transport services. Transurban fully supports integrated public transport, and it fully supports investments by all sides of government in more public transport. We believe that cities work best when public transport—be it road, buses, rail, light rail or active transport—all work together effectively. Those decisions around how much value is derived come down to the willingness of the customer to pay and how much tolls should increase and for how long. If you make judgment calls about reducing the call on the user-pays system, it has consequences that go back to the Government's budget.

**The Hon. JOHN GRAHAM:** I will provide one of the reasons for public concern about how the Government gets value for money in these deals. The former Auditor-General, Tony Harris, said, "When Transurban leave the negotiating room nothing is left on the table, not even the Laminex. They just have this reputation for being superb negotiators at the taxpayers' expense." That is a serious view. It is to the credit of your company, but it also goes to the question of how we ensure public confidence in these deals. Do you have a response to that view?

**Mr HEAD:** I go back to the process prescribed by government. A number of steps in the process are very robust. One could even mount an argument that the process that we go through in relation to these types of

user-pays models are far more robust and go through far more scrutiny than in other parts of government. It is very rare for someone to be able run through the kind of list that I referred on page 32 of the proposal. It would be rare that a transaction would have to go through so many of those steps. We think they are entirely appropriate. As I understand it, Transurban and all of the other private sector participants are happy to follow them. These are very difficult decisions about value and how to spend finite resources. There are no silver bullets. Working together—the private sector with the government—we hope to come up with the best solution in the options available to us. As I said, there are no silver bullets.

**The CHAIR:** Does Transurban run the Logan Motorway in Queensland?

**Mr HEAD:** Yes.

**The CHAIR:** Does it own 100 per cent?

**Mr HEAD:** We own 62.5 per cent. We are in that road with a couple of other investors, including Australian Super, which goes back to the point about—

**The CHAIR:** Is that concession contract available in the public domain?

**Mr HEAD:** I assume so. I am much more familiar with what is on and off the public record in New South Wales due to my responsibilities, but I am happy to take that question on notice to provide an accurate answer.

**Dr MEHREEN FARUQI:** Thank you for appearing before the Committee and for providing evidence today. I refer to the time saved every day figures you have calculated. Is that compared with a do-nothing alternative or to providing alternative public transport?

**Mr HEAD:** It compares a trip to what is existing on the ground today.

**Dr MEHREEN FARUQI:** So it is a do-nothing approach?

**Mr HEAD:** No. Doing nothing is another extreme. One of the most compelling points on the page that I provided to members is the third dot point on the map, on the right-hand side. There are two columns of dot points. It states that new toll roads improve traffic across the network, including untolled roads. One of the perspectives that it is important to capture in this discussion is what Sydney might look like with none of the investments put in place by both sides of Parliament over the past few years.

**Dr MEHREEN FARUQI:** I understand that. It is compared with the current alternative, not to any other alternative that may save time.

**Mr HEAD:** Through my lens, doing nothing is having not done anything and imagining what our existing roads would be like and how long it would take to get around. The travel time savings that Transurban and other participants in the market publish tend to be in relation to what is on the ground versus what is about to be delivered.

**Dr MEHREEN FARUQI:** A couple of submissions have raised concerns about non-competition clauses in contracts that State governments enters into with tolling companies, including Transurban. Are there any non-competition clauses in your contract with the Government?

**Mr HEAD:** Yes. I will answer that question by using an illustrative example that highlights the point.

**Dr MEHREEN FARUQI:** Can you first give me a yes or no answer?

**Mr HEAD:** Yes, that is the case. Why? Investors are putting superannuation funds at risk, and if someone were to build a road or some other piece of infrastructure directly next door without some kind of obligation to have a discussion with the people who had put their capital at risk, they would not attract the funds. Therefore, it would not be an option. The best way to describe how it works in practice is to use the M2. When we were doing the M2 upgrade a few years ago there was a discussion with the Government about the very question you ask and whether any clauses within the M2 concession deed would preclude the development of the North West Rail Link. There was an interpretation that that may well be the case. Transurban had a dialogue with the Government about how as part of this upgrade we could relieve it of that particular obligation.

Transurban sees itself as a long-term participant in the city of Sydney in which we operate. As a consequence of that, we are open to having discussions when these issues may arise as an impediment. There are elements in the very beginning of the deal that are required to be there in order to attract capital. However, Transurban as a partner of government is always willing to discuss how we can solve those problems rather than stand in the way of any progress. We did that on the M2, and as a consequence of that the North West Rail Link is currently being constructed, and we are fully supportive of that. We also fully support sharing the patronage

load across public transport in the north west because it is the right thing to do for the city. What is right for the city is right for Transurban and its investors.

**Dr MEHREEN FARUQI:** When you negotiate non-competition clauses such as those you just referred to, do you offset that against toll concession extensions on another road? Is it offset in some way? Otherwise it would still be a risk.

**Mr HEAD:** That is a very good question. Hopefully the message you took out of the right-hand side of the handout is that governments have difficult decisions to make about finite resources. The community and customers have an equal difficulty with regard to their household budget and how they choose to spend their money on groceries, public transport or wherever it may be. The same goes for Transurban. We are very willing and open to having a discussion with government about how we can get the best result for the community, for the Government and for our customers. However, we also have another consideration in our mix, that is, the people who have given us their money. That is the money that people around this table have in their superannuation fund accounts. We enter those discussions with an open mind and a willingness to find a solution, but we need to cater for all the stakeholders. If we eliminate one of them from the equation, we no longer have a sustainable business.

**Dr MEHREEN FARUQI:** You might offset that through other negotiations?

**Mr HEAD:** Yes.

**Dr MEHREEN FARUQI:** Would these non-competition clauses be in every contract you have on toll concessions with the Government?

**Mr HEAD:** They are definitely in the older ones. Contracts like the M2, the Eastern Distributor and the M7 immediately come to mind. The Westlink M7 has a form of it. I would need take the question on notice with regard to the others to be 100 per cent sure. As a broad answer for today to aid the discussion, I would say yes. However, I would appreciate being able to take the question on notice so that I can provide an accurate answer.

**Dr MEHREEN FARUQI:** That would be great. Would they cover mostly non-competition with regard to providing public transport or do they cover other areas as well? I am asking in general terms.

Brk/SK

**Mr HEAD:** Because we are the custodian of superannuation investors' money, we need to make sure that there is not something that is going to come out of left field and basically make that money worth zero. Otherwise we would be sitting in front of another inquiry where superannuation funds would have gone from something of value to something of no value. As a general principle, to attract private sector investment there needs to be some form of reasonable protection but, as contracts have modernised and the process has got more mature, I think as a general rule of thumb they have become more flexible and certainly Transurban, as a custodian of those contracts which we own or are the investor in, we take that view on even the older ones that are more rigid.

**Dr MEHREEN FARUQI:** You did not really answer my question. Apart from having non-competition for public transport are there other areas that they cover?

**Mr HEAD:** As far as I am aware it is transport, so it is roads, rail, other forms of transport.

**Dr MEHREEN FARUQI:** That might be competing with the toll road?

**Mr HEAD:** Yes.

**Mr BYRNE:** Certainly I am aware of other forms, in fact I think roads are probably the primary form of contemplation in a number of the clauses.

**Mr HEAD:** It is a good point. The Westlink M7 has a wide central median and it is prescribed in the concession deed that a light rail can be put there if it is needed or wanted. So as the contracts modernize and people become more aware of how they all fit together and how cities operate, they have taken different forms. That is probably a really good example. We would be happy to provide some detail on the public-transport-enabling capacity in the central median of the M7. The question that is important—

**Dr MEHREEN FARUQI:** You have answered my question. My time is limited and I want to go into another area which is related to this, so you might be able to say that. You talked a lot about risk and liability and other submissions have as well and have highlighted the case of the Cross City Tunnel and the Lane Cove Tunnel, about the financial issues that arose with them.

**The Hon. TREVOR KHAN:** They went broke.

**Dr MEHREEN FARUQI:** Yes. So obviously you are a profit-making organisation, you are not just doing your work for charity, so you have looked at what happened there and have covered those risks and liabilities, some of the things you talked about now. Could you tell me a little more about how these contracts have changed to cover those risks and liabilities? I think one thing is non-competition, I guess, to cover those risks. How else have you put things in the contract to cover your risk and liability, or to reduce it?

**The Hon. Dr PETER PHELPS:** The Cross City Tunnel actually closed down roads and it still lost money.

**The CHAIR:** Order!

**Mr HEAD:** I think the risk that the private sector has taken on as time has gone by has probably increased. So, as you say, there are certain protections in certain deeds around provision of an alternative right next door that could really hurt that superannuation investment. In times gone by, there has been closing-off of roads above ground, free roads or "funnelling" as it is sometimes referred to. That is something that I cannot imagine happening in today's environment, certainly not for car customers anyway. So there are a number of things that are probably less stringent, so probably more in favour of government as time has gone by, and that is ultimately a function of competition and the more people who participate in these processes, the more likely you have to have favourable risk allocation.

**Dr MEHREEN FARUQI:** But there is hardly any competition, I would not say that there is competition, since you own most of the toll roads around Australia. There is hardly any competition in the sector, I would say.

**Mr HEAD:** Well, what I am talking about is—

**Dr MEHREEN FARUQI:** And I guess, talking about risk, one more question—

**The Hon. Dr PETER PHELPS:** You cannot make a statement like that.

**Mr HEAD:** You cannot say there is no competition because, if you go back and have a look at the five toll roads that were procured under Labor and the four that were procured under the Liberal-Nationals, all of those were competitively procured. Some of them went broke and then Transurban acquired them; others were acquired well and truly after the fact. But the initial procurement was done in a competitive environment. So I do not think it is technically correct to say—

**Dr MEHREEN FARUQI:** Well, you have a current monopoly, let us say then, on toll roads, that would be an accurate statement to make.

**Mr HEAD:** Again I go back to the point about monopoly. I think this is a word that is a little bit fraught. A monopoly is somebody who can put up prices, by whatever they would like, and they are the only provider of the service. On any account, the toll road concession business in Sydney is not that. Every single road has a very tightly prescribed concession deed and the tolls can only go up by what was agreed in that concession deed. That does not pass the test in terms of what is or is not a monopoly.

**Mr BYRNE:** We have made reference in our submission to some of the Australian Competition and Consumer Commission [ACCC] considerations in that respect, which explicitly discount the fact that we are considered a monopoly, according to the matrixes Mr Head has just described.

**Dr MEHREEN FARUQI:** Well, you own 13 out of the 16 toll roads in Australia.

**The Hon. Dr PETER PHELPS:** Maybe that is because they are the most effective and efficient. Maybe they are the experts.

**The CHAIR:** Order!

**Dr MEHREEN FARUQI:** We can argue about that later on. Transurban has been given extensions on both the M7 and M2 until 2048 and I want to ask you whether you are reliant on these extensions to recoup any of the costs from the other motorways that you have constructed?

**Mr HEAD:** No.

**Dr MEHREEN FARUQI:** You are not reliant on these?

**Mr HEAD:** No. So we think about these as investments in a box, let us say. So, when we originally acquired the M2, we paid a sum of money, from memory it was many billions of dollars. That investment was made on that particular case. In terms of extensions that might have been granted for other projects, they are

precisely the same as we have described in this one-pager. There is a capital cost, it needs to be covered. It can either be covered by user-pays, so extensions of concession, toll increases et cetera, or if there is a gap it needs to be funded by the government contribution. And that is exactly what happened in the case of NorthConnex. We put forward a series of funding sources for NorthConnex that covered \$3 billion. Some of those were not deemed to be value for money or appropriate for government following the process, so those funding sources were deducted. The consequence was that there was \$800 million required to make the project happen. Fifty per cent of that came from the Federal Government, because they saw enormous productivity benefits and customer benefits and freight benefits for western Sydney and the other \$400 million-odd came from the state of New South Wales, to fill that funding gap from consolidated revenue.

**Dr MEHREEN FARUQI:** So the extensions are not really to cover the cost of the M7, let us say, but to cover the cost of NorthConnex—that is the agreement.

**Mr HEAD:** There is absolutely no confusion about that. Going back to Mr Byrne's answer a moment ago, if NorthConnex was built as a stand-alone project, it would have covered about a third of its costs. By using the surrounding network and delivering benefits right across western Sydney, another about a third was covered of that capital cost and the final piece was covered by the state and Federal Governments. So it goes back to this example: The tolls, the time you can charge them for and how fast they go up, you can move them around and they are the difficult decisions that government has to make. If they all move down too far, then a government contribution is the result.

**The Hon. TREVOR KHAN:** Or no road.

**Mr HEAD:** Or no road.

**Dr MEHREEN FARUQI:** Were these extensions negotiated through unsolicited proposals as well? Were they part of the NorthConnex?

**Mr HEAD:** They were following the prescribed process, yes.

**Dr MEHREEN FARUQI:** One quick question on escalation of toll road fees. Why at the moment, on many of the toll roads, are the toll escalations higher than the consumer price index [CPI]?

**Mr HEAD:** Again we go back to the three variables that you have got to consider and tolls essentially reflect the value of time. That is how we start the discussion. We try and make an estimate of value of time. We are very conscious of the costs that tolls impose on people. We are conscious that household budgetary decisions are very difficult and that householders need to consider value in going through that process. CPI is one way of dealing with escalation, another is 4 per cent. CPI is one of those things that basically is a basket of goods. Eleven goods go into the estimate of CPI, only one of them relates to transport. So there is an argument that government has to consider when making these decisions about whether CPI is an accurate reflection of a person's ability to pay.

An alternative is average weekly earnings. Average weekly earnings is another consideration that governments across Australia have had to grapple with to try and work out whether that is a better reflection of time. All of these things are an impost on the household budget and we are very sympathetic to that, but all household budgets need to be managed and decided upon within the household. To give you some examples on that, CPI over the last four or five years has been growing at 1.8 percent—I am referring to page 31 of the submission. Average weekly earnings is growing at 3.4. This is just a little bit more detail around what governments have to grapple with, in terms of how do we put these proposals together? How do we assess what is value for money? What can people afford to pay? And what is reasonable, when you put forward these toll road projects.

**The Hon. Dr PETER PHELPS:** I want to look at things raised in other submissions that deserve a response in advance to them being raised. First, in your submission on page 30 you talk about tolling arrangements for freight vehicles. It is generally accepted that the tolling arrangements on Sydney roads have freight vehicles paying three times as much as cars. You do not cite any evidence. The Transport Workers Union submission raises this imbalance between freight vehicles, cars and bikes and the like. Do you have any evidence from here or overseas in relation to the construction costs or road wear and tear caused by trucks and whether that is in fact three times the cost of ordinary passenger vehicles?

**Mr HEAD:** Yes, we do. This debate is best considered through the lens of NorthConnex and the M7, which is a major freight corridor and a bypass of Western Sydney and delivers enormous benefits to the freight community. To answer your first question about construction costs: when designing NorthConnex, the grade or flatness in the tunnel is very flat. It means the tunnel needs to be designed in a different way and it may need to be longer. It is different to other tunnels in Sydney where you find trucks climbing a higher grade. The

ventilation systems are designed to cater for trucks. Truck emissions are greater and the ventilation systems need to be different. The pavement depth needs to be different because trucks actually do 6,000 times more wear and tear than a car. The pavement depth needs to be greater and the breakdown bays in a tunnel like the NorthConnex need to be bigger to accommodate trucks. There is, frankly, a lot of additional capital cost that goes into a new project like NorthConnex to cater for the trucking community.

**The Hon. Dr PETER PHELPS:** Would you be able to provide studies or evidence that quantifies that?

**Mr HEAD:** We would be happy to.

**The Hon. Dr PETER PHELPS:** We know the differential exists, the question is whether there is evidentiary proof that there is a physical requirement for that differential to exist.

**Mr HEAD:** We would be happy to provide that. We only talked about the costs there. The benefits are outstanding. If you think of a trip on the M7 and NorthConnex when it is delivered, the travel time savings compared to the existing competing route are one hour and 10 minutes. Trucks will be getting through Western Sydney one hour and 10 minutes quicker. They will not be stopping and starting on Pennant Hills Road and there are significant safety issues around that. In doing so they will make a financial gain. The average size truck costs about \$62 to run per hour and the larger B-doubles about \$100. There are additional costs for us in providing the infrastructure and there are significant commercial benefits for those trucks using that route. Not to mention the safety and community amenity on Pennant Hills Road as a consequence.

**The Hon. Dr PETER PHELPS:** The length of the concessions granted: 40 years seems a long time for a concession to be granted. Can you provide any details on what the depreciation rate is for capital assets in your firm?

**Mr HEAD:** I will answer your question as you asked it. We straight-lined depreciation over the course of the concession.

**The Hon. Dr PETER PHELPS:** Is that your choice or the tax office?

**Mr HEAD:** No, that is a tax office rule. To put that in layman's terms, if you turn to page 29 there is an instructive chart. A dollar today—40 years was your question?

**The Hon. Dr PETER PHELPS:** Yes.

**Mr HEAD:** A dollar invested today is worth about 12 cents in 40 years time. This is where the depreciation and the amount of profit that is being made gets very confusing for an average citizen in Sydney. Essentially, we are investing a very large sum of money up front and getting very little back in terms of our capital costs for many years. Because of the time value of money a dollar today is worth a lot less into the future. That is where the communication challenge around the provision of these services really lies. I am grateful for the opportunity to come to the Committee and talk about it because it is a difficult concept to understand.

**The Hon. Dr PETER PHELPS:** If I said, "You give me \$1,000 today and I will give you \$1,000 in 40-years time," would you accept that as a good deal, Mr Head?

**Mr HEAD:** No.

**The Hon. Dr PETER PHELPS:** That is because there are two factors at play, not merely the opportunity cost of what you could have done with that thousand dollars but the real value of money if inflationary trends continue is likely to be lower?

**Mr HEAD:** That is exactly right, Dr Phelps. I tried to point that out in the one-pager at the front on the right-hand side. If private sector organisations are not deemed to be receiving an appropriate return for the risk they take, the money that your superannuation has invested in Transurban will be taken out by your investment manager and it will be put into ANZ, BHP, Woolworths or some other investment. Our opportunity to come forward and try to provide user-pay solutions will no longer exist. It is a fine balancing act between the providers of capital, superannuation, the customers, the community and the Government.

**The Hon. Dr PETER PHELPS:** My final question relates to the noncompetition clauses that you mentioned. Lest it be portrayed that you are seeking to remove all competition, is it not the case that the majority of the noncompetition clauses relate specifically to the provision of additional new road infrastructure on a parallel route and every one of them, after the eastern distributor contract, has been done on the basis that there is no noncompetition clause in relation to public transport?

**Mr HEAD:** I believe that to be the case, but I would like to check. You are probably more familiar with this than I am. For that I apologise. We will take that on notice and provide further detail.

**The Hon. Dr PETER PHELPS:** It is not correct to portray the contemporary contracts as preventing in any way the provision of public transport and comparable public transport infrastructure on near identical routes?

**Mr HEAD:** Yes.

**The Hon. Dr PETER PHELPS:** It is to stop government or another firm building a replica M7 on the same footprint?

**Mr HEAD:** That is correct.

**The Hon. Dr PETER PHELPS:** Surely it benefits you to support public transport? It does not necessarily hurt your interests. If we build up green field suburbs which have toll road links there are still people who will want to take public transport?

**Mr HEAD:** I hope I made this point earlier, we are supportive of a fully functioning and integrated transport system in Sydney, that includes all modes. Often we look for opportunities to coexist and support by having better connectivity between modes.

**The Hon. Dr PETER PHELPS:** By the same token, where public transport infrastructure is put in place ahead of toll road arrangements that is going to be useful for you. For example, Edmondton Park, Leppington and the entire prospective development in Western Sydney—even if the starting mode of transport is publicly funded rail infrastructure—there is certainly an argument for the addition of tolling in that area, is not there?

**Mr HEAD:** Yes.

**The Hon. Dr PETER PHELPS:** It does not hurt you. More people means more people wanting to use their cars.

**Mr HEAD:** It would hurt us more to be the opposite. Sydney is an amazing city with an unbelievable climate, a great workforce and it now has enormous amounts of infrastructure in multiple areas going in. The cultural facilities, the sporting facilities, the heavy and light rail facilities and new roads will combine into a potent mix that will deliver Sydney and the growth it is capable of to the global stage. We truly have an opportunity here with this city to be one of the best and most liveable cities in the world. The only way to do that is via an integrated transport system and Transurban is 100 per cent behind that aspiration. If we all grow and prosper together then all of our investments and all the investments that the Government makes in all the other spaces, such as public transport and light rail, will all be far more valuable.

**The Hon. TREVOR KHAN:** If I could put aside heavy transport. In the context of Dr Faruqi's remarks concerning a monopoly; for a passenger vehicle the potential user of NorthConnex will have available to them the alternative of using the NorthConnex or continuing to use Pennant Hills Road?

**Mr HEAD:** That is correct.

**The Hon. TREVOR KHAN:** So, by its very nature, the argument about a monopoly falls down when there is a choice available to the consumer?

**Mr HEAD:** I was remiss in not making the other key point in relation to that question—

**The CHAIR:** Sorry to interrupt, but that is not the position with respect to trucks.

**Mr HEAD:** No, that is true, and I will come to that—

**The Hon. TREVOR KHAN:** I was very clear with regards to that.

**Mr HEAD:** There are two key elements that differ from a traditional monopoly and, as the Hon. Trevor Khan has quite rightly pointed out, the availability of an alternate route is number one and unfettered price increases, which we do not have, is the other. So the Hon. Trevor Khan is absolutely right.

**The Hon. TREVOR KHAN:** Part of the problem in regards to the cross city tunnel and the Lane Cove tunnel was that, at the time of negotiating the contracts for those projects, it would be right to say that essentially the starting price was wrong—that is, it was unattractive for the motorist to use those pieces of infrastructure. Is that right?

**Mr HEAD:** That is one explanation. It is a difficult equation to unpick but, yes, that is a fair assumption.

**The Hon. TREVOR KHAN:** So in this non monopolistic world in which we live, it would seem that the road user was not attracted to using the tunnel and was instead prepared to spend more time travelling—for example, in the case of the Lance Cove tunnel by continuing to go over the top of the hill and through those intersections on that road.

**Mr HEAD:** That is correct.

**The Hon. TREVOR KHAN:** So, putting aside as a piece of infrastructure the Sydney Harbour tunnel and now the harbour tunnel, on all the other projects that you are involved in there is the maintenance of a road system as an alternative to your project?

**Mr HEAD:** That is correct.

**The Hon. TREVOR KHAN:** And in each of those a road user is entitled to continue to use Victoria Road, Parramatta Road or some other road instead of the piece of infrastructure that you operate?

**Mr HEAD:** Correct.

**The Hon. TREVOR KHAN:** And if it were priced incorrectly at the start or if the inflation factor that was applied to the starting toll was wrong then you would lose users to those alternative pieces of infrastructure, is that right?

**Mr HEAD:** Yes, it is.

**The Hon. TREVOR KHAN:** That is just the nature of a business—if you get it wrong in some part of your deal then it will not work anymore.

**Mr HEAD:** That is right, and that essentially goes back to the risks that we take. So we take the risk on construction. Construction can go wrong—it can be over budget and it can be overtime. There are statistics to that point in the submission which show that the private sector has a pretty good track record on that front in comparison to Government delivery. Then we get to the point that the Hon. Trevor Khan has made about pricing and whether customers choose to use the alternate free route or to use ours.

At this stage we are still seeing growth in patronage on our motorways, which suggests that people are still seeing value that those roads deliver. What I think is really encouraging for the community of Sydney is that their options are only going to expand as the infrastructure program that is being rolled out currently comes to fruition. So there are going to be more public transport options, there are going to be more road options and the free routes are still going to be there. So our options here, in terms of which way we choose to expend our household budget, are going to expand, which I think is a terrific thing for the city of Sydney. It is one of the reasons why I am very bullish about Sydney's ability to continue to grow and to be a great global city.

**The Hon. TREVOR KHAN:** I think I can safely say that I am out of time so I will stop there.

**The CHAIR:** Mr Head, in light of making a reasonably long opening statement, would you be open to another quick round questions before you leave?

**Mr HEAD:** Yes, we are very happy to answer any questions the Committee has for as long as it likes.

**The CHAIR:** Okay, there are limits on that.

**Mr HEAD:** I apologise, we are passionate about our industry—

**The CHAIR:** There is no need to apologise. But we will ask one more round of questions of five minutes each.

**The Hon. JOHN GRAHAM:** Mr Head, thank you for your evidence on the non-compete clauses. It was very useful, and if you could forward that answer to my question on notice then that would be useful. Is there a non-competition clause on the NorthConnex project?

**Mr HEAD:** I will have to take that on notice. But what I would say is that if it was a big point of the negotiation then it would have sprung to mind immediately. So I think that in itself is a reflection of how important or otherwise we see those things.

**The Hon. JOHN GRAHAM:** If you are happy to take it notice, that would be useful—and, in particular, does any non-compete clause for NorthConnex relate to public transport? If you could take those two issues on notice, I would appreciate it.

**Mr HEAD:** I am 90 per cent sure that the answer to that is no. But I will take it on notice.

**The Hon. JOHN GRAHAM:** I appreciate that. Is there a toll-free period anticipated for NorthConnex?

**Mr HEAD:** That is a discussion that we will need to have at board level for NorthConnex. I am on that board, representing 50 per cent of the shares. We have the Canada Pension Plan and the Queensland Investment Corporation on the board with us. Having said that, if we look at the only other roads that Transurban has opened new as greenfield developments in Sydney then we can see that we have had toll-free periods. So I would hesitate a guess that we would. For how long that is will be a decision for the board, and I do not want to pre-empt my fellow directors on that. But I think, on past form, we would expect the answer to that question to be yes.

**The Hon. JOHN GRAHAM:** Is there anything in the contract or the agreement that you have with Government that requires that or ties your hands in that respect?

**Mr HEAD:** No, not that I am aware of.

**The Hon. JOHN GRAHAM:** So your view is that it is really a matter for your company as to whether that is the case?

**Mr HEAD:** Yes.

**The Hon. JOHN GRAHAM:** Have there been discussions about a toll-free period with Government in relation to NorthConnex?

**Mr HEAD:** No, it is a bit far down the track for us, and it is not a particularly contentious decision. So I would envisage that we would not really have those discussions until six months beforehand.

**The Hon. JOHN GRAHAM:** I have some further questions but I will allow the Chair to finish his line of questioning.

**The CHAIR:** Yes, thank you. I will skip through this reasonably quickly as it is the same question broken down into different parts. Has Transurban had any discussions whatsoever or made any unsolicited offers to the New South Wales Government regarding entering into a concession agreement to operate the tolling arrangements of any or all of the sections of WestConnex once it is completed?

**Mr HEAD:** One of the responsibilities that I have as Group General Manager for New South Wales is to try to work out how we can work with Government to make the network work better. That manifests in many ideas being put forward. So in relation to WestConnex as a whole asset—that is, as in three different projects—no, we have not put an unsolicited proposal forward for that.

**The CHAIR:** No, my question was in two parts. Has Transurban had any discussions whatsoever, or made any unsolicited offers, in regard to any or all of the sections of WestConnex?

**Mr HEAD:** We have been thinking about the missing links in Sydney for a very long time—that is how NorthConnex came about. When we were looking NorthConnex we were also looking at M4 East, as it was known then, which is now part of WestConnex, and also M5 East. So the answer to your question is yes, we have.

**The CHAIR:** Thank you, that is fine. I will move on to my next question, which is the same question. Has Transurban had any discussions whatsoever or made any unsolicited offers to the New South Wales Government regarding entering into a concession agreement to operate the tolling arrangement on the recently announced western harbour tunnel? So I am asking about discussions or unsolicited proposals.

**Mr HEAD:** Yes, but let me just clarify that—

**The CHAIR:** I will allow you to come back to elaborate in a moment but we do have limited time.

**Mr HEAD:** Mr Chair, you could ask that question about any part of the network and the answer would still be yes. That is my job.

**The CHAIR:** We will come back to that. That is fine. I ask the same question again: has Transurban had any discussions whatsoever or made any unsolicited offers to the New South Wales Government regarding entering into concession arrangements to operate tolling arrangements on the recently announced northern beaches tunnel?

**Mr HEAD:** Westlink M7, M5, M2, Lane Cove tunnel, western harbour tunnel, northern beaches link, cross city tunnel, Eastern distributor, the answer is yes.

