



Transport Workers' Union of NSW

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Upper House Committees
Parliament of NSW
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Inquiry into the Impact of the WestConnex Project – Response to Questions on Notice

I refer to your email of 17 October 2018 regarding questions taken on notice by the Transport Workers' Union of NSW (TWU) in the course of giving evidence before the Public Accountability Committee (Committee) at the public hearing of the Inquiry into the Impact of the WestConnex Project on 11 October 2018.

The TWU provide the following responses to the questions taken on notice.

1 Communications between Fair Trading NSW and owner driver creditors of Road Constructions Australia Pty Ltd

1.1 The Hon. Dr Peter Phelps asked during proceedings whether Fair Trading NSW had been in contact with any of the TWU's owner driver members who are creditors of an excavation company previously engaged by Sydney Motorway Corporation on the WestConnex Project, Road Constructions Australia Pty Ltd (RCA) with a view to providing those creditors information about the recovery of amounts owed to them by RCA, now in liquidation.

1.2 The question was posed as follows:

The Hon. Dr PETER PHELPS: *In relation to the RCA matter, has Fair Trading NSW contacted any of those drivers or creditors about providing information to them to seek redress?*

Mr RASMUSSEN: *We will take that question on notice. We are unsure.*

The Hon. Dr PETER PHELPS: *That is fine. I would have thought that Fair Trading NSW would be the key agency that should have contacted those people about the recovery of outstanding amounts. It would be great if you could take that question on notice.*

1.3 The TWU responds as follows.

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- 1.4 The TWU is aware from liquidation reports that RCA entered liquidation owing its subcontractors for excavation work performed on the WestConnex project around \$400,000. The TWU can provide examples of the totals owed to five transport subcontractors (the names of which will be withheld for privacy reasons):
- (1) Subcontractor 1: Total owing = \$46,067.64;
 - (2) Subcontractor 2: Total owing = \$2,896.92;
 - (3) Subcontractor 3: Total owing = \$64,473.92;
 - (4) Subcontractor 4: Total owing = \$145,522.09;
 - (5) Subcontractor 5: Total owing = \$133,048.13.
- 1.5 The liquidation reports also show that RCA itself went into liquidation being owed around \$700,000 from its head contractors for WestConnex works.
- 1.6 The transport subcontractors owed money by RCA for work performed are unsecured creditors and are, realistically, unlikely to ever recover the money they are owed.
- 1.7 Sadly, this is a not uncommon situation for owner drivers in New South Wales, who have very little ability under current legislative regimes to recover money for work completed in the event their principal contractor becomes insolvent or simply does not pay.
- 1.8 Particularly in the building industry, which is widely acknowledged as being "*infamous for its non-payment of subcontractors*"¹, the collapse of a big contractor has a ripple effect, often ruining scores of subcontractors and suppliers, who are last in the queue as administrators, banks and employees have first call on the assets².
- 1.9 For most owner drivers, the reality is that the existing remedial measure for securing payment are ineffective, and are often inaccessible, costly and artificial³.
- 1.10 Current securities of payment legislation has low accountability for companies that do not pay their owner drivers for work performed, and places an incredibly high burden on the owner drivers to prove that they should be paid.
- 1.11 Whilst owner drivers, and in particular the TWU's excavated materials contract carriers, appreciate that upon investing capital on their vehicles and businesses they take on a certain degree of inherent risk in that there is no guarantee of finding work (or adequate work). However, it cannot be conceded that there is any level of acceptable risk when it comes to not being guaranteed payment for completed work.
- 1.12 There is clearly a need for legislative reform in this area.
- 1.13 The principal contractor should be held accountable for ensuring the people who do the work for them get paid.
- 1.14 The government should look seriously at implementing the recommendations of the Collins Report which include (amongst many others) that, for building projects valued at \$1 million or more, head contractors be required to hold money on trust for their subcontractors, and would require that head contractors pay their subcontractors for work performed within a maximum of 28 days. maximum payment times of 28 days⁴.
- 1.15 Despite the TWU's attempt to have the Government (as head contractor on the WestConnex project) take responsibility for the scores of owner drivers who have not been paid by their principal contractors for work completed on its much touted WestConnex project, shamefully these owner drivers remain out of pocket to the tune of the hundreds of thousands.

- 1.16 In answer to the question of the Hon. Dr Peter Phelps, the TWU is not aware of any of its owner driver members owed money by RCA for work performed on the WestConnex project who have been contacted by Fair Trading (or, in fact, any other agency) to assist with recovery of money owed.

2 Labor's Proposed M4 Cashback Scheme

- 2.1 The Hon. West Fang asked during proceedings whether the TWU supported Labor's proposed M4 cashback scheme on the widened section of the M4, and whether the TWU accepted that in order to fund the scheme, services like education and health would suffer.

- 2.2 The question was posed as follows:

The Hon. WES FANG: *Do you support Labor's proposed cashback scheme on the widened section of the M4?*

Mr OLSEN: *Yes, I do. But I do not think it extends to small business people.*

The Hon. WES FANG: *No, just generally.*

Mr OLSEN: *Yes.*

The Hon. WES FANG: *Do you know what the toll will be under a cashback arrangement?*

Mr OLSEN: *No, I do not.*

The Hon. WES FANG: *It will remain in place and it will be borne by the taxpayers. Do you accept that to fund that scheme Labor will have to pull money out of education and health? Do you think it is fair that Nepean Hospital should pay for Labor's cashback scheme?*

The Hon. GREG DONNELLY: *I think he is trying hard.*

The CHAIR: *Let the witness answer the question.*

Mr OLSEN: *I do not accept that, but I will take the question on notice and provide a more thorough response. I do not accept that premise, but I am happy to take it on notice and answer it in full.*

- 2.3 The TWU responds as follows.

