

Portfolio Committee No.2 – Health and Community Services

# **Road tolling in New South Wales**

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# Table of contents

	<b>Terms of reference</b>	<b>vi</b>
	<b>Committee details</b>	<b>vii</b>
	<b>Chair’s foreword</b>	<b>viii</b>
	<b>Recommendations</b>	<b>x</b>
	<b>Conduct of inquiry</b>	<b>xii</b>
<b>Chapter 1</b>	<b>Toll roads in New South Wales</b>	<b>1</b>
	<b>Overview of toll roads in New South Wales</b>	<b>1</b>
	A brief history	1
	Modern tolling arrangements	2
	Is Sydney the most tolled city in the world?	4
	<b>Why does the State fund motorways through the use of tolling?</b>	<b>5</b>
	Transport policy	5
	Funding transport investments	6
	Procuring motorway developments through the use of Public Private Partnerships	8
	Concession agreements/Project Deeds	11
	<b>Current toll roads in New South Wales</b>	<b>12</b>
	Sydney Harbour Bridge	12
	Sydney Harbour Tunnel	14
	M5 South-West Motorway	15
	Hills M2 Motorway	18
	Eastern Distributor	19
	Cross City Tunnel	20
	Westlink M7 Motorway	22
	Lane Cove Tunnel	23
	WestConnex	24
	Sydney Gateway	26
	<b>Other proposed toll roads</b>	<b>32</b>
	NorthConnex	32
	Other roads projects in pipeline	35
	Beaches Link and the Western Harbour Tunnel	35
	Proposed F6 Extension	36
	Committee comment	36
<b>Chapter 2</b>	<b>Transparency of tolling regimes</b>	<b>39</b>
	<b>Existing policies and procedures</b>	<b>39</b>
	Making the investment decision - Business Cases	39
	Infrastructure Investor Assurance Framework	39

	Public Private Partnership Guidelines	40
	Unsolicited proposals	41
	Formal planning approvals	41
	Public disclosure of information	42
	Audit Office of NSW	43
	<b>Concerns relating to the transparency of tolling arrangements</b>	<b>43</b>
	Transparency of negotiation process and contractual arrangements	44
	Committee comment	47
	Lack of visibility of private sector returns	47
	Committee comment	49
	Publication of business cases	50
	Committee comment	50
	Competition in the tolling market	51
	Committee comment	54
	Revenue from one toll road subsidising other motorway developments	54
	Committee comment	56
	Road toll escalation rates	57
	Committee comment	59
	Sydney Motorway Corporation	60
	Committee comment	65
<b>Chapter 3</b>	<b>The need for Independent Regulation</b>	<b>67</b>
	<b>Calls for independent regulation</b>	<b>67</b>
	The involvement of IPART	70
	Role of the Audit Office of NSW	71
	Committee comment	72
<b>Chapter 4</b>	<b>Other concerns – affordability and fairness</b>	<b>73</b>
	<b>The impact of tolling arrangements on Western Sydney</b>	<b>73</b>
	Impact of tolled roads on families in Western Sydney	73
	Public reactions to the introduction of additional tolls	74
	Inequalities between East and West Sydney	76
	Impact on businesses	77
	Committee comment	78
	<b>Impact of tolls on the trucking industry</b>	<b>79</b>
	Existing approach	79
	Committee comment	80
	Impact on owner-driver operators	81
	Limited industry consultation	82
	Use of non-compete clauses to restrict public transport	83
	Consideration of public transport alternatives	84
<b>Chapter 5</b>	<b>Opportunities for reform</b>	<b>87</b>
	<b>Towards a network approach</b>	<b>87</b>
	Dynamic tolling	87

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	Toll saturation	89
	Wholesale road pricing reform	90
	Barriers to reform	92
	NSW Government position	92
	<b>Are there other more suitable delivery models available to the government?</b>	<b>93</b>
	Committee comment	94
<b>Appendix 1</b>	<b>Submissions</b>	<b>97</b>
<b>Appendix 2</b>	<b>Witnesses at hearings</b>	<b>101</b>
<b>Appendix 3</b>	<b>Sydney toll network map</b>	<b>104</b>
<b>Appendix 4</b>	<b>Petition and Government Response – Reintroduction of tolls on the M4</b>	<b>106</b>
<b>Appendix 5</b>	<b>Minutes</b>	<b>108</b>
<b>Appendix 6</b>	<b>Dissenting statement</b>	<b>138</b>

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## Terms of reference

1. That Portfolio Committee No. 2 – Health and Community Services inquire into and report on matters relating to tolling regimes for roads in New South Wales including:
  - (a) a review of the tolling regimes in place on different roads and an explanation for the differences between each
  - (b) the process for determining how tolls are set for all types of vehicles, the length of tolling concession periods, the rationale for extending these concession periods and opportunities to increase transparency for the public, particularly given the absence in some instances of any competitive process
  - (c) how tolling contracts are negotiated and varied and opportunities to increase public scrutiny and accountability of the negotiations that take place between private tolling companies and the NSW Government
  - (d) the rationale for allowing higher than CPI increases on certain tolls
  - (e) the extent of any consultation undertaken with the trucking industry before changes are made to tolling regimes
  - (f) the appropriateness of involving the Independent Pricing and Regulatory Tribunal (IPART) in the determination of tolls and their escalation, given the involvement of IPART and other such independent regulators in setting public transport fares and other services such as electricity transmission and distribution charges
  - (g) opportunities to increase the assurance to the public that tolling arrangements represent the fairest possible outcome
  - (h) an examination of road tolling arrangements in overseas jurisdictions, and
  - (i) any other related matter.

The terms of reference were self-referred by the committee on 7 December 2016.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 7 December 2016.

## Committee details

### Committee members

<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	<i>Chair</i>
<b>The Hon Paul Green MLC</b>	Christian Democratic Party	<i>Deputy Chair</i>
<b>Dr Mehreen Faruqi MLC*</b>	The Greens	
<b>The Hon John Graham MLC*</b>	Australian Labor Party	
<b>The Hon Trevor Khan MLC *</b>	The Nationals	
<b>The Hon Taylor Martin MLC*</b>	Liberal Party	
<b>The Hon Daniel Mookhey MLC*</b>	Australian Labor Party	
<b>The Hon Dr Peter Phelps MLC</b>	Liberal Party	

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- \* Dr Mehreen Faruqi MLC substituted for Ms Dawn Walker MLC for the duration of the inquiry.
- \* The Hon John Graham MLC substituted for the Hon Courtney Houssos MLC from 20 July 2017.
- \* The Hon Trevor Khan MLC substituted for the Hon Bronnie Taylor MLC for the duration of the inquiry.
- \* The Hon Taylor Martin MLC substituted for the Hon Matthew Mason-Cox MLC from 11 May 2017 and for Mr Scot MacDonald MLC from 4 July 2017 for the duration of the inquiry.
- \* The Hon Daniel Mookhey MLC was a participating member of the committee for the duration of the inquiry.

## Chair's foreword

Road tolls are imposing a significant cost burden on many individuals, families, businesses and communities in New South Wales. Sydney, in what is a relatively short period of time, has morphed from having just a few road tolls to being one of the most tolled cities in the world. And while the speed at which the number of tolled roads has expanded across the Sydney in recent years is significant, what is more surprising, some may argue alarming, is the lack of genuine public debate and transparency around this area of important public policy. It is therefore entirely appropriate that citizens are seeking greater assurances that road tolling projects represent value for money both for themselves and the state and are in the public interest.

For some thirty years, successive governments in New South Wales have sought to deliver improvements in the road network through the use of road tolling. This represents a clear policy choice by government and is one that has been made consistently by incumbent governments. However, much of the evidence presented to this inquiry focused on serious concerns about the transparency of these tolling arrangements and the underlying decision making and negotiation processes that led to their creation. The majority of recommendations within this report are therefore directed towards enhancing the body of information, both quantitative and qualitative, currently in the public domain relating to current and future road tolling projects.

The committee has recommended that the Government disclose more information about road tolling projects. This includes documents such as businesses cases, base case financial models, cost benefit analysis and transport forecast modelling – all of which are essential to enabling the public, the Parliament and interested parties to make informed decisions as to a project's appropriateness or otherwise. Whilst the committee acknowledges the inherent complexity of such projects, and that there are legitimate commercial in confidence considerations, it believes that it is important that these documents be visible to those who are ultimately responsible for funding these projects – the users of the toll roads and the citizens of New South Wales.

Of particular concern was the lack of transparency pertaining to Sydney Motorway Corporation. Hence the committee has recommended that Sydney Motorway Corporation, as well as any future infrastructure delivery entity responsible for delivering toll road projects, be subject to at least the same level of transparency and accountability as any other public sector agency.

Throughout the inquiry process, the committee heard arguments about the opaqueness of the road tolling concession deed negotiation process, and the difficulty in establishing whether the public interest was being protected. After careful consideration, the committee has recommended that the NSW Government establish an independent entity, to be provided with all relevant information, so that it can publish an informed statement on whether tolling arrangements are in the public interest. The establishment of such an entity is an important step to providing an additional layer of assurance and scrutiny over the ever increasing number of toll roads in Sydney.



On behalf of the committee, I would like to thank all those who have participated in this inquiry, particularly those who made submissions and gave oral evidence. I would also like to acknowledge and thank my committee colleagues for their support and contributions, and the secretariat staff and Hansard reporters for their professional work.

A handwritten signature in black ink that reads "Greg Donnelly". The signature is written in a cursive style with a large initial 'G'.

Hon Greg Donnelly MLC  
**Committee Chair**

## Recommendations

- Recommendation 1** **37**  
That the NSW Government publish a contract summary of the WestConnex – M4 Widening Project Deeds on the WestConnex website.
- Recommendation 2** **50**  
That the NSW Government publish the expected internal rate of return for future individual privately operated tolled roads, at suitable intervals.
- Recommendation 3** **51**  
That the NSW Government:
- mandate the disclosure of strategic business cases, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads,
  - publish the base case financial models for the NorthConnex and WestConnex projects, and future projects, 18 months after either: (a) the commencement of construction on a project, or (b) after the opening of the first stage of a project, whichever comes first,
  - mandate the disclosure of cost benefit analysis at the same time as the base case financial model is published, and
  - mandate the disclosure of traffic forecast modelling and any reviews of this traffic forecast modelling, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads, at the same time as the base case financial model is published.
- Recommendation 4** **60**  
That the NSW Government ensure that the consumer price index be considered as the default position of the road toll escalation rate for future concession agreements.
- Recommendation 5** **66**  
That the NSW Government ensure that the same level of transparency and accountability as required by a public sector agency be applied to the Sydney Motorway Corporation and any future infrastructure delivery entity.
- Recommendation 6** **66**  
That the NSW Government:
- annually publish remuneration for the senior executives of Sydney Motorway Corporation
  - issue directions to the Sydney Motorway Corporation so that it complies with the Government Information (Public Access) laws.
- Recommendation 7** **72**  
That the NSW Government, prior to signing any future road tolling concession agreement, establish an independent entity that can publish an informed statement on whether any proposed road tolling agreement safeguards the public interest.

**Recommendation 8**

**79**

That the NSW Government investigate the costs and benefits of implementing a capped toll across all of Sydney's road network, and publish this information so that the community can have an informed debate.

**Recommendation 9**

**81**

That the NSW Government identify and publish the evidence supporting its decision to toll heavy vehicles three times that of light vehicles.

**Recommendation 10**

**95**

That the NSW Government ensure that new or renegotiated road tolling concession agreements enhance the ability of future governments to manage the wider road network.

## **Conduct of inquiry**

The terms of reference for the inquiry were self-referred by the committee on 7 December 2016.

The committee received 115 submissions and 1 supplementary submission.

The committee held four full days of public hearings: three and a half days were held at Parliament House in Sydney and one afternoon at Penrith City Library, Penrith.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

# Chapter 1 Toll roads in New South Wales

This chapter outlines current road tolling arrangements in New South Wales. It begins with a brief history of the implementation of tolling in the State, provides an overview of government policy in regard to the establishment and cost of using toll roads, and outlines a summary of the key characteristics of the nine tolling regimes currently in place. The chapter concludes by discussing the planned tolling arrangements for the remaining stages of the WestConnex and NorthConnex motorways, as well as potential tolling arrangements being considered by the NSW Government for the Western Harbour Tunnel and Beaches Link and Proposed F6 Extension projects.

## Overview of toll roads in New South Wales

- 1.1 This section provides an overview of the tolling arrangements in New South Wales. It begins with a brief history of the use and implementation of toll ways in New South Wales, and provides a strategic overview of the tolling arrangements currently in place.

### A brief history

- 1.2 Tolls have a long history in New South Wales. The first toll bridge was constructed in 1802 at South Creek at Windsor by a private citizen, Andrew Thompson, who agreed to finance the construction of the bridge and its maintenance in return for the right to collect a toll for the use of the bridge over a 14 year period. This, in effect, marked the first private sector contribution to the development of Sydney's road assets.<sup>2</sup>
- 1.3 In 1811, the first major toll road was opened and included 16 miles of the Hawkesbury Road with collection stations located in the city, adjacent to what is now Central Railway station, and Parramatta. A second collection station (turnpike) was also opened in November 1812, linking Parramatta and Windsor.<sup>3</sup>
- 1.4 In 1832 toll collection was formally regulated through a Turnpike Act that provided for toll collection on local roads. This was deemed necessary to pay for the maintenance of these roads as traditionally, funding had been directed to the main arterial routes.<sup>4</sup> Over the next 65 years, various tolls were introduced across Sydney's public roads including places such as Oxford Street, Bondi Junction; Anzac Parade, Randwick, and Hyde Park, Sydney.<sup>5</sup>
- 1.5 To illustrate the nature of these historical tolls, Mr Braxton-Smith, Deputy Secretary, Transport for NSW advised of an Act passed in 1855 which granted a concession to the Pymont Bridge Company for bridges, viaducts and roads around Darling Harbour and what was known then as Blackwattle Swamp. He advised that these tolls were based on the 'type of the carriage and the number of horses that were pulling it, the number of people travelling in

<sup>2</sup> Submission 97, Infrastructure Partnerships Australia, p 3.

<sup>3</sup> Ernst & Young, *The economic contribution of Sydney's toll roads to NSW and Australia*, 2008, p 9.

<sup>4</sup> Ernst & Young, *The economic contribution of Sydney's toll roads to NSW and Australia*, 2008, p 9.

<sup>5</sup> Submission 97, Infrastructure Partnerships Australia, p 3.

that carriage or people simply moving on foot. In fact, a toll even applied to the type of animal that was being herded down this network'.<sup>6</sup>

- 1.6 To a large extent this system of tolling ended in 1877, with the arrival of the steam tram network. This resulted in decreasing traffic volumes which meant that the collection of tolls became 'costly and inefficient'.<sup>7</sup>
- 1.7 One hundred years on from the introduction of the Turnpike Act, in 1932 the Sydney Harbour Bridge was opened to traffic. Initially tolls were collected manually from stations collected at the northern end of the Bridge, however in 1970, automated, cash based toll collection was introduced.<sup>8</sup>
- 1.8 Tolls were also previously collected on the M1 Pacific Motorway (formally known as the F3 Sydney-Newcastle Freeway) between Berowra and Calga until they were removed in 1988. Similarly, tolls were also collected between Waterfall and Bulli Tops between 1975 and 1995.<sup>9</sup> Each of these freeways were built and maintained by the State.

### **Modern tolling arrangements**

- 1.9 In more recent times, successive NSW Governments have sought to address the transport challenges facing Sydney through the implementation of an orbital road corridor and inner city distributors which would allow road users to bypass or access the Sydney central business district as required. This plan has largely been completed through the construction of road assets using Public Private Partnership (PPP) arrangements. That is, 'long-term arrangements between the public and private sector for the delivery of service enabling public infrastructure'.<sup>10</sup>
- 1.10 These PPP arrangements have each been determined by the government of that time, with projects being funded through various funding models based on the principle of 'user-pays'<sup>11</sup> and each with varying levels of government contributions. The consequence of this approach is that today, a number of different pricing approaches to tolls exist across Sydney's road network.
- 1.11 Since 1992, when the Sydney Harbour Tunnel was opened to traffic, a series of motorway projects have been commissioned using this approach and drivers are today required to pay tolls on nine separate stretches of Sydney's road network. These are:
- Sydney Harbour Bridge (opened in 1932)
  - Sydney Harbour Tunnel (commissioned in 1987, opened in 1992)
  - M5 South West Motorway (commissioned in 1991, opened in 1992)

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<sup>6</sup> Evidence, Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW, 11 April 2017, p 19.

<sup>7</sup> Submission 97, Infrastructure Partnerships Australia, p 3.

<sup>8</sup> Ernst & Young, *The economic contribution of Sydney's toll roads to NSW and Australia*, 2008, p 9.

<sup>9</sup> Glen Humphries, 'Remember the Waterfall tollgates', *Illawarra Mercury*, 29 July 2016.

<sup>10</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, p 1.

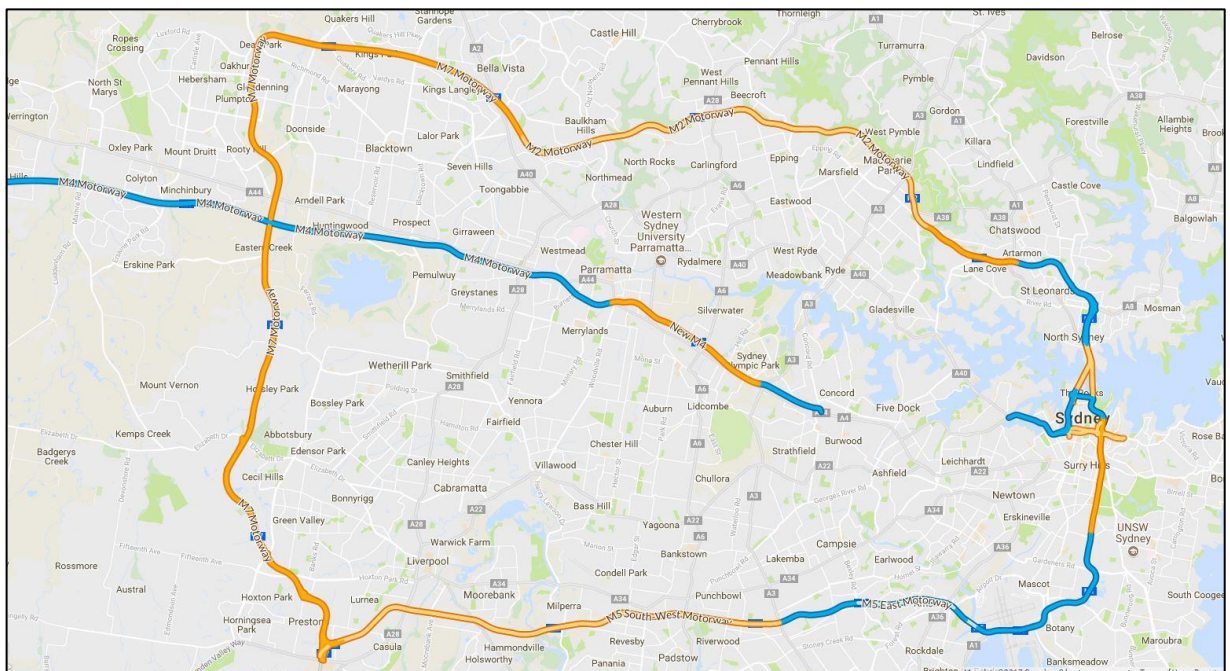
<sup>11</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19.

- Hills M2 Motorway (commissioned in 1994, opened in 1997)
- Eastern Distributor (commissioned in 1996, opened in 1999)
- Cross City Tunnel (commissioned in 2002, opened in 2005)
- Westlink M7 Motorway (commissioned in 2003, opened in 2005)
- Lane Cove Tunnel (commissioned in 2003, opened in 2007)
- M4 Widening section of the WestConnex (commissioned in 2014, opened in August 2017).<sup>12</sup>

**1.12** With the exception of the Sydney Harbour Bridge, these toll roads are operated by private companies under long term concession agreements with the NSW Government.<sup>13</sup> As the following sections show, some of these agreements have been in place for decades, with others set to run for many decades to come. A summary of the key characteristics of each of these tolls is discussed later within this chapter.

**1.13** Figure 1 below illustrates Sydney's existing tolled motorway network. A larger version of this map is provided in Appendix 3.

**Figure 1 Sydney's tolled motorway network**



*Source: Roads and Maritime Services, Calculate your toll website.*

**1.14** The number of tolls is set to increase to 14 upon completion of the remaining stages of the WestConnex scheme (four more tolls) and NorthConnex (one toll).<sup>14</sup> With plans and

<sup>12</sup> Submission 109, Transport for NSW, pp 4-7; NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, <<https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>>.

<sup>13</sup> Submission 109, Transport for NSW, pp 4-7.

<sup>14</sup> Submission 109, Transport for NSW, pp 7-9.

considerations also underway for the Western Harbour Tunnel and Beaches Link and potentially a Proposed F6 Extension, the number of tolls in Sydney could increase further still.

- 1.15** Tolls were also previously collected on the M4 Western Freeway (formally known as the F4 Western Freeway) from 1993 until 2010 when the concession agreement completed its term and the motorway was returned to the State. A Cashback scheme for NSW residents was in operation for the M4 Western Freeway from 1997 until the toll was removed in 2010.<sup>15</sup> The M4 toll was \$2.75 when it was abolished in 2010.

### **Is Sydney the most tolled city in the world?**

- 1.16** The current situation has led some commentators to question whether Sydney is now the most tolled city in the world. Evidence presented to the committee outlined the following information relating to this question:

- of the now 17 toll roads operating in Australia, nine are in New South Wales, two are in Victoria, and six are in Queensland<sup>16</sup>
- the total length of tolled roads in Australia is 248.5 km. Of this, 106.2 km or 43 per cent of these kilometers were in Sydney.<sup>17</sup>

- 1.17** In seeking to compare the extent of tolling on Sydney's roads to other international cities, Roads and Maritime Services explained that as Australia's largest city (in terms of population, economic output, workforce etc.), it was 'not surprising to find that a number of toll roads form part of Sydney's transport network'.<sup>18</sup> Furthermore, other cities apply charges across networks of toll roads, in a similar way to Sydney, and that this was 'common throughout Europe, the UK and Asia'.<sup>19</sup>

- 1.18** As outlined above, there are around 100 tolled kilometres on Sydney's roads. Roads and Maritime Services advised that as a range of tolling models exist across the world, a direct comparison between cities based on toll road kilometres 'is not necessarily an accurate reflection of the role road tolling play in large cities across the world'. However, that within this context, 'it would appear that a number of comparable international cities have more toll road kilometres and higher toll charges than Sydney'.<sup>20</sup> For example:

- The London congestion charge covers an area of 21km<sup>2</sup> within central London which encompasses hundreds of roads at a current cost of around an equivalent of \$20 per day

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<sup>15</sup> Editorial, 'Sydney's M4 Toll to be abolished', *The Sydney Morning Herald*, 14 February 2010.

<sup>16</sup> Answers to supplementary questions, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 18 May 2017, p 3. Note that this information has been updated to include the recently opened M4 Widening section of the WestConnex.

<sup>17</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2018, p 3. Note that this information has been adjusted to include the approximate 7.5km of the M4 Widening section of the WestConnex.

<sup>18</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 3.

<sup>19</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 3.

<sup>20</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 4.



– an amount which Roads and Maritime Services argues is approximately 30 per cent more than a similar ‘to and from’ journey in Sydney on WestConnex.<sup>21</sup>

- Tokyo has a total toll road network length of over 300 km – more than three times that of Sydney. Charges vary across the network, however a two way trip on the Tokyo Bay Aqua-Line, would cost drivers an equivalent cost of almost five times the capped cost of the WestConnex.<sup>22</sup>

**1.19** However, Professor David Hensher, Institute of Transport Logistic Studies, University of Sydney Business School suggested that Sydney does have the most kilometers compared to other cities:

I think what is worth noting is that Sydney is the great laboratory to study toll roads. We have more toll road kilometres than anywhere else in the world in cities. I love it, being an academic in Sydney. We have 135 kilometres at the moment or you could call it 270 directional kilometres or 700 lane kilometres depending on how you want to measure it. That is going to 370 directional kilometres or 185 kilometres in total and 900 lane kilometres with current and pending construction.<sup>23</sup>

## Why does the State fund motorways through the use of tolling?

**1.20** The challenges facing the Sydney transport network are widely acknowledged. Substantial population and economic growth has left Sydney facing increasing congestion which is impacting social and economic outcomes. This congestion was estimated by the Bureau of Infrastructure, Transport and Regional Economics (BITRE) to have cost the Sydney economy over \$6 billion in 2015, and is forecast to rise to \$12.6 billion by 2030, without action.<sup>24</sup>

**1.21** Whilst evidence to the inquiry demonstrated widespread support for investment in the transport network, a diverse range of views on how to address the challenges were presented, and in particular, the use of tolling as a means of funding motorway construction. This section highlights some of the NSW Government’s strategic policy positions relating to tolling.

### Transport policy

**1.22** The NSW Government’s overarching transport policy is the 2012 *NSW Long Term Transport Masterplan* (The Masterplan). This guides the Government’s transport funding priorities over the next 20 years which seek to deliver ‘an integrated, modern transport system that puts the customer first’.<sup>25</sup>

**1.23** The Masterplan identifies the completion of the motorway network as a high priority in order to ‘generate substantial productivity benefits by increasing the volume of traffic the

<sup>21</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 4.

<sup>22</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 4.

<sup>23</sup> Evidence, Professor David Hensher, Professor of Management and Founding Director of the Institute of Transport and Logistics Studies, University of Sydney Business School, 22 May 2017, p 18.

<sup>24</sup> Submission 109, Transport for NSW, p 3.

<sup>25</sup> NSW Government, *NSW Long Term Transport Masterplan*, 2012, p 9.

infrastructure can accommodate'.<sup>26</sup> Whilst the Masterplan acknowledges that an 'integrated package of solutions' is required to manage congestion on Sydney's network, it emphasises the need to complete the 'missing gaps [in the motorway network] that are slowing the network down and contributing to congestion and delays across the city'.<sup>27</sup>

**1.24** Combined with other transport initiatives, such as integrated planning, reducing reliance on cars, supporting public transport and deploying a congestion action plan, the Masterplan argues that, addressing these gaps will provide 'a fully connected, smoothly flowing motorway network'. The WestConnex is identified as Sydney's motorway priority in this regard.<sup>28</sup>

**1.25** The Masterplan also sets out a high level position on the use of tolls to fund such infrastructure development, and commits to examining the potential benefits of reforming tolls on Sydney's motorway network to match network improvements with demand management and fairer pricing.<sup>29</sup>

### **Funding transport investments**

**1.26** Ultimately, there are three primary sources from which transport services and infrastructure can be funded:

- General taxation of citizens – with costs borne by the community as a whole,<sup>30</sup>
- Direct user charging - such as tolls,<sup>31</sup> or
- Governments financing and owning infrastructure through their own borrowings.<sup>32</sup>

**1.27** In practice, a combination of these sources is used to deliver the construction of new motorways, with the user of the road providing the majority share. The Masterplan states that 'road users pay a majority (less than 70 per cent) of these costs through a combination of road user charges, motor vehicle taxation (MVT) and tolls on State-owned motorways'.<sup>33</sup>

**1.28** The combination of funding sources to be used for such investments is a policy choice for the government of the day, and it is clear from the evidence provided to the inquiry that a diverse range of views exist on the use of direct user charging as a means of funding new infrastructure.

**1.29** The NSW Government's policy position on tolling is that its primary objective is to provide a revenue stream that enables investment in the motorway network to take place, delivering new segments earlier than what would have otherwise been possible, had the State to rely only on general taxation as a source of funding.<sup>34</sup> Mr Braxton-Smith argued that this approach

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<sup>26</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, p 140.

<sup>27</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, pp 140 - 141.

<sup>28</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, pp 141 - 143.

<sup>29</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, p 125.

<sup>30</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19.

<sup>31</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19.

<sup>32</sup> Evidence, Mr Tony Harris, Former NSW Auditor-General, 12 April 2017, p 13.

<sup>33</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, p 366.

<sup>34</sup> Submission 109, Transport for NSW, p 11; Evidence, Mr Braxton-Smith, 11 April 2017, p 20.

delivered significant benefits to the users of these roads and the community more generally, stating:

Tolls allow Sydney's motorways to be built faster than would otherwise occur if government relied only on taxation as a source of funding ... it delivers benefits to communities through the reduction of traffic on local roads, it delivers benefits to taxpayers through a lower upfront government contribution, which in turn enables the government of the day to invest more of that funding on other infrastructure that the State needs and, finally, industry is also a beneficiary from the reduced travel time because it lowers operating costs and boosts productivity, which in turn leads to higher rates of economic growth.<sup>35</sup>

- 1.30** The NSW Government also argued that 'it is important that the funds raised from tolls on the new public motorways will be invested back into the transport network'. This, it argues, will benefit drivers and businesses by enabling new projects to be built faster, delivering an improved network, thereby increasing productivity through reduced travel times and operating costs.<sup>36</sup>
- 1.31** In October 2014, the Government approved a broad set of principles for tolling Sydney's motorways, to be used to guide future tolling decisions on Sydney's motorway network. These are outlined in the table below.

**Table 1 The NSW Government's road tolling principles<sup>37</sup>**

<b>The NSW Government's Road Tolling Principles</b>	
<b>1.</b>	New tolls are applied only where users receive a direct benefit
<b>2.</b>	Tolls can continue while they provide broader network benefits or fund ongoing costs
<b>3.</b>	Distance-based tolling for all new motorways
<b>4.</b>	Tolls charged for both directions of travel on all motorways
<b>5.</b>	Tolls charged reflect the cost of delivering the motorway network
<b>6.</b>	Tolls take account of increases in expenses, income and comparable toll roads
<b>7.</b>	Tolls will be applied consistently across different motorways, to the extent practicable, taking into account existing concessions and toll roads
<b>8.</b>	Truck tolls at least three times higher than car tolls
<b>9.</b>	Regulation could be used so trucks use new motorway segments
<b>10.</b>	Un-tolled alternative arterial routes remain available for customers.

- 1.32** Mr Braxton-Smith, Deputy Secretary, Transport for NSW advised that this policy approach was informed from evidence gathered on its customers' needs, preferences and attitudes, and

<sup>35</sup> Submission 109, Transport for NSW, p 3.

<sup>36</sup> Submission 109, Transport for NSW, p 11.

<sup>37</sup> Submission 109, Transport for NSW, p 11.

that a ‘clear majority of road users’ supported the construction of more motorways, and were prepared to pay a toll in order to deliver such roads:

Since Transport for NSW was formed in 2011, we have made a practice of gathering evidence as to customers' needs and preferences and attitudes to inform our decisions about the transport network we have today and the one we are building tomorrow.

Research about these things supports decision making around investments in infrastructure, service improvement, communications and pricing. In research commissioned by Transport for NSW in 2016, a clear majority of road users told us that they want more motorways built to reduce congestion and to complete Sydney's motorway network and are prepared to pay a toll to get the network they want and the travel-time saving they are seeking.<sup>38</sup>

**1.33** Looking at the key findings of this research further, the NSW Government stated that the research indicated that ‘there was strong community support for extension of the current motorway network’ as:

- 66 per cent believe that Sydney’s motorways do not currently link up as an effective network
- 72 per cent agree that Sydney needs more motorways to improve traffic flow and congestion
- 59 per cent are in favour of new toll roads to make getting around Sydney easier
- 84 per cent of customers use a toll road to save time.<sup>39</sup>

**1.34** Mr Braxton-Smith further advised that it was also clear from the research ‘that road users make a choice about paying a toll to use a motorway so they can save time’ and that ‘the research in fact shows motorway customers are not particularly sensitive in an economic sense to the toll level they are paying’.<sup>40</sup> In other words ‘toll road price level is not a strong determinant of usage or satisfaction. Rather it is the travel time saving’.<sup>41</sup>

### **Procuring motorway developments through the use of Public Private Partnerships**

**1.35** The use of Public Private Partnership arrangements (PPPs) have been used extensively in Australia as a means of procuring infrastructure projects. This trend has been no different in New South Wales. In fact, Infrastructure Partnerships Australia asserts that ‘New South Wales has led the world in the use of PPPs to deliver motorway projects’ over the past two decades, arguing that this ‘success’ is due to ‘bipartisan support for innovative private financing funded by ‘user-pays’ models’.<sup>42</sup>

**1.36** PPPs appear in many different forms, with the specific roles and responsibilities of private sector partners varying across individual projects with specific arrangements determined by the government of the day and the needs of the project. However, since the delivery of the

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<sup>38</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19.

<sup>39</sup> Submission 109, Transport for NSW, p 12.

<sup>40</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19.

<sup>41</sup> Submission 109, Transport for NSW, p 12.

<sup>42</sup> Submission 97, Infrastructure Partnerships Australia, p 7.

Sydney Harbour Tunnel in 1987 private sector partners have been routinely involved in the design, construction, finance, operation, and maintenance (or combination thereof) of road projects. Information on the specific roles of private sector partners is published on the NSW Treasury website, some of which has been summarised in the following sections.

**1.37** Advocates of the use of PPPs cite a number of benefits. The NSW Government's submission states that the use of PPPs has been used successfully as a procurement method, delivering 'value for money outcomes' for the people of New South Wales:

The use of PPPs as a procurement method has delivered value-for-money outcomes to governments by enabling the market to bring global leading practice and innovation to the design, construction, operation and whole-of-life asset management. It has also provided governments with efficient risk allocation and capital structuring.

Tolls allow motorway corridors to be built faster as the investment is initially absorbed by the private sector and recouped through tolls over time. This directly benefits drivers by delivering new infrastructure. This benefits taxpayers who are getting much needed infrastructure for a relatively small initial outlay. By adopting this approach, the people of NSW reap the economic and social benefits.<sup>43</sup>

**1.38** The transfer of construction and patronage risk away from governments onto private equity holders is also considered to be a key benefit of the PPP model, as demonstrated by the financial failures such as the Cross City Tunnel and Lane Cove Tunnel.<sup>44</sup> These projects have since been subject to extensive scrutiny and evaluation by various parties.

**1.39** For example, the NSW Parliament established a Joint Select Committee in 2005 to inquire into and report on matters relating to the Cross City Tunnel and Lane Cove Tunnel. The committee tabled three reports in 2006, the first two of which discussed the 'general dissatisfaction of the community over the Cross City Tunnel project' and made recommendations, among other things, to 'ensure that future infrastructure projects delivered by Public Partnership arrangements are not similarly compromised'.<sup>45</sup> The committee's third report focused on the 'design, exhibition and construction' of the Lane Cove Tunnel and highlighted the need for 'more comprehensive community information'.<sup>46</sup>

**1.40** Around the same time, the then Auditor-General also completed a performance audit on the Cross City Tunnel. The report identified 'significant public criticism of the toll road and traffic management changes' and raised a number of issues for privately financing infrastructure projects going forward. These included, among other things, the importance of:

- 'having value for money for motorists as an explicit objective of the bidding process
- defining project costs
- separating funding of costs not directly related to the project so the user-pays principle can apply in a fair way

<sup>43</sup> Submission 109, Transport for NSW, p 13.

<sup>44</sup> Submission 109, Transport for NSW, p 13.

<sup>45</sup> Joint Select Committee on the Cross City Tunnel, *Second Report, The Cross City Tunnel and Public Private Partnerships*, Chairman's Foreword.

<sup>46</sup> Joint Select Committee on the Cross City Tunnel, *Third report inquiry into the Lane Cove Tunnel*, 23 August 2006, p 1.

- handling contract variations transparently
- conducting effective community consultation
- patronage projections in determining project impacts'.<sup>47</sup>

1.41 These case studies have provided valuable lessons for the government and the private sector alike and have resulted in changes in the way PPP contracts have been structured, with some noting the enhanced level of sophistication of tolling agreements over the years.<sup>48</sup>

1.42 Notwithstanding the purported benefits of the PPP approach and the ongoing appeal of such models to successive governments, an alternative position which questioned the relative merits of PPP was presented to the inquiry. Professor Graeme Hodge advised that 'reviews are now saying the international evidence on long term infrastructure contracts is 'both weak and mixed...Academics are generally sceptical whereas governments and suppliers are not.'<sup>49</sup>

### *Stages of the PPP Process*

1.43 Government agencies or state owned corporations using a PPP arrangement to procure a motorway must adhere to a number of national and state policies. These guidelines provide instruction on the key stages that must be undertaken and the types of processes that must be completed by the procuring entity. These stages, as presented within the NSW PPP procurement Guidelines, are outlined in the Table below.

**Table 2 Stages of a PPP procurement process**

Stage	Cabinet Approval required
Project Development / Pre-expression of interest stage	Yes. Approval to invite EOIs.
Expression of Interest (EOI)	Yes. Approval to invite Request for Proposals.
Request for Proposals (RFP)	Yes. Approval of preferred bidder.
Negotiation and execution	Yes. Treasurer approval of Joint Financing Arrangement.
Contract Management	No. However, approval required to materially vary contract, commercial terms or funding.

1.44 Concerns were raised by a number of inquiry stakeholders about the transparency of this process. This is discussed further in Chapter 2.

<sup>47</sup> NSW Audit Office, Auditor-General's Report, Performance Audit, The Cross City Tunnel Project, 2006, foreword.

<sup>48</sup> Evidence, Mr Kanofski, 11 April 2017, p 32.

<sup>49</sup> Evidence, Professor Graeme Hodge, Monash University, 12 April 2017, Sydney Transcript, p 2.

### **Concession agreements/Project Deeds**

- 1.45** The commercial arrangements for the delivery and operation of individual toll roads are set out in individual concession agreements/project deeds. Each toll road is governed by its own concession agreement which is negotiated and signed off by the government of the day as per the process outlined in the previous section.<sup>50</sup> A range of agencies are involved to some degree in this process, including: Transport for NSW, Roads and Maritime Services and NSW Treasury. In addition, for unsolicited proposals, that is, proposals that originate from the private sector, senior representatives from the Department of Premier and Cabinet may be involved in the negotiations.<sup>51</sup>
- 1.46** The terms of a concession agreement will include as standard:
- the initial toll level
  - how prices will escalate
  - the term of the concession
  - the Government contribution, i.e. the amount of tax payer funds that will be contributed to the project.<sup>52</sup>
- 1.47** The above levers are inextricably linked and the adjustment of one will ultimately impact another. In other words, a trade off exists between the initial toll price, escalation rate, amount of government contribution, and length of term of concession.<sup>53</sup>
- 1.48** In determining these levers, the government will consider a range of factors relevant to the specific motorway in question such as construction, operation and maintenance costs, the value the project delivers for the community, the complexity of the project, and forecast levels of traffic.<sup>54</sup>

### ***Setting toll prices***

- 1.49** Concession agreements set out the maximum toll that can be applied by the operator. These 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 objectives of funding the project.<sup>55</sup>
- 1.50** The NSW Government advises that different toll levels are tested to optimise economic benefits, road network performance and attractiveness for private sector investment. Furthermore, tolls must also be set at a level that represents value to motorists at a price that they are willing to pay.<sup>56</sup>

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<sup>50</sup> Submission 100, Transurban, p 27.

<sup>51</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 2.

<sup>52</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19.

<sup>53</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 16.

<sup>54</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 19; Submission 100, Transurban, p 7.

<sup>55</sup> Submission 100, Transurban, p 29; Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 16.

<sup>56</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 15.

