

INQUIRY INTO ROAD TOLLING

Organisation: Transport Workers' Union of NSW
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Legislative Council – General Standing Committee No. 2

SUBMISSION OF THE TRANSPORT WORKERS' UNION OF NSW

1 Introduction

- (1) This is the submission of the Transport Workers' Union of New South Wales (**TWU**) to the Inquiry of the Legislative Council General Standing Committee No.2 into road tolling (**Inquiry**). This submission is authorised by TWU State Secretary Richard Olsen.
- (2) This submission will focus on the impact of current road tolling arrangements upon the TWU's membership base, which includes a range of drivers working in a number of industries including freight, oil, fuel and gas, waste, car carrying, passenger and construction. The submission will particularly focus upon owner drivers.

2 Current Tolling Regime

2.1 NSW Toll Roads – Ownership and Concession Periods

- (1) All toll roads in NSW exist within the Sydney Metropolitan and Greater Sydney regions.
- (2) Today in NSW tolls are imposed on drivers travelling on the Hills M2 Motorway (**M2**), M5 South-West Motorway (**M5**), Westlink M7 Motorway (**M7**), Military Road E-Ramps, Eastern Distributor, Sydney Harbour Bridge and Tunnel, Cross City Tunnel (**CCT**) and Lane Cove Tunnel (**LCT**).
- (3) The number of toll roads in NSW is set to increase with the reintroduction of tolls on the M4 Western Motorway (**M4**) upon the completion of the M4 Widening project which is reportedly forecast to occur in the first quarter of 2017.¹ More tolls will be added as further stages of the WestConnex project, including the M4 East, New M5, M5 East and M4-M5 Link, open between 2017 to 2023² and tolls will also apply to the NorthConnex tunnel when it opens in 2019.³
- (4) The majority of toll roads in NSW are owned and operated by private companies under concession arrangements in partnership with the NSW government.
- (5) Private companies, for example Transurban Limited which currently owns 100 per cent of the M2, LCT and CCT, 75.1 per cent of the Eastern Distributor and 50 per cent of the M5 and M7 under concession until

¹ <http://www.dailytelegraph.com.au/news/nsw/postchristmas-m4-toll-will-hit-holiday-pockets-where-it-hurts/news-story/5f77617f15b5c53e03fc26d26e471303>

² <https://www.westconnex.com.au/faqs>

³ <http://northconnex.com.au/community/faqs>

between 2026 and 2048,⁴ are engaged by the government to finance, build, operate and maintain these motorways. The private companies receive in return the right to collect revenue from the operation of the roads for the duration of the relevant concession period with the roads to then be “handed over” to the government.⁵ Concession periods may be extended by agreement between the company and the government and this has recently occurred with respect to the M2 (by 2.1 years), M7 (by 11.4 years) and the LCT (by 11.5 years) in connection with the NorthConnex project.⁶

- (6) Similar partnership arrangements exist with regards to the WestConnex and NorthConnex projects currently under construction.
- (7) The rationale for using private rather than public finance to fund road construction and maintenance is said to be that the use of private finance allows the community to benefit from the earlier construction of toll roads than would otherwise be possible under more traditional, publicly funded approaches to procurement.⁷
- (8) The exception is the Sydney Harbour Bridge and Tunnel which are owned by the NSW government and operated by Roads and Maritime Services (RMS).⁸

2.2 Methods of Tolling

- (1) The most traditional method of tolling in NSW is by the imposition of a fixed toll which applies for the use of a particular motorway regardless of distance or time travelled. With the exception of the M7 (and, when opened, WestConnex), which operates on a distance-based methodology whereby drivers pay for the distance travelled on the motorway, and the Sydney Harbour Bridge and Tunnel, which operate on a time of day methodology whereby drivers pay a toll based on the time at which they travel, all toll roads in NSW currently operate on a fixed toll basis.⁹
- (2) Since mid-2013 when the M5 became the final toll road in the country to close its toll booths¹⁰ and all toll roads in NSW became cashless, road users in NSW have been required to pay for tolls via electronic tags or passes. In the event a driver uses a toll road without an electronic tag or pass, they are sent a Toll Notice which requires the payment of the relevant toll plus an administration fee (typically \$10).¹¹

⁴ <https://www.transurban.com/our-operations/our-roads>

⁵ <https://www.transurban.com/content/dam/investor-centre/toolkit/transurban-overview.pdf>, p 56.

