

Toll Redress

Submission: Inquiry into toll roads in Australia | 2017

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Section 1

Advocating For Toll Road Consumers

After advocating for two years on road tolling issues and encountering many consumers who are adversely impacted by the tolling system in Australia, we established Toll Redress to conduct further research and provide meaningful assistance to the thousands of people who have contacted us from around Australia.

We believe we can provide unique insight into toll roads, toll road consumers, toll road operator practices, government systems, and arrangements that will be of interest to policymakers, stakeholders and consumers. These insights are drawn from extensive research and observations made from the case studies of a number of affected people all around Australia.

No doubt other submissions will focus on WestConnex, infrastructure planning oversights and the overall viability of various road projects, so we have chosen to focus more on what our research observations are. Many of these observations will be in relation to Queensland's tolling arrangements, as this is where our data has suggested the most serious problems lie.

Transurban Limited

Transurban Limited is an Australian toll road company operating in Queensland, New South Wales, Victoria and Virginia (USA)¹. A billion-dollar ASX listed company, they began in Victoria: their longest-serving government arrangement is Melbourne's CityLink, where they entered a Public-Private Partnership (PPP) in 1995². Along with CityLink, they operate the go via network in QLD and the Roam and RoamExpress network in NSW.

Transurban has a monopoly of toll roads in Queensland, operating all six roads, and also maintains a strong presence in New South Wales (operating six out of eight roads), and Victoria (operating CityLink). A number of their roads are under concession until as far away as 2065 and they have lucrative contracts with state governments.

¹ Transurban Limited, <https://transurban.com/our-operations/our-road>

² The Age, 'Transurban the making of a monster', <http://www.theage.com.au/victoria/transurban-themaking-of-a-monster-20160512-gotjm9.html>

Section 2

Tolling Arrangements and Escalation

Tolling arrangements vary from state to state and it is difficult to obtain information about these arrangements due to secret agreements between toll road operators and state governments. Toll Redress argues that that every agreement, in addition to the road franchise agreements and concession deeds, should be made available in the spirit of public interest. Agreements made under PPPs must be open to critical analysis but as it stands, they are protected from public scrutiny which results in an inability to create proper reform.

The escalation of unpaid tolls also varies from state to state. Based on our conversations and communication from disaffected tolling consumers, our observation is that existing escalation arrangements enslave people in a vicious cycle of confusion, stress and financial strain. Our office hears of instances where debtors experience depression and suicidal thoughts that are driven by points in the escalation system. They find themselves in a vulnerable financial position and are left with little government or corporate assistance.

The body responsible for enforcement of unpaid tolls in Queensland, the State Penalties Enforcement Registry (SPER), recently acknowledged the reality of the infringement arrangements. In a document supplied to a committee, they described the fee arrangements as “complicated, inconsistent and inflexible”³.

QUEENSLAND UNPAID TOLL ESCALATION*



*This chart was formed using information from Transurban and Government websites. The escalation time periods are just a guideline as this information can be hard to obtain and can vary depending on the source.

³ Queensland Treasury, 'Briefing Note for Finance and Administration Committee', <http://www.parliament.qld.gov.au/documents/committees/FAC/2017/SPERAmendmentBill2017/bp-15Mar2017.pdf>

The current system in Queensland provides little help to debtors who have been impacted by unfair practices of Transurban. SPER has said on public record that they only have three categories to place debtors in. These three categories are: happy to comply (willing to pay SPER debt), in hardship, and wilfully non-compliant. It is also a matter of public record that SPER receives withdrawal notices from organisations, where organisations have incorrectly pursued someone for a debt and it has eventually been registered as a debt with SPER. Transurban is a corporation that is known to regularly refer debt incorrectly or unfairly to the State which escalates to SPER.

Despite this, SPER did not list a debtor category that reflects this, or that reflects a debt in dispute with the issuing agency. Our understanding is that those who dispute their debt are instead categorised as “wilfully non-compliant”. This points to a system that does not appropriately and fairly deal with those facing unfair practices at the hands of organisations.

Our understanding of the current system with SPER is that little investigation occurs to ensure the debt is fair, valid and true. When contacted to dispute a PIN resulting from a toll debt, SPER refers debtors to either the Department of Transport and Main Roads (DTMR) or Transurban. Transurban then refers debtors back to DTMR or SPER, and so it continues. This back-and-forth story is common, and it causes great frustration and mental anguish on people to the point that they give up.