***Escalation rates***

- 1.51** Concession agreements will also outline the rates at which toll prices can be adjusted or escalated. As illustrated in the following section a number of different approaches exist within the current nine concession agreements. For example, for some toll roads such as the Lane Cove and Westlink M7 Motorway the escalation rates are calculated at the Consumer Price Index (CPI) per quarter. Others, such as the Hills M2 Motorway and the Eastern Distributor are calculated at CPI (or a combination of CPI and average weekly earnings (AWE)) or 1 per cent per quarter, whichever is greater.<sup>57</sup>
- 1.52** The NSW Government advised the committee 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 argued that ‘placing a blanket limit of CPI to escalation rates would have the effect of pushing up the initial price on future toll roads’. The government further argued that such an approach would ‘make it more difficult to attract private investment, reduce competition in the market, and would be likely to increase costs for Government, taxpayers and road users’.<sup>58</sup>

***Length of concession***

- 1.53** As outlined in the following section, concession agreements have long terms of up to 30 – 40 years. This arises from the need to create a commercially viable project. The capital and ongoing operational and maintenance costs of the project must be recouped. Therefore, the lower the initial toll rate, the longer the concession length and/or the higher contribution required from Government.
- 1.54** However, there is a limit to how much value longer concession terms can contribute to the funding mix due to the impact of the time value of money. That is, the more long-dated the cashflow, the less it is valued in today’s prices.<sup>59</sup>

**Current toll roads in New South Wales**

- 1.55** The following sections set out the key characteristics of the nine separate tolling regimes currently in place in New South Wales. This includes an overview of the toll method and cost to the user, key terms of the concession agreement where relevant, as well as a summary of the respective PPP arrangement used to deliver and operate the road.

**Sydney Harbour Bridge**

- 1.56** The Sydney Harbour Bridge was opened in 1932 and is currently the only toll road in New South Wales that is owned and operated by the NSW Government.<sup>60</sup> The key features of this toll road are presented in Table 3 below.

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<sup>57</sup> Submission 109, Transport for NSW, p 13.

<sup>58</sup> Submission 109, Transport for NSW, p 13.

<sup>59</sup> Submission 100, Transurban, p 29.

<sup>60</sup> Submission 109, Transport for NSW, p 4.



**Table 3 Sydney Harbour Bridge - Summary of tolling regime<sup>61</sup>**

<b>Sydney Harbour Bridge</b>	
<b>Tolling method</b>	Variable time of day / southbound only.
<b>Owner/operator</b>	Roads and Maritime Services.
<b>Cost – Class A (Cars)</b>	\$2.50 - \$4.00 depending on time of day (At 1 July 2017).
<b>Cost – Class B (Trucks)</b>	\$2.50 - \$4.00 depending on time of day (At 1 July 2017).
<b>Escalation rate</b>	Price increases determined by the NSW Government.

Source: Submission 109, Transport for NSW, p 4.

- 1.57** The Harbour Bridge was initially tolled in both directions however it became toll free for drivers heading out of Sydney's CBD (northbound) in 1970.<sup>62</sup> Variable time of day tolling was introduced in 2009 to help ease traffic congestion and to encourage motorists to travel outside of peak hours where possible.<sup>63</sup>
- 1.58** Tolls range from \$2.50 - \$4.00 depending on the time of travel with vehicles travelling outside of peak hours paying a lower toll than vehicles travelling during peak hours.<sup>64</sup> Toll prices on the Sydney Harbour Bridge are aligned with the Sydney Harbour Tunnel. The full pricing schedule for the Sydney Harbour Bridge and the Sydney Harbour Tunnel is outlined in Table 4 below.

**Table 4 Cost of travelling on Sydney Harbour Bridge and Harbour Tunnel<sup>65</sup>**

<b>Weekdays</b>	<b>Cost</b>
6.30 am – 9.30 am	\$4.00
9.30 am – 4.00 pm	\$3.00
4.00 pm – 7.00 pm	\$4.00
7.00 pm – 6.30 am	\$2.50
<b>Weekends and public holidays</b>	<b>Cost</b>
8.00 am – 8.00 pm	\$3.00
8.00 pm – 8.00 am	\$2.50

Source: Roads and Maritime Services, Sydney Harbour Bridge and Harbour Tunnel

<sup>61</sup> Submission 109, Transport for NSW, p 4

<sup>62</sup> Li, Zheng and Hensher, David, *Toll Roads in Australia: An Overview of Characteristics and Accuracy of Demand Forecasts*, Transport Reviews, 30: 5, 541-569.

<sup>63</sup> Roads and Maritime, Sydney Harbour Bridge and Harbour Tunnel, <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/sydney-harbour-bridge-tunnel.html>

<sup>64</sup> Submission 109, Transport for NSW, p 4.

<sup>65</sup> Roads and Maritime, Sydney Harbour Bridge and Harbour Tunnel, <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/sydney-harbour-bridge-tunnel.html>

- 1.59** The fee structure outlined in Table 3 has been in place since January 2009.<sup>66</sup> However, under the *Roads Act 1993*, Roads and Maritime Services may fix the amount of tolls and charges to be levied. In doing so, it must have regard to movements in the Consumer Price Index.<sup>67</sup> Mr Ken Kanofski, Chief Executive, Roads and Maritime Services confirmed that the matter of toll pricing on the Sydney Harbour Bridge and Tunnel is considered annually by the relevant Minister.<sup>68</sup>
- 1.60** No evidence was received to the inquiry which indicated changes to the pricing structure. However, at the time of writing this report, media reports alluded to NSW Government proposals to introduce tolling on the northbound sections of the Sydney Harbour Bridge and Tunnel as part of the funding strategy for the Western Harbour Tunnel and Beaches Link project.<sup>69</sup> These reports are discussed further later in this chapter.

### Sydney Harbour Tunnel

- 1.61** The Sydney Harbour Tunnel was opened in 1992 and is a 2.3 km, four lane, under-water tunnel running below Sydney Harbour.<sup>70</sup> The tunnel is owned and operated by Sydney Harbour Tunnel Company (a company owned by Transfield Holdings in a joint venture with Kumagai Gumi and Olbia Pty Limited).<sup>71</sup> The key features of this toll are summarised in Table 5.

**Table 5 Sydney Harbour Tunnel – Summary of tolling regime<sup>72</sup>**

Sydney Harbour Tunnel	
<b>Tolling method</b>	Variable time of day / southbound only.
<b>Concession holder</b>	Sydney Harbour Tunnel Company.
<b>Cost – Class A (Cars)</b>	\$2.50 - \$4.00 depending on time of day (At 1 July 2017).
<b>Cost – Class B (Trucks)</b>	\$2.50 - \$4.00 depending on time of day (At 1 July 2017).
<b>Escalation rate</b>	No rate identified. Aligned with Sydney Harbour Bridge.
<b>PPP arrangement</b>	The project involved: design, construction, finance and operation of the tunnel by the private sector. Estimated contract value at time of contract award: \$670 million.

<sup>66</sup> Answer to supplementary questions, Mr Kanofski, 18 May 2017, p 22.

<sup>67</sup> *Roads Act 1993 No 33*, s 215.

<sup>68</sup> Evidence, Mr Kanofski, 11 April 2017, p 22.

<sup>69</sup> Sydney Morning Herald, *Harbour Bridge tolls set to soar*, 19 July 2017.

<sup>70</sup> NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, Sydney Harbour Tunnel. <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>71</sup> Roads and Maritime, Harbour tunnel – completed, <http://www.rms.nsw.gov.au/projects/sydney-inner/harbour-tunnel.html>; Transfield, Investments Portfolio, Sydney Harbour Tunnel, <http://www.transfield.com.au/sydney-harbour-tunnel>

<sup>72</sup> Submission 109, Transport for NSW, p 5; NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, Sydney Harbour Tunnel, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>.

<b>Sydney Harbour Tunnel</b>	
<b>Contract start date</b>	June 1987.
<b>Concession term</b>	Ends June 2023.
<b>Contract published</b>	Contract not available online.

- 1.62** Since 2009, a variable time of day charging regime, aligned with that applied on the Sydney Harbour Bridge, has been in operation. See Table 4 for full fee structure. By agreement with the Sydney Harbour Tunnel Company, toll pricing of both the Sydney Harbour Bridge and Sydney Harbour Tunnel is regulated by Roads and Maritime Services and must charge the same level of toll.<sup>73</sup>
- 1.63** The Harbour Tunnel was designed, constructed, financed and operated by the private sector in line with a concession agreement that commenced in June 1987. This agreement is due to expire in June 2023 after which ownership of the Harbour Tunnel will revert to Roads and Maritime Services.<sup>74</sup>
- 1.64** While it is reported that tolling revenue from both the Sydney Harbour Tunnel and the Harbour Bridge were used to support the tunnel's construction, the committee did not receive any further detail on the financing arrangements for the tunnel.<sup>75</sup>
- 1.65** As referred to above, the media has recently reported that the NSW Government is considering the introduction of northbound tolls on the Sydney Harbour Tunnel as part of the funding strategy for the Western Harbour Tunnel and Beaches Link project. Further information on these reports can be found later in this chapter.

### **M5 South-West Motorway**

- 1.66** The M5 opened to traffic in 1992 and covers 22 km in Sydney's south-west from Prestons to Beverly Hills. It is currently operated by Interlink Roads Pty Ltd, a company whose major equity holders include Transurban (50 per cent)<sup>76</sup> and Hastings Fund Management (21 per cent).<sup>77</sup> Key features of the M5 South-West Motorway toll are set out in Table 6 below.

<sup>73</sup> D Chung, Private Provision of transport infrastructure – unveiling the inconvenient truth in New South Wales, 31st Australasian Transport Research Forum, 2008, p 389.

<sup>74</sup> NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, Sydney Harbour Tunnel, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>75</sup> D Chung, Private Provision of transport infrastructure – unveiling the inconvenient truth in New South Wales, 31st Australasian Transport Research Forum, 2008, p 391.

<sup>76</sup> Submission 100, Transurban, p 27.

<sup>77</sup> Sheng Li, and David Hensher, Toll Roads in Australia: An Overview of Characteristics and Accuracy of Demand Forecasts, 2010, *Transport Reviews*, 30:5: 5, 541-569.

**Table 6 M5 South-West Motorway - Summary of tolling regime<sup>78</sup>**

<b>M5 South-West Motorway</b>	
<b>Tolling method</b>	Fixed toll based on size of vehicle / each direction.
<b>Concession holder</b>	Interlink Roads Party Ltd.
<b>Cost – Class A (Cars)</b>	\$4.60 (At 1 July 2017). <sup>79</sup>
<b>Cost – Class B (Trucks)</b>	\$13.81 (At 1 July 2017). <sup>80</sup>
<b>Cashback scheme</b>	Under cashback scheme, NSW residents can claim back the value of tolls. <sup>81</sup>
<b>Escalation rate</b>	Consumer Price Index (CPI) or 1 per cent per quarter, whichever is greater.
<b>PPP arrangement</b>	Original project involved: finance, construction and maintenance of motorway between Beverley Hills and Casula. Project was subsequently extended to include: Western Extension, Moorebank Avenue Interchange and Southwest widening projects.  Estimated contract values: Original project (\$315 million in 1991); Western Extension (\$65 million in 1993); Moorebank Avenue Interchange (\$32 million in 2002); Widening project (\$400 million in 2012).
<b>Contract start date</b>	February 1991.
<b>Concession term</b>	Ends December 2026. Original term extended on two separate occasions from 2014 as part of contract variations.
<b>Contract published</b>	Summary of contracts available online. <sup>82</sup> Certain contract deeds published online. <sup>83</sup>

**1.67** Tolling is charged in both directions on the M5 motorway and is based on the size of the vehicle. Class B vehicles are charged three times that of Class A vehicles whereby Class A

<sup>78</sup> Submission 109, Transport for NSW, p 5; NSW Treasury, Public Private Partnerships, Awarded Projects, M5 Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>79</sup> M5 South-West Motorway, M5 South West Motorway Toll Price, <https://www.m5motorway.com.au/toll-price>

<sup>80</sup> M5 South-West Motorway, M5 South West Motorway Toll Price, <https://www.m5motorway.com.au/toll-price>

<sup>81</sup> Roads and Maritime Services, M5 Cashback Scheme, <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/m5-cash-scheme.html>

<sup>82</sup> NSW Treasury, Awarded Projects, Roads, M5 South West Motorway, [https://www.treasury.nsw.gov.au/sites/default/files/2017-02/M5\\_Contracts\\_Summary\\_25\\_June\\_2012\\_small.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2017-02/M5_Contracts_Summary_25_June_2012_small.pdf)

<sup>83</sup> Roads and Maritime, Class 3 Contract Documents, <http://www.rms.nsw.gov.au/business-industry/partners-suppliers/tenders-contracts/contracts-awarded/class-3-contract-documents.html>

vehicles are defined as three axle vehicles under 2.0 metres in height or two axle vehicles under 2.8 meters in height and Class B vehicles include all other vehicles.<sup>84</sup>

- 1.68** A cashback scheme was introduced on the M5 South-West in 1997. This allows New South Wales residents, subject to certain conditions<sup>85</sup> to claim back the value of tolls paid when using a privately registered vehicle in New South Wales for private, pensioner or charitable use on the motorway. Trips made using government or business registered vehicles are ineligible.<sup>86</sup> It has been reported that annual rebates to individuals are approximately \$100 million per financial year however, no further information on this matter was provided to the inquiry.<sup>87</sup>
- 1.69** The original M5 South-West concession agreement has been subject to a number of variations and therefore amendment to the tolling arrangements. As reported by NSW Treasury, these variations included the extension of the M5 to the west in 1993. This project (\$65 million), was to be financed by a range of measures including:
- an extension of the agreed concession term (22 years post completion) by a further eight years to 2022, and
  - re-negotiation of the rate of escalation – where it was agreed that Interlink will peg tolls for 3 years after which time escalation could occur in line with consumer price index. This was instead of 9 per cent per annum, as agreed in the original concession agreement.<sup>88</sup>
- 1.70** In 2012 it was agreed that the M5 be widened between Beverley Hills and Prestons. This project (\$400 million) was funded by a government contribution of \$50 million as well as:
- an extension of the concession term by a further 3.3 years to December 2026, and
  - an increase in truck tolls (Class B) to 3 times that of car tolls (Class A).<sup>89</sup>
- 1.71** The concession agreement for the M5 is due to end in 2026. However, at the Budget Estimates 2017-2018 hearing, the Minister for WestConnex, the Hon Stuart Ayres MP stated that this concession agreement will form part of the ‘WestConnex toll concession’ and that it

<sup>84</sup> Class A vehicles include three axle vehicles under 2.0 metres in height or two axle vehicles under 2.8 meters in height. Class B vehicles include all other vehicles. M5 South-West Motorway, M5 South West Motorway Toll Price, <https://www.m5motorway.com.au/toll-price>

<sup>85</sup> Cash back can be claimed from NSW resident subject to the following conditions: the vehicle is registered in NSW for private, pensioner or charitable use; drivers are registered and have paid tolls using electronic tag or tagless accounts, and drivers have submitted claims within 12 months.

<sup>86</sup> Roads and Maritime Services, M5 Cashback Scheme, <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/m5-cash-scheme.html>

<sup>87</sup> Sydney Morning Herald, *Taxpayer bill for cashback scheme on Sydney toll roads hits 1.5 billion and climbing*, 19 December 2016, <http://www.smh.com.au/nsw/taxpayer-bill-for-cashback-scheme-on-sydney-toll-roads-hits-15-billion--and-climbing-20161207-gt6hiq.html>

<sup>88</sup> NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, M5 South West Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>89</sup> NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, M5 South West Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

will be ‘part of the commercial negotiation for the sale of Sydney Motorway Corporation’. Minister Ayres further added that ‘that has always been part of the Government’s position’.<sup>90</sup>

### Hills M2 Motorway

**1.72** The Hills M2 Motorway links the lower north shore and the northwest regions of Sydney. It opened in 1997 and since 2005 has been owned and operated by Transurban.<sup>91</sup> Key features of the Hills M2 Motorway toll are outlined in Table 7 below.

**Table 7 Hills M2 Motorway - Summary of tolling regime<sup>92</sup>**

<b>Hills M2 Motorway</b>	
<b>Tolling method</b>	Fixed toll based on number of toll points passed and size of vehicle / each direction.
<b>Concession holder</b>	Transurban.
<b>Cost – Class A (Cars)</b> (At 1 July 2017) <sup>93</sup>	\$6.95 (North Ryde). \$3.51 (Pennant Hills Road). \$2.49 (Windsor Road). \$2.08 (Lane Cove Road on-ramp). \$3.51 (Herring & Christie Roads).
<b>Cost – Class B (Trucks)</b> (At 1 July 2017) <sup>94</sup>	\$20.85 (North Ryde). \$10.52 (Pennant Hills Road). \$7.46 (Windsor Road). \$6.23 (Lane Cove Road on-ramp). \$10.52 (Herring and Christie Road).
<b>Escalation rate</b>	Consumer Price Index (CPI) or 1 per cent per quarter, whichever is greater.
<b>PPP arrangement</b>	Original project involved: finance, design and build of M2 motorway by the private sector. The estimated contract value was \$644 million at the time of award. The government contributed \$232.6 million.
<b>Contract start date</b>	August 1994.

<sup>90</sup> Evidence, The Hon Stuart Ayres MP, Minister for Western Sydney, WestConnex, and Sport, 6 September 2017, p 5.

<sup>91</sup> Submission 100, Transurban, p 27.

<sup>92</sup> Submission 109, Transport for NSW, p 5; NSW Treasury, Public Private Partnerships, Awarded projects, M2 Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>93</sup> Transurban, Linkt, Hills M2, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/hills-m2/toll-pricing>

<sup>94</sup> Transurban, Linkt, Hills M2, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/hills-m2/toll-pricing>

<b>Hills M2 Motorway</b>	
<b>Concession term</b>	Ends June 2048. The original term was extended from 2042 to 2046 as part of the M2 Motorway Upgrade Project and subsequently to 2048 as part of the M2 Integration Works project.
<b>Contract published</b>	Summary of contracts available online. <sup>95</sup> Project deeds available online. <sup>96</sup>

- 1.73** Toll prices for the Hills M2 are determined by the number of toll points that a driver passes along – i.e. at which points they enter and exit the motorway, as well as the size of vehicle.<sup>97</sup> Heavy vehicles are required to pay three times that of Class A vehicles. The concession agreement provides that toll prices may be adjusted in line with the Consumer Price Index (CPI) or 1 per cent per quarter, whichever is greater.<sup>98</sup>
- 1.74** The original concession was agreed between the Hills Motorway Consortium and Roads and Maritime Services in 1994. Since that time the contract has been subject to a number of variations which have impacted tolling arrangements on the motorway. These variations included the M2 Upgrade Project which took effect in 2010 and was completed in 2013. The private sector financed the work with an estimated capital cost of \$546 million and received an extension of the original concession term by four years to 2046 upon the completion of the works.<sup>99</sup>
- 1.75** In 2015 M2 Integration works to enable the safe merging of traffic from the proposed NorthConnex tunnel onto the M2 were agreed. The NSW Treasury website reports that the term of the concession agreement was further extended to 2048 as part of this project.<sup>100</sup>

### **Eastern Distributor**

- 1.76** The Eastern Distributor provides a 6 km motorway link between the City and Kingsford Smith Airport and Port Botany. It opened in 1999 and is owned and operated by Airport Motorway Limited, a company which Transurban has been the major equity owner (75.1 per cent) since June 2007.<sup>101</sup> Key features of this toll are outlined in Table 8 below.

<sup>95</sup> NSW Treasury, Public Private Partnerships, Awarded Projects, Roads, Hills M2, [https://www.treasury.nsw.gov.au/sites/default/files/201702/M2\\_contracts\\_summary\\_28May2013.pdf](https://www.treasury.nsw.gov.au/sites/default/files/201702/M2_contracts_summary_28May2013.pdf)

<sup>96</sup> Roads and Maritime, Class 3 Contract Documents, <http://www.rms.nsw.gov.au/business-industry/partners-suppliers/tenders-contracts/contracts-awarded/class-3-contract-documents.html>

<sup>97</sup> Transurban Linkt, Hills M2 Toll Pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/hills-m2/toll-pricing>

<sup>98</sup> Submission 109, Transport for NSW, p 5.

<sup>99</sup> NSW Treasury, Public Private Partnerships, Awarded projects, Roads, M2 Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>100</sup> NSW Treasury, Public Private Partnerships, Awarded projects, Roads, M2 Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>101</sup> Submission 100, Transurban, p 27.

**Table 8 Eastern Distributor - Summary of tolling regime<sup>102</sup>**

<b>Eastern Distributor</b>	
<b>Tolling method</b>	Fixed toll based on size of vehicle / northbound.
<b>Concession Holder</b>	Airport Motorway Pty Limited.
<b>Cost – Class A (Cars)</b>	\$7.09 (At 1 July 2017). <sup>103</sup>
<b>Cost – Class B (Trucks)</b>	\$14.18 (At 1 July 2017). <sup>104</sup>
<b>Escalation rate</b>	Consumer Price Index (weighted 37.5 per cent) + Average Weekly Earnings (AWE) (weighted 63.5 per cent) or 1 per cent per quarter, whichever is greater.
<b>PPP arrangement</b>	Project involved: finance, design, construction, operation and maintenance of the Eastern Distributor by the private sector. The estimated contract value at the time of contract award was \$680 million. <sup>105</sup>
<b>Contract start date</b>	August 1996.
<b>Concession term</b>	Ends December 2048.
<b>Contract available</b>	Summary of contracts available online. <sup>106</sup>

**1.77** Toll prices for the Eastern Distributor are fixed and based on the size of vehicle. Heavy vehicles are required to pay two times that of Class A vehicles. The concession agreement enables prices to be adjusted by the greater of either a weighted sum of CPI (37.5 per cent) plus Average Weekly Earnings (63.5 per cent), or 1 per cent, whichever is greater. This concession agreement is due to complete in 2048.<sup>107</sup>

### **Cross City Tunnel**

**1.78** The Cross City Tunnel opened in 2005 and comprises two east-west toll road tunnels under the Sydney CBD. The tunnel has been owned and operated by Transurban since 2014.<sup>108</sup> The key features of this toll are outlined in Table 9 below.

<sup>102</sup> Submission 109, Transport for NSW, p 6, NSW Treasury, Public Private Partnerships, Awarded projects, Roads, Eastern Distributor, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>103</sup> Transurban, Linkt, Eastern Distributor, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/eastern-distributor/toll-pricing>

<sup>104</sup> Transurban, Linkt, Eastern Distributor, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/eastern-distributor/toll-pricing>

<sup>105</sup> NSW Treasury, Public Private Partnerships, Awarded projects, roads, Eastern Distributor, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>106</sup> NSW Treasury, Public Private Partnerships, Awarded projects, roads, Eastern Distributor, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>107</sup> Submission 109, Transport for NSW, p 6.

<sup>108</sup> Submission 100, Transurban, p 27.



**Table 9 Cross City Tunnel - Summary of tolling regime<sup>109</sup>**

<b>Cross City Tunnel</b>	
<b>Tolling method</b>	Fixed toll based on number of toll points passed and size of vehicle / each direction.
<b>Concession holder</b>	Transurban.
<b>Cost – Class A (Cars)</b> (At 1 July 2017) <sup>110</sup>	\$5.55 (Main Tunnel). \$2.62 (Sir John Young Crescent).
<b>Cost – Class B (Trucks)</b> (At 1 July 2017) <sup>111</sup>	\$11.10 (Main Tunnel). \$5.23 (Sir John Young Crescent).
<b>Escalation rate</b>	Consumer Price Index per quarter.
<b>PPP arrangement</b>	Project involved: finance, design, construction, operation and maintenance of project by the private sector. The estimated capital cost at the time of contract award was \$680 million.
<b>Contract start date</b>	December 2002.
<b>Concession term</b>	Ends December 2035.
<b>Contract available</b>	Summary of contracts available online. <sup>112</sup>

- 1.79** A fixed toll, based on the number of tolling points passed through, and the size of vehicle is in place on the Cross City Tunnel. Heavy vehicles are required to pay two times that of Class A vehicles. The concession agreement provides that these prices can be adjusted in line with CPI per quarter.<sup>113</sup>
- 1.80** The Cross City Tunnel has been subject to controversy since its opening having been acquired out of receivership twice, the first in 2007 and again in 2013 when Transurban acquired it for \$475 million.<sup>114</sup> These financial failings have been attributed to forecasting errors by the original concession holder which saw forecast opening traffic volumes substantially above those which materialised.<sup>115</sup>
- 1.81** The Cross City Tunnel was the subject of an inquiry by a Joint Select Committee and a performance audit by Auditor-General in 2006.

<sup>109</sup> Submission 109, Transport for NSW, p 6.

<sup>110</sup> Transurban Linkt, *Cross City Tunnel Toll Pricing*, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/cross-city-tunnel/toll-pricing>

<sup>111</sup> Transurban Linkt, *Cross City Tunnel Toll Pricing*, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/cross-city-tunnel/toll-pricing>

<sup>112</sup> NSW Treasury, Public Private Partnerships, Awarded projects, Roads, Cross City Tunnel, [https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Cross\\_City\\_Tunnel\\_contracts\\_summary\\_2008\\_update\\_lowres.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Cross_City_Tunnel_contracts_summary_2008_update_lowres.pdf)

<sup>113</sup> Submission 109, Transport for NSW, p 6.

<sup>114</sup> Submission 100, Transurban, p 45.

<sup>115</sup> Submission 100, Transurban, p 28.

### Westlink M7 Motorway

- 1.82** The M7 was opened to traffic in 2005 and is a 40 km toll road linking the M5 South-West with the M4 and the Hills M2. It is currently owned and operated by Northwestern Roads Group which is 50 per cent owned by Transurban and 50 per cent owned by Western Sydney Road Group.<sup>116</sup> The key features of the toll road are outlined in Table 10 below.

**Table 10 Westlink M7 Motorway – Summary of tolling regime<sup>117</sup>**

Westlink M7 Motorway	
<b>Tolling method</b>	Distance based toll / each direction.
<b>Concession holder</b>	Northwestern Roads Group.
<b>Cost – Class A (Cars)</b>	39.65 cents/km, capped at \$7.93 per trip (At 1 July 2017). <sup>118</sup>
<b>Cost – Class B (Trucks)</b>	\$1.19/km, capped at \$23.79 per trip (At 1 July 2017). <sup>119</sup>
<b>Escalation rate</b>	Consumer Price Index (CPI) per quarter.
<b>PPP arrangement</b>	Project involved: finance, design, construction and operation and maintenance of the M7 Westlink Motorway as well as financing, design and construction of associated improvements to surface roads and intersections. The contract value was estimated at \$1.54 billion at the time of contract award. Around \$360 million of funding was provided by the Commonwealth government.
<b>Contract start date</b>	December 2003.
<b>Concession term</b>	Ends June 2048. The original term was extended from 2037 as part of NorthConnex project.
<b>Contract available</b>	Contract summary available online. <sup>120</sup>

- 1.83** The M7 Motorway is Sydney's first distance-based toll road in that different tolls are charged depending on the length of the users' journey.<sup>121</sup> For Class A vehicles, the toll is calculated on a cent per km rate (39.65 cents/km) which is capped at a maximum of \$7.93 after 20 kilometres. Class B (Trucks) pay three times this rate, and are charged a rate of \$1.19 per km

<sup>116</sup> Transurban Linkt, Westlink M7, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/westlink-m7>; Submission 100, Transurban, p 27.

<sup>117</sup> Submission 109, Transport for NSW, p 6; NSW Treasury, Public Private Partnerships, Awarded projects, Roads, Westlink M7 Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>; Roam, About Westlink M7, Toll pricing, <https://www.roam.com.au/using-westlink-m7/about/toll-pricing>

<sup>118</sup> Roam, About Westlink M7, Toll pricing, <https://www.roam.com.au/using-westlink-m7/about/toll-pricing>

<sup>119</sup> Roam, About Westlink M7, Toll pricing, <https://www.roam.com.au/using-westlink-m7/about/toll-pricing>

<sup>120</sup> [http://nswtreasury.prod.acquia-sites.com/sites/default/files/2017-02/Westlink\\_M7\\_contr.pdf](http://nswtreasury.prod.acquia-sites.com/sites/default/files/2017-02/Westlink_M7_contr.pdf)

<sup>121</sup> Submission 109, Transport for NSW, p 6.

up to \$23.67 after 20 kilometres.<sup>122</sup> The concession agreement provides that these prices may be adjusted quarterly in line with the consumer price index.<sup>123</sup>

- 1.84** The original term of concession was 34 years to February 2037. However, in January 2015 this was extended by a further 11 ½ years to 30 June 2048 as part of the funding arrangements for the NorthConnex project. An increase to the heavy vehicle toll multiplier was also agreed at this time.<sup>124</sup>

### Lane Cove Tunnel

- 1.85** The Lane Cove Tunnel opened in 2007 and is a 3.6 km twin-tunnel motorway between the Epping Road Bridge crossing of the Lane Cove River in Lane Cove West and the Gore Hill Freeway in Artarmon. The Lane Cove Tunnel is owned and operated by Transurban. The key features of this toll are outlined in Table 11.

**Table 11 Lane Cove Tunnel - Summary of tolling regime<sup>125</sup>**

Lane Cove Tunnel	
<b>Tolling method</b>	Fixed toll based on size of vehicle / each direction.
<b>Concession holder</b>	Transurban.
<b>Cost – Class A (Cars)</b> (At 1 July 2017) <sup>126</sup>	\$3.25 (Main Tunnel). \$1.62 (Military Road E-Ramp).
<b>Cost – Class B (Trucks)</b> (At 1 July 2017) <sup>127</sup>	\$9.86 (Main Tunnel). \$4.93 (Military Road E Ramp).
<b>Escalation rate</b>	Consumer Price Index per quarter.
<b>PPP arrangement</b>	Project involved: finance, design, construction and maintenance of the twin tunnels as well as the two tolled north facing ramps connecting the Warringah Freeway in North Sydney with Falcon Street and Military Road by the private sector.

<sup>122</sup> Roam, About Westlink M7, Toll pricing, <https://www.roam.com.au/using-westlink-m7/about/toll-pricing>

<sup>123</sup> Submission 109, Transport for NSW, p 6.

<sup>124</sup> NSW Treasury, Public Private Partnerships, Awarded projects, Roads, Westlink M7 Motorway, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>125</sup> Submission 109. Transport for NSW, p 7, NSW Treasury, Public Private Partnerships, Awarded Projects, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>; Submission 109. Transport for NSW, p 7.

<sup>126</sup> Transurban Linkt, Lane Cove Tunnel, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/lane-cove-tunnel/toll-pricing>; Transurban Linkt, Military Road E-Ramps, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/military-road-e-ramps/toll-pricing>

<sup>127</sup> Transurban Linkt, Lane Cove Tunnel, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/lane-cove-tunnel/toll-pricing>; Transurban Linkt, Military Road E-Ramps, Toll pricing, <https://www.linkt.com.au/sydney/using-sydney-toll-roads/military-road-e-ramps/toll-pricing>

<b>Lane Cove Tunnel</b>	
	The contract value is estimated at \$1.1 billion at the time of contract award.
<b>Contract start date</b>	December 2003.
<b>Concession term</b>	Ends June 2048. Original concession term was extended from 2037 as part of funding arrangements for the NorthConnex project.
<b>Contract available</b>	Contract Summary available online. <sup>128</sup>

- 1.86** Toll prices for the Lane Cove Tunnel are based on the number of toll points passed as well as the size of vehicle. Heavy vehicles are required to pay three times that which is paid by Class A vehicles (cars). The concession agreement provides that the operator may adjust prices quarterly in alignment with the consumer price index.<sup>129</sup>
- 1.87** Transurban acquired the concession in 2010 for \$630 million after the tunnel went into receivership. Like the Cross City Tunnel, initial traffic forecasts inaccurately predicted traffic volumes. Opening traffic volumes were less than half of that predicted by the forecasts.<sup>130</sup>
- 1.88** The original concession agreement has also been subject to a number of modifications. The Treasury website reports that these include the extension of the original concession term by 11 ½ years from January 2037 to June 2048 as part of the funding model for the NorthConnex project. Increases to the heavy vehicle multiplier were also agreed at this time.<sup>131</sup> However, these concession variations have not been identified within information provided by Transport for NSW.<sup>132</sup>
- 1.89** As discussed earlier in the report, the Lane Cove Tunnel was the subject of an inquiry by a Joint Select Committee in 2006.

### **WestConnex**

- 1.90** With an estimated cost of \$16.8 billion, the WestConnex Scheme is Australia's largest transport infrastructure project.<sup>133</sup> It is being delivered in a number of stages, the first of which opened to traffic in July 2017. A toll was subsequently introduced one month later on 15 August 2017.

<sup>128</sup> NSW Treasury, Public Private Partnerships, Awarded projects, roads , Lane Cove Tunnel, Updated summary of contracts, August 2010. [https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Lane\\_Cove\\_Tunnel\\_contracts\\_summary\\_09August2010.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Lane_Cove_Tunnel_contracts_summary_09August2010.pdf)

<sup>129</sup> Submission 109, Transport for NSW, p 7.

<sup>130</sup> Submission 100, Transurban, p 45.

<sup>131</sup> NSW Treasury, Public Private Partnerships, Awarded projects, Roads, Lane Cove Tunnel, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>; Submission 109, Transport for NSW, p 7.

<sup>132</sup> Submission 109, Transport for NSW, p 7.

<sup>133</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 5.

- 1.91** The WestConnex scheme seeks to provide significant improvements to Sydney’s motorway network by ‘improving travel times, productivity, reliability and accessibility for the community and businesses’ as well as providing ‘crucial support for Sydney’s long term economic and population growth’.<sup>134</sup> However, it has been subject to controversy with community opposition, claims of ever increasing project costs, and issues of transparency featuring within the evidence to the inquiry, and public commentary more generally.
- 1.92** The WestConnex projects, as described on the WestConnex website are outlined below, and illustrated on Figure 2 below.
- (Stage 1A) M4 Widening – Widening of the M4 Motorway between Parramatta and Homebush from three to four lanes in each direction. The road opened to traffic in July 2017 and tolling commenced from 15 August 2017.<sup>135</sup>
  - (Stage 1B) M4 East – Extension of the M4 in tunnels between Homebush and Haberfield via Concord. The project is expected to open to traffic in 2019.
  - (Stage 2) New M5 – Duplication of the M5 East from King Georges Road Interchange Upgrade at Beverly Hills with twin motorway tunnels from Kingsgrove to a new interchange at St Peters. The project is expected to open to traffic in 2020.
  - (Stage 3) M4-M5 Link – Construction of tunnels connecting the M4 East at Haberfield and the New M5 at St Peters via Rozelle and Camperdown. The project includes an interchange at Rozelle with provision for a future connection to the Western Harbour Tunnel and Beaches Link. Construction is expected to start in 2019, and the project is anticipated to be completed in 2023.<sup>136</sup>

<sup>134</sup> Submission 109, Transport for NSW, p 8.

<sup>135</sup> WestConnex, *Motorists experience first stage of New M4*, 6 July 2017. <https://www.westconnex.com.au/news-media/motorists-experience-first-stage-new-m4>

<sup>136</sup> WestConnex, WestConnex projects, M4-M5 Link, <https://www.westconnex.com.au/project>

Figure 2 WestConnex Scheme



Source: Sydney Motorway Corporation, *WestConnex – Delivering Australia’s largest transport infrastructure project*, 2016, p 7.

### Sydney Gateway

- 1.93 The Sydney Gateway project seeks to provide a connection between the new St Peters Interchange and the Sydney Airport and Port Botany Precinct. The Gateway project was identified as a Stage 2 project within the WestConnex Strategic Business Case, and was in fact referred to 43 times within that same strategic business case.<sup>137</sup>
- 1.94 Up until 10 August 2017, the Sydney Gateway was also referred to as a project on the WestConnex website. However, at the time of writing this report and sometime after the 10 August 2017, references to the Gateway project were removed. The reason as to why this change took place has not been outlined within evidence provided to the committee.
- 1.95 Mr Ken Kanofski advised the committee on 22 May 2017 that ‘we [Roads and Maritime Services] are working with ... Sydney Airport and other key stakeholders ... to refine that design. When we have completed that design it will be released publically’.<sup>138</sup>

<sup>137</sup> NSW Government, *WestConnex Updated Strategic Business Case*, November 2015, p 152.

<sup>138</sup> Evidence, Mr Kanofski, 22 May 2017, p 56.

**1.96** Mr Kanofski further confirmed that in relation to implementation of the project, ‘it will be finished in time for the project to be built by 2023 to coincide with the M4-M5 Link’; ‘that the road project does not include any costs of relocating or duplicating freight rail’; that ‘there is no relocation of the rail required for the original design that was put out by WestConnex’; and that ‘yes’, the cost of the gateway is incorporated in the \$16.8 billion cost.<sup>139</sup>

**1.97** However, at the Budget Estimates 2017-2018 hearing the Minister for WestConnex, The Hon Stewart Ayres, stated that ‘The Sydney Gateway project is not part of the delivery of WestConnex’.<sup>140</sup> He further advised that a business case was being prepared for this project, and will be made available to the public once developed:

The business case is currently being developed. Sydney Gateway is not included in the WestConnex motorway project. As that business case is developed and financial models are developed along with the design the Government will make that public.<sup>141</sup>

**1.98** The Minister did not provide specific timeframes as to when the business case was going to be completed. However, the Minister confirmed that as a distinct project, the proposed toll cap for the WestConnex scheme would not be applicable to the Sydney Gateway.<sup>142</sup>

**1.99** The Roads Minister, The Hon Melinda Pavey, also set out the following information at the Roads, Maritime and Freight Budget Estimates 2017-2018 hearing relating to the business case for the Sydney Gateway:

... no decision has been made on the tolling of Sydney Gateway or whether there will or will not be a toll. But we are in conversations with stakeholders at the moment. In regard to context, of course there will be strategic business cases, there will be EISs and there will be public consultation. We will be completing the road part of Sydney Gateway to coordinate the timing with the finishing of the St Peters interchange, which is part of WestConnex, and that is due in 2023. That is six years away, so we have time and we have started on our homework. We will continue to do our homework and we will continue to do the planning because it is important that we have proper access to Sydney's major gateway to the airport and also to Port Botany. We need better transport solutions, whether they are freight solutions, motorist solutions or public transport solutions ...<sup>143</sup>

**1.100** Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, also sought to provide some additional information as to why \$800 million had been contributed from the WestConnex budget. Mr Kanofski explained that ‘it is important to understand that the Sydney Gateway and WestConnex share one objective ... that is ‘to connect St Peters interchange to Sydney Airport’. However, Sydney Gateway had ‘a number of objectives’ including ‘improving freight rail to the airport and the port, relieving congestion around Sydney Airport and connecting St Peters interchange to the airport’. Mr Kanofski therefore

<sup>139</sup> Evidence, Mr Kanofski, 22 May 2017, p 56-57.

<sup>140</sup> Evidence, The Hon Stuart Ayres MP, Minister for Western Sydney, WestConnex, and Sport, 6 September 2017, Budget Estimates Hearing, p 6.

<sup>141</sup> Evidence, The Hon Stuart Ayres MP, 6 September 2017, p 6.

<sup>142</sup> Evidence, The Hon Stuart Ayres MP, 6 September 2017, p 6.

