

## Chapter 4

### Equity aspects of toll arrangements

#### The regional impacts of tolls

4.1 Several submissions noted the regional inequity of tolls. People who live in the inner city generally have good access to nearby services on roads that were paid for by the public. There is a random element:

...Sydney's road network was developed as a series of incremental concessions, not as an integrated network...this organic growth sees, for example, the Westlink in Sydney tolled both ways on a distance basis, while Sydney's earlier M2 is a flat rate and the publicly-owned Harbour Bridge and the privately-held Harbour Tunnel see a low, medium and high toll that varies on the time of day but only in one direction. People in Sydney's north-west pay a lot to come to the CBD, while people in the south-west can pay nothing because of Cashback...<sup>1</sup>

4.2 There is, however, a systematic inequity. People living further from the city, who tend to be less affluent, are dependent on toll roads to get to work. In Sydney:

Those with the least capacity to pay, who have been forced to compromise with the lowest cost homes located furthest from the CBD are subjected to the highest costs to travel to gain high value employment closest to Sydney CBD.<sup>2</sup>

4.3 And in Melbourne:

The inevitable conclusion...is that wealthy, well-educated people with good jobs will live in the inner city and pay nothing, and the hoi polloi will live out in the boondocks and will be charged for the privilege to come in. That would lead to the sort of South African slum you have beside a white township...There is a primary school classroom being born in Werribee every week. I cannot accept that it's good public policy to say that we should make all those people pay more for everything because they use it more because they live further away.<sup>3</sup>

4.1 Tolls can be a significant cost to households. The Western Sydney Regional Organisation of Councils estimates a daily return trip from the 'North Western Growth Centre' to the city at \$27.62 a day.<sup>4</sup> This comes to \$138 a week, or 9 per cent of

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1 Mr Brendan Long, Chief Executive Officer, Infrastructure Partnerships Australia Ltd, *Committee Hansard*, 3 August 2017, p. 32. Cashback is a New South Wales government scheme which gives residents a rebate of their tolls for the M5.

2 Western Sydney Regional Organisation of Councils, *Submission 2*, p. 4.

3 Mr Denis Nelthorpe, Chief Executive Officer, WESTjustice, *Committee Hansard*, 3 August 2017, p. 55.

4 Western Sydney Regional Organisation of Councils, *Submission 2*, p. 7.

average weekly ordinary time earnings,<sup>5</sup> or 20 per cent of the minimum weekly wage.<sup>6</sup> Transurban's submission indicates that 4 per cent of its New South Wales consumer account holders pay between \$50 and \$125 a week.<sup>7</sup>

4.4 Several submissions and witnesses called for reductions of tolls on the basis of need. Others argued that regular users should be charged less per trip than occasional users. They conceded that it might be difficult to implement.<sup>8</sup>

4.5 Mr Scott Charlton of Transurban argued that toll roads offer value. He gave the example of a commuter paying \$120 a week in tolls travelling from the Central Coast. He would be saving about six hours a week by travelling on the tollway. If his wage rate was \$50 an hour, '...he would be making an extra \$180 a week'.<sup>9</sup>

4.6 The regional inequity works partly through the costs to local businesses:

[The Westgate Tunnel tolls] would be an additional cost on the transport industry and local businesses in an already very competitive market with low margins and presumably the costs would eventually flow on to consumers through higher priced goods.<sup>10</sup>

4.7 A part of the logic of tolls is that they will be paid only by those willing to pay for the extra amenity of toll roads. Those not willing to pay will use alternative transport, either other roads or rail. But for some toll roads there is no reasonable alternative.<sup>11</sup>

### **The impacts of tolls on businesses**

4.8 Tolls can be a substantial issue for businesses. The National Road Transport Association complains that the methods of setting tolls are not transparent. Trucks in fact do not have an alternative to paying tolls, as there are regulations to force them to use the tollway rather than side streets. Trucks already pay more for road maintenance through registration and fuel charges. Further, tolls can be varied:

In April 2017 Transurban increased the toll for heavy vehicles using CityLink in Melbourne by up to 125 per cent to fund the CityLink-

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5 ABS, *Average Weekly Earnings, Australia, May 2017*, Cat. No. 6302.0, 17 August 2017. The calculation is based on full time adult average weekly ordinary time earnings of \$1543.80.

6 Fair Work Commission, *Statement: Annual Wage Review 2016–17*, p. 3, 'The national minimum wage will be \$694.90 per week'.

7 Transurban, *Submission 27*, p. 49.

8 Mr Denis Nelthorpe, Chief Executive Officer, WESTjustice, *Committee Hansard*, 3 August 2017, pp. 55–6; Western Sydney Regional Organisation of Councils, pp. 8–9.