Upon talking to DTMR, we were constantly told that they are “just a processing unit” and only investigate if an infringement is disputed. If that happens, they only rely on information provided to them by Transurban. This involves trusting in Transurban’s word and recording keeping that the customer was sent a ‘Demand Notice’, which is enshrined in legislation. We hear many instances where the customer has not received a Demand Notice and now faces unfair penalties, and it appears there is no onus of proof on Transurban to show that the customer received the Demand Notice.

CASE STUDY: Brisbane man with \$30,000 in SPER debt and a suspended driver's licence as a result of unpaid toll infringements.

Due to poor communication from the tolling operator (Transurban, go via) the customer’s tolling account was suspended, and subsequent toll charges (\$4.39) incurred a \$23.46 administration fee per unpaid toll. The customer became aware when a bundle of approximately 30 toll invoices arrived in the mail. The amount of unpaid tolls was about \$130, but the administration fees added an additional \$700 to the total bill. There were 30 separate invoices, but Transurban insisted that he could not pay his unpaid tolls or get an account until the administration fees were paid in full. The customer had the money for the unpaid tolls, but could not afford the administration fees. They refused to let him pay the tolls.

The customer needed to use the toll road to get to work, or travel 2 and a half times the distance to work, which he could not afford. Many times he tried to rectify the situation but they were unhelpful. Transurban started referring his unpaid tolls to the Tolling Offence Unit (TOU) at DTMR. Due to DTMR's delayed batch processing of infringements the customer started receiving bundles of infringements in the mail at a later date.

Not only did he not know what exactly was happening, he also didn't know who to speak to so he could sort it out. For a while it overwhelmed him and while facing other life challenges with a young child, he could not always mentally process what was happening.

Eventually he had Transurban chasing him for over \$7,000 (\$6,000 in administration fees), Transurban's debt collector for over \$5,000, DTMR for some infringements, and SPER for a large number of infringements relating to the unpaid tolls as well. He tried appealing to SPER and SPER had DTMR respond. DTMR said they were just relying on what Transurban sent them. DTMR then sent him to Transurban. Transurban sent him back to DTMR. All his appeals were denied with Transurban, DTMR and SPER, and he felt absolutely helpless. His SPER debt was now \$30,000 and he owed Transurban \$6,000 in administration fees for \$1,200 worth of tolls. SPER suspended his licence and he was about to lose his job and go bankrupt.

At this point the customer became aware of our work and contacted us. We familiarised ourselves with his case and informed him that what happened to him is very common. At this point we assisted him in further communication to Transurban and provided him a few paragraphs to include in his communication:

Your company have escalated my Demand Notices to the TOU and SPER as a result of me not being able to pay the many hundreds of dollars in administration fees applied to my unpaid tolls.

It is my understanding that the administration fees charged to me by your company are to reflect the actual cost of issuing invoices. Can you please confirm to me in writing for and on behalf of Transurban Limited and Go Via that the many hundreds of dollars of administration fees charged to me by your company reflect the actual cost associated with issuing the Invoices/Notices to me, and would withstand an external audit, forensic analysis, legal challenge or Government inquiry?

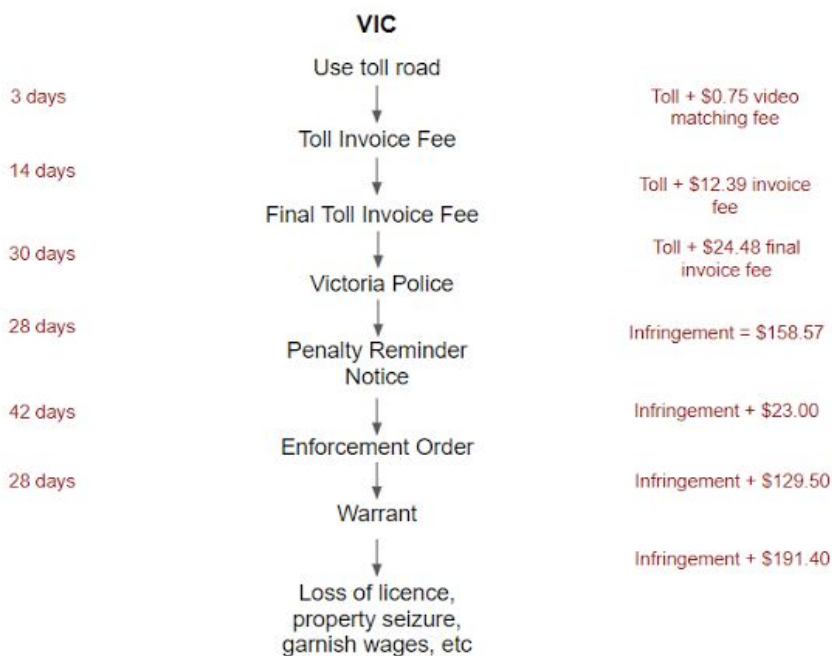
Just as we predicted, Transurban had someone from head office contact him and they immediately waived all the administration fees totalling \$6,000.