<sup>143</sup> Evidence, The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, 6 September 2017, Budget Estimates Hearing, p 6.

concluded that it was ‘natural that the WestConnex project should make a contribution to Sydney Gateway’:

It is natural that the WestConnex project should make a contribution to Sydney Gateway but Sydney Gateway is a much broader project. I do not think that anyone would argue that duplicating the freight line, for example, is part of WestConnex. What we have here is a single objective that crosses over between these two projects.<sup>144</sup>

**1.101** Mr Kanofski also provided further commentary on the allocation of the \$800 million to the Gateway project from the WestConnex budget:

The reality is that the \$16.8 billion includes an allocation of \$800 million. We will be expecting Sydney Motorway Corporation to contribute \$800 million towards Sydney Gateway when it is built.

The Sydney Motorway Corporation has never had a commission to study Sydney Gateway. The Sydney Motorway Corporation took over the development of the delivery of the WestConnex project on 1 October 2015. At that stage Sydney Gateway was already an RMS project. It has never been a Sydney Motorway Corporation project.<sup>145</sup>

### ***Sydney Motorway Corporation***

**1.102** The WestConnex scheme is being delivered by the Sydney Motorway Corporation, a private company established by the NSW Government in August 2014 under the *Corporations Act 2001 (Cth)* on behalf of the State. The organisation is governed by a majority independent Board appointed by its shareholding Ministers who are: The Minister for WestConnex The Hon. Stuart Ayres MP, Treasurer The Hon. Dominic Perrottet MP and Minister for Finance, Services and Property The Hon. Victor Dominello MP.

**1.103** Roads and Maritime Services commissioned Sydney Motorway Corporation to deliver and finance WestConnex.<sup>146</sup> Roles and responsibilities are set out in concession deeds for the design, construction, operation, maintenance and financing of WestConnex projects.

**1.104** The financing arrangements for the scheme are undoubtedly complex with each stage of the scheme to be financed on a stand-alone basis.<sup>147</sup> For example, Stage 1 (i.e M4 Widening and M4 East) and Stage 2 (New M5) of WestConnex will be funded through private sector debt raised against the collection of future tolling revenue (about 70 per cent) as well as contributions from the State (\$1.8 billion) and Federal governments (\$1.5 billion).<sup>148</sup>

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<sup>144</sup> Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 6 September 2017, Budget Estimates Hearing, p 5.

<sup>145</sup> Evidence, Mr Kanofski, 6 September 2017, p 5.

<sup>146</sup> WestConnex, Sydney Motorway Corporation, [www.westconnex.com.au/sydney-motorway-corporation](http://www.westconnex.com.au/sydney-motorway-corporation)

<sup>147</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 10.

<sup>148</sup> Evidence, Mr Dennis Cliche, Chief Executive Office, Sydney Motorway Corporation, 22 May 2017, p 43.



- 1.105** However, it is also important to note that the government's WestConnex tolling policy is that tolls raised on each individual section of the scheme will go towards funding the entire WestConnex scheme.<sup>149</sup> That is, revenue collected from the M4 Widening section of the motorway will be used to fund that section as well as its connection to the M5, and the duplication of the M5.<sup>150</sup> This is discussed further in Chapter 2.
- 1.106** Concession agreements for Stage 1 and Stage 2 have been signed between Roads and Maritime Services and subsidiary companies of Sydney Motorway Corporation. These concession agreements provide the subsidiary companies with a right to collect tolls on these stages of the WestConnex scheme upon their completion.<sup>151</sup> Like other concession agreements, the maximum toll that the operator can apply, the escalation rate, and the term of agreement are determined by the NSW Government.
- 1.107** In May 2017, the NSW Government announced its plans to sell a majority stake of at least 51 per cent in Sydney Motorway Corporation. Proceeds from this sale are to part fund the final stage of the WestConnex project (the M4-M5 Link).<sup>152</sup> On 16 August 2017, the Government confirmed it will launch a competitive trade sale in late 2017 and has called for parties to register interest in Sydney Motorway Corporation and its subsidiaries. The transaction is targeted to close in mid-2018.<sup>153</sup> The sale of Sydney Motorway Corporation is discussed further in Chapter 2.
- 1.108** A joint press release from the Treasurer and the Minister for WestConnex reported that the government will pursue the sale of 'a 51 per cent stake' in Sydney Motorway Corporation. The Treasurer, The Hon Dominic Perrottet MP advised that the sale strategy was 'informed by extensive market sounding and analysis by NSW Treasury and would ensure a competitive tender process that would deliver the best value for the people of NSW'.<sup>154</sup>

### *Tolling arrangements for WestConnex*

- 1.109** As discussed at the onset of this section, the first stage of the WestConnex – the M4 Widening which runs from Homebush to Parramatta, opened to traffic in July 2017. A toll was subsequently introduced one month later on 15 August 2017. The Hon Stuart Ayres MP, Minister for WestConnex, confirmed that the financial cost of the one-month toll free period was borne by the New South Wales Government, at a 'flat fee of \$15 million'.<sup>155</sup> The key features of this toll are provided in Table 12 below.

<sup>149</sup> Evidence, Mr Kanofski, 22 May 2017, p 74.

<sup>150</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 20.

<sup>151</sup> Evidence, Mr Kanofski, 11 April 2017, p 34; Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 17

<sup>152</sup> Evidence, Mr Cliche, 22 May 2017, p 43.

<sup>153</sup> NSW Treasury, Current projects, WestConnex, <https://www.treasury.nsw.gov.au/projects-initiatives/commercial-transactions/current-projects>

<sup>154</sup> NSW Government, Media Release, *NSW Government confirms funding strategy to deliver Westconnex*, 16 August 2017.

<sup>155</sup> Evidence, The Hon Stuart Ayres, 6 September 2017, p 20.

**Table 12 WestConnex – M4 Widening**

<b>WestConnex – M4 Widening</b>	
<b>Tolling method</b>	Distance based toll / each direction.
<b>Concession holder</b>	WCX M4 Pty Limited (a Sydney Motorway Company subsidiary).
<b>Cost – Class A (Cars)</b> (At 15 August 2017)	Initial flagfall (\$1.22) + \$0.45/kilometre up to a maximum of \$4.56. <sup>156</sup>
<b>Cost – Class B (Trucks)</b> (At 15 August 2017)	A heavy vehicle multiplier of x 3 will apply.
<b>Escalation rate</b>	Maximum of the consumer price index or four per cent per annum, whichever is greater, until 2040. After which, adjustments will be made in alignment with the consumer price index. <sup>157</sup>
<b>Procurement Arrangement</b>	RMS issued a concession agreement to Sydney Motorway Corporation to deliver and finance the WestConnex project. This stage was estimated to have cost \$490 million.
<b>Contract start date</b>	December 2014.
<b>Concession term</b>	Ends 2060.
<b>Contract available</b>	Contract deeds available online. <sup>158</sup> No contract summary available.

**1.110** Unlike other toll roads in operation, information relating to the WestConnex – M4 Widening, including a contract summary, is not provided on the PPP pages of the NSW Treasury website. No evidence was received to the inquiry to confirm why this was the case.

**1.111** Opposition to the re-introduction of tolling on the M4 was the subject of a petition presented to the Legislative Assembly by Ms Prue Car MP on 23 May 2017. The petition received over 10,000 signatures and was discussed in the House on 22 June 2017. The Government response to the petition was received on the 11 July 2017, from The Hon Stuart Ayres, MP.<sup>159</sup> Other petitions opposing the construction of the WestConnex project have also been

<sup>156</sup> WestConnex, New M4 tolls, <https://www.westconnex.com.au/NewM4tolls>

<sup>157</sup> WestConnex website, tolls, [www.westconnex.com.au/using-westconnex/tolls](http://www.westconnex.com.au/using-westconnex/tolls); Evidence, Mr Kanofski, 11 April 2017, p 35.

<sup>158</sup> Roads and Maritime, Class 3 Contract Documents, WestConnex M4 Widening, <http://www.rms.nsw.gov.au/business-industry/partners-suppliers/tenders-contracts/contracts-awarded/class-3-contract-documents.html>

<sup>159</sup> Government Response to Petition, The re-introduction of tolls on the M4, The Hon Stuart Ayres, MP, Received by the Office of the Clerk of the Legislative Assembly, 11 July 2017.

presented, including one from Ms Jenny Leong MP in October 2015. This petition also received over 10,000 signatures.<sup>160</sup>

**1.112** In relation to the number of cars using the newly tolled road, Minister Ayres confirmed that since the toll was introduced, ‘around 75 per cent of people who utilised the motorway prior to the toll being implemented’ continue to use the road. However, Minister Ayres argued that this was ‘very consistent with, if not better than, the performance of the introduction of other toll roads in the past in New South Wales’.<sup>161</sup>

**1.113** Regarding the traffic impact of the introduction of the toll on Parramatta Road, Minister Ayres stated:

There is no doubt there has been an increase in traffic on Parramatta Road because there has been a reduction in the amount of traffic that was on the motorway before the toll was introduced. As you would be aware, when you increase the price of a product the demand for it drops. That means traffic will go and test other roads. That is a fairly consistent approach with the introduction of toll roads.<sup>162</sup>

**1.114** The toll to be paid on each of the WestConnex stages will be made up of the following components. These include an initial flagfall, i.e. a set fee for travelling on the WestConnex of \$1.22 and a per kilometre rate of \$0.45/kilometre (in 2017 dollars). A trip cap of \$8.60 will apply across the entire WestConnex scheme as each of the individual stages complete. A heavy vehicle multiplier of x 3 will apply to trucks.<sup>163</sup>

**1.115** The concession agreement provides that these prices may be adjusted at a maximum of four per cent or the consumer price index per annum, whichever is greater, until 2040. After this, adjustments will be made in alignment with the consumer price index.<sup>164</sup>

**1.116** The WestConnex website presents the maximum tolls that will be applied on the remaining individual sections of the scheme. These are outlined in Table 13 below.

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<sup>160</sup> Petition, Ms Jenny Leong, MP, Requesting that the Government halt the tender and construction processes for the WestConnex and establish a parliamentary inquiry into the project, tabled 13 October 2015.

<sup>161</sup> Evidence, The Hon Stuart Ayres MP, 6 September 2017, p 2.

<sup>162</sup> Evidence, The Hon Stuart Ayres MP, 6 September 2017, p 4.

<sup>163</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 6.

<sup>164</sup> WestConnex website, tolls, [www.westconnex.com.au/using-westconnex/tolls](http://www.westconnex.com.au/using-westconnex/tolls).

**Table 13** Maximum tolls to be applied on stages of WestConnex

Section	Open to traffic	Section	Maximum toll (Class A- Cars)
<b>M4 Widening</b>	2017	Parramatta (Church Street) to Homebush (Homebush Bay Drive).	\$4.56
<b>M4 East</b>	2019	Homebush (Homebush Bay Drive) to Haberfield (Parramatta Road and City West Link).	\$3.95
<b>New M5</b>	2020	Beverly Hills (King Georges Road) to St Peters (St Peters Interchange).	\$6.19
<b>M5 East</b>	2020	Beverly Hills to General Holmes Drive.	\$6.18
<b>M4-M5 Link</b>	2023	Haberfield to St Peters.	\$6.50

Source: WestConnex, Tolls for WestConnex stages<sup>165</sup>

- 1.117** On 13 October 2017 it was reported in the media that the NSW Audit Office will re-examine the WestConnex project. The report stated that the Auditor-General, Ms Margaret Crawford, had not yet determined the scope of the audit. Mr Barry Underwood, Executive Director of the Audit Office is also reported to have stated ‘it is not yet clear whether Sydney Motorway Corporation, would be examined as part of the audit’.<sup>166</sup>

## Other proposed toll roads

- 1.118** As illustrated above, the number of tolls is set to increase on Sydney’s roads upon completion of the remaining stages of the WestConnex project and completion of the NorthConnex in 2019. The number of tolled roads in Sydney could potentially rise further still, with tolling arrangements under consideration for the Western Harbour and Beaches Link and the Proposed F6 Extension. This section provides an overview of the tolling arrangements, confirmed or otherwise, for these projects.

### NorthConnex

- 1.119** NorthConnex will be a new underground motorway linking the M1 Pacific Motorway at Wahroonga to the Hills M2 Motorway at Pennant Hills Road Interchange at West Pennant Hills.<sup>167</sup> The project includes integration work along the Hills M2 Motorway to enable the

<sup>165</sup> WestConnex, Tolls for WestConnex stages, <https://www.westconnex.com.au/using-westconnex/tolls>.

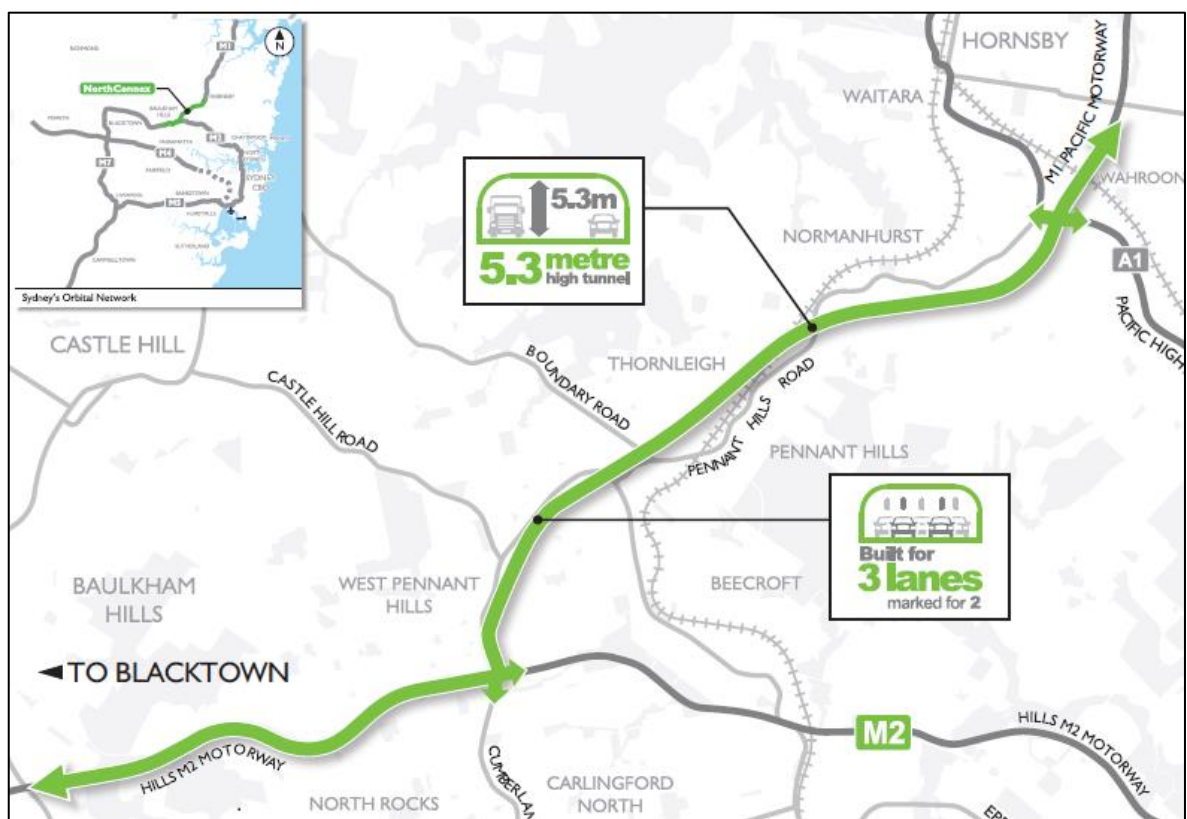
<sup>166</sup> Matt O’Sullivan, ‘NSW Auditor-General to inquiry into WestConnex for a second time’, *Sydney Morning Herald*, 13 October 2017.

<sup>167</sup> Submission 109, Transport for NSW, p 7.

merge of traffic from the tunnel onto the Hills M2 Motorway. The motorway is scheduled for completion in late 2019 with tolling expected to commence shortly thereafter.<sup>168</sup>

- 1.120** This route is important for the movement of freight and the NorthConnex will provide a motorway grade bypass of the Sydney CBD. It is also reported that the project will result in the removal of around 5,000 heavy vehicles off Pennant Hills Road each day, thereby improving air quality and reducing traffic noise as well as reducing congestion, and improving amenity and connectivity for those living and working in the area.<sup>169</sup> A map of the project is provided in Figure 3 below.

**Figure 3 NorthConnex**



Source: Transurban

- 1.121** The NorthConnex project as it exists today originated from an unsolicited bid put forward by Transurban and Westlink M7 shareholders in 2012. The final project was developed under the NSW Government Unsolicited Proposal Guide and the final contract was agreed in 2015.<sup>170</sup> Major equity holders for the NorthConnex are Transurban (50 per cent) with Canada Pension Plan and Queensland Investment Corporation owning the remaining 50 per cent.<sup>171</sup>

<sup>168</sup> Answers to supplementary questions, Mr Andrew Head, Transurban, 18 May 2017, p 23.

<sup>169</sup> Submission 109, Transport for NSW, p 7.

<sup>170</sup> NSW Treasury, Public Private Partnerships, Awarded projects, Roads, NorthConnex, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>171</sup> Evidence, Mr Andrew Head, Group General Manager, Transurban, 11 April 2017, p 3.

- 1.122** The concession agreement sets out the financing arrangements for the \$3 billion dollar project. These include:
- Private sector debt raised against tolling revenue collected from users.<sup>172</sup>
  - Contributions of \$405 million from each of the NSW and Federal Governments.<sup>173</sup>
  - A variation of the M7 concession agreement. This includes increasing the tolls for trucks to three times that of cars, and an extension of the term of concession of 11½ years.<sup>174</sup>
- 1.123** The Government has advised that car and truck tolls will be aligned with the M2 pricing.<sup>175</sup> However, actual prices as well as the proposed escalation rate have not been confirmed within the evidence provided. The concession will expire in 2048.<sup>176</sup>
- 1.124** As outlined above, tolls are expected to commence in late 2019 and there is currently no ‘toll free’ period specified within the concession agreement. Transurban advised that it, along with its partners, ‘will consider any toll-free period closer to the NorthConnex opening date’.<sup>177</sup>
- 1.125** The contract also includes a revenue sharing arrangement whereby the State will receive payments should traffic revenues exceed base case projections. The risk of revenues falling below projections will be borne by the toll operator.<sup>178</sup>
- 1.126** Unlike other tolled roads in Sydney, heavy vehicles not delivering in the local area will be required to use NorthConnex.<sup>179</sup>
- 1.127** This requirement is set out within the Project Deeds for NorthConnex and subject to certain conditions being satisfied, Roads and Maritime Services will compensate the NorthConnex operator if a certain percentage of heavy vehicles continue to use Pennant Hills Road. Commenting on expected extent of any compensation payable, Mr Kanofski advised, that is expected to be ‘relatively modest’, as it is expected that most trucks will move to the NorthConnex in any event.<sup>180</sup>
- 1.128** Questioned about the level of compensation that will be provided to the operator should the forecast number of heavy vehicles fail to use the model, Roads and Maritime Services stated: ‘The specific compensation calculations are Commercial in Confidence’.<sup>181</sup> Transurban states

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<sup>172</sup> Submission 109, Transport for NSW, p 7.

<sup>173</sup> NSW Treasury, Public Private Partnerships, Roads, NorthConnex, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>174</sup> Submission 109, Transport for NSW, p 7; NSW Treasury, Public Private Partnerships, Awarded projects, Roads, M7, <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

<sup>175</sup> Submission 109, Transport for NSW, p 7.

<sup>176</sup> Submission 109, Transport for NSW, p 7.

<sup>177</sup> Answers to supplementary questions, Mr Head, p 23.

<sup>178</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 20.

<sup>179</sup> Answers to supplementary questions, Mr Head, p 26.

<sup>180</sup> Evidence, Mr Kanofski, 11 April 2017, p 78.

<sup>181</sup> Answers to supplementary questions, Mr Kanofski, 21 June 2017, p 5.

that ‘this would represent compensation for loss of revenue from tolls that those vehicles would have been expected to pay had they instead used NorthConnex’.<sup>182</sup>

- 1.129** At the recent Budget Estimates hearing the Chief Executive of Roads and Maritime Services confirmed that the specific regulatory option to be used had not yet been determined.<sup>183</sup>
- 1.130** Notwithstanding the purported benefits of the scheme, a number of inquiry participants expressed concerns about the implementation of NorthConnex. These related to issues of transparency, competition and the unsolicited proposal process. These concerns are discussed in further detail in Chapter 2.

### **Other roads projects in pipeline**

- 1.131** A number of other roads projects have been identified by the NSW Government for further planning and investigation. These include the Beaches Link and the Western Harbour Tunnel, and the Proposed F6 extension.
- 1.132** These projects are at different stages in the planning process and therefore any tolling arrangements have yet to be confirmed by the NSW Government. The status of these road projects as confirmed by Roads and Maritime Services, as well as proposals reported in the media are presented below.

### **Beaches Link and the Western Harbour Tunnel**

- 1.133** The Beaches Link is a tunnel which will ‘connect to the Warringah Freeway, cross underneath Middle Harbour connecting with the Burnt Bridge Creek Deviation at Balgowlah and upgrade the Wakehurst Parkway to two lanes, between Seaforth and Frenchs Forest’.<sup>184</sup>
- 1.134** The Western Harbour Tunnel will ‘connect to WestConnex at the Rozelle Interchange, cross underneath Sydney Harbour between the Birchgrove and Waverton areas and connect with the Warringah Freeway at North Sydney’.<sup>185</sup>
- 1.135** Roads and Maritime Services confirmed the status of the project, outlining that proposed tolling arrangements would be considered in the next stage of work which is expected to be completed in 2018. RMS stated:

The NSW Government has announced the preferred route, the start of geotechnical drilling and the commencement of market sounding process for the delivery of the Western Harbour Tunnel and Beaches Link. The next stage of work is expected to be completed in mid-2018 and will include a reference design; confirmed project

<sup>182</sup> Answers to supplementary questions, Mr Head, p 26.

<sup>183</sup> Evidence, Mr Kanofski, 6 September 2017, p 26.

<sup>184</sup> Roads and Maritime Services Fact Sheet, Western Harbour Tunnel and Beaches Link, June-July 2017, p 1.

<sup>185</sup> Roads and Maritime Services Fact Sheet, Western Harbour Tunnel and Beaches Link, June-July 2017, p 1.

costings; funding strategy including tolling options and private sector involvement; and construction timeline including start and completion dates.<sup>186</sup>

### **Proposed F6 Extension**

- 1.136** The proposed F6 Extension Motorway would connect Sydney's current motorway network, southern Sydney and the Illawarra. Project information contained on the RMS website states that 'Roads and Maritime Services will carry out geotechnical analysis to determine underground rock and soil conditions along the F6 road corridor. 'Geotechnical investigations will be carried out...starting from May 2017. It is expected up to 30 sites will be drilled over around a three month period'. The fact sheet further states that these investigations will 'inform recommendations about the current corridor'.<sup>187</sup>
- 1.137** Roads and Maritime Services, advising on the status of the project, states that 'No decision has yet been made regarding the construction of the proposed F6 Extension'.<sup>188</sup> This was confirmed by the Roads Minister, The Hon Melinda Pavey MP at the recent Budget Estimates hearing. Minister Pavey also stated that costings had not yet been completed for the project.<sup>189</sup>

### **Committee comment**

- 1.138** For some three decades successive governments have delivered investments in the road network through the use of tolling. The committee acknowledges that this represents a clear policy choice for a government and is one that has been made consistently by incumbent governments.
- 1.139** As has been the case in some other Australian states and territories, the private sector has played a significant role in the construction and finance of major road projects in New South Wales. In return, and with specific conditions stipulated within concession agreements with Roads and Maritime Services, private companies have received the right to recoup the finance provided through the collection of tolls over many decades. As this chapter clearly illustrates, this approach has resulted in a disparate patchwork of tolling regimes in place across the Sydney metropolitan area. And while this chapter does not seek to discuss the efficacy of the decisions that have resulted in this situation, it does seek to make accessible and clear information on the separate arrangements in place as well as those proposed in the coming years.
- 1.140** The presentation of this information raises some important issues for the committee. With nine tolling regimes already in place, a further five to be introduced upon completion of the remaining stages of the WestConnex and NorthConnex, and a clear intent from the government to apply tolls to fund future roads priorities, it is more important than ever that

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<sup>186</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 11

<sup>187</sup> Roads and Maritime Services, Fact sheet 2017, Proposed F6 Extension Geotechnical investigations, p 2. <http://www.rms.nsw.gov.au/documents/projects/sydney-south/f6-corridor/f6-corridor-fact-sheet.pdf>

<sup>188</sup> Answers to questions on notice, Mr Kanofski, 18 May 2017, p 3.

<sup>189</sup> Evidence, The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, 6 September 2017, p 5.



the NSW Parliament and the community become fully informed about the issue of road tolling, road tolling arrangements and all relevant associated matters so that careful and considered decisions can be made regarding this critically important public policy area.

- 1.141** The committee notes the inherent complexity of the development and negotiation process which dictates the price of a road toll, its escalation rate and the length of a concession agreement. The committee also understands that there are legitimate commercial in confidence considerations associated with developing and implementing road tolling projects. From the evidence and information presented to the committee during the inquiry, what is clear is that many people are confused about the issues around road tolling. However, there has been no evidence or suggestion of improper or corrupt decision making or behaviour. The committee notes that due to the significant sizes of the projects, in terms of their costs and values, the NSW Parliament and the community are entitled to high levels of transparency. This is discussed further in Chapter 2. The Committee endorses the use of private sector arrangements for the construction and operation of major arterial roads, where appropriate, and the tolling arrangements that are required to finance them.
- 1.142** The committee notes that unlike other toll roads in operation, a contract summary is not available for the newly opened WestConnex – M4 widened project. Irrespective of the reasons why a contract summary has not been published, the committee believes that one should be developed and published on the WestConnex website.

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### **Recommendation 1**

That the NSW Government publish a contract summary of the WestConnex – M4 Widening Project Deeds on the WestConnex website.

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## Chapter 2 Transparency of tolling regimes

Many of the concerns raised throughout the inquiry centered on issues of transparency of tolling regimes. Some inquiry participants called for enhanced visibility of the detail contained within road toll concession agreements as well as the processes used to determine these conditions. A number of other measures to improve transparency were also suggested to the committee. This chapter discusses these issues, and concludes with a discussion on associated issues such as the visibility of private sector returns from tolled roads, cross-subsidisation of tolled roads and competition in the tolling market.

### Existing policies and procedures

- 2.1** A number of policies and procedures exist within the New South Wales public sector to inform and regulate government decision making relating to the delivery of large infrastructure projects such as toll roads.
- 2.2** The NSW Government strongly argued that large infrastructure projects are subject to ‘rigorous oversight’, and that a range of ‘established processes’ exist to enable the Government to make ‘balanced assessments and decisions in the public interest’. Decisions are based on ‘objective evidence, analysis and advice, and are supported by appropriate consultation’.<sup>190</sup>
- 2.3** A number of agencies are routinely involved to ensure ‘adequate independent checks and balances’ on infrastructure projects are conducted.<sup>191</sup> Agencies include: Transport for NSW, Roads and Maritime Services, NSW Treasury, Infrastructure NSW, and the Department of Planning and Environment.<sup>192</sup> This section of the chapter explains some of the key policies and steps that large infrastructure projects such as toll roads must pass through to receive government approval to proceed.

### Making the investment decision - Business Cases

- 2.4** Business Cases are an important step in the investment decision making process as they examine a proposed project’s merit through the consideration of costs, benefits, risks and other implementation requirements. Both Preliminary and Final Business Cases are required by NSW Treasury for large projects. These should include economic and financial appraisals of a range of options, consistent with NSW Treasury guidelines.<sup>193</sup>

### Infrastructure Investor Assurance Framework

- 2.5** The NSW Infrastructure Investor Assurance Framework (IIAF) is an independent, risk-based assurance process for capital projects with an estimated capital cost over \$10 million. The framework is intended to provide a level of confidence to Cabinet that capital projects are

<sup>190</sup> Submission 109, Transport for NSW, p 14.

<sup>191</sup> Submission 109, Transport for NSW, p 14.

<sup>192</sup> Submission 109, Transport for NSW, p 14.

<sup>193</sup> Submission 109, Transport for NSW, p 14; NSW Treasury, *Treasury Circular NSW TC12/19, Submission of Business Cases*, p 1.

being effectively developed and delivered through the completion of independent peer reviews at key decision points during a project's lifecycle – such as at the investment decision (Business Case), procurement (pre-tender and tender evaluation) and delivery (pre-commissioning) stages.<sup>194</sup> Infrastructure investor assurance is a confidential process and reports are confidential.<sup>195</sup>

### Public Private Partnership Guidelines

**2.6** In New South Wales, any public infrastructure project with a total estimated capital value exceeding \$100 million must be assessed against a potential Public Private Partnership (PPP) procurement method, having regard to value for money considerations as per requirements set out in the NSW Public Private Partnership Guidelines 2017 (The Guidelines).<sup>196</sup> All NSW Government agencies including state owned corporations are required to comply with the Guidelines.<sup>197</sup>

**2.7** The Guidelines are based on the following principles:

- Ensure PPPs are procured in a professional and transparent manner, minimising tender costs and providing fair opportunity to all prospective private sector participants
- Ensure stability of PPP delivery structures, with sustainable debt financing and robust commercial and financial structures
- The Government will not guarantee private sector borrowings
- Encourage innovation in the provision of infrastructure and service delivery, and
- Ensure the timely disclosure of information on contracts and tenders.<sup>198</sup>

**2.8** As outlined in Chapter 1, the Guidelines set out a defined approval process for potential PPP projects. Generally, Cabinet approvals are required at project funding and procurement decision stages.<sup>199</sup> Furthermore, the Expenditure Review Committee (a sub-committee of Cabinet) is required to provide approvals at certain stages of the tender process. The Expenditure Review Committee will consider whether the 'procurement remains in the public interest and is likely to provide value for money'.<sup>200</sup> As part of the broader Government approval process, Gateway Reviews at relevant points should be conducted as per the

<sup>194</sup> Infrastructure New South Wales, *Infrastructure Investor Assurance Framework*, December 2016, p 15, [http://www.infrastructure.nsw.gov.au/media/58290/Final%20Pub%20IIAF%20Paper%20v%205.2.2\\_web.pdf](http://www.infrastructure.nsw.gov.au/media/58290/Final%20Pub%20IIAF%20Paper%20v%205.2.2_web.pdf)

<sup>195</sup> Infrastructure New South Wales, *Infrastructure Investor Assurance Framework*, December 2016, p 7, [http://www.infrastructure.nsw.gov.au/media/58290/Final%20Pub%20IIAF%20Paper%20v%205.2.2\\_web.pdf](http://www.infrastructure.nsw.gov.au/media/58290/Final%20Pub%20IIAF%20Paper%20v%205.2.2_web.pdf).

<sup>196</sup> Answers to supplementary questions, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 18 May 2017, p 1.

<sup>197</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, p 1.

<sup>198</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 1.

<sup>199</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, p 9.

<sup>200</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 1.

requirements of the Infrastructure Investment Assurance Framework prior to obtaining Cabinet approvals.<sup>201</sup>

### Unsolicited proposals

- 2.9** Unsolicited proposals for PPPs are proposals initiated by the private sector. The NorthConnex project originated through this process. Unsolicited proposals for new infrastructure must comply with the NSW Government's *Unsolicited Proposals: Guide for Submission and Assessment*. This policy is administered by the Department of Premier and Cabinet (DPC) and has been designed to 'encourage non-government sector participants to approach government with innovative infrastructure or service delivery solutions, where the government has not requested a proposal and the proposal is uniquely placed to provide a value for money solution'.<sup>202</sup>
- 2.10** The *Unsolicited Proposals Guide for Submission and Assessment* defines an evaluation process. In summary, it includes a four staged approach which includes: concept review, preliminary and strategic assessment, detailed proposal and negotiation of a final binding offer.<sup>203</sup>
- 2.11** An unsolicited proposals assessment committee typically includes representatives from the Department of Premier and Cabinet, NSW Treasury and Infrastructure NSW. Where a proposal requires deeper consideration, membership may be extended to include other agencies or experts with subject matter expertise.<sup>204</sup> A Probity Advisor will also be appointed for large-scale projects at Stages 2 and 3 of the assessment process.<sup>205</sup>
- 2.12** Unsolicited proposals must be submitted to Cabinet for approval prior to the progression at a number of stages during the assessment process and before the signing of any agreement.
- 2.13** Professor Hodge gave evidence that unsolicited bids and proposals were 'dangerous because they are usually less visible in respect of the State's priorities than many other kinds of options'. He indicated that there should be much more transparency, and debate about whether unsolicited bids were in the interest of the State.<sup>206</sup>

### Formal planning approvals

- 2.14** Formal planning approvals through the Department of the Planning under the *Environment Planning and Assessment Act 1979* must also be gained prior to the implementation of projects.

<sup>201</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, p 9.

<sup>202</sup> NSW Government, Department of Premier and Cabinet (20 September 2016), *Unsolicited Proposals*, <https://www.nsw.gov.au/contact-us/unsolicited-proposals/>.

<sup>203</sup> Department of Premier and Cabinet, *Unsolicited Proposals – Guide for Submission and Assessment*, August 2017, pp 2-3.

<sup>204</sup> Evidence, Mr Simon Draper, Deputy Secretary, Department of Premier and Cabinet, 22 May 2017, p 66.

<sup>205</sup> Department of Premier and Cabinet, *Unsolicited Proposals – Guide for Submission and Assessment*, August 2017, p 17.

<sup>206</sup> Evidence, Professor Graeme Hodge, Professor of Law, Monash University, 1 April 2017, p 7.

This includes the preparation of Environmental Impact Assessments which is the process used to identify potential environmental effects of a development proposal.<sup>207</sup>

- 2.15** The Government argued that the summation of the above procedures and polices ensures that road tolling contracts are signed after a robust assessment process, which adequately protects the public interest. The next section of the chapter outlines the Government's approach to releasing information about the road tolling contracts.

### **Public disclosure of information**

- 2.16** Transport for NSW argued that a number of legislative provisions exist to support the transparency of road tolling information, including concession agreements.<sup>208</sup> For example, the *Government Information (Public Access) Act 2009* (GIPA Act) requires that contracts of \$5 million or more must be disclosed in full, less any confidential information, within 45 days of the contract becoming effective. These contracts are currently published on the Roads and Maritime Services website.<sup>209</sup> Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, described the extent of redacted information as 'minor', stating that 'redactions [were] generally limited'.<sup>210</sup>
- 2.17** The *NSW Public Private Partnership Guidelines 2017* also requires a project summary of PPP arrangements to be published within 90 days of becoming effective. These must be prepared by the responsible agency with the assistance of legal or technical experts as well as NSW Treasury. Project summaries must typically include a project overview, as well as commercial and contractual features which summarise the key aspects of the project's contracts. A legal expert must author or declare that summations of the project's contracts are correct.<sup>211</sup> These are currently published on the Public Private Partnership pages of the NSW Treasury's website.<sup>212</sup>
- 2.18** The NSW Government submission states that 'contracts are audited by the Auditor-General and tabled in Parliament. A contract summary is then prepared and published on the NSW Treasury website'.<sup>213</sup> However, it appears that this requirement may have recently changed. The current NSW PPP Guidelines states that 'the Auditor-General is no longer required to audit contract summaries as Project Contracts (redacted) are now released under the GIPA Act and given the costs and time involved for the Auditor General to audit the Project Summaries'. Furthermore, project summaries will no longer be required to be tabled in Parliament.<sup>214</sup>

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<sup>207</sup> Submission 109, Transport for NSW, p 14.

<sup>208</sup> Submission 109, Transport for NSW, p 14.

<sup>209</sup> Submission 109, Transport for NSW, p 14; *Government Information (Public Access) Act 2009* (NSW), ss 27, 31-32.

<sup>210</sup> Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 11 April 2017, p 37.

<sup>211</sup> NSW Treasury, *NSW Public Private Partnerships Guidelines 2017*, pp 42-43.

<sup>212</sup> Submission 109, Transport for NSW, p 14.

<sup>213</sup> Submission 109, Transport for NSW, p 14.

<sup>214</sup> NSW Treasury, *NSW Public Private Partnerships Guidelines 2017*, p 5.

**2.19** The creation of legal entities like Sydney Motorway Corporation, whether intended or otherwise, can significantly impact on the public's ability to access information regarding road tolling projects. This is discussed further later in this chapter.

### **Audit Office of NSW**

**2.20** The Acting Auditor-General, Mr Ian Goodwin, set out the Audit Office's roles and responsibilities as they related to tolling issues in NSW. He explained that of most relevance was the Audit Office's performance audit work which examines the 'efficiency, effectiveness and compliance' of a particular government activity or major project. Around 17 performance audits are performed a year and topics are selected taking a risk-based approach as well as advice from Parliament and others.<sup>215</sup>

**2.21** Commenting on the nature of the work undertaken, Mr Goodwin advised that the Audit Office 'do not comment on whether road tolling is warranted per se', but will instead focus on 'process that supports road tolling'. For example, it may comment 'on whether the process of collecting tolls is efficient or whether the business case to support a toll was robust through a business case'.<sup>216</sup> The Audit Office's recent report into the NorthConnex is an example of such a performance audit.

**2.22** Unlike other many other Australian jurisdictions, the NSW Auditor-General does not have powers to examine activities of a private sector organisation that provides services on behalf or in partnership with Government.<sup>217</sup>

### **Concerns relating to the transparency of tolling arrangements**

**2.23** Notwithstanding the requirements outlined above, many inquiry participants expressed concerns about a lack of transparency in tolling agreements between the NSW Government and relevant private sector operators, including in how toll prices are determined. Concerns generally centred on the following areas:

- The transparency of the PPP negotiation process itself, and the imbalance in negotiating powers between the private and public sectors
- Lack of visibility of private sector returns and other financial information
- Potential impacts of limited competition in the tolling market
- Revenue collected from one toll road being used to fund other motorway developments
- The rationale and reasoning for the use of the existing escalation rates
- Transparency and accountability arrangements specific to Sydney Motorway Corporation.

<sup>215</sup> Evidence, Mr Ian Goodwin, Acting Auditor-General, Audit Office of New South Wales, 22 May 2017, p 82.

<sup>216</sup> Evidence, Mr Goodwin, 22 May 2017, p 82.

<sup>217</sup> Evidence, Mr Goodwin, 22 May 2017, p 82; Answers to questions on notice, Mr Ian Goodwin, Acting Auditor-General, Audit Office of New South Wales, 22 June 2017, p 6.

2.24 Each of these concerns is discussed further below.

### **Transparency of negotiation process and contractual arrangements**

2.25 Many inquiry participants raised concerns about the transparency of the negotiation process. This section presents these concerns and provides some additional detail on the relevant NSW government policy relating to the negotiation process.

2.26 For instance, Professor Graeme Hodge, Professor of Law at Monash University, was generally critical of the levels of transparency relating to infrastructure contracts in Australia, stating: ‘I personally believe that our systems are insufficiently transparent and too secretive’.<sup>218</sup> Professor Hodge argued that such contracts were ‘essentially two-way deals between government and business’ and did not directly involve relevant communities and accountability bodies.<sup>219</sup>

### **General roles and responsibilities**

2.27 As outlined in Chapter 1, a number of steps must be undertaken by Roads and Maritime Services as the commissioner of toll road projects. The negotiation stage takes place after the selected bidder(s) has been identified through the Request for Proposals (RFP) process which culminates with the evaluation of the PPP bids against the project’s value for money criteria.<sup>220</sup>

2.28 Roads and Maritime Services advised that ‘highly experienced, senior professionals from Treasury, Transport for NSW, and Roads and Maritime Services represent the NSW Government’ when negotiations over a road tolling agreement take place.<sup>221</sup> The specific involvement of NSW Treasury may vary depending on the project. However, some requirements are set out in in *NSW Public Private Partnership Guidelines 2017* and are discussed below.