⁶ <https://www.transurban.com/content/dam/investor-centre/toolkit/transurban-overview.pdf>, p 16.

⁷ http://infrastructureaustralia.gov.au/policy-publications/publications/files/Eco_contribn_of_sydney's_Toll-Roads_EY2008.pdf

⁸ <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/sydney-harbour-bridge-tunnel.html>

⁹ <http://www.rms.nsw.gov.au/sydney-motorways/toll-charges/index.html>

¹⁰ <http://www.smh.com.au/nsw/all-set-for-change-as-bell-tolls-for-last-booth-20130309-2fsh8.html>

¹¹ <http://www.rms.nsw.gov.au/sydney-motorways/tags-passes/index.html>

- (3) Motorists are required by law to pay tolls.¹² It is an offence not to pay a toll and failure to pay a toll may result in a penalty notice being issued.¹³

2.3 Differential Toll Rates – Cars and Heavy Vehicles

- (1) With the exception of the Sydney Harbour Bridge and Tunnel, which have a single class for tolling meaning that all vehicles pay the same toll for using those roads regardless of their size, all NSW toll roads have differential tolling regimes meaning that different vehicles pay different tolls depending on whether they are defined as “Class A” or “Class B” vehicles.
- (2) Class A vehicles are either three axle vehicles under two metres in height or two axle vehicles under 2.8 metres in height (with respect to the M5 and Eastern Distributor) or any vehicle 12.5 metres or less in length and 2.8 metres or less in height (with respect to the M2, M7, LCT and CCT). Any vehicle which exceeds those dimensions is classified as a “Class B” vehicle.¹⁴
- (3) As at 1 January 2017, the toll cost for Class B vehicles is two times that of Class A vehicles for the Eastern Distributor and CCT and three times that of Class A vehicles for the M2, M5, M7 and LCT.¹⁵
- (4) The toll cost for heavy vehicles associated with the WestConnex project will be three times the car toll cost.¹⁶ The NorthConnex car and truck tolls will be “aligned” with the M2 pricing, meaning the toll cost for heavy vehicles is likely to be three times the cost for light vehicles once that tunnel is opened to traffic.¹⁷
- (5) The explanation given as to why heavy vehicles are charged tolls at an amount three times greater than cars on the M5 is that heavy vehicles occupy two or more car spaces on the motorway.¹⁸ However, the most common rationale given for the higher toll costs for heavy vehicles is that those rates are said to reflect the greater wear and tear heavy vehicles have on roads compared to cars.¹⁹ The logic, so the argument goes, is that this requires increased costs to either maintain or meet higher build standards initially (or both) and therefore tolls merely recover these costs.²⁰
- (6) This may be so. However, there is presently no data or information published which identifies with any precision the actual amount of damage caused to roads by heavy vehicles, the costs of associated repairs and the

¹² <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/index.html>

¹³ *Roads Regulation 2008* (NSW), cl 30

¹⁴ <http://www.rms.nsw.gov.au/sydney-motorways/documents/sydney-motorways-toll-charges.pdf>

¹⁵ <http://www.rms.nsw.gov.au/sydney-motorways/documents/sydney-motorways-toll-charges.pdf>

¹⁶ <https://www.westconnex.com.au/faqs>

¹⁷ <http://northconnex.com.au/community/faqs>

¹⁸ <http://www.m5motorway.com.au/about-m5/faqs#134>

¹⁹ <https://www.westconnex.com.au/faqs>

²⁰ <http://infrastructure.org.au/wp-content/uploads/2017/01/NSW.pdf>

amounts which are actually spent on repairs, and links these factors to the toll charges set for heavy vehicles. In the absence of such material publicly available, it would appear that the decision to charge heavy vehicles toll rates at two to three times the rates charged to cars has been arrived at on the basis of a general view taken as to the wear and tear caused to the road by heavy vehicles rather than any specific knowledge as to that fact.