We then suggested that he raise with a senior executive how their refusing to accept payment for tolls did not appear to be part of their terms and conditions or written in the legislation, and by not allowing him to pay the tolls effectively made Transurban the engineers of his State debt. Despite Transurban constantly saying that they can not withdraw infringements, the executive called the customer ASAP and told him they have asked for all the infringements to be withdrawn. The customer tells us that the executive did not want to put it in writing, but told him he should check with SPER in 24 hours.

The end result was that the customer had all administration fees wiped and all toll infringements withdrawn, plus his licence was reinstated. If the customer did not know the right questions to ask, he would still represent \$30,000 of SPER's debt pool and he would be in the category of wilfully non-compliant, and attracting the negative stigma that Queensland Treasury and SPER attach to these people.

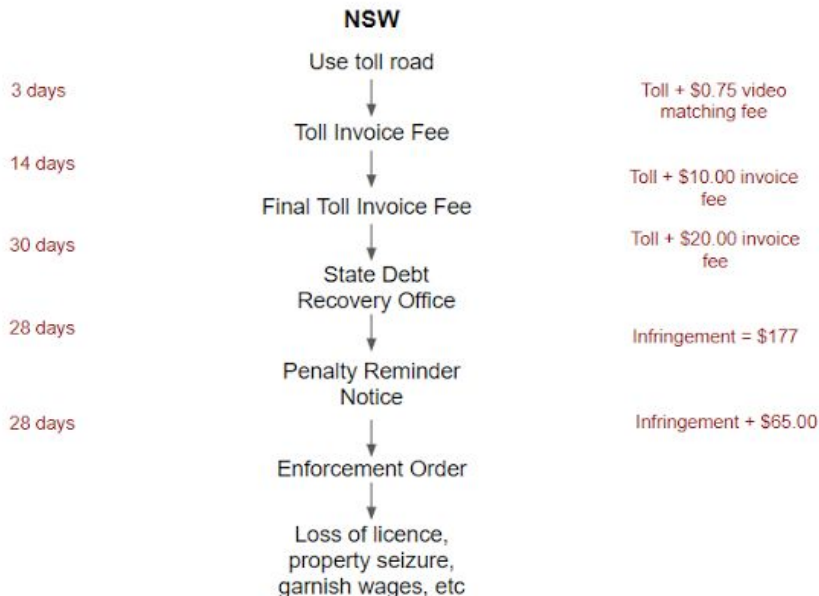
The involvement of SPER in the tolling system has seen many people disadvantaged like the Brisbane man above.

VICTORIA UNPAID TOLL ESCALATION*



*This chart was formed using information from Transurban and Government websites. The escalation time periods are just a guideline as this information can be hard to obtain and can vary depending on the source.

NEW SOUTH WALES UNPAID TOLL ESCALATION*



*This chart was formed using information from Transurban and Government websites. The escalation time periods are just a guideline as this information can be hard to obtain and can vary depending on the source.

Possible Solutions

- Make it a requirement by law that toll road operators send Demand Notices, Final Toll Invoice Fees and other pertinent communication by registered post to consumers who have not paid their toll road trip. This should also include a requirement that receipt of this registered delivery for each notice be supplied to the state as a mandatory requirement as part of their evidentiary base before issuing any infringements.
- Make it a requirement by law that toll road operators cannot demand payment of administration fees before tolls.
- Infringements, notices and orders issued by the government should also be issued by registered post.
- Implement an effective dispute resolution process at government level, where government departments must rely on more than just a toll road operator's word that they sent out reminder invoices to a consumer. This process should also include adequate training of staff: in a few cases, government staff have referred debtors to the Tolling Customer Ombudsman, who has no powers to intervene with debts that have escalated to the government.

This improved system should also identify and take into consideration administrative errors that occurred in the process of a consumer's business activities or day-to-day life, or where an innocent mistake was made.