2.29 Requirements outlined in the PPP Guidelines include the completion of documentation for approval to appoint a preferred bidder - for sign off by Cabinet by the responsible agency, together with NSW Treasury, and negotiation parameters. Agencies must also contact Treasury for a template Negotiation Plan. The committee has not received any evidence as to indicate what steps are included within this plan.<sup>222</sup>

2.30 The Guidelines also set out requirements for responsible agencies to contact NSW Treasury for procedures, templates and checks relevant to the financial close of the project – that is, the stage in which all conditions of the agreement have been satisfied, documents have been executed and funding can be drawn down. These include a standard list of conditions precedent and acceptable financial close protocol.<sup>223</sup> As per the step above, the committee has not received any evidence to indicate what steps are included within these documents.

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<sup>218</sup> Evidence, Professor Graeme Hodge, Professor of Law, Monash University, 12 April 2017, Sydney Transcript, p 2.

<sup>219</sup> Evidence, Professor Hodge, 12 April 2017, p 2.

<sup>220</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, pp 35-37.

<sup>221</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 2.

<sup>222</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, p 37.

<sup>223</sup> NSW Treasury, *NSW Public Private Partnership Guidelines 2017*, p 37.



- 2.31** Furthermore, toll road PPPs are usually considered joint financing arrangements, as defined by the *Public Authorities (Financial Arrangements) Act 1987*. This requires that the Treasurer's authority be obtained for a public authority to enter into such an arrangement, on recommendation of the relevant Minister and of the NSW Treasury.<sup>224</sup>

### ***NSW Treasury responsibilities***

- 2.32** Ms Leilani Frew, Executive Director, Commercial Group, NSW Treasury provided some additional commentary on the specific role of NSW Treasury in the PPP procurement of toll road projects. She advised that Treasury's role was 'to ensure that projects are developed, procured, contracted and managed in accordance with relevant whole-of-government policies, decisions and the State's fiscal and risk position'.<sup>225</sup>

- 2.33** Treasury does this through the provision of policy frameworks in respect of business case policies, investor assurance policies and PPP guidelines. Treasury also provides advice to the Treasurer regarding resource allocation decisions and any other decisions relating to major infrastructure projects that the Treasurer participates in. Furthermore, Treasury also provides 'representation on steering committees and project teams, in particular ensuring that it provides the policy and infrastructure policy guidance to those projects to enable and facilitate some very efficient and effective development processes for those projects'.<sup>226</sup>

- 2.34** However, in respect to the specific determination of the tolling arrangements such as toll price and escalations rates for a particular road, Ms Frew explained that NSW Treasury's role was actually 'quite limited'. Ms Frew advised that 'tolling policy and principles are set by Roads and Maritime Services under ... the transport cluster'. However, in cases where proposed tolling arrangements have 'whole of state fiscal implications in respect of funding requirements or risk, then Treasury will provide advice to the Treasurer to support decision-making around entering into those arrangements'.<sup>227</sup>

- 2.35** All projects with an estimated capital value of over \$100 million must consider development opportunities for private finance, within the respective business cases. Treasury's Commercial Group 'will work with agencies and provide advice in respect of those, prosecute any independent advice that agencies might have received, and then collectively provide advice as to the veracity of the assumptions being made by the agencies'.<sup>228</sup>

### ***Imbalance of negotiation powers***

- 2.36** Mr Tony Harris, a former Auditor-General of New South Wales, expressed concern about the negotiation process. He referred to an imbalance of negotiating power between the private and public sector. The first reason for this, he argued, was the superior negotiation incentives

<sup>224</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 2.

<sup>225</sup> Evidence, Ms Leilani Frew, Executive Director, Commissioning and Contestability Unit, Commercial Group, NSW Treasury, 22 May 2017, p 61.

<sup>226</sup> Evidence, Ms Frew, 22 May 2017, p 61.

<sup>227</sup> Evidence, Ms Frew, 22 May 2017, p 70.

<sup>228</sup> Evidence, Ms Frew, 22 May 2017, p 70.

and skills inherent within the private sector, compared to its public sector counterpart.<sup>229</sup> He referred to his previous commentary on Transfield to illustrate this point:

These people are very, very skilled in ways that the public service is just not skilled ... I have said when Transfield was negotiating its multi deals in New South Wales it was a superb negotiator. That is its job. That is its life. It lives and dies by its ability to write good contracts. When they leave the room, they take the Laminex with them. They do not leave anything on the table.<sup>230</sup>

**2.37** Professor Hodge, Professor of Law at Monash University also commented on the imbalance in skill set between the public and private sectors stating:

I think that companies – and Transurban is just one example – that do these deals, week in and week out, do have an advantage over all governments, not just the New South Wales Government, because that is their sole job. So I think in the initial stages they do have a professional advantage, if you like, and governments have to work hard to come equally to the table.<sup>231</sup>

**2.38** Discussing the respective skill sets available in the public sector further, Mr Harris advised of an ‘unwillingness of government to invest in skilled advisors’, using the example of the negotiations for the M1 to illustrate this criticism.<sup>232</sup>

**2.39** Furthermore, Mr Harris suggested that private companies were in a superior negotiation position from the start of any negotiation process as the private company did not have to do the deal, whereas it was very much in the interest of the public sector negotiators to get the deal done on account of political pressures. This, Mr Harris argued, was the ‘just a starting recipe for super returns for the private sector’.<sup>233</sup>

Another reason is the political pressure faced by government negotiators. They are obliged to negotiate a completed deal. Private sector negotiators are obliged to negotiate a profitable deal.<sup>234</sup>

**2.40** Mr Harris also asserted that there was limited competition in these types of arrangements and in cases where good competition might exist, it was decided by the Government, to go through an unsolicited proposal process.<sup>235</sup> In summing up his concerns, he stated that he could provide instances to illustrate each of points outlined above, and stated: ‘We have been as a public sector hopeless I this arena, and we have been hopeless for 40 years’.<sup>236</sup>

<sup>229</sup> Answers to supplementary questions, Mr Tony Harris, Former Auditor-General of New South Wales, 4 May 2017, p 10.

<sup>230</sup> Evidence, Mr Tony Harris, Former Auditor-General of New South Wales, 12 April 2017, Sydney Transcript, p 13.

<sup>231</sup> Evidence, Professor Hodge, p 6.

<sup>232</sup> Answers to supplementary questions, Mr Harris, p 10.

<sup>233</sup> Evidence, Mr Harris, 12 April 2017, p 13.

<sup>234</sup> Answers to supplementary questions, Mr Harris, p 10.

<sup>235</sup> Evidence, Mr Harris, 12 April 2017, p 13.

<sup>236</sup> Evidence, Mr Harris, 12 April 2017, p 13.

### Committee comment

- 2.41** Openness and transparency in government decision making and processes is key to building accountability and trust within the community. It enhances public confidence in government decision making and helps ensure that the government of the day is properly responsive to the interests of the people of New South Wales.
- 2.42** The committee acknowledges that a number of processes and procedures exist within the NSW public sector to support transparency of process and accountability of decision making relating to road tolling projects. However, it appears that for all but those intimately involved in the process, those practices and responsibilities remain opaque. Factors contributing to this include the technical nature of these projects, and the spread of process responsibility amongst the respective agencies – including Roads and Maritime Services, Transport for NSW, NSW Treasury, Infrastructure NSW, Department of Planning and Environment, and the Audit Office of NSW.
- 2.43** Regarding the negotiation process itself, the committee notes the concerns presented by inquiry stakeholders regarding a perceived imbalance of power between State and private sector negotiators. Roads and Maritime Services however, has argued that their negotiators were ‘highly experienced’ and it is acknowledged that the sophistication and skill set in this area has improved with time and experience.
- 2.44** The publication of concession deeds and accompanying project summaries are important steps and are welcomed by the committee.

### Lack of visibility of private sector returns

- 2.45** The lack of visibility to the public of private sector returns from toll road projects was also identified as an area of particular concern. Acknowledging that the disclosure of contract information through project summaries rated ‘fairly well in terms of transparency’, Professor Hodge argued that much more could be done to make clear the terms of the commercial deal.<sup>237</sup> Professor Hodge explained:

Put simply, citizens still do not know what price is being paid to private financiers to bear which risks, and citizens do not know what returns on investments the private financiers are expecting to earn from this public infrastructure. In my view, they should.<sup>238</sup>

- 2.46** Professor Hodge argued that such information was critical to informing policy change as it was not possible to determine how much the purported benefits of PPP arrangements cost the taxpayer:

I understand completely that this whole game is about the risks that private companies take and the fact that they ought to be getting returns where they take large risks; I

<sup>237</sup> Answers to questions on notice, Professor Graeme Hodge, Professor of Law, Monash University, 29 May 2017, p 1.

<sup>238</sup> Submission 112, Professor Graeme Hodge, Monash University, p 4.

think that is perfectly reasonable. The issue is, we do not know what we have been paying for risks.<sup>239</sup>

But what happens on average is a good question. What happens on average is something that I have been trying to get hold of for perhaps 1½ decades and I am still looking. If we are going to make policy changes in this arena we really do need to know is what does happen on average with these returns.<sup>240</sup>

**2.47** Professor Hodge acknowledged that genuine reasons for confidentiality existed at certain times of the negotiation process. However, he did not agree that this level of confidentiality was necessary after the contract has been signed.<sup>241</sup>

**2.48** As outlined earlier in this chapter, the GIPA Act provides that full tolling contracts be disclosed, less confidential information. The definition of ‘confidential’ is important in this regard as it includes the commercial-in-confidence provisions of a contract.<sup>242</sup> Professor Hodge advised that the LexisNexis concise Australian Legal Dictionary defined ‘comercial-in-confidence’ as ‘a label or contractual stipulation flagging an intention to maintain the confidentiality of commercial information’, or in his own words:

... a ‘desired state of affairs by the two contract parties rather than being a guaranteed state’. The commercial in confidence label does not guarantee protection from disclosure under Freedom of information. Nor does it guarantee confidentiality through enforceable confidentiality order.<sup>243</sup>

**2.49** However, Professor Hodge observed that it was exactly this confidential/commercial in confidence information that remained undisclosed that was fundamental to increasing ‘assurances to the public that the tolling arrangements represented the fairest possible outcomes’.<sup>244</sup>

**2.50** Professor Hodge was not the only inquiry participant who provided comment on the returns received by private investors. The evidence indicated a public perception of ‘super’<sup>245</sup> and ‘obscene’<sup>246</sup> profits being transferred to private operators as a result of the tolling arrangements. However, as Professor Hodge explained, whilst ‘stock market announcements and share prices give some clues here ... we simply do not know the average return to private investors for these projects’.<sup>247</sup>

**2.51** Transurban sought to provide some clarification on the nature of the private returns achieved from their tolled roads. Transurban explained that in every project negotiation a base case financial model was agreed between the private sector proponent and the Government and that this model included forecasts of cash flow and returns to be achieved by the private

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<sup>239</sup> Evidence, Professor Hodge, 12 April 2017, p 6.

<sup>240</sup> Evidence, Professor Hodge, 12 April 2017, p 2.

<sup>241</sup> Evidence, Professor Hodge, 12 April 2017, p 2.

<sup>242</sup> *Government Information (Public Access) Act 2009* (NSW), s 32

<sup>243</sup> Answers to questions on notice, Professor Hodge, pp 1-2.

<sup>244</sup> Evidence, Professor Hodge, 12 April 2017, p 1.

<sup>245</sup> Submission 111, Mr Tony Harris, Former Auditor-General of New South Wales, p 3.

<sup>246</sup> Submission 55, Name suppressed, p 1.

<sup>247</sup> Submission 112, Professor Graeme Hodge, Monash University, p 4.

operator throughout the concession period. However, it was standard practice across the infrastructure sector that such models were retained as commercial-in-confidence as disclosure could jeopardise the competitiveness of the procurement process:

Consistent with the practice of ASX listed entities, Transurban does not make long term forecasts available to the market. If financial models or forecasts were made public, it may jeopardise the competitiveness of procurement processes.<sup>248</sup>

**2.52** Government representatives also provided some indication as to the nature of these returns. Roads and Maritime Services advised that Return on Investment (a profitability ratio) was a key assessment criterion in determining whether to grant an unsolicited project approval. In specific relation to the NorthConnex project, whilst the profit estimated was determined to be commercial in confidence, it was assessed as being ‘within market benchmarks’.<sup>249</sup> However, no evidence was provided to the committee on what these benchmarks might be.

**2.53** Providing general commentary on the issue of transparency, Mr Draper, Deputy Secretary, Department of Premier and Cabinet cautioned that a trade-off exists between the release of information and the willingness of private sector parties to identify value adding projects:

The experience we have in the public private partnership space and unsolicited proposals is while there is a default position of providing as much information as reasonably possible there is a trade-off with commercial confidentiality. The more the Government discloses that is commercially confidential the less parties are willing to come forward with proposals that are of value to the public.<sup>250</sup>

### Committee comment

**2.54** Whilst some information pertaining to private sector returns from tolled roads is visible to public sector decision makers, it is not visible to the people of New South Wales. This tension must be recognised and better managed by the NSW Government. Today’s roads projects are worth billions of dollars that will ultimately be funded by the users of these motorways – the people of New South Wales. It is therefore not unsurprising and appears entirely appropriate to the committee that citizens are seeking greater assurances that these projects are in the public interest.

**2.55** The committee understands the potential impact of full disclosure of financial information of road projects on future competitive processes. Nevertheless, the committee believes that there are strong public policy reasons why there should be greater details available regarding return on equity on tolled roads.

**2.56** The committee received evidence that the government assesses future expected returns from tolled roads against industry benchmarks. The committee believes that these industry benchmarks should be publicly released.

<sup>248</sup> Answers to supplementary questions, Transurban, 18 May 2017, p 22.

<sup>249</sup> Answers to supplementary questions, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 18 May 2017, p 19.

<sup>250</sup> Evidence, Mr Draper, 22 May 2017, p 68.

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**Recommendation 2**

That the NSW Government publish the expected internal rate of return for future individual privately operated tolled roads, at suitable intervals.

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**Publication of business cases**

- 2.57** Business cases provide decisions makers with the information they need in order to make robust investment decisions. These documents contain important economic and financial analysis to assist the determination of a project's merit or otherwise. The transparency of information contained within these business cases was also the subject of some concern.
- 2.58** Regarding the publication of business cases, Ms Frew, Executive Director, Commercial Group, NSW Treasury explained that there is currently no overarching policy which stipulates a requirement for the public sector to publish business cases. However, Ms Frew argued that the government's decision to publish the strategic business case for the WestConnex scheme 'demonstrated a preparedness to move into greater transparency'.<sup>251</sup>
- 2.59** Explaining why base case financial models for the NorthConnex and WestConnex schemes have not been published by the Government, Roads and Maritime Services stated, 'this information is commercial in confidence. Current PPP guidelines have been complied with'.<sup>252</sup>

**Committee comment**

- 2.60** The publication of business cases and financial information relating to the assessment of project proposals has been the subject of intense public debate in recent years. This is no more so than in relation to the publication of business cases for the WestConnex project. The committee notes evidence from NSW Treasury that there is no over-arching government policy to mandate the publication of infrastructure business cases.
- 2.61** On 9 November 2005 the Base Case Financial Models for both the Lane Cove Tunnel and the Westlink M7 (Western Sydney Orbital) were tabled in the Legislative Assembly. In both instances, the release was done after the commencement of construction on the project, in the case of the Lane Cove Tunnel; or two years and four months after the opening of the first stage of the project, in the case of the Westlink M7. The Committee can identify no damage to either the public interest or the private interests of corporations that has been caused by the publication of these documents. The committee therefore recommends that the Base Case Financial Models for the NorthConnex and WestConnex projects, and future projects, be published 18 months after either: (a) the commencement of construction on a project, or (b) after the opening of the first stage of a project, whichever comes first. The committee also recommends that project cost benefit analysis, as well as traffic forecast modelling or any reviews thereof, be disclosed at this time.

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<sup>251</sup> Evidence, Ms Frew, 22 May 2017, pp 67-68.

<sup>252</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 16.

- 2.62** The recent disclosure in the media of ‘cabinet in confidence’ financial information relating to the Western Harbour Tunnel and Beaches Link project, as well the Proposed F6 extension has served to illustrate the ongoing opaqueness of the investment decision making process. The committee understands that decisions regarding the final funding strategies for these projects have yet to be confirmed by the NSW Government.

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### **Recommendation 3**

That the NSW Government:

- mandate the disclosure of strategic business cases, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads,
  - publish the base case financial models for the NorthConnex and WestConnex projects, and future projects, 18 months after either: (a) the commencement of construction on a project, or (b) after the opening of the first stage of a project, whichever comes first,
  - mandate the disclosure of cost benefit analysis at the same time as the base case financial model is published, and
  - mandate the disclosure of traffic forecast modelling and any reviews of this traffic forecast modelling, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads, at the same time as the base case financial model is published.
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### **Competition in the tolling market**

- 2.63** The perception of a lack of competition in the road tolling market, and concerns relating to the dominance of one private operator, Transurban, in the NSW tolling market was identified by a number of stakeholders. This section presents the current ownership of road tolling concession agreements in NSW, the concerns raised, and the position of NSW Government representatives on this matter.

#### ***Transurban’s interests in NSW tolling concessions***

- 2.64** As illustrated in Chapter 1, the dominance of Transurban in the tolling market as the holder of seven concession agreements with the NSW Government is evident. The table below presents Transurban’s interests in Sydney’s toll roads. The table below shows that Transurban is currently the holder (in full or in part) of seven concession agreements with the NSW Government. However, it also shows that five of these were acquired after the initial tender process occurred for the projects.

**Table 14 Transurban's concession agreements with the NSW Government**

Concession Agreement	Transurban Ownership	Opening Date	Date Transurban acquired interest or commenced operating asset	Remaining period of concession / concession to end
M5	50 per cent	August 1992	June 2007	10 years to December 2026
M2	100 per cent	May 1997	June 2005	31 years to June 2048
Eastern Distributor	75.1 per cent	December 1999	June 2007	31 years to July 2048
M7	50 per cent	December 2005	December 2005	31 years to June 2048
Lane Cove Tunnel	100 per cent	March 2007	August 2010	31 years to June 2048
Cross City Tunnel	100 per cent	August 2005	June 2014	19 years to December 2035
NorthConnex	50 per cent	Expected 2019	Expected 2019	28 years to June 2048

Source: Submission 100, *Transurban*, pp 27 and 29.

**2.65** Transurban's large market share also extends over the Australian tolling market as holder of concessions for 13 of the 17 toll roads currently in operation nationally.<sup>253</sup>

***Concerns regarding lack of competition in the tolling market***

**2.66** Some inquiry participants expressed concerns about limited competition in the tolling market and the potential impact of Transurban's large share of concession agreements in New South Wales.

**2.67** For example, Professor Hodge, Professor of Law at Monash University, stated his concern and noted that further evidence based research was required to better inform discussion on this issue. Professor Hodge noted that a road operator dominant in the market could result in it having an enhanced bargaining position with governments when opportunities for future tolling concessions arise or discussions around transport policy changes take place. To address this matter, Professor Hodge emphasised the need for competition in the market:

I think they [private companies such as Transurban] are in the box seat for influencing public policy and doing things like offering road pricing solutions and so on into the future. Again, it is another reason why you would want a long-term governor, in the public interest.

<sup>253</sup> Submission 98, WestConnex Action Group, p 10. Note that figures in the submission have been updated to reflect the newly opened section of the WestConnex.



I think that Transurban, and many other companies, influence government and it is part of their democratic right, if you like. I think we have to strive for competition, that is probably the answer.<sup>254</sup>

**2.68** Mr Braxton-Smith, Deputy Secretary for Transport for NSW expressed the following position regarding the number of concession agreements held by Transurban, advising the committee of strict probity guidelines and scrutiny of government processes in place. He stated:

We have very strict probity guidelines and scrutiny and oversight by a number of bodies that are intended to ensure that we are conducting ourselves in an impartial manner in the use of taxpayers' funds and obtaining best value for money. If anything were uncovered, it would be the subject of some serious investigation by the Independent Commission Against Corruption [ICAC] and other entities that have oversight. I do not have any personal knowledge of any issues in that regard.<sup>255</sup>

**2.69** The Chief Executive of Roads and Maritime Services also advised that there have been no evidence of impropriety in this regard and advised the committee that competition policy was a matter for the Australian Competition and Consumer Commission [ACCC]:

Competition policy and legislation is a matter for the Australian Competition and Consumer Commission [ACCC]. It has specifically looked at this issue and determined not to act in any way. We have strong competition laws in Australia. As I said, it is ACCC's job to intervene if it believes there is a market power. One of the real issues about market power is that it normally manifests in pricing power. No toll road operator in New South Wales has pricing power; all prices are set by the Government.<sup>256</sup>

**2.70** Mr Draper, Deputy Secretary, Economic Policy, Department of Premier and Cabinet, also reflected on the competitive nature of bidding for major infrastructure projects, noting that there were varying levels of competition at different points of the procurement process. For example:

When you look at the projects, there is competition in the design and construct level that is competitive. Because of the scale of these projects there are only a limited number of players that play on their own, they often form consortia. At the design and construct level we have had many new participants into the market and we are getting competition there and the Government has been successful in those contracts. You have competition in the design and concept level that some proponents bring and you have competition for provision of capital, and that is a competitive area. When you think about the breakdown, while you might see only a limited number of road toll operators in the design and construct and the provision of capital, there is quite a lot of competition.<sup>257</sup>

**2.71** Claims of limited competition in the tolling sector were refuted by Mr Andrew Head, Transurban, who advised the committee that he did not think it was technically correct to say

<sup>254</sup> Evidence, Professor Hodge, 12 April 2017, p 6.

<sup>255</sup> Evidence, Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW, 11 April 2017, p 36.

<sup>256</sup> Evidence, Mr Kanofski, 11 April 2017, p 36.

<sup>257</sup> Evidence, Mr Draper, 22 May 2017, p 68.

that there was limited competition in the tolling market as all of the concession agreements were initially competitively procured. He stated:

You cannot say there is no competition because, if you go back and have a look at the five toll roads that were procured under Labor and the four that were procured under the Liberal-Nationals, all of those were competitively procured. Some of them went broke and then Transurban acquired them; others we acquired well and truly after the fact. But the initial procurement was done in a competitive environment.<sup>258</sup>

- 2.72** Mr Head, Transurban, also refuted claims of Transurban holding a monopoly position on toll roads on account of the absence of two key elements that differ from a traditional monopoly, a) the availability of an alternative route, and b) the ability to increase prices at will:

There are two key elements that differ from a traditional monopoly ... the availability of an alternative route is number one and unfettered price increases, which we do not have.<sup>259</sup>

### **Committee comment**

- 2.73** The committee notes the dominant position of Transurban as the holder of seven concession agreements with Roads and Maritime Services. The committee, however, rejects any suggestion that it holds a 'monopoly' position, and thus also rejects any suggestion that it should be regulated in ways comparable to either natural or government-created monopolies. Rather, the committee recognises that its market power is attributable to Transurban's extensive history in the management of road tolling operations, and the expertise that it has developed through specialisation.
- 2.74** One of the implications of having one dominant participant in the road tolling market in NSW is the concentration of knowledge about the operation of toll roads held outside of government. This requires government to invest to ensure that the agencies negotiating with the private sector and managing contracts are appropriately resourced and co-ordinated.

### **Revenue from one toll road subsidising other motorway developments**

- 2.75** Another area of frustration expressed by some inquiry participants was the fact that revenue collected from one toll road was being used to subsidise the development of other parts of the road network. This raised issues not only in relation to transparency for the user of the road but also of fairness and alignment with the founding principle of user pays.
- 2.76** This issue was raised mostly in relation to the M4 Widening section (Stage 1A) of the WestConnex project, however, is also relevant to other parts of the network including the M7 and NorthConnex; and the existing toll on the M5 South-West Motorway and WestConnex. Furthermore, as recent media articles have also demonstrated, it would appear that such an

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<sup>258</sup> Evidence, Mr Andrew Head, Group General Manager, New South Wales, Transurban, 11 April 2017, p 8.

<sup>259</sup> Evidence, Mr Head, 11 April 2017, p 11.

approach is also being considered by the government for the Beaches Link and Western Harbour Tunnel and Sydney Harbour Bridge and Tunnel.<sup>260</sup>

### ***WestConnex***

**2.77** The government's WestConnex tolling policy is that tolls raised on each individual section of the scheme will go towards funding the entire WestConnex scheme.<sup>261</sup> That is, revenue collected from the M4 Widening section of the motorway will be used to fund that section as well as its connection to the M5, and the duplication of the M5.<sup>262</sup> Tolls will therefore be collected on the M4 widened section (a \$500 million project and 16 per cent<sup>263</sup> of the WestConnex motorway) for a period of 43 years.

**2.78** The strategic business case for the WestConnex project forecasts that the widened M4 Motorway will be the most trafficked part of the entire WestConnex project. It therefore follows that revenue collected from this stage of the WestConnex scheme is expected to be much higher than revenue collected on other parts of the motorway. Inquiry stakeholders therefore argued that Western Sydney motorists were unfairly subsidising less profitable stretches of the WestConnex scheme. For example, the WestConnex Action Group stated:

What this means is that Western Sydney motorists will be charged with high tolls to subsidise the most expensive and least profitable parts of WestConnex for decades.<sup>264</sup>

**2.79** Councillor Stephen Bali, Mayor of Blacktown City Council, expressed similar concerns stating it was effectively a tax on residents living in Western Sydney:

The finance should match the cost because basically the way you are doing it is an additional cost imposed on western Sydney and forcing them not only to pay for this road but to pay for all the infrastructure around western Sydney ... Well it is basically a tax increase just because you live in western Sydney. It is disgusting to say that we have got to pay more just to live in western Sydney.<sup>265</sup>

**2.80** Responding to these claims, Mr Kanofski, Chief Executive, Roads and Maritime Services stated that it was 'absolutely a matter of public record' and that this was the WestConnex tolling policy. He also pointed to the \$3.3 billion contribution to the project that was being made by the State and Federal Governments.<sup>266</sup>

**2.81** In response to questioning related to the 'fairness' of such an approach, Mr Kanofski referred to Transport for NSW research stating that users will ultimately choose to use the toll road if it represents value for money to them. He therefore considered the funding approach fair:

<sup>260</sup> Sydney Morning Herald, *Revealed: \$8 tolls each way planned for new roadway tunnels to Sydney's north* (19 July 2017), <http://www.smh.com.au/nsw/revealed-8-tolls-each-way-planned-for-new-roadway-tunnels-to-sydneys-north-20170718-gxdawm.html>.

<sup>261</sup> Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 22 May 2017, p 74.

<sup>262</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 20.

<sup>263</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 4.

<sup>264</sup> Submission 98, WestConnex Action Group, p 5.

<sup>265</sup> Evidence, Councillor Stephen Bali, Mayor of Blacktown City Council, 12 April 2017, Penrith Transcript, p 5.

<sup>266</sup> Evidence, Mr Kanofski, 22 May 2017, p 51.

... what customers actually think is that they make an individual judgement about whether the toll is worth it to them. What the research shows – and I am not speculating on what individual people might think – is that individual customers make a decision as to whether to use the toll road or not on whether they think it represents value to them in terms of their timesaving. If they think it provides value to them they will use it, if they do not think it will provide value to them they will not. In that sense I think it is entirely fair.<sup>267</sup>

### ***Other examples of cross-subsidisation***

- 2.82** While much of the evidence focussed on the WestConnex scheme, this issue is also relevant to other parts of Sydney’s motorway network. For instance, NorthConnex will also be partly funded from an extension of the M7 concession agreement. Roads and Maritime Services outlined a rationale for this approach:

In the absence of a network approach to tolling, the NorthConnex project would require a higher toll level and/or greater government contribution which would have resulted in the project being delivered later than currently forecast. The funding approach has reduced the level of government contributions required for the project, freeing up capacity to invest in other social infrastructure projects.<sup>268</sup>

- 2.83** Recent media reports also suggest that a similar cross-subsidy is being considered for the funding of the Western Harbour Tunnel and Beaches Link project. As discussed in Chapter 1 tolls collected from the Sydney Harbour Bridge and Harbour Tunnel are being considered as a means to part fund the project.<sup>269</sup>

- 2.84** Professor Hensher, Founding Director of the Institute of Transport Logistics Studies at the University of Sydney Business School, offered an alternative view on the issue:

If you set the toll to reflect the efficient use of each of the roads, then the issue about what you do with the revenue becomes a separate issue. As long as the user is getting the benefit that they are paying for, then how you reallocate the revenue really is something that I am not fussed about. What I do recognise though is we want to have a connected network and a very liveable city. I believe it is the efficiency of the whole network that matters, as long as anybody using a particular road is not being treated inequitably. All I am saying is: if whatever they pay gives them their benefit, problem solved ...<sup>270</sup>

### **Committee comment**

- 2.85** The cross-subsidisation of revenue from one tolled roadway to help fund another motorway raises several issues. The committee endorses the principle of ‘user pays’. This includes those instances where the user of one tolled road is subsidising the cost of another tolled road –

<sup>267</sup> Evidence, Mr Kanofski, 22 May 2017, p 75.

<sup>268</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 21.

<sup>269</sup> Sydney Morning Herald, *Revealed: \$8 tolls each way planned for new roadway tunnels to Sydney’s north* (19 July 2017), <http://www.smh.com.au/nsw/revealed-8-tolls-each-way-planned-for-new-roadway-tunnels-to-sydneys-north-20170718-gxdawm.html>.

<sup>270</sup> Evidence, Professor David Hensher, Founding Director, Institute of Transport Logistics Studies, University of Sydney Business School, 22 May 2017, p 24.

provided that the latter is, through network connectivity, improving the driving experience on the former. The committee endorses such an approach to funding as entirely fair and equitable.

- 2.86** The extreme level of cross-subsidisation from the M4 widening project to the broader Westconnex network breaches the government's toll funding principles. Residents in one area of Sydney, who may not use the rest of the network, are bearing an unfair proportion of the cost of the project.

### Road toll escalation rates

- 2.87** As illustrated in Chapter 1, a number of different escalation rates exist across the toll road network. The inconsistent nature of these arrangements, and the fact that agreed escalation rates are some way above existing rates of inflation or CPI was the source of frustration for some inquiry participants. This section outlines the concerns presented and the government's position on the existing policy.
- 2.88** As discussed in chapter 1, escalation clauses are set within the concession agreements to each individual toll road and were put in place by the government of the day at the time the decision was made to construct and finance the road through a tolled concession.<sup>271</sup>
- 2.89** The consumer price index is a common measure of inflation and as outlined in Chapter 1, has been used as a measure to indicate how much the toll prices can be adjusted. The CPI measures the quarterly changes in the price of a 'basket' of goods and services which account for a high proportion of expenditure by households in Australia.<sup>272</sup> The most recent figures published by the Australian Bureau of Statistics state a 0.2 per cent increase in CPI between the quarter starting March 2017 to June 2017, with an annual CPI increase of 1.9 percent over the 12 months to June 2017.<sup>273</sup> This is some way below the increases that are provided for within the concession agreements.
- 2.90** A number of inquiry participants sought to offer some insight as to why escalation rates are structured the way they are. For example, Mr Tony Harris, former Auditor-General of NSW, offered the following perspective, suggesting that it enabled private financiers to recoup significant economic losses in the early stages of the toll, as patronage on the road is likely to increase and stabilise with time:

... there are very significant costs incurred at the beginning of the wind up of traffic on a toll road. I suppose Macquarie Bank was one of the first people to realise this and to structure themselves properly so that they make significant economic losses in the early stages of a toll road and as the traffic winds up to more profitable levels they can start to recoup the losses that they have incurred. So the indexation of the toll is not so much because maintenance costs and the like are going up; it is in order to recoup past losses. You can set your toll at a low enough level that your indexation has to be higher than CPI or you can set it at a higher level, meaning that your

<sup>271</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 22.

<sup>272</sup> Australian Bureau of Statistics, Consumer Price Index, Australia, Jun 2017, Explanatory Notes, 26 July 2017.

<sup>273</sup> Australian Bureau of Statistics, Consumer Price Index, Australia, Jun 2017, June Key Figures, 26 July 2017.

indexation can be lower. The only way to work out whether the indexation is at an appropriate level is after the fact.<sup>274</sup>

- 2.91** Mr Loades, Chairman, of the National Roads and Motorists Association, also alluded to the commercial nature of discussions around escalation rates and the rationale for existing approaches. Mr Loades stated, ‘At a high level, the explanation is that is how the deal stacked up to make it happen’.<sup>275</sup>
- 2.92** Transurban explained that adjusting tolls in line with a rate comparable to increases in users wages and willingness to pay meant that ‘lower tolls could be charged in the early years of a concession’. Transurban advised that the rationale for this approach was also that ‘traffic volumes are still ramping up and the travel time savings are not as large as in later years.’ Travel time savings on the tolled road are expected to be larger in later years on account of increased congestion resulting from population and employment growth.<sup>276</sup>
- 2.93** Transurban also stated that increasing tolls at a lower rate would result in a funding gap that would need to be funded either through government contributions, a longer concession period or higher initial tolls. Transurban asserted that applying higher initial tolls may not be fair to users as ‘they would be getting lower travel time savings and have less ability to pay the higher tolls than motorists using the road later in its life’.<sup>277</sup>
- 2.94** Transurban argued that the ‘best proxy to measure the value of time is the rate at which the earnings for workers increase’ and that ‘Average Weekly Earnings (AWE) is a more direct connection between time and money for individuals than’ CPI.<sup>278</sup> Transurban presented the movements of the CPI and the AWE over the five years from June 2011 - 2016, outlining that AWE increased by 18 per cent in this period, whereas CPI had only increased by 9.4 per cent.<sup>279</sup>
- 2.95** Other inquiry participants questioned the equity of the current approach to setting escalation rates. For example, Mr Butler, Penrith City Council, argued that IPART should play a role in the future determination of escalation rates:

I think we have got a vehicle established to determine equity in price inflation for infrastructure provided by government or provided by the private sector on behalf of government and that is the Independent Pricing and Regulatory Tribunal, so we strongly believe that IPART should play a role in determining escalation.<sup>280</sup>

- 2.96** The NSW Government’s position, as summarised in Chapter 1, is 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’.

<sup>274</sup> Evidence, Mr Harris, 12 April 2017, p 12.

<sup>275</sup> Evidence, Mr Kyle Loades, Chairman, National Roads and Motorists Association, 22 May 2017, p 6.

<sup>276</sup> Submission 100, Transurban, p 31.

<sup>277</sup> Submission 100, Transurban, p 31.

<sup>278</sup> Submission 100, Transurban, p 31.

<sup>279</sup> Submission 100, Transurban, p 31.

<sup>280</sup> Evidence, Mr Craig Butler, Assistant General Manager, Penrith City Council, 12 April 2017, Penrith Transcript, p 6.

- 2.97** The government argues that ‘placing a blanket limit of CPI to escalation rates would have the effect of pushing up the initial price on future toll roads’. The government further argued that such an approach would ‘make it more difficult to attract private investment; reduce competition in the market, and would be likely to increase costs for Government, taxpayers and road users’.<sup>281</sup>
- 2.98** Commenting further on this position, Mr Braxton Smith, Transport for NSW, advised that customer research indicated a ‘clear preference for more consistency’. However, that the research also indicated that ‘customers were not really thinking about the rate, each time they travel; and that they think about much more in terms of how much they spend on average per week or per month’.<sup>282</sup>
- 2.99** The equity of this approach was raised by the then Auditor-General, Mr Sendt, in the Performance Audit Report of the Cross City Tunnel Project. While the report is obviously directed at the particular circumstances pertaining to the Cross City Tunnel, one of his audit opinions has relevance to the discussion on escalation rates more generally. For example, in response to actions by the Roads and Traffic Authority of negotiating a revised financial package to keep the project at a ‘no net cost to government’, including the amendments of tolling escalation rates, the Auditor-General reported that:

This action distorts inter-generational equity between tunnel users. If it was appropriate for tunnel users to fund these costs, this should have been done by changing the base tolls. Escalation factors should do no more than reflect underlying cost movements or inflation.<sup>283</sup>

- 2.100** In its response to the performance audit, the Roads and Traffic Authority refuted this opinion, stating:

The RTA queries the validity of the ‘intergenerational equity’ argument put by the report. To be a valid point it must assume that tunnel users will cease to be tunnel users after that period of time which defines a generation. Given that a substantial majority of motorists are active drivers for more than 30 years this ‘intergenerational equity distortion’ referred to in the report is overstated. It needs also to be appreciated that private sector delivery of the project enables its benefits to be provided decades earlier than may have otherwise been the case.<sup>284</sup>

### Committee comment

- 2.101** The road toll escalation rate differs widely across the Sydney road tolled network, and it is evident to the committee that the reasons for these differing approaches are not transparent to road users. Whilst the evidence received indicates that escalation rates are designed to make commercial arrangements feasible, the inconsistent approach to and escalation rates far above the consumer price index is of particular concern to the committee.

<sup>281</sup> Submission 109, Transport for NSW, p 13.

<sup>282</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 22.

<sup>283</sup> Audit Office of NSW, *Auditor-General’s Report Performance Audit, The Cross City Tunnel Project*, May 2006, p 35.

<sup>284</sup> Audit Office of NSW, *Auditor-General’s Report Performance Audit, The Cross City Tunnel Project*, May 2006, p 9.

- 2.102** The committee acknowledges and understands the trade-off involved in aligning escalation rates with the consumer price index. It may mean an increased level of State funding required to deliver such projects, or an increase in the initial price of the tolls. However, on balance the committee finds that this trade-off is appropriate to ensure the continued public support and use of tolled roads. The committee therefore recommends that the consumer price index be considered as the default position of the road toll escalation rate for future concession agreements.

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#### **Recommendation 4**

That the NSW Government ensure that the consumer price index be considered as the default position of the road toll escalation rate for future concession agreements.

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#### **Sydney Motorway Corporation**

- 2.103** As discussed in Chapter 1, Sydney Motorway Corporation is a private company which was established by the NSW Government in 2014 to finance and deliver the WestConnex project. Particular concerns were raised about accessing information relating to the WestConnex scheme given the fact that Sydney Motorway Corporation, as a private company, falls outside of requirements stipulated within the *Government Information (Public Access) Act 2009*.
- 2.104** Ms Leibmann from the WestConnex Action Group explained that of primary concern with the WestConnex scheme was ‘the ongoing lack of transparency around the negotiations, around the setting’ of the tolls and ‘the contracts for sale of tolling concessions’. Ms Leibmann explained:

There has been no accountability about these decisions being made by government – which roads will be tolled, to whom the tolls are going to be paid, how much the tolls are, the terms of the toll concessions, the length of time they are payable, et cetera. All of these have been negotiated in private, without any opportunity for public discussion

WestConnex is a really significant government project. We are talking about a minimum of \$17 billion and if these extensions are going to come along, I should not imagine that that would double the cost. As such, we firmly believe that they should be subject to the same scrutiny, the same transparency and the same ability to get information as though it were a government project.<sup>285</sup>

- 2.105** The WestConnex Action group argued that in relation to the WestConnex project, ‘the NSW public has not been allowed access to any of the documents or negotiations surrounding the setting of tolls, or the contracts for the sale of tolling concessions’.<sup>286</sup> Furthermore, ‘all but the topline financial figures have been redacted from the WestConnex Updated Strategic Business

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<sup>285</sup> Evidence, Ms Rhea Liebmann, WestConnex Action Group, 12 April 2017, Penrith Transcript, pp 15-16.