- (7) The rationale used to justify the setting of tolls for heavy vehicles at two to three times the price of tolls for light vehicles must also be considered in light of the fact that heavy vehicles already pay three to 11 times more in registration charges than cars in NSW depending on their weight. Registration charges are based upon a vehicle's weight so that the more a vehicle weighs, the higher the registration charge is.²¹
- (8) Furthermore, information available on the NorthConnex website indicates that the project intends to have the effect of redirecting "around 5,000 heavy vehicles each day off Pennant Hills Road" and onto the toll road by, potentially, the introduction of "regulatory measures on the surrounding road network including fines for trucks not using the tunnel that do not have a genuine destination around Pennant Hills Road".²² The WestConnex website also states that one of its key benefits will be the shifting of "heavy vehicles to the underground motorway, returning the local streets to local communities".²³
- (9) It should be noted that many local councils already attempt to limit the use of roads within their jurisdiction to place limits on heavy vehicle access, forcing heavy vehicles onto toll roads.
- (10) Any move to force heavy vehicles to utilise toll roads, and potentially fining their drivers for failing to do so, has the potential to create an inequitable situation wherein heavy vehicle drivers are punished simply for doing their jobs. This issue will be returned to in more detail below.

2.4 Setting of Tolls, Toll Increases and Rationale for Allowing Higher than Consumer Price Index Increases on Certain Tolls

- (1) There is little information available publicly as to the processes involved in the setting and increasing of toll rates.
- (2) The relevant legislation offers little guidance. The *Roads Act 1993* (NSW) provides only that the amount of any toll or charge must not exceed the amount prescribed by or in accordance with the regulations²⁴ (although the *Roads Regulation 2008* (NSW) does not presently contain any such prescriptions) and that in setting tolls for the Sydney Harbour Bridge and

²¹ <http://www.rms.nsw.gov.au/business-industry/heavy-vehicles/registration/charges.html>;
<http://www.rms.nsw.gov.au/roads/registration/fees/registration-costs.html>

²² <http://northconnex.com.au/community/faqs>

²³ <https://www.westconnex.com.au/faqs>

²⁴ *Roads Act 1993* (NSW), s 213(3).

Tunnel the RMS “must have regard to” movements in the consumer price index (**CPI**).²⁵

- (3) Rather, the setting of toll rates and the rates of toll increases are matters which are contained in the concession agreements negotiated between private road owners and the government with respect to each individual toll road.
- (4) With the exception of the Sydney Harbour Bridge and Tunnel, tolls on NSW’s privately owned and operated toll roads are indexed or “escalated” on a quarterly basis in the following manner, specific to the terms of the particular concession agreements which cover them:
 - (a) The M2 toll is escalated quarterly by the greater of the quarterly CPI or one per cent;
 - (b) The Eastern Distributor toll is escalated quarterly by the greater of a weighted sum of quarterly average weekly earnings and quarterly CPI or one percent;
 - (c) The LCT and M5 tolls are escalated quarterly by CPI – those tolls cannot be lowered as a result of deflation, however, until inflation counteracts the deflation the tolls cannot be increased;
 - (d) The M7 toll is escalated or de-escalated quarterly by quarterly CPI; and
 - (e) The CCT toll was escalated four per cent annually to Dec 2011 and will be escalated three per cent annually to December 2017 and thereafter by quarterly CPI until the end of the concession period in 2035.²⁶
- (5) It is expected that tolls on the WestConnex and NorthConnex will also be subject to concession agreements which will allow rates to rise at 1 per cent per quarter, or at the rate of inflation, whichever is greater.²⁷
- (6) Given that in the September to December 2016 quarter the CPI increase was only 0.5 per cent,²⁸ this means that toll charges on some of Sydney’s largest motorways such as the M2 are, in line with contracts signed with private tolling companies, currently able to increase at double the rate of inflation. Whereas tolls on the M7, for instance, will rise at a slower pace because the concession agreement allows them to increase only at the rate of inflation.
- (7) Again, there is no published methodology or information which evidences why toll increases are necessary on a quarterly basis, why some increases above the rate of inflation are justified, nor why the rates at which tolls increase are not consistent across all toll roads but differ across the various concession agreements.