9 Mr Scott Charlton, Chief Executive Officer, Transurban, *Committee Hansard*, 3 August 2017, p. 48.

10 Hobson's Bay City Council, *Submission 29*, [p. 3].

11 No WestConnex Public Transport, *Submission 25*, p. 3.

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Tullamarine widening project not due for completion until 2018. In comparison, tolls for light vehicles were increased by only 5 per cent.<sup>12</sup>

4.9 The association calls for a national approach to tolls and an independent pricing regulator.<sup>13</sup>

4.10 Associate Professor Russell Thompson argues that trucks avoid tolls, because they cannot pass on the costs or benefits of using the tollway. This imposes costs on people living on or near the roads they use. He says that prices should be set to encourage users to move goods at the lowest cost, taking into account externalities such as congestion and pavement damage.<sup>14</sup>

### **Unpaid tolls**

4.11 Perhaps the biggest issue to do with tolls is what happens when they are unpaid. The issuing of toll notices for unpaid tolls and the resulting enforcement processes if the toll remains unpaid are regulated through the contractual agreements in place with state governments.<sup>15</sup>

4.12 Before the introduction of electronic tolling, compliance with payment of tolls was in all probability very high because of the manual collection methods employed and an exact fee charged. Now the processes are less transparent.

### **Victoria**

4.13 The submission from WEstjustice sets out the issues very clearly for Victoria.

4.14 Operators often cannot notify a person who does not have an account with them of an unpaid fine. While they can read car registration plates, the address linked to the registration may not be current, or the driver of the car may not be the registered owner, or the driver may not clear their mail or have the language skills to read the notice.

4.15 If a toll is not paid automatically, an invoice is issued with an 'administration fee'. This fee is \$12.14, even though the Victorian Auditor-General in 2002 found that a cost-based fee of between 28 cents and 93 cents could be justified.<sup>16</sup> Through various stages of reminders, infringement notices and enforcement orders, up to an infringement warrant, the total cost of a single unpaid journey escalates over a period of a few months to \$345. This amount is charged for each day of unpaid travel.

4.16 Many people end up with unmanageable debt, which goes through the Magistrates' Court: Mr Denis Nelthorpe, of WEstjustice, recounted the example of:

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12 National Road Transport Association, *Submission 7* [p. 3].

13 National Road Transport Association, *Submission 7* [p. 6].

14 Associate Professor Russell Thompson, *Submission 9*, [p. 2, p. 3].

15 Transurban, *Submission 27*, p. 16.

16 Quoted in Toll Redress, *Submission 36*, p. 5, p. 8.

...an ageing Indian grandmother who had brought up her grandson after the mother had died. He had, unbeknownst to her, registered his car in her name and driven up and down. She was carted off to court for \$200,000.<sup>17</sup>

4.17 He said that outstanding fines of between \$20 000 and \$200 000 are becoming common. In the last resort, failure to pay can result in imprisonment. WEstjustice presents figures of unpaid infringement warrant debt: warrants for toll fines totalled \$687 million in 2015.

4.18 Geographically, infringement debt was disproportionately concentrated in outer suburban communities with higher rates of disadvantage.<sup>18</sup> The fines, when they are paid, divert money from already disadvantaged local economies.<sup>19</sup>

4.19 WEstjustice says that toll fine infringements are jamming the Magistrates' Court. They observe that the Royal Commission into Family Violence recommended removing minor traffic matters from the courts so that more serious issues could be dealt with.<sup>20</sup> They note that toll prosecutions are the 'number one offence' in the Victorian Magistrates' Court, ahead of theft, and that 73 per cent of tolling infringements proceed to court, compared with 24 per cent of other offences.<sup>21</sup>

4.20 WEstjustice notes that the toll operators do take steps to keep the tolls out of court. It further observes:

The toll operators do not obtain a significant economic benefit from this system, particularly in the absence of evidence that the punitive system is driving high rates of compliance.<sup>22</sup>

### ***Queensland***

4.21 The system is similar in Queensland. A small unpaid toll quickly ratchets up through administration charges and infringements fees:

[The system is] critically reliant on contact details in the [Department of Transport and Main Roads] database being current. If a person does not update their mailing address with TMR, the person will not receive any of their notices (invoice and demand notice from the toll road operator, penalty infringement notice from TMR or enforcement order from SPER [the State Penalties Enforcement Registry]). They may not be aware they are under enforcement until SPER undertakes data enrichment (to source a new address when notices come back to SPER as 'return to sender' for

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17 Mr Denis Nelthorpe, Chief Executive Officer, Wes in Newtjustice, *Committee Hansard*, 3 August 2017, p. 56.

18 WEstjustice, *Submission 3*, [pp. 2-4].

19 Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 3 August 2017, p. 55.

20 WEstjustice, *Submission 3*, [p. 6].

21 Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 3 August 2017, p. 55.