<sup>286</sup> Submission 98, WestConnex Action Group, p 4.



Case'.<sup>287</sup> Further concerns relating specifically to the WestConnex project are also discussed later in this chapter.

- 2.106** Mr Nathan English from No WestConnex Public Transport also reported concerns regarding access to information from Sydney Motorway Corporation. He reflected on the group's frustrations in dealing with multiple parties in seeking information relating to the project. Mr English explained:

When we ask direct questions of SMC [Sydney Motorway Corporation] we are quite often told that Roads and Maritime Services are the ones which have to answer. When we ask Roads and Maritime Services we quite often will get stalling tactics. If we ask the Minister for WestConnex we quite often have any number of people writing on his behalf back to us, including SMC. I would like to propose maybe regulations on SMC being strengthened so that the accountability that they have based on the fact that they are using taxpayers' money becomes something aligned with government agencies.<sup>288</sup>

- 2.107** Mr Lozano, also from the No WestConnex Public Transport group, echoed this sentiment, noting that public perception was that Sydney Motorway Corporation had been set up to hinder scrutiny over WestConnex activities:

But just think about the public perception that exists here. We have what broadly could be described as a government infrastructure project being run by a private corporation. The public perception is that the private corporation was set up to stop inquiry, to stop any sort of scrutiny over their activity.<sup>289</sup>

- 2.108** In February 2016 the Opposition introduced into the Legislative Assembly the *Government Information (Public Access) Amendment (Sydney Motorway Corporation) Bill 2016*. The object of this bill was to amend the *Government Information (Public Access) Act 2009* to provide that information held by the Sydney Motorway Corporation may be accessed under that Act. The bill was defeated at the Second Reading stage of the debate on 12 May 2016.

### ***Sale of Sydney Motorway Corporation***

- 2.109** As outlined in chapter 1, Sydney Motorway Corporation was set up under the *Corporations Act* by the NSW Government in 2014. As such, it operates in accordance with a constitution and shareholder agreement. The shareholder agreement is not in the public domain. Sydney Motorway Corporation 'is not subject to direction by its shareholders'.<sup>290</sup> Ms Leilani Frew, NSW Treasury, advised that Sydney Motorway Corporation was set up this way to enable it the funding and financing strategy of recycling the state's interests in the project to fund subsequent stages to be take place.<sup>291</sup>

<sup>287</sup> Submission 98, WestConnex Action Group, p 4.

<sup>288</sup> Evidence, Mr Nathan English, No WestConnex Public Transport Inc., 12 April 2017, Penrith Transcript, p 19.

<sup>289</sup> Evidence, Mr John Lozano, No WestConnex Public Transport Inc., 12 April 2017, Penrith Transcript, p 19.

<sup>290</sup> Evidence, Ms Frew, 22 May 2017, p 63.

<sup>291</sup> Evidence, Ms Frew, 22 May 2017, p 66.

- 2.110** Sydney Motorway Corporation is currently 100 per cent owned by the State.<sup>292</sup> However, the government has announced plans to sell a 51 per cent stake in Sydney Motorway Corporation with the sale proceeds to be used as part of the asset recycling process for the funding of the M4-M5 Link section of the WestConnex project. This was re-confirmed by the Treasurer, the Hon Dominic Perrottet at the recent budget estimates hearing of 6 September 2017.<sup>293</sup> A competitive trade sale is scheduled to commence later in 2017 and a target completion date of mid-2018 has been set.<sup>294</sup> This section provides some further detail on the evidence received to the inquiry relating to this sale.
- 2.111** Concession agreements are currently in place for Stages 1 and 2 of the Westconnex Project. Sydney Motorway Corporation is currently undertaking the procurement for the Design and Construction of the M4-M5 Link, Stage 3. The sale of Sydney Motorway Corporation will incorporate the above three concession agreements.<sup>295</sup>
- 2.112** However, at the recent budget estimates hearing, the Minister for WestConnex, the Hon Stuart Ayres MP also confirmed that the existing M5 toll concession agreement, which is due to expire in December 2026 would also be included as part of the sale of Sydney Motorway Corporation. The Minister stated:

We are selling the toll concession until 2026 as part of what the current arrangements are now and there is no change to government policy with relation to cashback. As we move through the transaction there will be commercial discussions around what takes place, but I need to be very clear with the Committee that there is no change to the Government's policy on cashback on the M5.<sup>296</sup>

- 2.113** In answer to questioning as to whether the Government is contemplating the extension of the toll concession beyond 2026, Minister Ayres stated, 'That is a commercial option for the government' and 'that will form part of the commercial negotiation for the sale of SMC [Sydney Motorway Corporation]'.<sup>297</sup>

#### ***Valuation of Sydney Motorway Corporation***

- 2.114** The committee sought to ascertain information about the sale and in particular potential valuations of Sydney Motorway Corporation. A number of questions remain unanswered on account of claims of commercial in confidence. However, this section outlines information obtained.
- 2.115** It is NSW Treasury's responsibility to undertake the sale of the equity in Sydney Motorway Corporation.<sup>298</sup> Ms Leilani Frew, Executive Director, Commercial Group confirmed that Treasury had undertaken a valuation of Sydney Motorway Corporation. However, 'due to the confidential nature of the pending sale process' it was not 'appropriate to disclose the State's

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<sup>292</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 16.

<sup>293</sup> Evidence, The Hon Dominic Perrottet MP, Treasurer, 6 September 2017, p 21.

<sup>294</sup> Answer to supplementary questions, Mr Kanofski, 18 May 2017, p 8.

<sup>295</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 10.

<sup>296</sup> Evidence, The Hon Stuart Ayres MP, Minister for Western Sydney, WestConnex, and Sport, 6 September 2017, Budget Estimates Hearing, p 5.

<sup>297</sup> Evidence, The Hon Stuart Ayres MP, 6 September 2017, Budget Estimates Hearing, p 5.

<sup>298</sup> Evidence, Ms Frew, 22 May 2017, p 62.

view of the valuation of Sydney Motorway Corporation'.<sup>299</sup> It is noted that on 5 October 2017 reference to these valuations were published in *The Australian* newspaper.

- 2.116** Ms Frew did however advise that a scoping study, which looked at the various sale options available to the government, was undertaken by NSW Treasury, and that this study supported the Government's announcement to sell the 51 per cent stake in Sydney Motorway Corporation. Goldman Sachs was appointed to assist with the preparation of this study.<sup>300</sup> Sale options considered within the study included initial public offerings and a competitive trade sale.<sup>301</sup>
- 2.117** Forecasts of the value of tolling revenue expected to be collected under WestConnex's concession agreements is central to understanding the potential value of Sydney Motorway Corporation. Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, declined to provide a view on forecast tolling revenues, given the imminent sales process.<sup>302</sup> In response to questioning on the estimated profits of WestConnex over the concession periods, Roads and Maritime Services responded that 'commenting on possible future revenue and profit is speculative and would compromise the sales process'.<sup>303</sup>

#### *Private sector interest in Sydney Motorway Corporation*

- 2.118** Some inquiry participants reflected on the current market interest in Sydney Motorway Corporation. Mr Dennis Cliche, Sydney Motorway Corporation, considered the market appetite to be strong:

From what I understand, it is a very good time [to sell]. There is a lot of interest from super funds in buying infrastructure of this nature. So it would seem a strong appetite, as you would know, with very good prices being paid. On that basis, I think it is very astute to go to market. If you do not get the price that you think it is worth, you do not have to sell it. That is plan B.<sup>304</sup>

- 2.119** Ms Frew, NSW Treasury, also advised of a strong market appetite for infrastructure projects, advising that Treasury would not have provided advice to the Government to sell if it was not believed there was 'genuine' competition for the State's interest in Sydney Motorway Corporation:

We would not have provided advice to the Government if we did not believe that there would be a genuine competition for the State's interest in the business. At the end of the day, the way we look at value for money and competitiveness is that absolute competition or a competitive process is one aspect. We look at the cost of retaining and the value of retaining. We look at a number of the valuation benchmarks that help guide whether or not it is appropriate to trade at whatever bids that come through the door.<sup>305</sup>

<sup>299</sup> Evidence, Ms Frew, 22 May 2017, p 61.

<sup>300</sup> Evidence, Ms Frew, 22 May 2017, p 62.

<sup>301</sup> Evidence, Ms Frew, 22 May 2017, p 62.

<sup>302</sup> Evidence, Mr Kanofski, 22 May 2017, p 75.

<sup>303</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 16.

<sup>304</sup> Evidence, Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation, 22 May 2017, p 58.

<sup>305</sup> Evidence, Ms Frew, 22 May 2017, p 68.

**2.120** Providing some further advice on the criteria that will be used by government in assessing the bids for Sydney Motorway Corporation, Ms Frew advised that the ‘sale objectives’ were being finalised. However, consistent with similar transactions, assessment would include ‘an element of balancing the level of proceeds with retained risk and liability by the State, as well as the outcomes of what we want from the transactional partner that we look to have in terms of the project’.<sup>306</sup> Ms Frew further explained:

It is a fine balance. I appreciate that you want competition to drive the best price. We need to balance that not with any price should we sell per se because we need to look at risk as well. We would not advocate selling for the best price if risk was significantly retained by the State.<sup>307</sup>

**2.121** Regarding the size of the interest in Sydney Motorway Corporation that is to be offered for sale, Ms Frew advised in May 2017 that ‘the request to bidders would be in terms of bidding of at least 51 per cent or other options that they might like to put forward’.<sup>308</sup> Recent announcements indicate that the government will proceed with a sale of 51 per cent of the company. It is not clear whether the government intends to consider the sale of a larger stake should offers arise.

**2.122** The NSW Government retains the right not to sell should bids received not demonstrate value for money. However, Ms Frew, NSW Treasury explained market testing was completed during the scoping study and that Treasury will ‘continually test that there will be competition and interest’ in the lead up to market’.<sup>309</sup>

**2.123** The committee inquired as to what options might be available for the funding of stage three of the WestConnex if the sale, for whatever reason should not proceed. Ms Frew stated, ‘there are other sources of funding that government could consider’. In general terms, these could include other forms of cash or borrowings that it might want to make at that time.<sup>310</sup>

**2.124** Responding to questioning on why the decision had been made to sell Sydney Motorway Corporation as a package, as opposed to stage by stage as originally intended, Ms Frew advised that the market had changed positively away from a limited market appetite:

In respect of the original funding and financing strategy for WestConnex, it was developed at a time where there was limited market appetite for greenfield construction plus greenfield traffic margin at risk. Five years on, that market has changed and there market now for that. It is demonstrated by the fact that Queensland Investment Corporation was able to dispose of its stake in QML...to Transurban through a competitive process.<sup>311</sup>

**2.125** Ms Frew advised that this change to the sale approach was based on consideration of the existing financial risk to the state:

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<sup>306</sup> Evidence, Ms Frew, 22 May 2017, p 64.

<sup>307</sup> Evidence, Ms Frew, 22 May 2017, p 68.

<sup>308</sup> Evidence, Ms Frew, 22 May 2017, p 64.

<sup>309</sup> Evidence, Ms Frew, 22 May 2017, p 68.

<sup>310</sup> Evidence, Ms Frew, 22 May 2017, p 68.

<sup>311</sup> Evidence, Ms Frew, 22 May 2017, p 65.

In best proceeds we are looking at value as well, which means that we need to take into account risk. So we are in a position now where nearly all projects are under construction and it is prudent for us to look at whether it is prudent for the State to continue to carry three projects in construction and the risk that goes with that.<sup>312</sup>

### ***Governance arrangements***

- 2.126** Sydney Motorway Corporation is subject to the NSW Treasury's Commercial Policy Framework. The framework requires the annual publication of a State of Corporate Intent, as well as provide a series of documents to Parliament.<sup>313</sup> However, Ms Frew advised that the Treasurer in 2016, that Sydney Motorway Corporation would be provided relief from this requirement for the 2015/2016 year on account of its 'embryonic nature in terms of establishment'. However, the Statement of Corporate Intent had been delivered for the 2016/2017 year.<sup>314</sup>
- 2.127** There is also some uncertainty as to what potential mandate the Audit Office will have should the company become 51 per cent private equity structure, and 49 per cent public equity structure. Mr Goodwin, Acting Auditor-General advised, that currently 'the Audit Office does have oversight of the sale and depending on the nature of any sale, if a sale takes place, we would have to look at what the substance of the arrangements post transaction'. From a general point of view, the questions of control can come down to a simple question around shareholding interest, but it really comes down to a question of influence'.<sup>315</sup>
- 2.128** Mr Goodwin further advised that if, following the sale, there was 'no longer a reported entity' controlled by the government, then it would not sit within their [the Audit Office's] mandate'.<sup>316</sup>
- 2.129** Currently, the 'extent that it sits within our mandate then it would allow us to do a financial performance or compliance audit, with one caveat I would make: obviously, the selection of any performance audit topic is one that is usually reserved for the Auditor General to do that to preserve the independence of the office'.<sup>317</sup>

### **Committee comment**

- 2.130** Sydney Motorway Corporation is responsible for delivering the largest infrastructure project in Australia, the WestConnex. Yet despite its multi-billion dollar price tag, it is not subject to the same transparency and accountability arrangements that govern the rest of the public sector.
- 2.131** This lack of transparency is of concern to the committee. As a matter of principal, the committee believes that any government related entity, irrespective of its classification as public or private, should be subject to robust levels of transparency and scrutiny.

<sup>312</sup> Evidence, Ms Frew, 22 May 2017, p 65.

<sup>313</sup> Evidence, Ms Frew, 22 May 2017, p 63.

<sup>314</sup> Evidence, Ms Frew, 22 May 2017, p 63.

<sup>315</sup> Evidence, Mr Ian Goodwin, Acting Auditor-General of NSW, 22 May 2017, p 85.

<sup>316</sup> Evidence, Mr Goodwin, 22 May 2017, p 85.

<sup>317</sup> Evidence, Mr Goodwin, 22 May 2017, p 85.

- 2.132** The committee believes that the accountability of Sydney Motorway Corporation must be enhanced. We also believe that the same level of transparency and accountability as required by a public sector agency should be applied to any future infrastructure delivery entity.

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**Recommendation 5**

That the NSW Government ensure that the same level of transparency and accountability as required by a public sector agency be applied to the Sydney Motorway Corporation and any future infrastructure delivery entity.

**Recommendation 6**

That the NSW Government:

- annually publish remuneration for the senior executives of Sydney Motorway Corporation
  - issue directions to the Sydney Motorway Corporation so that it complies with the Government Information (Public Access) laws.
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## Chapter 3 The need for Independent Regulation

Many inquiry participants called for the introduction of an independent regulator to oversight the negotiation process to ensure that the end result represented value for money for the people of New South Wales. However, this position was refuted by the NSW Government which argued that additional oversight was unnecessary. This chapter outlines the key arguments presented.

### Calls for independent regulation

**3.1** There was broad support from many inquiry participants for the introduction of an independent regulator as a means of providing assurance to the public that tolling arrangements represented the fairest possible outcomes. This need was however refuted by the NSW Government.

**3.2** Mr Loades, Chairman of the National Roads and Motorists Association (NRMA) argued that the NRMA was unable to make informed decisions as to whether tolling arrangements represented a good deal for its membership. He therefore called for full disclosure of commercial arrangements, or in the absence of full disclosure, assessment of tolling arrangements by an independent body:

For the decade I have been involved with the NRMA we have been a frequent stakeholder contact with the government. We understand the high level benefits and the importance of the road system and toll funding. By the same token we believe if NRMA cannot get access to the deal, what is the deal and how it compares to others, we would like to rely on an independent body, such as the IPART or others.<sup>318</sup>

**3.3** This position is explained further in the NRMA's 2015 discussion paper titled: *Improving the Performance of Sydney's Road Network*:

To implement a network wide road tolling strategy in Sydney, there is a need to disconnect funding arrangements with pricing for road users ... We believe that disconnecting funding from pricing could be achieved by shifting toll price setting to an independent toll road pricing agency (eg, the Independent Pricing and Regulatory Tribunal (IPART)) ... We believe that placing the tolling role with an independent agency provides arms-length decisions from government on road tolls, to achieve its performance obligation. Indeed, the agency could also take on the role of monitoring the performance of RMS on the achievement of its own road performance objectives.<sup>319</sup>

**3.4** Support for independent regulation or an independent oversight body was also presented by the Transport Workers Union of NSW as a means to improve transparency and accountability:

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

<sup>318</sup> Evidence, Mr Kyle Loades, Chairman, National Roads and Motorists Association, 22 May 2017, p 2.

<sup>319</sup> Submission 110a, Financial-Architects Asia Pty Ltd, p 7.

good starting point in terms of introducing a layer of transparency and accountability which has so far been missing from these processes.

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. An element of consultation with the transport industry and the general driving population would be a crucial part of any such process.<sup>320</sup>

**3.5** Mr McIntosh, Chief of Staff for the Transport Workers' Union of NSW explained the position of his organisation further:

We just think firstly, that anything that adds more transparency to this process is a good thing. At the end of the day we would like an independent body to be able to take all these factors into account. At the moment ... without any real consultation, without any real say in this, the...owner-driver right at the bottom of the supply chain, just has to cop whatever he or she cops. At least under this system there would be a way of putting all these views forward and hopefully coming up with some relatively fair and transparent arrangement. We would be supportive of such an approach.<sup>321</sup>

**3.6** Professor Graeme Hodge argued that the role of an independent regulator was particularly important, given the long term nature of infrastructure contracts. He referred to the work of the academic John Stern, who asserted that 'regulatory agencies have an important and continuing role in public infrastructure, and they are complementary, not substitutes' to existing contractual arrangements. Professor Hodge therefore believed better use could be made of regulators than had been done so in the past.<sup>322</sup> Professor Hodge explained:

I think relying on governments of the day, in a sort of patchwork approach, to be making decisions for long-term contracts that sometimes really need some serious steering, leaves the community open to exactly the problem that we had in the first instance, where one government took a decision that tied up the next 14 or 15 governments long term. I think that getting an independent regulator involved as a contract overseer is a sensible move.<sup>323</sup>

**3.7** Whilst there was limited evidence presented by inquiry participants on the specific roles and responsibilities that a regulator would undertake, Professor Hodge offered some suggestions on where value might be gained. His suggestion centred on the involvement of a regulator, in a watching capacity, from the start of the negotiation process, so that should the underlying conditions under which the original contract was agreed change significantly, the independent body would be in a position to take steps to renegotiate the contract. He explained:

... contracts are never complete, there is always a situation where Governments will want to do something different, new technology will come in, we will want to introduce road pricing, something will change and someone will say, it was not in the

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<sup>320</sup> Submission 95, Transport Workers' Union of NSW, p 9.

<sup>321</sup> Evidence, Mr Nick McIntosh, Transport Workers' Union of NSW, 11 April 2017, p 52.

<sup>322</sup> Evidence, Professor Graeme Hodge, Professor of Law, Monash University, 12 April 2017, Sydney Transcript, p 3.

<sup>323</sup> Evidence, Professor Hodge, 12 April 2017, p 5.



contract. That is the point that I would be saying, you give the job to the independent regulator, in exactly the same way as we have done for electricity, gas or water.<sup>324</sup>

...

I am not sure the third party would be doing anything other than watching what is going on so that if they are called on in the future to make a decision on the return on capital they are aware of the deal that was struck in the first place.<sup>325</sup>

- 3.8** Others alluded to a more involved role which would see an independent regulator making decisions in respect to the actual determination of tolling concession agreements. For example, the NRMA stated that ‘mechanisms to vary user charges should be independently calculated (e.g. by IPART)’. Explaining this further, Mr Loades, Chairman of the NRMA stated:

We respect and appreciate that the Government of the day and previous governments of different persuasions have fundamentally delivered tolling in a similar model, without IPART, and in recent times it has been Infrastructure NSW and other government agencies. As much as we respect that, we do believe it needs true independence to have oversight into the deal: what should the toll be? What should the escalation be? Is this a fair deal for motorists and New South Wales? That is why we argue that IPART is so important, or an equivalent.<sup>326</sup>

- 3.9** This opinion was shared by a number of local government representatives from Western Sydney. There was a general opinion that the involvement of an independent regulator may go some way to allay concerns that the existing tolling arrangements result in particular inequalities for the people of Western Sydney. For example, Blacktown City Council’s submission states that:

IPART could be given responsibility for regulating, promoting and managing the equitable and efficient use of tolls. This would provide transparency which is lacking in the current process.<sup>327</sup>

- 3.10** Similarly, Mr Craig Butler, Assistant General Manager, Penrith City Council, confirmed support for the involvement of IPART, particularly in relation to the determination of escalation rates.<sup>328</sup> Councillor John Thain, Mayor of Penrith City, reiterated this support stating that ‘I would certainly welcome IPART having a look over the whole process’.<sup>329</sup>
- 3.11** The Motorcycle Council of NSW also expressed dissatisfaction with the existing levels of transparency and consultation regarding tolling arrangements and therefore expressed strong support for the involvement of IPART:

<sup>324</sup> Evidence, Professor Hodge, 12 April 2017, p 5.

<sup>325</sup> Evidence, Professor Hodge, 12 April 2017, p. 9

<sup>326</sup> Evidence, Mr Loades, 22 May 2017, p 3.

<sup>327</sup> Submission 101, Blacktown City Council, p 5.

<sup>328</sup> Evidence, Mr Craig Butler, Assistant General Manager, Penrith City Council, 12 April 2017, Penrith Transcript, p 6.

<sup>329</sup> Evidence, Councillor John Thain, Mayor of Penrith City, 12 April 2017, Penrith Transcript, p 6.

Given there has been a lack of transparency and consultation regarding the setting of motorcycle tolls nor openness about contracts, the MCC would enthusiastically welcome IPART's involvement in the setting of tolls.<sup>330</sup>

### **The involvement of IPART**

**3.12** There was limited consensus amongst inquiry stakeholders as to whom or what entity might be appropriate to undertake the role of an independent regulator. Many pointed towards the involvement of the Independent Pricing and Regulatory Tribunal which is responsible for providing 'independent regulatory advice and decisions to protect and promote the ongoing interests of the consumers, taxpayers and citizens of NSW'.<sup>331</sup> However, there was mixed response as to the appropriateness of IPART to undertake such a role.

**3.13** The submission to the inquiry received from the Chair of IPART dated 22 February 2017 stated that IPART would 'be pleased to undertake a review of road tolling in NSW'. It states:

IPART would be pleased to undertake a review of road tolling in NSW to determine how tolls are set and how they should change over time. We would bring our extensive experience in regulating transport infrastructure and recommending fares for public transport services to such a review.

IPART uses a rigorous, transparent and inclusive review process. We actively engage with stakeholders as well as undertake independent research and analysis.<sup>332</sup>

**3.14** However, the NSW Government's position was that it 'would not recommend extending IPART's role to also determine maximum prices and their escalation rates for tolls'.<sup>333</sup> It outlined the following reasons:

- 'It is not consistent with IPART's core function of regulating government monopoly services. Unlike electricity and water networks, toll roads are not monopoly services as there is always a free alternative.
- The NSW Government has already entered into long-term commercial arrangements with toll road operators that take into account toll prices, escalation rates and projected revenues. IPART determinations of toll road pricing would undermine these commercial arrangements and potential future negotiations.
- The NSW Government is unaware of any other Australian jurisdiction using a regulator like IPART to set road toll prices and escalation rates'.<sup>334</sup>

**3.15** Commenting on this position further, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services stated that he considered the involvement of IPART in order to provide some additional scrutiny to the process to be unnecessary. He explained:

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<sup>330</sup> Submission 113, Motorcycle Council of NSW, p 6.

<sup>331</sup> Independent Pricing & Regulatory Tribunal, Our Role, <https://www.ipart.nsw.gov.au/Home/About-IPART/Our-role>

<sup>332</sup> Submission 91, Mr Peter Boxall, Chair, Independent Pricing and Regulatory Tribunal, p 1.

<sup>333</sup> Submission 109, Transport for NSW, p 15.

<sup>334</sup> Submission 109, Transport for NSW, p 15.

I think we have an incredibly robust system both of assurance during the process, which has been designed by Infrastructure NSW — an organisation that was purpose-built to do that — and we have an enormous amount of scrutiny after the fact. So we have scrutiny during the fact, we have scrutiny after the fact. I think in terms of further scrutiny after the fact, in my view that would be a misguided use of taxpayers' money.<sup>335</sup>

**3.16** Mr Head, Transurban, was also sceptical of the involvement of a body such as IPART, for similar reasons to that of the RMS, noting that toll road concessions 'are very tightly prescribed at the day the deal is signed; there is no ambiguity about what will happen and how those prices will increase'.<sup>336</sup> Transurban explained that there were two key elements of the tolling industry that differed from a monopoly:

- A monopoly service provider usually indicates a lack of choice for the customer – there are alternative service providers in the form of untolled routes and public transport options available to commuters for all tolled routes in NSW; and
- If unregulated, a monopoly service provider may have unfettered ability to set prices – all toll roads in NSW are regulated through a very tightly prescribed concession deed and the tolls can only be adjusted by what is agreed in that concession deed.<sup>337</sup>

**3.17** A similar view was expressed by Mr Brendon Lyon, Chief Executive, Infrastructure Partnerships Australia, who noted that IPART has nothing to do and nothing to regulate because it can do nothing to regulate or change the structure of existing contracts:

I respectfully submit that this is misguided unless the Committee is considering a very large scale change to the existing models. Indeed, the terms of reference ask whether it is appropriate. I respectfully submit that it is not only not appropriate; there is in fact nothing for IPART to regulate because the tolls are set in sovereign contracts. In terms of the level of tolls, they were set in concrete when the road was built. This is the reality.<sup>338</sup>

### **Role of the Audit Office of NSW**

**3.18** The existing and potential role of the Audit Office was also discussed within the evidence. In exploring the potential for involvement of the Auditor-General, Mr Ian Goodwin, Acting Auditor-General, emphasised the importance of the fundamental principle that auditors remain independent of the decision making process:

We audit the work and decisions of others. It is best for auditors to avoid being involved in decision-making processes. In simple terms, to be involved in a decision-making process could lead to a situation where the auditor would lose their independence, because you start auditing your own advice. The other important thing

<sup>335</sup> Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 11 April 2017, p 34.

<sup>336</sup> Evidence, Mr Andrew Head, Group General Manager NSW, Transurban, 11 April 2017, p 5.

<sup>337</sup> Answers to supplementary questions, Mr Andrew Head, Group General Manager NSW, Transurban, 17 April 2017, p 25.

<sup>338</sup> Evidence, Mr Brendan Lyon, Chief Executive officer, Infrastructure Partnerships Australia, 22 May 2017, p 30.

for clarification is we do not question the merits of Government policy. This is a well-established path through the *Public Finance and Audit Act*.<sup>339</sup>

- 3.19** Commenting on the proposal of additional independent oversight by the Auditor-General, Mr Goodwin argued that it was not a role suited to the Audit Office, for the reasons noted above. He stated:

Without offering a view on the pros and cons of such arrangements, I would say that it is an unlikely role for an Auditor-General. As I discussed earlier, we are best positioned to avoid being involved in negotiations, project development or toll setting to preserve the independence of the office to conduct audits should they be required of a major project, or the efficiency, effectiveness and delivery of Government programs.<sup>340</sup>

### **Committee comment**

- 3.20** The committee acknowledges the opposing arguments concerning the involvement of an independent regulator or oversight body in road tolling arrangements. However, the committee is persuaded by the arguments of community organisations such as the NRMA, who even as a major stakeholder noted that it could not inform their members if a road tolling proposal was in their interests, and argued that there should be a role for an independent oversight body.
- 3.21** The questions of what role and at what point such an independent body should be involved are important ones. It is apparent to the committee that the involvement of an independent entity, both during the negotiation process as well as any future renegotiation is merited.
- 3.22** The committee considers that an independent entity should be established, and be provided with all relevant information, including commercial in confidence material, so that it can make an informed statement on whether proposed tolling arrangements safeguard the public interest. This statement must be published prior to the government signing off any future road toll concession agreement.
- 3.23** Whilst the committee sees some merit in such an independent body reviewing past tolling contracts and providing a level of assurance to the public about them, it acknowledges that these contracts have been negotiated, signed off by the government of the day and are legally binding. However, the committee does find that with a pipeline of potential tolling projects having been announced by the government, the circumstances call for the establishment of an independent entity capable of thoroughly scrutinising proposed tolling projects.

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### **Recommendation 7**

That the NSW Government, prior to signing any future road tolling concession agreement, establish an independent entity that can publish an informed statement on whether any proposed road tolling agreement safeguards the public interest.

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<sup>339</sup> Evidence, Mr Ian Goodwin, Acting Auditor-General, Audit Office of New South Wales, 22 May 2017, p 82.

<sup>340</sup> Evidence, Mr Goodwin, 22 May 2017, p 82.

## Chapter 4 Other concerns – affordability and fairness

This chapter discusses a range of concerns presented by inquiry participants relating to the affordability and fairness of the New South Wales' road tolling regime. This includes the particular impact of road tolls on the residents of Western Sydney and the trucking industry, and concerns as to whether public transport or other alternative options to tolling are considered appropriately in making such decisions.

### The impact of tolling arrangements on Western Sydney

**4.1** A considerable body of evidence presented to the inquiry focussed on the affordability and fairness of the existing and proposed tolling regimes on the people and local economy of Western Sydney. The committee heard from many individuals as well as local government representatives who expressed strong concerns that road tolls had a disproportionate and unfair impact on residents and businesses in Western Sydney. They argued that this inequality was only set to get worse with the imminent introduction of additional tolls upon completion of the M4 Widening project and the completion of further stages of the WestConnex scheme. These arguments are explored further in this section.

#### Impact of tolled roads on families in Western Sydney

**4.2** The cost impost of road tolls on family budgets, particularly in light of the introduction of tolls on the widening of the M4, part of the WestConnex scheme, was one of the most frequent concerns presented to the inquiry.

**4.3** Penrith City Council expressed strong opposition to the introduction of tolls stating that it did 'not accept that the current tolling arrangements represent the fairest possible outcome for Western Sydney residents'.<sup>341</sup>

**4.4** Explaining this position, Councillor Thain, Mayor, Penrith City Council, advised that residents in Western Sydney relied heavily on the use of their cars, and that 88 per cent of residents use their cars to get to work. He noted that public transport options were limited, particularly for those working outside of the Sydney CBD, and that many residents had to work outside of their local area due to employment availability. This meant that travel on the tolled network was required.<sup>342</sup>

**4.5** Councillor Thain advised that the introduction of further tolls on Sydney's roads caused 'emotions to run high' within the community. He sought to quantify the impact of the M4 tolls on household budgets, estimating that some households would have to find an extra \$6,500 per year to travel on the M4 alone.<sup>343</sup>

**4.6** Councillor Bali, Mayor, Blacktown City Council, shared these concerns and argued that the introduction of tolls on the WestConnex scheme and the chosen method of distance based tolling would have a devastating impact on household budgets in the area. Observing that

<sup>341</sup> Submission 94, Penrith City Council, p 2.

<sup>342</sup> Evidence, Councillor John Thain, Mayor Penrith City, 12 April 2017, Penrith Transcript, p 2.

<sup>343</sup> Evidence, Councillor Thain, 12 April 2017, p 2.

incomes in Sydney's West are below the Australian average, Councillor Bali argued that the tolling system was 'inequitable' and that tolls targeted 'those least likely to be able to afford to use the toll roads'.<sup>344</sup>

- 4.7 Ms Rhea Liebmann from the WestConnex Action Group also mirrored these concerns. He voiced strong opposition to the introduction of distance based tolling on the WestConnex scheme, and stated that it would be those least able to afford it that would have to bear the financial burden:

I think the most objectionable part of the tolls proposed [for the WestConnex scheme] is the inequity of the user-pays and distance based tolling regime. Sydney is broadly spread ... it seems to us that it is completely inappropriate for Sydney, as a city to be charging on distance. We want to grow.-we have to grow out. Those further out from the centre are probably those least likely to be able to pay these tolls. To us it seems a regressive tax, hitting those who can least afford it, like western Sydney small business owners, tradesmen and commuters who often cannot pass those costs on.<sup>345</sup>

- 4.8 However, the committee also heard representations from the NSW Government which sought to dispel some of the concerns presented above. For instance, Mr Kanofski, Chief Executive Officer, Roads and Maritime Services, advised 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'.<sup>346</sup>

- 4.9 However, some inquiry participants questioned the government's argument. Councillor Bali argued that the use of the 'free' alternatives would have a detrimental social impact on the families of Sydney's west due to the resulting increased travel times. He stated: 'we are here to build a good society and how can we say we are helping society if we are forcing mums and dads out there to be a longer time away from their families'.<sup>347</sup>

- 4.10 On account of the potential redirection of traffic onto the 'free' alternatives, questions were directed to Roads and Maritime Services as to whether the NSW Government could guarantee that the quality of the untolled road network would not deteriorate as a result of the introduction of the new tolls. In response, Roads and Maritime Services advised that 'the introduction of new toll roads provides additional motorway capacity for through-traffic, better manages traffic flow and reduces travel times along the entire network'.<sup>348</sup>

### **Public reactions to the introduction of additional tolls**

- 4.11 The above concerns presented by local government representatives were also reflected in many of the individual submissions received to the inquiry. These submissions expressed strong opposition to the introduction of tolls, particularly on the M4. The following extracts reflect the nature of concerns raised.

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<sup>344</sup> Evidence, Councillor Stephen Bali, Mayor of Blacktown City, 12 April 2017, Penrith Transcript, p 2.

<sup>345</sup> Evidence, Ms Rhea Liebmann, WestConnex Action Group, 12 April 2017, p 16.

<sup>346</sup> Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 22 May 2017, p 76.

<sup>347</sup> Evidence, Councillor Bali, 12 April 2017, p 5.

<sup>348</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 21.

### Public reactions to the introduction of additional tolls

- ‘I am really angry that you are going to put a toll on the M4 again after it being said never again will there be a toll on the M4. I really feel for the people in the west who seem to be the ones who are penalised. Many travel long distances to work via the M4 and this is an added burden on struggling hard working people. Stop the toll!!!’<sup>349</sup>
- ‘No tolling on the M4’.<sup>350</sup>
- ‘M4 tolls ... will impose a burden on a large number of people who live in the greater Sydney area who can least afford an additional financial impost...The M4 has been toll free for years ...which would have influenced the decision by people of where to work ... it is incredibly disappointing that a government would allow ... tolls to be introduced on the M4 when so many people are struggling to meet the basics of day to day life ...’<sup>351</sup>
- ‘I believe the M4 should not be set up as an income earner again. We, the public, and M4 users have already paid for that road, with the promise of no more payments ... The toll charges on all major roads are exorbitant, with some of us paying 2 tolls, twice a day, 5-6 days a week. The average bill per month of \$350!! Enough!’<sup>352</sup>
- ‘... I would like to submit a serious objection on the proposed M4 toll in Sydney’s west. This toll is not justified for this road. It is a main arterial road to Western Sydney. This toll will add over \$2000 of extra burden to families in this region. A region we already know is poorer than any other in the Sydney basin ... For too long governments have delegated infrastructure costs back onto the customer ... This is unethical, greedy and seen by me as unjust.’<sup>353</sup>
- ‘It currently costs my family approximately \$20,000 per annum in toll roads. The proposed toll that you intend to implement will further add to this burden.’<sup>354</sup>

**4.12** As illustrated above, a source of significant frustration in numerous submissions from individuals was the perception that the M4 had already been paid for. In response to this issue, Roads and Maritime Services confirmed: ‘Tolls on the WestConnex New M4 will help fund the New M4, not the existing motorway ... The widened New M4 represents only 16 per cent of the total motorway and there will always be a free alternative’.<sup>355</sup>

<sup>349</sup> Submission 11, Name suppressed, p 1.

<sup>350</sup> Submission 50, Name suppressed, p 1.

<sup>351</sup> Submission 105, Mr Christopher Joret, p 1.

<sup>352</sup> Submission 88, Name suppressed, p 1.

<sup>353</sup> Submission 58, Name suppressed, p 1.

<sup>354</sup> Submission 73, Name suppressed, p 1.

<sup>355</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 4.

- 4.13** The re-introduction of tolling on the M4 was also the subject of a petition presented to the Legislative Assembly by Ms Prue Car, MP on 23 May 2017. The petition received over 10,000 signatures and was discussed in the House on 22 June 2017. The Government response to the petition was received on the 11 July 2017, from The Hon Stuart Ayres, MP.<sup>356</sup> The petition and the Government response are provided in Appendix 4.

### **Inequalities between East and West Sydney**

- 4.14** The committee received a body of evidence noting the inequalities that Western Sydney residents and businesses faced compared to other geographical sectors of the city. For instance, Financial Architects Asia, a private consultancy firm specialising in transport and infrastructure financing arrangements, argued that the existing system of tolling in Sydney resulted in a 'high degree of incoherence with many resultant inequities'.<sup>357</sup> Of particular note was the inequities that resulted based on where an individual lived.
- 4.15** To illustrate the extent of this inequality, Financial Architects Asia calculated the costs of commuting to the Sydney CBD and to Sydney Airport for those living within different parts of Sydney. These figures are presented in the table below. It found that people living in the North-West and South-West areas of Sydney are disadvantaged, while people from the East, North and South and to a lesser extent North-East are relatively advantaged.<sup>358</sup> It should be noted that the authors of this table present a number of assumptions to this analysis within their submission, which are outlined in the footnote below.<sup>359</sup>

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<sup>356</sup> Government Response to Petition, The re-introduction of tolls on the M4, The Hon Stuart Ayres, MP, Received by the Office of the Clerk of the Legislative Assembly, 11 July 2017.

<sup>357</sup> Submission 110a, Financial Architects Asia, p 19.

<sup>358</sup> Submission 110a, Financial Architects Asia, p 1.

<sup>359</sup> The authors present a number of assumptions within their submission. These should be considered in conjunction with the figures presented in the table. Notes include: Values calculated in 2015 dollars but projected to 2023 to include the opening of WestConnex; Toll rates are all projected to 2023 on best guess basis using 2.5 per cent per annum inflation; Assumes nil cash back for heavy vehicles.



**Table 15 Cost of commuting to CBD and Sydney Airport from different areas of Sydney**

Costs of CBD commuting From/To			Cost of trips to/From Mascot Airport		
City Sector	Projected Daily cost Cars	Projected Daily Cost Heavy Goods Vehicles	City Sector	Projected Daily cost Cars	Projected Daily Cost Heavy Goods Vehicles
North East	\$4.00	\$4.00	North East	\$12.83	\$21.65
North	\$4.00	\$4.00	North	\$12.83	\$21.65
North West	\$30.10	\$82.29	North West	\$38.92	\$99.94
West	\$18.63	\$55.88	West	\$18.63	\$55.88
South West	\$22.12	\$86.90	South West	\$13.30	\$69.25
SW (no cash back)	\$31.91	\$86.90	SW (no cash back)	\$23.08	\$69.25
South	\$8.83	\$17.65	South	\$0	\$0
East (Not via CCT)	\$0	\$0	East (Not via CCT)	\$8.83	\$17.65

Source: Submission 110a, *Financial Architects Asia*, p 26.

### Impact on businesses

- 4.16** Inquiry participants also sought to illustrate the impact of tolls on local businesses. For example, Councillor Thain, Mayor of Penrith City advised that tolls were a deterrent to business, especially for those businesses in competition against businesses based in the city.<sup>360</sup> The impact on small businesses, particularly individual owner-operators was also raised by the Transport Workers' Union of NSW and is discussed in further later in this chapter.