²⁵ *Roads Act 1993* (NSW), s 215(2).

²⁶ <https://www.transurban.com/content/dam/investor-centre/toolkit/transurban-overview.pdf>, p 45.

²⁷ <http://www.smh.com.au/interactive/2016/sydney2026/chapter1.html>

²⁸ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6401.0>

- (8) Furthermore, the fact that tolls applying to the various NSW toll roads, and the rates at which they are permitted to increase, are based on individual and separate commercial agreements between the government and private companies for the concession and operation of each particular road, effectively resulting in the toll road network in Sydney being broken up into individual sections with each tolled section representing a stand-alone project, leads to inequitable outcomes where motorists using different sections of the network pay vastly different sums which may increase at vastly different rates for similar functionality.²⁹
- (9) It is also relevant to note that drivers are charged tolls in return for certain benefits, including faster travel times and less congestion. However, the time costs incurred by drivers when there are delays on toll roads caused by, for example, roadworks, do not result in a discount on the tolls charged despite drivers not receiving the benefit for which they have paid.

3 Extent of any Consultation with the Transport Industry Before Changes are made to Tolling Regimes

- (1) Despite being the largest representative of truck drivers in NSW, the TWU is unaware of any consultation having been undertaken with the industry as to tolling regimes or changes thereto.
- (2) This means that heavy vehicle drivers who are forced to pay these higher tolls have no say nor are explained the rationale behind any changes.

4 The Impact of Road Tolls on Owner Driver Operators

- (1) The vastly higher and ever increasing toll charges imposed on heavy vehicle drivers are experienced by those drivers in the context of what is a highly competitive, price taking industry. Accordingly, tolls are a highly contentious issue across the heavy vehicle industry.
- (2) This cannot be more so than for owner drivers.
- (3) Owner drivers are small businessmen and women who operate single vehicles and work for a single corporation which, in most cases, has the ability to unilaterally set the terms of their engagements. Most now operate as their own proprietary companies in order to carry out their work. They are responsible for all costs associated with the running of their vehicles including, in the vast majority of cases, road tolls incurred in the course of performing work.
- (4) For the most part, owner driver operators are unable to recover the costs associated with tolls from their principal contractors, who are reluctant to pass this cost on to consumers given the competitive nature of the industry in which there is more often than not a race to the bottom in order to secure tenders for work.
- (5) As outlined earlier, on many occasions owner drivers have no choice but to use toll roads due to restriction placed on non-toll roads. Even where this

²⁹ <http://infrastructure.org.au/wp-content/uploads/2017/01/NSW.pdf>

is not the case, in many instances drivers can be penalised for missing a delivery window and are therefore forced to take toll roads in order to avoid penalty even though they cannot recover this cost.

- (6) In the words of Phil Ramondino, a tipper owner driver and TWU member:

Over a month, I would pay tolls that I don't recover amounting to 30 per cent of my income, easily. We can spend \$300 a day on tolls easily. Yesterday I drove the M2 and M7 nine times which works out at nearly \$270. It's a lot of money. And that comes straight out of my pocket. The government is making it hard not to use toll roads. They're pushing us on to toll roads by making roads light limit. It's going to get worse because once the tolls go back on the M4 there's no way around it anymore. We pay more on registration charges and then more on tolls – it feels like double dipping. We're paying big rego, big green slips, and then because we're trucks we have to pay triple the tolls. And this is while our rates continue to go down.

- (7) Kassem Ghami, a TWU owner driver member working in the car carrying industry, experiences a similar situation:

We can't recover the costs of tolls. It is the way they do it – tolls are on you. I drive roughly 1500-2000km per week, mainly around the Sydney area and everywhere you go these days is tolls. In a month, the amount I spend on tolls would average to be about \$1000 easily. We are not able to up our rates to cover the cost of tolls either. It has a huge impact on my business.

I quite often take backroads to avoid the cost of tolls, but if you do that you lose out on work because it takes longer and you've also added more kilometres onto your day, you've had to spend more on fuel and you're on the road longer which adds more stress.

