

INQUIRY INTO ROAD TOLLING REGIMES

Organisation: Transport Workers' Union of New South Wales

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Submission to the Inquiry into Road Tolling Regimes

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Transport Workers' Union of New South Wales

1 About the TWU

- 1.1 The Transport Workers' Union of New South Wales (TWU) represents tens of thousands of men and women in Australia's road transport, aviation, oil, waste management, gas, passenger vehicle and freight logistics industries.
- 1.2 With over one hundred (100) years' experience representing the workers who conduct Australia's crucial passenger and freight transport tasks, the TWU has been proactive in advocating for the establishment and improvement of industry standards which advance the lives and safety of transport workers, their families and the community at large.

2 Introduction

- 2.1 The TWU welcomes the opportunity to contribute to the 'Inquiry into Road Tolling Regimes' (**Inquiry**).
- 2.2 By virtue of the long representational history that the TWU has with Contract Carriers, the TWU is uniquely placed to advocate for the commercial and operational realities encountered by Contract Carriers, including the impact toll expenses have on the viability of small businesses across NSW.
- 2.3 The cost imposition toll roads place on Contract Carriers is a highly contentious issue across the heavy vehicle industry that is consistently raised as a concern with the TWU.
- 2.4 In light of the transport industry being a highly competitive price taking industry that is marred by the consistent undercutting of rates and conditions in order to secure work, increases in tolled road rates and the development of new toll roads continues to put financial pressure on small business operators who merely seek to complete an honest day's work in an industry where reasonable rates are upheld and safety outcomes are accounted for.
- 2.5 Like everyone else, Contract Carriers seek to undertake work in view of making a profit and return from work in the same condition that they left in the morning. Unfortunately, the ever-increasing cost impositions Contract Carriers face in the course of work makes this goal a forgone reality.
- 2.6 The TWU is optimistic that the experiences of transport industry operators outlined in these submissions and explored throughout the inquiry will compel *Portfolio Committee Number Six (6) – Transport and Customer Service* to make recommendations that account for the plight of small business operators in view of the NSW Government adopting said proposals.

3 The Abilities or Otherwise of Trucking Businesses to Afford Increases in Tolling Charges and the Extent or Otherwise of their Ability to Pass this Through

- 3.1 Contract Carriers are small business people who own and operate single vehicles who are engaged by Principal Contractors by a contract of carriage.
- 3.2 Most Contract Carriers operate as proprietary companies responsible for all costs associated with running their vehicle and performing work, including but not limited to toll costs.
- 3.3 The terms Contract Carriers are engaged under are often set unilaterally, limiting the bargaining power of Contract Carriers. Too often the rate offered by Principal Contractors within terms of engagement does not provide Contract Carriers with cost recovery for toll expenses, as Principal Contractors are reluctant to pass this cost onto consumer due to the competitive

nature of the transport industry where history has shown a race to the bottom with rates and conditions in order for Principal Contractors to secure tenders for work.

- 3.4 Contract Carriers are subsequently recognised as a vulnerable group of workers who require special protections to ensure that their independent status as contractors is not exploited.
- 3.5 The protections afforded to Contract Carriers are preserved in Chapter six (6) of the *Industrial Relations Act 1996* (NSW) (**IR Act**).
- 3.6 Chapter six (6) of the IR Act allows the Industrial Relations Commission to establish industrial instruments comparable to awards, which set out a minimum cost recovery model and minimum rates of pay through “contract determinations”.
- 3.7 Contract determinations ensure that at a minimum, Contract Carriers complete work within a model that recovers baseline costs with the view of making a profit.
- 3.8 This model enables Contract Carriers to complete reasonable hours of work within safe conditions as the contract determination acts as a safeguard.
- 3.9 In absence of a contract determination accounting for toll charges encountered in the course of completing work, Principal Contractors will continue engaging Contract Carriers with unilateral terms of work making it easier for Principal Contractors to cut corners and offer Contract Carriers remuneration below transport industry standards.
- 3.10 It is a commercial reality that most Contract Carriers are unable to recover the costs associated with tolls from Principal Contractors. Despite this, Contract Carriers are often forced to use toll roads instead of free alternative routes as either restrictions are placed on non-toll roads, Contract Carriers are explicitly directed to use the fastest route available or in many instances, Contract Carriers are penalised for missing a delivery window and are therefore forced to take toll roads in order to avoid said penalty.
- 3.11 The TWU is aware of various cases where Principal Contractors directed Contract Carriers to consistently take the fastest routes to multiple destinations. In some instances, this direction led Contract Carriers to travel through up to fifteen (15) toll points per day. This significant cost has led some Contract Carriers to disclose to TWU Officials that they rely on various lines of credit to pay their amassed toll debts, despite operating a financially viable business as a Contract Carrier for decades. Likewise, various Contract Carriers have disclosed to TWU Officials that in light of ever-increasing toll prices and introduction of new tolled roads, it is becoming less and less viable to continue making ends meet. Many Contract Carriers have cited toll costs as being one of the leading reasons that they either converted, or seek to convert to being a company driver, rather than a Contract Carrier.
- 3.12 The cost imposition that toll charges place on Contract Carriers cannot be underestimated. Comparably, the TWU is aware of multiple industry leading Transport Companies reviewing and reallocating runs to limit the amount of toll roads company drivers use when completing work. That industry leading transport companies have exponential financial resources in comparison to a Contract Carrier and they choose to continue to invest resources to review and restructure their business operations to limit toll charges illustrates the significant cost imposition toll charges place on transport operators.
- 3.13 Unlike leading transport companies, Contract Carriers have neither the scope nor often the permission from their Principal Contractor to alter routes in order to avoid toll costs.