Administration Fees

Transurban has said in documentation supplied to the Tolling Customer Ombudsman - the national toll road ombudsman service - that administration fees "are required to reflect the actual cost associated with issuing these Invoices/Notices and are regularly audited to ensure compliance"⁴. They also said they are charged in accordance with the agreements between state governments and Transurban. These agreements that specify the administration fee costs need to be made public. This is for a number of reasons.

- Our understanding is that the Queensland Transport Infrastructure Act (TIA) states "an Administration Charge ... for a toll must not be more than reasonable cost ... of issuing a notice for, and collecting the unpaid toll and administration charge for the toll."⁵ Our questions are:
 - Why are the administration charges different in every state if Transurban is using the same postal service (Australia Post) everywhere?
 - How does Transurban justify \$23.89 cost to send out a letter to a consumer?
 - Will Transurban supply and publish a breakdown of their administration charges to demonstrate how these administration charges reflect actual cost?
As they are not allowed to profit from the administration charges, this breakdown should not be classified as "commercial" and should be publicly available.
- In a number of cases, Transurban issues multiple unpaid tolls (sometimes over 100) - each with an administration fee - in the same letter, causing the administration fees to run into thousands of dollars.
 - If administration fees are cost-based, how does it cost Transurban thousands of dollars to issue invoices in one envelope?
- In 2001, Transurban increased their administration fee for non-payment of tolls in Victoria. They did this without seeking permission from the state government⁶. Customers were overcharged \$1.3 million and Transurban did not have to pay this back. In 2002, the Victorian Government engaged an accounting firm which found a cost-based fee of between 28 cents and 93 cents could be justified⁷.

⁴ Tolling Ombudsman, 'Reference: TCO Review 1st September 2015 - 29th February 2016' (page 2),

<http://www.tollingombudsman.com.au/TU%20Response%20-%20Sep%2015%20to%20Feb%2016.pdf>

⁵ Transport Infrastructure Act 1994, Section 93, page 104, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/T/TranstInfA94.pdf>

⁶ Auditor General Victoria, 'Report on Public Sector Agencies', 2003-2004, page 60,

<http://www.audit.vic.gov.au/publications/2004/20040526-Financial-Statement-and-other-audits-forBalance-Dates-other-than-30june-2003.pdf>

⁷ Auditor General Victoria, 'Report on Public Sector Agencies', 2003-2004, page 67,

<http://www.audit.vic.gov.au/publications/2004/20040526-Financial-Statement-and-other-audits-forBalance-Dates-other-than-30june-2003.pdf>

However, the Victorian Government then agreed that the administration fee no longer had to be cost-based and that it should be set at a level which acts as a deterrent for toll road users who fail to carry their e-tags⁸.

Our questions are:

- In Victoria, are administration charges cost-based?
- Why does a senior executive write in official Transurban communication published on the Tolling Customer Ombudsman website that administration fees are required to reflect actual cost, if they have an agreement with the Victorian Government that they don't have to be cost-based?

Given in Transurban's history where they have already overcharged customers \$1.3 million, it is our position that for transparency, these agreements should be made freely available to the public.

Since 2002, there have been great advancements in technology which have led to a reduction in the cost of communication. If at this time, accountants found a justifiable cost-based charge would be between 28 cents and 93 cents, it could be argued that costs in communication 15 years later are cheaper. Yet, even if we were to disregard technological advancements and the prevalence of electronic communication, an administration fee surely would not cost anymore than a maximum of \$5.

Possible Solutions

- If administration fees do not reflect "reasonable cost ... of issuing a notice for, and collecting the unpaid toll and administration charge for the toll", immediate action should be taken to stop Transurban from charging their current administration fees.
- If administration fees do not reflect "reasonable cost ... of issuing a notice for, and collecting the unpaid toll and administration charge for the toll", all infringements in Queensland relating to unpaid tolls that arose from the administration fees being against the TIA should be immediately withdrawn and an urgent review into these arrangements should be conducted.

⁸ Auditor General Victoria, 'Report on Public Sector Agencies', 2003-2004, page 60,
<http://www.audit.vic.gov.au/publications/2004/20040526-Financial-Statement-and-other-audits-forBalance-Dates-other-than-30june-2003.pdf>

Section 3

State Government Infringement Debt

Exact figures of infringement debt are difficult to obtain due to a lack of transparency. Our research suggests Australians have in excess of \$1 billion in infringement penalty debt initiating from unpaid tolls. The below figures only include debt owed to SPER, SDRO and the Victorian Government. Other levels and departments of government as well as toll road operators have separate debt pools which means in reality, the debt resulting from unpaid tolls is much larger again.

