

INQUIRY INTO ROAD TOLLING REGIMES

Organisation: Operation Redress Pty Ltd

Date Received: 28 May 2021



Submission: Road tolling regimes in NSW

Who We Are

There are many subject matter experts and disaffected parties that can speak to the road tolling issues in New South Wales. Their evidence is important and essential to this inquiry and we don't propose to have the same expertise, nor are we disaffected parties. However, we do offer a unique perspective that we believe is important to the overall discussion.

We have been advocating for toll road consumers for over five years. Toll Redress serves to be a voice for toll road users who have been duped by unfair and egregious toll road administration charges. We have been effective in raising public awareness of the issues at hand.

Toll Story

In order to understand the issues being experienced, it pays to understand the dominant company involved in many of the arrangements being discussed, who is also involved in planning discussions about future toll arrangements. The company is an ASX-listed, multi-national, multi-billion dollar giant. Their corporate entity is Transurban but they are also known as Linkt, and previously Go Via, Roam, and CityLink. They have a number of toll roads on the East Coast of Australia.

Transurbans's grand plan

In our view, issues with WestConnex, fee gouging customers, PFAS contamination, contractor litigation, litigation embroiling various state governments, consumer class actions and illegal campaign contributions (USA) etc., is a taste of things to come if Transurban is allowed to become even bigger and more powerful.

Transurban has spoken about an approach which we believe is their grand plan. To their shareholders at various meetings, Transurban has stipulated a plan to toll all roads in Australia and apply a user charge, most likely per kilometre. This plan was backed by then-Prime Minister Malcolm Turnbull.¹

In July 2021, an electric vehicle tax is being introduced in Victoria² of around 2 to 2.5 cents per kilometre and it appears to be controversial. One of the reasons provided for introducing this tax is to account for lost fuel excise revenue, given electric vehicle owners don't pay this.

¹ <https://www.smh.com.au/national/toll-giant-transurban-wants-to-charge-for-all-roads-20160513-goup2i.html>

² <https://www.drive.com.au/caradvice/victorias-ev-user-tax-is-a-lost-opportunity-opinion/>

If the community is concerned or upset about being charged 2 to 2.5 cents per kilometre for electric vehicles, imagine the level of discontent when that 2 cents turns into 8 to 20 cents per kilometre (additional charges may also be payable) paid to Transurban for all vehicles. This is not a conspiracy: Transurban have been pushing for this kind of model for years with prices between 8 and 20 cents per kilometre being suggested.

Transurban even published a study from 2015/2016 called Transurban's Melbourne Road Usage Study which they say "*...was the first real-world test of user-pays road charging in Australia.*"³

It has been billed as a "fairer model", but we disagree. This is because it has potential to unfairly impact a number of people:

- Those who live in a rural or regional area which requires them to travel far distances.
- Those who live in suburban areas at significant distance from their office.
- Those fleeing domestic or other violence.
- Transurban says it isn't fair for "infrequent and low-demand motorists" to subsidise "frequent, high-demand motorists". Under a user-pay model, people who currently travel long distances to visit "infrequent motorists" like their grandparents, may have to pay extra for the privilege.
- There's an emergency that requires people to travel above their budgeted or allotted kilometres.
- Those who face a life-changing situation that leaves them living in their car.
- Life circumstances that result in an unplanned road trip/family vacation.
- People who receive a reduction in hours or pay by their employer, but have to travel the same distance.
- Parents or guardians of children who change schools or start a new hobby/activity, requiring them to travel a longer distance.
- Those who take responsibility for when a person they love can no longer drive, resulting in them needing to drive more to meet their loved one's health or other needs.

The argument that it is a fairer model ignores the spontaneity and unpredictability of humanity. Expecting people to budget their road travel months ahead is unsustainable, and will lead to fee gouging which Transurban has already been accused of doing.

Further to this, Transurban has also expressed the need for a private police force on their/all roads. They hinted at this in a presentation, suggesting a "National Enforcement Framework" would be needed to enforce their/a user-pay system.

³ <https://changedconditionsahead.com/download-report/>

It will likely be written into legislation that you must have a Transurban GPS tracker fitted to your car and that removing it will be an offence. Transurban referenced the use of such a device (OBD-II GPS device) in their study.⁴ Transurban will know where your car is at all times, which then raises concerns around privacy.