- 3.14 Where Contract Carriers are not directed to complete work on the fastest available route and consequently have the ability to avoid toll roads, more often than not Contract Carriers opt to using free alternative roads to reach intended destinations.
- 3.15 Often the free alternative roads are suburban backstreets or major roadways that join residential hubs.
- 3.16 Richard Olsen, TWU NSW State Secretary spoke with Ben Fordham on 2GB on 11 May 2021 in response to the concerns of the public that heavy vehicle operators are regularly using suburban roads and are congesting residential roads, stating:
- ... “we understand the frustrations of families living within these areas. We [heavy vehicle operators] apologise for being there, but the state Government is putting us there. There are better ways of moving freight but that comes at a cost, and this cost is not being shared equally.*
- The state Government is working with Transurban making these costs unreasonable for the transport industry to absorb, so therefore we have to find alternatives.*
- Big companies such as Toll and others are reorganising their routes to go onto public roads because they cannot absorb the costs either, so imagine then Ben, our people, Owner Drivers, small business families who own a truck are trying to make a living - they cannot afford \$20 each way. We [heavy vehicle operators] use these roads all the time and we will continue to use these roads because we cannot afford to use tollways.”*
- 3.17 The TWU has had extensive involvement in attempting to negotiate compensation for toll expenses into a number of Contract Carrier contract agreements with leading Principal Contractors, such as Toll Transport Pty Ltd, TNT Australia Pty Ltd and Linfox Australia Pty Ltd.
- 3.18 While the TWU negotiates contract agreements with large Principal Contractors, the TWU rarely negotiates contract agreements with smaller Principal Contractors as there are rarely opportunities to negotiate regarding conditions. Rather conditions are unilaterally set, and there is neither oversight non-transparency about the agreement.
- 3.19 Where discussing contract agreements with major Principal Contractors, the TWU sought to negotiate to find a way of compensating Contract Carriers for toll charges incurred.
- 3.20 This claim was pursued as Contract Carriers were making it clear that there was increased financial pressure as a result of not being remunerated for toll charges which led to toll costs eating into the labour rate of Contract Carriers.
- 3.21 Robert Rasmussen, TWU Lead Official, explains his experience negotiating toll expense compensation with Principal Contractors:
- ... “Of the various negotiations for contract determinations in which I have been involved, the primary justification provided by Principal Contractors for not remunerating Contract Carriers for toll prices was that Contract Carriers could claim the expense back on tax. In response to this, I have raised concerns that toll expenses affect the immediate cash flow of Contract Carriers, which burdens Contract Carriers. It is also the case that drivers do not recover their money on a 1:1 basis when claiming toll expenses on tax, leaving them out of pocket even after claiming toll charges as a business-related expense.*
- Another justification that Principal Contractors provide when negotiating whether or how Contract Carriers are compensated for toll charges, is that Contract Carriers are currently paid*

at a rate that incorporates toll expenses into the rate. In these meetings, I rejected and continue to reject this notion.

The introduction of new tolls and the exponential rise in the price of existing tolls has caused a considerable cost burden for Contract Carriers. In my experience negotiating toll reimbursements with Principal Contractors, I do not believe that the rate of pay includes and reflects current toll rates in Sydney.

In my time as an Organiser and Lead Official, I have witnessed both the introduction of new toll points and unjustifiable price rises for existing toll points for heavy vehicles throughout Sydney. I do not believe that Principal Contractors could envisage the cost burden tolls would have on Contract Carriers when establishing rates of pay. I therefore do not believe that current rates of pay account for toll costs."

3.22 Contract Carriers continue to express helplessness regarding the introduction of new toll roads and the exponential increases in existing toll charges and the effect they are having on business operations.