- 2.4 Labor has indicated that its proposed M4 Cashback scheme will operate on the same rules as the M5 Cashback introduced in 1997⁵. It is therefore unlikely that the proposed M4 Cashback scheme will benefit TWU members in the course of performing their work, particularly those owner drivers who are worse hit by road tolls (given that the M5 Cashback is limited to vehicles registered for private use⁶).

¹ Bruce Collins QC, 'Final Report: Inquiry into Construction Industry Insolvency in NSW', November 2012 (*The Collins Report*), p 8.

² Ibid, p 9; Australian Financial Review, "Building industry slump claims another victim", 15 November 2012, p.44.

³ *The Collins Report*, above n 1, p 42.

⁴ Ibid, pp 355 and 364.

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http://www.lukefoley.com.au/cashback_makes_a_comeback_for_m4_under_labor_s_fair_deal_for_western_sydney_motorists

⁶ <https://www.tollpay.com.au/faq#8>

- 2.5 However, notwithstanding that the proposed scheme will not benefit TWU owner driver members (in that capacity), the TWU is nonetheless supportive of any measure which would make the lives of working people, in this case the hardworking people of Western Sydney in particular, easier.
- 2.6 It is not for the TWU to say how the proposed scheme will be funded.
- 2.7 Labor have indicated that the M4 will be fully funded by savings measures that, entirely appropriately, will be outlined by the Shadow Treasurer prior to the 2019 State Election campaign and reviewed by the independent Parliamentary Budget Office⁷.
- 2.8 However, it is disingenuous to suggest that in order to fund the scheme, Labor will necessarily have to pull money out of health and education. The TWU rejects the proposition put by the Hon. Wes Fang to this effect during the hearing.
- 2.9 The suggestion is particularly rich coming from a government which, to date, has notched up over \$11 billion in budget blowouts which have all but wiped out the revenue raised from its privatisation of TransGrid and AusGrid (which revenue was promised to essential infrastructure and could certainly have been invested in health and education)⁸ due to its colossal mismanagement of infrastructure and other projects. To name a few:
- (1) The WestConnex project – over \$6 billion blowout to date⁹;
 - (2) The Sydney Metro (Chatswood to Bankstown) - \$1.5 billion blowout¹⁰;
 - (3) The Intercity train fleet - \$1 billion blowout¹¹;
 - (4) The CBD Light Rail – over \$500 million blowout¹²;
 - (5) The Northern Beaches B-Line – \$290 million blowout¹³;
 - (6) The Opal Card system - \$63 million blowout¹⁴;
 - (7) The North West Rail Link – Skytrain – over \$49 million blowout¹⁵;
 - (8) The Nepean Green Bridge - \$29 million blowout¹⁶;

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<http://www.lukefoley.com.au/cashback-makes-a-comeback-for-m4-under-labor-s-fair-deal-for-western-sydney-motorists>.

⁸ <http://www.afr.com/news/politics/nsw-boasts-of-10b-in-surpluses-but-delays-reform-of-state-taxes-20151217-glpmqv>; <http://www.afr.com/business/nsw-to-net-16-billion-through-ausgrid-lease-20161020-gs6ngb>.

⁹ WestConnex Strategic Business Case.

¹⁰ Media Release, Premier, 11 May 2016.

¹¹ Auditor General Report "Volume Six Transport" November 2015.

¹² <http://www.smh.com.au/nsw/sydney-light-rail-line-costs-blow-out-to-22-billion--600-million-more-than-budgeted-20141109-11jzn.html>.

¹³ <http://www.smh.com.au/nsw/more-nsw-transport-blowouts-as-northern-beaches-bus-project-cost-doubles-20161022-gs8cpb.html>.

¹⁴ Page 46, Auditor-General's Report to Parliament, Volume Six 2015.

¹⁵ <http://www.smh.com.au/nsw/north-west-rail-link-costs-blow-out-on-sydneys-biggest-public-transport-project-20150602-gheua6.html>.

¹⁶ <http://www.dailytelegraph.com.au/newslocal/west/walkers-to-stroll-across-49-million-nepean-footbridge-by-2018/news-story/44c2abd9445f9b726ed643b58c17abb2>.

(9) Tibby Cotter Bridge - \$13 million blowout¹⁷.

2.10 Perhaps it was an attempt by the Honourable Member to deflect attention from the government's mammoth overspending failures. However, the TWU submits that Labor's proposed M4 Cashback scheme is good policy which will provide tangible benefits to the people of Western Sydney. It would do the government well to focus on doing the same.

3 Conclusion

3.1 The TWU hopes these answers assist the Committee.

3.2 The TWU once again thanks the Committee for the opportunity to give evidence on behalf of its members in this important Inquiry.

Yours faithfully

Richard Olsen

State Secretary

Transport Workers' Union of NSW

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¹⁷ <http://www.smh.com.au/nsw/13-million-blowout-for-albert-tibby-cotter-bridge-is-not-our-fault-heritage-council-20150205-1379qz.html>.