**The Hon. MEHREEN FARUQI:** And is it yes on the F6 as well?

**Mr HEAD:** Yes.

**The CHAIR:** This is my final question. Putting aside those ones I have just mentioned, which are well-known and front of mind for the community, has Transurban had any discussions whatsoever or made any unsolicited offers to the New South Wales Government regarding entering into a concession agreement to operate tolling arrangements on any other road, freeway, highway or bridge in New South Wales?

**Mr HEAD:** Mr Chair, if you are talking about on the Sydney Motorway network then yes, that is what we do. But let me just make one point, because you have made your point very strongly—all of those discussions would be undertaken through the Government's unsolicited proposal process.

**The CHAIR:** Mr Head, you said you had not made any unsolicited proposals.

**Mr HEAD:** When did I say that?

**The CHAIR:** I thought you said that about three minutes ago in regard to these matters I went through.

**Mr HEAD:** No, my answer to every question you have asked is yes.

**The CHAIR:** I thought that was in regard to discussions. My question was in two parts—discussions, which is obviously talking about the general issue; and unsolicited proposals. There were two parts.

**Mr HEAD:** Okay. In relation to discussions, I can confidently say that I have had discussions with people on all of those matters, so the answer is categorically yes.

**The CHAIR:** What about unsolicited proposals?

**Mr HEAD:** For which parts?

**The CHAIR:** All of them. The unsolicited proposal part of my question applied to all of them.

**Mr HEAD:** Okay, let me go through them. No formal unsolicited proposal on the Northern Beaches Link, no formal unsolicited proposal on Western Harbour Tunnel.

**The CHAIR:** What about WestConnex?

**Mr HEAD:** No formal unsolicited proposal on WestConnex.

**The CHAIR:** What about informal?

**Mr HEAD:** Discussions.

**The Hon. TREVOR KHAN:** Chair, your time has finished, but he is giving an answer.

**Mr HEAD:** I am very happy to clarify this. I want to be clear on that. No unsolicited proposals on those specific areas of the network that you referred to, so they do not count in the point I am about to make. On page 32, the New South Wales Government, as at June 2016, had received 118 unsolicited proposals. Now, I just confirmed that none of them were from us—except for the NorthConnex, which went through the process. Of the 118 that were received, only five are currently progressing, so that again goes to that point about the process and being the custodian of value and the taxpayer. The Government does not just accept unsolicited proposals willy-nilly. They consider them very carefully through that process that I articulated on page 32, and the vast majority of them are thrown out before they ever become public. That, to me, says that the process is working and that the value for money equation is being defended.

**Dr MEHREEN FARUQI:** Are time savings calculated in peak hour?

**Mr HEAD:** Both.

**Dr MEHREEN FARUQI:** So they are an average of peak and off peak?

**Mr HEAD:** Often you will see—if you read where it is quoted—it will say "peak" or "off peak".

**Dr MEHREEN FARUQI:** So 155,750 hours—

**Mr HEAD:** That is across the day. On a given day in New South Wales—Sydney, actually—155,000 hours are saved every day. It is a staggering statistic.

**Dr MEHREEN FARUQI:** Thank you. My time is limited. I want to go back to the question about it being a monopoly service and the issue that it is not a monopoly service. It is for trucks using NorthConnex because trucks are being forced into the tunnel. Would you agree with that?

**Mr HEAD:** That I agree with. There are very good reasons for that, which I would be happy to answer.

**Dr MEHREEN FARUQI:** That is fine.

**The Hon. TREVOR KHAN:** Yes, safety, apart from anything else—get them off Pennant Hills Road.

**Dr MEHREEN FARUQI:** It is my time. I would argue, for example, someone is travelling on the M7 from Campbelltown to Macquarie Park—and I did this through Google maps—

**The Hon. Dr PETER PHELPS:** Because you have never been to Campbelltown because you are a Green.

**Dr MEHREEN FARUQI:** —and they want to get to work before nine. If they travel on the M7 it takes about an hour and 15 minutes. The alternate route, which everyone says is available, takes double that amount of time. That is not really an equivalent comparison, to be fair.

**The Hon. Dr PETER PHELPS:** Of course it is.

**Dr MEHREEN FARUQI:** Of course it is not.

**The Hon. Dr PETER PHELPS:** You can buy a Prada handbag and you can buy a bag for \$2 at Paddy's Markets.

**The CHAIR:** Order!

**Dr MEHREEN FARUQI:** Would you agree it is not an equivalent comparison?

**Mr HEAD:** This discussion needs to have a little bit more detail in it. The best point is the one I referred to earlier. Toll roads improve the network, including the untolled roads. The alternate route we are talking about in the example you articulated is the Cumberland Highway—56 sets of traffic lights over the same course. Can you imagine what that would be like if Westlink M7 was not built and how long it would take that person that you are referring to get to work?

**Dr MEHREEN FARUQI:** There are alternatives to providing toll roads—

**The Hon. Dr PETER PHELPS:** Is that a question or a statement?

**Dr MEHREEN FARUQI:** It is a question. One alternative, and let me know if you considered it when you were considering alternatives for the NorthConnex, is to build an underpass to bypass traffic lights. Was that an alternative that Transurban considered?

**Mr HEAD:** On Cumberland Highway?

**Dr MEHREEN FARUQI:** No, on NorthConnex?

**The Hon. Dr PETER PHELPS:** NorthConnex is one big underpass.

**Dr MEHREEN FARUQI:** An alternative to NorthConnex.

**The Hon. Dr PETER PHELPS:** It is a very long underpass.

**Mr HEAD:** Sorry, I was thinking about Westlink M7 when you were asking the question. Can you please repeat it for me? I thought we were talking about Westlink M7

**Dr MEHREEN FARUQI:** I am talking about both things.

**Mr HEAD:** In terms of NorthConnex—

**Dr MEHREEN FARUQI:** Do you consider alternatives to the one that you provide?

**Mr HEAD:** Yes, absolutely.

**Dr MEHREEN FARUQI:** Do you provide Government with a number of alternatives?

**Mr HEAD:** Absolutely. There were many, many engineering solutions considered in relation to NorthConnex. Again, they are very difficult decisions for Government because building a tunnel is very expensive, but it does disrupt less people once you are underground and you are digging it than it would to build an aboveground route.

**Dr MEHREEN FARUQI:** And costs a lot more?

**Mr HEAD:** It does. But the engineering solutions need to be feasible, and they take into consideration all sorts of things, including environmental impacts.

**Dr MEHREEN FARUQI:** I understand that; I am a civil engineer. If it costs a lot more, how do you think it provides best value for the public?

**Mr HEAD:** They are the decisions that the process needs to consider. I can assure you, and I am sure that the people who are about to follow me will talk to it at great length, they agonise over these decisions. Trying to find the right engineering solution—

**Dr MEHREEN FARUQI:** We might leave the Government to justify their decisions rather than Transurban justifying them.

**The Hon. Dr PETER PHELPS:** Well, do not ask the questions relating to their decisions.

**The CHAIR:** Order!

**Mr HEAD:** I can assure you that I was involved in the discussion of many, many different routes in relation to NorthConnex, and all of the questions that you would expect us to ask in trying to determine if they were a better solution were debated at length and considered.

**Dr MEHREEN FARUQI:** Going back to the toll escalations, is their purpose also to cover, perhaps, increasing costs of maintenance? What do they cover?

**Mr HEAD:** My example that I used at the very beginning of the presentation was, admittedly, very simplistic, but it talks about the \$9 out of the \$10. Nine dollars covers the capital cost and the ongoing maintenance of the asset, so the simple answer to your question is yes.

**Dr MEHREEN FARUQI:** How much of the \$9 would cover maintenance?

**Mr HEAD:** That is a fictitious example.

**Dr MEHREEN FARUQI:** As a percentage?

**Mr HEAD:** It is quite small by comparison to what it costs to build these projects. The lion share of the investment that goes into these things is in the original capital cost, and that is why—when you are looking at it through a time value of money equation—not getting your money back for 40 years when you are investing \$3 billion is quite a challenging investment.

**Dr MEHREEN FARUQI:** The company is still making super profits, though.

**The Hon. Dr PETER PHELPS:** Yes, and we all know that The Greens hate any companies making any profits whatsoever. In relation to trucks and NorthConnex—

**Dr MEHREEN FARUQI:** Point of order: I do not think that comment was based on any evidence whatsoever.

**The Hon. TREVOR KHAN:** Nor was your comment.

**The Hon. Dr PETER PHELPS:** That is right, nor was your comment on super profits.

**The CHAIR:** Order!

**Dr MEHREEN FARUQI:** I ask Dr Phelps to withdraw that comment.

**The Hon. Dr PETER PHELPS:** Nor was your comment on super profits—

**The CHAIR:** Order!

**The Hon. Dr PETER PHELPS:** Which you know, or which you should know, is an economic term—

**The CHAIR:** Order!

**The Hon. Dr PETER PHELPS:** —relating exclusively to monopolies.

**The CHAIR:** Order! I have been very patient, particularly with the Hon. Dr Peter Phelps, who has been butting in through most of Dr Faruqi's questions. I have given him a fair go. We should settle, move on, and withdraw the barbs. It was not necessary. Dr Faruqi did not have a crack at the Government, or Dr Phelps as a member. It is not reasonable.

**The Hon. Dr PETER PHELPS:** If she withdraws the comments on super profits, I will withdraw my comment.

**The Hon. TREVOR KHAN:** Let us go on.

**The Hon. Dr PETER PHELPS:** I have a question—

**The CHAIR:** I have not ruled. Are we at a stalemate?

**The Hon. Dr PETER PHELPS:** I will withdraw the allegation that the New South Wales Greens are a bunch of dirty communists who hate profit.

**The CHAIR:** I do not know how that really advances the morning.

**The Hon. Dr PETER PHELPS:** I have withdrawn it.

**The CHAIR:** No, withdraw everything, unqualified.

**The Hon. Dr PETER PHELPS:** I withdraw. In relation to NorthConnex and trucks, did you have any discussions with representatives of the trucking industry or with the Transport Workers Union or independent contractors who own trucks who expressed their desirability or not of the creation of NorthConnex, and, if so, what was their view?

**Mr HEAD:** Henry, help me out. What page am I looking for? There is a whole section on this which I think is really useful.

**Mr BYRNE:** Engaging the freight industry. Page 33 of our submission deals with this.

**Mr HEAD:** There are two streams of work that we undertake in relation to that question. The first is what I would call core business at Transurban. With all of our commercial customers, our freight customers, we have a biennial strategic review; we sit down with them and talk about their account, how it is working, changes to the infrastructure that they are using, how it might impact their bills, all that sort of stuff. We also put out a quarterly update to commercial customers and we undertake one-on-one meetings whenever they are requested. That is what we do. As part of that, as a matter of normal business, we would update anybody about any arrangement that was changing, including NorthConnex. Then there was a Government/proponent process that consisted of myself and Peter Duncan, who was the CEO of RMS at the time. We felt that the most effective way to get to this industry was via the Road Freight Industry Council, which he convened. In March 2014 and then again in August 2014 we met with them.

**The Hon. Dr PETER PHELPS:** Was this prior to your unsolicited proposal?

**Mr HEAD:** It was on the way through the process. We picked the part of the process that we thought was most relevant for them to capture their feedback. In August 2014 we had a discussion around the funding models and all of the various elements of the proposal, particularly the infrastructure itself, that we could articulate to them, to give them the opportunity to prepare any submissions for the environmental impact statement. We tried to time it perfectly to capture their feedback. We then went through the environmental assessment process, which went on display shortly after that. After we went through the environmental assessment process we obviously sent out stakeholder letters to all of these people and then, as we moved into the changes that were being implemented on the network, we put it up on the variable message signs that you see, the electronic signs, put it on the website and put out media releases. We did as much as we could think of.

**The Hon. Dr PETER PHELPS:** Would you say that they were generally supportive?

**Mr HEAD:** Yes, I would. I understand that there are people who have expressed some lack of support since then but I think when we presented it, as I have presented today, through the lens of real benefits for the freight industry, they are very compelling. Travel time savings are immense and the financial benefits that they receive as a consequence of using this service are very compelling. I do not recall getting huge amounts of pushback at the freight industry council, no.

**The Hon. Dr PETER PHELPS:** There are at least five schools on Pennant Hills Road that would benefit from having trucks removed from that road, is that not correct?

**Mr HEAD:** Yes. One of the things that we were very concerned about in relation to Pennant Hills Road—and it goes right back to some of the politicians who have been on that corridor for many, many years like Philip Ruddock—was that after a very long trip down the Pacific Highway these trucks are getting into a very congested city urban area, 21 sets of traffic lights, businesses on either side, residences on either side—

**The Hon. Dr PETER PHELPS:** Schools.

**Mr HEAD:** And schools. It is an area that you would rather not see very large B-double trucks careering through there at the end of their journey. We determined, in concert with government, that they were getting significant benefits by using the NorthConnex, so the decision was made that it would not be appropriate

for trucks to be travelling down Pennant Hills Road unless they were delivering in the corridor when a world-class piece of infrastructure was at their disposal just a few metres below them.

**The CHAIR:** Thank you for both coming along today and representing Transurban. The Committee has resolved that answers to any questions taken on notice should be returned within 21 days. The secretariat will contact you about any questions you may have taken on notice and any additional questions on notice members may have.

**The Hon. TREVOR KHAN:** To be clear, the period of 21 days will run from when the secretariat contacts and confirms what is outstanding? So there will not be more than one period of 21 days, is that correct?

**The CHAIR:** You will have one single period of 21 days in which to complete your answers to any questions taken on notice.

**Mr HEAD:** Thank you. We appreciate the opportunity.

**(The witnesses withdrew)**

**(Short adjournment)**

**KENNETH JOHN KANOFSKI**, Chief Executive, Roads and Maritime Services, and

**ANTHONY DAVID BRAXTON-SMITH**, Deputy Secretary, Customer Services, Transport for NSW, affirmed and examined:

**The CHAIR:** I will shortly invite one or both of you to make an opening statement. The Committee has received the whole-of-government submission to this inquiry, submission No. 109. I note that the Committee has read the submission but feel free to make what opening comments you may wish.

**Mr BRAXTON-SMITH:** I thank the Committee for today's invitation to this hearing, which is my first. It is correct that we have made a submission and I appreciate the opportunity to make an opening statement, which I will try and keep brief but I do want to provide a little bit of context. New South Wales has got a fast-growing population and a fast-growing economy, particularly so in Sydney where we are expecting to have one million people in the next decade. More residents and more jobs equals more demand for transport systems and for the movement of people, goods and services. There is growing congestion on the road network and that is frustrating our customers as well as reducing productivity. The Bureau of Infrastructure, Transport and Regional Economics [BITRE] estimated that Sydney's congestion cost us \$6.1 billion in 2015 and forecasts that it is going to rise to \$12.6 billion by 2030. It is important that we minimise the drag, or the potential drag, on our economy of this.

So there is really a pressing need for infrastructure investment, both public transport networks and road networks both to meet the demands and expectations of our customers and the community but also to sustain our economic performance and our growth. That is basically why we are investing record amounts of money at the moment in both road and rail networks. Ultimately, all new public transport infrastructure is funded by money from two primary sources: it is either from taxation of New South Wales citizens or it is from direct user charges, which is the focus of this inquiry and where I will direct my further opening remarks.

Charging of road tolls for a use of a road that has been financed, built and operated by a private company on a government-granted concession is a well-established practice in Sydney. For example, in 1855, an Act was passed to grant a concession to the Pymont Bridge Company for bridges, viaducts and roads around Darling Harbour and Blackwattle Swamp, as it was then known. Tolls were based at the time on the type of carriage and the number of horses that were pulling it, the number of people travelling in that carriage or people simply moving on foot. In fact, a toll even applied to the type of animal that was being herded down this network. When the Harbour Bridge opened in 1932, separate rates applied for motorcycles with a sidecar and ones without, for different types of car and truck—depending on the size and weight of the truck—and there was still a rate for a horse and rider.

In essence, for a long time, road tolls have been based on the customer-use cases of the day and the user-pays principle. It is a principle that is well understood and accepted by the community. Since Transport for NSW was formed in 2011, we have made a practice of gathering evidence as to customers' needs and preferences and attitudes to inform our decisions about the transport network we have today and the one we are building tomorrow. Research about these things supports decision making around investments in infrastructure, service improvement, communications and pricing. In research commissioned by Transport for NSW in 2016, a clear majority of road users told us that they want more motorways built to reduce congestion and to complete Sydney's motorway network and are prepared to pay a toll to get the network they want and the travel-time saving they are seeking.

It is also clear from this research that road users make a choice about paying a toll to use a motorway so they can save time. The research in fact shows motorway customers not particularly sensitive in an economic sense to the toll level they are paying. In other words, there is a degree of inelasticity within a price range. When a customer makes the choice they are mainly focused on the travel-time saving, and that is what drives their satisfaction with the road that they have travelled on. Our customers have also indicated in our research that they had a clear preference for more consistent pricing, but they have told us that it would not affect their use of the motorway network.

New South Wales has got a number of different pricing approaches to motorway tolls and these are specified in the tolling agreements that have been, in some cases, in place for decades. The terms of those agreements include the initial toll level, how prices will escalate, the length of the concession period and the amount of taxpayer funds that will be contributed. The balance of that equation reflects a number of factors specific to the motorway—its nature, construction cost, et cetera—as well as how it is going to be funded and financed. Those are decisions that are ultimately made in that equation by the government of the day.

As previously stated, new infrastructure is ultimately funded by money from two sources: from taxation of New South Wales citizens and from direct user charges. Tolls allow Sydney's motorways to be built faster than would otherwise occur if government relied only on taxation as a source of funding for them. This directly benefits users by delivering new infrastructure that delivers journey-time savings to customers, it delivers benefits to communities through the reduction of traffic on local roads, it delivers benefits to taxpayers through a lower upfront government contribution, which in turn enables the government of the day to invest more of that funding on other infrastructure that the State needs and, finally, industry is also a beneficiary from the reduced travel time because it lowers operating costs and boosts productivity, which in turn leads to higher rates of economic growth. Thank you for the opportunity to make my opening statement.

**The CHAIR:** Thank you very much. I call on the Hon. John Graham.

**The Hon. JOHN GRAHAM:** One question first to Mr Kanofski just to clarify a matter that is on the public record. According to the RMS 2016 annual report, the head of the RMS is paid at the senior service level 6 rate and in 2015-16 received \$569,704. Is that correct?

**Mr KANOFSKI:** That is correct.

**The Hon. JOHN GRAHAM:** By the time WestConnex is finished will Sydney be the most tolled city in the world?

**Mr KANOFSKI:** We would have to take that on notice. We have not done an extensive study of cities in the world and their level of tolling.

**The Hon. JOHN GRAHAM:** It would have to be right up there though, would it not, by the time this is finished?

**Mr KANOFSKI:** As I said, we would have to take that on notice.

**The Hon. JOHN GRAHAM:** If you could that would be helpful. Have not motorists in Western Sydney already paid for the M4? Why are they now being tolled again?

**Mr BRAXTON-SMITH:** At this stage there is no toll applied.

**The Hon. JOHN GRAHAM:** There is certainly one planned.

**Mr BRAXTON-SMITH:** The WestConnex business case does have one planned, which is helping to fund the construction of the link between the M4 and the M5 as well as the upgrading of the M4, the widening of the lanes, and the duplication of the M5. So that is how it is intended to fund it, from, in part, contributions from government but in part from user-pays charges.

**The Hon. JOHN GRAHAM:** The majority of submissions to this inquiry feel that they have already paid for this road and they are being asked to pay again. What do you say to those people?

**Mr BRAXTON-SMITH:** The tolls will be funding the widening of the M4, the extension of it to connect with the M5, and the duplication of the M5.

**The Hon. JOHN GRAHAM:** I will come to some of the specifics. According to the NSW Treasury website, the widening of the M5 to three lanes each way cost \$400 million and the toll concession period to pay for it was extended by 3.3 years. Is that correct?

**Mr KANOFSKI:** I am not sure I understand the question about the toll concession period.

**The Hon. JOHN GRAHAM:** I am just asking you about the extension to the toll concession period, which, as I understand it, was about 3.3 years for the widening of the M5 to three lanes each way.

**Mr KANOFSKI:** The toll concession period for the M5 was extended by more than 3.3 years, I think, as part of that process, but I would have to get back to you on the exact detail. But certainly as part of the widening of the M5 the toll concession was extended in order to pay for the widening.

**The Hon. JOHN GRAHAM:** And this was a \$400 million project. The M4 widening is going to cost \$500 million—\$100 million more than that widening on the M5—but it is going to have a toll on it for 43 years. Is that correct?

**Mr KANOFSKI:** As my colleague said, the widening of the M4 is part of the WestConnex scheme and the tolls on the WestConnex scheme are to make a partial contribution towards paying for the widening of the M4, the M4 East—which is a tunnel from the widened section to Haberfield—there is then a further tunnel to Rozelle, there is a major interchange at Rozelle, there is a link then between the M4 and the M5, the M5 is being duplicated and there is a new—

**The Hon. JOHN GRAHAM:** So what is really going on here, is it not, as you described that, is that motorists on the widened M4 are obviously paying for more than just that project; they are actually paying for the whole project, as you described it there as they are having the toll increased for 43 years?

**Mr KANOFSKI:** I think that is quite inherent in the business case; it is not a revelation.

**The Hon. JOHN GRAHAM:** But it goes to the fairness of the tolls on the widened M4.

**Mr KANOFSKI:** As I said, the business case for the WestConnex scheme, which includes all of those parts, is partially funded by the tolls on the entire scheme.

**The Hon. JOHN GRAHAM:** That is not user-pays; it is much more than user-pays. By virtue of this toll you are describing and its 43-year extension, users are paying much more than the benefit they are receiving. Is that not correct?

**Mr BRAXTON-SMITH:** It is a two-part tolling system. There is a distance-based component. The majority of customers who currently use the M4 journey well beyond the place where it currently ends on the arterial road network. That will still be available to those customers, or they will have the alternative of paying more to travel the additional distance avoiding a number of traffic lights and getting a faster run to their ultimate destination.

**The Hon. JOHN GRAHAM:** Your answer does not take account of the fact that distance-based tolling will apply for 10 times longer for the widening of the M4 than it has for a similar sized project—that is, the widening of the M5. How do you explain that?

**Mr BRAXTON-SMITH:** I will take that question on notice.

**The Hon. JOHN GRAHAM:** I am happy for you to do so.

**Mr BRAXTON-SMITH:** Our submission states on page 5 that the extension of the M5 South-West concession scheme was originally through to 2014 but was extended to 2026. We will have to check the maths on the point you are putting to us.

**Mr KANOFSKI:** The important point is that the tolling on the M5 West was extended as part of a scheme to widen the M5 West. The tolling on the M4 is part of the WestConnex total scheme, which the business case makes very clear is to partially fund the entire WestConnex program.

**The Hon. JOHN GRAHAM:** It goes to the point that people in Penrith will be paying this toll for 43 years to pay for other bits of the network. That is undeniable under the WestConnex business case.

**Mr KANOFSKI:** The WestConnex business case is tolled until 2056 in order to make a contribution towards the payment of the entire cost of building the WestConnex scheme.

**The Hon. JOHN GRAHAM:** Thank you. When will the widening of the M4 be completed?

**Mr KANOFSKI:** The current estimated date is June 2017.

**The Hon. JOHN GRAHAM:** When will tolling commence on the M4?

**Mr KANOFSKI:** I will explain how these things work. Roads and Maritime Service [RMS] has issued a concession agreement to a subsidiary company of the Sydney Motorway Corporation to build, own and operate the entirety of the WestConnex scheme, or in this case the M4. It is entitled under that agreement to toll from the date when the M4 widening is complete.

**The Hon. JOHN GRAHAM:** So it is entitled to do that. Have there been any discussions about delaying that date?

**Mr KANOFSKI:** As I said, the position is very clear that it is entitled to do that. There has been a range of speculation—

**The Hon. JOHN GRAHAM:** I am asking whether there have been any discussions.

**Mr KANOFSKI:** Any change to that would be a matter for the Government to consider. My suggestion is that that matter should be referred to the relevant Ministers.

**The Hon. JOHN GRAHAM:** Are you aware of discussions about deferring that date?

**Mr KANOFSKI:** As I said, the position is very clear. If there were to be any changes to that, it would be a decision for the Government, and it is a question for the Government.

**The Hon. JOHN GRAHAM:** When do you expect the toll to be in place?

**Mr KANOFSKI:** The toll is currently enabled by the contract to be in place from the completion of the M4 widening—that is, the toll on the widened section.

**The Hon. JOHN GRAHAM:** I turn to the issue of toll escalation. Can you confirm the toll escalation arrangements? Your submission states that none are guaranteed for the Sydney Harbour Bridge; CPI or 1 per cent, whichever is greater, for M5 South-West Motorway and the Hills M2 motorway; 37.5 per cent CPI plus 63.5 per cent average weekly earnings for the Eastern Distributor; and CPI per quarter for the Cross City Tunnel, the Westlink M7, and the Lane Cove Tunnel. Is this not a mess when it comes to motorists navigating the system or any sensible policy outcome?

**Mr BRAXTON-SMITH:** These escalation clauses were put in place by the government of the day at the time the decision was made to construct and finance the road through a tolled concession. It is very clear that they are not consistent. Our customer research indicates a clear preference for more consistency. However, it also indicates that customers are not thinking about the rate each time they travel; they think much more in terms of how much they spend on average per week or per month.

**The Hon. JOHN GRAHAM:** One of the things that stands out is the lack of escalation for the Sydney Harbour Bridge and the Sydney Harbour Tunnel. When was the last change to those tolls?

**Mr KANOFSKI:** I am happy to take the detail on notice. However, from memory it was about seven or eight years ago. It is important to understand the reason for that difference.

**The Hon. JOHN GRAHAM:** I want to focus on the Sydney Harbour Bridge and the Sydney Harbour Tunnel. Why have the tolls not increased since then?

**Mr KANOFSKI:** Those tolls are not set in a concession agreement with a private operator. All of the other motorways are set.

**The Hon. JOHN GRAHAM:** Correct.

**Mr KANOFSKI:** It is the Government's role to change the Sydney Harbour Bridge and the Sydney Harbour Tunnel tolls.

**The Hon. JOHN GRAHAM:** But the Roads Act 1993 requires that in setting tolls on the Sydney Harbour Bridge and Sydney Harbour Tunnel Roads and Maritime Services must have regard to movement in the CPI. What steps have you taken in regard to the CPI?

**Mr KANOFSKI:** The matter is considered annually by the relevant Minister of the day.

**The Hon. JOHN GRAHAM:** It is an obligation that attaches to RMS. You have a statutory obligation. What steps have you taken to fulfil it?

**Mr KANOFSKI:** We have provided advice to the Minister of the day about the impact of applying the CPI or any other increase—

**The Hon. JOHN GRAHAM:** You have provided advice and it has been ignored by the Government.

**The Hon. Dr PETER PHELPS:** Point of order: The member is relatively new to this place. Asking officials what advice has been provided to Government is very difficult given that they should not be saying what they do or do not provide.

**The Hon. JOHN GRAHAM:** I am happy to take guidance on that.

**The CHAIR:** The member understands the point being made on the issue of policy. I will let him proceed because I think he understands.

**The Hon. JOHN GRAHAM:** Thank you for your evidence to date on that question. I turn to an issue that received publicity this week with regard to the F6 project. Can either of you confirm the existence of a memo dated 26 September 2016 headed "Failure and critical options analysis".

**The Hon. TREVOR KHAN:** Point of order: I have had a look at the terms of reference and the I struggle to see how this question comes within a bull's roar of them.

**The CHAIR:** I do not think we have heard the question yet.

**The Hon. JOHN GRAHAM:** It goes to the value-for-money question on these roads projects, and specifically the F6.

**The Hon. Dr PETER PHELPS:** To the point of order: Term of reference (a) refers to review of the tolling regime in place on different roads and an explanation of the differences between each. There is nothing of a prospective nature in relation to potential future roads that I can see.

Brk/SK

**The CHAIR:** I draw your attention to (g) "Opportunities to increase the assurance of the public that tolling arrangements represent the fairest possible outcome"; (h), "The examination of road tolling arrangements in overseas jurisdictions"; and (i) "Any other related matters".

**The Hon. TREVOR KHAN:** In terms of (i), I think it is generally accepted that (i) must relate to the terms above. It cannot be used as an invitation for what could generally be described as a fishing exercise.

**The CHAIR:** With respect, I do not think I have heard enough of the question to conclude a sufficient exercise so I ask you to continue.

