

**Submission
No 378**

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

Organisation: Transport Workers' Union (NSW Branch)

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INQUIRY INTO THE IMPACT OF THE WESTCONNEX PROJECT

Public Accountability Committee

SUBMISSION OF THE TRANSPORT WORKERS' UNION OF NEW SOUTH WALES

1 Introduction

- (1) This is the submission of the Transport Workers' Union of New South Wales (**TWU**) to the Inquiry of the Public Accountability Committee (**Committee**) into the impact of the WestConnex project (**Inquiry**).
- (2) This submission is authorised by TWU State Secretary, Richard Olsen.

2 Background

- (1) The TWU represents over 20,000 transport workers working throughout New South Wales in the construction, freight logistics, aviation, oil, waste management, gas, road transport, cash-in-transit and passenger transport industries.
- (2) Included in the TWU's membership base are transport workers who have been engaged to work on various parts of the WestConnex project in a range of capacities including concrete and aggregate cartage, waste removal, excavation and general freight and construction transport work.
- (3) Over the period from mid-2016 to present, the TWU has received information from its membership, in particular from its tip truck and concrete sections, regarding a range of issues of concern which have arisen at WestConnex sites involving the actions of WestConnex contractors.
- (4) Whilst the creation of "10,000 jobs during the construction phase, including hundreds of apprenticeships for young workers in Western Sydney" was and continues to be touted as one of the 'key benefits' of the WestConnex project¹, the TWU questions whether the Government has done enough to ensure those jobs are local, safe and fair jobs for the people of New South Wales.
- (5) The TWU wishes to make this submission to the Inquiry on behalf of its members who have worked and continue to work, in various capacities, on the WestConnex project. The submission will discuss various issues which

¹ See, for example: WestConnex Business Case Executive Summary – September 2013, p 4, 10, 14, 15, etc; WestConnex Updated Strategic Business Case – November 2015, p 317; the WestConnex Website - <https://www.westconnex.com.au/>.

the TWU is aware its members have faced working on the WestConnex project under the Inquiry's term of reference 1(j) – 'any other related matter'.

3 'Any other related matter' – Issues faced by transport workers engaged on the WestConnex project

3.1 Introduction

- (1) As noted, the TWU represents transport workers who have been engaged to work on various parts of the WestConnex project in a range of capacities including concrete and aggregate cartage, waste removal, excavation and general freight and construction transport work.
- (2) Over the period from mid-2016 to now, the TWU has received information from its membership, in particular from its trip truck and concrete sections, regarding a range of issues of concern which have arisen during WestConnex jobs. Those issues concern, broadly, the following matters:
 - (a) Safety issues including the overloading of trucks, fatigue management breaches and defective vehicles;
 - (b) The underpayment and late payment of workers; and
 - (c) The prevalence of interstate vehicles performing local work.

3.2 Case Study – Road Constructions Australia Pty Ltd

- (1) The TWU has received (from approximately mid-2016) and continues to receive complaints regarding safety issues and the under and late payments of employee and owner drivers engaged to work on the WestConnex project.
- (2) The complaints stem from drivers engaged by a number of different contractors working for numerous principal contractors on the WestConnex project.
- (3) Due to the nature of the work and the industry, a majority of the complaints the TWU has received have come to it via third parties and as anonymous tips.
- (4) In order to attempt to ascertain some detail about the types of problems occurring in WestConnex workplaces, the TWU chose to focus on one company which it investigated and subsequently audited, namely, Road Constructions Australia Pty Ltd (**RCA**).
- (5) RCA held a major contract on the WestConnex project to remove excavated material and engaged both employee and owner drivers to perform this work.

- (6) In March 2017, having received reports of underpayments and overloading and fatigue management breaches, the TWU sent two officials from its Newcastle and Northern Sub-Branch to enter the registered premises of RCA to inspect records with respect to its owner drivers and employees under suspicion of breaches of both the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1996* (NSW).
- (7) During that process, the TWU was able to ascertain that over 35 casual employees employed by RCA were paid at rates lower than the applicable Modern Award – the Road Transport and Distribution Award 2010.
- (8) Additionally, the TWU was able to identify four owner drivers who had been sub-contracted by RCA to perform excavation work on the WestConnex project who were engaged on illegal terms which did not meet the minimum standards in the Excavated Materials Contract Determination (being the Modern Award equivalent for owner drivers under New South Wales law) or the relevant law in relation to loading and rest break requirements. In particular:
 - (a) The owner drivers were being paid a load rate calculated on tonnage rather than on the basis of kilometre or hourly rates as required by the Determination. This meant that the drivers were working for below the minimum rates set out in the Determination;
 - (b) The owner drivers were engaged on payment terms of 30 days rather than the maximum 14 days provided under the Determination. One owner driver had received email communications from RCA at one stage indicating that payment for work completed would be late as a result of overdue payments owing to RCA from its principal contractor, Lend Lease;
 - (c) In relation to load mass compliance, records indicated that one of four contractors achieved around 50 per cent valid load weights with the remaining three averaging less than 10 per cent valid loads. This indicated that the vehicles engaged by RCA were overloaded over 90 per cent of the time;
 - (d) The records indicated that, for the most part, drivers were not recording their rest breaks correctly or consistently. This suggested that fatigue breaks were not being taken or not being recorded or monitored in compliance with chain of responsibility laws.
- (9) When presented with the TWU's findings, RCA sought advice and subsequently rectified the issues raised above by back-paying the affected employees a total of approximately \$80,000, and adjusting rates of pay moving forward.
- (10) (It may be noted that notwithstanding that achievement, RCA was ultimately placed under external administration earlier this year with unpaid invoices