3.23 Dawid Wojcik, TWU member and Contract Carrier of eleven (11) years, explains the affect toll costs have on the profitability of his business:

... "When I commenced work as an Owner Driver, I could operate profitably. Over time, various expenses have made it increasingly difficult to operate at a profit. The main expenses that hinder my business operations, include the increased toll costs upon Sydney motorways, which continually increase at a rate greater than CPI every quarter, the introduction of new tolled motorways and continual increases of insurance costs."

3.24 Paul Newton, TWU member and Contract Carrier of thirty-eight (38) years, explains:

... "I have been a member of the Transport Workers' Union of New South Wales (TWU) for over twenty-five (25) years. For the past ten (10) years, I have been the Head Delegate for Contract Carriers at my yard. Toll charges are one of the most consistent, if not the most consistent, concern Owner Drivers raise with me. I am approached on a daily basis by Owner Drivers concerned about the mounting toll costs they have to pay and whether it is viable for them to continue working for a Principal Contractor that does not offer financial assistance for tolls.

There has been a sharp price increase in toll charges that has made it a lot less affordable to continue using toll roads as an Owner Driver. A prime example of this is that at or around 1985, tolls between Banksmeadow and North Ryde would cost approximately twenty (20) cents. Comparatively, the same route would now cost me approximately seventeen (17) dollars. My regular run is from Botany and Macquarie Park. This journey is eighteen (18) kilometres. I make this journey approximately twice a day. I consequently encounter a minimum of six (6) toll points on a thirty-six (36) kilometre stretch of road. I have calculated that per year, these tolls cost me as an Owner Driver a minimum of \$5300."

3.25 Rocky Reitano, TWU member and Contract Carrier of seventeen (17) years, explains:

... "I recall my Principal Contractor holding a toolbox talk where Owner Drivers were advised by Management, words to the effect of "as small businesses you should be paying for your own tolls, as this is an expense that is part and parcel with running a transport business. It is not the Principal Contractor's responsibility to pay you as contractors and pay for your toll expenses at the same time."

I was frustrated that my Principal Contractor was confiscating e-tags from Owner Drivers, as we already operate on thin financial margins. I also felt that my Principal Contractor had acknowledged that it is their responsibility to pay for tolls by providing Owner Drivers with e-tags, but were choosing to now shirk this responsibility by revoking the e-tags.

Registering an e-tag to my company name made me far less profitable as an Owner Driver. I would characterise my pay as an Owner Driver before paying toll charges as being fair. I was able to operate profitably for the work I completed. My business suffered as a result of not being compensated for toll charges. I felt that money was handed to me in one hand, yet taken out of the other as toll expenses would eat into my profits.”

- 3.26 It is well established that rates of pay and methods of remuneration affect safety on roads.
- 3.27 Where Contract Carriers are unable to recoup costs when driving safely, they will be forced to drive faster and for longer periods of time. It is therefore imperative that Contract Carriers are paid through a fair and sustainable remuneration model that includes remuneration that accounts for toll costs encountered in the course of work, so that economic pressures do not lead to poor safety outcomes for drivers and the public at large.
- 3.28 A series of enquiries, reports and decisions affirm that methods of remuneration and safety are inextricably linked. These findings are evident in the NSW Industrial Relations Commission report directed by former Minister for Labour and Industry, the Hon E.A Willis, to investigate the deemed employee provisions of the *Industrial Relations Act 1940*. The report concluded:
- (1) there is an overwhelming case for establishing industrial regulations for Contract Carriers;
 - (2) Contract Carriers are in many respects akin to employees;
 - (3) there is a vast power imbalance between Contract Carriers and Principal Contractors; and
 - (4) there is a causal link between rates of pay and safety outcomes.
- 3.29 Further, the 2001 ‘*Report of Inquiry into Safety in the Long-Haul Trucking Industry*’ prepared for the then Motor Accidents Authority of NSW by Professor Harry Quinlan and the report published in October 2008, titled ‘*Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*’ affirmed the interlinked nature of remuneration methods and safety outcomes.
- 3.30 A 2011 Safe Work Australia report that studied safety in supply chains as part of the development of the *Australian Work Health and Safety Strategy 2012-2022* concluded that:
- ... “*client demands for tight time schedules, long hours (and poor queuing practices that reduced opportunity for drivers to rest) and low returns (as elaborate pyramid subcontracting is used to reduce freight rates/returns to drivers) [were linked to poor safety outcomes]. In turn, the intensification of these pressures in an already competitive industry has resulted in unsafe and unhealthy work practices such as excessive hours of work, increased use of kilometre or trip-based payment systems, speeding, drug use (to combat fatigue) and cuts to maintenance.*”
- 3.31 A 2011 paper titled ‘*The Economics of Safety: How Compensation Affects Commercial Motor Vehicle Driver Safety*’ concluded:
- ... “*higher pay produces superior safety performance for firms and for drivers...clearly truck driver pay is an extremely strong predictor of driver safety.*”
- 3.32 A 2014 study titled ‘*Associations Between Heavy-Vehicle Driver Compensation Methods, Fatigue-Related Driving Behaviour and Sleepiness*’ involved the random sample of 346 long-