**The Hon. JOHN GRAHAM:** I first want to confirm the existence of this memo. Are either of you aware of its existence?

**Mr BRAXTON-SMITH:** I think you are making reference to a memo that was released under a recent Government Information Public Access Act [GIPA] application.

**The Hon. JOHN GRAHAM:** Correct.

**Mr BRAXTON-SMITH:** So I am aware of its existence.

**The Hon. JOHN GRAHAM:** And are you aware of a comparison then between a rail option, which is outlined in the memo, which appears to be cheaper than the road option, which is contemplated, that is, the F6?

**Mr BRAXTON-SMITH:** I am not aware of any of the details to do with the subject matter of that particular memo, save to say that it was written by an employee who was clearly disaffected and does not reflect Transport for NSW's policy or evidence-based analysis.

**The Hon. JOHN GRAHAM:** Can you take on notice the estimates of the number and value of properties that will be purchased to allow the construction of the F6 tollway, the Western Harbour Tunnel and Northern Beaches Link?

**The Hon. TREVOR KHAN:** Point of order: The point of order is the same as before. This is an inquiry into road tolling and I submit that what Mr Graham is now doing goes well and truly beyond the scope and intent of this inquiry.

**The CHAIR:** I think the invitation has been to take it on notice?

**The Hon. JOHN GRAHAM:** Correct.

**The CHAIR:** Are you prepared to take the question on notice?

**Mr BRAXTON-SMITH:** Well, I think if the question is about the number and value of properties for the construction of either of those potential motorways, then that would be a question that is impossible to answer.

**The CHAIR:** But they have been announced by the Premier, have they not, those projects?

**Mr BRAXTON-SMITH:** But there have been no studies to determine the final route and therefore the number of properties that might be affected by the route.

**The Hon. JOHN GRAHAM:** I am happy if that is the Government's response on notice but if it is other, that it be taken on notice.

**Mr KANOFSKI:** We are happy to take the question on notice and give you a response.

**The Hon. JOHN GRAHAM:** Thank you. Turning to WestConnex, are there any non-complete clauses in the contracts for WestConnex?

**Mr KANOFSKI:** I would have to take that on notice.

**The Hon. JOHN GRAHAM:** Thank you. Really what I am getting to: Is the Government constrained in any way in building public transport to get people along this corridor more quickly?

**Mr KANOFSKI:** I do not think so but I will take it on notice to look at the detail of the contract.

**The Hon. JOHN GRAHAM:** Thank you. What performance standards do these contracts contain when it comes to minimum speeds, congestion avoidance, road quality—are there any performance standards at all or are these just arrangements about the price people will be charged?

**Mr KANOFSKI:** There are performance standards with regard to the quality of the road and there are performance standards generally with regard to its need to be kept open and available for customers to use. There are generally not performance standards with regard to average speeds and the like.

**The Hon. JOHN GRAHAM:** So incident response times and equipment failure response times, are they the sorts of things that are captured in the description you have just given?

**Mr KANOFSKI:** Incident response times I will have to take on notice but generally there would be performance standards with regard to incident response times, in the newer contracts I hasten to add. I think we have here a history.

**The Hon. JOHN GRAHAM:** Understood. I am asking here about WestConnex specifically and the modern contracts. Are there penalties that exist where these performance standards are not met?

**Mr KANOFSKI:** Contracts are not allowed to contain penalties, so generally where performance standards are met there may be regimes with regard to what the consequences of not meeting performance standards are.

**The Hon. JOHN GRAHAM:** And what might those consequences be?

**Mr KANOFSKI:** They could vary.

**The Hon. JOHN GRAHAM:** The total cost of WestConnex has been described as \$16.8 billion. That number has increased over time but that is now understood to be the value of the project, is that correct?

**Mr KANOFSKI:** Yes, the total cost of the WestConnex scheme is \$16.8 billion.

**The Hon. JOHN GRAHAM:** And there is no change to that?

**Mr KANOFSKI:** That is the total estimated cost of the WestConnex scheme.

**The Hon. JOHN GRAHAM:** Does that include the cost of acquiring houses that need to be purchased?

**Mr KANOFSKI:** Yes.

**The Hon. JOHN GRAHAM:** What is your estimate of the total cost to taxpayers of local road upgrades required to be completed from the Roads and Maritime Services [RMS] budget as a result of WestConnex and not in the \$16.8 billion. What is your estimate?

**Mr KANOFSKI:** It is very difficult to actually attribute. We have got a range of works that happen on local roads and they happen whether you are building a new motorway or not. So there are local road upgrades in surrounding areas around where the WestConnex scheme is being built. It is not a reasonable thing to attribute those to the project. So the answer to your question is that there is a whole range of things happening across the network in any given year.

**The Hon. JOHN GRAHAM:** I am not attributing them to the project, I am asking what is the cost of the road upgrades in the vicinity of WestConnex?

**Mr KANOFSKI:** I would have to take that on notice.

**The Hon. JOHN GRAHAM:** That would be helpful. Has the New South Wales Government or either of your agencies revised their forecasts for WestConnex, in light of the Western Sydney Airport and Sydney Metro being announced?

**Mr KANOFSKI:** I am not sure I understand the question. In what regard?

**The Hon. JOHN GRAHAM:** Since those announcements, are there any changes to the modelling which is envisaged for WestConnex, in particular any changes in demand?

**Mr KANOFSKI:** The demand modelling supported the final business case. Obviously the project is in construction now.

**The Hon. JOHN GRAHAM:** So there has not been subsequent demand modelling following those announcements?

**Mr KANOFSKI:** Not specifically, no.

**Dr MEHREEN FARUQI:** Thank you for coming in, Mr Kanofski and welcome to your first hearing, Mr Braxton-Smith. I might start with the user-pays principle. In the Transport for NSW submission, on page 3 it says: Tolls are fair in that they apply the principle of user pays, meaning those who benefit most from the toll road pay.

But would you agree that this has not been the case for many tolling regimes? I can give you a few examples: The M4 was one we discussed earlier, but extended tolls on the M7, to pay for the NorthConnex, these are not benefiting the users who are using the M7. Even the NRMA said at that time that they were alarmed. There are examples of the Cross City Tunnel, for example, where the majority of the benefits went not to the motorists paying for that but to the businesses and pedestrians on William Street.

**The Hon. TREVOR KHAN:** Point of order: With fairness to these witnesses, they are here to answer a question. What has been essentially asked of the witnesses now—if it could be described as a question—is about four or five different projects all rolled up into one. It is impossible for the witnesses to reasonably answer a question that is so long.

**Dr MEHREEN FARUQI:** To the point of order: I have asked a question. I am just giving examples to clarify what I mean to the witnesses, to make it easier for them to answer this question.

**The CHAIR:** I thought the member was working up to asking the question.

**The Hon. TREVOR KHAN:** To the point of order: That is the problem, isn't it? It is difficult to work out where it is going.

**The CHAIR:** Sometimes we need to be patient. I think we were getting there. The question is going to be asked and this was leading up to it. Please get to the specifics when you can.

**Dr MEHREEN FARUQI:** Given your claims for this being a user-pays model where the motorist who uses the toll road pays, can you justify, given these examples, that it is actually a user-pays model as described by Transport for NSW?

**Mr BRAXTON-SMITH:** In relation to the examples that you gave, I do not have any objective evidence- or research-based analysis to be able to comment on any of the roads that you remarked about. Our market research does say that customers expect a travel time saving and are prepared to pay the money in order to get that and that they see that as the key benefit that is provided to them by the use of a tolled motorway.

**Dr MEHREEN FARUQI:** I might put that question another way: Given that the extension of tolls on M7 motorists are being used to pay for NorthConnex, that is not a user-pays model, would you agree with that?

**Mr BRAXTON-SMITH:** No, the tolls on the M7 were not extended.

**Dr MEHREEN FARUQI:** The toll concessions on the M7 have been extended to 2048.

**Mr KANOFSKI:** You are right, my apologies.

**Dr MEHREEN FARUQI:** And Transurban acknowledged that this morning, that they were going to be used to pay for NorthConnex. So my question is, do you think this is a user-pays model as described by Transport for NSW?

**Mr BRAXTON-SMITH:** The current position for Transport for NSW and one of the things it used to enable it to provide a system and a network, which is what customers are looking for, is to take a network-wide view. So there have been some tolling principles that have been adopted by government and they are set out on page 11 of our submission.

**Dr MEHREEN FARUQI:** I have seen your submission.

**Mr BRAXTON-SMITH:** The principles there are that the tolls pay for the use of the network.

**Dr MEHREEN FARUQI:** That is not what your submission says. Moving on, I am interested in the re-tolling of the M4. You said that there has been an agreement with a subsidiary of the Sydney Motorway Corporation [SMC]?

**The Hon. TREVOR KHAN:** Point of order. I think the witness wants to say something.

**The CHAIR:** A point of order has been taken. The suggestion is that Mr Braxton-Smith wished to say something further, is that so?

**Mr BRAXTON-SMITH:** I wanted to draw members attention to point two of the tolling principles. It says that tolls can continue while they provide broader network benefits or fund ongoing costs. That is the principle of spreading the cost amongst all users of the motorway network.

**Dr MEHREEN FARUQI:** In terms of the M4 and the toll, you said that there was a concession agreement already in place with the subsidiary of SMC, is that correct?

**Mr KANOFSKI:** Yes, there is.

**Dr MEHREEN FARUQI:** If there is a toll free period granted on the M4, as was suggested earlier, would the taxpayer be compensating the toll operator for that free toll period?

**Mr KANOFSKI:** I have answered the question previously with regard to speculation about changes to that. It is a matter for the Government and you should refer the questions to the Government.

**Dr MEHREEN FARUQI:** Transport for NSW would have no say in how that works?

**Mr KANOFSKI:** I have answered the question.

**Dr MEHREEN FARUQI:** In relation to WestConnex, there was originally an announcement that there would be a cap of \$7.35. I am quoting 2013 dollars. Now that there are five separate toll links within WestConnex is there a plan to have a journey cap or will individual links be capped?

**Mr KANOFSKI:** The tolling arrangement that is set out in the final business case for WestConnex is a scheme-wide tolling arrangement and the cap applies to journeys taken on that scheme.

**Dr MEHREEN FARUQI:** To different links or the length of the journey?

**Mr KANOFSKI:** When the project is complete under the tolling arrangements outlined in the final business case when you enter the scheme then your total journey on the scheme will be capped.

**Dr MEHREEN FARUQI:** At \$7.35 in 2013 dollars?

**Mr KANOFSKI:** Yes, at \$7.35 in 2013 dollars.

**Dr MEHREEN FARUQI:** Many of the submissions from local councils such as Penrith have highlighted the unfairness and inequity of tolling as those who use WestConnex and the toll roads are in Western Sydney or south western Sydney and have the lowest incomes and will be hardest hit by this. Is there inequity in how toll roads are built and tolls set, given there are no viable public transports alternatives?

**Mr KANOFSKI:** It is not our place to speculate on Government policy.

**Dr MEHREEN FARUQI:** You are the organisation that plans and delivers transport for the public of New South Wales?

**Mr KANOFSKI:** Absolutely.

**Dr MEHREEN FARUQI:** Would it not be part of your remit to deliver transport that is fair and equitable?

**Mr KANOFSKI:** The WestConnex scheme delivers substantial benefits for all customers. It delivers particularly strong benefits for customers in Western Sydney who will see journey times from Parramatta to the airport reduced by—off the top of my head—40 minutes. The WestConnex scheme provides strong customer benefits to all of the customers who will be using it. For that there is a tolling regime put forward in the final business case which outlines the total scheme tolling arrangements to partially pay for the total scheme.

**Dr MEHREEN FARUQI:** When planning for toll roads do you consider public transport alternatives that could provide value for money that you could compare with the travel time savings that are compared with the current situation or the do nothing scenario?

**Mr BRAXTON-SMITH:** It is important to examine the nature and the use of the networks when you do those evaluations. One of the things that is not well understood at the moment is the amount of commercial traffic on the motorway network. A recent analysis indicates it is 40 per cent of all vehicles and that is by volume. Of that 40 per cent 30 per cent are light commercial vehicles, or commercially registered vehicles, but the other 10 per cent are heavy trucks and they are carrying goods and delivering services. Therefore, around 50 per cent of the motorway capacity is being used for economic benefit and business purposes. Therefore, public transport cannot be a substitute for that usage.

**Dr MEHREEN FARUQI:** Half of the people still are private motor vehicles. In terms of heavy vehicles do you consider freight on rail alternatives when planning for these toll roads?

**Mr BRAXTON-SMITH:** The freight mix is again considered. Rail freight is of a particular nature. Rail is particularly suited to bulk and containerised loads that are moving en masse. It is generally accepted in freight that you need good last-mile first-mile connectivity to break bulk and distribute to warehouses and final

destinations. In planning the overall network through the long-term transport master plan consideration has been given to the right mix of rail and road networks in order to deliver the transport task that is required, I think that is the answer.

**Dr MEHREEN FARUQI:** That does not answer my question. I asked a more specific question. In considering NorthConnex was there a rail or public transport alternative considered?

**Mr BRAXTON-SMITH:** NorthConnex already has a rail line that follows to the approximate alignment of the NorthConnex. It is used for freight, as the main north line, as well as passenger movements. We are currently building metro which is going to provide a faster more direct connection to the central business district when it opens in 2024. When you take into account those pieces of infrastructure for the movement of people you are still left with the significant task for the movement of goods that is not economic to build a railway line for, which is why you need road-based transport such as buses, point-to-point transport, and other forms of public transport.

**Dr MEHREEN FARUQI:** In regard to toll extensions, have you had any unsolicited bids for toll extensions from tolling companies?

**Mr BRAXTON-SMITH:** I would have to take that on notice.

**Dr MEHREEN FARUQI:** Transurban said that they had made unsolicited bids for the extension of the M7 or the M2. Could you confirm that? I am reading from the New South Wales unsolicited proposals guidelines. One of the guidelines is about the types of proposals that are not considered unique and proposals unlikely to be progressed. It says, "proposals for significant extensions to existing contracts". Does a proposal to extend toll extensions fall into that category?

**Mr KANOFSKI:** The application of the unsolicited bid policy is a matter for the Department of Premier and Cabinet. They administer those guidelines and they give strong guidance on what can and cannot proceed. The point I would make about unsolicited proposals is that of the number of unsolicited proposals that have been received very, very few actually are progressed. That is true of proposals for roads as much as it is true for proposals for anything else. Those guidelines are designed to test a whole range of matters including uniqueness, value for money and all of those things. If you look at the evidence of how many have been submitted over time—I do not have the exact number—and how many are progressed you would find that very few are progressed. That would suggest to me that it is a rigorous process run by the Department of Premier and Cabinet to test the proposition you are suggesting.

**The Hon. MEHREEN FARUQI:** Why do you think Sydney has half of the toll roads in Australia?

**Mr BRAXTON-SMITH:** Sydney is geographically very spread out. We have just completed the rollout of the Opal card network in the greater Sydney metropolitan area, and it is the largest single network rollout for a smartcard system in the world. It is a big geographical area.

**The Hon. MEHREEN FARUQI:** Sure, but how does that justify the number of toll roads that we have?

**Mr BRAXTON-SMITH:** Sydney is a very geographically spread out area and there is a demand for travel along certain corridors that needs to be met. The Government of the day, having been provided with the advice as to the alternatives, has made the decision that a toll road will best meet the community's need.

**The Hon. MEHREEN FARUQI:** A few submissions to the inquiry have highlighted the fact that Transurban is the majority owner of toll roads in New South Wales and Australia and because of that it has excessive power and a very strong negotiating position when it comes to toll concession agreements and the building of toll roads. For example, the former Victorian Premier Jeff Kennett told the *Age*:

Money, instead of going to government, is going to the private sector; and that is a total waste.

Would you have a comment to make on the excessive influence of Transurban and how it might outmanoeuvre in negotiations? Also is this actually giving the public value for money?

**Mr KANOFSKI:** I think it is impossible to speculate on the answer to that question.

**The Hon. MEHREEN FARUQI:** Given people's observations that Transurban is making huge profits, and that toll roads are costing billions of dollars, do you think that is providing people value for money given your experience in transport?

**Mr KANOFSKI:** I think the principal issue for the Government is: do toll concession agreements—however they are formed; whether by an unsolicited proposal or through a tender process—deliver value for money for the taxpayers? We have a number of very strong processes in place to ensure that value for money for

taxpayers is obtained. That is our prime focus. Whether it is a negotiation or a tender process, one of the absolute principles of that is value for money. There is a whole range of scrutiny that comes with that. Business cases are published. Contract summaries are published. Auditor-General's opine and others conduct reviews. So I think the principal question for us as the transport entities of Government is: are we seeking to get value for money out of those negotiations? And the answer is definitely: yes.

**The Hon. MEHREEN FARUQI:** Mr Kanofski, you said that business cases were published. But a few people have highlighted recently, including Infrastructure Australia and the Auditor-General of New South Wales, that one of the reasons why project costs are so huge and why they blow out is that detailed business cases are actually not published.

**Mr KANOFSKI:** The business case for WestConnex has been published.

**The Hon. MEHREEN FARUQI:** We could argue about that until the cows come home. Turning to another line of questioning, are there non-competition clauses in the contracts that Transport for New South Wales signs with toll road contractors?

**Mr KANOFSKI:** Yes, there are some in some of the agreements.

**The Hon. MEHREEN FARUQI:** So the non-competition clauses are not in every agreement?

**Mr KANOFSKI:** I would have to take that on notice, but there are some in some agreements.

**The Hon. MEHREEN FARUQI:** Do those non-competition clauses actually include the non-provision of public transport in certain instances—for example, if that competes with the toll road?

**Mr BRAXTON-SMITH:** Not to my knowledge. We will take that on question on notice and confirm.

**Mr KANOFSKI:** We will have to take that on notice. I think that some of the older ones may have done that but we would have to take that on notice.

**The Hon. MEHREEN FARUQI:** If you could take that on notice, it would be very helpful. Much of the justification for toll roads is actually around reduced travel time, for instance, and the boost that provides to productivity. But a number of submissions have claimed that big road projects do not actually save time and neither do they boost productivity. The reason for that is that when toll roads are provided more people start living further out and also they travel greater distances. Do you have any comments to make on that?

**Mr BRAXTON-SMITH:** In terms of people travelling greater distances, I think the Australian Bureau of Statistics and other statistics gatherers have come to the conclusion that the average distance travelled by customers in motor vehicles has plateaued, and in fact people are travelling slightly less now than they were a decade ago per vehicle and per person. So I think you are posing a question as to which came first—the chicken or the egg. Did a lot of people move somewhere where there was not a sufficient road network—to the extent that the demand grew to justify the building of a motorway to enable those people to save travel time?

**The Hon. MEHREEN FARUQI:** But I think on the saving of travel time it is an average. So it depends on where you live in this instance. I guess the other issue with that is: how confident are you that economists have correctly valued people's willingness to pay? We have in the past had estimates which have been quite wrong in terms of how many people would pay the toll to travel on certain motorways. For instance, certain motorways have not seen eventuate the thousands of cars that were predicted to travel on them. How confident are you in the case of WestConnex that the cost will be recouped?

**Mr BRAXTON-SMITH:** In general, not being an economist myself I do not feel qualified to comment on the skill or competence of economists. That is a job for New South Wales Treasury and Infrastructure NSW, who have a very robust independent assurance process that is designed to give Government the confidence that the forecasts and the modelling are correct. Infrastructure NSW was established recently because historically there had been problems in terms of the performance of infrastructure being as forecast. That is precisely one of the reasons why it was established—to give both Government and the community greater confidence in the forecasts and that they were reasonably based. So I would rely on them.

**The Hon. TREVOR KHAN:** I will go to page 12 of your submission, which deals with tolling research. More particularly, we have heard repeated references to customers and people—that is, the motorway users. I think your evidence already has been to the fact that about half of them are commercial users. Has research been done, for instance, with regards to what the average toll is that people are paying per month in terms of motorway users—that is, e-tag holders and the like?

**Mr BRAXTON-SMITH:** We have taken samples of e-tag data. For instance, we took a sample of data of all e-tags and looked at the spending curve. What we discovered was that about 68 to 70 per cent of

customers are spending \$50 a month or less. Market research also tends to confirm that. When customers are asked to estimate their spending, 20 per cent say it is less than \$20 per month and the balance up to that number. At the other end of the spectrum, about 10 per cent of customers are very high spenders; and they are clearly the commercial users of the network who are using it very regularly.

**The Hon. TREVOR KHAN:** When you say they are using it very regularly, do I take it to mean that is once a day or more than once a day?

**Mr BRAXTON-SMITH:** It is multiple journeys. Interestingly, one of the pieces of analysis we did was on the M5. We found that only 10 per cent of motorists who use the M5—this is out of the cashback dataset so this is private vehicles—are taking between 21 and 40 trips a month, so, in other words, one or two journeys a day. The other 90 per cent are spread at either end of the spectrum—60-plus per cent use it one to five times a month and then there is a bunch of super users, about 15 per cent of customers, who are using it 40-plus trips per month.

**The Hon. TREVOR KHAN:** Do I take it from this that your data is not consistent with the perception that motorways are generally used by commuters into the city?

**Mr BRAXTON-SMITH:** The data does not bear that out. The data would indicate that commuters account for about 10 per cent of motorway traffic at most—if you assume a commuter to be a vehicle registered for private use that journeys on the network between 21 and 40 times per month.

**Mr KANOFSKI:** Just to add to that, I think one of the other points on commuting to the city which is important to note is that the mode share of cars for peak time commuting to the Sydney CBD is very low—it is about 12 per cent. It is low by world standards. Rail does the heavy lifting of people commuting to the CBD. The number of commuters actually using cars to get to the Sydney CBD is very low.

**The Hon. TREVOR KHAN:** Do you know what the factor is that I will describe as the disinhibitor to people commuting to the city?

**Mr BRAXTON-SMITH:** We conducted market research in 2012-13 on customers who use roads generally and the key determinate of what mode they will choose to come to the city. The key inhibitor to using a vehicle to come to the city is the cost of parking.

**The Hon. Dr PETER PHELPS:** That is exactly right.

**Mr BRAXTON-SMITH:** In respect of cost, there is also the comparative journey time for public transport and the majority of those customers who drive to the city are generally from the eastern suburbs, the lower North Shore or inner west.

**The Hon. TREVOR KHAN:** If we are talking about those people, generally they are higher income earners, I take it?

**Mr BRAXTON-SMITH:** Well, you would have to get demographic data. It is an assumption.

**The Hon. Dr PETER PHELPS:** I think it is safe to make that assumption.

**The Hon. TREVOR KHAN:** Reference has been made to commuters from the south-west. If we take out of that commuter sample those who jump on the train, where are those commuters going? Where are they driving to? Are they driving into the city or are they driving somewhere else?

**Mr BRAXTON-SMITH:** We do not have point-to-point movement data for the vehicles once they leave the paid network. We do not have fine grain data that would tell us where they are going.

**The Hon. TREVOR KHAN:** I will ask another question.

**Mr BRAXTON-SMITH:** But, in the overall strategic transport model, which is used to design the network and analyse point to point, there is statistical analysis which shows they are distributed quite broadly.

**Mr KANOFSKI:** The number of people who drive end to end on a motorway, and I do not have the precise numbers I am sorry, is much lower than people actually imagine it to be. In other words, what we have, particularly with regard to roads like the M7 or the M5, is people who are clearly taking a journey from somewhere in the suburbs to somewhere else in the suburbs. A very large percentage of them are not travelling the entire length of those roads.

**The Hon. TREVOR KHAN:** Of course our motorway network, putting aside the M7, has generally been a spider network into the city, is that not right, by its geography?

**Mr KANOFSKI:** Yes, by and large.

**The Hon. TREVOR KHAN:** If we put the M7 to one side, what you have got is commuters coming on to the network for a part of the time and then jumping off, either to their destination or to use the standard arterial road system?

**Mr KANOFSKI:** Correct.

**The Hon. TREVOR KHAN:** In terms of the M7, that is a distance tolling mechanism, is that right?

**Mr BRAXTON-SMITH:** Correct.

**The Hon. TREVOR KHAN:** That is the only road in our system that uses distance tolling?

**Mr KANOFSKI:** It is currently the only road. The M7 has distance-based tolling. WestConnex, of course, as it comes online, the business case tolling regime is for distance-based tolling.

**The Hon. TREVOR KHAN:** In respect of the system generally, this is a technology issue that has arisen that has allowed the distance-based tolling, is that right?

**Mr KANOFSKI:** The technology for tolling has come a long way. When we first went away from needing people in toll booths to collect tolls at a particular point, obviously—

**The Hon. TREVOR KHAN:** So when you had those, you could collect for pigs, and whatever.

**Mr KANOFSKI:** And all manner of different styles of vehicles. Certainly the technology is now at a level so that you can calculate where people got on and came off, and you can charge them for that particular distance. It is fair to say that there is a movement towards that style of tolling because the technology allows it and it performs very clearly with a user-pays style principle where the more you use, the more you pay. Importantly, on things like WestConnex, there is then a cap as well which goes to people's capacity to pay.

**The Hon. TREVOR KHAN:** The picture you paint is that while there is a component of what we can describe as commuter traffic which may use it for its full distance, a lot of relatively short parts of the motorways are being used by that commuter traffic, is that right?

**Mr KANOFSKI:** As a generalisation. That is a reasonable generalisation.

**The Hon. TREVOR KHAN:** And about 50 per cent of the traffic is commercial use of one sort or another, either a heavy user or other commercial user, is that right?

**Mr BRAXTON-SMITH:** Yes, that is our estimate.

**The Hon. TREVOR KHAN:** In terms of the other commercial user category, going to the terms of the inquiry, at the present time the other commercial user group is tolled, is it not, at the same time as a private passenger vehicle in most cases. Is that the case?

**Mr BRAXTON-SMITH:** At the present time, yes.

**The Hon. TREVOR KHAN:** To do otherwise, I suppose, would essentially be in the nature of a tradies tax. The plumber going from X to Y could theoretically be charged more, but the question is whether that is appropriate?

**Mr BRAXTON-SMITH:** Historically, if you look back in the days when toll booths were attended—

**The Hon. TREVOR KHAN:** Yes, apart from charging for pigs.

**Mr BRAXTON-SMITH:** —generally there was a distinction made between the size and weight of the vehicle and the style of the vehicle. When the technology was first introduced, because of its limitations, that fell by the wayside. Other jurisdictions have reintroduced tolling that is based for commercial vehicles on a multiplier of the standard vehicle. Victoria and Queensland have that system in place where they charge 1.5, 1.6 times the charge for a standard passenger vehicle.

**The Hon. TREVOR KHAN:** If we wanted to, for instance, encourage more people to jump on their moped and head into town—if they are crazy enough to do it on the expressways—you could always charge a differential toll for them as well?

**Mr KANOFSKI:** From a policy perspective those options are now available to Government because the technology has got to a point that we can make them available. Obviously there are pros and cons on any of those policy positions, and those are a matter for Government to determine.

**The Hon. TREVOR KHAN:** Sure, but the technology has now got to a point that we could accommodate those as well?

**Mr KANOFSKI:** Yes.

**The Hon. Dr PETER PHELPS:** In relation to the Independent Pricing and Regulatory Tribunal [IPART], there have been suggestions that IPART regulate the toll costs on the existing network. Would that not present a serious problem because effectively you are in an existing contractual relationship with a private company and seeking to regulate the price would present a substantial risk for any future investments we might seek in New South Wales.

**The Hon. JOHN GRAHAM:** I do not think that is the suggestion, but feel free to ask the question.

**The Hon. Dr PETER PHELPS:** It says at (f), "The appropriateness of involving... [IPART] in the determination of tolls and their escalation". That would represent a serious risk—

**The CHAIR:** I think that is in regard to the negotiation over the contract in the first instance.

**The Hon. Dr PETER PHELPS:** In that case, if that is the assurance from those opposite that that is the situation, do you believe that the New South Wales public service, in its discussions when IPART is not involved, still seeks to get value for money for taxpayers in this State?

**Mr BRAXTON-SMITH:** We have a very strong framework of evidence-based analysis and evaluation of any proposal put to us that is for the purpose of determining value for money.

**The Hon. Dr PETER PHELPS:** Do you believe that the addition of IPART on such a selection board or review panel would in any way enhance the oversight of the existing agencies in examining proper cost benefit analyses?