I would like to know why it is so expensive. Every quarter tolls go up. If it went up once a year, maybe that would be alright. But every quarter is too much.

- (8) Tony Pace and Phil Grima, TWU owner driver members driving rigid tipper trucks to transport asphalt have made the following comments:

Tolls aren't covered by our contract determination. They weren't a big issue when the determination was made but now they are through the roof. And we've had to absorb the cost of tolls. At the moment, we actively try to avoid toll roads and we're still spending \$400-\$500 a month. If we used them all the time it could be up over \$1500 a month. Avoidance of toll roads also means extra road time, extra fuel, definitely extra stress and fatigue and cluttering up of local roads. There's also an impact on the environment, because your engines are running longer, the trips are 15-45 minutes longer. And when the M4 toll comes back on there will be no real way to avoid that, so it's going to have a significant impact on us. A short load using the M4 toll might only pay one of our smaller trucks around \$100 and we will reportedly be paying \$25 in tolls for the return trip, three times more than a car. This means there will potentially be days where our toll bill will be in excess of our fuel costs and currently our fuel bill is our biggest expense. It just doesn't match our income. We cannot absorb it.

We understand we use more of the roads than cars and we wear the road out. It's damage to the road that they're using as an excuse to charge us more and it's probably right but it's just too much to absorb without remuneration for it. Particularly when tolls just go up overnight and there's no warning for the industry to react, there's no consultation. It's just dictated to us. You've got no choice but to pay. And there is nothing holding the companies back from charging what they want. There's no control, no one looking at it on our behalf.

Tolling might be fair if they actually published a list of: this is what this road cost us to run this year, this is what our tolls were, this is what we pay our directors and shareholders. Complete transparency.

It would be nice if there was a discount sometimes when they are doing roadworks too.

- (9) A TWU owner driver member working in parcel delivery, John Visser, has mirrored these sentiments:

There's nothing in our contract that says we have any recovery for tolls. There is no agreement for the recovery of tolls. Pressure is being put on drivers to take toll roads but drivers are refusing to do that because of the costs involved. It can cost up to \$300 per week. It would probably exceed 10 per cent of the income for most drivers. And they're talking about forcing drivers to use the NorthConnex rather than Pennant Hills Road. Forcing drivers to use toll roads is not good because you need a choice. Marginal operators, owner drivers should be able to have a choice.

I understand the reasons tolls exist to a point and I understand that it is a user pays principle. The only way the government is able to build these roads is to farm it out to private enterprise. The infrastructure wouldn't exist without it. So, I don't mind paying for some of it. The problem is that there are private companies who can charge what they want and who are profiting off tolls. It's not a break-even toll payment, it's a profit. The lack of transparency is telling. Because we don't get to see the structure of how they charge the tolls. Especially for the heavy vehicles, we need some transparency. There should be scrutiny on how some of those contracts are run between private companies and the government, especially when people are forced onto toll roads. There needs to be oversight.

- (10) Finally, Frank Black, a long-distance interstate owner driver (who is based in Queensland but often drives in Sydney) had the following to say about the current tolling regime:

The majority of owner/drivers haven't got any formal arrangements for getting reimbursed for tolls. At times, I've spent up to \$200 a week on tolls. I'll avoid toll roads when I can, but sometimes it is not possible because of the amount of time sitting in traffic, local government laws that insist that heavy vehicles use toll roads such as in Queensland, there is no alternative route, it's not cheap especially for heavy vehicles. I actually get annoyed about paying tolls because we already pay for our road use through fuel tax and our registration costs which are much higher than light vehicles because that's meant to cover our usage of the roads. So, if we're paying that to the government, why is the government giving it out to someone else to charge us again? I understand that trucks damage the road surface more than cars. And I haven't got a problem with paying for that. But I think that I'm paying it twice. The government needs to show us and justify why they are charging us again. As mentioned before I don't mind paying my share, if that's what it's for, but not if you're charging me twice in the form of fuel tax and road user charges and tolls. To increase tolls to these ridiculous amounts is nothing but highway robbery and a slap in the face to all transport operators by the government.