haul drivers in Western Australia and NSW and examined the association between driver compensation methods and fatigue related driving behaviour. It was determined that there is:

... *“a significant association between compensation methods and 4 out of 5 fatigue-related variables, including the number of km driven per day, hours driven per day, total hours worked per week and mean driving time between breaks.”*

- 3.33 A 2017 study titled ‘*Why do Long Distance Truck Drivers Work Extremely Long Hours*’ applied tests to a survey of truck drivers in the US which incorporated pay level and pay method, testing the target earnings hypothesis. The findings were:

... *“the labour supply curve exhibits a classic backwards shape reflecting drivers’ preference to work until they reach target earnings. Above target earnings, at a “safe rate’ for truck drivers, they trade labour for leisure; they work fewer hours, leading to greater highway safety.”*

- 3.34 Tolls represent a significant and growing expense for Contract Carriers who too often are unable to recover these costs from Principal Contractors. This is a harsh reality for Contract Carriers who currently operate in a competitive market where contracts of carriage are secured on the basis of which Contract Carrier accepts the lowest rate of remuneration for their work. This remuneration often falls short of covering capital, vehicle maintenance and labour costs, let alone toll charges.
- 3.35 If the current trajectory continues, Contract Carriers will continue to be placed under pressure to drive faster and work longer hours in order to make ends meet, particularly where toll charges eat into labour rate.
- 3.36 TWU Officials and Officers are well placed to attest to firsthand experience of the inextricable link between an adequate cost recovery model whereby toll charges are accounted with Contract Carriers and safety outcomes.
- 3.37 Mr Gavin Webb, TWU Chief Legal Officer recalls a situation where vulnerable visa workers approached the TWU with concerns about their engagement as Fleet Operator drivers.
- 3.38 In this particular situation the workers outlined experiences where they were forced to work well in excess of their visa restrictions, drivers were directed to falsify fatigue management records and were not allowed to take legislated breaks. Further, drivers were paid well below the site agreement rate and were not receiving payment for allowances they were entitled to. Drivers

also explained that the vehicles they were operating were poorly maintained as they did not have the funds

3.39 The TWU investigated the allegations and contacted the Principal Contractor to reinforce the obligation on the Company to ensure all involved throughout the supply chain were engaging in safe workplace practices.

3.40 The TWU subsequently conducted a Right of Entry on the Fleet Operator to sight and make copies of documents that recorded terms of engagement, pay records and training records.

3.41 Mr Webb recounts:

... "we walked into a desolate office space that had little to no paperwork, with the exception of a tall stack of crumpled papers on the edge of his desk. The Director sat in a chair with a laptop in front of him.

I asked the Director to show us copies of pay records. He looked at me blankly.

His hands were visibly shaking as he started fumbling around on his computer. He kept repeating the words "pay records, pay records" to himself whilst looking on his computer.

It quickly became obvious to me that he didn't have the records we were asking for, in fact when we asked him what records he did keep of the people he engaged, truth be told, he had nothing.

The Director slowly started to let his guard down as he came to the realisation that we knew what type of workplace practices he was involved in.

Slumped in his chair, the Director pointed to the stack of crumpled papers on his desk and said words to the effect of "those are all toll notices. I cannot pay them. I am in so much debt that I cannot afford to pay workers at their base rate, pay for toll expenses and make a profit."

3.42 These interactions are not uncommon for Officials of the TWU, who on a daily basis hear that dismal cost recovery models that do not account for expenses encountered in the course of work lead to Contract Carriers to ignore scheduled vehicle services, pay for the tolls using family credit cards in an attempt to balance finances and struggle to make a profit where expenses eat into their labour rate.

3.43 Contract Carriers do not have the expectation that as small business operators they are entitled to a free ride. They are not opposed to toll roads per se and appreciate that occasionally toll roads are required for infrastructure projects to be built. The primary concerns of Contract Carriers are the unsustainable increases of toll prices, the unjustifiably high rates they are required to pay as heavy vehicle drivers in order to do their jobs, the lack of transparency and consultation in setting and increasing toll rates and the lack of compensation afforded to Contract Carriers for toll expenses.