**Mr KANOFSKI:** No, I do not. I think that if you look at the assurance process that we have, and this is an important issue so I would like to explain the assurance process that we have, so business cases are prepared for all of these projects. Business cases are assured by Infrastructure NSW, which is an independent body and provides independent advice to the Government, and these are big projects. So generally speaking, in the room at the time when we are discussing value for money for these projects, we will NSW Treasury, the New South Wales Department of Premier and Cabinet, Transport for NSW, Roads and Maritime Services.

**The Hon. Dr PETER PHELPS:** Not the sort of people who throw money away willy-nilly.

**Mr KANOFSKI:** Not in my experience.

**The CHAIR:** What about Treasury?

**Mr KANOFSKI:** Then we have Infrastructure NSW providing an independent assurance function. The Auditor-General audits those arrangements. We have public disclosure through the Government Information (Public Access) Act and the Public Authorities (Financial Arrangements) Act requirements to disclose public-private partnership contracts. There is an incredibly robust process to ensure that value for money is being sought and obtained.

**The Hon. Dr PETER PHELPS:** That is nice little segue. Thank you, Mr Kanofski, for that. In 1994, then the Auditor-General had a report entitled "Private participation in the provision of public infrastructure: the Roads and Traffic Authority". Were you with the Roads and Traffic Authority then, or are you aware of that 1994 report from the Auditor-General?

**Mr KANOFSKI:** No and no.

**The Hon. Dr PETER PHELPS:** The Roads and Traffic Authority [RTA] gave a response to that report in which it said:

The Auditor-General's report contains factual errors and inaccuracies ..."

It said further:

The Auditor-General is misleading in relation to ERS payments.

Sometimes the Auditor-General gets it wrong, is that not correct?

**Mr KANOFSKI:** What I would say is when an Auditor-General's report is prepared if we have got issues with it then we would make those issues known. Whether or not they got it wrong is a judgement for someone else.

**The Hon. Dr PETER PHELPS:** Is it not fair to say that basically your predecessor, the RTA and your current arrangements, actually got better at writing contracts for public-private partnerships [PPP]? You have become more aware of what the limitations were, over time you have taken those issues on board and now write much better contracts than in those early years?

**Mr KANOFSKI:** I think there is no doubt that the level of sophistication—as in all things, to be frank—in terms of tolling agreements and tolling concessions has come along way from those early agreements. The sophistication in the way that issues are considered in those agreements is now much more fine tuned and deal with a broader range of issues than it did a long time ago.

**The Hon. Dr PETER PHELPS:** Is it fair to say that the road network in Sydney, in the Cumberland Basin, is an organic entity? So you cannot look at one aspect of traffic-flow management in one area without having implications to other areas and on that basis improvements in one area necessarily flows on to improvements in traffic conditions in areas that are affected by the catchment of that improvement?

**Mr KANOFSKI:** That is correct. I think toll roads are really good case in point in that toll roads provide a substantial benefit to the user of that particular toll road. They also provide a very substantial benefit to the balance of the users on the road network and the reason they do that is because absent being able to raise some of the money to pay for the road in tolls, those toll roads would take much longer to build and they will not be brought to bear as quickly as they are. Now what that means in simple terms is that the advent of toll roads means there is more capacity in the road system and that is of benefit to all road users.

**The Hon. Dr PETER PHELPS:** For example, a person coming in from Western Sydney who previously had to rely solely on Parramatta Road for travel between Penrith and Parramatta, receives a material benefit if they continue to use Parramatta Road after the creation of a toll road despite the fact that they might not pay any contribution to the cost of that toll road not actually being users themselves?

**Mr BRAXTON-SMITH:** If I could add, that is correct. Some of the analysis that we have indicates that whilst 25 per cent of the traffic will be removed from Parramatta Road, indeed, 50 per cent of the vehicle kilometres will be removed from Parramatta Road—that is principally the through traffic—therefore it is going to be much better proposition for those who are resident in the local communities. They will experience a benefit from the completion of WestConnex.

**The Hon. Dr PETER PHELPS:** So the argument that people who do use the M4 are paying for an improvement in the total network through the creation of the M7 and M5 upgrades is spurious because the necessary flow improvements that will be occasioned by WestConnex and an M5 upgrade will have a material benefit on their travel times on the M4. Would that not be the case?

**Mr KANOFSKI:** I am not sure that I entirely follow the question but the proposition that toll roads benefit the broader road network is absolutely true. I just might add, in terms of the question before about NorthConnex and the connection to the M7 and the Lane Cove Tunnel, they are major feeder roads for NorthConnex so we are talking an entire journey.

**The Hon. Dr PETER PHELPS:** Mr Braxton-Smith, one of the arguments that has been used by people who do not like cars generally, and who definitely do not like toll roads, is that we would be better off if we spent a lot more money building infrastructure for public transport networks. You may not have it with you but could you take on notice what the average taxpayer subsidy is? In other words, what is the differential between the fare cost charged to users of public transport networks and the actual costs, including not only the operating expenses but also the depreciation expenses on the capital infrastructure? Do you have a rough figure on how much they are subsidised?

**Mr BRAXTON-SMITH:** When the Independent Pricing and Regulatory Tribunal [IPART] did its last review of Opal fare pricing it came to the conclusion that at present what is known as fare-box recovery is around the mid to high 20 per cent of the costs—in other words, of the \$100 of cost, public transport fares are paying \$20-something of it.

**The Hon. Dr PETER PHELPS:** So 80 per cent?

**Mr BRAXTON-SMITH:** IPART came to the conclusion that the socially optimal level is 30 per cent of fare-box recovery—in other words, suggesting that for the operating cost of public transport the user should pay 30 per cent and the taxpayer should meet 70 per cent of that cost.

**The Hon. Dr PETER PHELPS:** For those people who say we should have full user-pays on, for example, WestConnex and there should be no payment on M7—and there are some people who say you should only have people using WestConnex paying for WestConnex—if we were to apply that sort of logic more broadly then you would expect public transport fares to rise by 500 per cent if it was a full cost recovery user-pays system, would you not?

**Mr BRAXTON-SMITH:** You would have to look at both demand as well as supply because the pricing is not in elastic so it would be difficult to predict.

**The Hon. Dr PETER PHELPS:** But the principle remains the same—that is, we accept that it is socially desirable to have some sort of cross-subsidy for public transport, why should not there also be a subsidy to provide a benefit to those people who otherwise would be freeloaders on the traffic-flow benefits that are occasioned by these new toll roads?

**Mr BRAXTON-SMITH:** That is a complex piece of economic analysis that you are talking about and, as I said before, I am not an economist. I could say that with toll roads in general there is usually a government contribution—read for that, a taxpayer contribution—so in the funding of the construction of it there is definitely a contribution by the broader taxpayer—

**The Hon. Dr PETER PHELPS:** But it is nowhere near 80 per cent.

**Mr BRAXTON-SMITH:** It depends on the road. I do not have a percentage in mind but it depends on the road. The nature of toll roads is such that it is mainly capital cost, whereas when you build public transport there is a significant ongoing operating cost to it.

**Mr KANOFSKI:** Just in terms of some recent examples of that, the taxpayer contribution to the NorthConnex project, which is around about a \$3 billion project, is about \$800 million towards the capital cost but the balance of the capital costs and all of the operating costs over the concessional period are then recouped through the tolling system. WestConnex, there is about \$3,500 billion worth of State and Federal funding—read for that, taxpayer funding—in the \$16.8 billion scheme. Again, the ongoing operating costs of those motorways is borne by the toll payer.

**The CHAIR:** Gentlemen, we are scheduled to finish at 11.45 a.m. I am proposing an extra five minutes per group, which will take us a little bit beyond that. Are you comfortable with that?

**Mr KANOFSKI:** Absolutely.

**The CHAIR:** Has the New South Wales Government had any discussions or received any unsolicited offers with potential private sector operators regarding entering into road tolling concession arrangements for—I will list them, and if you need to take this question on notice please do so—any of the five sections of the WestConnex project: the western harbour tunnel, northern beaches tunnel, Sydney Harbour Bridge, Sydney Harbour Tunnel and Anzac Bridge?

**Mr KANOFSKI:** I would have to take it on notice. Broadly, discussions with the New South Wales Government could cover a whole range of people. You could term discussions with me to be discussions with the New South Wales Government, discussions with the Minister, discussions with a whole range of people.

**The CHAIR:** I think it is important we formulate this very precisely: it is discussions between the New South Wales Government, whoever agency or Minister or individual you might seek to nominate, and a potential private sector operator. That is what I am saying specifically.

**Mr KANOFSKI:** I would have to take that on notice in terms of discussions.

**The Hon. JOHN GRAHAM:** A question first to Mr Braxton-Smith. Thanks for the research you have run us through, the customer research about attitudes, the e-TAG samples and the market research from 2012. I think it would be of assistance to the committee if you were able to provide that to the committee. Are you happy to do so?

**Mr BRAXTON-SMITH:** I am happy to provide a summation of an extract of the research that I have talked about and the data analysis that supports—

**The Hon. JOHN GRAHAM:** I think as much detail as you are able to provide would assist us to sort through what are clearly some complex issues here.

**The Hon. TREVOR KHAN:** And dispel some misconceptions.

**The Hon. JOHN GRAHAM:** I am sure. I was surprised by one aspect of the research. You told us that on tolls customers had said they would not affect their use. Are you aware of the University of Sydney research "How much is too much for tolled road users" about toll saturation in February 2016?

**Mr BRAXTON-SMITH:** Yes, I am aware of that piece of research.

**The Hon. JOHN GRAHAM:** Which really appears to contradict that suggestion, that in fact Sydney might be reaching a toll saturation point given the number of tolled motorways we now have.

**Mr BRAXTON-SMITH:** It is a complex piece of economic modelling—

**The Hon. JOHN GRAHAM:** It is.

**Mr BRAXTON-SMITH:** —based on a design to test a hypothesis. But it is not in my area of expertise.

**The Hon. JOHN GRAHAM:** If you are able to provide on notice a view about that research? I do not think there is research like it and its finding that we might be at a toll saturation point certainly might have real implications for policy. If you could provide an answer on notice—a view about it—that would be very helpful. Are you happy to do so?

**Mr BRAXTON-SMITH:** I am happy to take the question on notice and provide an answer.

**The Hon. JOHN GRAHAM:** When will the first concession agreement be sold for WestConnex by the Sydney Motorway Corporation or its subsidiaries?

**Mr KANOFSKI:** It is a matter for the Government.

**The Hon. JOHN GRAHAM:** So you are not aware of timing currently?

**Mr KANOFSKI:** As I said, the question is when will it be sold; the answer is it is a matter for the Government.

**The Hon. JOHN GRAHAM:** Would some of these questions be better directed to the Sydney Motorway Corporation rather than yourself?

**Mr KANOFSKI:** No. It is a matter for the Government not the Sydney Motorway Corporation.

**The Hon. JOHN GRAHAM:** I will turn to the question about IPART. I was interested in your views on IPART. In principle, on a range of other areas, such as water, IPART does provide a view where there are these sorts of customer charges. Thanks for running through the government processes. One of the issues here is that it is very attractive for government or for agencies or especially for Treasury when there are upfront payments coming onto the table within the forward estimates. I can guarantee you that is attractive to government and also to Treasury. You have indicated you do not believe IPART is necessary. Do you have an objection though to these processes being given some additional scrutiny by IPART after the fact? Do you object to that being added to the process?

**Mr KANOFSKI:** The answer I would give is I think it is unnecessary. I think we have an incredibly robust system both of assurance during the process, which has been designed by Infrastructure NSW—an organisation that was purpose-built to do that—and we have an enormous amount of scrutiny after the fact. So we have scrutiny during the fact, we have scrutiny after the fact. I think in terms of further scrutiny after the fact, in my view that would be a misguided use of taxpayers' money.

**Mr BRAXTON-SMITH:** If I could just add to that? We did a quick scan around other jurisdictions where there were concession road agreements in place and could not find any jurisdiction where there is a regulatory oversight of a contracted concession agreement. We looked in the UK, Ireland, Germany, France, Canada, the USA as well as interstate and in none of those instances where they have a concession agreement with a toll road operator do they have any regulatory oversight. It would be quite a novel control mechanism.

**The Hon. JOHN GRAHAM:** That might be the case if it was over the period; that might not be the case if it was scrutiny of the deal after it had been concluded but before it was finally signed off. Surely that is the case.

**Mr KANOFSKI:** I think I have given an answer on that.

**Dr MEHREEN FARUQI:** I just want to know if any of your departments have any say in how tolls rise—the escalation of tolls?

**Mr BRAXTON-SMITH:** They are set by contract. We provide some analysis of the alternatives when we are going through the business case phase—this is current practice—but ultimately the government of the day makes the decision. In essence, the equation would be if you want to have a lower escalation clause you would either have to increase the initial toll that is paid or, alternatively, increase the contribution from the taxpayer.

**The Hon. TREVOR KHAN:** Or lengthen the concession.

**Mr BRAXTON-SMITH:** Or potentially lengthen the concession period. However, I would note that because of the time value of money and the way that discounted cash flows work, you would be providing an extraordinarily quite long tail in order to achieve that; you might have to double the length of a concession, depending on how your discounted cash flow works.

**Dr MEHREEN FARUQI:** Or another scenario could be to reduce some of the profit margins of the operator, because you said earlier that for NorthConnex \$810 million was being paid by Federal and State governments and the rest you said would be recouped—whatever the company had invested would be recouped through tolls, plus the maintenance and all the time would be recouped by toll as well. I think what was missing in my equation, and tell me if you agree with that, are the profits of the company as well as the toll extensions on the M7, which is also part of what taxpayers are paying. Would you agree with that?

**Mr BRAXTON-SMITH:** Government does not control the margin that is applied by private operators. Government relies on the competitive process and what is known as efficient financial markets to provide the solution for the financing of the road, and by nature of the competitive process of the finance markets there is a degree of certainty that you will get competitive pricing—so there will be no super profits. Overall, there is an assurance process designed to ensure that government gets value for money.

**Dr MEHREEN FARUQI:** So you would not agree that Transurban is making a huge amount of profit, as has been reported in the last couple of years?

**Mr KANOFSKI:** I think it is quite a value-laden comment to talk about a huge profit. The profits are profits. There are many companies that make profits. Like all companies that invest in toll roads, Transurban and others take very long-term positions, spending a lot of capital upfront, and there is complete risk transference in terms of traffic numbers. I think we have seen that in both the Cross City Tunnel and the Lane Cove Tunnel where there is real genuine commercial risk being transferred to the private sector. It is normal in that regard for the returns on that capital to be sufficient to deal with the risk of that. We provide a great deal of scrutiny on whether the deal being offered to government provides value for money for taxpayers. I would not like to speculate and put any sort of evaluative terms around Transurban's profit.

**Dr MEHREEN FARUQI:** Just on escalation rates as well, I understand that there has been a 4 per cent escalation rate set for WestConnex per annum. Would that be accurate?

**Mr KANOFSKI:** The tolling regime for WestConnex includes a 1 per cent per quarter or CPI, whichever is the higher, for a period of time and then reverting to CPI after that period.

**Dr MEHREEN FARUQI:** You said earlier that there still have not been toll concession agreements on WestConnex.

**Mr KANOFSKI:** I did not say that.

**Dr MEHREEN FARUQI:** Have there been toll concession agreements over all parts of the WestConnex?

**Mr KANOFSKI:** No, not all parts of the WestConnex. I gave very specific evidence that there is a toll concession agreement in place for what was euphemistically known as "stage one", which is the M4 widening and the M4 East. There is a toll concession agreement in place for the new M5. They are a matter of public record.

**Dr MEHREEN FARUQI:** So this 4 per cent or higher increase would be only for those two?

**Mr KANOFSKI:** That is the regime in place for those two; that is, 1 per cent per quarter or CPI, whichever is the higher for a period, and then reverting to CPI at the expiration of that period.

**The Hon. Dr PETER PHELPS:** There are some who long for a return to the days of the old Department of Main Roads and the Department of Public Works. Can you explain from a policy perspective why toll roads are now built by private companies rather than having large government departments building large infrastructure projects?

**Mr BRAXTON-SMITH:** Having not been around in those days, I cannot comment on how it used to be. However, I can say that toll roads are based on the user-pays principle, and they enable government to access funds efficiently and to have private sector take risks in order that the infrastructure the community wants and needs is built and delivered sooner. As a result, government can do more with the funds available to it.

**The Hon. Dr PETER PHELPS:** In other words, instead of using funds which under a big government model would be used for the provision of road infrastructure, they can be used for schools, hospitals, health and recreational facilities because the private sector is willing to meet the capital costs of the creation of those pieces of infrastructure. Is that not correct?

**Mr BRAXTON-SMITH:** It creates more capacity for the government of the day to make decisions about how it might otherwise allocate its capital to some of the project categories you mentioned or anything else that it might decide should be invested in on behalf of the community.

**The Hon. Dr PETER PHELPS:** That position is clearly bipartisan; a number of public-private partnerships [PPPs] have been entered into when Labor governments have been in power. Is that not correct?

**Mr BRAXTON-SMITH:** I do not have personal memory or knowledge of that.

**Mr KANOFSKI:** I can confirm that that it is correct.

**Mr BRAXTON-SMITH:** I am sure that is something you could establish.

**The CHAIR:** That is a matter of fact.

**Mr KANOFSKI:** It is a matter of fact. Successive New South Wales governments of both political persuasions have entered into toll road agreements.

**Mr BRAXTON-SMITH:** I moved here only five years ago.

**The Hon. Dr PETER PHELPS:** Welcome to Sydney. We are glad to have you. More importantly, having public-private partnerships allows for risk to be moved off the government books, does it not? If you have a project wholly or substantially funded by a private sector company, it wears the risk rather than taxpayers. If that were not the case and a project were to fail, or if it were to require continuous subsidy, it would have to call on consolidated revenue.

**Mr BRAXTON-SMITH:** One of the general principles of PPPs is that risk is allocated to the party best placed to manage it. The very nature of contracting for the provision of the infrastructure under a PPP means that government is reducing its risk profile substantially.

**The Hon. Dr PETER PHELPS:** The argument that these are simply cash cows because no project fails is effectively disproved by the case of the Cross City Tunnel and the Lane Cove Tunnel, is it not?

**Mr BRAXTON-SMITH:** There is evidence both here and in other jurisdictions of a number of failures of PPP models where, having secured the contract, the proponents have found that they took more risk than in hindsight would have been prudent. Government is generally protected from the downside of that. As members have seen, the Cross City Tunnel has not resulted in a call on the Government for the cost, and the tunnel is still there for the benefit of those people who are prepared to pay the toll. It is a neat way of managing risk and putting it in the hands of those who have the expertise to manage it.

**The Hon. TREVOR KHAN:** Are there examples in other States of projects that have to gone off the rails?

**Mr BRAXTON-SMITH:** In Brisbane the CLEM M7 and the airport link found themselves in financial distress. That in part led to the further development of the PPP model because it was clear that there was an inherent risk in the model where the operator takes all the risk on volume. That is why the market contract structure is different today.

**The Hon. Dr PETER PHELPS:** Imputations have been made that the share of the market held by Transurban is somehow an indication of nefarious influence within government or deference to a monopoly provider. Is there any evidence of that in either of your departments?

**Mr BRAXTON-SMITH:** We have very strict probity guidelines and scrutiny and oversight by a number of bodies that are intended to ensure that we are conducting ourselves in an impartial manner in the use of taxpayers' funds and obtaining best value for money. If anything were uncovered, it would be subject to some serious investigation by the Independent Commission Against Corruption [ICAC] and other entities that have oversight. I do not have any personal knowledge of any issues in that regard.

**Mr KANOFSKI:** Not at all. Competition policy and legislation is a matter for the Australian Competition and Consumer Commission [ACCC]. It has specifically looked at this issue and determined not to act in any way. We have very strong competition laws in Australia. As I said, it is the ACCC's job to intervene if it believes there is market power. One of the real issues about market power is that it normally manifests in pricing power. No toll road operator in New South Wales has pricing power; all prices are set by the Government

**The CHAIR:** If you Google "road tolling concession agreements Australia" you get a copy of a document entitled "Road Franchise Agreement", which comprises 487 pages of the road concession contract for the Logan Motorway in Brisbane. Who is disadvantaged by making concession agreements publicly available for scrutiny?

**Mr KANOFSKI:** Concession agreements are made available in New South Wales.

**The CHAIR:** That is the full concession agreement?

**Mr KANOFSKI:** Concession agreements are made available under the Government Information (Public Access) Act 2009.

**The CHAIR:** In their entirety?

**Mr KANOFSKI:** With minor redactions for commercial-in-confidence. The redactions are generally limited.

**The CHAIR:** You have clarified that. Thank you for appearing before the Committee today. The Committee has determined that questions on notice should be responded to within 21 days of receipt. The secretariat will assist you with that. Once the Committee has received those answers and analysed them, if it is determined that there is some value in knocking on your door again, it may well do so.

**Mr KANOFSKI:** We are very happy to assist the Committee in any way.

**(The witnesses withdrew)**

**The CHAIR:** I welcome you both to this hearing today which is the first day of hearings for this inquiry into road tolling in New South Wales. I will commence by asking each of you to state your name and position and swear either an oath or affirmation. The words for both should be in front of you.

**MARCUS RAY**, Deputy Secretary, Planning Services, Department of Planning and Environment, affirmed and examined

**VICTORIA WHITE**, Acting Chief Operating Officer, Greater Sydney Commission, affirmed and examined

**The CHAIR:** We have decided that each of the Opposition, cross-bench and Government members will run out a series of questions and we will rotate between them. Are you comfortable with that?

**Mr RAY:** Yes.

**Ms WHITE:** Yes.

**The CHAIR:** I invite one or both of you to make an opening statement with respect to what you want to say. You do not need to. The more you do, obviously it cuts into time for questioning but you are both welcome to make an opening statement.

**Mr RAY:** I am happy to have questions.

**Ms WHITE:** I am too.

**The Hon. JOHN GRAHAM:** On the issue of non-complete clauses, I am interested, from a planning perspective, when these do end up in contracts what sort of consultation is there across government? From a planning perspective, do you know about these in the course of the contract or do you find out about them afterwards?

**Mr RAY:** I have no knowledge of what the level of engagement is about that. In my own case, if there was a non-complete clause I would only find out about that—my experience has been to only find out about that after the event. As far as I am aware, there is not that level of consultation, certainly in my experience, at my level.

**The Hon. JOHN GRAHAM:** And from the Greater Sydney Commission?

**Ms WHITE:** Yes I have to maintain that position, as Marcus has said. It is not something that happens.

**The Hon. JOHN GRAHAM:** So it is potentially a weakness in the system at the moment where these things might have a big impact on our transport plans for the city but you might not be able to consult about it until it is really too late and things are done and dusted?

**Mr RAY:** I do not think I can actually comment on that because I have not been in a situation where those issues have been addressed. They may well be addressed through some other mechanism that I am not involved in.

**The Hon. JOHN GRAHAM:** Thanks for that. I will turn to the issue about the widely varying tolls and toll escalation. One of the, I thought, really good submissions in front of the committee was from Infrastructure Partnerships Australia. They ran through some of the system-wide issues that this really creates across the city. I think this is one of the things the committee has got to grapple with. It is not something that will be fixed in the very short term but it is a serious medium-term issue. They talk about things such as: some of the very small projects end up with very high tolls; there is no capacity for demand tolling or time-of-day tolling; there is no capacity to adjust for hybrid cars or multiple-occupancy vehicles reducing tolls in off peak times; there is an inconsistent application of price signals and inequity—these are all the sorts of issues that come up as a result of the tolling system we have ended up with. I am just interested, from a planning point of view, these would all be of concern to you. Have you got any observations about what this means as we plan the City of Sydney?

**Mr RAY:** Well, from Planning's perspective—and I would also think the Greater Sydney Commission as a more recent strategic planning entity—obviously planning is involved with the broad strategic work that leads to the major strategies that shape the city, whether they be transport strategies or land use planning strategies like the district plans, or the Plan for Growing Sydney. But ultimately, those questions that you have talked about in relation to the differential tolling arrangements between different roads, that is not a matter that we would get involved with. That would be something that I would see is a matter that would be dealt with primarily by Roads and Maritime Services [RMS] and Transport for NSW.

**The Hon. JOHN GRAHAM:** But that is really part of the issue here, that these are matters dealt with by RMS but they have big implications for where people might choose to live and how much they can afford to

travel. It has real life implications for people living and working in the city. You are really saying you do not have significant input into this system that has evolved. Is that your evidence?

**Mr RAY:** Yes. From my experience, the Department of Planning does not have a great deal of involvement in the setting of a particular toll or anything of that nature, with a project. So we get involved in the broad strategic work where the Government develops its infrastructure program, we look at how that impacts on land use planning outcomes and then obviously down the track we consider those individual proposals when they come forward. But as to the actual setting of the tolls or the tolling structure or the arrangements between the Government and the private entities, we have no involvement in that.

**The Hon. JOHN GRAHAM:** Just a quick perspective from the Greater Sydney Commission?

**Ms WHITE:** The same—we have not had any influence over the toll prices. I think our role is as an advisory body, to understand where housing, land use and transport best serves the community, so minimising travel is obviously a major thing that we are trying to achieve as we grow quite significantly. But on the actual question of tolls and what influence we have had, we have not had any.

**The Hon. JOHN GRAHAM:** I will turn to that issue about people commuting across the city, about travel times, particularly for work and home. Are you aware of the research from the University of Sydney, "How much is too much for tolled road users?" which talks about a toll saturation point for Sydney road users?

**Mr RAY:** I have not read it.

**Ms WHITE:** I haven't.

**The Hon. JOHN GRAHAM:** It is ground-breaking research that looks at the question of when might people stop being able to afford to pay tolls and it is really, for the first time, saying we may be reaching that point in Sydney. Certainly, the majority of submissions in front of this committee, particularly from out in western Sydney, are saying that the number of toll roads, the number of tolls, the rate of the tolls, are now at a level where we are at breaking point. That has got to have implications for how people move around the city—the sort of city that you might like to plan from a Greater Sydney Commission point of view.

**Ms WHITE:** We have seen significant investment in public transport and roads in the last five-years-plus to address, partly, the congestion issues which arise from people having to use their cars or feeling like they have to use their cars because they do not have adequate access to public transport or roads. Part of the decision with roads is that there is always an alternative route people can take so it comes down to the value of time.

**The Hon. TREVOR KHAN:** It comes down to choice.

**The Hon. JOHN GRAHAM:** It is not always a practical choice if you are working in the city or Parramatta and have to get back to Penrith to see your family, is that right?

**Ms WHITE:** In terms of economic development for the city, as a commission, our aim is to have centres of economic advantage, places where we will have more jobs because we will have a lot more people that have access to housing, transport and jobs, ideally in a different or better arrangement.

**The Hon. JOHN GRAHAM:** Does it concern you, from a planning point of view, that the submissions in front of the Committee say, "we are at breaking point when it comes to being able to afford going from home to where the jobs are", which are not in some of the western suburbs?

**Ms WHITE:** I cannot comment on a report that I have not read.

**The Hon. JOHN GRAHAM:** I am asking about the submissions to the Committee?

**Ms WHITE:** I think that is part of our aim as a commission and in how we grow the city is to minimise travel times and provide greater access to jobs. If that is answering your question that is what we are trying to deliver.

**The Hon. JOHN GRAHAM:** Any response from the planning department?

**Mr RAY:** Again, I have not read the submissions. One of the issues is if congestion is an issue and if there is no infrastructure built then the congestion will only get worse. It is a complex equation about what type of infrastructure gets built, will that infrastructure service the freight needs as well as people's going to work needs. Not everybody works in the city or in defined areas. Often people do have to travel by car. Public transport is not always the answer. That is why the Government has a mix of proposals for public transport and roads.

**The Hon. JOHN GRAHAM:** What you are describing is exactly what life in this city is like, the mixture of tolls that apply is a major hurdle to rationally planning life in the city, is it not?

**Mr RAY:** I could not say that.

**The Hon. JOHN GRAHAM:** I will move on to travel speeds. We have good information about what the peak travel speeds are along the major road corridors for the morning and the afternoon. Some of the toll concessions reach out to 2048 and 2060 and we have locked in the tolls for those periods. One of the things that the Committee has to grapple with is how those two things interact. It is going to be difficult to predict what the travel speeds are given the variables present out to 2048 and 2060. Do you have any view about that?