22 WEstjustice, *Submission 3*, [p. 6].

example) and eventually makes contact with them or when pulled over by police while driving and are advised that their licence is suspended.<sup>23</sup>

4.22 There the total of toll-related debt in the State Penalties Enforcement Registry is \$233 million. The submission by Toll Redress presents a concerning story of a debt that had escalated to \$30 000 plus loss of driver's licence. (The debt was eventually waived by Transurban.) Toll Redress says that

Existing escalation arrangements enslave people in a vicious cycle of confusion, stress and financial strain.<sup>24</sup>

4.23 This submission points out that toll notices are often not received by the person for whom they are intended.<sup>25</sup> It questions the rationale for toll road operators' 'administration charges', given that they vary hugely from state to state, and sometimes two administration fees are charged in the same letter.<sup>26</sup>

4.24 It is worth noting that the amount of toll infringement debt in Queensland fell sharply in 2016–17, after rising in the previous two years. No reason has been suggested for the fall.<sup>27</sup>

### ***New South Wales***

4.25 In Sydney the situation does not seem quite so bad, partly because the fines are less likely to end up in court. Non-payment of tolls is recovered through the civil debt system. Debt collectors are engaged by the road operators, and the amount recovered is the toll plus an administration fee. Consumers are protected by hardship arrangements and debt collection Codes of Practice. There is a cap on the number of infringement notices that can be issued each month, currently 300 per road (compared with over 58 000 infringements issued per month on CityLink in Victoria). These are dealt with in the criminal system, but unlike Victoria where each day of unpaid travel results in a separate fine, a single fine is used to penalise a course of offences.<sup>28</sup>

4.26 The system has elements of a lottery, but it does mean that the overall impact is considerably less.<sup>29</sup> The fines that accrue are in the region of \$1000 to \$3000, which is more manageable. The total amount of infringement debt for unpaid tolls in New South Wales has been estimated at \$97 million.<sup>30</sup>

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23 State Penalties Enforcement Registry (Queensland), General overview of the tolling enforcement process, additional information received 1 August 2017, p. 3.

24 Toll Redress, *Submission 36*, p. 5, p. 3.

25 Toll Redress, *Submission 36*, p. 5, p. 10.

26 Toll Redress, *Submission 36*, p. 8.

27 Ms E Goli, Commissioner of State Revenue, (Queensland), correspondence received 1 August 2017.

28 WESTjustice: Briefing paper - Our plan for a fair and effective toll enforcement system for Victoria, April 2017, additional information received 8 August 2017, pp. 10–11.

29 WESTjustice, *Submission 3*, [p. 2].

30 Toll Redress, *Submission 36*, p. 10.

4.27 The rate of unpaid tolls in New South Wales is possibly reduced also by the government's cashback scheme, which gives residents a rebate of their tolls for the M5.<sup>31</sup>

### ***The operators' view***

4.28 Transurban argues that toll roads are different from other utilities. In the event of an unpaid power bill the authority can cut off the power, whereas it is impossible to exclude people from roads. It says that it takes considerable trouble to contact the customer and make suitable arrangements before it resorts to an infringement notice, partly because more than 90 per cent of infringement recoveries are retained by the state authority and Transurban often does not recover its costs through the process.<sup>32</sup>

4.29 Transurban has a financial hardship policy in place. WEstjustice argues that it is of limited usefulness as it applies only for the period before a matter finds its way into the legal system. If it is not accessed in the first 60 days, it is not available.<sup>33</sup> Toll Redress points out that the hardship policy does not apply to business or commercial customers.<sup>34</sup>

### ***The Tolling Customer Ombudsman***

4.30 Transurban funds, with other operators, the Tolling Customer Ombudsman (TCO), a service to help people deal with toll and fine notices.<sup>35</sup> Customers can choose to use the service, at no cost. Complaints may be resolved by way of conciliation, mediation or arbitration and the parties may negotiate a settlement at any stage. TCO decisions are binding on the toll operators but not the toll road users or customers, who retain all legal rights.<sup>36</sup>

4.31 Both WEstjustice and Toll Redress have noted that the TCO does not meet the Attorney-General's Department guidelines for industry complaint schemes.<sup>37</sup> Further, there is no customer input into how it is run. It is also of limited usefulness for the same reason as Transurban's hardship policy: it is relevant only before infringements get into the legal system.

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31 New South Wales Government, Roads and Maritime Services, *M5 Cashback Scheme*, <http://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/m5-cash-scheme.html> (accessed 28 July 2017).

32 Transurban, *Submission 27*, p. 17.

33 Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 3 August 2017, pp. 57–8.

34 Mr Michael Fraser, Director, Toll Redress, *Committee Hansard*, 3 August 2017, p. 58–9.

35 RACQ, *Submission 5*, p. 3.

36 TCO Tolling Customer Ombudsman, response to Toll Redress, *Submission 36*.

37 Toll Redress, *Submission 36*, pp. 11–12; Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 3 August 2017, p. 55, p. 59.

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4.32 The TCO concedes that the narrowness of the jurisdiction made it inappropriate for the service to be established as a fully compliant industry complaints body. However, the service was informed by the same principles as those bodies. Currently all private toll operators in Australia contract with the TCO for it to provide an independent service in which it is guaranteed that there will be no conflict of interest in decision-making.<sup>38</sup>

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38 TCO Tolling Customer Ombudsman, response to Toll Redress, *Submission 36*.