4 The Rationale for Allowing Higher than CPI Increases on Certain Tolls and for the Truck Toll Being Set at Three Times the Toll for Car Traffic

4.1 With exception of the Sydney Harbour Bridge and Tunnel, all tolled NSW roads are charged at varying rates depending on whether a vehicle is classified as either a 'Class A' or 'Class B' vehicle.

4.2 Class A and Class B vehicles have differential classifications based on the height, length and axles of a vehicle.

4.3 Generally, Class A vehicles are vehicles that are 12.5 metres or less in length and 2.8 metres or less in height.

4.4 Class B vehicles are any vehicles that exceed the dimensions for Class A vehicles.

4.5 As at the time of these submissions, the toll costs for Class B vehicles is two (2) times that of Class A vehicles on the Eastern Distributor and Cross City Tunnel, whereas the Hills M2

Motorway, M5 South-West Motorway, Westlink M7 Motorway, Lane Cove Tunnel, WestConnex – New M4, WestConnex – M8, WestConnex – M5 East and NorthConnex charge Class B vehicles approximately three (3) times what Class A vehicles are charged to use the same tollways.

- 4.6 The justification as to why Class B vehicles are commonly charged three (3) times what Class A vehicles are for the same tollways is that heavy vehicles have greater wear and tear on roads in comparison to cars, as well as heavy vehicles occupying the equivalent of two or more spaces on a road that a Class A vehicle otherwise would.
- 4.7 Despite the common justification for Class B vehicles being charged three (3) times the rate of Class A vehicles due to heavy wear and tear on roads, little data or information is published or made available proving that the rate disparity is justified.
- 4.8 As at the time of these submissions, no substantive data is publicly available that identifies the real damage attributed to heavy vehicles on various toll roads, the costs associated with rectifying said damage, the costs encountered in the course of constructing tolled roads to account for the wear and tear heavy vehicles are expected to place on tolled roads, nor any other data or justification considered when setting the price for Class B vehicles.
- 4.9 In light of the lack of readily accessible data recording the quantitative wear and tear Class B vehicles cause to tolled roads, there is no assurance to the public that current tolling arrangements represent the fairest possible outcome for Class B vehicle owners and operators.
- 4.10 Frustration around the Government's lack of transparency regarding how wear and tear attributable to heavy vehicles on toll roads is calculated is further agitated by the fact that the same heavy vehicles that pay up to three (3) times the rate of Class A vehicles, also pay up twelve (12) times more for registration than cars do.
- 4.11 Further to this, toll costs throughout NSW are reviewed and escalated quarterly (with exception of the Sydney Harbour Bridge and Tunnel) with movement in rates depending on various Concession Agreements.
- 4.12 Concession Agreements set out the maximum toll that can be applied by the operator.
- 4.13 Concession Agreements are determined at the time of contract negotiation. In setting prices as well as escalation rates, the government will decide on a regime that best meets the objects of funding the project.¹
- 4.14 Concession Agreements not only outline the length of the concession but also the rate in which toll prices can be escalated, known as the 'escalation rate'.
- 4.15 The NSW Government advises, that:
*... "the Government needs flexibility when negotiating Public Private Partnerships and the escalation rates on toll roads to ensure the best overall outcome for NSW and the taxpayer are achieved. The Government further argued that such an approach [not using Public Private Partnerships] would make it more difficult to attract private investment, reduce competition in the market and would likely increase costs for Government, tax payers and road users."*²
- 4.16 Considering there is no transparency about what methodology, quantitative or qualitative data is considered when setting toll road rates above inflation, the inconsistent changes in toll road

¹ Portfolio Committee No. 2 – Health and Community Services, 'Road Tolling in New South Wales' Report 47, October 2017, 11.

² Portfolio Committee No. 2 – Health and Community Services, 'Road Tolling in New South Wales' Report 47, October 2017, 12.

costs throughout NSW does not represent the fairest possible outcome to Contract Carriers and heavy vehicle operators.

- 4.17 The TWU is subsequently of the view that the Government is obliged to publish what considerations are accounted for when concession agreements are made and escalation rates are calculated.
- 4.18 Considering registration charges for heavy vehicles in NSW are calculated using the vehicle type, gross vehicle mass, the number of axles and the vehicle's nominated configuration (the highest configuration at which a driver intends to operate the vehicle), Contract Carriers the TWU liaises with are of the reasonable belief that increased registration costs account for increased wear and tear on roads.
- 4.19 In light of heavy vehicle operators encountering increased costs of registration and unsubstantiated toll road charges, the TWU is of the belief that the rationale for allowing higher than CPI increases on certain tolls and for the truck tolls being set at three (3) times the toll for car traffic is currently unjustifiable and does not represent the fairest possible outcome for heavy vehicle operators.