**Mr RAY:** Obviously, for the assessment of individual projects, whether they are public transport projects or road projects obviously there are complex models about how traffic works in the city. Like all models, obviously there is a lot of work that goes into them. They are particularly complex. The further away the horizon the potential for there to be a disparity between what actually happens and what the predictions are probably gets greater, simply because there are more intervening events that can occur over time.

**The Hon. JOHN GRAHAM:** That is right. When you talk about 2048 and 2060 you have to know what planning is aware of: where are the jobs going to be, where are the people going to be living, where is the public transport, where are the schools, what type of vehicles are people driving, and what fuel are they using. This is getting more uncertain. We have a fixed toll system with long-term contracts locked in and one that does not have a logic attached to it.

**The Hon. TREVOR KHAN:** That is an assertion.

**The Hon. JOHN GRAHAM:** I am happy for the view to be contested. Is there a better way to do this from a planning perspective that would see logic or a rationale?

**Ms WHITE:** I cannot offer anything in terms of what the difference in tolls does in terms of how people travel differently. What the commission and planning and transport is trying to do with delivering a regional plan—basically the update to the plan for growing Sydney—in conjunction with the future transport strategy, is aligning jobs, growth and housing with where the transport system needs to grow. There are always financial pressures about how much you can do and when. There is a lot of good planning going on in terms of transport. There are pinch points in the system such as where there is need for public transport in the system or where there is need for a whole new road is something we are developing in terms of not just the road congestion and pinch points but where housing and jobs need to go as well?

**Mr RAY:** I might add that we are in a better position now with the commission taking the leading coordinating role to do that work across government in a more sophisticated and effective way. We are pushing out the horizon for that planning to 2050, as per the release of the draft district plans last year, rather than looking at 2036 or 2040. We are trying to push that horizon out and look at land use and transport planning for that broader 35-year horizon.

**The Hon. JOHN GRAHAM:** When it comes to the planning of transport issues it seems that some of the time road projects and public transport projects sit side-by-side and are not properly compared. That moment of comparison is often missed in the process. Is there a better way to deal with the comparison as we go forward with the planning?

**Ms WHITE:** I cannot speak for transport. We worked side-by-side with them.

**The Hon. Dr PETER PHELPS:** Will you allow the witness to answer the question you raised?

**Ms WHITE:** I cannot speak for transport.

**The Hon. JOHN GRAHAM:** Understood.

**Ms WHITE:** They use a network approach. There are a range of transport issues such as freight, some can go on rail and some has to be on road. Some of those things we know when we are planning a transport system. Where you get better housing connectivity to transport and where you need employment and freight destinations and where you need to have those nodes. It is in a much better position than it ever has been. The country has advanced a lot and Infrastructure Partnerships Australia [IPA] has been part of that. It is understood that it is not just roads and freight or public transport and trains, it is a network approach that we are aiming towards. I am certainly more confident, I have to say, that there is a much more collaborative process happening across the New South Wales government to make sure those things work together.

**The Hon. JOHN GRAHAM:** I am happy to hear that. From a planning point of view, is there a way to ensure this? How does this happen in your experience, that there is a head-to-head comparison about those public transport and road projects? How does this happen? Where is the forum where it happens? It does seem we miss the mark some of the time.

**Mr RAY:** Because these projects are often so large, and we talked about them in the past being sort of "city shapers", I think the best place to start that comparison is in the strategic planning. So you can look at what sort of levels of road projects, what sort of public transport and what sort of rail freight projects need to be put into the mix through the strategic planning. These are such large projects. We are talking about \$11 or \$12 billion for the City and Southwest Metro. So it should be done at the strategic planning stage, where those things can be weighed up, rather than left to the project stage, where really we are just looking at the project that is presented, whether it be a project presented by Government or a project presented by a private operator.

**The Hon. JOHN GRAHAM:** I will return to the infrastructure partnerships submission, and I apologise if you have not read it. It is a discussion about moving from the system that we have got in the medium term to a more rational network, and really looking at the road system and the road tolling system as a network. I do not know if you have any reflections to make about that idea in general, but how might it interact with the sorts of issues that you have both talked about so far about how the city is planned for where people live and work.

**Ms WHITE:** I would just reiterate that that is certainly the intention of the update to the regional plan and the transport plan at the same time. So they are basically 40-year forward-thinking programs that will say, "This is where housing will be, this is where freight will be and this is where employment will be," and try to ensure that there are more employment opportunities in different places than there are currently so there is not necessarily the reliance on people getting from Penrith to the city or wherever it is. So I think there is a better way in that that was one of the main purposes of putting the Greater Sydney Commission—that is, to bring those bodies together so that we can actually plan the city together.

**Dr MEHREEN FARUQI:** I thank Mr Ray and Ms White for coming in to provide evidence to us today. We discussed quite a bit in this hearing earlier today unsolicited proposals for, say, toll roads. I am wondering if your departments have any involvement in unsolicited proposals when they are assessed for toll roads et cetera?

**Mr RAY:** Obviously it is a process that is run out of the Department of Premier and Cabinet, as I understand it. On occasion the department may be asked by the Department of Premier and Cabinet to provide certain advice about certain aspects. I have not been involved in the assessment of one of those proposals per se but I know that the department would provide advice when requested.

**Dr MEHREEN FARUQI:** Given that, as you discussed earlier, the strategic implications of how roads are built and how public transport is built, do you think that either of your organisations have a role when huge toll road projects might be proposed in an unsolicited way to Governments to actually figure out how they link in to the broader strategic plan?

**Mr RAY:** It does not matter whether they are toll roads or not, or whether they are public transport projects or not, for projects of that magnitude and nature, yes, clearly the department has a role in providing advice about what the impacts of that proposal would be in relation to the existing strategic plans—how it would change them and what it would do to land use planning. I am sure the commission would be—

**Ms WHITE:** similarly minded, I think.

**Dr MEHREEN FARUQI:** We also heard today that often in contracts for toll road concessions there are non-compete clauses. Some of those non-compete clauses might also relate to public transport—or rather not building public transport to compete with those toll roads. Is that a concern for you in terms of planning, given that I think it is quite well understood that public transport alternatives are environmentally better—

**The Hon. TREVOR KHAN:** I do not think Dr Mehreen Faruqi is reflecting the evidence correctly. Those were in past contracts. The evidence was not with regards to current contracts. It was taken on notice.

**Dr MEHREEN FARUQI:** I have not said past or current contracts; I said some of these contracts have non-compete clauses which relate to public transport. I did not at all refer to past or current contracts.

**The Hon. TREVOR KHAN:** But Dr Faruqi sought to summarise the evidence and did not give an accurate reflection of the evidence.

**The CHAIR:** I think Dr Faruqi can continue with her question.

**Dr MEHREEN FARUQI:** Mr Ray and Ms White, do you think that non-compete clauses which do not allow public transport to be built are an issue in terms of the overall plan for greater Sydney?

**Mr RAY:** I can speak from the department's perspective. Again I do not have any personal experience of those clauses. It would depend, I think, on the specific circumstances of what that actually meant. Ultimately,

those things are a matter for Government to make decisions on. If the Department was asked then it would provide advice about what the implications were, and then it would be up to Government to make a decision.

**Dr MEHREEN FARUQI:** Mr Ray, do you know if the department has ever provided advice on those things in your experience?

**Mr RAY:** I do not personally know.

**Dr MEHREEN FARUQI:** Ms White, do you have any comments to make on that?

**Ms WHITE:** I am not aware of the cases that Dr Faruqi is talking about where there have been non-compete clauses against public transport versus building a toll road. So I cannot really answer. We certainly have not provided advice on that in the past.

**Dr MEHREEN FARUQI:** You both talked earlier about earlier about having a strategic plan and looking at 2050 to have a plan prepared for. When we talk about networks and integrated transport, is it important to actually have mode share targets—to have some targets for 50 years time to say that, for example, in 50 years time in Sydney we want 60 per cent of people to be travelling on public transport? At the moment I think 60 per cent of people make their journeys in private vehicles, which is the exact opposite of what Paris and London have. Do you think those sorts of targets would actually help us to better prepare and to move towards a more liveable and sustainable city?

**Ms WHITE:** I certainly think we are encouraging mode share where it is more environmentally sustainable and it is more efficient in terms of service. I cannot tell you from the Greater Sydney Commission's perspective whether we are considering setting targets for those things. We are certainly working with the Department of Transport and understanding through them that they have a better understanding of the transport network than we do. Certainly our role is to encourage more efficient use of transport, and when it comes to housing that means a public transport system that connects people between home and job.

**Dr MEHREEN FARUQI:** Are you at all concerned about what I guess I can call this ever-expanding network of toll roads at all, especially given that quite a few submissions have raised the issue of unfairness and inequity. To quote from one of the submissions:

... those who most need good access to quality road infrastructure are the very same who can least afford to use it.

In that case people are talking about Western Sydney and south-west Sydney, where people do pay a lot of money to travel on toll roads. They are also the people who earn lower incomes. Is that something that you consider in the mix of strategic planning—how to actually reduce the unfairness and inequity? It goes to the heart of liveability as well.

**Ms WHITE:** If we point to the example of the Sydney Metro, which was the north-west section of the north-west rail link, certainly there was a lot of growth without a transport solution like a train. So that has certainly been addressed, and that is extending through down to the south-west side. Infrastructure takes a long time to actually get approved and to be put into place, and we are all aware of that. So there are certainly parts of Western Sydney that are increasingly having better access to public transport, which they have not had before. I think when we see the north-west rail link actually start to function it will have a huge impact on how people travel and their opportunity to get onto the public transport system.

**Mr RAY:** I might just add that obviously one of the key areas that the department and now more recently the Greater Sydney Commission is moving in is trying to facilitate jobs closer to home so that there are more jobs in south-western Sydney and more jobs in north-western Sydney. So that has been a policy of Government for quite a considerable amount of time. In some cases, that has been more successful than in others, but it is still a key component of the Government's land use planning policies to encourage employment opportunities closer to home so that people do not have to travel from the west to the east as much, or not as many people have to travel from the west to the east.

**Dr MEHREEN FARUQI:** Can you give me a specific example of how Planning has been involved in that and it has been a success?

**Mr RAY:** I would think historically one of the bigger successes has been around Norwest and Bella Vista with the establishment of the business park campuses out there. That has obviously brought a lot of employment to north-western Sydney. It provides the base now for the North West Rail Link, and the Sydney Metro will have public transport options as well. It started as a car-based employment area. Obviously Macquarie Park is a little bit closer in. Certainly the department and the Commission are trying to foster those developments in Western Sydney and south-western Sydney. There was land rezoned for a Sydney science park in the last couple of years. The department and the Commission are facilitating that move to employment land and then it is a question for the market to take it up.

**Dr MEHREEN FARUQI:** I have one specific question about the WestConnex toll road and the specific involvement of Planning in that. I know that the New South Wales Department of Planning assessed and approved stage one and stage two of the environmental impact statement [EIS], but from what I recall, the contract worth \$8 billion for stage one and stage two had already been agreed to and signed before the EISs were approved. Would I be correct?

**Mr RAY:** Yes, I think that was right.

**Dr MEHREEN FARUQI:** How do you explain that? Does that make the planning process for an EIS a little bit farcical? What if the Department of Planning had said, "This EIS does not work." What would have been the repercussions then?

**Mr RAY:** Ultimately that would have been a matter for Government, having signed the contract, if the proposal had to be significantly altered as a result of the environmental impact assessment. That would have been a matter for RMS, which would have signed the contract.

**Dr MEHREEN FARUQI:** Is that a flaw that the process was not followed and what has the department recommended so that this does not happen again?

**Mr RAY:** The department assesses the projects as they are formed up, whether it is Sydney Metro or Roads and Maritime Services. Ultimately, the obligations on the department are clear; they are under the statute. The department does that independent assessment separate from the arm of Government that is proposing the project. Our obligation and our duty is clear, and that is what we do, whether the contract is signed before or not.

**Dr MEHREEN FARUQI:** It does not put more pressure on the Department of Planning if you know the contract has already been signed?

**Mr RAY:** As I said, the department looks at its obligations and it advises the Minister for Planning about the ultimate determination. We are clear what our statutory requirements and obligations are, and that is what we follow.

**The Hon. TREVOR KHAN:** Going back a little bit in time, around 2010-11, part of the issue with the development of employment lands in the vicinity of what can loosely be described as Badgerys Creek, or thereabouts, I think was the description used in the inquiry I was on, was that the limitations of infrastructure and particularly transport infrastructure to those employment lands. Was that the case?

**Mr RAY:** Yes, if I reflect back there were significant limitations with the road network around the Western Sydney employment lands area.

**The Hon. TREVOR KHAN:** If I remember correctly, various developers were pressing for the rezoning of their land for employment lands, but it awaited the completion of the infrastructure that would allow the release?

**Mr RAY:** Yes, or a Government commitment to funding the infrastructure.

**The Hon. TREVOR KHAN:** Which was not forthcoming under the former Government?

**Mr RAY:** No. I think that is right.

**The Hon. TREVOR KHAN:** Essentially, the development of employment in those western areas in Sydney is essentially a chicken and an egg thing. You cannot really develop the employment lands without the transport infrastructure being in place, is that right?

**Mr RAY:** Yes.

**The Hon. TREVOR KHAN:** Indeed, without transport infrastructure, the employment lands are not going to go anywhere, anyway.

**Mr RAY:** And whatever other infrastructure is available, whether it be water or sewer, or what have you.

**The Hon. TREVOR KHAN:** It gets down to how do we stop people having to travel long distances. The way we do that is to develop an infrastructure package that allows for employment to move further west.

**Mr RAY:** Yes.

**Ms WHITE:** Certainly the city deal that the New South Wales Government has entered into with the Australian Government and the eight local councils is to look at how we plan that area better so around the second airport, which, ultimately, will make a massive contribution to New South Wales in terms of economic development, and that needs to be done in conjunction with the people that own the land in terms of the Federal

Government, and the understanding around the airport. We need to look at planning for transport infrastructure as well as other infrastructure—water, sewer, energy, et cetera—so that we have a proper functioning airport as it is staged. There is certainly a lot of work that is happening to understand what is needed in that area and then what obligations each party has in respect of committing to that.

**The Hon. TREVOR KHAN:** It is safe to say in respect of continuing to build this city, we have spent billions of dollars—some of it Government money, some of it private money—to fix holes in the road network that exists to date, is that not right?

**Ms WHITE:** If I go back to the third city with the airport, there is certainly the need for servicing that area, and for New South Wales to make the most of what is a unique opportunity. For that, it is largely all new infrastructure to open up an area of Sydney that is currently paddocks and chicken sheds, and that sort of thing.

**The Hon. TREVOR KHAN:** I am not being critical of your answer, but it is non-responsive. What we have already had to do in the past six years is fix some of the gaps in the existing infrastructure. Is that not right?

**Ms WHITE:** I think we could say there has been a significant increase in investment and infrastructure and, as a result of that, with projects like North West Rail Link we are seeing better connectivity between people.

**The Hon. TREVOR KHAN:** And that is an exercise worth tens of billions of dollars in respect of the rail projects that have been undertaken.

**Ms WHITE:** I cannot tell you the number off the top of my head, but yes.

**Mr RAY:** Yes.

**The Hon. TREVOR KHAN:** On top of all we have done already, in respect of the development of these employment lands in Western Sydney, we still have outstanding projects worth billions of dollars that we have to press through. Is that not right?

**Mr RAY:** Certainly with opening the land towards the airport there is quite a substantial infrastructure spend for the Government to achieve that.

**The Hon. TREVOR KHAN:** You agree with me that there is only a particular bucket of money that the State Government has to draw out of?

**Mr RAY:** Yes, absolutely.

**The Hon. TREVOR KHAN:** Dr Phelps would know better than I, but a large chunk of our annual budget is spent on health. I think it is about half, is it not?

**The Hon. Dr PETER PHELPS:** Mid-forties.

**The Hon. TREVOR KHAN:** Large chunk on health, large chunk on education, and what is left goes to everything else. That is about right, is it not?

**Mr RAY:** Yes, the capital spend is related to the operational spend.

**The CHAIR:** Mr Ray, be aware that you are taking as agreed a number of assumptions that Mr Khan is putting to you. You need to be careful in the way you answer those questions.

**The Hon. TREVOR KHAN:** I certainly do not wish to mislead the witness in any way.

**The CHAIR:** I just want the witness to be clear.

**The Hon. TREVOR KHAN:** It is called a leading a witness.

**The CHAIR:** That is why I am drawing it to his attention.

**The Hon. TREVOR KHAN:** Essentially there are few choices left for government of either political persuasion as to how we are going to develop lands in Western Sydney to achieve the employment objectives that I think would be shared across the political aisle, is that not right?

**Ms WHITE:** It is certainly about getting the future planning right so that we are directing that investment into the right areas to maximise the opportunity in terms of economic, social and liveability.

**The Hon. TREVOR KHAN:** The Committee heard evidence from Transport for NSW this morning as to who actually uses the toll roads and that about 50 per cent of the users are commercial vehicles of some sort. Were you aware of those sorts of figures?

**Mr RAY:** Yes, I was.

**The Hon. TREVOR KHAN:** When people talk toll roads it seems to me they are talking about commuters moving from far Western Sydney into Sydney to work. That is a misconception of how our toll road system works, is it not?

**Mr RAY:** I suppose if 50 per cent of people are commercial then the other 50 per cent are private users.

**The Hon. TREVOR KHAN:** We will get to that. But that does not necessarily mean they use the toll road all the way, does it?

**Ms WHITE:** I do not think we can answer that.

**The CHAIR:** That is hypothetical.

**Mr RAY:** It is a bit hypothetical. I presume some people do and some do not.

**The Hon. TREVOR KHAN:** Are you aware that Transport for NSW said that of those who come into the city only 10 per cent or 12 per cent commute by car?

**Mr RAY:** Sorry, I cannot—if that is their figures then that is their figures. Transport for NSW would know more than I would know.

**The Hon. TREVOR KHAN:** In your role do you have any independent data on how people use their cars to commute about the city?

**Mr RAY:** I think we would generally rely on the data from Transport for NSW.

**The Hon. TREVOR KHAN:** You would have no reason to doubt it?

**Mr RAY:** We would have no reason to seek other information. I just qualify that, I would have to check that.

**Ms WHITE:** We have not done any of our independent research into that.

**The Hon. TREVOR KHAN:** If 12 per cent—I am not too certain whether it was 10 per cent or 12 per cent—of those who commute into the city use their car, then we would have to take into account people who come from the Eastern Suburbs, the Northern Suburbs and people from the Inner West with their cars?

**Ms WHITE:** Absolutely.

**The Hon. TREVOR KHAN:** Would you agree with me that we then have to divide our 12 per cent to come to a much smaller figure for those coming from way out west who purportedly use the toll roads to come all the way in? That is a matter of logic, is it not?

**Ms WHITE:** Again, neither of us understand well enough the numbers that you are talking about but obviously there would be a mixing percentage. Not everyone is going to go from Rouse Hill down to the city. People come from all different destinations to drive into the city. Not everyone uses a toll road to get into the central business district either.

**The Hon. TREVOR KHAN:** That is true. I am not being critical but there is a whole mix of detailed data that potentially changes the picture of who these toll road users are and what they are actually doing on them, is that right?

**Ms WHITE:** I understand that even companies like Transurban understand that very well.

**The Hon. TREVOR KHAN:** In terms of the impact of price changes, would you agree with me that the elasticity of demand for the use of that toll road potentially is different between a private commuter coming into town and, for instance, the tradie who uses it regularly during the day to get from one job to another?

**Ms WHITE:** I could not comment to be honest.

**The Hon. TREVOR KHAN:** Mr Ray?

**Mr RAY:** I understand that that is the advice that Transport would give the department about that—those figures.

**The Hon. TREVOR KHAN:** In terms of the heavy transport users—the prime movers and the B-doubles—the operators of those, whether they be the individual subbie or the transport company, the elasticity in the demand curve that impacts their decisions as to whether they use a toll road or not, if they have got a choice, is going to be again different from a private user?

**Mr RAY:** That is my understanding of the Transport figures, the advice they give us.

**The Hon. TREVOR KHAN:** Yet the B-double prime movers use—I think the Transport for NSW submission is—about 22 per cent of the use of those toll roads?

**Mr RAY:** If those are the Transport figures, those are the Transport figures.

**The Hon. TREVOR KHAN:** The flavour I get—and I invite you to correct me if I am wrong—is that one should not be simply looking at toll roads as a commuter exercise, really it is an economic driver of activity in the city?

**Ms WHITE:** Certainly for large freight it is my understanding that it is chosen because it saves time so the cost of actually using the toll road is a saving in terms of time lost for people travelling and being stuck in traffic, so it is a real cost.

**The Hon. TREVOR KHAN:** You cannot deliver goods to Woolworths by simply getting them to the closest railway station, they have to get to an end point. Is that not correct?

**Mr RAY:** Toll roads or any roads or freeways are used by private commuters to get to work but they are also used for freight.

**The Hon. TREVOR KHAN:** And they are also used by other commercial entities—the tradies who move about the city—are they not?

**Mr RAY:** Yes.

**Ms WHITE:** The white vans, absolutely.

**The Hon. TREVOR KHAN:** That is a significant component of the usage of the toll roads?

**Ms WHITE:** I do not have the numbers but—

**Mr RAY:** Again, we would rely on the Transport numbers in that regard.

**The Hon. TREVOR KHAN:** And there is no reason to doubt the Transport numbers?

**Ms WHITE:** No.

**Mr RAY:** As far as I am aware, no.

**The CHAIR:** I note that the Hon. John Ajaka, the President of the Legislative Council, is seated in the public gallery. I welcome the President to this hearing.

**The Hon. Dr PETER PHELPS:** Ms White, are you a fan of history?

**Ms WHITE:** No, sorry.

**The Hon. Dr PETER PHELPS:** What a pity, because you would know that 2018 is the seventieth anniversary of the County of Cumberland plan.

**Ms WHITE:** Yes, we have posters in our office. Everyone is a very big fan.

**The Hon. Dr PETER PHELPS:** That is fantastic to hear. Your organisation is basically the grandchild of that original William McKell plan, is it not?

**Ms WHITE:** That is often said, yes.

**The Hon. Dr PETER PHELPS:** Even in that 1948 plan there were a series of roads that were sought to be constructed over a period of time, not merely direct links but also orbital roads that later progressed under later Labor governments in the 1950s and under Liberal governments in the 1960s. In many instances they were not developed and it is only now that we are getting around to it—for example, the original 1951 plan had an effective F6 going west of the airport and down that way. There are still enormous gaps in a 70-year-old transport scheme, are there not?

**Ms WHITE:** I think there have been plenty of plans that have been put out there that actually take a bit longer than you would expect and it really is: How does the city grow?

**The Hon. Dr PETER PHELPS:** I am going to use Labor as a specific example considering it was McKell's plan. You had decades of Labor governments to build these things. In many instances not only were they not built but the start of them was also shelved—for example, the Western Distributor. I remember—Ms White might not but Mr Ray might remember—the tombstones over Darling Harbour that were there for just on two decades awaiting structures being placed on top of them?

**The Hon. JOHN GRAHAM:** As a student of history though you will concede that you were in government for some of this period?

**The Hon. Dr PETER PHELPS:** No doubt, but what I am saying is even today we are still seeking to find ways to fill the missing gaps in a road transport structure that had its origins in the 1940s and 1950s and despite years and years of government control over the construction of roads they never got built. What we have had through the use of private-public partnerships [PPPs] is the creation of those roads. Is that a fair assessment to make?

**Ms WHITE:** I think the governments at the time made the decisions that they made at the time when the commission certainly was not around to offer anything of what happened back then.

**Mr RAY:** Indeed, it was only a twinkle in the County of Cumberland's eye as its grandchild.

**Dr MEHREEN FARUQI:** But should you be building 1950s road plans in the twenty-first century?

**Ms WHITE:** I go back to where we are heading. I am possibly not the biggest fan of history because I am one of those people who likes to move forward.

**The Hon. TREVOR KHAN:** You learn a lot from history.

**Ms WHITE:** I understand that completely, but certainly for the Greater Sydney Commission, for Sydney there is a rather enormous task of jobs and housing that has to happen in the future; so our job is to plan that as best we can. That certainly looks at things that were proposed many, many decades ago even, but we are now saying that it is the time to build them and make the most of this opportunity.

**The Hon. Dr PETER PHELPS:** Does your organisation look at housing needs and housing development in greenfield sites across the Cumberland basin?

**Ms WHITE:** We are currently looking at where housing over the next 40 years will be best placed.

**The Hon. Dr PETER PHELPS:** Do governments build houses these days?

**Ms WHITE:** Typically not. You have got the Land and Housing Corporation that does social housing—

**The Hon. Dr PETER PHELPS:** But do they actually build houses or do they simply contract out the work to have houses built?

**Ms WHITE:** I do not think they do physically the work themselves; they contract the work.

**The Hon. Dr PETER PHELPS:** So in that instance they are exactly like contemporary toll roads in the sense that instead of government, which it once used to do, building houses—just as the way government used to build roads—we now rely on the private sector to build those things, to deliver the services, and presumably we do not say to those housing contractors, "Oh no, you can't make profits".

**Ms WHITE:** We certainly do not say that.

**The Hon. Dr PETER PHELPS:** So in a time when there was limited capital within Australia for large-scale infrastructure projects, whether they be roads or houses, because of the very nature of our relationship with the empire under the sterling bloc, when foreign capital was very restricted in coming into Australia unless it came from the United Kingdom, there may have been an argument that governments should spend money to build houses and to build roads and other large-scale infrastructure projects. But surely those conditions have now been obviated by our greater use of globalisation and overseas investments and the general freeing up of capital markets. Is not the whole *raison d'être* for governments involving themselves in large-scale capital projects made completely defunct by the economic conditions which we face in the twenty-first century?

**Mr RAY:** I just do not think I could comment on that.

**The CHAIR:** You are entitled to take it on notice.

**The Hon. Dr PETER PHELPS:** That is something I should ask Treasury. But the point of fact is that at the greenfield sites in far Western Sydney at the foot of the mountains—basically in that stretch going from what I would call from Putty to Picton—there is inevitably going to be economic development there, housing development there, and it is going to require road infrastructure as well as public transport infrastructure networks. Presumably that is key to your thinking because you do not want to make the mistakes of the past of ad hoc developments which do not have appropriate infrastructure put in place at the time.

**Ms WHITE:** That is where the focus is, Towards our Greater Sydney, which was published last year in November and we are updating the regional plan similarly to say—and that is why we are working in

collaboration with Transport—this is how the city should grow; this is where the houses will be over five, 10, 20, 40 years; this is how we can make the most of it for New South Wales in terms of amenity, productivity, liveability and the economy. Perhaps there has been less collaboration in the past around where infrastructure should go and the timing of that infrastructure. Certainly one of the reasons why the Greater Sydney Commission was put together was to bring those bodies together; so that is certainly what we have been doing with all of those different agencies.

**The Hon. Dr PETER PHELPS:** So 2½ cheers for Bill McKell. Luke Foley will be happy at that.

**The CHAIR:** That brings us to the conclusion of our session with you both. I thank you both very much for coming along. We have appreciated the opportunity to be able to ventilate a number of issues with you and we appreciate your frank responses. You have taken some questions on notice that we have already flagged but some members may have additional questions. The secretariat will liaise with you but the arrangement will be, and hopefully you are agreeable to it, that answers to questions on notice will be returned within 21 days.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**NICK McINTOSH**, Chief of Staff, Transport Workers Union of NSW, and

**PHIL RAMONDINO**, member and Tip Truck Owners Section President, Transport Workers Union of NSW, sworn and examined

**The CHAIR:** Welcome and thank you for appearing before the Committee. Your submission is very useful and members have read it. Would you like to make an opening statement?

**Mr McINTOSH:** First, I thank the Committee for the opportunity to appear before this inquiry. The Transport Workers Union [TWU] is the largest representative of truck drivers in the country and of small business, representing thousands of owner-drivers across New South Wales. Our submission focuses in particular on the plight of these small business men and women. One of the key points of our submission is that most of our owner-driver members operate vehicles that toll roads classify as class B, meaning that they are charged between two and three times the tolls imposed on a class A vehicle. The logic for this has generally been that heavy vehicles cause greater wear-and-tear damage. However, other than a general understanding that larger and heavier vehicles are likely to cause greater damage to roads than smaller vehicles, there is no empirical evidence that we have seen illustrating how much extra damage is caused.