Queensland

As at 28 February 2017, the total debt (including unpaid penalties for speeding, driving, parking and more) for SPER stood at nearly \$1.18 billion.

Of the \$1.18 billion debt pool, \$228.4 million (19.35% of debt pool) was for toll related debt. This made up the largest portion of SPER debt, and by the end of March 2017, it rose to \$233 million.

Victoria

As at 30 June 2015, the total debt as reported by the Sheriff's Office for outstanding warrants was \$1.69 billion.

Of the \$1.69 billion debt pool, \$687 million (40.65% of debt pool) was for tolling infringement warrants. This also made up the largest portion of debt.

New South Wales

As at 31 December 2015, the total debt owed to the SDRO was \$805 million.

Lack of transparency around SDRO debt has made it difficult to obtain how much of this initiated from unpaid tolls. Considering in both Queensland and Victoria, toll infringements made up the largest portion of the debt pool, our conservative estimate for tolling infringements in New South Wales is that it makes up 12% of the total debt pool. This would mean \$97 million is owed to the SDRO as a result of unpaid tolls.

Section 4

Tolling Customer Ombudsman

The Tolling Customer Ombudsman (TCO) service is meant to provide an independent service to disaffected toll road customers who wish to dispute a decision made by a toll road operator. It is important to note that the TCO does not have the same powers as other ombudsmen services - once an unpaid toll escalates to the state government, the TCO has no powers to intervene or freeze further escalation. This raises several questions about the viability of the TCO considering many toll road disputes involve the state government, and this is where the disputes most in need of investigation sit.

The implementation of the TCO service and the legitimacy of its current operation have raised concerns, and further points to a problematic tolling system in need of review.

Over the past 12 years, the TCO service has never been a member of the Australia New Zealand Ombudsman Association (ANZOA), which is Australia's peak body of ombudsmen⁹. In a publication written by ANZOA, they reference concern about "ombudsman" bodies that do not conform to the accepted model and are inappropriately described as an ombudsman office.

The policy statement reads:

"Our view is that a body should not be described as an Ombudsman unless it complies with six essential criteria addressing independence, jurisdiction, powers, accessibility, procedural fairness and accountability."¹⁰

Our understanding is that the TCO is not responsible to an independent board of industry and consumer representatives and that it operates as a for-profit organisation (as it operates under Lorimax Pty Ltd – a business that the lead Ombudsman is a director of), it appears the TCO would not meet Independence and Accountability criteria. These must be considered very important criterion in order for consumers to trust the service, and if the TCO as it currently stands does not meet them, an urgent review needs to be conducted. If Australia's peak body of Ombudsmen would not describe the TCO as a legitimate Ombudsman, it cannot be expected that Australian toll road customers trust this service. Further to missing key criteria of ANZOA's policy statement, the implementation and history of the TCO raise pertinent questions about the agenda behind the TCO service and its independence.

According to the TCO's September 2012 - February 2013 Review, the TCO was the idea of a Transurban's spokesperson, who was a driving force in its establishment.¹¹

⁹ The Scandal, 'The need to establish an official tolling ombudsman service', <http://thescandal.com.au/news/transurban/the-need-to-establish-an-official-tolling-ombudsman-service-31-8-2016>

¹⁰ Australia New Zealand Ombudsman Association, 'ESSENTIAL CRITERIA FOR DESCRIBING A BODY AS AN OMBUDSMAN', http://www.anzoa.com.au/assets/anzoa-policy-statement_ombudsman_essential-criteria.pdf

¹¹ Tolling Ombudsman, 'TCO Review', <http://www.tollingombudsman.com.au/TCO%20Review%20-%20Sep%2012%20to%20Feb%2013.pdf>

The agenda behind creating the TCO service is clear, given it was 'driven' by someone whose job it is to be concerned with media and public image, rather than with disaffected customers experiencing poor service and unfair practices at the hands of the toll road operator. Until recently, the 'independent' TCO website was also owned by Transurban Limited.

Transurban was listed as the Domain Registrant, while the Registrant was a Transurban employee. The TCO website (www.TollingOmbudsman.com.au) only changed ownership once a 'cease and desist' request was sent to Transurban Limited (who were the owner of the website at the time) as they were using the business name Tolling Customer Ombudsman despite it being registered to our entity, Tolling Customer Ombudsman Pty Ltd (TCOPL).

Transurban Limited never responded to the cease and desist request, but promptly transferred ownership of the website over to the TCO who engaged Gilbert + Tobin lawyers. The TCO then pursued TCOPL through the World Intellectual Property Organisation, but ultimately lost on all accusations. The judgment is published on AUSTLII¹².