5 The Impact and the Geographical Distribution of the Impact of Toll Costs on NSW Drivers and on Productivity

- 5.1 Tolling regimes and arrangements differ throughout NSW, Victoria and Queensland, which are the only jurisdictions in Australia where tolled roads exist³.
- 5.2 Whilst the methods in which leasing is organised and tolled roads are charged are not dissimilar between the three jurisdictions, "Sydney came in with the highest average spend on road tolls at \$84.60 a week, followed by Melbourne at \$50.80 and Brisbane at \$51.90."⁴
- 5.3 Further, "Sydney was the most expensive city for total transport costs, with an average spend of \$22,250.88 in 2019 per household. This was an increase from \$22,108.61 in 2018. Transport costs counted for 14.4% of the average total household income in Sydney."⁵
- 5.4 Importantly, the expenses outlined above regarding vehicle and travel costs in Sydney were calculated prior to new tolled roads becoming operational, meaning some of the state's most expensive toll roads were not accounted for in the aforementioned findings.
- 5.5 It is undeniable that the cost imposition that toll roads create throughout NSW disproportionately affects those who reside in Western Sydney.
- 5.6 As at October 2020, data indicates that the households based in Wollondilly, Camden, Liverpool, Penrith, Fairfield, Blacktown and the Hills District encounter the highest toll expenses.⁶ Of the top seven (7) areas outlined in these findings, six (6) are based in Western Sydney.
- 5.7 Further, "the Western Sydney Regional Organisation of Councils has estimated a daily return trip from the North Western Growth Centre (encompassing the Blacktown, Hills Shire and

³ 'Car Running Costs in Australia 2020', *Budget Direct* (Web Page) <<https://www.budgetdirect.com.au/car-insurance/research/car-owner-cost-statistics.html>>.

⁴ Ibid.

⁵ Ibid.

⁶ 'New Real Time Data: Western Sydney 'Toll Town'', *Illion* (Web Page, 12 October 2020)

<<https://www.illion.com.au/2020/10/12/new-real-time-data-western-sydney-toll-town/>>:~:text=The%20average%20household%20weekly%20spending%20on%20tolls%20across,average%20household%20pays%20117%%20more%20than%20inner%20metro.>.

Hawksbury council) to the city at \$27.62 a day. The adds up to about nine percent of average weekly earnings in Australia and 20% of the minimum weekly wage.”⁷

- 5.8 Importantly two (2) of the three (3) methods of charging for toll roads severely increases toll costs for those living in Western Sydney, being a fixed-point toll point and a distance-based methodology of calculation.
- 5.9 The most traditional method of tolling in NSW is by way of a fixed-point toll which applies from the use of a particular motorway regardless of distance or time travelled.
- 5.10 The fixed-point toll is a flat rate traditional method that disadvantages Western Sydney residents, as in order to travel to a central destination (e.g., the Sydney Central Business District), the resident will likely encounter various tolled roads that back onto one another, effectively compounding toll charges.
- 5.11 Notably, there are currently no incentives for Western Sydney motorists that limits the daily, weekly or monthly costs that road users pay where multiple tolled roads are used in conjunction with one another.
- 5.12 In light of motorways throughout NSW being owned and operated by various companies, establishing a cap of toll charges for road users would prove most beneficial where it spanned over the entire tolled road network, meaning irrespective of who owned and recouped costs for toll roads, there would be either a daily, weekly or monthly cap limiting the charges paid. Such a cap would not operate dissimilarly to the caps throughout the Opal card system, which would alleviate the financial stress toll roads place on Western Sydney families.
- 5.13 Tolled roads such as the M7 and WestConnex operate in accordance with a distance-based methodology whereby those using either road is charged on the basis of the distance travelled.
- 5.14 The distance-based methodology does not account for the fact that Western Sydney motorists live further out from central locations and as such, are required to travel upon the full gaunt of tolled roads and pay the maximum associated toll charge in order to access their destination.
- 5.15 In effect, charges calculated via the distance-based methodology punish motorists living, working or frequently travelling to, from and throughout Western Sydney.
- 5.16 Whilst the disproportionate financial burden toll roads place on western Sydney residents is well recorded, too often the plight of Contract Carriers facing mounting toll costs where they reside, operate from or frequently travel to, from and throughout Western Sydney goes unnoticed.
- 5.17 Contract Carriers often encounter dozens of toll points in the course of daily work, which depending on who their Principal Contractor is and the terms of engagement, will likely not be compensated for this overhead.
- 5.18 Whilst Roads and Maritime Services maintains that free alternative roads are available for those residing in Western Sydney who do not wish to travel upon toll roads⁸, too often Contract Carriers are unable to travel upon these routes as they are either expressly directed to travel

⁷Andy Kollmorgen, ‘Toll road costs and fines: Are toll road companies like Transurban taking drivers for a ride?’, *Choice* (Web Page, 12 January 2018) <<https://www.choice.com.au/transport/cars/fines/articles/road-toll-costs-and-fines>>.