If, as is suggested by the pricing of toll roads, the extra wear and tear caused by a heavy vehicle is two or three times that of a car, that does not appear to be based on any evidentiary finding. It should also be remembered that heavy vehicle operators are already paying between three and 11 times more in registration fees than a car owner on New South Wales roads, presumably for similar reasons. Put simply, heavy vehicle operators travelling on toll roads appear to be having to reach into their pocket twice for the same reason. This issue is exacerbated by the fact that in many cases heavy vehicle operators have little choice other than to use toll roads. This is due to a combination of having to meet tight delivery windows, local council road limits and, in the case of the current proposal for the NorthConnex, having to use this toll road or risk being fined.

All of this might not matter if owner-drivers were able to recover all of their costs. However, very few, if any, are able to recover the cost of all of their tolls all of the time because they are simply unable to recover these either from their principal contractor or from the top of the supply chain. This means that in most cases some or all toll costs have to come out of the owner-drivers' bottom line. In an environment where government contracts allow tolls to increase at double the rate of inflation, such as is currently the case on the M2, this eats further into owner-drivers' take-home pay. There are numerous examples of owner-drivers addressing this issue in our submission, and Mr Ramondino will further address this in his opening statement.

Despite being the largest representative of transport workers in the State, the TWU has never been consulted about changes or issues relating to the tolling regime. The owner-drivers we represent are not opposed to tolls per se and are not asking for a free ride. They simply want some transparency and a proper explanation about many of these issues as well as consultation when tolls or changes to them are proposed. Simply put, if small business men and women are to be charged more for tolls, there should at least be some basis in fact and evidence rather than the current system, which sees them arbitrarily charged two to three times more for driving on a toll road when they are already being slugged three to 11 times more in registration fees, ostensibly for the same purpose.

**Mr RAMONDINO:** As an owner-driver and the president of the Tip Truck Owners Section of the Transport Workers Union, I know that some of the principal contractors pay the tolls if that is negotiated before the job commences, and some do not pay at all. The people who pay tolls have to include that in their invoices at the end of the month, and those invoices can take 30 to 90 days to be paid. Therefore, a small fleet owner with, for example, 12 trucks could be paying \$28,000 a month. As a small operator, depending on the job, tolls cost me \$270 a day, which is about \$1,500 a week. We go from A to B constantly; we do not go around. We can do that route five or six times a day.

By increasing the tolls, you are pushing heavy vehicles off the freeways because drivers try to take shortcuts. They use back roads—it could be Parramatta Road or the Great Western Highway—to make up the time they are losing by not using the freeways. That makes roads more dangerous for the public. The cost of tolls is forcing truck drivers to take shortcuts. New South Wales has the highest registration and green slip costs in the country, and if the tolls keep increasing, or if more are introduced, that will also force drivers to take shortcuts with repairs and maintenance. That has been proved through the Highway Patrol and Roads and Maritime Services blitzes, which have resulted in 40 per cent vehicles being defected or being found overloading and so on.

**The Hon. JOHN GRAHAM:** Thank you for your submission. What consultation occurred with the trucking industry prior to the announcement about the large increase in tolls for trucks and the extension of the concessions in relation to NorthConnex?

Brk/SK

**Mr McINTOSH:** I caveat my answer by saying that I have only been in this position for about nine months and our new State Secretary for a similar period of time. But as far as we are aware, no consultation occurred between the toll operators and us. That is the simple answer to that and it is about all I can say, that we are not aware of any consultation that has taken place.

**The Hon. JOHN GRAHAM:** And you said in your opening statement, you have asked for proper consultation but really, some consultation would be a step forward before we get to proper consultation on an issue like that, which does have a real impact.

**Mr McINTOSH:** That is right. The last thing we would want is just a tick-a-box exercise where we get sent a letter from someone saying, "This is what we are doing. What do you think?" and we respond and then nobody really cares and they just say, "Yes, we consulted because we sent something to the union". You are right, we want a start where there is something, but we want to be able to sit around and express our concerns and get our concerns answered. As I outlined at the start, our members do not have an issue with tolls per se, so long as there is some rationale and basis to it and not just, "This is what is going to happen; you cop it or you don't".

**The Hon. JOHN GRAHAM:** In some ways that is not surprising, given what we have heard this morning about how these proposals are developed and assessed. It really does happen inside a black box, in part for commercial-in-confidence reasons, so there are some reasons why that might happen. But really, one of the questions in front of the committee is, could this be more transparent? Is there a way to open this up in a way which does not compromise the deals but allows the public or key parts of industry, like yourselves, to have some sort of oversight of what is going on? Have you got a view about that transparency issue?

**Mr McINTOSH:** I will say something and I might see if Mr Ramondino wants to say something about that. But we certainly would support any move that would create greater transparency, some level of consultation so that, at the very least we would be able to go to our membership and say: This is what is coming; these are the reasons why it is coming; what are your views about this? None of that happens now. I will pass to Mr Ramondino who is on the front line.

**Mr RAMONDINO:** We are already working with the Highway Patrol and the Roads and Maritime Services [RMS] because we can see there are a lot of accidents. Every second report on an accident, it is a truck and dog or a tipper truck or whatever. That is the body I represent. We can pass on information to the members and to the tip truck owners, but at the end of the day it has to be done in a proper way. We are just truck drivers but at the end the day we need to understand how you are going to put it through and the best method of doing it.

**The Hon. JOHN GRAHAM:** I presume it will vary specifically in these instances if some of these truck companies have got existing contracts they have struck, based on the old prices?

**Mr RAMONDINO:** That's right.

**The Hon. JOHN GRAHAM:** Or some of the smaller outfits have quoted for jobs at a particular rate, not knowing that their tolls are about to go through the roof.

**Mr RAMONDINO:** You will find these contracts will not be varied. It is: You have signed the contract; there are no increases; carry on with it.

**Mr McINTOSH:** And on that question I would say there are two facets. Firstly, for Mr Ramondino and other owner-drivers that that is right, essentially you are just going to have to dip into your own bottom line if things go up because you have not factored it in and, in many cases, you cannot factor it in. I saw Lindsay Fox say something the other day about this in the Victorian scenario where they, say, have a contract with Coles and they have quoted a certain price and the margins in transport are such that it is a price taking industry and it is ultra-competitive, it is very very thin and the minute that you start adding some externality like that, where costs just go up then really all these people can do, and all even the biggest players in this field can do, is just absorb the cost and hope they are still turning a buck at the end of the day.

**The Hon. JOHN GRAHAM:** And dealing with a big company like that, how long might that contract extend for?

**Mr RAMONDINO:** The duration of the job. So whether the tunnel takes from WestConnex to, I think it is going to the M5, that is the duration of the job.

**Mr McINTOSH:** And Coles or Woolworths contracts, which are really the biggest contracts in terms of the transport industry, would be probably five years. You would get that sort of deal and whatever you negotiate is what you negotiate.

**The Hon. JOHN GRAHAM:** So it is not that, having entered a five-year contract, you are not looking for surprises.

**Mr McINTOSH:** And the competitiveness of the transport industry, it would be extremely rare that, even someone as big as Toll or Linfox would be able to put a rider to a contract: If things like tolls change, you will pay that back to us. That just does not happen because it is just too competitive and even the biggest players have to cut as much as they can.

**The Hon. JOHN GRAHAM:** That is at the big end of the market. At the small end of the market, what impact is this having on owner-drivers or drivers whose pockets this is coming out of?

**Mr RAMONDINO:** It is a simple thing. It makes it harder for the truck driver because, at the end of the day, everything is expensive. If the truck driver has to do five loads from point A to point B, that fifth load is for the tolls, the fuel, the insurances or whatever. They are driving like lunatics. I am out there, driving alongside them and I can see the way they are driving and it is just putting pressure on the truck driver and it is just getting worse. The other problem is, you have got management of fatigue, which is important for a truck driver because, for you to do the five loads, you have to be within the top 10 trucks on the job. So you are getting there three or four o'clock in the morning to be up the front to do the loads because, if you are up the back, you are not going to do the loads, so you are down on money.

**The Hon. JOHN GRAHAM:** Yes and you have talked about it. There are a lot of economic pressures in this industry. You have talked about rego, green slips, the pressure on maintenance—all those things go to the economic pressures, particularly for the smaller operators. But what you are telling us is, this is the one that changes the behaviours because you can choose to avoid a toll by going the back road. This is the one that is driving some of the potentially dangerous behaviours.

**Mr RAMONDINO:** There is a particular incident, I don't know whether you have seen it on Facebook or one of the websites where a truck is just driving like—I think it was on television—where the driver is driving like a lunatic. It is on a back road where he is trying to miss all these cars, to try and beat them and then he has not even got the trailer registered. It is getting worse. When Duncan Gay was the Minister for Transport I told him, before this all started, "This is what is going to happen", but I think it fell on deaf ears.

**The Hon. JOHN GRAHAM:** One of the methods by which there might be some more transparency has been the suggestion that, when these deals are struck between government and some of these big companies about what the toll rates are, the Independent Pricing and Regulatory Tribunal [IPART] or another independent agency should have a look at the deal and certify whether it is in the public interest, whether it is good value for money. Does the Transport Workers' Union [TWU] have a view about that sort of approach to transparency?

**Mr McINTOSH:** Yes, we would be supportive of such a move. We just think firstly, that anything that adds more transparency to this process is a good thing. At the end of the day we would like an independent body to be able to take all these factors into account. At the moment, as I said, without any real consultation, without any real say in any of this, the poor old driver such as Mr Ramondino or another owner-driver right at the bottom of the supply chain, just has to cop whatever he or she cops. At least under this system there would be a way of putting all these views forward and hopefully coming up with some relatively fair and transparent arrangement. We would be supportive of such an approach.

**The Hon. JOHN GRAHAM:** One of the things that leapt out of the submission, to me, was a quote from one of your drivers which said, "Tolling might be fair if they actually published a list of: This is what the road cost us to run this year; this is what our tolls were; this is what we pay our directors and shareholders"—complete transparency. Can you think of any obstacles to a move towards that sort of transparency?

**Mr McINTOSH:** I am not the expert on that.

**The Hon. JOHN GRAHAM:** We might have to ask some others as well, I concede that.

**Mr McINTOSH:** But it would make sense to us. I would be interested to see the profits of some of these toll roads and certainly the amount of money they would make from heavy vehicle tolls. I do not know if that information is even available but I would be very interested to see what the amount of money that is made from the heavy vehicle industry itself on toll roads is. And yes, anything that makes it more transparent, so that

we can see how much is earned, who gets paid what and all the rest of it, would certainly help. Just opening the whole thing up and making it transparent has got to be a good thing.

**The CHAIR:** Mr McIntosh, I want to ask you a question about NorthConnex and specifically what we heard and understand is going to be a mandated requirement for heavy vehicles to use that tunnel, save and except for trucks that are doing servicing of businesses in the area, local deliveries. And there will be a mandated requirement, as we understand, and I think you indicated in your opening statement or in your answer to one of the questions, about a fine that would apply if a semitrailer or a B and W, for example, that did not have that exemption right used, for example, Pennant Hills Road. Can you elucidate on what you understand is the case and what will be the underpinning regulation or legislation that will provide the capacity to levy a fine on the driver of the truck?

**Mr McINTOSH:** I would have to search for the source, it is on a government or NorthConnex website. Our understanding is heavy vehicle drivers will be forced to use the NorthConnex, which obviously entails a toll. If they use Pennant Hills Road, unless they can prove they are delivering somewhere in that area—I am a Hills district boy and I know that area well—they will be fined if caught on Pennant Hills Road and not having a fair dinkum delivery. I do not know the underpinning legislation or regulation but I believe that is the proposal.

**The Hon. JOHN GRAHAM:** Has there been some consultation on this point? The deal is done now, I understand that. Surely there has been consultation on this point.

**Mr McINTOSH:** Not that I am aware of. It is possible that someone in the Transport Workers Union years ago received something from NorthConnex but I would be shocked if there had been any fair dinkum consultation other than here is our proposal in a written form.

**The Hon. JOHN GRAHAM:** I am surprised by that. There are some commercial in confidence reasons why you keep things under wraps while you negotiate a submission to Government but there seems to me no reason why, having settled on a path, that there would not then be consultation about how it works. What is the best way to make sure that trucks are—if this is the decision that has been made—moved on to the motorway in a way that is not going to disturb local traffic and is going to work without heavy handed penalties being applied? Do you have any views on that?

**Mr McINTOSH:** I am surprised as well. We understand that some things are commercial in confidence and all the rest of it. If it is going to directly affect our members, or any truck drivers for that matter, there should be consultation with the biggest representative of those truck drivers. When I say consultation, as I said at the start, there is an argument in the industrial sphere that we have with employers as to what consultation is. We mean real consultation where we sit down and discuss the pros and cons and get a proper response not "this is what we are thinking and you can tell us what you like but we do not really care". You would expect that would happen but as far as I am aware that has not occurred.

**Dr MEHREEN FARUQI:** Thank you for attending this afternoon. In regard to NorthConnex, now the regime of fines has been set.

**The Hon. TREVOR KHAN:** I do not believe the regime of fines has been set.

**Dr MEHREEN FARUQI:** Will be set once the road is open. They have said it is going to happen. If we could turn back time and you were consulted what would your view be on this?

**Mr McINTOSH:** I might start it. At the outset we do not have any per se issue with tolls. When I say "we", the owner drivers and members do not have an issue. We understand the benefits and sometimes you need these things to happen. We do have an issue where there is, number one, no consultation and, number two, no evidence provided to us to say that it is going to be three times more than a normal car and here are the reasons why a B-double causes three times the damage a car does. If that was the case and it was proven that might be one thing. We would still be saying truck drivers are double dipping because they are already paying three to 11 times as much in registration. We would be asking those questions and asking what is the rationale and have you considered that truck drivers are getting hammered and that people like Mr Ramondino cannot necessarily recover those costs and it will eat into the bottom line.

**Dr MEHREEN FARUQI:** Mr Ramondino, could you talk about the issue of forcing trucks and fining them if they do not go through the toll?

**Mr RAMONDINO:** The thing I do not understand is when they construct the road surely it takes into account that heavy vehicles are going to be using the road. We are paying the highest insurance and rego in the whole of Australia, surely that covers the cost. I cannot understand about the costing of the road. The forcing of people—this is what I do not understand—we have a credit on our beeper that goes off when we go through

tolls. Sometimes it does not work, it has reached its limit because we do not have an open limit on our beepers. What happens if I have to use Pennant Hills Road because I do not have enough funds? How does it work? That is the question I have. I think it is unfair to get charged or get a fine.

**Dr MEHREEN FARUQI:** In your submission on page 3.6 and in your opening statement you said, "there is presently no information published which identifies with any precision the actual amount of damage caused to roads by heavy vehicles, the cost of associated repairs and the amounts which are actually spent on repairs". We heard this morning from Transurban—I was astounded—that trucks cause 6,000 times more wear and tear than cars. Is that what they said?

**The Hon. Dr PETER PHELPS:** That is what they said.

**Dr MEHREEN FARUQI:** We were told 6,000 times more.

**Mr RAMONDINO:** Than a car?

**Dr MEHREEN FARUQI:** Yes. I want your view of that. If that is the case then paying three times makes more sense.

**Mr RAMONDINO:** It is funny they say that because I have a truck and dog, it is a truck and a trailer. If I pay the New South Wales Roads and Maritime Services an extra \$6,000 I am allowed to cart six tonne extra. You pay for it. You are paying for every tonne you use. Where is this money going? Someone needs to explain where this money is going. They say it might be 6,000 times more, we are actually paying more to put more tonnes on our trucks. We are not getting away with it, if you know what I mean.

**Mr McINTOSH:** The main point for owner drivers in particular—if that is what they are saying, that is what they are saying. If that is the evidence they have given, fine. It has to be remembered that owner drivers, as in our submission, generally speaking cannot recover the cost or if they can recover some costs it takes 90 days to receive that. If you are going backwards and forwards six times and you are paying \$150 in tolls a day and times that by five and 90 days, that is a hell of a lot out of pocket money straight off the bat and in a lot of cases drivers cannot recover that, it just eats into the bottom line. Even if that Transurban report is true—

**Dr MEHREEN FARUQI:** It is not a written report, they provided evidence this morning.

**Mr McINTOSH:** Whatever it is, I have not seen it. That point has to be remembered, how are the drivers expected to afford it and make a buck? Every dollar eats into the profit margin that most of time they cannot recover.

**Dr MEHREEN FARUQI:** In your submission you raised some points about the inequity of tolling regimes and forcing cars and trucks into tunnels. There is a discussion around how different sections of toll roads or different toll roads have different tolls as well as the vastly higher and ever increasing toll charges imposed on heavy vehicle drivers. How would you propose that there would be a more equitable tolling regime?

**Mr RAMONDINO:** It does not make sense, because you can do the M5 and it costs you \$11 and that goes from the airport to Liverpool. This is truck costing. You can do the M2, which is the same distance, and that is \$20. We cannot work out how they work it out. If you use the M7 you get charged for what you use. You cannot work it out. It is a joke.

**Dr MEHREEN FARUQI:** Do you think it should be more consistent and do you have any views on how that could happen?

**Mr McINTOSH:** I suppose logic would say that these things should be more consistent and should all be based on some sound rationale. I suppose each contract is different—

**The Hon. TREVOR KHAN:** And negotiated at a different time—

**Mr McINTOSH:** Yes, and negotiated at a different time, and I suppose with different people as well. The Transport Workers Union [TWU] does not have a set view on how something should or should not operate. We would just like to be in the tent, and we would like them to realise that every dollar that owner-drivers spend cannot be recovered—certainly 100 per cent of it cannot be recovered—and it eats into their profit margin.

**Mr RAMONDINO:** I would say that the fairest way would be like with the M2 where you pay for what you use.

**The Hon. TREVOR KHAN:** Sorry to interrupt, but do you mean the M2 or the M7?

**Mr RAMONDINO:** Yes, sorry, the M7. You should only pay for what you use. With the M5 I could start at the airport and get off at Bankstown and still have to pay \$11 or \$12. If I get off at Liverpool, it is still \$12.

**The Hon. TREVOR KHAN:** On the Eastern distributor depending upon which way you go you are either charged or not charged.

**Mr RAMONDINO:** Yes, exactly. If you take the Eastern distributor and go into the cross city tunnel then you pay for it twice. It is just a joke. That little bit there, which is just one turn, means that you pay double. It just does not make sense.

**Dr MEHREEN FARUQI:** In 2016 in the September quarter there were reports in almost every newspaper that Transurban profits as revenues rose twice as fast as traffic volumes. When they were questioned about it, they said that this was in part due to the increase in the truck toll multiplier during the September quarter to 2.56 times the car toll. So they admit that in part their profits are rising because of the increased toll charges for truck drivers. What is your view on whether toll charges should be increased to increase profits for toll road companies? Would transparency improve the situation, for instance?

**Mr McINTOSH:** One would hope so, firstly. Secondly, with all of these things, and I am going to sound like a broken record here, if Transurban or anyone else for that matter is making that much profit because of heavy vehicles then most of the time it is not coming from a New South Wales Government construction project or from Coles or Woolworths; most of the time it just comes straight out of the pocket of the guy at the bottom of the supply chain, or at least the majority of that money does. If the cost was truly being passed all the way up the line then it should be either the Government or the big client at the end of it paying it. But in a lot of cases for owner-drivers that is simply not the case, and when these things increase then it just eats away at their own profit margin—and they are not recovering those costs. So that is our big issue there.

**Mr RAMONDINO:** Going to the increase of the trucks, it is all about construction. We have trucks coming from Victoria and Queensland. They are in all these tunnels and the major road constructions. I think even the Hon. Duncan Gay said that the increase in truck movements within 10 years was something astronomical, and I cannot remember the exact number. There is going to be a lot more movements because of these tunnels and the road construction. So you will find that is why it has gone up, and it is going to go up further because these jobs just have to be done—the tunnels have to be dug. And they are still talking about more tunnels.

**Dr MEHREEN FARUQI:** Absolutely, I do not have any further questions.

**The Hon. Dr PETER PHELPS:** Mr McIntosh, let me just say, and as a Liberal it kills me to say this, that the TWU has given us a damn good submission.

**Mr McINTOSH:** If that is the only question that you have, the Hon. Dr Phelps, then thank you very much.

**The Hon. Dr PETER PHELPS:** That has probably killed your career in the union movement but it is actually a really good submission and it raises a number of very important issues. So whoever did this submission should be given a big pat on the back because it is actually quite substantial.

**Mr McINTOSH:** I will pass that on. Thank you.

**The Hon. Dr PETER PHELPS:** If Transurban were able to produce evidence, through studies which were not done by them—in other words, through objective studies—that the cost of construction for a motorway and the cost of operation of a motorway is substantially increased to cater for truck traffic, would that go some way towards easing your concerns about the two to three time multiplier on tolls?

**Mr McINTOSH:** I will start on that one. I think it would go some way as an underlying rationale. I think though, as I said, the issue still remains—if owner-drivers were able to recover that cost then I do not think we would be talking about this being such an issue. The problem is that, even if that is the case and if this bit about the 6,000 times is true, which it may well be, we would still be saying that the main thing that needs to be taken into account is that every dollar spent on a toll is, generally speaking, coming out of the pockets of the owner-drivers. So obviously it would not go all the way, because until our owner-drivers can recover those costs we are still going to be in the same situation—even if there is some sound rationale to back up the theory behind it.

**The Hon. Dr PETER PHELPS:** So you are not opposed to the construction of tollways or motorways per se; it is just how the equity falls on truck drivers and the commercial users of that infrastructure which you are chiefly concerned about?

**Mr McINTOSH:** I think that is fair.

**The Hon. Dr PETER PHELPS:** You mentioned long-distance and interstate truck driving. Would it be better in fact if the Government invested more money in rail projects to take trucks off the roads, especially

for long-distance travel? Do you think that would be an appropriate shift for long-distance freight transport instead of using road transport?

**Mr McINTOSH:** I think it is like anything—it is a case of horses for courses with certain things. There may be some instances where that would assist.

**Mr RAMONDINO:** Isn't it being done already? I think it is already being done—not so much for interstate but it is happening from Port Botany to Chullora, isn't it? They are building a goods line for the train?

**The Hon. Dr PETER PHELPS:** There is supposed to be duplication of the existing goods line.

**Mr RAMONDINO:** Yes, and getting rid of container trucks off the roads. I think it is already happening.

**The Hon. Dr PETER PHELPS:** What about just ending the construction of new motorways totally and redirecting funding towards public transport options as a better option?

**Mr RAMONDINO:** No.

**The Hon. Dr PETER PHELPS:** What about phasing out entirely the use of semitrailers and B-doubles as major forms of freight transport and replacing them with a combination of rail, maritime transport and non-articulated trucks running on renewable energy?

**Mr McINTOSH:** We would not support that, and I cannot really see how that would be viable either.

**The Hon. Dr PETER PHELPS:** What about replacing current light commercial vehicles with light electric and rechargeable hybrid light commercial vehicles for the transportation of freight in urban areas, do you think that is a good idea?

**Mr McINTOSH:** I am not even sure I understand what that means.

**The Hon. Dr PETER PHELPS:** It is about replacing current light commercial vehicles with light electric and rechargeable hybrid light commercial vehicles for transportation of freight in urban areas.

**Mr McINTOSH:** To be honest, I really do not know enough about that or the viability of that to comment. I do not think I even understand the second part of the question.

**Mr RAMONDINO:** I think it is a few more years down the track.

**The Hon. Dr PETER PHELPS:** It is just that those four bizarre suggestions which I have just raised are in fact in the current policy documents of The Greens of New South Wales. I just wanted to see how the TWU would feel about a situation where we decided to phase out the use of semitrailers and B-doubles as a form of transport.

**Mr McINTOSH:** I will not get partisan about it; but what I will say is that we would obviously—

**The Hon. Dr PETER PHELPS:** But bad ideas should be called out for what they are.

**Dr MEHREEN FARUQI:** That is your view, the Hon. Dr Peter Phelps.

**Mr McINTOSH:** We would support the employment of transport workers. They do a fantastic job on our roads and we want them to keep doing that job. I think that is about as much as I will say on that, because I do not think I even understand the light commercial vehicle reference.

**The CHAIR:** I think that was an editorial position being put as opposed to an actual question.

**The Hon. Dr PETER PHELPS:** They were very genuine questions. Mr Ramondino, thank you for coming in. Do you own your own truck or do you own a series of trucks?

**Mr RAMONDINO:** I just have one truck.

**The Hon. Dr PETER PHELPS:** Presumably you own that truck not just because you love truck driving but because you would like to make some money out of it.

**Mr RAMONDINO:** Of course.

**The Hon. Dr PETER PHELPS:** So you have invested your own money in that truck, and presumably taken out a loan. So you have to repay the capital cost of that to the bank plus interest plus have some money left afterwards to pay for your own livelihood and that of your family. That is a reasonable mode of existence, is it not? It is not unreasonable to accept that you should be able to make a reasonable profit out of the money that you put into your business?

**Mr RAMONDINO:** No, it is not unreasonable.

**The Hon. Dr PETER PHELPS:** And in the same way Transurban puts their money into various projects, so they should be able to make a reasonable profit too, shouldn't they?

**Mr RAMONDINO:** Yes, a reasonable profit. I agree with them making a reasonable profit, but not an over-the-top one.

**The Hon. Dr PETER PHELPS:** That is fine.

**Mr RAMONDINO:** And, by the way, when I change a rate I would charge you the same rate that I charge the next person. It is not a different rate. I understand that freeways were built at different times but surely there must be a method whereby we can be charged for what we use.

**The Hon. Dr PETER PHELPS:** Certainly, but a person who has paid off their truck would be able to charge a lower rate than someone who has just entered the market and may have several hundred thousands of dollars of debt they have to repay.

**Mr RAMONDINO:** The costing is always the same. My costing and the person who has got a truck paid off is exactly the same.

**The Hon. Dr PETER PHELPS:** Your operating costs are the same, but your capital replacement costs—

**Mr RAMONDINO:** The truck that is paid off is usually about five years old and the repairs multiply by double, so the costing is the same. When you work mathematically, it is exactly the same. It does not matter whether it is a new truck or a five-year-old truck. For the new truck, you do not have to do repairs, you do services, but you are making your repayments. The guy who has the five-year-old truck is doing the repairs and maintenance.

**The Hon. TREVOR KHAN:** There are obviously a number of variable costs that you incur in respect of the operation of your transport business. That would be right, would it not?

**Mr RAMONDINO:** Yes.

**The Hon. TREVOR KHAN:** You have no control over the price of your fuel from time to time.

**Mr RAMONDINO:** That is right.

**The Hon. TREVOR KHAN:** You have limited control over your maintenance costs during the period of your contract, that would be right, would it not? Indeed, if you change your truck, depending on the finance rate, you have no control over that. Is that right?

**Mr RAMONDINO:** That is right.

**The Hon. TREVOR KHAN:** All of those costs will either be fixed, that is they will be a monthly charge, or they will vary depending on the number of kilometres travelled in the truck.

**Mr RAMONDINO:** Not so much the payment of the truck; that stays for the duration of the truck.

**The Hon. TREVOR KHAN:** I am not doubting that, but it is a monthly charge, irrespective of mileage.

**Mr RAMONDINO:** Yes.

**The Hon. TREVOR KHAN:** If we go to the NorthConnex issue, Mr McIntosh is a Hills boy, so he knows, and I assume you do too, from 7.30 in the morning until 9.30 or 10, you could safely describe Pennant Hills as a car park, could you not?

**Mr RAMONDINO:** For sure, 100 per cent.

**The Hon. TREVOR KHAN:** So the time that you take travelling along Pennant Hills Road to get on to the M2 or M7—that interchange that you cannot remember precisely what it is called—takes an hour, at least?

**Mr RAMONDINO:** Of course, yes.

**The Hon. TREVOR KHAN:** We build the NorthConnex, there is a toll and you do it, let us say, in 20 minutes, you have got a saving of time, do you not?

**Mr RAMONDINO:** I think it is a great idea, but all we are asking for—

**The Hon. TREVOR KHAN:** Hold on. You have a saving of fuel, and you have a saving of wear and tear on the truck. All of those are pluses in the exercise, are they not?

**Mr RAMONDINO:** Yes.

**The Hon. TREVOR KHAN:** You have referred to the cost of the toll. There are actually advantages to going on NorthConnex as well, is that not right?

**Mr RAMONDINO:** That is right.

**The Hon. TREVOR KHAN:** Am I right in saying that apart from this arrangement in respect of heavy vehicles being obliged to use NorthConnex, are there any other toll roads where there is an obligation to use that toll road as opposed to the tollway?