to WestConnex to the tune of approximately \$500,000. This has resulted in the non-payment of significant amounts to TWU members and RCA owner drivers.)

3.3 Safety breaches

- (1) In addition to the specific issues discussed in relation to RCA above, there have been more widespread safety breaches reported on the WestConnex project.
- (2) In particular, around the same time the TWU was dealing with RCA, in March 2017, highway patrol police and inspectors from the Roads and Maritime Services (**RMS**), Environmental Protection Agency and Worksafe conducted a joint safety blitz on trucks which had been sub-contracted to the WestConnex project to move soil and debris spoil from nearby WestConnex construction sites, specifically on the M5 at Bexley and near the M4 at Sydney Olympic Park (dubbed 'Operation Catapult').
- (3) The blitz had been sparked by a number of serious truck accidents, including one WestConnex truck which was loaded with spoil that crashed on the M7 in late February 2017, trapping one person in a car and injuring four.
- (4) It was widely reported that the blitz uncovered problems such as cracked couplings, bald tyres, deficient brakes and evidence of speed limiter tampering, and over a two-day period 33 truck and trailer defect notices and 22 infringements were issued².
- (5) A second³ and third⁴ instalment of Operation Catapult were later carried out targeting different areas which resulted in a similarly significant number of infringement notices being issued.
- (6) In addition, the TWU also attended the excavation sites simultaneously with the joint taskforce blitz in order to interview drivers. The drivers interviewed by the TWU claimed that:
 - (a) They were often instructed to 'get in line' early (a practice whereby the first truck will receive the first load and subsequently get more loads in a day), sometimes starting work hours before the time recorded in their log books;

² See, for example, <http://www.abc.net.au/news/2017-03-02/nsw-police-truck-safety-blitz-also-uncovers-bikies/8319014>.

³ See, for example, <https://www.fullyloaded.com.au/industry-news/1703/operation-catapult-2-truck-and-dog-combinations-focus>.

⁴ See, for example, <https://www.fullyloaded.com.au/industry-news/1704/nsw-police-release-op-catapult-3-results>.

- (b) They were often loaded without consultation on maximum weight;
- (c) They often did not have access to scales on site before leaving;
- (d) They had issued complaints about the condition of their vehicles to their employers and had been told to simply continue operating;
- (e) Whilst being inspected, their employers have pressured them to get back on the road to get another load;
- (f) They often felt they had no option but to do as they were told by the loaders on the WestConnex project from fear of losing a load or the contract.

3.4 Engagement of interstate trucks

- (1) In addition to the safety and other issues set out above, the TWU has also received multiple reports that a number of companies contracted to the WestConnex project have sub-contracted to interstate vehicles.
- (2) By attending a number of WestConnex excavation sites to identify vehicles registered in Australian States other than New South Wales, the TWU was able to obtain evidence of vehicles registered in Victoria and South Australia working on the WestConnex project.
- (3) The TWU has also received a number of subsequent reports which suggest that this is not an uncommon practice.
- (4) Apart from the fact that the engagement of interstate trucks means local jobs are being taken away from local workers (despite the New South Wales Government's proud proclamations about the 10,000 jobs created by the construction of the WestConnex project), this also presents, in the TWU's view, a safety risk given that the vehicles in question are not registered to work on New South Wales roads.

1.2 Steps taken by TWU to engage with WestConnex

- (1) Given the findings of its investigation into RCA, its interviews with drivers at WestConnex excavation sites in conjunction with the Operation Catapult blitzes and its continued receipt of non-verified complaints surrounding other contractors working on the WestConnex project, the TWU determined to write (in July 2017) to Michael Polito, the Principal Manager of Health and Safety with Sydney Motorway Corporation (**SMC**) directly.
- (2) The TWU took this step so that it could inform SMC of the concerns it held not just about RCA, but also what appeared to be more widespread safety and compliance issues, as well as underpayments of workers, across the WestConnex project.