⁸ Portfolio Committee No. 2 – Health and Community Services, ‘*Road Tolling in New South Wales*’ Report 47, October 2017, 74.

upon the fastest route available, or allocated a run which cannot be complete within the allocated timeframe where free alternative routes are travelled upon.

6 Opportunities to Increase the Assurance to the Public that Tolling Arrangements Represents the Fairest Possible Outcome

- 6.1 As aforementioned, Class B vehicles are generally charged up to three (3) times the rate of Class A vehicles.
- 6.2 Vehicles are determined to meet Class B vehicle requirements on the basis of exceeding the dimensions of Class A vehicles.
- 6.3 The TWU is of the view that the current differentiation between Class A and Class B vehicles does not represent the fairest possible outcome for road users, as currently vehicles that are marginally longer than 12.5 metres or a fraction higher than 2.8 metres are being charged the same class rate as vehicles that are of far greater height, weight and axles.
- 6.4 In light of the justification for Class B vehicles being charged up to three (3) times the rate of Class A vehicles due to heavy wear and tear on roads, it is manifestly unjust that vehicles that merely meet the Class B vehicle requirements are charged the same rate as the heaviest vehicles on roads as theoretically the damage caused by the two are not comparable.
- 6.5 The TWU is of the view that vehicles classifications should be reviewed to account for the scale and varying classes of vehicles to ensure that tolling arrangements represented the fairest possible outcome for all road users.

7 Changes to Free Alternative Routes

- 7.1 The introduction of new tollways and the continually rising price of road tolls for Class B vehicles throughout Sydney has continued putting pressure on Contract Carriers to make ends meet.
- 7.2 Further to existing financial pressures, Contract Carriers often advise TWU Officials of their concerns about continuing operating their business once proposed toll roads are completed and operational, including but not limited to the Westlink M4 to M5, Sydney Gateway, Western Harbour Tunnel, Beaches Link and the M6.
- 7.3 Within the past twelve (12) months, Contract Carriers have advised the TWU about disturbing changes to road rules that remove a Contract Carrier's discretion to choose to travel on an alternative free road, instead of travelling upon a toll motorway.
- 7.4 One example Contract Carriers often raise as a concern is the restrictions that were placed on trucks and buses using Pennant Hills Road once the NorthConnex was operational.
- 7.5 Once the NorthConnex became operational, gantries were introduced in Pennant Hills Road which restricted trucks and buses over 12.5 metres long and over 2.8 metres clearance travelling between the M1 and M2. This change renders Pennant Hills Road, the free alternative route, inaccessible to many owner drivers. Where trucks and buses surpassing the height and length limitations access Pennant Hills Road, a fine of \$194 is payable.
- 7.6 Imposing a fine on heavy vehicle operators who choose to use the free alternative road of Pennant Hills Road created an inequitable situation whereby drivers are punished simply for carrying out their work and does not represent the fairest possible outcome for heavy vehicle operators.
- 7.7 Limiting access to free alternative routes for heavy vehicles flies in the face of evidence of Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, within the Parliamentary Inquiry into Road Tolling in NSW in 2017, whereby Mr Kanofski stated that a central principle of the

tolled network is that there must always be a free alternative available. This means that in effect motorists will only choose to use [the toll] if it delivers them value.⁹