**Mr RAMONDINO:** No, there is not.

**The Hon. TREVOR KHAN:** If heavy transport constitutes about 5 per cent of the registered vehicles in New South Wales and tollway use is about twice that, that is you are twice as likely to see a registered heavy vehicle on a toll road, do you think that might indicate that, in fact, owner drivers of heavy vehicles are choosing to use the toll roads because there is an advantage in time and wear and tear on the vehicles?

**Mr RAMONDINO:** You will find that the owner driver who is using the tolls is recouping the tolls. The ones that are not recouping the tolls, you will find them on the back roads. The problem with NorthConnex, you have got no choice, and there has been no consultation. That is what Nick was talking about before. There is no consultation. All there is: You have to use it, or else you get fined. That is where I think it is wrong.

**The Hon. TREVOR KHAN:** Let us work on the basis—

**Mr McINTOSH:** Sorry, on that point, you said is it fair to say they are choosing to use it, or something to that effect.

**The Hon. TREVOR KHAN:** I am inviting whether that is the case.

**Mr McINTOSH:** You have to remember there are other issues. If owner drivers miss certain delivery windows at certain places, and I do not know so much in construction, but definitely in retail, if you go to the Woolworths distribution centre [DC] at Minchinbury, for argument's sake, and you miss your delivery window, you can potentially get penalised through a monetary fine. More likely what is going to happen if you miss your window is that you then have to sit at the DC for the next couple of hours. So you end up losing more money by not taking the toll road, but it is a matter of deciding for yourself what is the worst loss—paying more money that you may not be able to recover through the toll or by missing the delivery window and sitting there for two hours and not getting paid for it if you are an owner driver?

**The Hon. TREVOR KHAN:** Mr McIntosh, even if I accept that, and I think I do, the use of the toll road provides an advantage to the user in that context, does it not?

**Mr McINTOSH:** It provides an advantage. What I am saying is that it is the lesser of two evils, perhaps, for an owner driver in that you are either going to have to fork out more money that you cannot necessarily recoup, or you take a punt that you go some other way and you miss your delivery window and then you sit there for two hours.

**The Hon. Dr PETER PHELPS:** If there are no toll roads, you are stuck with one option, and that is Roads and Maritime roads.

**Mr McINTOSH:** I suppose if there were no toll roads then the delivery windows would have to be changed if no-one could possibly meet the deadline.

**The Hon. TREVOR KHAN:** Let us talk about Pennant Hills Road. Would you agree with me—and this is perhaps a euphemism—but if somebody were to sneeze on Pennant Hills Road, what would otherwise take an hour during peak hour could easily turn into two hours or more. That is, you only have to have the smallest of glitches on that road—

**Mr McINTOSH:** I do not think anyone is going to argue—I am not going to argue about Pennant Hills Road.

**The Hon. TREVOR KHAN:** It is a shocker.

**Mr RAMONDINO:** Neither am I.

**The Hon. TREVOR KHAN:** If what you are talking about is falling outside a window, Pennant Hills Road is the perfect example of a road, is it not, where a driver stuck on that road is really at the mercy of just

about—well, the dog wandering over the road and getting run over. It is an impossible road that demonstrates there has got to be an alternative.

**Mr McINTOSH:** I, and I think Phil, does not disagree that we do not have any issue with there being an alternative to Pennant Hills Road, and a toll alternative to Pennant Hills Road. What we are saying is that we have not had the consultation about it. You were talking about modelling before. Is it necessarily fair to be told you must use this road without any consultation and this is what you must pay to use the road. Perhaps it is going to make a great difference to everybody on the road, but the problem is we do not know that because we have not been properly consulted and we have not put our views forward or even heard the alternative views.

**The Hon. TREVOR KHAN:** Maybe this inquiry will give that opportunity.

**Mr McINTOSH:** Perhaps.

**The Hon. TREVOR KHAN:** As a traffic court lawyer, issues about the impact of heavy vehicles on our highways was a repeated argument that was put forward by what used to be the RTA in respect of overloading fines. This is nothing new. In terms of fining drivers, I am sure the TWU has seen it played out hundreds, if not thousands, of times in our Local Courts with its members. We will get the data.

**Mr McINTOSH:** That is right. The only thing in that, of course, is that a lot of the time it is not necessarily the owner driver who wants to break laws or overload. A lot of the time it is the pressures that get them there.

**The Hon. TREVOR KHAN:** I am not arguing the toss on what you are saying.

**Mr RAMONDINO:** The question should be asked, "Why are they overloading?"

**The Hon. TREVOR KHAN:** There are a variety of reasons.

**The CHAIR:** That is right.

**The Hon. TREVOR KHAN:** I think I used every excuse under the sun.

**Mr RAMONDINO:** I am sure the fleet owner or the owner driver does not like driving down the road with four or five tonne extra on their back. There has got to be a reason.

**The Hon. TREVOR KHAN:** Yes.

**The CHAIR:** Gentlemen, thank you very much.

**The Hon. Dr PETER PHELPS:** Yes, thanks. It was a very good submission.

**The CHAIR:** We appreciate you making time available today to provide us with the opportunity to ask additional questions about your detailed submission. Some questions on notice have arisen as we have gone through our questioning this afternoon. With respect to that, the secretariat will liaise with you. You will have 21 days to respond to the questions. There may be additional questions that members might have following your evidence this afternoon.

**(The witnesses withdrew)**

**(Short adjournment)**

**MICHAEL JOHN ARNOLD**, Tolling Customer Ombudsman, before the Committee via teleconference, sworn and examined:

**The CHAIR:** Mr Arnold, thank you for your submission, which is submission No. 2 in this inquiry. The Committee has read that submission. Before we proceed to questions would you like to make a brief opening statement?

**Mr ARNOLD:** I have also sent the secretariat some up-to-date statistics, which I presume have been circulated in addition to my original submission. I thought it would be useful to get an idea of the number of complaints in respect of toll operators in New South Wales over the past 12 months.

**The CHAIR:** Are you agreeable to those being included as part of your evidence this afternoon?

**Mr ARNOLD:** Yes. I agree they should be tabled as part of the evidence.

**The CHAIR:** Thank you, each member has a copy in front of them. Do you wish to make any other introductory comments?

**Mr ARNOLD:** It might come up in questioning that one of the issues I have raised in a number of my six-monthly reports over the years is that I have tried to deal with particular issues as they arise. I do not know if the Committee has had an opportunity to read those, but one of the issues that I try and speak to each State government about is to do with the registration and transfer of motor vehicles. Often when people transfer a vehicle from one person to another this leads to a number of unnecessary disputes because tolls have been charged to the old owner as opposed to the new owner. I just make that as a quick comment really because it is an issue that I did raise.

**The CHAIR:** Are you happy for the questioning to begin?

**Mr ARNOLD:** Yes.

**The Hon. JOHN GRAHAM:** Thank you for providing the table; it will certainly be useful to the Committee. In the first instance I want to ask you about administration fees. In evidence given to this Committee it has been suggested that Transurban, with a particular interest in New South Wales, has sometimes issued up to 100 unpaid tolls, each with an administration fee included in the same letter, and that this might run into thousands of dollars. I was surprised to read that evidence. Given the number of disputes that you deal with, what is your view as to whether that might be the case?

**Mr ARNOLD:** You will see from the statistics I have provided that New South Wales does not loom large in the number of cases I handle each year for a major State. In relation to issuing large numbers of administration fees, when they come to me I automatically refer them to the toll operators and the toll operators are then usually quick to defer to me to substantially reduce those toll fees. I have a practice of saying that they should be fair in the way that they go about it. My response to that is upon referral to me the toll administration fees are generally ameliorated. In fact, it would be the norm that they would be ameliorated.

**The Hon. JOHN GRAHAM:** They are dealt with by the company once you have referred them back?

**Mr ARNOLD:** I have a practice of sending them the complaints and by way of discussions, which I have had with them in the past, I would expect that administration fees going back over a long period of time should not be charged in full and they are generally substantially reduced.

**The Hon. JOHN GRAHAM:** I thought the numbers were actually quite small considering the number of people who are going through these tollways—as you say, in New South Wales very low. What is the reason for that?

**Mr ARNOLD:** I must say it is a historical thing that I have been dealing with toll road operators in New South Wales for a number of years now as the Tolling Customer Ombudsman and in particular on the small roads over the years I used to meet with Roam and Roam Express with the small toll operators. Often I would visit them and have a fairly personal relationship with them and I always took the view with them that it is far better that they resolve the dispute themselves than come to me where I am what might be a blunt instrument, and they seem to me to be quite successful in settling their own complaints.

**The Hon. JOHN GRAHAM:** In your last review, 1 March to 1 November 2016, you refer to a third party having attempted to take control of the name of the Tolling Customer Ombudsman without the authority or consent of the toll operators. Can you give us some more background on that dispute?

**Mr ARNOLD:** It is in relation to a person in Queensland who registered a competing business name—I will call it a business name—and that became the subject of some litigation at the administrative level, which still continues in a sense that it is no longer an issue really. The person through the listed name attempted to sort of develop a business in a sense.

**The Hon. JOHN GRAHAM:** Can you tell us anything else about the operation of administration fees in New South Wales given your experience?

**Mr ARNOLD:** In a letter that I send out to people within my jurisdiction I tell them that I do not have the jurisdiction to deal with administration fees per se because they are fixed between the State Government and the toll operators. In Queensland and Victoria they are fixed by the toll operators and the State Government. In New South Wales I believe that the government operators, if I can call them that, have their administration fees fixed and I would expect the toll operators with which I deal to fall within the same sort of range of administration fees, and it is my experience that the fees charged in New South Wales are not out of alignment with the administration fees charged in other States. Some have different methods of the way they will impose administration fees along the way, but they do not seem to be out of kilter with other States' tolls administration fees.

**The Hon. JOHN GRAHAM:** So that goes to the size of the administration fee but also to the impact—it does not impact on the number of complaints you might see regardless of whether you do or do not have jurisdiction.

**Mr ARNOLD:** In recent times there has been a spike in complaints in relation to administration fees being charged because for a period of time the toll operators in New South Wales, for privacy reasons, could not access material from the RMS and so they had limited ability to charge these fees. Now that has been changed last year, so they are pursuing fees to a greater degree.

**The Hon. JOHN GRAHAM:** So this may be more of an issue now. Just to return to the number of complaints, you say the Ombudsman has handled in excess of 6,000 complaints since inception. Is inception 2004?

**Mr ARNOLD:** Yes, that is right.

**The Hon. TREVOR KHAN:** That is about 460 a year.

**Mr ARNOLD:** It is probably about 7,000 now but it is that sort of round figure. In the early years of the Ombudsman there were fewer complaints, but as the knowledge of the Ombudsman system has grown, the numbers have increased somewhat over the last few years, particularly in Queensland.

**The Hon. JOHN GRAHAM:** We have received one submission which has drawn attention to your relationship with the Australian New Zealand Ombudsman Association just suggesting you are not a member of that organisation and that you may not meet the criteria they set out for the operation of an Ombudsman's office in general. I do not know the background to those criteria but I thought you would appreciate the opportunity to respond to that suggestion.

**Mr ARNOLD:** The TCO does not belong to ANZOA—and I know ANZOA very well because when I set up the tolling ombudsman system I was an Ombudsman of the financial system of Australia and was sort of instrumental in the original days of ANZOA setting that up. But I did not envisage TCO's enrolment to be of such a size or to deal with the complexity of disputes that the other Ombudsmen, like the finance Ombudsman services or the banking Ombudsman or those sorts of bodies did, but I followed the same principles in relation to ANZOA in my handling of disputes.

**The CHAIR:** Have you in the past received matters reported to you of concern or complaint by customers using either the Sydney Harbour Bridge or the Sydney Harbour Tunnel, and I do appreciate they are not listed as owned by any of the organisations in your first paragraph? Have you had any of those complaints before?

**Mr ARNOLD:** I do have complaints of that nature and what I do is I explain to the customer, the road user, that I do not have jurisdiction; I will forward them on to the RMS and some people have contacted us and said, "Can you give us a name?" and we will generally get an aid to ring up and try and get a name so that we can assist in the process of resolving those disputes.

**Dr MEHREEN FARUQI:** Good afternoon. As I understand it you are the owner of a private company called Lorimax Pty Limited, trading as Tolling Customer Ombudsman.

**Mr ARNOLD:** That is correct.

**Dr MEHREEN FARUQI:** Does your funding for that role come from the road tolling companies?

**Mr ARNOLD:** Yes, it comes from the tolling companies.

**Dr MEHREEN FARUQI:** Can you name the companies that fund your role?

**Mr ARNOLD:** In Melbourne there is Citylink, which is part of Transurban; Eastlink, which is not part of Transurban; Roam and Roam Express, which are part of Transurban; and Interlink, which is not part of Transurban. Originally the roads in Queensland were not owned by Transurban, but now they are.

**Dr MEHREEN FARUQI:** On which toll roads in Sydney do you have jurisdiction as the Tolling Customer Ombudsman?

**Mr ARNOLD:** The roads controlled by Roam Express, Roam and Interlink, but not the roads that are controlled by Roads and Maritime Services or the government-controlled roads.

**Dr MEHREEN FARUQI:** That is, all the roads except Sydney Harbour Bridge and the Sydney Harbour Tunnel ?

**Mr ARNOLD:** Yes, that is right.

**Dr MEHREEN FARUQI:** You said you were not a member of the Australian New Zealand Ombudsman Association, and you are not an ombudsman in law like the New South Wales Ombudsman. Do you think it is confusing for people that you have this title and a different role?

**Mr ARNOLD:** I try to make it clear to people when they contact me so that they understand the role. I do not know that it is necessarily confusing. Having been involved in industry ombudsman schemes for almost 20 years, I think people have an understanding of what an ombudsman does. Industry ombudsmen are not defined as ombudsman at law in the traditional way, but they still have the nomenclature of ombudsman. Not many people say they are confused. People often raise the issue of independence given that we are paid by the industry. It happens to all ombudsmen. Given that we are being paid by the operators, they ask how we can be independent. My response is that a service is being provided to the customers free, so someone has to fund it. I suppose the decisions I make depend on my sense of equity. Of course, if the customer is not satisfied with the result they can go elsewhere; they do not lose any legal rights.

**Dr MEHREEN FARUQI:** I have looked at some of the latest reports of the ombudsman on the website. I see that there is not necessarily a consistency in what is reported. Do you have any reporting requirements and how often do you have to report ?

**Mr ARNOLD:** The only reporting requirement—although it is not necessarily a requirement but something I undertook to do as part of the process—is to produce the six-monthly reports, which are of course available online to anyone. However, there is no statutory reporting requirement.

**Dr MEHREEN FARUQI:** Are there any requirements imposed by the companies that fund you?

**Mr ARNOLD:** They only require that I produce the six-monthly report as part of the contract that I have with them. When I first took tolling operations into Queensland when the State Government was privatising or corporatising its roads, part of the arrangement in respect of toll roads was that I continue to produce a six-monthly review.

**Dr MEHREEN FARUQI:** Given that there have been thousands of complaints since your role started, and you said that you handed on the more complex issues to Roads and Maritime Services or the responsible authority, do you think there is a case to be made for having a tolling ombudsman in law to make it easier for people to make complaints and have them resolved in an accountable and transparent manner?

**Mr ARNOLD:** I am a great supporter of industry ombudsman schemes. I have to say that because I have been one in relation to the general insurance industry, the financial services industry, and non-statutory bodies. I have a history in the law going back 50 years, being a judge and in a variety of other ways. Industry ombudsman schemes can operate quickly. That is the ideal. They can get responses quickly, and that is why I think they are great idea.

**Dr MEHREEN FARUQI:** Do you think there is a case for having a New South Wales Ombudsman in law for tolling rather than an industry ombudsman?

**Mr ARNOLD:** If I were advocating, and I suppose I am, I would say that industry schemes work very well, very efficiently, very quickly and very inexpensively. I get a number of cases referred to me by various consumer affairs departments and the ombudsmen in different States.

**Dr MEHREEN FARUQI:** You do not think there is any conflict of interest, for instance, having an industry ombudsman in terms of impartiality in resolving complaints?

**Mr ARNOLD:** That depends on the integrity of the ombudsman concerned. I understand why people say, "But they pay for you." But never in my life have I made decisions based on getting paid.

**Dr MEHREEN FARUQI:** Have you had any complaints regarding the issue of equity in the tolling system, or is that one of the more complex areas that you would refer to someone else?

Brk/SK

**Mr ARNOLD:** In relation to equity?

**Dr MEHREEN FARUQI:** Yes, different tolling, different tollways have different tolls, or people living further away, let us say from where they have to work paying more tolls. Are any of those issues brought to you?

**Mr ARNOLD:** Not quite in the terms of equity. Because of their particular circumstances people might have a problem traveling from areas, coming from outside areas where there are not tollways into areas where there are toll roads. I have complaints of that nature, more from Queensland where people come from the north of Queensland and they come down to the south, where there are no toll roads in the north and there can be difficulties of understanding and those sorts of areas. But generally, if I believe that there has been some positive disadvantage, I can deal with a toll operator and say, well there are some circumstances should be taken into account in this regard and there will be some amelioration.

**Dr MEHREEN FARUQI:** I am also interested in the process you take to resolve disputes, for instance. So if a toll road user, for instance, is served with an infringement notice for driving an unregistered vehicle and then they refuse to pay the fine, what would you do?

**Mr ARNOLD:** By an unregistered vehicle, you mean unregistered for the purpose of the toll?

**Dr MEHREEN FARUQI:** Yes, that is correct.

**Mr ARNOLD:** It depends on the circumstances because there can be a number of ways why this happens. There can be an account that falls away because of a problem often with a banking error. You might have an account which has been paid on periodic payments, somebody forgets to change a credit card number or things of that nature and so they end up driving unregistered on the road. Usually I take into account the circumstances of how that happened. I take into account that, if they are account holders, they do get an account on a monthly basis and they do have the opportunity to establish whether they are continuing to pay their tolls or not. But I find, if there are circumstances that should be taken into account, the toll operators are generally amenable to reasonable discussion.

**Dr MEHREEN FARUQI:** My last question, because you have a lot of experience, it seems, on toll roads. I am just wondering what your view is around transparency, or rather the secrecy, in how tolls are set and the lack of consultation. We heard earlier from the TWU saying that they had not been consulted in setting tolls for many of the toll roads. Do you have a view on that and do you think we can increase consultation and improve transparency in some way?

**Mr ARNOLD:** I am a great believer in transparency and openness in every regard. And from my understanding, there is consultation that does take place, there are usually warnings that are given in advance about when tolls are going to be increased. In Victoria, for example, they are extending the toll roads and discussions did take place with trucking companies and companies of that nature. But the problem always with consultation—and I suppose politicians know this—people can be consulted but if they do not get the outcome they believe they should get, they often believe the consultation was not good enough.

**Dr MEHREEN FARUQI:** Thank you, Mr Arnold.

**The CHAIR:** I pass you now to the Government members on the committee.

**The Hon. TREVOR KHAN:** I just note this, I work on the basis you have been in operation for 13 years, is that right?

**Mr ARNOLD:** Yes, that is about right.

**The Hon. TREVOR KHAN:** So, if we work on 7,000 complaints during that period of time which is, I think, the figure you indicate?

**Mr ARNOLD:** Yes.

**The Hon. TREVOR KHAN:** That is about 538 complaints per year, is that right?

**Mr ARNOLD:** Probably. It has run over the last three or four years at about 1,300 to 1,500 complaints, so, yes.

**The Hon. TREVOR KHAN:** And if I look at New South Wales, on the figures that you have provided today, I think, if the maths on my phone is right, that is 99 complaints recorded in the 12-month period?

**Mr ARNOLD:** I have not added them up, I must say.

**The Hon. TREVOR KHAN:** I am sure the Secretariat staff will do that but if I am right that it is about 100, that is 100 out of 500-odd or, in fact, you give the figure of say 1,000 or 1,300 or the like. Where are all the complaints? Are they in Victoria or Queensland? Because I take it it is the eastern seaboard that you are dealing with?

**The CHAIR:** We have lost the connection again. Mr Arnold, we have you back again and I will ask the Hon. Trevor Khan to ask his question again.

**The Hon. TREVOR KHAN:** I think I had you at 100 complaints in New South Wales and, at a minimum, we have 538 per year but you have got it at over 1,000 I think. Where are all the complaints coming from? Are they from Queensland, Victoria or what?

**Mr ARNOLD:** The majority of complaints, if you get some of the staff to have a look at the six-monthly report, there is a full breakdown in relation to all of the states and the major proportion of complaints are in respect of Queensland.

**The Hon. TREVOR KHAN:** Is that because they are unhappy up there or is there something else going on?

**Mr ARNOLD:** Before there was a corporatisation by the Government, going back four or five years ago, they were government-run and I do not think there was a huge deal of enforcement in relation to the gathering of the tolls. With the corporatisation, the attitude of the government changed and there was a greater deal of enforcement and then the toll ownership was sold and eventually went to Transurban. But I think probably the company did maintain the increased level of enforcement. And I think Queensland does have, as I said before, peculiarities because of its size and the people in the north not being used to tolls, if they come down south that creates some particular problems. But the statistics will show that Queensland has the higher proportion of complaints.

**The Hon. TREVOR KHAN:** If we look at New South Wales, with about 100 complaints per year, is that basically what you are receiving each year, around about the one hundred figure?

**Mr ARNOLD:** I think it might be more than 100.

**The Hon. TREVOR KHAN:** If I have got it wrong, that is fine. Do you want to give an estimate as to what you think it is?

**Mr ARNOLD:** Leaving aside the number, as I said earlier on in my introduction or thereabouts, that the number of complaints in New South Wales that I receive is comparatively small, compared to the overall, as a proportion.

**The Hon. TREVOR KHAN:** I suppose the point I am getting to is that Dr Faruqi asked about some form of legislative basis for the establishment of a Tollway Ombudsman in New South Wales. If what you are receiving is something in the order of two complaints per week, would you agree with me that the suggestion of a legislatively created Ombudsman, if it is to be a separate person, is going to be a somewhat under-utilised body?

**Mr ARNOLD:** I would think that is probably a fair conclusion to reach. I do not think, irrespective of the numbers, I think it is a small number and I do not think establishing a specific statutory body would be warranted.

**The Hon. TREVOR KHAN:** I am arguing against my case now: If I get an administrative fee imposed on me by Roam Express, which is who I use, making that declaration, and find that has been charged to me how do I know of your existence?

**Mr ARNOLD:** There is a requirement that toll operators notify any person with whom there is a complaint of the existence of the Tolling Customer Ombudsman and provide contact details so that people can contact the tolling Ombudsman. There is a website in which a complaint form can be completed and lodged.

There is a telephone number for people to contact the Ombudsman and we have a facility for those people to mail in complaints for those who do not have computer savvy, or the like. That is the process in which people contact the Tolling Customer Ombudsman [TCO].

**The Hon. TREVOR KHAN:** I have not been hit with an administrative fee in those circumstances, because I was not aware of that. Do the tolling companies provide you with sufficient money for a 1800 number?

**Mr ARNOLD:** Yes, there are sufficient resources for a 1800 number, to maintain the website and other facilities for people to contact the TCO. It would be interesting for you to know that now well over 90 per cent of complaints are lodged online.

**The Hon. TREVOR KHAN:** It is interesting.

**Mr ARNOLD:** The vast majority of people do lodge complaints online.

**The Hon. TREVOR KHAN:** The final question is, and I do not wish to be offensive, but you have told us that you have been involved in the law for 50 years?

**Mr ARNOLD:** That's right.

**The Hon. TREVOR KHAN:** Do you operate the office on a full-time basis or is it operated in a semi-retired capacity?

**Mr ARNOLD:** I would not say semi-retired. When I was the Ombudsman of the finance industry throughout Australia I operated by way of agreement with the board of the financial Ombudsman. I did not operate from their premises. Now, I am doing consultancies in relation to other regulatory areas, so I do it in conjunction with that work. I have a full-time personal assistant and I have another administrative person and can access a deputy Ombudsman if need be.

**The Hon. Dr PETER PHELPS:** The first question relates to the general principle of alternate dispute resolution. Would you say that in recent years there has been a growth in alternate dispute resolution as the preferred means of corporates, in particular, dealing with these sorts of situations?

**Mr ARNOLD:** Yes, there has been an increase in use of them. During my time with the financial Ombudsman there were a whole range of matters just dealt with through the financial Ombudsman. That will only expand in view of the difficulties experienced in relation to banks and life insurance customers. The financial Ombudsman jurisdiction will be expanded and so I think dispute resolution will only increase in use.

**The Hon. Dr PETER PHELPS:** Further to that, it is not merely those named as an Ombudsman, as an alternative to litigation it is increasingly common that two companies in dispute over a contractual relationship or a company and a consumer in dispute over a contractual relationship will seek to avoid the court process by employing a respected Queen's Counsel [QC] to seek to conciliate, or if that is not possible, to have a binding arbitration?

**Mr ARNOLD:** That is true. It is a growing level of work certainly at the bar in Victoria and New South Wales. There are a number of people who specialise in mediation and arbitral proceedings as an alternative to the courts.

**The Hon. Dr PETER PHELPS:** Is it not the case that in the overwhelming majority of cases, particularly in relation to a customer and a corporate, the corporate will effectively pay the costs of that barrister?

**Mr ARNOLD:** They will often do that.

**The Hon. Dr PETER PHELPS:** In that instance what you have is a situation where although the person is being paid for their services by the company there is still no concern that the company is buying their favour, it is because they have, to be crude about it, the deepest pockets they are the ones who are paying for the use of that service?

**Mr ARNOLD:** Yes. I think it is because of the imbalance in power that can often exist between a large corporate organisation and consumer. It is not untoward that the corporation should fund the barrister or QC and one I hope would openly rely on the integrity of the QC in conducting the process.

**The CHAIR:** Mr Arnold, I have one question. I have been a toll road user in New South Wales for some years using a whole variety of different toll roads. I have to confess, it is not until the last fortnight, through the work of the good officers of the secretariat looking for witnesses for this inquiry, I became aware that there was an Ombudsman for tolling customers. If you do not know the answer say so: Why is the presence

or existence of an Ombudsman for tolling issues not advertised by the tolling companies? They have very expensive infrastructure with those signs that change on a regular basis informing customers about changed road conditions. Why would they not be putting signage up saying there is a road toll Ombudsman and that person can be contacted in regard to matters of concern?

**Mr ARNOLD:** I must admit I had not thought about that in that sense. The difficulty is in relation to putting too much signage on the road because people say the driving can be confusing.

**The CHAIR:** These signs are on the roads already.

**Mr ARNOLD:** They flash up?

**The CHAIR:** Correct. Indicating a "change in road conditions", "reduce speed", etcetera.

**Mr ARNOLD:** Yes. I will raise it in one of my six-monthly reviews.

**The Hon. Dr PETER PHELPS:** When I get my quarterly bill, I have an E-way tag, I cannot recall seeing any mention of the Ombudsman on that. Are you sure that the accounts which are sent out in hard copy or electronic form mention your existence? The first time I would know I had a problem may well be at the point I receive my quarterly bill.

**Mr ARNOLD:** Under the Ombudsman's scheme I would expect as part of the scheme that the customer contacts the tolling operator directly first to have the problem solved at the first instance between the toll operator and customer. If it is not resolved in the first instance the toll operator must advise the customer of the existence of the Tolling Customer Ombudsman.

**The Hon. Dr PETER PHELPS:** They must advise the customer?

**Mr ARNOLD:** Yes.

**The Hon. Dr PETER PHELPS:** So that is an unequivocal requirement?

**Mr ARNOLD:** Yes, that is a requirement of the scheme.

**The Hon. TREVOR KHAN:** But that does not assist the customer who, upon receiving the statement which may include a charge, just grind their teeth and says, "That toll road operator has skinned me again". It does not assist those people who in a sense acquiesce to being ripped off, does it?

**Dr MEHREEN FARUQI:** That is why there are only two complaints a week—because people do not know about this.

**The Hon. TREVOR KHAN:** We might be in agreement there. But, Mr Arnold, that is the problem, is it not?

**Mr ARNOLD:** The difficulty with that is that if they grind their teeth and then contact the Tolling Customer Ombudsman then I would have to say to them, "Look, under the scheme you will have to go and contact the toll operator to try to resolve this with them initially". That is the premise of any ombudsman scheme—that they encourage the parties to try to resolve the complaint before the ombudsman takes action. In my experience, it works most effectively, because if people ring the toll operator then generally the issues get resolved. If they are not resolved then they come to the Tolling Customer Ombudsman who then moves in and seeks to resolve the matter. So I think the idea is to try to get the matters resolved in the first instance between the customer and the operator.