- (11) The preceding comments from a small number of owner drivers reflect what is being experienced by these small businessmen and women across the transport industry.

- (12) Toll represents a significant and growing expense for these owner drivers which they are more often than not unable to recover from their contractors. This is a particularly harsh reality for drivers who already operate in a highly competitive, price taking industry in which their rates often fail to cover their capital, maintenance or labour, let alone expenses including toll charges.

Further, that owner drivers are taking steps to avoid toll roads where possible means that the stated objectives of some toll roads with respect to removing heavy vehicles from local streets is failing.

- (13) This small snapshot of the experience of owner drivers in NSW shows that these small businesses are not expecting a free ride. They are not opposed to toll roads per se and understand they are necessary in order for infrastructure to be built. And they are happy to pay their fair share. But they are concerned about the lack of transparency and consultation which currently exists around the setting and increasing of tolls and the higher rates they are required to pay as heavy vehicle drivers simply in order to do their jobs and undertake the integral role that they play in the transportation of freight, building materials and so forth throughout the Sydney region.

5 Opportunities to Increase Assurance to Public that Tolling Arrangements Represent Fairest Possible Outcomes and Appropriateness of involving IPART in Determination of Tolls

- (1) The TWU believes that the involvement of the Independent Pricing and Regulatory Tribunal (**IPART**) in the determination of toll rates and their escalation would be a good starting point in terms of introducing a layer of transparency and accountability which has so far been missing from these processes.
- (2) The TWU submits that, at the very least, there ought to be published information or data which justifies the rate of tolls, and particularly the rates charged to heavy vehicles, and the need for any toll increases by, for example, demonstrating and costing the need for any repairs and so on.
- (3) An element of consultation with the transport industry and the general driving population would be a crucial part of any such process.

6 Conclusion

- (1) There are recognisable benefits in having motorways constructed and it is accepted that this often leads to tolls being placed on such roads in order to cover the costs. This submission is not concerned with this as a concept, but rather is focused on its impact on the transport industry.
- (2) The current tolling regime represents a disparate system controlled by individual and separate agreements between the government and private companies. This results in inconsistency across the road network as to the rates of tolls set on each particular toll road and the rates by which those tolls may increase. This has the potential to deliver inequitable outcomes where motorists are charged more or less depending upon which section of the network they use.
- (3) Additionally, there are inequities inherent in the inconsistent use of tolling methods across the network which see motorists paying distance based levies in some cases or fixed prices in others.
- (4) Further, and of greatest significance from the perspective of the TWU and the drivers it represents, the differential pricing system between heavy and

light vehicles with respect to tolls leads to a situation whereby small businessmen and women, who already pay vastly higher registration fees, are being penalised again on toll roads which they are often unable to avoid simply for doing their jobs.

- (5) Tolls represent a significant and growing proportion of the expenses of owner drivers who must in many cases absorb these costs themselves in a context where their rates often already fail to cover their labour and operating expenses. Whilst toll prices continue to rise, the rates of these drivers are stagnating or decline. This is an untenable and unsustainable situation for these small business owners.
- (6) All of these factors exist within a system in which decisions about differential toll rates between heavy and light vehicles and toll rates and rises on particular toll roads are contained in concession agreements negotiated behind closed doors between private road owners and the government. Those processes are presently conducted without consultation, transparency or accountability. In effect, at present, hundreds of millions of dollars are being paid out in tolls every year without any information published as to how they are set and whether they are delivering value for money for consumers.
- (7) The TWU submits that there must be greater transparency in the process for how tolls rates and rises are set both in general and for heavy vehicles. This should involve consultative processes and independent scrutiny, perhaps by a body such as IPART.
- (8) Overall, the TWU submits that the costs of toll roads for heavy vehicles are far too high, especially in the context of owner drivers not being able to recover these costs and in many instances not having any option other than to use toll roads, and this issue must be addressed as a matter of priority.

28 February 2017
Transport Workers' Union of NSW
31 Cowper Street
Parramatta NSW 2150

Contact:

Nick McIntosh
Chief of Staff
Transport Workers' Union of NSW