- 7.8 Whilst the NSW Government publicly boasts that the introduction of NorthConnex is projected to take up to five thousand (5,000) trucks off Pennant Hills Road per day, little regard is given to Contract Carriers forced to use NorthConnex at the rate of \$23.97 in either direction travelled.
- 7.9 In light of the introduction of a \$23.97 toll charge and limitation of heavy vehicle access to Pennant Hills Road, the TWU held a convoy on Saturday 12 September 2020 in solidarity with Owner Drivers across NSW. The Convoy was a show of anger at the deal made between the NSW Government and the toll road operator Transurban to start tolling transport operators in the middle of a global pandemic and recession. The decision was made with no consultation with the transport industry, which faces mounting costs day on day. The convoy was attended by dozens of Contract Carriers contracted to different Principal Contractors who sought to highlight the inequity of the toll charge and the lack of discretion afforded to truck drivers to use a free alternative route.
- 7.10 Further to the convoy, Mr Olsen wrote to the Hon. Andrew Constance, Minister for Roads and Transport on 11 September 2020 to highlight the plight of Contract Carriers forced to use toll roads. The correspondence directed to the Minister sought a commitment to:
- (1) Ensuring there will be No New Tolls on new roads built in NSW.
 - (2) Provide full compensation to Transport Workers and Transport Companies that employ Working Families for the use of all Toll Roads from March 2020 until the COVID-19 Pandemic is over.
 - (3) Cease all new Toll Increases that apply to Transport Workers until the COVID-19 Pandemic is over.
 - (4) Legislate a daily cap on all Tolls paid by Transport Workers on existing Toll Roads in NSW.
 - (5) Support the TWU's current application before the Industrial Relations Commission to provide compensation to Small-Business Owner Drivers for the use of Toll Roads when they are required to use them by their Principal Contractors and their Clients.
 - (6) Mandating and enforcing that all Transport Workers and the Contractors that engage them that perform work on Government contracts are paid within thirty days of issuing invoices.
 - (7) Mandating and ensuring that all Transport Workers that perform work on Government contracts are provided with fair and safe rates of pay and conditions.
- 7.11 The Minister did not commit to any suggestions put to him.
- 7.12 Another example of free alternative routes being limited to Contract Carriers is the changes to lanes on Epping Road once the M2 was introduced.
- 7.13 Once the M2 became operational, Contract Carriers contacted TWU Officials highlighting the fact that Epping Road was reduced to a two (2) lane road. This increased congestion on the free alternative route and disincentivised Contract Carriers taking Epping Road instead of paying the Class B Vehicle Rate.
- 7.14 The TWU is disappointed that Owner Drivers have limited abilities to travel upon free alternative routes and are often forced to use toll roadways. This places a huge burden on small business

⁹ Portfolio Committee No. 2 – Health and Community Services, 'Road Tolling in New South Wales' Report 47, October 2017, 74.

owners who are already struggling with the expenses they are required to pay to maintain their vehicle and business status.

- 7.15 The TWU intends to continue advocating in this space to ensure that Contract Carriers are not exploited in the future and ensure that toll expenses do not pressure small businesses out of operation.

8 Consultation with the Transport Workers' Union of NSW with regards to Changes in Tolling Regimes

- 8.1 The TWU further notes that despite being the largest representative body of truck drivers and the only union within NSW who has coverage over Contract Carriers, the TWU is unaware of any past or current attempts being made by the NSW Government to consult with heavy vehicle operators prior to changes being made to tolling regimes.

- 8.2 With the exception of the current inquiry into road tolling regimes to which this submission belongs and previous parliamentary inquiries, the TWU is unaware of any further consultation with truck drivers throughout NSW.

- 8.3 In light of the lack of consultation and limited bargaining power of Contract Carriers, much alike their contract of carriage, terms of engagement are set unilaterally by the party with greater power and are offered on a take it or leave it basis. Further, contract Carriers do not have the ability to circumvent toll expenses as options for free alternative routes are increasingly limited, leaving no option but for Contract Carriers to encounter toll costs.

- 8.4 The TWU is subsequently of the view that there should be a requirement for consultation prior to changes being introduced in tolling regimes to ensure that tolling arrangements represent the fairest possible outcome and there is increased transparency for the public about how toll charges are set.

9 Conclusion

- 9.1 The continual rise of toll charges and ever-increasing number of toll roads is a primary factor that places pressure on sustainability and safety of those in the road transport industry.

- 9.2 The NSW Government has afforded little consideration to the plight of Contract Carriers, who are the small business people of Australia that keep our transport industry moving.

- 9.3 The current tolling regime in NSW does not represent the fairest possible outcome for truck businesses, as there is little ability for Contract Carriers to afford increases in tolling charges or otherwise to pass this expense through to Principal Contractors. Further, the current classifications of vehicles as Class A and Class B vehicles does not account for the varying types of vehicles operating throughout NSW.

- 9.4 Further, the disparate geographical distribution of tolled roads affecting those in Western Sydney punishes those who live, work and travel through the Western suburbs of Sydney.

- 9.5 The TWU sincerely hopes that the findings of this inquiry act as a catalyst for the NSW Government to review current tolling regimes and implement changes that increase transparency for the public regarding how toll rates are set, particularly where the rate is set higher than CPI.

- 9.6 The TWU will continue advocating to ensure that as a vulnerable class of workers, Contract Carriers, are not exploited into the future. Further, the TWU will continue to shine a light on

dodgy industry practices to ensure that Contract Carriers are not engaged in a race to the bottom with the rest of the transport industry throughout NSW.