**The CHAIR:** Mr Arnold, that draws to a conclusion our time with you this afternoon. On behalf of the Committee I thank you very much for making yourself available. This has been a very productive session and we appreciate the opportunity to ask questions. The Committee has resolved with respect to questions on notice that may have been flagged or in fact arise from the questions asked today that there be a 21-day return period. The Secretariat will liaise with you in that regard. Thank you very much once again. Good afternoon.

(The witnesses withdrew)

**MICHAEL FRASER**, Director, Toll Redress, and

**MADDISON JOHNSTONE**, Director, Toll Redress, affirmed and examined:

**The CHAIR:** I thank Mr Fraser and Ms Johnstone for coming along to this Committee hearing this afternoon. The Committee has received your submission to this inquiry, submission No. 104. All the Committee members have had the opportunity to study your submission so you can take it as read. I invite one or both of you to make an opening statement. You do not need to cover in any detail what has already been covered in your submission. Once that is complete, I will open the hearing up to questions from Committee members.

**Ms JOHNSTONE:** We welcome the opportunity to appear as witnesses here today to share our insights and observations of the tolling industry. We established Toll Redress to apply our research into helping the thousands of disaffected toll road consumers all around Australia who have made contact with us because they have been affected by systemic issues in the tolling industry. These consumers come to us from all walks of life, from academics to tradies, professional athletes, university students, single mothers, struggling families and a variety of businesses. The one thing they have in common is that they do not understand how they are in the position that they are in, which is normally thousands of dollars in debt. Too many become frustrated, stressed and even suicidal.

Amongst our work investigating and exposing issues in 7-11 stores and most recently Domino's Pizza, among other companies, our office advocates for these disaffected toll road users. We have assisted some consumers with their complaints as they were disputing administration fees and had had no success in rectifying the issue directly with Transurban and/or the Government. When we directed them with the right questions to ask, Transurban wiped all of their administration fees, and in some cases also withdrew Government penalty notices. As highlighted in our submission, we made statements with citations that outlined the concerning practices of Transurban. These include overcharging customers, illegal political donations, their relationship with the ombudsman service and the relentless charging of administration fees.

We have expressed these concerns for the Committee to consider, because Transurban has a plan to toll every kilometre in the Australian road network. If it cannot effectively manage the comparatively small amount of kilometres of road that it currently operates—in dealing with disputes, customer complaints, correct invoicing and payments—then how can Australians trust this company to manage the entire road network. Transurban's submission would almost have the Committee believe that motorists have a great attitude towards toll roads. I do not need to tell the Committee that this is not the case. Instead I will use the words of Transurban's own chairman Lindsay Maxsted, who at last year's annual general meeting said, "No-one likes paying tolls, obviously".

**The CHAIR:** Thank you. Mr Fraser, do you also have an opening statement?

**Mr FRASER:** No, we just have the one.

**The CHAIR:** Thank you very much for that forthright opening statement. We have Committee members from the Government, the Opposition and the crossbench. We will rotate between the three groups. We will start with questions from the Hon. John Graham from the Opposition.

**The Hon. JOHN GRAHAM:** Thank you for your submission. I thought it brought a perspective that was not present in many of the other submissions so I am keen to ask you about some particular aspects of it and to get you to really spell those out. First of all, on the issue of secrecy, you state clearly that you are opposed to some of the secrecy around these tolling arrangements and you observe that increasingly in New South Wales applications to access Government documents are being blocked for secrecy reasons. Could you expand on that point for the Committee?

**Mr FRASER:** I suppose we commonly hear the term commercial in confidence. Basically where the toll road agreements exist there is an agreement that we do not even know about that exists as well. For example, in Queensland there is the road franchise agreement. It covers the three state roads that Transurban operates, and there are three council roads as well. Recently we found out that there was an agreement that no-one knew about. We tried to bring it to light and then it became this announcement that there was an agreement. We heard from internal people that it was called a prosecution agreement, which was some special arrangement for Transurban to recoup more money in administration fees by issuing fewer infringements between them and the State. Nobody knew about that.

**The Hon. JOHN GRAHAM:** Did this apply in Queensland or in New South Wales?

**Mr FRASER:** I am just giving an example. So that is what we found out there. When we start looking in Victoria or any other State it is concerning that it is very hard to find all the information, such as road franchise agreements, prosecution agreements and things like that, to actually give us the full picture of what is happening and how people are being affected or will potentially be affected by what is in those agreements.

**The Hon. JOHN GRAHAM:** One of the things that makes it more difficult in New South Wales is the particular structure of the WestConnex project, which sees the Sydney Motorway Corporation sitting outside the public sector. Certainly members of the Committee were looking forward to their appearance today, and we may need to revisit that issue later. Is that one of the things that makes this more complicated—

**Mr FRASER:** Definitely.

**The Hon. JOHN GRAHAM:** —or more difficult to access? Is this one of the things in New South Wales that is adding to the culture of secrecy?

**Mr FRASER:** Yes. When you do not know what is in the agreement—for example, a lot of media and people from Government come to us asking questions. We have spent all this time researching, and we have written to every Minister that had anything to do with the road, and it is like writing to the ether. Writing to Transurban is like writing to the ether. You might as well write to nobody; you do not get any answers. We have to triangulate data and start working out what something means between this agreement, this agreement, and this agreement, what is admitted, and you start getting a fuller picture. Then we tease some of that out through media and then we will find that companies like Transurban say, "Yes, we will elaborate on that now. Yes, it exists, but it is all for the customer."

**The Hon. JOHN GRAHAM:** On page 6 of your submission you talk about customers finding themselves in debt. I was really surprised to read that in some cases it is upwards of \$100,000. That seems unbelievable as a real-life case. You are saying to us that may well be the case?

**Ms JOHNSTONE:** Absolutely, yes. That happens mostly for businesses, courier businesses in particular, \$100,000 debt, and they are not privy to hardship clauses in Transurban's terms or anything, and so they suffer the most.

**The Hon. JOHN GRAHAM:** Without going into all the details of this particular case, can you tell us is this drawn out of New South Wales, Victoria or Queensland?

**Mr FRASER:** We have seen examples in every State.

**The Hon. JOHN GRAHAM:** It may well also be the case in New South Wales, is your view?

**Ms JOHNSTONE:** Yes. They use toll roads across the whole network. It could be based in Queensland, but it is from—

**The Hon. TREVOR KHAN:** Can you say that again?

**Ms JOHNSTONE:** They used the whole network. They are using Transurban roads in Queensland, New South Wales and Victoria. Even if they are based in Queensland, they are still accruing debt from all States.

**Mr FRASER:** A trucking company that is travelling in Victoria, Sydney, and Queensland. It is very easy—we have had people who have updated their details on the Transurban website. They have done everything right, registered it, done. They find out three months later when they get their credit card statement that their account was suspended because their information was incorrect, and depending on how much they have driven, they have got hundreds and hundreds of notices that they have not paid. In Queensland, for example, it is \$23.46 per unpaid toll in administration fees. In New South Wales it is \$10 for the first notice, \$10 for the second, but they give it to you as \$20. All these rack up and people get that in a bundle and they do not how it accumulated.

**The Hon. JOHN GRAHAM:** It is really the interaction of those two things that is the problem, the administration fees as well as the original administrative problem?

**Mr FRASER:** Yes. Transurban would say that the customer has not updated their details correctly. But we have represented people. We do not do it directly so we help them draft their communication, and Transurban has admitted fault and wiped everything. They have fought some cases for years, going to the Tolling Customer Ombudsman [TCO], going to the Government, going everywhere they can to solve the problem.

**The Hon. JOHN GRAHAM:** I want to go back to that question, but to clarify how this might happen, on page 13 of your submission you say, "Transurban sometimes issue over 100 unpaid tolls—each with an

administration fee—in the same letter, causing the Administration Fees to run into thousands of dollars." That is the sort of circumstance we are talking about here, where there might be some error in the way you have described, and then this bill hits, maybe hundreds of unpaid tolls with administration fees, and they might add up to something significant?

**Mr FRASER:** Yes, and what is interesting—we have had a whistleblower who has been helpful—and he said it is so well known that they say, "I have a customer on the phone. He got a tree in the mail." Because they know they get these big bundles and they are very unhappy. What Transurban will do—

**The Hon. JOHN GRAHAM:** What does that mean, "He got a tree in the mail."

**Mr FRASER:** There is that much paper in the envelope—

**Ms JOHNSTONE:** They have cut down a tree.

**Mr FRASER:** —that they have had to cut down a tree to send them out. I have seen 183 notices in one bundle.

**The Hon. JOHN GRAHAM:** We have heard evidence in front of the Committee now that when those issues of administration fees are raised, by and large, they are fixed. You are suggesting that might not be the case in your experience. What is your view on that issue? When these issues are raised, is Transurban or other companies able to fix them?

**The Hon. TREVOR KHAN:** Does this not have to be limited to New South Wales in light of the evidence that we have received?

**The Hon. JOHN GRAHAM:** I am happy to limit it to New South Wales.

**Mr FRASER:** To clarify, I suggest Transurban operate on a national level from head office where all of this is handled, and how they manage those problems is the same. It does not matter which State you are in. If we sound like we are talking about Queensland, we are talking about the general handling of escalated matters. New South Wales is a lot better than Queensland, and we believe that is because they do not yet have a monopoly with the toll roads as they do in Queensland.

**The Hon. JOHN GRAHAM:** We are most interested in the New South Wales, which is a good point. The situation you are describing is very concerning. When you raise these things, are they able to be fixed?

**Ms JOHNSTONE:** Yes, they are able to be fixed, but we have heard of instances from people who live interstate who have never been to this part of the country, and they are receiving administration fees for a toll trip they never made. They call up the toll road operator and they are told, "Too bad. Sorry, you have to pay it." Some insist that they are not going to pay it. Others give up and pay it, even though it is not their debt. They just do not want to fight it anymore.

**Mr FRASER:** We have heard it many times that the system could not read the plate, so it matched the closest number plate. Sometimes people just pay it, because they give up and they are worried about it turning into an infringement. It is very concerning.

**The CHAIR:** Where did you hear that?

**Mr FRASER:** Which part?

**The CHAIR:** The point about matching the closest number plate.

**Mr FRASER:** When they ring up and talk to Transurban. We had a guy from Hobart say, "I never used the toll road in Queensland. How do I know I never used the toll road in Queensland? Because my car and me are in Hobart, but they have insisted that I owe this debt."

**The CHAIR:** This is the operator at Transurban?

**Mr FRASER:** Yes.

**The Hon. TREVOR KHAN:** You are saying that a Tasmanian plate is picked up in Queensland?

**Mr FRASER:** I can tell you how that happens and I have discovered this only recently. Roads Australia has a national database, and they sell that data. They charge money to supply that data to the operator. So you can get a number plate in Queensland that is the same as a number plate in New South Wales, or whatever. What the system is doing—

**The Hon. TREVOR KHAN:** Really? The technology is so bad that you would pick up a Tasmanian plate as a Queensland plate?

**Mr FRASER:** Let us say the number plate is 001-ZZZ. You can get that in Queensland and you can also get that in New South Wales, so the system is finding the first one and matching that, and that is going out. Sometimes it is a guy with a scooter who is from Western Australia who says, "I have not been to this State. I have not used your road."

**The Hon. JOHN GRAHAM:** When it comes to fixing these issues, you have been quite critical of the current TCO in place. What is a better system to deal with these issues, which you are now saying are more significant than we had realised. I think that would be a fair assessment from the Committee's reaction to your evidence.

**Mr FRASER:** We need a proper ombudsman service. Bearing in mind that what you are seeing of the TCO at the moment is modifications that have been made as we have constantly prodded them along the way. They talk about, for example, it being industry-funded. That website was not industry-funded, it was Transurban-funded. Transurban set it up. The chief council registered a domain name. The ombudsman never registered an operating name for years. We have exposed a lot of this. We need an independent ombudsman who can freeze escalation, like the financial service ombudsmen—freeze the escalation of matters in full until the matter is resolved.

**Dr MEHREEN FARUQI:** Thank you for your submission and for being here. I will continue on the ombudsman line of questioning. We had a question and answer session with the TCO before you came in. It is my understanding that if someone has a complaint they call Transurban first and if that is not resolved then they might go to the Ombudsman. We estimated that roughly the Ombudsman is getting two complaints a week—

**The Hon. TREVOR KHAN:** I estimated that.

**Dr MEHREEN FARUQI:** Yes, you did.

**The CHAIR:** It was a rough calculation.

**Dr MEHREEN FARUQI:** From your experience, if people complain to Transurban and get no where then do a lot of them not take it any further?

**Mr FRASER:** They do not know where to go. I do not think that you are getting true figures from the Ombudsman because what you find is—we hear from our whistleblowers that they do a lot of settling of things behind the scenes. If they feel there is risk in a matter then the Ombudsman will draft a decision which does not get published or seen. It is sent to Transurban and they say, "They have got you on this one." That then gets settled and it does not make it into the public reports.

**The Hon. TREVOR KHAN:** On the figures that the Committee has got that is not how it works.

**Mr FRASER:** He, himself has said—I cannot remember where—that he often drafts a draft decision, sends it to Transurban—this came out of his own mouth—and then they will go and contact a customer and say, "Yes, we did the wrong thing." There is no determination that comes about. There are only a very few number of determinations on that website—the last one being July 2016.

**Dr MEHREEN FARUQI:** In your submission you say that Australians owe more than \$1 billion in toll penalties. That is what you were talking about earlier when you gave the example of a courier, for instance, being \$100,000 in debt. That is really concerning. Do you have any idea as to how much of that debt is in New South Wales?

**Ms JOHNSTONE:** I am not sure.

**Mr FRASER:** The numbers are very hard to get a hold of.

**Ms JOHNSTONE:** The secrecy thing before.

**Mr FRASER:** I think it is probably a few hundred million dollars. It is very hard to find all of this out. You just write to the departments and you do not get answers at all.

**Ms JOHNSTONE:** That is just penalty debt which is actually held with the toll road operator, so it is likely to be much higher than that again.

**The Hon. TREVOR KHAN:** That is relying upon a *Current Affair* report that you refer to in your submission, is that right?

**Mr FRASER:** We actually supplied our research to a *Current Affair* and then they ran a story.

**The Hon. TREVOR KHAN:** You reference a *Current Affair* as the source of that?

**Mr FRASER:** Yes. We took the reports published by, for example, the State Penalties Enforcement Registry [SPER] in Queensland and the Sherriff in Victoria and I think from the State Debt Recovery Office [SDRO] or something in New South Wales and compiled those numbers of what was publicly available. We have kept all of those—

**The Hon. TREVOR KHAN:** Are you able to provide those numbers?

**Mr FRASER:** Yes. We keep everything referenced.

**The CHAIR:** That would be very useful.

**Dr MEHREEN FARUQI:** You have spoken quite a bit about transparency. The Transport for NSW submission highlights that toll roads are subject to rigorous oversight and it states that tolling agreements are subject to clear public disclosure requirements. You have a different view on transparency. What is a good way of improving transparency so that people can have a better understanding of how tolls are set, what the behind-the-door agreements might be and how they come about?

**Mr FRASER:** That is probably a hard one. The reason they are not transparent is because they do not want you to see what is in the agreement. I know that we keep coming back to Queensland examples, but I suppose we are sort of talking about a sign of things to come once they get full control of all the toll roads, which we are getting very close to having in New South Wales, we will be seeing the same problems they are seeing in Queensland—for example, that prosecution agreement we were talking about. That was a way for Transurban to actually recoup more money in administration fees. They did not want anyone to see that because it showed that they were the benefactor in that agreement. So it is a bit of a hard one.

**Dr MEHREEN FARUQI:** You also said your submission, and I quote:

We have seen all over Australia that toll road contracts are generously extended when operators offer to do maintenance and construction on government roads.

We do know that toll road contracts have been quite generously extended in New South Wales for many years and there is speculation on others—

**The Hon. TREVOR KHAN:** No, we do not.

**Dr MEHREEN FARUQI:** We do know that they have been extended for another 20 years and there is speculation that they might be extended for 50 years in some cases. That is a pretty generous extension.

**The Hon. TREVOR KHAN:** You are running two issues together.

**Dr MEHREEN FARUQI:** I do not think I am.

**The Hon. TREVOR KHAN:** That is not the evidence that has been given today.

**Dr MEHREEN FARUQI:** We have reports here saying that tolls have been extended for more than 20 years in some cases.

**Mr FRASER:** In Queensland 40 years recently.

**Dr MEHREEN FARUQI:** Could you expand a little bit more on what you mean by "... operators offer to do maintenance and construction on government roads."?

**Mr FRASER:** There is a turn in Queensland and Transurban said, "We will sort it out for you. We will tidy it all up and get it right and it would be really nice if you would let us extend that agreement over there." So they sort of look at helping the Government tidy things up and somehow manage to get a longer agreement on a contract. In the case of the Logan Motorway, Transurban were not involved when the agreement was extended but it was extended 40 years because the road was in poor condition. They said that the trucks wore it out and that the trucks would have to pay three times. They extended it 40 years but they extended it for everyone, motorists as well—I have probably gone off the point.

**Dr MEHREEN FARUQI:** You have also raised concerns about government and politicians entering into long-term concession agreements that will obviously significantly outlast governments and politicians as well.

**Mr FRASER:** Yes.

**Dr MEHREEN FARUQI:** What is your remedy for that? Do you think that the New South Wales Government should have some more powers to cancel agreements if things are not going well or companies are making too much profit, for instance, at the behest of taxpayers?

**Mr FRASER:** From what we have read, the provisions are already there to exit these agreements. I think it was a former Auditor-General who might be giving evidence tomorrow—

**Ms JOHNSTONE:** Tony Harris.

**Dr MEHREEN FARUQI:** The previous Auditor-General.

**Mr FRASER:** He was actually talking about—I know we are quoting him but do not guarantee that this is a fact—the Constitution gives you them the right to do that kind of thing but whether it is a good practice or not because he said it made people entering into public-private partnerships [PPPs] hesitant if the Government just starts chopping them down. But if they can be altered and extended and have the fee structure changed then they can be changed back in a way that is fairer or more consistent with the consumer price index [CPI] or the current environment I suppose. I think that is maybe what we need to look at, not necessarily axing everything but working out: Is it fair for everybody?

**Dr MEHREEN FARUQI:** I am also interested in your view on the road charging system—that is, the system of charging per kilometre rather than having a capped toll. Is it a more equitable system than the current system?

**Mr FRASER:** I think we are both open to a fairer system. We have had a lot of discussion about what is right. We do not propose to have all the answers. What we are doing is we are asking questions: Why is this this way? One of the big questions that I would be asking is—we are worried about when WestConnex is going to be completed and things like that but Transurban are pushing very hard for a toll every kilometre on the 900,000 kilometres of road that we have in Australia. What would happen to those concession deeds if we start paying per kilometre? Do we pay tolls until we get to the toll road and then we say, "This is a private road, that is a separate issue again." Then we pay the toll and then we get back off and pay per kilometre again. So are Transurban going to be happy to wipe-out all the toll roads and just have pay-for-kilometre everywhere? What will happen to those concession deeds in the proposal that Transurban has to toll all roads?

**The Hon. Dr PETER PHELPS:** I am not sure whether it was Mr Fraser or Ms Johnstone who mentioned illegal political donations. Could one of you elaborate on what you mean by illegal political donations?

**Ms JOHNSTONE:** Transurban is actually in the United States as well. They operate two toll roads in Virginia I believe. We reference it in our submission that they made something like—

**Mr FRASER:** What happened was—this is from my memory of it—it was reported in the *Washington Times*, and Transurban acknowledged this, there was illegal campaign contributions to 90 campaigns in Virginia.

**Ms JOHNSTONE:** And this was over three years.

**Mr FRASER:** So they came in, all these donations happened and then they won the contract. Then it was found that they were illegal because they could not do it—they were an Australian company, they did something wrong. They said, "Whoops, we did not know. We are very, very sorry." Some of the politicians gave the money back.

**The Hon. Dr PETER PHELPS:** So the nature of their illegality was the fact that the US system does not allow donations from foreign entities or foreign individuals, is that the case?

**Mr FRASER:** I bet you are much better at this and more expert than me, but it was something that we were just going off what was reported and what Transurban acknowledged.

**The Hon. Dr PETER PHELPS:** But it is not that big a problem, is it, foreign donations to political parties?

**Mr FRASER:** These are big, big, big companies with big legal teams who talk about the rigorous tests before they do anything, and let me tell you if I was going to go off to another country and donate to 90 campaigns I might check my legal foundations before I did it. We make rigorous checks about what we do now because we have made mistakes in the past; so I think they would have had better resources to make those checks and I think they would have known better.

**The Hon. Dr PETER PHELPS:** Mr Fraser, you mentioned openness that is an important part of corporate life and part of that is disclosure of various things. Do you have any disclosures you would like to make to this committee which might draw into question the credibility of any testimony you give before us?

**Mr FRASER:** I am guessing you are going to be referring to the Commonwealth Bank judgement.

**The Hon. Dr PETER PHELPS:** Am I? Would you like to elaborate on that?

**Mr FRASER:** Is that the question? Transurban has probably come and had a discussion with you, because we have heard they have met with a number of people about this.

**The Hon. Dr PETER PHELPS:** Actually, there is a thing called Google and it is very useful for finding information. Would you like to make any declaration as to the credibility of your testimony before us today?

**Mr FRASER:** If you would like me to say something about that I would be happy to talk to that. Basically, there came a point in the beginning of my advocacy, in its infancy, I started trying to expose some of the conduct of the Commonwealth Bank and eventually they put surveillance on me. They got caught and then they took me to court and sued me for defamation because of this executive. I was unprofessional in the way I pursued this executive, but what happened was that the Commonwealth Bank funded this defamation case, despite the fact that it was the individual taking the action against me who is a member of the gay community. I had to make the choice not to defend myself in court because two whistleblowers that they were trying to get access to, who were also from the gay community—basically, if I went to court I would have exposed them, and they were very concerned and I gave them my commitment. I just said, "You know what? We'll roll the dice and what happens happens" and it was a consequence I was living with.

The judge came out and said that I had a campaign against the executive before he was gay and he called me a homophobic stalker, and then the Commonwealth Bank subsequently made sure everybody knew about it and published it far and wide.

**The Hon. Dr PETER PHELPS:** What was the payout against you?

**Mr FRASER:** The judge ordered a \$300,000 judgement against me.

**The Hon. Dr PETER PHELPS:** The statutory maximum for a defamation payout in New South Wales is \$350,000. So the defamation you committed against that person was at the highest end of the scale.

**Mr FRASER:** According to the judge.

**The Hon. Dr PETER PHELPS:** Did Justice McCallum also describe you as a stalker?

**Mr FRASER:** Yes, as I said, a homophobic stalker.

**The Hon. Dr PETER PHELPS:** Did you, in fact, send out an email to 500 members of the company outing the person as gay and naming his partner?

**Mr FRASER:** That is something that was discussed in court and I have had legal advice not to talk about that. But what I will say is that the court documents say that he was an advocate for gay rights at the bank, so I am not quite sure how I could out a gay advocate—that would be my question.

**The Hon. Dr PETER PHELPS:** Did you send an email to 500 staff members outing him and naming his partner?

**Mr FRASER:** I cannot talk about that because my legal advice would be not to.

**The Hon. Dr PETER PHELPS:** Did the other emails contain "explicit homophobic references"?

**Mr FRASER:** Once again, that was something that I did not defend in court and what happened in court became evidence and became truth and I am happy to accept what the judge said and move on.

**The CHAIR:** Order! In terms of the point that is being made, we have got specific terms of reference for this inquiry. Obviously you are pursuing a line of questioning which you are looking to continue to pursue. I am just wondering how much further and how long you wish to proceed with it?

**The Hon. Dr PETER PHELPS:** The witness presents himself as a credible witness in relation to exposing corporate misdeeds. I strongly contend that that is not the case and I am using examples from a court case where his credibility was extremely compromised by the evidence which was presented at the time and also the statements of Justice Lucy McCallum, who is a very good judge and would not make a mistake in a trial of such a nature. I am willing to end the questioning at this point with the notation that I consider this witness has absolutely zero credibility, based on his previous actions, and I am not sure that this committee should place any reliance on the information which he presents.

**Ms JOHNSTONE:** Chair, may I please say something?

**The CHAIR:** Yes, you can.

**Ms JOHNSTONE:** For the past year I have been working alongside Michael; he is my colleague and my business partner. I have not said anything in public before; I have told a handful of people—my parents do not even know. For the past year I have been watching my colleague be smeared even though he chose to take a \$300,000 hit in order to protect two gay whistleblowers from the Commonwealth Bank of Australia.

**The CHAIR:** Can I draw a line under it now? Arguably it has gone a bit too far anyway. We are here to deal with specific terms of reference. The Hon. Peter Phelps decided to pursue a line of questioning, which he did, and a line is being drawn underneath that. There are three minutes left. Are there any further questions from the Government?

**The Hon. TREVOR KHAN:** Can I take you to page 9 of your submission? Ms Johnstone, I am happy if you answer this but I am not restricting the question to you.

**Ms JOHNSTONE:** I am an equal business partner.

**The Hon. TREVOR KHAN:** I am not being critical in any way. You talk in terms of political donations there. Would you agree that in New South Wales there is a regime of restrictions on political donations?

**Ms JOHNSTONE:** I am actually not too sure about New South Wales' arrangements with political donations, but what I can talk about is Transurban's practices as a company. Do we want this company to be managing the entire Australian road network?

**The Hon. TREVOR KHAN:** I am dealing with part of your report. You are not aware of New South Wales' restrictions on the quantum of political donations that can be made by individuals and companies?

**Ms JOHNSTONE:** I do not know the exact restrictions, no.

**The Hon. TREVOR KHAN:** You could draw the conclusion from the paragraph that is there that both the ALP and the Coalition parties are bent because they are receiving political donations. Is that right? That is what your intention is from that section of your report?

**Ms JOHNSTONE:** About the political donations?

**The Hon. TREVOR KHAN:** Yes.

**Ms JOHNSTONE:** We have said, "Transurban has donated to the Liberal National Party and the Australian Labor Party".

**The Hon. TREVOR KHAN:** The purpose of that is to say that essentially Transurban is capable of buying parties in New South Wales. Is that what you are asserting?

**Ms JOHNSTONE:** We are simply saying they have influence and they have been in trouble in the past for giving illegal political donations.

**The Hon. TREVOR KHAN:** They have been in trouble in the past apparently in the United States—

**Ms JOHNSTONE:** Correct, the same company.

**The Hon. TREVOR KHAN:** I am asking if you are putting the allegation that Transurban is buying political parties in New South Wales. Is that what you are putting?

**Ms JOHNSTONE:** We are not alleging anything. We simply stated the fact that Transurban Limited has donated to the Liberal National Party and the Australian Labor Party and I would ask you is that a fact, to your knowledge or—

**The Hon. TREVOR KHAN:** Are you aware of the caps on political donations in New South Wales, and your answer is not.

**Ms JOHNSTONE:** I do not know the exact cap, no.

**The Hon. TREVOR KHAN:** Could I invite you to go away and do your research?

**Ms JOHNSTONE:** We have done a lot of research, we have got a lot of references here. I am not too sure what exactly you are disputing about the fact that Transurban Limited has donated to the Liberal National Party and the Australian Labor Party.

**Mr FRASER:** And I think all we are asking here today, regardless of any credibility, let us not talk about credibility, let us just talk about we are giving you information; we are relying upon what government reports are saying and what Transurban have said themselves. That is all we need to rely upon; you do not need to rely upon what I am telling you. We have given you the references in the submission; whoever wishes to see

it and critique it—this is about we are trying to be transparent about what we have found. We are not a committee that has this incredible power to look into this stuff and make these wise decisions. We are just saying here is the information, here are the resources, we dug it up and if you think it is not what we think it is when you look at it and make a decision, we are happy with that.

**The CHAIR:** Our time has expired. There may be some supplementary questions that we will provide to you; they will be in the form of written questions to you and the secretariat will liaise with you in regard to that. We have resolved to provide a 21-day turnaround period for answers to those questions. Thank you both very much for coming along this afternoon; it has provided us with an opportunity to go into some finer detail in some of the matters you have raised in your detailed submission.

**(The witnesses withdrew.)**

**(The Committee adjourned at 16:30.)**