

**Submission
No 402**

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

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Impact of the WestConnex project – and future liabilities in the event of Transurban takeover....

Submission by Josephine Wadlow-Evans,

Monsanto’s Roundup a looming liability for Bayer as megamerger nears

Class-action lawsuits filed against Monsanto’s weed killer could sink the company’s tie-up with Bayer, despite concessions to win regulatory approval.

February 27, 2018 12:36 pm

AND

<https://www.ecowatch.com/glyphosate-honey-bayer-monsanto-2577435405.html>

Beekeepers File Legal Complaint Against Bayer Over Glyphosate in Honey

[Bayer](#), which [recently wrapped](#) up its takeover of [Monsanto](#), now owns [glyphosate](#) and [the liabilities surrounding it.](#)

Last Thursday, the same day the \$63 billion acquisition closed, a beekeeping cooperative in northern France filed a legal complaint against the German chemical giant after the controversial weedkiller was detected in [honey](#) produced by one of its members, [AFP](#) reported.

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<https://www.accc.gov.au/media-release/accc-concerned-about-transurbans-interest-in-westconnex> -

<http://registers.accc.gov.au/content/index.phtml/itemId/1205063/fromItemId/750991> -
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Having read through the ACCC comments as they relate to the acquisition of the WestConnex (euphemistically known as the Sydney Motorway Corporation) in the real world it would more likely than not be referred to as a ‘monopoly’ as orchestrated by, in specific terms, the incumbent Liberal National Party known as a Coalition...and indeed the ACCC concerns would be well taken on board, they too are concerned about what is seen as again, a monopoly...

However, as far as this government is concerned creating monopolies with favoured companies, such as in one instance Lend Lease appear to have the monopoly game sewn up, in that it is not

seen as a problem, whilst Turnbull indeed saw it as a problem...and determined to legislate to fix competition policy in Australia - <https://www.australiancompetitionlaw.org/reports/2014harper.html> - but clearly ignored by the incumbent NSW State Government ... <https://www.australiancompetitionlaw.org/legislation/2017harper.html> - hopefully the ACCC has taken this into consideration over its deliberation of the takeover by Transurban of the SMC...and in so doing that they allow the transfer of ALL liabilities such as all impending Class Actions as per contained within this short submission...as set out below...

As a comment we would be well advised to remember the James Hardie cases, and how 'victims' found a voice and in many cases well earned and hard fought for 'compensation'- which sadly did not make up for the intense suffering that victims and their families had to endure to see a semblance of recompense...with the WestConnex it is likely that thousands will also end up fighting for compensation as they present with 'asbestos related diseases, Mesothelioma, silicosis and other life threatening diseases' as a direct result of the 'negligence of all parties, and most of all individual members of the incumbent NSW State Government under the leadership of the Premier Gladys Berejiklian...each of those parties, whether they were Ministers, CEO of SMC, partners, companies and third parties, such as the EPA, SafeWork NSW, SIRA, the Ombudsman and others, share direct liability as they were entrusted to protect the community at large and had a 'duty of care' to all members of the community, that 'duty of care' fortunately is legally noted as being 'retrospective'.

It appears, if this is correct that the ACCC embraced the changes within the Competition Laws as laid out by the Harper Policy Review/revision - <https://www.accc.gov.au/media-release/accc-welcomes-new-era-in-competition-law>

Below is the prelude to the changes as per the Turnbull era....

<http://www.australiancompetitionlaw.org/law/mmp/index.html> -
<http://www.pm.gov.au/media/2016-03-16/joint-media-statement-fixing-competition-policy-drive-economic-growth-and-jobs> - <http://competitionpolicyreview.gov.au/final-report/>

The Turnbull Government will legislate to fix competition policy in Australia through implementation of the Harper Review's recommendation to amend Section 46 of the Competition and Consumer Act - the misuse of market power provision.

<http://www.radioaustralia.net.au/international/2016-12-02/lendlease-covering-up-serious-incidents-on-barangaroo-worksite-former-safety-manager-says/1636764> -
<http://finance.ninensn.com.au/newsbusiness/8563044/lend-lease-sued-over-sandy-crane-collapse>

The above information as it relates to the takeover by Bayer of Monsanto is applicable also to the intent by Transurban to takeover the SMC...in that specific answers must be given, that as with the Bayer takeover of Monsanto the aforementioned company will also be taking over ALL of the Liabilities, thus enabling, as with the victims of Monsanto and Glyphosate poisoning, those victims enabled under the terms of the takeover to sue for compensation as a direct result of Monsanto's negligence...the right for those adversely impacted by the SMC infrastructure project...to also sue for compensation.

However, the subtle importance as it defines the takeover by Transurban, courtesy of the incumbent NSW State Government and its Premier Gladys Berejiklian - is that the takeover will,

as undertaken by Bayer, include all liabilities...inclusive of potential Class Actions by those thousands of members of the General Public who were knowingly exposed and impacted by the willful and deliberate unsafe actions of the CEO of Sydney Motorway Corporation, Dennis Cliché, its officers and shareholders at the time...initially Gladys Berekilijian and Duncan Gay and then a change in government produces two other shareholders...who both took on the liability of the company's serious breaches of the Corporation's Act OH&S and WHS regulations; this liability also captured the Sydney Motorway Corporation's contractors, partners and third party operators...but the real liability under the Corporation's Act OH&S and WHS falls on the shoulders of the CEO, Dennis Cliché...