#### *Is a toll cap the solution?*

- 4.17** The committee received evidence about the utility of a toll cap to reduce the cost impact of tolled roads on families. Mr Kanofski, Roads and Maritime Services, argued that there had been 'quite deliberative consideration, of the issue of affordability' when setting the tolling arrangements for the WestConnex Scheme, as demonstrated by the introduction of a toll cap:

... the issue of affordability is dealt with by the fact that what we do not have is a distance based toll that goes on and on forever. What we have is a distance based toll with a flag fall and a distance based toll and then a cap, which goes to the issue of affordability.<sup>361</sup>

- 4.18** However, Mr Casuscelli, Western Sydney Regional Organisation of Councils, asserted that the application of a cap on the WestConnex scheme did not address the issue, as residents from

<sup>360</sup> Evidence, Councillor Thain, 12 April 2017, p 2.

<sup>361</sup> Evidence, Mr Kanofski, 22 May 2017, p 76.

Western Sydney frequently used multiple motorways, each owned and operated by different companies. He therefore argued that a cap across the entire network was needed:

Distance-based tolling in terms of how we apply it in New South Wales does not work. It does not really acknowledge that a traveller from Western Sydney does not use one motorway, often they use multiple motorways. Having a cap on a single link does not quite work because you need journey caps. It takes me a while to get to where I need to go with multiple links. Therefore, give me a journey cap. That solves some of the problem.<sup>362</sup>

- 4.19** The mechanism of a toll cap across the network, and not just on a particular motorway, was also supported by a number of other witnesses. For example, Penrith City Council expressed support for this approach arguing that a cap, similar to that applied on an Opal card, could be applied where communities have limited access to alternative transport solutions. Councillor Thain explained:

Our proposition is ... that communities with poor public transport services and low jobs density should be compensated with a daily or weekly toll cap, just like the users of Opal cards who have their travel capped at \$60 per week.<sup>363</sup>

- 4.20** Similarly, Blacktown City Council also supported the capping of tolls, and in its submission recommended that consideration be given to a hardship measure which could be applied in socially disadvantaged areas.<sup>364</sup> Speaking to the committee, Councillor Bali argued that toll capping occurs in other jurisdictions and transport modes:

Capping is an acceptable principle that occurs on toll roads in Melbourne on single uninterrupted trips, and there is weekly capping on Sydney Train fares. It is not unreasonable to ask that a weekly cap be applied to Sydney toll roads. It should be no more than \$40 per week.<sup>365</sup>

### **Committee comment**

- 4.21** The committee notes the evidence presented from a diversity of stakeholders that highlight a disproportionate impact of road tolls on the citizens and businesses of Western Sydney. While the government has promised a toll cap on the WestConnex project, the committee recognises that residents travel across multiple different tolled roads, and considers that a cap on the Westconnex project alone is inadequate. However, while the committee considers that a road toll cap should be applied across the whole road network, the cost implications of this to the government are not clear. Accordingly, the committee recommends that the government investigate the costs and benefits of implementing a capped toll across all of Sydney's road network, and publish this information so that the community can have an informed debate.

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<sup>362</sup> Evidence, Mr Casuscelli, 12 April 2017, Penrith Transcript, p 8

<sup>363</sup> Evidence, Councillor Thain, 12 April 2017, Penrith Transcript, p 2.

<sup>364</sup> Submission 101, Blacktown City Council, p 4.

<sup>365</sup> Evidence, Councillor Bali, 12 April 2017, Penrith Transcript, p 2-3.

### Recommendation 8

That the NSW Government investigate the costs and benefits of implementing a capped toll across all of Sydney's road network, and publish this information so that the community can have an informed debate.

## Impact of tolls on the trucking industry

**4.22** This section outlines the Government's road tolling policy for heavy vehicles and discusses concerns presented by the Transport Workers' Union of NSW, in particular the transparency in which tolls for heavy vehicles have been determined and their impact on owner-driver operators.

### Existing approach

**4.23** With the exception of the Sydney Harbour Bridge and Tunnel, all NSW toll roads have differential tolling regimes whereby price is based on vehicle size. Generally, two classifications exist:

- Class A vehicles – three axle vehicles under two metres in height or two axle vehicles under 2.8 m 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, Lane Cove Tunnel and Cross City Tunnel).
- Class B - Any vehicle that exceeds those dimensions is classified as Class B.<sup>366</sup>

**4.24** As outlined in Chapter 1, the toll for Class B vehicles is two times that of Class A vehicles for the Eastern Distributor and Cross City Tunnel and three times that of Class A vehicles for the M2, M5, M7 and Lane Cove Tunnel.<sup>367</sup>

**4.25** The Government's tolling principles require 'truck tolls to be at least three times higher than car tolls'.<sup>368</sup> Roads and Maritime Services argued that this policy is 'nationally consistent', and 'reflect the increased maintenance costs and re-sheeting intervals over the life of the project concession attributable to the trucks use of the roads'. Furthermore, Roads and Maritime Services advised that historical traffic figures showed 'no significant diversions of trucks to the wider arterial networks' as a result of the setting of the tolls at this rate.<sup>369</sup>

**4.26** Transurban also sought to explain the rationale for this approach, advising that it also reflects in part the greater value which drivers of these vehicles derive from the time savings achieved from using the toll road.<sup>370</sup> Transurban presented figures which showed that operating costs for freight operators are around three times and up to five times the cost of the average car. Transurban therefore argued that these figures support the argument that trucks should pay

<sup>366</sup> Submission 95, Transport Workers' Union of NSW, p 3.

<sup>367</sup> Submission 95, Transport Workers' Union of NSW, p 3.

<sup>368</sup> Submission 109, Transport for NSW, p 11.

<sup>369</sup> Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 26.

<sup>370</sup> Submission 100, Transurban, p 30.

three times as much as cars to use a tolled road because ‘at current [tolling] levels, large vehicles derive at least the same amount of value as cars based on their operating costs’.<sup>371</sup>

**4.27** In contrast, the Transport Workers’ Union of NSW expressed concerns relating to the application of this heavy vehicle multiplier, and argued that this rationale was unfounded in the absence of empirical evidence that demonstrated exactly how much extra damage was caused to the roads by heavy vehicles:<sup>372</sup>

There is presently no data or information published which identified with any precision the actual amount of damage caused to roads by heavy vehicles, the costs associated with repairs and the 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 least 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.<sup>373</sup>

**4.28** The Transport Workers’ Union further advised that the rationale for this pricing regime should also be considered ‘in light of the fact that heavy vehicles already pay three to 11 times more in registration charges than cars depending on their weight, so that the more a vehicle weighs, the higher the registration charge is’.<sup>374</sup>

**4.29** In response to supplementary questioning on the rationale for the adoption of a heavy vehicle multiplier, Transurban advised that ‘large vehicles also occupy a greater proportion of road capacity. There are significant additional costs incurred in the design of tunnel infrastructure that is specifically derived from the freight industry’.<sup>375</sup> Transurban also identified a number of industry and technical sources to justify higher tolls for trucks, which included:

- Mid-North Weight of Loads Group – which indicated that the wear and tear to road infrastructure caused by one articulated truck estimated to be equal that of 6,000 cars.
- Australian Transport Assessment and Planning Guidelines 2016 – that in summary indicated that a B-Double truck (at 100 per cent payload) would impact the pavement around 32,000 times more than the small car (at 75 per cent pay load).<sup>376</sup>

### **Committee comment**

**4.30** The committee notes the concerns of the Transport Workers’ Union of NSW as to the rationale to charge heavy vehicles up to three times that of light vehicles. The committee notes the evidence presented to the inquiry of increased construction and maintenance costs incurred to roads as a results of heavy vehicle use and the fact that heavy vehicle owners derive greater benefits from the used of toll roads. The committee therefore recommends that

<sup>371</sup> Submission 100, Transurban, p 30.

<sup>372</sup> Evidence, Mr Nick McIntosh, Chief of Staff, Transport Workers’ Union of NSW, 11 April 2017, p 50.

<sup>373</sup> Submission 95, Transport Workers’ Union of NSW, pp 3-4.

<sup>374</sup> Submission 95, Transport Workers’ Union of NSW, p 4.

<sup>375</sup> Submission 100, Transurban, p 30.

<sup>376</sup> Answers to questions on notice, Mr Andrew Head, Transurban, 18 May 2017, pp 4-5.

the NSW Government publish the evidence-base upon which this policy position has been based on as soon as possible.

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### **Recommendation 9**

That the NSW Government identify and publish the evidence supporting its decision to toll heavy vehicles three times that of light vehicles.

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#### **Impact on owner-driver operators**

**4.31** One of the primary concerns raised by the Transport Workers' Union of NSW was the cost impost of tolls on owner-driver operators – i.e. small businesses which operate single vehicles.

**4.32** In most cases, these businesses unilaterally set the terms of their engagements and are responsible for all costs associated with the operation of their vehicles, including, 'in the vast majority of cases, road tolls incurred as a result of performing work'.<sup>377</sup> These terms are also set within the context of a 'highly competitive, price taking industry'.<sup>378</sup> As explained by the Transport Workers' Union of NSW, increases to tolls are therefore a highly contentious matter:

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. While 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.<sup>379</sup>

**4.33** Mr Nick McIntosh, Chief of Staff, Transport Workers' Union of NSW, explained further that for the most part, owner drivers were unable to recover the escalating cost of these tolls from their principle operators, who are reluctant to pass on this cost onto the consumers given the competitive nature of the industry. He also explained that on many occasions, owner drivers have no choice but to use the toll roads, due to certain restrictions. And even in cases where restrictions do not apply, drivers are required to use toll roads to ensure that they meet delivery timeframes.<sup>380</sup>

#### **Impact of tolls on owner-driver operators**

The Transport Workers' Union of NSW presented a number of case studies to illustrate the impact of tolls on owner-driver operators. Two examples are presented below.

##### **Mr Phil Ramondino - a tipper owner driver**

'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

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<sup>377</sup> Submission 95, Transport Workers' Union of NSW, p 6.

<sup>378</sup> Submission 95, Transport Workers' Union of NSW, p 6.

<sup>379</sup> Submission 95, Transport Workers' Union of NSW, p 10.

<sup>380</sup> Evidence, Mr McIntosh, 11 April 2017, p 50

as 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 the 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 tolls. And this is while our rates continue to go down'.<sup>381</sup>

**Mr Tony Pace and Mr Phil Grima – rigid tipper truck drivers to transport asphalt**

'Tolls aren't covered by our contract determinations. 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're actively trying 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 \$1,500 a month. Avoidance to 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 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 that cars and we wear the road out. Its 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 ...'<sup>382</sup>

**Limited industry consultation**

**4.34** The Transport Workers' Union reported that it was 'unaware of any consultation having been undertaken with the industry as to tolling regimes or changes thereto'.<sup>383</sup> In effect, this meant that heavy vehicle drivers 'who are forced to pay these higher tolls have no say nor are explained the rationale behind any changes'.<sup>384</sup> The Transport Workers' Union therefore identified concerns about the lack of transparency and consultation which currently exists around the setting of tolls:

... these small businesses are not expecting a free ride. They are not opposed to toll roads per se and understand that 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 ...<sup>385</sup>

<sup>381</sup> Submission 95, Transport Workers' Union of NSW, p 7.

<sup>382</sup> Submission 95, Transport Workers' Union of NSW, p 7.

<sup>383</sup> Submission 95, Transport Workers' Union of NSW, p 6.

<sup>384</sup> Submission 95, Transport Workers' Union of NSW, p 6.

<sup>385</sup> Submission 95, Transport Workers' Union of NSW, p 9.

- 4.35** Responding to this assertion, Roads and Maritime Services advised that some engagements had occurred. These included workshops facilitated by Roads and Maritime Services, Transurban, Road Freight Industry Council – which included representatives from the Australian Trucking Association, the Livestock and Bulk Association, Transport Workers Union, Toll and Linfox in March 2014 and August 2014 and again in December 2014. The purpose of these exercises were to brief the industry ‘on the NorthConnex project and its funding model’.<sup>386</sup> Further engagement stakeholder letters were also issued in February 2015.<sup>387</sup>

### **The need for an integrated transport system**

- 4.36** An integrated transport system is one in which different modes of transport can work effectively and efficiently together. The NSW Long Term Transport Masterplan positions itself as the first integrated transport strategy, bringing together transport and land use planning, with planning for freight and passenger movements, as well as all modes of transport. There was widespread acknowledgement amongst inquiry stakeholders of the benefits of and need for an integrated transport system. However, some concerns were raised that the government’s existing approach to motorway development, was restricting the development of an integrated transport system. This section discusses two of the key concerns raised – the use of non-compete clauses in road tolling concession agreements and inadequate consideration of public transport alternatives.

#### **Use of non-compete clauses to restrict public transport**

- 4.37** Some road toll concession agreements include clauses that prevent the Government from developing competing forms of public transport on the relevant routes. These clauses were negotiated into the concession agreements in order to protect the levels of tolling revenue collected on the respective roads for the investor. There are no extant contracts with non-compete clauses, for public transport, for any toll road other than the Eastern Distributor, which was opened in 1999. The non-compete clause in the concession agreement for the M2 was amended to allow for the facilitation of the construction of the North-West Rail Link, and the Westlink M7 concession agreement includes specific arrangements for public transport (such as light rail or a busway) to occupy the central median – between the carriageways of the motorway – should this be required or desired in the future.
- 4.38** A number of inquiry participants expressed their dissatisfaction with the use of these non-compete clauses because it would limit future transport options, and argued that they should not be included in future contracts.<sup>388</sup> Responses to these concerns, as provided by the Government and Transurban are outlined below.
- 4.39** The NSW Government advised that such clauses were typically contained within older concession agreements, but were no longer a feature of modern contractual arrangements. For instance, regarding motorways currently under development, Mr Ken Kanofski confirmed that

<sup>386</sup> Submission 100, Transurban, p 33; Answers to supplementary questions, Mr Kanofski, 18 May 2017, p 25.

<sup>387</sup> Submission 100, Transurban, p 33.

<sup>388</sup> Submission 85, Ms Wendy Bacon, p 8; Submission 96, City of Sydney, p 2.

there are ‘no non-compete clauses for public transport within any of the WestConnex concession agreements’.<sup>389</sup> He further advised that ‘one of the key objectives of WestConnex is to release road capacity, for example, on Parramatta Road to improve public transport services’.<sup>390</sup>

**4.40** In relation to the NorthConnex project, Transurban confirmed that the concession agreement does not contain any specific non-competition clauses that relate to the Government’s ability to build competing infrastructure, including public transport.<sup>391</sup>

**4.41** However, Transurban did seek to provide some additional rationale as the use of non-compete clauses more generally. Mr Head explained that there must be some form of ‘reasonable protection’ for investors. Using the example of NorthConnex, Mr Head advised:

The NorthConnex arrangements, like all contracts for toll roads that Transurban and our partners operate in NSW, contain undertakings in regards to future events or decisions by RMS or the Government which have a material adverse effect on the operation of NorthConnex. For instance, if certain connections to NorthConnex are closed or a new high capacity motorway is opened which connects the M1 to the M7 Motorway. In such cases, the parties may need to negotiate changes to the project parameters. This provides some level of assurance to Transurban and our partners in NorthConnex as to how future Government decisions or external events may impact their investment.<sup>392</sup>

### **Consideration of public transport alternatives**

**4.42** Another concern presented to the committee was that alternative public transport options were not being considered adequately in the analysis of toll road projects. For example, Mr John Lozano, WestConnex Public Transport, alluded to situations where ‘public transport options’<sup>393</sup> had been omitted from project business cases. Such exclusions, he argued, ‘totally invalidates’ the business case and ‘are not in the public interest’.<sup>394</sup> Mr Tony Harris, former Auditor-General of New South Wales, also suggested that the public sector had historically ‘compartmentalised public transport away from private transport ... Therefore, the crossover is very limited’.<sup>395</sup>

**4.43** However, Mr Braxton-Smith, Transport for NSW advised that ‘it is important to examine the nature and the use of networks’ when such analysis is undertaken in the consideration of any public transport alternatives. Mr Braxton-Smith explained that a public transport option may

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<sup>389</sup> Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 6 September 2017, Budget Estimates Hearing, p 20.

<sup>390</sup> Answers to supplementary questions, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 21 June 2017, p 4.

<sup>391</sup> Answers to questions on notice, Mr Andrew Head, Group Leader New South Wales Transurban, 18 May 2017, p 7.

<sup>392</sup> Answers to questions on notice, Mr Andrew Head, p 7.

<sup>393</sup> Evidence, Mr John Lozano, No WestConnex Public Transport, 12 April 2017, p 17.

<sup>394</sup> Evidence, Mr Lozano, 12 April 2017, p 17.

<sup>395</sup> Evidence, Mr Tony Harris, 12 April 2017, Sydney Transcript, p 15.



not always be an appropriate option to consider, as around 50 per cent of the motorway capacity is being used for business purposes such as the freight movement:

One of the things that is not well understood at the moment is the amount of commercial traffic on the motorway network. A recent analysis indicates it is 40 per cent of all vehicles and that is by volume. Of that 40 per cent 30 per cent are light commercial vehicles, or commercially registered vehicles, but the other 10 per cent are heavy trucks and they are carrying goods and delivering services. Therefore, around 50 per cent of the motorway capacity is being used for economic benefit and business purposes. Therefore, public transport cannot be a substitute for that usage.<sup>396</sup>

**4.44** Mr Braxton-Smith also explained that ‘the freight mix<sup>397</sup> is also considered when looking at road and rail alternatives and ‘in planning the overall network through the long-term transport masterplan consideration has been given to the right mix of rail and road networks in order to deliver the transport task that is required’.<sup>398</sup>

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<sup>396</sup> Evidence, Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, 11 April 2017, p 26.

<sup>397</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 26.

<sup>398</sup> Evidence, Mr Braxton-Smith, 11 April 2017, p 27.



## Chapter 5 Opportunities for reform

A number of inquiry participants put forward suggestions of reform for Sydney's tolled roads. The majority of these recommendations centred on the need to take a 'network' based approach to the management of the road network and introduce a dynamic pricing regime that would result in the more efficient operation of the entire road network. Other suggestions of reform included alternative delivery and financing models, with the view to getting a better return for the taxpayers of New South Wales. These suggestions are discussed below.

### Towards a network approach

- 5.1** Several inquiry participants, including Infrastructure Partnerships Australia, Professor David Hensher, from the Institute of Transport Logistics Studies at the University of Sydney Business School, and National Roads and Motorists Association, outlined their strong support for the need to transition towards a network based approach to the management of Sydney's motorway network.
- 5.2** A key advantage of this approach would be the ability to manipulate tolling prices as a form of demand management for certain roads, thereby encouraging the economic efficiency of the roads and addressing the congestion challenges facing Sydney's transport network. The key areas of discussion relating to such a model are outlined below.

#### Dynamic tolling

- 5.3** Infrastructure Partnerships Australia, an independent public policy think tank and network, first advocated for a network model in its 2009 discussion paper, *Urban Transport Challenge: Driving Reform on Sydney's roads*. This paper outlined a model which would allow the 'Sydney Motorway Network to operate as under a single tolling structure'. Under this model, the various segments of the tolling system would be 'integrated into a single pricing system that would be set at a rate to ensure the most efficient use of the network at all times, maintaining traffic at optimal levels'. In effect, this would mean that 'motorists would be charged a floating toll, pegged to the number of vehicles on the network' with patrons receiving 'a reduction of tolls during quiet periods of low demand, and increased charges at times of high demand'.<sup>399</sup>
- 5.4** Mr Brendan Lyon, Chief Executive Officer, Infrastructure Partnerships Australia, advised that consultation with government representatives and operators around the time of publication had indicated significant support for such a model. However, Mr Lyon also very much acknowledged the scale of political consensus required to move to such an arrangement:

When we were preparing this paper, as part of it, we hosted a consultation meeting which, at the time, included the then director of motorways at the Roads and Traffic Authority, as it was then, representatives of all of the equity clubs that were in the motorways themselves, and also included Transurban and whichever other operating service providers were in the network back at that time, and Infrastructure Australia ... The thing that was overwhelming at the time was that everyone from the equity owners, the operators, the regulators in respect of the New South Wales Government

<sup>399</sup> Submission 97, Infrastructure Partnerships Australia, p vii.

bureaucracy, all of them could see the benefit of moving toward a network toll, all of them, there obviously will be difficult discussions if you head down that path around the commercial outlook, and so on. Nonetheless, in respect of the outcome, there was total alignment but a view that a change of that scale is going to need a very heavy degree of political consensus.<sup>400</sup>

- 5.5** Professor David Hensher, Founding Director of the Institute for Transport Logistics Studies, University of Sydney Business School, also expressed strong support for the move towards dynamic tolling. Professor Hensher advised that the way in which the price of the tolls was currently set was his primary area of concern. He argued that as tolls were determined by commercial/funding factors, and not network efficiency criteria, that the intended benefits of the toll roads – that is, the time savings - were not being achieved. He explained:

I think this is a fundamental area of concern that I have. Having been involved in most toll roads over the years in providing advice, one of the things that we have all been limited by is an instruction from government that the toll will be so much upon opening and will be indexed according to an agreed indexed arrangement. In my view, that fails to reflect and has failed to reflect changing traffic conditions and the value of travel time savings. We all agree that toll roads are built for a number of reasons, but the main one is to save time relative to other opportunities. If they do not save time given the toll that has been charged, we have to ask ourselves are we getting value for money in terms of the way in which those toll roads are being priced?

Basically, another way of saying this, in my view, is that tolling has become a commercial proposition in contrast to a network efficiency solution, resulting often in a loss in network welfare gains when you look at the implications that has had on the rest of the network. Unfortunately, there is no incentive for the operator of a standalone asset to think network. Why would they? It is not what they have been asked to do. There currently exists, in my view, a significant failure across all toll roads in Australia — of which Sydney has the most — to optimise the level of the toll.<sup>401</sup>

- 5.6** Professor Hensher also acknowledged that on account of existing commercial arrangements, there was ‘no incentive for the operator of a standalone asset to think about the network’. He further explained that as the State was unable to adjust pricing, it found it difficult to optimise the network. This was of particular concern given the extent of motorway operating under pre-determined pricing models:

The State gives away pricing controls as a result of what we are doing and then finds it difficult to optimise the network when it only has control over this important lever for part of the network. If we only had one or two toll roads this may not be a concern, but as the toll roads become a significant part of the road network this suddenly becomes a massive concern because the privately operated toll roads start to look like a large chunk of the network.<sup>402</sup>

- 5.7** Professor Hensher further argued that prices of the current tolls were ‘wrong’ given the level of congestion that was still evident on the roads and contended that the introduction of dynamic tolling was necessary to achieve the desired benefits:

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<sup>400</sup> Evidence, Mr Brendan Lyon, Chief Executive Officer, Infrastructure Partnerships Australia, 22 May 2017, p 32.

<sup>401</sup> Evidence, Professor David Hensher, Founding Director, Institute of Transport and Logistics Studies, University of Sydney Business School, 22 May 2017, p 17.

<sup>402</sup> Evidence, Professor Hensher, 22 May 2017, p 17.

You have to wonder at some times of the day whether, in fact, it is worth using the toll road, given the relative congestion. What that tells me is we have got the toll wrong. If the toll is there to generate efficient use, given the value of travel time savings, we should be changing the toll to reflect that in order to generate a benefit. It is known as dynamic tolling. We do not do that. We have the technology to do it.<sup>403</sup>

- 5.8** In contrast to the statements of Mr Lyon above, which indicated support from toll operators to move to such a model, Professor Hensher believed that transition was ‘generally opposed by the operating companies on many grounds’ but in particular, for reasons of ‘certainty about revenue flows’.<sup>404</sup> Looking ahead, Professor Hensher advocated for the separation of pricing mechanisms from the provider, stating ‘I think there is a huge role for the private sector in the delivery of the infrastructure, but not in the pricing of it; that should be done from a network perspective’.<sup>405</sup> He further explained that:

I would love to have a fully deregulated road market whereby the adjustments are based on demand and supply. At the end of the day the private sector has commercial interests on the bit they are responsible for and there is no guarantee that they are going to heed any of that market response under the model that we have observed over the past 25 years. They are quite happy with the way it is still structured now. You can still leave it within the hands of the private sector but change the way in which there is control over setting the tolls.<sup>406</sup>

- 5.9** Similarly, the City of Sydney called for ‘incremental reform’ that would result in better alignment of road tolling regimes with agreed transport network outcomes. It suggested that a universal road pricing system should be introduced to, among other things, ‘use demand management systems to encourage the shifting of demand, for commuters and commercial and freight operators – across links in the network, and across the day and week’ as well as ‘better align the price and the cost for the use of the road’.<sup>407</sup>
- 5.10** Whilst not explored in detail by Transurban, its submission outlined its support for ‘road pricing reform’ as outlined in the *Harper Competition Policy Review 2015*.<sup>408</sup>

### **Toll saturation**

- 5.11** Another issue raised by Professor Hensher which supported the transition towards a network approach was the concept of toll saturation. Toll saturation suggests that irrespective of the benefits to be gained from using a particular toll road that there is a fixed amount that people are willing to pay on travel including toll roads, on account of competing pressures on their fixed household budgets.
- 5.12** Professor Hensher went on to explain that this did not mean that people would not choose to use a new toll road, for example. It would mean that people would choose to forgo travel on

<sup>403</sup> Evidence, Professor Hensher, 22 May 2017, p 18.

<sup>404</sup> Evidence, Professor Hensher, 22 May 2017, p 17.

<sup>405</sup> Evidence, Professor Hensher, 22 May 2017, p 24.

<sup>406</sup> Evidence, Professor Hensher, 22 May 2017, p 26.

<sup>407</sup> Submission 96, City of Sydney, pp 2-3.

<sup>408</sup> Submission 100, Transurban, p 36.

another section of Sydney's tolled network. Professor Hensher argued that this concept had not been considered adequately within transport appraisals, which meant that 'the value of travel time savings' used to assess the costs and benefits of additional infrastructure links was 'too high'.<sup>409</sup> Professor Hensher explained:

One of the issues that I have assigned to this discussion in recent years has come out of some almost common sense views about the notion of toll saturation. It is an idea that I proposed some time ago and we finally did some research a couple of years ago. When people are saying it gets to a stage when no matter whether there is time savings on offer, given the toll we have to pay, there is just simply not enough of the budget we wish to allocate to travel to justify wanting to spend even more money on tolls even though there may or may not be the degree of time savings that is being promoted. The consequence of this, I believe, is that the value of travel time savings that we are using in appraisal of additional links is too high.<sup>410</sup>

- 5.13** Professor Hensher advised that the 'consequence of ignoring' the concept of toll saturation 'is high' and 'of major concern'. He suggested that the value of travel time saving for the WestConnex project is overestimated by the 'tune of 50 per cent'.<sup>411</sup> Professor Hensher's position is that it was time to reconsider the way in which appraisal was conducted on individual projects, but also suggested that it was time to start thinking about network pricing:

We need to start thinking about network pricing. We have heard about this in the literature — road pricing reform ... This is to do with efficient pricing of the use of the roads, which includes the damage and wear and tear, and where there is congestion that is appropriately internalised by an appropriate adjustment in the price.

Toll saturation, to me, is very important. I have given seminars on this and I have had Transurban and others say, "You're right but we don't like it." So I do not know what we are going to do about it. It is one of those things. It often takes 10 years for people to listen to sense, so maybe in eight years' time this might be part of the appraisal method. But it is serious issue, because we are evaluating the network. We should not be evaluating whether we build an individual toll road as if it operates on an island. In my view, it may be time to revisit this topic of networks and network pricing reform.

<sup>412</sup>

### **Wholesale road pricing reform**

- 5.14** A number of inquiry stakeholders raised the proposition of whole scale reform of road pricing. The National Roads and Motorists Association advocated for 'comprehensive long term reform' was needed which would see current arrangements 'transition to a comprehensive network user pays model'.<sup>413</sup> This, the NRMA argued was the 'best and most fair model' and its necessity would 'only become more apparent in time as the infrastructure backlog' increased.<sup>414</sup>

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<sup>409</sup> Evidence, Professor Hensher, 22 May 2017, p 18.

<sup>410</sup> Evidence, Professor Hensher, 22 May 2017, pp 17-18.

<sup>411</sup> Evidence, Professor Hensher, 22 May 2017, p 18.

<sup>412</sup> Evidence, Professor Hensher, 22 May 2017, p 18.

<sup>413</sup> Submission 115, National Roads and Motorists Association, p 5.

<sup>414</sup> Submission 115, National Roads and Motorists Association, p 5.

**5.15** The NRMA therefore called for as a first step the ‘complete review of all existing motoring vehicle taxes and charges ... to assess what type of road user charging models could be implemented to secure long term investment in the road network and how it interacts with public transport’. Furthermore, consideration was then required as to ‘how tolling charges fit into any proposed user charging model would need to take place’.<sup>415</sup>

**5.16** In a similar light, Professor Hensher referred to research undertaken by his colleague Professor Corrine Mulley, which considered reducing registration charges and replacing them instead with a distance-based charge for the whole network, including maybe suburban streets.<sup>416</sup>

We calculated that if you halved the registration charge and introduced a peak period 5¢ per kilometre — peak period only, so people have a choice and the choice is the off peak — and for most car users, the choice is not public transport, it is to change the time of day they travel.

That public transport argument is often used as a constraint to say we cannot do anything until we invest in more public transport, so we do not do anything. The point is we know, as a result of congestion, that people start to switch the time of day in order to stay in their beloved car. Being realistic about that, certainly in the medium term, as much as I would like greater use of public transport, a 5¢ per kilometre with a halved registration charge will make the majority of people in Sydney financially no worse off and Treasury will be happy, because they would not be slugged either.<sup>417</sup>

**5.17** Professor Hensher acknowledged that such an approach would require considerable political buy in:

Once you put that in place and get buy-in — and I call that votes — then you can start increasing that cents per kilometre in order to raise revenue to reinvest in public transport, roads and so on. Until you convince people that this is worth doing, it does not hit their hip pocket and, "By God, I have got a time saving," they will say, "Wow, this is pretty good." We need to demonstrate it. I have been talking to the Federal Government, as difficult as it is to get them interested in this. The current Minister, Paul Fletcher, would love to be able to trial something like that, but we do not know where to trial it.<sup>418</sup>

**5.18** Calls for such reform was also expressed by Mr Matthew Hounsell, a transport researcher who explained that ‘there was broad consensus amongst the economic and transport professionals that a broad pricing scheme should be ... introduced’. Mr Hounsell argued that ‘introducing the right type of road pricing system will reduce congestion within our metropolitan areas’ thereby improving national productivity and health and free up significant amounts of space for more productive uses.<sup>419</sup>

<sup>415</sup> Submission 115, National Roads and Motorists Association, p 5.

<sup>416</sup> Evidence, Professor Hensher, 22 May 2017, p 18.

<sup>417</sup> Evidence, Professor Hensher, 22 May 2017, p 19.

<sup>418</sup> Evidence, Professor Hensher, 22 May 2017, p 19.

<sup>419</sup> Submission 84, Mr Matthew Hounsell, p 2.

### Barriers to reform

- 5.19** It was acknowledged by inquiry stakeholders that such reform would present significant challenges, not least because of the binding nature of the concession agreements currently in place. As explained by WSROC, reform would require agreements ‘to be reached with motorway operators under the leadership of the State Government. Existing contracts would need to be re-negotiated with motorway concession holders, with incentives and possible compensation for investors’.<sup>420</sup>
- 5.20** Mr Brendan Lyon, Infrastructure Partnerships Australia also outlined other challenges and consequences including the redirection of people off the tolled network and that additional measures would also have to be taken to address these consequences:

It is complex to do because of the existing owners and tolling agreements, because dynamic pricing would serve to price a lot of people off the roads and could have unintended consequences, quite conceivably driving traffic off motorways and onto suburban streets, so-called rat runs.

It is also self-evident that a lot more public transport capacity and corridors would be needed to cater for the growth in public transport journeys. That would have to be in place first to give people options and choices, not just a higher charge for what they must consume. Rather, we would recommend a much wider reform that would see the fuel excise and registration charges axed and replaced with an on-vehicle time, mass, distance and location based road user taxation system — something that it will be a relief to the Committee to learn must be led by a national government and is being quietly considered at the moment in Canberra<sup>421</sup>

### NSW Government position

- 5.21** While not discussed in detail by the NSW Government as part of the inquiry process, the Long Term Transport Masterplan does identify potential merit in the introduction of a standard per kilometre toll across Sydney’s motorway network. It states:

A standardised cents-per-kilometre charge across the entire Sydney motorway network has the potential to deliver significant benefits, notably:

- Consistency for motorway users - that is regardless of what part of the network people use or where they live, charges will be directly linked to level of use.
- New funds for new roads – could be generated and directed towards the motorway network and other public transport alternatives.<sup>422</sup>

- 5.22** The NSW Government also acknowledged the challenges associated with such a reform within the Masterplan, stating:

Developing new road tolling options is a significant undertaking and will require discussions with the community and major contract renegotiations with current motorway owners and future developers. We must consider the benefits of the

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<sup>420</sup> Submission 103, Western Sydney Regional Organisation of Councils, p 8.

<sup>421</sup> Evidence, Mr Lyon, 22 May 2017, p 31.

<sup>422</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, p 374.



available options and the extent to which these would outweigh any negative impacts.<sup>423</sup>

## Are there other more suitable delivery models available to the government?

- 5.23** Mr Tony Harris, a former Auditor-General of NSW was the only inquiry participant to provide commentary on whether there might be alternative PPP arrangements available to government to deliver road tolling projects. In summary, Mr Harris argued that there may be alternative arrangements available to the State that would enable it to deliver projects at a lower cost to the taxpayer and that would enable it to retain the ability manage the risks associated with traffic management. His suggestions are discussed below.
- 5.24** Mr Harris asserted ‘that there is confusion about this issue of finance and risk taking and because of that confusion, motorists in New South Wales have paid significantly more than they should have for the road toll services being provided’.<sup>424</sup> Mr Harris referred to a number of factors that were responsible for this, including the higher costs associated with the financing of such projects by the private sector.
- 5.25** Looking ahead, Mr Harris offered a solution whereby the government could take on the role of project financier, but the private sector could still retain responsibilities relating to design, build and maintenance. He suggested that the Government could put out a tender for a toll road – and compare the costs of both the private sector and the government providing the finance of the project’.<sup>425</sup> It could then ‘see what the price differentials are and whether those price differentials are warranted in view of the cheaper cost of finance that the Government can obtain and the better value that the Government can extract by better managing the risks’.<sup>426</sup>
- 5.26** Mr Harris explained that this approach was desirable because the Government could borrow at a better rate than the private sector, on account of its triple-A credit rating, thereby reducing the cost of the project. Furthermore, that the transfer of financing risk to the private sector, comes at a higher project cost:
- ... they [the Government] could do one simple thing: put out a tender for a toll road, if you like, and have it on the one hand where the government is the financier and on the other hand where the private sector is the designer, the builder, the maintainer, the financier and the owner and see what the difference is between the two tenders, given the Government's interest rate for its own borrowings. Considering that the Government borrows far better than the private sector the deal should be quite clear just to start off with. But there are added issues, as we have talked about, called risk and that makes it hugely much more expensive to have the private sector in the deal.<sup>427</sup>
- 5.27** Mr Harris also talked to the State’s loss of flexibility upon the signing of long term contracts, noting that that the private sector was not in a position to manage the risks associated with the

<sup>423</sup> NSW Government, NSW Long Term Transport Masterplan, 2012, p 374.

<sup>424</sup> Evidence, Mr Tony Harris, Former Auditor-General of New South Wales, 12 April 2017, Sydney Transcript, p 12.

<sup>425</sup> Evidence, Mr Harris, 12 April 2017, p 13.

<sup>426</sup> Evidence, Mr Harris, 12 April 2017, p 17.

<sup>427</sup> Evidence, Mr Harris, 12 April 2017, p 13.

project – for example, take steps to increase or encourage further patronage on the toll roads in question.<sup>428</sup> Not only did this restrict the government's ability to address the efficiency of the network as referred to by other stakeholders, it also meant that the State could not benefit from uplifts in patronage, as a result of future roads projects.<sup>429</sup>

- 5.28** Mr Harris suggested that even in cases where the government of the day had taken the decision not to borrow and go into a higher debt situation, that there may be more suitable options available. Mr Harris questioned whether an approach whereby the private sector provided the finance to the project, effectively owning the project, and then the state rented the asset back from the private sector, at an agreed price. The government could then be the toll collector and could retain control of the traffic risks:

If you say no government wishes to extend its triple-A borrowing capacity in order to reduce costs for its citizens, but they would prefer the private sector to increase its borrowings in order to impose a higher cost on motorists, then that is a policy decision. Yes, I accept that. Then you would look to see, given that constraint, is there a better way of doing it than the way we are doing it now? For example, why do we not say to the private sector, "You own the road and we will rent it from you at a price that enables you to have the profit that a utility should have. We will take the traffic risks."

... if more trucks use this road, thus causing you more maintenance costs, we can put that into the formula as well. We take the traffic—I do not think this is the best solution but given your hypothesis it might seem to be a better solution than the one we have at the moment. You put it out to tender and say, "What kind of return do you want? You have got all these cost issues, maintenance and the like, but what kind of return do you want? You can own the road because we do not want the debt on our books. You have it on your books, even though it is more expensive. What kind of return do you want?"<sup>430</sup>

### **Committee comment**

- 5.29** It is clear to the committee that a broad body and a growing level of support exists for transition towards a network based approach to road tolling. However, it remains the case that significant barriers exist to the adoption of any road networking approach, including having to renegotiate multiple existing road toll contracts.
- 5.30** For the reasons in relation to 'sovereign risk' given earlier in the report, the committee reject any unilateral attempt by government to demand or force a renegotiation of existing contractual agreements. It is quite possible however, that within the long contract periods for the existing toll roads, that such renegotiations are proposed, and found to be in the public interest.
- 5.31** Whatever the merits of moving toward road tolling concession agreements which enhance the ability of future governments to manage the wider road network, the primary goal should be that these networks be built, and that the fiscal integrity of the State budget be maintained

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<sup>428</sup> Evidence, Mr Harris, 12 April 2017, p 13.

<sup>429</sup> Evidence, Mr Harris, 12 April 2017, p 13.

<sup>430</sup> Evidence, Mr Harris, 12 April 2017, p 20.

while doing so. While not excluding the possibility that demand management tolling could be included in future contracts, the committee is of the view that this is a secondary consideration and, if done, it should not be done in a way that would lead to uncertainty for potential contractors for the building and operation of new motorways

- 5.32** It is of concern to the committee that the long time frames associated with tolling concession contracts can inhibit long term transport policy development. Hence the committee recommends that the government ensure that new or renegotiated road tolling concession agreements enhance the ability of future governments to manage the wider road network.

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**Recommendation 10**

That the NSW Government ensure that new or renegotiated road tolling concession agreements enhance the ability of future governments to manage the wider road network.