The fact that in its 12 year operating history, the TCO never registered "Tolling Customer Ombudsman" and "Tolling Ombudsman" as business names is startling, and should raise many questions over the processes followed by the TCO in all aspects of the service it purports to provide consumers.

While the current ombudsman service maintains a close relationship with toll operators and does not have legitimate ombudsman powers, we protected the name "Tolling Customer Ombudsman" by registering it with ASIC. Our intention is to pass this name onto a legitimate, government-approved, new and overhauled independent ombudsman service. However, until this service is established, we launched a website (www.TollingCustomerOmbudsman.com.au) to give disaffected toll road consumers an opportunity to notify their elected representatives and public servants of their toll road complaint, as well as informing the Group General Manager of Customer Operations at Transurban.

If the TCO was truly independent of Transurban, their publications might provide more critical discussion and informative data. The TCO's six-monthly reviews provide minimal detail that is hard to follow and understand. When looking at the reports published by the TCO, the quality of information, formatting and discussion appears to be equivalent to that of a Grade 8 student's attempt at a report¹³. When comparing the TCO's reports to legitimate ombudsman service reports from similar industries, the TCO's pales in comparison (see the Public Transport Ombudsman of Victoria's annual report)¹⁴. This is especially concerning considering the TCO's service covers all of Australia, not just one state.

¹² AUSTLII, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AUDND/2016/26.html?stem=0&>

¹³ TCO Review, 1 March 2016 - 31 August 2016,

<http://www.tollingombudsman.com.au/TCO%20Review%20-%201%20March%20to%2031%20August%202016.pdf>

¹⁴ Public Transport Ombudsman Victoria, 'Public Transport Ombudsman Victoria Annual Report 2016',

http://www.ptovic.com.au/images/PDFs/2016_PTO_Annual_Report_Web.pdf

It is important that any and all data that could point toward identifying the overarching cause of tolling problems be made publicly available. And it seems that the TCO does not publish semantic and critical data on toll road complaints to ensure the government and stakeholders are able to identify the root of the problem.

The TCO also does not have a dedicated fax machine, and instead uses the one at the Hawthorn Post Office. If a customer wishes to call the TCO, a 1800 number is supplied but operating hours are not referenced on the website. Our understanding is that when calling this 1800 number, it goes to voicemail where you have to leave your contact details. The TCO also does not publish an office address online and when asked for it by customers, does not usually provide it.

A Brisbane City councillor wrote to Transport and Main Roads Minister Mark Bailey, seeking an independent ombudsman service in place of the existing TCO. On 25 October 2016 in council proceedings, Councillor Amanda Cooper said:

“I myself wrote to Minister Mark Bailey on 9 September, so more than six weeks ago, and sought his support for the appointment of a tolling ombudsman that is independent of the commercial toll operators and independent of government. Unfortunately, I did this because I think this is a genuine issue. We certainly have determined that the existing Tolling Customer Ombudsman who operates is actually paid for by Transurban, which may be perceived to be somewhat of a conflict of interest for them to be operating in this particular space. I suggested in my correspondence to the Minister that this role could be a role very similar to that of the Queensland Ombudsman. Unfortunately, six weeks later, he still has not responded to my letter to him.”¹⁵

Possible Solutions

- Appoint a new, overhauled tolling ombudsman service that is entirely independent of the commercial toll road operators.
- Give a new, overhauled tolling ombudsman service standard ombudsman powers, enabling them to pause matters during the course of an investigation and freeze further escalation through government levels.

¹⁵ Brisbane City Council, 'Minutes of Proceedings', 25 October 2016, <https://www.brisbane.qld.gov.au/sites/default/files/20161102-council-minutes-post-recess-25-october-2016.doc>

Final Word

It is concerning that deals between toll road operators such as Transurban and state governments are enshrined in secrecy. Given Transurban has a history of overcharging customers and are angling towards tolling every kilometre of road in Australia, there needs to be an urgent and in-depth public review into all existing and future agreements held. Without transparency and critical analysis of these agreements, toll road consumers will continue to be adversely impacted by the practices of Transurban, and more needs to be done to protect their rights and wellbeing.

Toll roads are a fast growing cancer throughout our road network in Australia. We fear that if we don't act now, the damage will be irreversible. Hopefully inquiries such as this will help us find our way into remission.

We would welcome the opportunity to share more of our research as witnesses at the inquiry.