Fortunately one is able to produce a letter in which the CEO Dennis Cliché acknowledges that he is well aware of the Corporation's Act OH&S and WHS which for all those 'victims' will be a relief to know...in fact one was advised a number of years ago to orchestrate a paper trail, which one has done...it includes responses from Peter Dunphy of SafeWork NSW, various Ministers, SIRA, the Ombudsman (that was a doozy when staff refused to act, as one had not informed them which Ministerial portfolio SafeWork NSW resided, and therefore she was unable to proceed with any investigation)...sadly that is the calibre of so many bureaucrats put into responsible positions but essentially/allegedly to ensure that certain 'developments' are protected...from any investigation...that has been so well disclosed by the Banking Royal Commission and how badly the ASIC, as the regulator has performed over the years...

Indeed when one made a formal complaint to the ASIC in regards to the fact that as the SMC was a registered company with the ASIC, that the ASIC were the overarching regulatory authority - and therefore they were the regulatory authority as it concerned the Corporation's Act OH&S and WHS...

First person contacted stated categorically that Yes, the ASIC were responsible for this section of the Corporation's Act...so one forwarded much of the information including photographs...then just as suddenly had an email from some male bureaucrat who denied that they were the responsible regulatory authority...the interaction took place over a number of days, including interaction with Greg Medcraft (remember the SMC was/is a NSW Government company) and it then became clear that allegedly pressure had been brought to bear, and between phone calls from the ASIC and a five page written denial of their responsibilities, as far as this specific Corporation's Act and Company, were concerned, the ASIC were not the regulatory authority that they pertained to be...much the same, again, as has been exposed during the Banking Royal Commission...

Concern must also be measured in that all the regulatory/statutory authorities denied any responsibility and indeed refused to take their responsibilities seriously, as has been so well disclosed by the Uhrig report ...the real figureheads behind the regulatory/statutory authorities are the Ministers...

<http://www.finance.gov.au/sites/default/files/Uhrig-Report.pdf> -

That government can engage in conduct through statutory authorities is a long and well-established concept. It follows that government, through Ministers, is accountable for statutory authorities. The accountability of specific Ministers is recognised through the Administrative Arrangements Order (AAO), issued from time to time by the Governor-General, which specifies the legislation administered by Ministers, including the enabling legislation of statutory authorities. Constitutionally, Ministers have a governance role and responsibility in respect of statutory authorities within their portfolios.

Thus more likely than not the following would be guided/instructed by the Minister under whose portfolio each of the regulatory/statutory resides and it became/becomes clear that it was not in the vested interested of any of the Ministers if the regulatory/statutory authorities acted as they were/are required to do, and that is to ensure that the general public and workers alike are protected from the deliberate vagaries of all parties concerned in the construction of the WestConnex and other branches contained within the 'infrastructure development'...as it would seriously impede not just the timeline but also if the Government had acted in the interest of the broader community – such as their welfare, health and safety – it would not, in the interest of a takeover, be seen as a 'financially viable' purchase, as it would most certainly come with future 'major liabilities'...such as Class Actions amongst a plethora of environmental problems...hidden by not just the EPA and as pointed out within this article... https://sydney.edu.au/halloran/publications/HARRIS_AssessingEnvironmentalImpact.pdf - *human health is not on the agenda of infrastructure by the NSW State Government (and indeed this amplified by the fact that the EIS only took into consideration PM10 and did not include PM2.5)*...as referred to in page 8 of the document...

Sadly throughout the construction of the WestConnex the incumbent State Government and its partners and stakeholders have viewed the health of communities as being of 'no consequence' or indeed more likely than not applied the same principles as used in many contentious developments...that at least 10% of any population will/would be adversely affected by the/a development, so essentially legally there is no contest...or liability...or as one victim suggested they are viewed as 'cannon fodder' which may or may not have been written into the contract presented to Transurban by the Sydney Motorway Company...sic., better known as the incumbent NSW State Government...

That list again would include not just the ASIC, but the CEO of the SMC Dennis Cliché, his officers, the EPA, SafeWork NSW, the Ombudsman, SIRA, the NSW Department of Health, all companies employed by the SMC, their partners and third parties and last but more importantly all Ministers of the incumbent NSW State Government...this should include past Ministers who were also part and parcel of this specific 'infrastructure package'...this should not exclude the Federal Government whose contribution would lead to their liability...and who chose to ignore one's voiced concerns...this was under the tutorage of the then *Prime Minister Tony Abbott...*

So before the final decision is made by the ACCC on the takeover by Transurban of the SMC – as to whether the takeover is the right a proper action;

One draws the ACCC attention to what is morally right and proper as it relates to the Transurban bid to take over the SMC as offered by the incumbent NSW State Government and its Ministers; in that Transurban, as with the takeover of Monsanto by Bayer...

Bayer, which recently wrapped up its takeover of Monsanto, now owns glyphosate and the liabilities surrounding it.

That Transurban, as with the takeover of Monsanto by Bayer, will also take on in entirety all 'liabilities whether they be disclosed/non disclosed, now or present in the future'...of the Sydney Motorway Corporation...

Finally what must be taken into consideration is the notion that the SMC has refused under the instructions of the incumbent NSW State Government to include within the final tunnel system any substantive and safe 'filtration' system...thus placing again thousands within communities to ongoing 'noxious chemical emissions'...from not just diesel but also the 'volatile organic compounds' - this burden the Transurban company will be taking on...

Summing up is perhaps best contained within the document...Justice is the will of the people...that it is imperative with all of the facts that the Transurban takeover of the SMC, also takes on, in their entirety, all 'liabilities, now and into the future'.

Josephine Wadlow-Evans

27th August, 2018.....