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## Appendix 1 Submissions

No	Author
1	Name suppressed
2	Tolling Customer Ombudsman
3	Mr Martin Geliot
4	Name suppressed
5	Name suppressed
6	Mr Brian Livings
7	Mr Alan Bottle
8	Mr Sam Mearthy
9	Name suppressed
10	Name suppressed
11	Name suppressed
12	Dr Upasiri de Silva
13	Mrs Christine Shaw
14	Mr Peter Philliponi
15	Name suppressed
16	Name suppressed
17	Mr Colin George
18	Mr Gregory Edwards
19	Mr James Cornish
20	Name suppressed
21	Name suppressed
22	Name suppressed
23	Name suppressed
24	Name suppressed
25	Name suppressed
26	Name suppressed
27	Mr John Gillies
28	Ms Marghanita da Cruz
29	Mr Scott Reynolds
30	Name suppressed
31	Confidential
32	Name suppressed

<b>No</b>	<b>Author</b>
33	Confidential
34	Mr John Crichton
35	Ms Amanda Carr
36	Rev Neil Atwood
37	Mrs Susan Spedding
38	Name suppressed
39	Name suppressed
40	Mr Gordon Walbank
41	Mrs Carmen Petersen
42	Name suppressed
43	Name suppressed
44	Mr Ross Signorelli
45	Mrs Jenny Chadwick
46	Confidential
47	Confidential
48	Name suppressed
49	Ms Alexis Colley
50	Name suppressed
51	Mrs Jennifer Whichello
52	Mrs Louise Manzi
53	Name suppressed
54	Ms Catherine Cunningham
55	Name suppressed
56	Name suppressed
57	Confidential
58	Name suppressed
59	Mrs Beryl Pittman
60	Mr Noel Benham
61	Mrs Margaret Lowe
62	Mr John Tylor
63	Name suppressed
64	Mr Mark Smith
65	Name suppressed
66	Mr Ross Mumby
67	Name suppressed

<b>No</b>	<b>Author</b>
68	Mr Christopher Forwood
69	Ms Melissa Hutchison
70	Name suppressed
71	Mr Dennis Reed
72	Mrs Leonie Orchard
73	Mr Arthur Rothwell
74	Mr Anthony Eden
75	Confidential
76	Name suppressed
77	Mr Andrew Chuter
78	Name suppressed
79	Mr Peter Hehir
80	Mr Michael Fogarty
81	Mr Ben Aveling
82	Name suppressed
83	Mr Peter Egan
84	Mr Mathew Hounsell
85	Ms Wendy Bacon
86	Mr Nathan English
87	Name suppressed
88	Name suppressed
89	Ms Rhonda Riding
90	Name suppressed
91	IPART
92	Name suppressed
93	Mr Andrew Quah
94	Penrith City Council
95	Transport Workers' Union of NSW
96	City of Sydney
97	Infrastructure Partnerships Australia
98	WestCONnex Action Group
99	No WestConnex Public Transport Inc – NoW PT
100	Transurban
101	Blacktown City Council
102	Action for Public Transport (NSW) Inc.

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<b>No</b>	<b>Author</b>
103	Western Sydney Regional Organisation of Councils Ltd
104	Toll Redress
105	Mr Christopher Joret
106	Name suppressed
107	Mr Selim Stamati
108	Mrs Josefina Stamati
109	Transport for NSW
110	Confidential
110a	Financial-Architects.Asia Pty Ltd
111	Mr Tony Harris
112	Professor Graeme Hodge
113	Motorcycle Council of NSW
114	Mr John Seddon
115	NRMA

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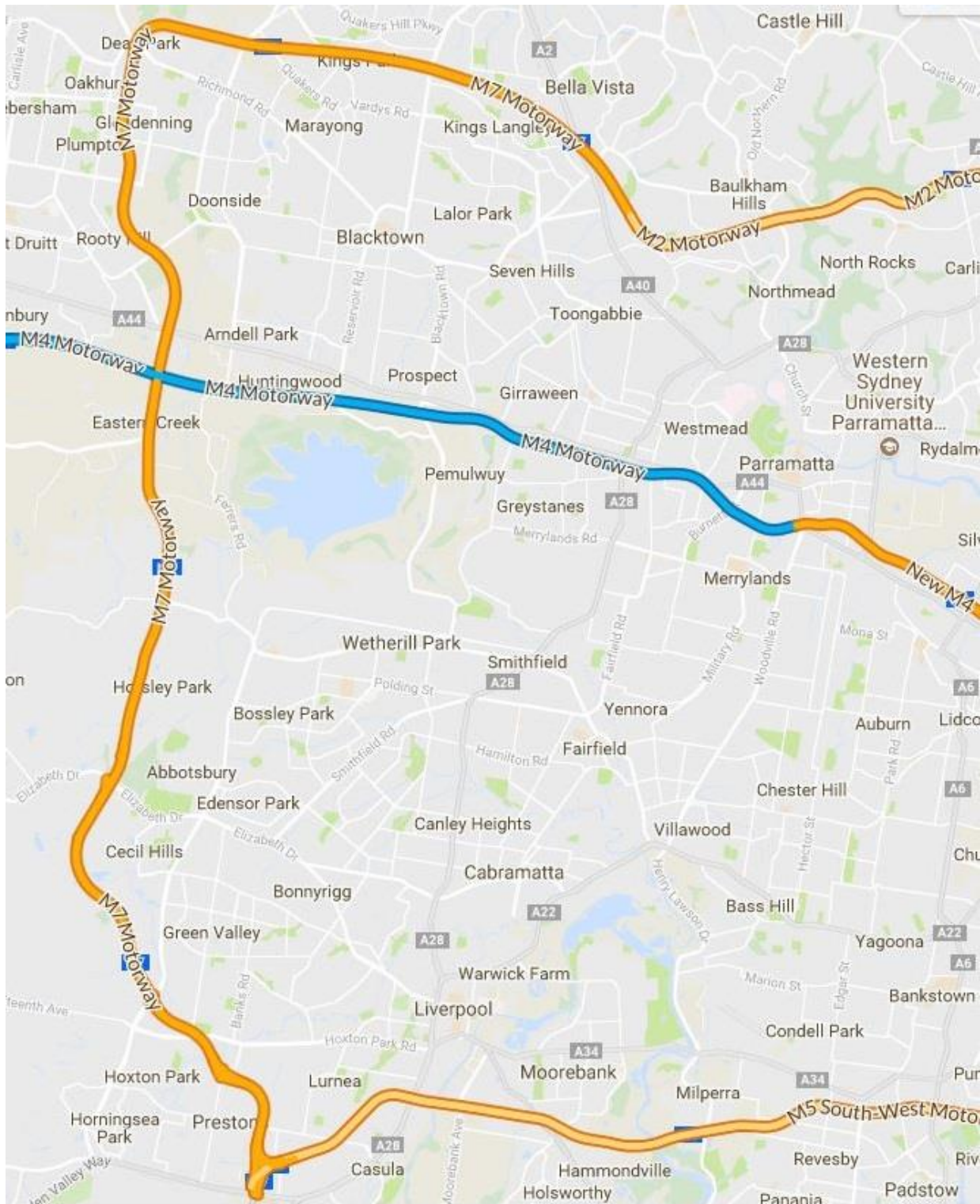
## Appendix 2 Witnesses at hearings

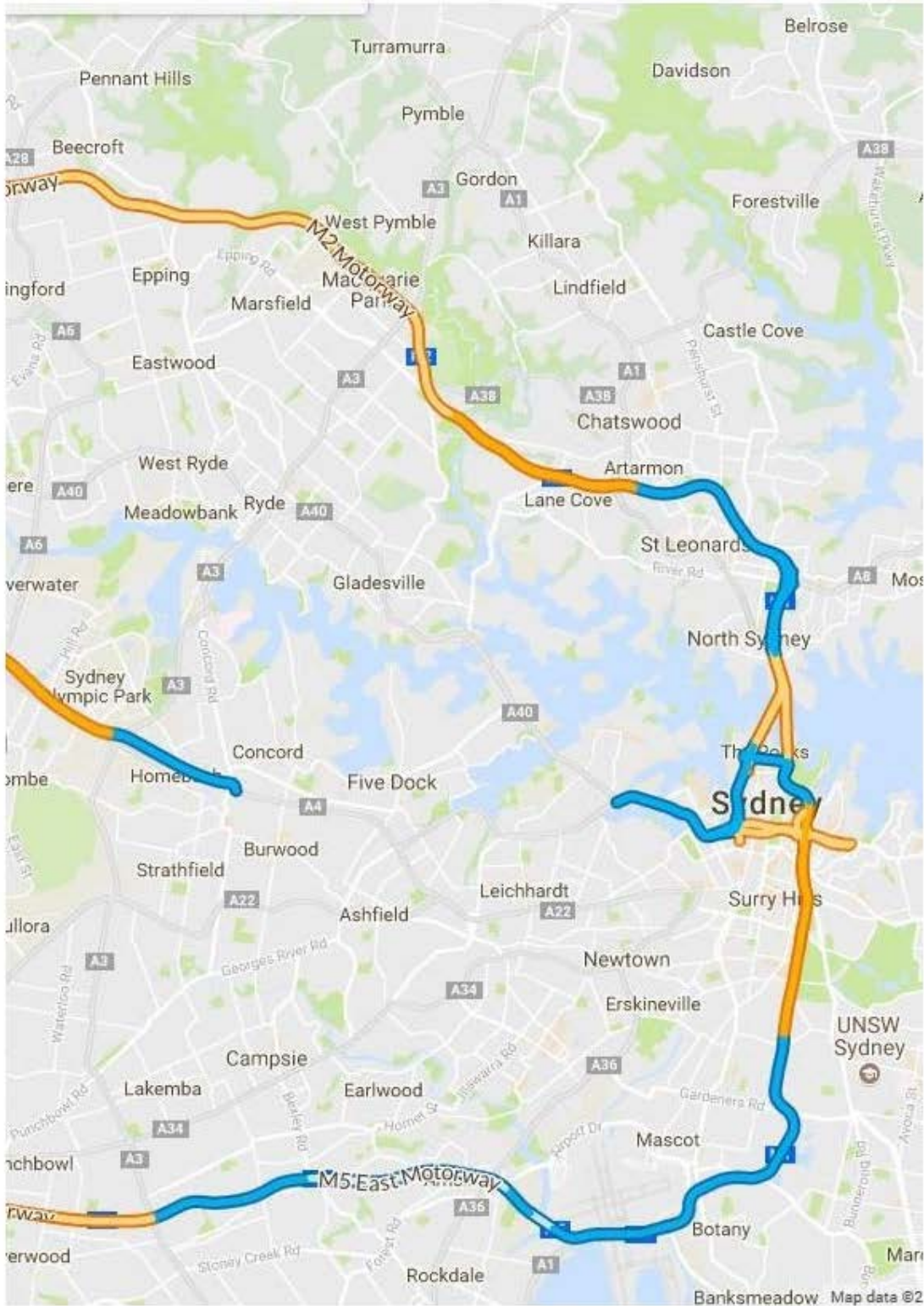
Date	Name	Position and Organisation
<b>Tuesday 11 April 2017</b>		
<b>Macquarie Room, Parliament House, Sydney</b>	Mr Andrew Head	Group General Manager, New South Wales Business, Transurban
	Mr Henry Byrne	General Manager, Investor Relations and Corporate Affairs, Transurban
	Mr Tony Braxton-Smith	Deputy Secretary, Customer Services, Transport for NSW
	Mr Ken Kanofski	Chief Executive, Roads and Maritime Services
	Mr Marcus Ray	Deputy Secretary, Planning Services, Department of Planning and Environment
	Ms Victoria White	Acting Chief Operating Officer, Greater Sydney Commission
	Mr Nick McIntosh	Chief of Staff, Transport Workers' Union of NSW
	Mr Phil Ramondino	Member and Tip Trucks Owners Section President, Transport Workers' Union of NSW
	Mr Michael John Arnold ( <i>via teleconference</i> )	Tolling Customer Ombudsman
	Mr Michael Fraser	Director, Toll Redress
Ms Maddison Johnstone	Director, Toll Redress	
<b>Wednesday 12 April 2017</b>		
<b>Macquarie Room, Parliament House, Sydney</b>	Professor Graeme Hodge	Professor of Law, Monash University
	Mr Tony Harris	Former Auditor-General of New South Wales

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Library Theatre, Penrith City Library, Penrith</b>	Mr Charles Casuscelli	Chief Executive Officer, Western Sydney Regional Organisation of Councils
	Cr Stephen Bali	Mayor, Blacktown City Council
	Mr Kerry Robinson	General Manager, Blacktown City Council
	Cr John Thain	Mayor, Penrith City Council
	Mr Craig Butler	Assistant General Manager, Penrith City Council
	Mr Jim Donovan	Member, Action for Public Transport NSW
	Ms Rhea Liebmann	Member, Westconnex Action Group
	Mr John Lozano	Member, No Westconnex Public Transport Inc
<b>Monday 22 May 2017 Macquarie Room, Parliament House, Sydney</b>	Mr Nathan English	Member, No Westconnex Public Transport Inc
	Mr Kyle Loades	Chairman, National Roads and Motorists' Association (NRMA)
	Mr Matthew Gijselman	General Manager, Public Affairs, National Roads and Motorists' Association (NRMA)
	Ms Carlita Warren	Senior Manager, Policy and Research, National Roads and Motorists' Association (NRMA)
	Prof David Hensher	Professor of Management, Institute of Transport Logistics Studies, University of Sydney Business School
Mr Brendan Lyon	Chief Executive Officer, Infrastructure Partnerships	

Date	Name	Position and Organisation
		Australia
	Mr Michael Twycross	Policy Officer, Infrastructure Partnerships Australia
	Mr Dennis Cliche	Chief Executive Officer, Sydney Motorway Corporation
	Mr Ken Kanofski	Chief Executive, Roads and Maritime Services
	Mr Simon Draper	Deputy Secretary, Economic Policy, Department of Premier and Cabinet
	Ms Leilani Frew	Executive Director, Commissions and Contestability Unit, Commercial Group, NSW Treasury
	Mr Ken Kanofski	Chief Executive, Roads and Maritime Services
	Mr Ian Goodwin	Acting Auditor-General, Audit Office of New South Wales
	Ms Claudia Migotto	Acting Assistant Auditor-General, Audit Office of New South Wales

## Appendix 3 Sydney toll network map





# Appendix 4 Petition and Government Response – Reintroduction of tolls on the M4

STOP THE TOLL ON THE M4

We ask the Legislative Assembly to call on the State Government to stop the toll on the M4

**To the Hon. Speaker and Members of the NSW Legislative Assembly.**

This Petition of concerned local residents residing in Western Sydney:

Brings to the attention of the House our deep concern over the **State Government's plan to reintroduce a toll on the M4. We are concerned that:**

1. This toll will cost Western Sydney commuters up to \$2,000 a year for a road that is currently free.
2. This is a complete contradiction of former Premier Barry O'Farrell's promise that a Liberal Government would not put any new tolls on existing roads.
3. This is an attack on household budgets in Western Sydney, an area that is already struggling with the cost of living.

We (the undersigned) ask the Legislative Assembly to call on the Government to stop the reintroduction of a toll on the M4.

PRESENTED BY

NAME:*	MOBILE: (optional)	SIGNATURE:*
	<i>Prue Car</i> 23/5/17 I certify that this Petition conforms to the requirements of the Standing Orders	<i>Helen Minnicorn</i> Clerk of the Legislative Assembly
EMAIL: (optional)		
ADDRESS:*		

Please return completed petitions to:  
**Prue Car MP, PO Box 4001 Werrington NSW 2747.**  
 For more petitions, please contact Prue's office on 9833 1122 or email [londonderry@parliament.nsw.gov.au](mailto:londonderry@parliament.nsw.gov.au)

I certify that this petition has more than 10,000 signatures

REQUIRED INFORMATION Authorised by Prue Car MP 12/82 Victoria St Werrington and printed by Infrisis Printers 5/71 a Millers Rd Dasechu using environment friendly inks March 2016



## The Hon Stuart Ayres MP

Minister for Western Sydney  
Minister for WestConnex  
Minister for Sport



Ms Helen Minnican  
Clerk of the Legislative Assembly  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

Dear Ms Minnican,

I refer to the petition lodged on 23 May 2017 by Ms Prue Car MP, Member for Londonderry, regarding the M4 Motorway.

WestConnex comprises three motorways totalling 33 kilometres, two-thirds of which will be underground. It includes widening and upgrading the New M4, building a New M5 and joining them together to create a free-flowing motorway loop.

As part of an integrated transport plan, along with our massive investments into metro and light rail, WestConnex will provide support for Sydney's long-term economic and population growth by easing congestion, creating jobs and connecting communities.

From Western Sydney to the edge of the CBD, motorists will not encounter a single traffic light, with a travel time saving of about 30 minutes. WestConnex will slash congestion and deliver thousands of hours per week back to mums, dads and small businesses.

Our funding model allows for more money to be spent on other important infrastructure projects such as schools and hospitals.

Travel on the M4 between Lapstone and Parramatta remains free, and there will be a free alternative to WestConnex.

Under tolling arrangements largely entered into by the previous Labor government, it costs motorists from my electorate of Penrith almost \$22 (\$2017) to access the CBD via the motorway network.

WestConnex will provide a more direct route for a maximum of \$8.60 (\$2017), around 40% of what they currently pay.

For years Western Sydney motorists have suffered from not having a completed M4 that connects to the Anzac Bridge. WestConnex will deliver that connection.

Yours sincerely

Stuart Ayres MP  
Minister for Western Sydney  
Minister for WestConnex  
Minister for Sport

GPO Box 5341, SYDNEY NSW 2001  
Phone: (02) 8574 6500 Fax: (02) 9339 5522 [www.nsw.gov.au/ministerayres](http://www.nsw.gov.au/ministerayres)

## Appendix 5 Minutes<sup>431</sup>

### Minutes no. 28

Wednesday 7 December 2016

General Purpose Standing Committee No. 2

Members' Lounge, Parliament House, Sydney, at 2.02 pm

#### 1. Members present

Mr Donnelly, *Chair*

Dr Faruqi

Mr Graham (by teleconference)

Mr Mason-Cox (by teleconference)

Dr Phelps (from 2.03pm, by teleconference)

Mrs Taylor

Revd Nile (substituting for Mr Green)

#### 2. Draft minutes

Resolved, on the motion of Mrs Taylor: That draft minutes no. 27 be confirmed.

#### 3. Correspondence

The committee noted the following items of correspondence:

##### ***Received:***

- 5 December 2016 – Email from Reverend Nile advising that he is substituting for Mr Green at the meeting on 7 December 2016
- 5 December 2016 – Letter from Hon Greg Donnelly MLC, Hon Paul Green MLC and Dr Mehreen Faruqi requesting a meeting of GPSC No 2 to consider a proposed self-reference into road tolling in New South Wales.

#### 4. Consideration of terms of reference.

The Chair tabled a letter enclosing a previously circulated terms of reference.

Discussion ensued.

Resolved, on the motion of Revd Nile: That the Committee adopt the terms of reference as amended:

##### **Inquiry into road tolling**

That General Purpose Standing Committee No.2 inquire into and report on matters relating to tolling regimes for roads in New South Wales including:

1. a review of the tolling regimes in place on different roads and an explanation for the differences between each
2. the process for determining how tolls are set for all types of vehicles, the length of tolling concession periods, the rationale for extending these concession periods and opportunities to increase transparency for the public, particularly given the absence in some instances of any competitive process
3. how tolling contracts are negotiated and varied and opportunities to increase public scrutiny and accountability of the negotiations that take place between private tolling companies and the NSW Government

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<sup>431</sup> Appendix 5 only includes minutes relevant to the inquiry.



4. the rationale for allowing higher than CPI increases on certain tolls
  5. the extent of any consultation undertaken with the trucking industry before changes are made to tolling regimes
  6. the appropriateness of involving the Independent Pricing and Regulatory Tribunal (IPART) in the determination of tolls and their escalation, given the involvement of IPART and other such independent regulators in setting public transport fares and other services such as electricity transmission and distribution charges
  7. opportunities to increase the assurance to the public that tolling arrangements represent the fairest possible outcome
  8. an examination of road tolling arrangements in overseas jurisdictions, and
  9. any other related matter.
- 5. Conduct of inquiry into road tolling in New South Wales**  
Resolved, on the motion of Dr Faruqi: That the closing date for submissions be 28 February 2017.
- 5.1 Stakeholder list**  
Resolved, on the motion of Mr Shoebridge: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.
- 5.2 Advertising**  
The committee noted the proposed methods of advertising of the inquiry.
- 5.3 Hearing dates**  
Resolved, on the motion of Revd Nile: That the committee hold 2-3 hearings in March/April 2017, the dates of which are to be determined by the Chair after consultation with members regarding their availability.
- 5.4 Adjournment**  
The committee adjourned at 2.12 pm, until Monday 13 February 2017, Room 1254, Parliament House (roundtable meeting with stakeholders for the child protection inquiry).

Tina Higgins  
Clerk to the Committee

**Minutes no. 31**

Wednesday 29 March 2017

Portfolio Committee No. 2 – Health and Community Services  
Members' Lounge, Parliament House, Sydney, at «Start\_Time»

**1. Members present**

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Dr Faruqi (substituting for Ms Walker for the duration of the inquiry into road tolling)

Mr Graham

Mr Khan (substituting for Mrs Taylor for the duration of the inquiry into road tolling)

Mr Mason-Cox

Dr Phelps

**2. Draft minutes**

Resolved, on the motion of Dr Phelps: That draft minutes no. 30 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 1 March 2017 – Email from Ms Margaret Crawford, Auditor-General of NSW to Chair, advising that the Audit Office will not be making a submission to the road tolling inquiry
- 1 March 2017 – Email from Mr Michael Fraser, Toll Redress, to Chair, requesting to appear as a witness to the road tolling inquiry
- 7 March 2017 – Email from the Hon Shaoquett Moselmane MLC, Opposition Whip, to the secretariat, advising that Mr Mookhey will be a participating member for the duration of the inquiry into road tolling
- 16 March 2017 – Email from Dr Mehreen Faruqi MLC to the secretariat, advising that she will be substituting for Ms Walker for the duration of the inquiry into road tolling
- 16 March 2017 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to the secretariat, advising that Mr Khan will be substituting for Mrs Taylor for the duration of the inquiry into road tolling
- 28 March 2017 – Email from Ms Penny Roberts, Head of Public Affairs, Transurban, to Chair, requesting a meeting to discuss Transurban's submission to the inquiry into road tolling.

***Sent:***

- 28 March 2017 – Email from the secretariat, to Ms Penny Roberts, Head of Public Affairs, Transurban, advising that the Chair is not available to meet.

**4. Inquiry into road tolling****4.1 Chair's proposed witness list**

Resolved, on the motion of Dr Phelps: That the committee adopt the Chair's proposed witness list, including the government witnesses identified by the Chair and/or their nominated agency representatives.

Resolved, on the motion of Dr Faruqi: That the secretariat contact AECOM to ascertain whether they are interested in participating in the inquiry, either by way of written submission or appearing at the public hearings.

**5. Adjournment**

The committee adjourned at 2.29pm, until Tuesday 11 April 2017, Macquarie Room, Parliament House, Sydney (public hearing for the inquiry into road tolling).

Stephanie Galbraith  
**Clerk to the Committee**

**Minutes no. 32**

Tuesday 11 April 2017

Portfolio Committee No. 2 – Health and Community Services

Macquarie Room, Parliament House, Sydney, at 8.48 am

**1. Members present**Mr Donnelly, *Chair*

Dr Faruqi

Mr Graham

Mr Khan

Dr Phelps

**2. Apologies**Mr Green, *Deputy Chair*

Mr Mason-Cox

Mr Mookhey (participating)

**3. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 31 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 16 March 2017 – Email from Ms Katherine Karavelatzis to the secretariat, providing information relating to the child protection inquiry
- 3 April 2017 – Email from Mr Rob Whitfield, Secretary, NSW Treasury, to secretariat, declining the invitation to appear as a witness at the public hearing for the road tolling inquiry
- 4 April 2017 – Email from Ms Amanda Jones, Chief Operating Officer and Deputy Chief Executive Officer, Infrastructure NSW, to secretariat, declining the invitation to appear as a witness at the public hearing for the road tolling inquiry
- 5 April 2017 – Email from Mr Brett Everett, Director, Pricing, Independent Pricing and Regulatory Tribunal to secretariat, declining the invitation to appear as a witness at the public hearing for the road tolling inquiry
- 6 April 2017 – Email from Mr Michael Twycross, Policy Officer, Infrastructure Partnerships Australia, to secretariat, declining the invitation to appear as a witness at the public hearing on 11 April 2017 for the road tolling inquiry
- 6 April 2017 – Email from Mr Hugo Harmstorf, Chief Executive Officer, Independent Pricing and Regulatory Tribunal to secretariat, confirming that IPART is not able to attend the public hearing for the road tolling inquiry and offering to provide further written submissions in response to any questions the committee may have
- 7 April 2017 – Email from Ms Wendy Stainlay, AECOM to secretariat, advising that AECOM wishes to decline the offer to participate in the road tolling inquiry
- 10 April 2017 – Letter from Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation to secretariat, advising that they will now not be appearing as a witness at the public hearing for the road tolling inquiry.

***Sent:***

- 5 April 2017 – Email from secretariat to Ms Wendy Stainlay, AECOM, to re-confirm whether AECOM is interested in participating in the inquiry
- 6 April 2017 – Email from secretariat to Dr Peter Boxall AO, Chair, Independent Pricing and Regulatory Tribunal, to ask if IPART will reconsider their decision not to appear as a witness at the public hearing for the road tolling inquiry

- 10 April 2017 – Email from secretariat on behalf of Chair to Ms Nicky Sutherland, Sydney Motorway Corporation (SMC), regarding SMC’s decision to decline the committee’s invitation to appear as a witness at the road tolling hearing of 11 April 2017.

## 5. Inquiry into road tolling

### 5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 2-3, 6-8, 12-14, 17-19, 27-29, 34-37, 40-41, 44-45, 49, 51-52, 54, 59-62, 64, 66, 68-69, 71-74, 77, 79-81, 83, 84-86, 89, 91, 93-105, 107-109, 111 and 112.

### 5.2 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Andrew Head, Group General Manager New South Wales, Transurban
- Mr Henry Byrne, General Manager, Investor Relations and Corporate Affairs, Transurban.

Mr Head tendered the following document:

- Infographic prepared by Transurban illustrating various tolling information including existing tolling arrangements, tolling benefits, and private sector contributions.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW
- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment
- Ms Victoria White, Acting Chief Operating Officer, Greater Sydney Commission.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Nick McIntosh, Chief of Staff, Transport Workers’ Union of NSW
- Mr Phil Ramondino, Member and Tip Truck Owners Section President, Transport Workers’ Union of NSW

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Michael Arnold, Tolling Customer Ombudsman (by teleconference).

Mr Arnold tendered the following document:

- Document entitled ‘NSW Toll Operators – Complaints – 12 months to March 2017’.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Michael Fraser, Director, Toll Redress
- Ms Maddison Johnstone, Director, Toll Redress.

The evidence concluded and the witnesses withdrew.

The public and media withdrew.

The public hearing concluded at 4.30 pm.

### 5.3 Provision of documents to participating member

Resolved, on the motion of Dr Phelps: That, as previously agreed by email, Mr Mookhey, who the committee has been advised intends to participate for the duration of the inquiry into road tolling, be provided with copies of meeting papers and unpublished submissions.

### 5.4 Tended documents

Resolved, on the motion of Mr Graham: That the committee accept and publish the following documents tendered during the public hearing:

- Infographic prepared by Transurban illustrating various tolling information including existing tolling arrangements, tolling benefits, and private sector contributions, tendered by Mr Head, Group General Manager New South Wales, Transurban
- Document entitled 'NSW Toll Operators – Complaints – 12 months to March 2017' tendered by Mr Arnold, Tolling Customer Ombudsman.

## 6. Adjournment

The committee adjourned at 4.38 pm, until Wednesday 12 April 2017, Macquarie Room, Parliament House, Sydney (public hearing for the inquiry into road tolling).

Stephanie Galbraith  
Clerk to the Committee

## Minutes no. 33

Wednesday 12 April 2017

Portfolio Committee No. 2 – Health and Community Services  
Macquarie Room, Parliament House, Sydney, at 9.47 am

### 1. Members present

Mr Donnelly, *Chair*  
Dr Faruqi  
Mr Graham  
Mr Khan  
Dr Phelps

### 2. Apologies

Mr Green, Deputy Chair  
Mr Mason-Cox  
Mr Mookhey (participating)

### 3. Inquiry into road tolling

#### 3.1 Partially confidential submissions

Resolved, on the motion of Mr Graham: That the committee keep the following information confidential, as per the request of the authors: submission authors' names in submissions nos. 1, 4, 5, 9, 10, 11, 15, 16, 20-26, 30, 32, 38, 39, 42, 43, 48, 50, 53, 55, 56, 58, 63, 65, 67, 70, 76, 78, 82, 87, 88, 90, 92 and 106.

#### 3.2 Confidential submissions

Resolved, on the motion of Dr Faruqi: That the committee keep submission nos. 31, 33, 46, 47, 57, 75, and 110 confidential, as per the recommendation of the secretariat, as they contain identifying and/or sensitive information.

### 3.3 Additional witnesses

Resolved, on the motion of Mr Khan: That the committee authorise the following letters to be sent, with a two-week timeframe for responses:

- Letter to Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation, noting his letter declining to appear as a witness at the hearing on 11 April 2017, indicating that the committee would like to invite him to appear at the hearing on 22 May 2017, and noting that the committee has the power to summons should he decline the committee's invitation
- Letter to Mr Rob Whitfield, Secretary, NSW Treasury, noting his email declining to appear as a witness at the hearing on 11 April 2017 and indicating that the committee would like to invite him to appear at the hearing on 22 May 2017
- Letters to the NSW Department of Premier and Cabinet and the Auditor-General of NSW, inviting them to appear at the hearing on 22 May 2017.

Resolved, on the motion of Mr Khan: That Transport for NSW and Road and Maritime Services be invited back to appear at the hearing on 22 May 2017 to respond to evidence received at the hearings on 11 and 12 April 2017.

### 3.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Professor Graeme Hodge, Professor of Law, Monash University.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tony Harris, Former Auditor-General of New South Wales.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The committee adjourned.

### 3.5 Public hearing – Penrith

The committee travelled to Penrith to conduct an off-site public hearing at the Library Theatre, Penrith City Library.

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Charles Casuscelli, Chief Executive Officer, Western Sydney Regional Organisation of Councils
- Cr Stephen Bali, Mayor of Blacktown City
- Mr Kerry Robinson, General Manager, Blacktown City Council
- Cr John Thain, Mayor of Penrith City
- Mr Craig Butler, Assistant General Manager, Penrith City Council.

Cr Thain tendered the following document:

- Toll user case study material.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Jim Donovan, Secretary, Action for Public Transport NSW
- Ms Rhea Liebmann, member, WestCONnex Action Group

- Mr John Lozano, member, No Westconnex Public Transport Inc
- Mr Nathan English, member, No Westconnex Public Transport Inc.

Mr Donovan tendered the following document:

- Map prepared by Action for Public Transport NSW, outlining proposed toll points to achieve road access pricing in eastern Sydney.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.29 pm.

### 3.6 Tendered documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during the public hearing:

- Toll user case study material, tendered by Cr John Thain, Mayor of Penrith City
- Map prepared by Action for Public Transport NSW, outlining proposed toll points to achieve road access pricing in eastern Sydney, tendered by Mr Jim Donovan, Action for Public Transport NSW.

### 3.7 Supplementary questions

Resolved, on the motion of Mr Khan: That any supplementary questions arising from the hearings on 11 and 12 April 2017 be lodged with the secretariat by 5.00 pm Thursday 20 April 2017.

## 4. Adjournment

The committee adjourned at 4.35 pm, until Monday 22 May 2017, Macquarie Room, Parliament House, Sydney (public hearing for inquiry into road tolling).

Stephanie Galbraith  
Clerk to the Committee

## Minutes no. 34

Friday 28 April 2017

Portfolio Committee No. 2 – Health and Community Services  
Members' Lounge, Parliament House, Sydney, at 2.35 pm

### 1. Members present

Mr Donnelly, *Chair*  
Dr Faruqi  
Mr Graham  
Mr Khan

### 2. Apologies

Mr Green, Deputy Chair

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received:*

- 27 April 2017 – Letter from Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation, accepting invitation to appear at the hearing on 22 May 2017.

**Sent:**

- 20 April 2017 – Letter from Chair to Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation, inviting him to appear at the hearing on 22 May 2017 and reminding him of the committee's power to summons should he decline the committee's invitation.

**4. Inquiry into road tolling****4.1 Comments in the media regarding Sydney Motorway Corporation's attendance at public hearing**

Resolved, on the motion of Mr Khan: That the possible unauthorised disclosure of the attendance by Mr Dennis Cliche, Chief Executive Officer of Sydney Motorway Corporation, at the committee's hearing on 22 May 2017, as reported in the Sydney Morning Herald on 27 and 28 April 2017, be noted and as the significance of the disclosure does not justify further inquiry, that no further action be taken.

**5. Adjournment**

The committee adjourned at 2.48 pm, until Monday 22 May 2017, Macquarie Room, Parliament House, Sydney (public hearing for inquiry into road tolling).

Stephanie Galbraith  
**Clerk to the Committee**

**Minutes no. 35**

Monday 22 May 2017

Portfolio Committee No. 2 – Health and Community Services  
Macquarie Room, Parliament House, Sydney, at 9.01 am

**1. Members present**

Mr Donnelly, *Chair*

Mr Green, *Deputy Chair*

Dr Faruqi

Mr Graham

Mr Khan

Mr Martin (substituting for Mr Mason-Cox for the duration of the inquiry) (until 3.30 pm)

Mr Mookhey (participating) (from 9.10 am)

Dr Phelps (from 9.08 am until 4.57 pm)

**2. Previous minutes**

Resolved, on the motion of Mr Khan: That draft minutes nos. 32, 33 and 34 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 11 April 2017 – Email from Dr Cameron Richards to secretariat, attaching research paper entitled 'New road tollways in Australia – If indeed a rort or scam, who, how and why so?'
- 8 May 2017 – Email from Mrs Elsie Bayliss to secretariat, regarding matters relating to the inquiry into elder abuse
- 9 May 2017 – Emails from Ms Rachel Simpson, Principal Manager Parliamentary Services, Transport for NSW, advising that Mr Tony Braxton-Smith is unable to attend the hearing on 22 May 2017



- 11 May 2017 – Email from the Hon Natasha Maclaren-Jones MLC to secretariat, advising that the Hon Taylor Martin MLC will be substituting for the Hon Matthew Mason-Cox MLC for the duration of the road tolling inquiry
- 18 May 2017 – Email from Mr Andrew Head, Transurban to secretariat, providing additional information in response to evidence from other witnesses at hearings on May 11 and 12.

**Sent:**

- 20 April 2017 – Letter from Chair to Mr Rob Whitfield, Secretary, NSW Treasury, inviting NSW Treasury to appear at the hearing on 22 May 2017
- 20 April 2017 – Letter from Chair to Mr Blair Comley PSM, Secretary, NSW Department of Premier and Cabinet, inviting the department to appear at the hearing on 22 May 2017
- 20 April 2017 – Letter from Chair to Ms Margaret Crawford, Auditor-General of NSW, inviting the Audit Office to appear at the hearing on 22 May 2017.

#### 4. Inquiry into road tolling

##### 4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 110a, 113, 114 and 115.

##### 4.2 Report deliberative meeting

The committee noted that the report deliberative will be held on Wednesday 16 August 2017 at 12.00 pm.

Dr Phelps joined the meeting.

Mr Mookhey joined the meeting.

##### 4.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- My Kyle Loades, Chairman, National Roads and Motorists' Association (NRMA)
- Mr Matthew Gijselman, General Manager – Public Affairs, NRMA
- Ms Carlita Warren, Senior Manager – Policy and Research, NRMA.

Mr Loades tendered the following document:

- NRMA Business Impact Survey dated March/April 2017.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Professor David Hensher, Institute of Transport Logistics Studies, University of Sydney Business School.

The Hon Mr Graham tendered the following document:

- Extract from Westconnex Updated Strategic Business Case – Technical paper 2 – KPMG WestConnex economic appraisal dated November 2015.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Brendan Lyon, Chief Executive Officer, Infrastructure Partnerships Australia
- Mr Michael Twycross, Policy Officer, Infrastructure Partnerships Australia.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation.

The following witness was sworn and examined on their former oath:

- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services.
- The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Simon Draper, Deputy Secretary, Economic Policy, Department of Premier and Cabinet
- Ms Leilani Frew, Executive Director, Commissioning and Contestability Unit, Commercial Group, NSW Treasury.

The evidence concluded and the witnesses withdrew.

Mr Martin left the meeting.

The following witness was sworn and examined on their former oath:

- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services.
- The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ian Goodwin, Acting Auditor-General, Audit Office of New South Wales
- Ms Claudia Migotto, Acting Assistant Auditor-General, Performance Audit, Audit Office of New South Wales.

Dr Phelps left the meeting.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.59 pm.

#### **4.4 Tendered documents**

Resolved, on the motion of Mr Graham: That the committee accept and publish the following documents tendered during the public hearing:

- NRMA Business Impact Survey dated March/April 2017, tendered by Mr Loades, NRMA
- Extract from Westconnex Updated Strategic Business Case – Technical paper 2 – KPMG WestConnex economic appraisal dated November 2015, tendered by the Hon John Graham MLC.

#### **5. Adjournment**

The committee adjourned at 5.00 pm, until 12.00 pm, Wednesday 16 August 2017 (report deliberative meeting for inquiry into road tolling).

Stephanie Galbraith  
**Clerk to the Committee**

**Draft minutes no. 43**

Friday 13 October 2017

Portfolio Committee No. 2 – Health and Community Services

McKell Room, Parliament House, Sydney, at 12:35 pm

**1. Members present**Mr Donnelly, *Chair*Mr Green, *Deputy Chair*

Dr Faruqi

Mr Graham

Mr Khan

Mr Martin

Mr Mookhey (participating)

Dr Phelps

**2. Previous minutes**

Resolved, on the motion of Dr Phelps: That draft minutes no. 35 be confirmed.

**3. New member**

The Chair noted the resolution of the House of 8 August 2017 discharging the Hon John Graham MLC from the committee and appointing the Hon Courtney Houssos MLC to the committee.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 16 May 2017 – Email – Mr Nathan English, No Westconnex Public Transport, to secretariat - providing supplementary information with transcript corrections
- 16 June 2017 – Email and attachments – Mr Robert Giltinan, Senior Policy and Public Affairs Advisor, NRMA, to secretariat – attaching a presentation and report in lieu of tabled document
- 4 July 2017 - Letter - Hon Natasha Maclaren-Jones to secretariat - advising Hon Taylor Martin will be substituting for Mr Scot MacDonald for the remainder of the inquiry
- 21 July 2017 – Email – Hon Shaoquett Moselmane to secretariat – advising Hon John Graham will be substituting for the Hon Courtney Houssos for remainder of road tolling inquiry.

**5. Inquiry into road tolling****5.1 Answers to questions on notice**

The following answers to questions on notice and supplementary questions were published under the authorisation of the resolution appointing the committee:

- Answers to supplementary questions from Mr Tony Harris, Former Auditor-General of New South Wales, received 4 May 2017
- Answers to questions on notice from Mr John Lozano and Mr Nathan English, No Westconnex Public Transport Inc, received 16 May 2017
- Answers to questions on notice and supplementary questions from Mr Andrew Head, Group General Manager New South Wales, Transurban, received 18 May 2017
- Answers to questions on notice from Mr Marcus Ray, Deputy Secretary Planning Services, Department of Planning and Environment, received 18 May 2017
- Answers to questions on notice from Mr Tony Braxton-Smith, Deputy Secretary Customer Services, Transport for NSW and Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, received 18 May 2017
- Answers to supplementary questions from Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, received 18 May 2017

- Answers to supplementary questions from Mr Tony Braxton-Smith, Deputy Secretary Customer Services, Transport for NSW, received 18 May 2017
- Answers to questions on notice and supplementary questions from Prof Graeme Hodge, Professor of Law, Monash University, received 29 May 2017
- Answers to questions on notice from Mr Kyle Loades, Chairman, NRMA, received 9 June 2017
- Answers to questions on notice from Mr Michael Twycross, Policy Officer, Infrastructure Partnerships Australia, received 7 June 2017
- Answers to questions on notice and supplementary questions from Mr Dennis Cliche, Chief Executive Officer, Sydney Motorway Corporation, received 21 June 2017
- answers to questions on notice and supplementary questions from Mr Simon Draper, Deputy Secretary Economic Policy, Department of Premier and Cabinet, received 21 June 2017
- Answers to questions on notice and supplementary questions from Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, received 21 June 2017
- Answers to questions on notice from Mr Tony Braxton-Smith, Deputy Secretary Customer Services, Transport for NSW, received 21 June 2017
- Answers to questions on notice and supplementary questions from Ms Leilani Frew, Executive Director Commissioning and Contestability Unit Commercial Group, NSW Treasury, received 21 June 2017
- Answers to questions on notice from Mr Ian Goodwin, Deputy Auditor-General, Audit Office of NSW, received 22 June 2017
- Answers to questions on notice from Mr Michael Fraser, Director, Toll Redress, received 29 June 2017.