Impact of toll costs on NSW drivers

Our proprietary software has revealed how many times Transurban entities have been in NSW Courts during 2020. We can't confirm whether these legal cases are against consumers and to do with unpaid tolls, but we are proceeding on this assumption. Roam Tolling Pty Ltd was the litigant at a hearing 30 times during COVID-19. Their entity Tollaust Pty Ltd was the litigant at a hearing 11 times during COVID-19. Their entity The Hills Motorway Limited was the litigant at a hearing 7 times during COVID-19. Their entity Interlink Roads Pty Ltd was the litigant at a hearing 29 times during COVID-19. These include multiple hearing dates for the one matter, but this reinforces the aggressive nature of this company: suing individuals during a global pandemic, where many people lost their job and had their livelihoods disrupted. These figures above do not account for any litigation that was settled before going to court.

Fee gouging in QLD

Our experience with Australia's tolling regime began in early 2015 as Transurban ramped up an aggressive debt collection program in Queensland that affected some of society's most vulnerable people.

People were being charged tens of thousands in administration fees for toll debts, which in some cases people were not aware existed or were billed in error. Transurban's financials⁵ showed significant revenue coming in from these egregious fees. We did countless media interviews about these issues, so Transurban hid the revenue in subsequent years to avoid investor and media scrutiny.

We wrote an article about their QLD court activity in November of 2017.⁶ Extract below:

"According to Queensland Magistrate court records that were recently obtained by Toll Redress, in the month of June 2017, Transurban (go via) filed 505 Statements of Claim against Queensland motorists, via their subsidiary Queensland Motorways Management. The average claim amount is \$6,000 and approximately 83% of each claim we examined were administration fees."

Note: There is now a class action⁷ against the Queensland arm of Transurban about the egregious fees that has over 23,000 claimants⁸ with a potential claim value into the hundreds of millions. The State of Queensland and the Brisbane City Council have recently been added as defendants.

⁴ <https://www.aph.gov.au/DocumentStore.ashx?id=1fc0f7b9-44f7-4885-b6b3-c28d54ae1d13>

⁵ <https://www.transurban.com/content/dam/investor-centre/03/1460930.pdf>

⁶ <https://www.opred.com.au/toll-redress/01/11/2017/transurban-queensland-go-via-sue-505-motorists-in-one-month>

⁷ <http://apps.courts.qld.gov.au/esearching/FileDetails.aspx?Location=BRISB&Court=SUPRE&Filenumber=8932/20>

⁸ <https://twitter.com/i/status/1397114862736711680>

Transurban owned ‘independent’ tolling ombudsman website

When assisting people with toll debt, we noticed that Transurban were encouraging people to go to the ‘independent’ tolling ombudsman. We did some research and found that Transurban actually set up and owned the website for the ombudsman service, the ombudsman had never registered a business name (ASIC requirement) in over a decade and in addition to refusing to provide an office address, was using the fax number for the local post office. The ombudsman appeared to have a pattern of favouring Transurban in decisions.

We registered the entity Tolling Customer Ombudsman, as well as a website and issued a cease and desist notice (we didn’t use lawyers) to protect the name and then the legal threats came from the ombudsman, which we believe Transurban may have been funding. We also received a call from Fair Trading that claimed to be acting on a directive from the then Attorney General of QLD to investigate possible criminal conduct against us. Fair Trading ended up complimenting our work. We have our views as to who may have had connections to the Attorney General and made a vexatious complaint.

The tolling ombudsman then lodged a claim 106 pages long with the World Intellectual Property Organization claiming we didn’t have a right to the website name. He lost and had a judgement recorded.⁹

Note: As a result of our work Transurban assigned ownership of the website to the tolling ombudsman and a more robust structure was established, including registering a business name and establishing a board. They are still not recognised by the Australian and New Zealand Ombudsman Association and may still not meet their criteria. As of this date they are months behind in their quarterly reporting.