- (3) Given the vast network of contractors undertaking work on the WestConnex project (and the prevalence of further sub-contracting to fleet operators and owner drivers by those contractors), and the difficulties associated with verifying complaints received from TWU members given the tendency of members to make those complaints in an anonymous way for fear of their jobs, the TWU sought the assistance of the SMC in working to ensure that all transport operators working on the WestConnex project were compliant with their various legislative obligations.
- (4) In order to do this, the TWU asked the SMC to facilitate audits of all transport contractors engaged on the WestConnex project (including those engaged directly by SMC, and those sub-contracted down the chain). Further, the TWU sought an opportunity to discuss how and when the audits would take place, how any issues identified in that process might be addressed and rectified, and how ongoing compliance could be ensured.
- (5) It was the TWU's assumption that the SMC would have a keen interest in ensuring its WestConnex worksites were operating at the highest possible standard and in compliance with all applicable industrial and workplace safety laws.
- (6) However, disappointingly, the TWU received a dismissive response from SMC which, while it emphasised on one hand that "*the safety of workers, the community and road users is our number one priority*", brushed off all responsibility for actually achieving that end to its complex network of contractors – the very contractors the TWU had just informed it were failing to meet safety and compliance standards. (The SMC's response in this respect was, helpfully, that: "*As you would appreciate all contracts and construction sites are under the care and control of our respective contractors and as such your enquiries should be directed to the individual contractors involved*".)
- (7) Notwithstanding the fact that the SMC is the corporation responsible for delivering the WestConnex project on behalf of the Government, it is incredibly disappointing to the TWU that the SMC is content to simply wash its hands of any responsibility for protecting the workers engaged on the project after it hands over work to its contractors.
- (8) The SMC's response also renders its previous public statements about its strong commitment to safety following the various Operation Catapult blitzes disingenuous to say the least.
- (9) For example, a SMC spokesperson was quoted after the first Operation Catapult blitz as saying: "*WestConnex will continue to work with the taskforce and will support any action taken as a result of the investigation ... Rogue heavy vehicle operators will not be tolerated on WestConnex ... We fully support the NSW Government's Joint Heavy Vehicle Taskforce*

and its efforts to stamp out unlawful behaviour amongst heavy vehicle operators working in NSW".

- (10) Given the shocking road toll from heavy vehicle accidents New South Wales has seen this year alone, coupled with the recent Monash University report which has confirmed that truck driving is most dangerous job in the country⁵, it is critical that when it comes to safety all possible efforts are made by all players along the chain to ensure compliance. This includes not just by ensuring trucks are not overloaded and that fatigue is managed in accordance with the law, but also by ensuring drivers are paid a fair day's pay for a fair day's work so they are not pushed to engage in risky behaviour simply to earn a dollar.
- (11) It is incredibly disappointing that although the SMC is happy to talk the talk on safety and fairness, when it comes to walking the walk they are nowhere to be seen.
- (12) The SMC should be condemned for failing to act on the various safety and related issues occurring on its worksites which the TWU has brought to its attention.

4 Conclusion

- (1) The Government should not be patting itself on the back about the creation of jobs which have come about as a result of its WestConnex project when it could not care less about whether they are local jobs, safe jobs or fair jobs.
- (2) In an industry where the catastrophic risks of allowing safety standards to drop are well known, there is no excuse for the Government failing to take an active role in ensuring all of its transport contractors are complying with their safety and industrial obligations.
- (3) The TWU submits that:
 - (a) The SMC should take responsibility for all amounts owing to workers engaged on the WestConnex project as a result of its dodgy contractors (including RCA, which the TWU gave it more than fair warning of over a year before its descent into insolvency) going out of business and failing to pay workers what they are owed;
 - (b) The SMC should immediately, in conjunction with the TWU, audit all contractors providing transport work on the WestConnex project for safety and industrial instrument compliance;
 - (c) The SMC should commit to ensuring that it will only contract work to companies which are willing to: undertake regular vehicle inspections for safety compliance; be subject to regular audits for

⁵ *The Driving Health Study: Work-Related Injury and Disease in Australian Truck Drivers*, Report 2, May 2018, Monash University.

- remuneration compliance; keep and provide access to records of which vehicles are working on site;
- (d) The SMC should commit to ensuring that sufficient facilities are provided at WestConnex sites to ensure safety compliance on our roads (for example, vehicle weigh scales);
 - (e) The SMC should ensure that local workers are prioritised over interstate workers.
- (4) The TWU thanks the Committee for the opportunity to submit to this important Inquiry on behalf of its members.

31 August 2018

Transport Workers' Union of NSW