## 5.2 Consideration of the Chair's draft report

The Chair submitted his draft report entitled Road tolling in New South Wales, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Martin: That paragraph 1.7 be amended by omitting ‘,’ after ‘1932’ and inserting it after ‘Act’.

Dr Faruqi moved: That paragraph 1.26 be amended by:

- a) omitting ‘two primary sources’ and inserting instead ‘three primary sources’
- b) inserting at the end:
  - ‘Governments financing and owning infrastructure through their own borrowings [FOOTNOTE: Evidence, Mr Harris, 12 April 2017, p 13]

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Graham, Mr Green.

Noes: Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the affirmative.

Resolved on the motion of Mr Graham: That the following new paragraph be inserted after paragraph 1.116:

‘On 13 October 2017 it was reported in the media that the NSW Audit Office will re-examine the WestConnex project. The report stated that the Auditor-General, Ms Margaret Crawford, had not yet determined the scope of the audit. Mr Barry Underwood, Executive Director of the Audit Office is also reported to have stated ‘it is not yet clear whether Sydney Motorway Corporation, would be examined as part of the audit.’ [FOOTNOTE: Matt O’Sullivan, ‘NSW Auditor-General to inquiry into WestConnex for a second time’, Sydney Morning Herald, 13 October 2017]

Dr Phelps moved: That paragraphs 1.135 and 1.138 be omitted:

‘At the time of writing this report articles were published in the media that appeared to disclose potential funding proposals for the Western Harbour Tunnel and Beaches Link project. The media reported that source information was outlined within a ‘leaked’ cabinet-in-confidence, Final Business Case for that project. In summary, reports alluded to the introduction of tolls on the Western Harbour Tunnel and Beaches Link project itself, as well as the re-introduction of tolls on the northbound sections of the Sydney Harbour Bridge and Harbour Tunnel as a means of raising the funding necessary to complete the project.<sup>432</sup> Information, as published within the report published by the Sydney Morning Herald, titled *‘Revealed: \$8 tolls each way planned for new road tunnels to Sydney’s north’*, is reproduced below.’

### **Western Harbour Tunnel and Beaches Link – Reported funding arrangements**

On 19 July 2017 details of funding proposals, as contained within a ‘leaked’ Final Business Case for the Western Harbour Tunnel and Beaches Link, were published in an article titled *‘Revealed: \$8 tolls each way planned for new road tunnels to Sydney’s north’* by the Sydney Morning Herald. It was reported that:

‘Motorists will pay tolls in both directions on the Sydney Harbour Bridge and the Harbour Tunnel under proposals to help cover the \$14 billion cost of a 14-kilometre tunnel linking the northern beaches to the city’s inner west.’

‘The plans for the new tolls...also reveal that motorists...[will pay] about \$8 (in today’s dollars) for a one-way journey by car on the entire length of the proposed Western Harbour Tunnel and Beaches Link.’

‘Charges for trucks will be three times greater than those for cars or light commercial vehicles.’

‘The analysis assumes tolls will be in place for a 35 year period on the Western Harbour Tunnel from 2023, and the Beaches Link a year later.’

‘Under the proposals... \$3 tolls for cars will be placed on northbound trips on the Sydney Harbour Bridge and the Sydney Harbour Tunnel from 2022 to make them the same as those on the proposed Western Harbour Tunnel.’

‘The documents show the new tolls on the Harbour Bridge and Harbour Tunnel will help cross-subsidise the third harbour crossing and the Beaches Link, whose tolls will be insufficient to cover the cost of building, maintaining and operating them.’

‘Transport authorities believe tolls are necessary to avoid free northbound trips on the Harbour Bridge and Harbour Tunnel undermining the case for a third crossing. A free alternative would discourage motorists from using a tolled Western Harbour Tunnel.’

‘It has also been proposed that tolls will be placed on southbound journeys of the Eastern Distributor. They would be set at half the cost of the existing charge for a northbound journey...about \$3.50 each way.’

‘The tolls for the new tunnels will be fixed...While tolls on the Western Harbour Tunnel will rise in line with the consumer price index, those on the Beaches Link will increase every year for the first two decades by 4 per cent or at the rate of inflation, whichever is greater.’

‘Asked about the proposed new tolls, a spokesman for Roads Minister Melinda Pavey said

<sup>432</sup> Matt O’Sullivan, Peter Martin, ‘Revealed: \$8 tolls each way planned for new road tunnels to Sydney’s north’, *Sydney Morning Herald*, 19 July 2017. <http://www.smh.com.au/nsw/revealed-8-tolls-each-way-planned-for-new-roadway-tunnels-to-sydneys-north-20170718-gxdawm.html>

there was “always speculation around major projects”. “As the Premier said when she announced the project, we have commenced a market sounding process to investigate funding options and delivery approaches. That work is not yet complete,” the spokesman said. We expect to have a detailed plan by the middle of next year”.<sup>433</sup>

‘As above, at the time of writing this report, media reports published possible funding solutions and tolling arrangements for this project. Relevant information is reproduced below.’

### **Proposed F6 Extension – Disclosure of potential funding models**

On the 25 July 2017, the Sydney Morning Herald, citing information from a ‘leaked financial appraisal’ reported that:

‘The proposed F6 Extension toll road from Sydney to Wollongong would charge about \$10 for each one-way journey.’

‘...the tollway between St Peters and Waterfall would open in stages during 2024 and 2025 and would be tolled for 35 years during which the government or a private owner would reclaim the \$14.5 billion it cost to build and the \$3.5 billion it would cost to operate.’

‘The toll would be capped at around \$8 in 2016 dollars, which would become \$10 in 2024 dollars.’

‘It would be made up of a toll of about \$3.50 from St Peters to the corner of President Avenue and Kingsway Road Miranda, about \$3.75 from President Avenue to Taren Point, and \$3.75 from Taren Point to Loftus. The section from Loftus to Waterfall would be untolled.’

‘The toll would rise...in line with a formula that lifts the toll by at least 4 per cent per year...After 20 years the toll would rise with inflation.’

‘Heavy vehicles would be charged three times as much as cars and light commercial vehicles.’

Asked about the leaked financial appraisal report, a spokesman for Roads and Maritime Services said...No final decision about the design or funding has been made. The community would be kept informed as the project progressed’.<sup>434</sup>

Question put.

The committee divided.

Ayes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Graham.

Question resolved in the affirmative.

Resolved, on the motion of Mr Graham: That paragraph 1.139 be amended by omitting: ‘- or user pays funding models’ after ‘use of tolling’.

<sup>433</sup> Matt O’Sullivan, Peter Martin, ‘Revealed: \$8 tolls each way planned for new road tunnels to Sydney’s north’, *Sydney Morning Herald*, 19 July 2017. <http://www.smh.com.au/nsw/revealed-8-tolls-each-way-planned-for-new-roadway-tunnels-to-sydneys-north-20170718-gxdawm.html>

<sup>434</sup> Sydney Morning Herald, *Sydney to Wollongong F6 Extension toll commuters \$100 per week*, 25 July 2017. <http://www.smh.com.au/nsw/sydney-to-wollongong-f6-extension-toll-to-cost-commuters-100-per-week-20170724-gxhidb.html>

Dr Phelps moved: That paragraph 1.142 be amended by omitting ‘However, from the evidence and information presented to the committee during the inquiry, what is clear is that the opaqueness around road tolling is so extreme that only a very small number of people can say that they understand and comprehend the range of issues associated with it. While there has been no evidence or suggestion of improper or corrupt decision making or behaviour, the committee is concerned that with the significant sizes of the projects, in terms of their costs and values, the NSW Parliament and the community are entitled to greater levels of transparency. This is discussed further in Chapter 2.’ and inserting instead:

‘From the evidence and information presented to the committee during the inquiry, what is clear is that many people are confused about the issues around road tolling. However, there here has been no evidence or suggestion of improper or corrupt decision making or behaviour. The committee notes that due to the significant sizes of the projects, in terms of their costs and values, the NSW Parliament and the community are entitled to high levels of transparency. The Committee endorses the use of private sector arrangements for the construction and operation of major arterial roads, where appropriate, and the tolling arrangements that are required to finance them. This is discussed further in Chapter 2.’

Question put.

The committee divided.

Ayes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Graham.

Question resolved in the affirmative.

Resolved, on the motion of Mr Khan: That paragraph 1.143 be amended by omitting ‘also’ after ‘The committee’.

Resolved, on the motion of Dr Faruqi: That the following new paragraph be inserted after paragraph 2.12:

‘Professor Hodge gave evidence that unsolicited bids and proposals were “dangerous because they are usually less visible in respect of the State’s priorities than many other kinds of options”. He indicated that there should be much more transparency, and debate about whether unsolicited bids were in the interest of the State.’ [FOOTNOTE: Evidence, Professor Hodge, 12 April 2017, p 7]

Dr Faruqi moved: That the following new recommendation be inserted after paragraph 2.43:

**‘Recommendation x**

That the unsolicited bids and proposals process be much more transparent, including more public information about how such projects meet the best interests of the state and deliver value for money.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Graham.

Noes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That paragraph 2.43 be amended by:

- a) omitting ‘However, it is abundantly clear to the committee that transparency of process and procedures could be improved.’
- b) omitting ‘in this regard’ after ‘important steps’.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Graham, Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Question resolved in the affirmative.

Dr Phelps moved: That paragraph 2.53 be omitted:

**‘Committee comment**

Whilst some information pertaining to private sector returns from tolled roads is visible to public sector decision makers, it is not visible to the people of New South Wales. This tension must be recognised and better managed by the NSW Government. Today’s roads projects are worth billions of dollars that will ultimately be funded by the users of these motorways – the people of New South Wales. It is therefore not unsurprising and appears entirely appropriate to the committee that citizens are seeking greater assurances that these projects are in the public interest.’ and that the following new committee comment be inserted instead:

**‘Committee comment**

Whilst some information pertaining to private sector returns from tolled roads is visible to public sector decision makers, it is not visible to the people of New South Wales. This is not unusual, and is a key component of any government contractual arrangement. The mere fact that a private enterprise has a contractual arrangement with the NSW Government should not necessitate that their private business arrangements be opened up for general public scrutiny. To do so would discourage bidders for government projects, if they know that any technological, administrative or other efficiencies would have to be disclosed in public, and potentially used by their competitors. Today’s roads projects are worth billions of dollars that will ultimately be funded by the users of these motorways – the people of New South Wales. The Committee believes, after reviewing all relevant expert evidence, that members of the community may be assured that these projects are in the public interest, and the existing contract and accountability arrangements by Government are sufficient.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Graham, Mr Green.

Question resolved in the negative.

Mr Khan moved: That paragraph 2.54 be amended by omitting: ‘Nevertheless, the committee believes that there are strong public policy reasons why there should be greater details available regarding corporate profits on tolled roads, in particular specific motorways and freeways.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That paragraph 2.54 be amended by omitting ‘corporate profits’ and inserting instead ‘return on equity’.

Dr Phelps moved: That paragraph 2.54 be amended by omitting ‘in particular specific motorways and freeways’.

Question put.

The committee divided.



Ayes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Graham.

Question resolved in the affirmative.

Dr Phelps moved: That paragraph 2.55 and Recommendation 2 be omitted:

**‘Committee comment**

The committee received evidence that the government assesses future expected returns from tolled roads against industry benchmarks. The committee believes that these industry benchmarks should be publicly released.’

**‘Recommendation x**

That the NSW Government publish the expected return on investment of privately operated tolled roads.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Question resolved in the negative.

Mr Graham moved: That Recommendation 2 be amended by:

- a) omitting ‘return on investment of’ and inserting instead ‘internal rate of return for future individual’
- b) inserting at the end: ‘, at suitable intervals.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Noes: Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the affirmative.

Dr Phelps moved: That paragraph 2.59 be amended by omitting: ‘The committee believes that the publication of such information, prior to project implementation, is vital to ensuring that the public is kept fully informed and that decision making is as transparent as possible.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Question resolved in the affirmative.

Dr Phelps moved: That paragraph 2.60 be omitted:

**‘Committee comment**

On 9 November 2005 the Base Case Financial Models for both the Lane Cove Tunnel and the Westlink M7 (Western Sydney Orbital) were tabled in the Legislative Assembly. This stands in contrast to the position of ‘commercial in confidence’ currently claimed for the NorthConnex and WestConnex base case financial models. The Committee can identify no damage to either the public interest or the private interests of corporations that has been caused by the publication of these documents. It is therefore not clear why the precedent established with these major projects has not been followed. The committee

therefore recommends that the unredacted Base Case Financial Models for the NorthConnex and WestConnex projects be published with immediate effect, and that for future toll road projects the Base Case Financial Model be tabled in Parliament within three months of contracts being signed' and that the following new committee comment be inserted instead:

**'Committee comment**

On 9 November 2005 the Base Case Financial Models for both the Lane Cove Tunnel and the Westlink M7 (Western Sydney Orbital) were tabled in the Legislative Assembly. In both instances, the release was done after the commencement of construction on the project, in the case of the Lane Cove Tunnel; or two years and four months after the opening of the first stage of the project, in the case of the Westlink M7. The Committee can identify no damage to either the public interest or the private interests of corporations that has been caused by the publication of these documents. The committee therefore recommends that the Base Case Financial Models for the NorthConnex and WestConnex projects, and future projects, be published 18 months after either: (a) the commencement of construction on a project, or (b) after the opening of the first stage of a project, whichever comes first.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Question resolved in the affirmative.

Dr Phelps moved: That Recommendation 3 be omitted:

**'Recommendation x**

That the NSW Government:

- mandate the disclosure of strategic and final business cases, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads,
- table in Parliament unredacted Base Case Financial Models for the NorthConnex and WestConnex projects, and
- table in Parliament the Base Case Financial Model for any future toll roads within three months of contract sign off' and that the following new recommendation be inserted instead:

**'Recommendation x**

That the NSW Government:

- mandate the disclosure of strategic business cases, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads,
- publish the base case financial models for the NorthConnex and WestConnex projects, and future projects, 18 months after either: (a) the commencement of construction on a project, or (b) after the opening of the first stage of a project, whichever comes first'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Question resolved in the affirmative.

Dr Faruqi moved: That Recommendation 3 be amended by inserting at the end:

**'Recommendation x**

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- Mandate the disclosure of cost benefit analysis
- Mandate the disclosure of traffic forecast modelling and any reviews of this traffic forecast modelling, appropriately redacted of commercial in confidence information, for major infrastructure projects such as toll roads.'

Mr Khan moved: That the motion of Dr Faruqi be amended by inserting 'at the same time as the base case financial model is published' after 'cost benefit analysis', and 'projects such as toll roads'.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Amendment of Mr Khan resolved in the affirmative.

Original question of Dr Faruqi, as amended, put and passed.

Dr Phelps moved, that:

- paragraph 2.61 be amended by omitting 'However, the committee believes that the Government should proactively release this information so that the community can be accurately and definitively informed of the government's intentions or possible options available to it in these areas of Sydney.'
- the remaining paragraph 2.61 be moved before Recommendation 3
- Recommendation 4 be omitted:

**'Recommendation x**

That the NSW Government publish the strategic and final business cases for the Western Harbour Tunnel and Beaches Link, appropriately redacted of commercial in confidence information, to enable an informed debate on the proposals identified.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Question resolved in the affirmative.

Dr Phelps moved: That paragraphs 2.72 and 2.73 be omitted:

**'Committee comment**

The committee notes the dominant position of Transurban as the holder of seven concession agreements with Roads and Maritime Services. Whilst not a monopoly, its market power is significant and its ambition of expanding its road network is publically stated and clear.

From the evidence presented to the committee it is not clear what the ramifications are of having one dominant company in the road tolling market. The committee will keep a watching brief on this issue' and that the following new committee comment be inserted instead:

**'Committee comment**

The committee notes the dominant position of Transurban as the holder of seven concession agreements with Roads and Maritime Services. The committee, however, rejects any suggestion that it holds a 'monopoly' position, and thus also rejects any suggestion that it should be regulated in ways comparable to either natural or government-created monopolies. Rather, the committee recognises that

its market power is attributable to Transurban's extensive history in the management of road tolling operations, and the expertise that it has developed through specialisation.'

Question put.

The committee divided.

Ayes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Graham.

Question resolved in the affirmative.

Dr Faruqi moved: That the following committee comment be inserted after paragraph 2.73:

**'Committee comment**

The committee is concerned by evidence that the dominant position of Transurban may lead to an unfair advantage in negotiating power and this may not present the best possible value for money outcome for taxpayers.

Hence the committee recommends that the NSW Government investigate the impacts of limited competition in the toll roads market, ensure that the concession of tolled motorways is a competitive process, and consider ways to prevent monopolisation of the NSW road network.'

Question put.

The committee divided.

Ayes: Dr Faruqi.

Noes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Graham: That the following committee comment be inserted after 2.73:

**'Committee comment**

One of the implications of having one dominant participant in the road tolling market in NSW is the concentration of knowledge about the operation of toll roads held outside of government. This requires government to invest to ensure that the agencies negotiating with the private sector and managing contracts are appropriately resourced and co-ordinated.'

Dr Faruqi moved: That the following new recommendations be inserted after paragraph 2.73:

**'Recommendation x**

That the NSW Government investigate the impacts of limited competition in the toll roads market and consider ways to prevent monopolisation of the NSW road network, and table the findings in Parliament.

**Recommendation x**

That the NSW Government refer the issue of competition in the toll road operation and toll road financing market to the Australian Competition and Consumer Commission (ACCC) for review.'

Question put.

The committee divided.

Ayes: Dr Faruqi.

Noes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Mr Khan moved: That paragraph 2.74 be amended by inserting 'some' before 'inquiry participants'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Noes: Dr Faruqi.

Question resolved in the affirmative.

Dr Phelps moved: That paragraphs 2.84, 2.85 and 2.86 be omitted:

**‘Committee comment**

The cross-subsidisation of revenue from one tolled roadway to help fund another motorway raises several issues. Firstly, cross-subsidisation makes it nearly impossible for the public to determine the true cost of toll road projects. Secondly, it is out of alignment with the principle of user pays, in that the user of one tolled road is subsidising the cost of another tolled road. The committee therefore questions whether such an approach to funding is entirely fair and equitable.

The committee also questions whether this approach is fully appreciated by the users of the toll roads in New South Wales. Whilst evidence from government officials suggests that this is not something that is of utmost concern to drivers, evidence to the inquiry would appear to suggest otherwise.

The equity of one project cross-subsidising another project is of some concern to the committee. This issue supports the committee’s later recommendation that further independent oversight is required to ensure that tolling arrangements represent the fairest possible outcome for the people of NSW, as discussed further in chapter 3’ and that the following new committee comment be inserted instead:

**‘Committee comment**

The cross-subsidisation of revenue from one tolled roadway to help fund another motorway raises several issues. The committee endorses the principle of ‘user pays’. This includes those instances where the user of one tolled road is subsidising the cost of another tolled road – provided that the latter is, through network connectivity, improving the driving experience on the former. The committee endorses such an approach to funding as entirely fair and equitable.’

Question put.

The committee divided.

Ayes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Mr Graham, Dr Faruqi.

Question resolved in the affirmative.

Mr Graham moved: That the following new committee comment be inserted after paragraph 2.84:

**‘Committee comment**

The extreme level of cross-subsidisation from the M4 widening project to the broader Westconnex network breaches the government’s toll funding principles. Residents in one area of Sydney, who may not use the rest of the network, are bearing an unfair proportion of the cost of the project.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Noes: Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the affirmative.

Dr Phelps moved: That paragraphs 2.101 and 2.102 be omitted:

**‘Committee comment**

The road toll escalation rate differs widely across the Sydney road tolled network, and it is evident to the committee that the reasons for these differing approaches are not transparent to road users. Whilst the evidence received indicates that escalation rates are designed to make commercial arrangements feasible, the inconsistent approach to and escalation rates far above the consumer price index is of particular concern to the committee.

The committee acknowledges and understands the trade-off involved in aligning escalation rates with the consumer price index. It may mean an increased level of State funding required to deliver such projects, or an increase in the initial price of the tolls. However, on balance the committee finds that this trade-off is appropriate to ensure the continued public support and use of tolled roads. The committee therefore recommends that escalation rates outlined in future concession agreements be no more than the consumer price index’ and that the following new committee comment be inserted instead:

**‘Committee comment**

The road toll escalation rate differs widely across the Sydney road tolled network, and it is evident to the committee that the reasons for these differing approaches are not readily transparent to road users. However, the evidence received indicates that escalation rates were designed to make commercial arrangements feasible, based on the historical circumstances of the time that the contracts were entered into.

The committee acknowledges and understands the trade-off involved in aligning escalation rates with the consumer price index. It would mean an increased level of State funding required to deliver such projects, or an increase in the initial price of the tolls or a lengthening of the tolling period. For this reason, the committee does not seek to mandate any particular rate of escalation clause.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Question resolved in the negative.

Mr Green moved: That Recommendation 5 be omitted:

**‘Recommendation 5**

That the NSW Government ensure that the road toll escalation rate with future concession agreements be no more than the consumer price index’ and that the following new recommendation be inserted instead:

**‘Recommendation 5**

That the NSW Government ensure that the consumer price index be considered as the default position of the road toll escalation rate for future concession agreements.

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham, Mr Martin.

Noes: Mr Khan, Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Mr Graham: That paragraph 2.115 be amended by inserting at the end: ‘It is noted that on 5 October 2017 reference to these valuations were published in the Australian newspaper.’

Dr Phelps moved: That paragraphs 2.130, 2.131, 2.132 and Recommendation 6 be omitted:

**‘Committee comment**

Sydney Motorway Corporation is responsible for delivering the largest infrastructure project in Australia, the WestConnex. Yet despite its multi-billion dollar price tag, it is not subject to the same transparency and accountability arrangements that govern the rest of the public sector.

This lack of transparency is of concern to the committee. As a matter of principal, the committee believes that any government related entity, irrespective of its classification as public or private, should be subject to robust levels of transparency and scrutiny.

The committee believes that the accountability of Sydney Motorway Corporation must be enhanced. We also believe that the same level of transparency and accountability as required by a public sector agency should be applied to any future infrastructure delivery entity.’

**‘Recommendation 6**

That the NSW Government ensure that the same level of transparency and accountability as required by a public sector agency be applied to the Sydney Motorway Corporation and any future infrastructure delivery entity’ and that the following new committee comment be inserted instead:

**‘Committee comment**

Sydney Motorway Corporation is responsible for delivering the largest infrastructure project in Australia, the WestConnex. Given its nature as a private entity, albeit one with Government majority shareholders, the committee recognises that it is not subject to the same transparency and accountability arrangements that govern the rest of the public sector, and nor should it be.

Nevertheless, the committee notes that the SMC has made itself available at both the current inquiry and at Budget Estimates hearings, and has been subject to robust levels of transparency and scrutiny at both.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Question resolved in the negative.

Mr Graham moved: That the following new recommendation be inserted after Recommendation 6:

**‘Recommendation x**

That the NSW Government:

- Annually publish remuneration for the senior executives of Sydney Motorway Corporation
- Issue directions to the Sydney Motorway Corporation so that it complies with the Government Information (Public Access) laws.’

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Noes: Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the affirmative.

Dr Faruqi moved: That the following new committee comment and recommendation be inserted after paragraph 2.133:

**‘Committee comment**

The committee takes note of the Acting NSW Auditor General's evidence that the NSW Audit Office does not have powers to examine activities of a private sector organisation that provides services on behalf of or in partnership with Government.

**Recommendation x**

That the NSW Government grant the NSW Audit Office the power to examine activities of a private sector organisation that provides services on behalf of or in partnership with Government.'

Question put.

The committee divided.

Ayes: Dr Faruqi.

Noes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That paragraphs 3.20, 3.21, 3.22, 3.23 and Recommendation 7 be omitted:

**'Committee comment**

The committee acknowledges the opposing arguments concerning the involvement of an independent regulator or oversight body in road tolling arrangements. However, the committee is persuaded by the arguments of community organisations such as the NRMA, who even as a major stakeholder noted that it could not inform their members if a road tolling proposal was in their interests, and argued that there should be a role for an independent oversight body.

The questions of what role and at what point such an independent body should be involved are important ones. It is apparent to the committee that the involvement of an independent entity, both during the negotiation process as well as any future renegotiation is merited.

The committee considers that an independent entity should be established, and be provided with all relevant information, including commercial in confidence material, so that it can make an informed statement on whether proposed tolling arrangements safeguard the public interest. This statement must be published prior to the government signing off any future road toll concession agreement.

Whilst the committee sees some merit in such an independent body reviewing past tolling contracts and providing a level of assurance to the public about them, it acknowledges that these contracts have been negotiated, signed off by the government of the day and are legally binding. However, the committee does find that with a pipeline of potential tolling projects having been announced by the government, the circumstances call for the establishment of an independent entity capable of thoroughly scrutinising proposed tolling projects.'

**Recommendation 7**

That the NSW Government, prior to signing any further road tolling concession agreement, establish an independent entity that can publish an informed statement on whether any proposed road tolling agreement safeguards the public interest' and that the following new committee comment be inserted instead:

**'Committee comment**

The committee acknowledges the opposing arguments concerning the involvement of an independent regulator or oversight body in road tolling arrangements. However, the committee is not persuaded by the arguments that there should be a role for an independent oversight body.

Toll roads are neither natural nor statutory monopolies. While there are arguments for the regulation of the pricing policies of such entities, the argument simply does not apply in the circumstance of Sydney's toll roads. Moreover, if such a necessity were to be claimed, then it would be equally applicable to existing tolling contracts. Yet the committee acknowledges that these contracts have been negotiated, signed off by the government of the day and are legally binding. Any attempt to unilaterally abrogate



such agreements would have profound long-term consequences for any government seeking to enter into arrangements with private sector contractors.

The committee is satisfied that the comprehensive experience and integrity of the public servants who work for the various departments in the assessment and delivery of potential tolling projects already represents sufficient scrutiny of those projects.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That Recommendation 7 be amended by omitting ‘further road tolling’ and inserting ‘future road tolling’.

Resolved, on the motion of Dr Phelps: That text in the box following paragraph 4.11 be amended by:

- a) omitting ‘Placing the burden of cost for state and national significant road infrastructure solely on the residents of Western Sydney is unbearable – a new toll on the M4 motorway will apply an incredible cost onto what is currently the most trafficked route into Western Sydney. The choice for residents of Western Sydney will be to either significantly increase our length of journey or pay a substantial toll a route that until now, either been free or subsidised. Western Sydney is the home of the economically least-advantaged residents of Sydney, and the burden of the proposed toll will be felt much stronger on Western Sydney residents than on the residents of other parts of Sydney. Put bluntly: those who most need good access to quality road infrastructure are the very same who can least afford to use it.’<sup>435</sup> and
- b) inserting ‘No tolling on M4’ [FOOTNOTE: Submission 50, Name suppressed, p 1], as the second bullet point in the grey box.

Resolved, on the motion of Dr Phelps: That the petition presented to the Legislative Assembly by Ms Prue Car MP relating to the reintroduction of tolls on the M4, as well as the response submitted by the Hon Stuart Ayres MP be attached to the report as appendices.

Dr Phelps moved: That paragraph 4.21 and Recommendation 8 be omitted:

**‘Committee comment**

The committee notes the evidence presented from a diversity of stakeholders that highlight a disproportionate impact of road tolls on the citizens and businesses of Western Sydney. While the government has promised a toll cap on the WestConnex project, the committee recognises that residents travel across multiple different tolled roads, and considers that a cap on the Westconnex project alone is inadequate. However, while the committee considers that a road toll cap should be applied across the whole road network, the cost implications of this to the government are not clear. Accordingly, the committee recommends that the government investigate the costs and benefits of implementing a capped toll across all of Sydney’s road network, and publish this information so that the community can have an informed debate.

**Recommendation x**

That the NSW Government investigate the costs and benefits of implementing a capped toll across all of Sydney’s road network, and publish this information so that the community can have an informed debate’ and that the following new committee comment be inserted instead:

**‘Committee comment**

<sup>435</sup> Submission 93, Mr Andrew Quah, pp 1-2.

The committee notes the evidence presented from a diversity of stakeholders that highlight the impact of road tolls on the citizens and businesses of Western Sydney. The committee therefore endorses the decision of the government to impose a toll cap on the WestConnex project. The committee does not endorse the view that a road toll cap should be applied across the whole road network, given the obvious cost implications of this to the government.'

Question put.

The committee divided.

Ayes: Mr Khan, Mr Martin, Dr Phelps.

Noes: Mr Donnelly, Dr Faruqi, Mr Green, Mr Graham.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 4.30 be amended by omitting:

'Whilst evidence to the inquiry cites reasons of increased construction and maintenance costs to roads, and the fact that heavy vehicle drivers derive greater benefit from the use of the toll roads, the committee agrees that the government's policy in this regard is not fully transparent.' and that the following new committee comment be inserted instead:

**'Committee comment**

The committee notes the evidence presented to the inquiry of increased construction and maintenance costs incurred to roads as a results of heavy vehicle use and the fact that heavy vehicle owners derive greater benefits from the used of toll roads.'

Resolved, on the motion of Dr Phelps: That paragraph 4.37 be amended by inserting at the end:

'There are no extant contracts with non-compete clauses, for public transport, for any toll road other than the Eastern Distributor, which was opened in 1999. The non-compete clause in the concession agreement for the M2 was amended to allow for the facilitation of the construction of the North-West Rail Link, and the Westlink M7 concession agreement includes specific arrangements for public transport (such as light rail or a busway) to occupy the central median – between the carriageways of the motorway – should this be required or desired in the future.'

Dr Faruqi moved: That the following new committee comment be inserted after paragraph 4.45:

**'Committee comment**

The committee notes that there are no measures in places for reasonable consideration of public transport alternatives before a toll road project is approved.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Graham.

Noes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Dr Faruqi moved: That the following new recommendation be inserted after paragraph 4.44:

**'Recommendation x**

That the NSW Government mandate the consideration and analysis of public transport alternatives as part of the business case for each proposed toll road project, and publish the details of this analysis within the public business case.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Graham.

Noes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Mr Graham moved: That the following new recommendation be inserted after paragraph 5.31:

**‘Recommendation x**

That any private toll road proposals adopted by Government should have been assessed against the benefits and costs of the comparable public transport option and they be published within the business case’

To which Dr Faruqi move: That the words ‘and they be published within the business case’ be inserted after the word ‘option’.

Amendment put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Graham.

Noes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Amendment negatived.

Original question put.

The committee divided.

Ayes: Mr Donnelly, Dr Faruqi, Mr Graham.

Noes: Mr Green, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Phelps: That paragraph 5.13 be amended by omitting ‘even suggesting’ and inserting ‘he suggested’.

Resolved, on the motion of Dr Phelps: That paragraph 5.14 be amended by:

- a) omitting ‘These findings supported’ before ‘Professor Hensher’
- b) omitting ‘that it’ and inserting ‘is that it’
- c) combining paragraphs 5.13 and 5.14.

Resolved, on the motion of Dr Phelps: That in the title following paragraph 5.14 ‘Whole scale’ be omitted and replaced with ‘Wholesale’.

Resolved, on the motion of Dr Phelps: That paragraph 5.30 be omitted:

**‘Committee comment**

It is clear to the committee that a broad body and a growing level of support exists for transition towards a network based approach to road tolling. However, it remains the case that significant barriers exist to the adoption of any road networking approach, including having to renegotiate multiple existing road toll contracts’ and that the following new committee comment be inserted instead:

**‘Committee comment**

It is clear to the committee that a broad body and a growing level of support exists for transition towards a network based approach to road tolling. However, it remains the case that significant barriers exist to the adoption of any road networking approach, including having to renegotiate multiple existing road toll contracts.

For the reasons in relation to ‘sovereign risk’ given earlier in the report, the committee reject any unilateral attempt by government to demand or force a renegotiation of existing contractual agreements.

Whatever the merits of moving toward road tolling concession agreements which enhance the ability of future governments to manage the wider road network, the primary goal should be that these networks be built, and that the fiscal integrity of the State budget be maintained while doing so. While not excluding the possibility that demand management tolling could be included in future contracts, the committee is of the view that this is a secondary consideration and, if done, it should not be done in a way that would lead to uncertainty for potential contractors for the building and operation of new motorways.’

To which Mr Graham moved: That the amendment of Dr Phelps be amended by inserting the words ‘It is quite possible however, that within the long contract periods for the existing toll roads, that such renegotiations are proposed, and found to be in the public interest.’ at the end of the second paragraph.

Amendment of Mr Graham put and passed.

Original question, as amended, put and passed.

Dr Faruqi moved: That the following new committee comment and recommendation be inserted after Recommendation 10:

**‘Committee comment**

The committee has heard evidence that Governments can borrow money to finance infrastructure at a cheaper rate than the private sector.

Hence the committee recommends that the NSW Government make better use of its capacity to borrow money at a lower interest rate than the private sector and finance infrastructure itself to retain it in public ownership, rather than relying on the private sector to finance infrastructure.’

**Recommendation x**

That the NSW Government make better use of its capacity to borrow money at a lower interest rate than the private sector and finance infrastructure itself to retain it in public ownership.’

Question put.

The committee divided.

Ayes: Dr Faruqi.

Noes: Mr Donnelly, Mr Green, Mr Graham, Mr Khan, Mr Martin, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Dr Phelps that:

- (1) The draft report [as amended] be the report of the committee and that the committee present the report to the House;
- (2) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- (3) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be kept confidential by the committee;
- (4) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- (5) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- (6) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- (7) That the report be tabled by 20 October 2017.

**6. Adjournment**

The committee adjourned at 4.28 pm, *sine die*.

Stephanie Galbraith  
**Clerk to the Committee**

## Appendix 6 Dissenting statement

**Dr Mehreen Faruqi MLC, The Greens**

### Overview

This inquiry has been a timely investigation into toll roads and road tolling regimes in NSW. The committee heard from a broad range of witnesses, the overwhelming majority of which felt there is obscurity in road tolling arrangements and lack of transparency in toll road projects in NSW. Whilst there is now some clarity around these issues and the Committee has made several useful recommendations; they do not fully address issues associated with toll roads and road tolling regimes.

### The need for transparent and objective transport planning

There are currently no measures in place for reasonable consideration of public transport alternatives before a toll road project is approved. Our transport infrastructure must be planned and built in the public interest, with transparent, evidence-based, accountable and participatory planning processes. The Government, therefore, must establish a framework for the consideration of public transport alternatives before approval of major road projects.

*Recommendation: That the NSW Government mandate the consideration and analysis of public transport alternatives as part of the business case for each proposed toll road project, and publish the details of this analysis within the public business case.*

### Unsolicited proposals

Unsolicited proposals represent particular problems with regard to open and transparent planning. The adoption of toll road proposals by the Government without inviting tenders or expressions of interest indicates infrastructure priorities are being led by the private sector and also means there is no comparison with competitors.

The committee heard evidence that there should be more transparency and debate about whether unsolicited proposals were in the best interest of the State. The Government should make the process more transparent and open to scrutiny. Any unsolicited proposals should be considered in the context of an integrated transport plan, and should be assessed by an independent body.

*Recommendation: That the unsolicited bids and proposals process be much more transparent, including more public information about how such projects meet the best interests of the state and deliver value for money.*

### Lack of competition in the toll road sector

The toll road industry in NSW is virtually monopolistic in that the overwhelming majority of roads in the state are operated by Transurban. The committee heard evidence that the dominant position of Transurban may lead to an unfair advantage in negotiating power and this may not present the best possible value for money outcome for taxpayers.

Hence the NSW Government should investigate the impacts of limited competition in the toll roads market, ensure that the concession of tolled motorways is a competitive process, and consider ways to prevent further monopolisation of the NSW road network.

*Recommendation: That the NSW Government investigate the impacts of limited competition in the toll roads market and consider ways to prevent monopolisation of the NSW road network, and table the findings in Parliament.*

*Recommendation: That the NSW Government refer the issue of competition in the toll road operation and toll road financing market to the Australian Competition and Consumer Commission (ACCC) for review.*

### **Lack of accountability of the private sector**

The committee heard evidence from the Acting NSW Auditor General that the NSW Audit Office does not have powers to examine the financial activities of a private sector organisation that provides services on behalf of or in partnership with Government. Other states and the Commonwealth have adopted laws over the past decade allowing audit offices to examine private entities receiving public funding. This includes private entities set up by the Government to deliver infrastructure projects, such as the Sydney Motorway Corporation (SMC) that has been set up to deliver Westconnex. Entities such as the SMC should be accountable to the NSW Auditor General as they are set up and operated using taxpayer funds.

*Recommendation: That the NSW Government grant the NSW Audit Office the power to examine activities of a private sector organisation that provides services on behalf of or in partnership with Government.*

### **Disclosure of traffic modelling**

It is critical that any proposal to build new toll roads or re-toll existing roads must be completed with transparency and objectivity. Therefore, it is critical that Governments publicly disclose all details of transport modelling and any reviews of this modelling. There is no case for commercial in confidence provisions being brought to preclude this information from being made available to the community and to NSW Parliament.

*Recommendation: The NSW Government mandate the disclosure of strategic and final business cases, including all details of traffic forecast modelling and any reviews of this traffic forecast modelling, and cost benefit analysis, for major infrastructure projects such as toll roads.*

### **Government borrowing funds and financing roads**

The committee heard evidence that Governments can borrow money to finance infrastructure at a cheaper rate than the private sector. The NSW Government should make better use of its capacity to borrow money at a lower interest rate than the private sector and finance infrastructure itself to retain it in public ownership, rather than relying on the private sector to finance infrastructure.

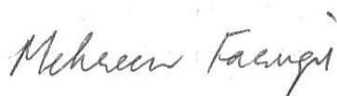
*Recommendation: That the NSW Government leverage its capacity to borrow money at a lower interest rate than the private sector and finance infrastructure itself to retain it in public ownership.*

### **Conclusion:**

We disagree with the committee recommendation that business cases only be published 18 months after the commencement of construction or after opening of the first stage of the project, whichever comes first. The NSW Government should mandate disclosure of full business cases well before the commencement of construction, so appropriate parliamentary analysis and public consultation can take place.

It is the Greens' position that NSW needs significant improvements in its processes for approval of new toll road projects, and in existing and new road tolling arrangements to match the community's expectations and to satisfy the core principles of transparency and accountability in state governance.

Implementation of recommendations in this report will go some way towards strengthening these processes and regaining public trust. However, the Greens' proposed recommendations mentioned above that were not accepted by the Committee are critical to addressing core issues raised by the community.



**Dr. Mehreen Faruqi MLC**  
NSW Legislative Council