Corporate conduct

Politicians, journalists, and investors have told us about Transurban backgrounding them on us, in some cases by senior Transurban management. Although the backgrounding is likely intended to defame us, it is interesting that they can’t seem to fault our research (instead they produce a defamation judgement on one of our founders from 2015).

This can be best demonstrated whenever Transurban responds to questions that have arisen from our research by making general statements that don’t answer the question or hiding behind commercial in confidence. They sometimes quietly make changes without acknowledging the issue or paying credit to our work.

Note: Transurban blamed the law for charging so many admin fees publicly and allegedly in their backgrounding meetings. After public pressure from us and others Transurban made a change to aggregate fees without any changes to the law, killing their long running argument. *“Transurban Queensland estimates demand notice aggregation results in a reduction of up to \$36 million per year in charges to motorists”*.¹⁰

⁹ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AUDND/2016/26.html?>

¹⁰ <https://www.parliament.qld.gov.au/documents/committees/TPWC/2018/6TollRoads/6-trns-17July2018.pdf>

What we find particularly concerning about Transurban is how they seemingly assist in creating an environment where everyone is against each other. We understand that politicians from the various parties, both state and federal, are trying to make decisions that improve our quality of life as a society. It concerns us that parties are being put against each other in Transurban's quest for more toll roads and revenue.

Depending on who you are will depend on what story Transurban will tell you. For example, Transurban told a NSW parliamentary inquiry (around the time they were trying increase toll fees on trucks), that trucks do up to 6,000 times more damage than cars¹¹. However, when wanting to dump potentially contaminated soil in Bacchus Marsh in VIC, residents say Transurban told them that trucks would "*barely have an impact*" at all on the roads.¹²

When they face pressure for gouging customers or other issues, they blame the state. The state may in turn blame Transurban. But when push comes to shove, because Transurban has so much infrastructure, money and power, whether a state wants to or not, it can end up in a situation where they may have to be more accommodating to Transurban's wishes.

It is our position that they are too powerful and have proven that they can't be trusted to act in good faith time and time again. States should observe their litigation history and consider different ways to fund essential infrastructure projects. We must remember that in recent times, both QLD¹³ and VIC¹⁴ states have found themselves entangled in Transurban's messy litigation.

Our work

We are a self-funded two-person team striving to expose corporate misconduct in large, multi-national, and/or ASX-listed companies. Our research as worker advocates has helped expose systemic wage theft at 7-Eleven, Domino's, and Retail Food Group (Michel's Patisserie, Donut King, Brumby's, Crust Pizza, Gloria Jean's etc). Our research as consumer advocates has helped expose egregious fees, mishandling complaints, and an ineffective Ombudsman service with Transurban. We have helped people from all around Australia wipe hundreds of thousands of dollars worth of unfair fees charged by Transurban.

As researchers and advocates, exposing corporate misconduct is just one important part of what we do. We conduct deep-dive research into companies and industries/sectors to determine if issues are systemic, what the regulators are doing about this, and who the main perpetrators are. We then try to find solutions for victims of misconduct.

¹¹ <https://www.parliament.nsw.gov.au/lcdocs/transcripts/127/Transcript%20-%2011%20April%202017%20-%20CORRECTED.pdf>

¹² <https://www.facebook.com/BacchusMarshSaysNoToToxicWaste/videos/2760000-cars-per-day/1010444456051553/>

¹³ <http://apps.courts.qld.gov.au/esearching/FileDetails.aspx?Location=BRISB&Court=SUPRE&FileNumber=8932/20>

¹⁴ <https://www.afr.com/companies/infrastructure/victorian-government-dragged-into-west-gate-tunnel-legal-dispute-20200617-p553hr>

We believe our research has been instrumental in leading to class actions against Transurban in Queensland, Domino's Pizza (a worker-led class action), and investigations into Retail Food Group for Michel's Patisserie franchisees. Further, Michael Fraser played a substantial part in exposing 7-Eleven, which resulted in \$170 million in backpay for thousands of workers. We're currently looking into the cosmetic surgery industry (advertising cosmetic surgery procedures to children), after being tipped off about underpayment. We have underpayment investigations underway into other large companies.

Authors: Maddison Johnstone and Michael Fraser

Operation Redress Pty Ltd (Franchise Redress, Toll Redress, Wage Theft Australia)