The Senate

Economics References Committee

Toll roads: issues of building, financing and charging

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Senate Economics References Committee

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Recommendation 1

6.7 That Infrastructure Australia take a system-wide, mode-neutral approach in its consideration of any project and consider alternative ways of solving the problem being addressed.

Recommendation 2

6.8 That the government reaffirm that Commonwealth funding (by way of grants or loans) will not be applied to any project which is not high on Infrastructure Australia's priority list.

Recommendation 3

6.15 That the Commonwealth make it a condition of any further infrastructure funding that states ensure that the systems for pursuing unpaid tolls and related charges are consistent with the treatment of comparable offences, if necessary by insisting on variation of the toll concession contracts.

Recommendation 4

6.21 That the Commonwealth reiterate the processes for making payments to the states for infrastructure projects, especially the necessity for milestones to have been met.

Recommendation 5

6.22 That the Commonwealth take account, in any funding decision, of the degree to which an infrastructure project might constrain future government action, either by the building of the project itself or by clauses in the project contract.

Recommendation 6

6.23 That the Commonwealth lift the amount of infrastructure grant funding to an extent that takes pressure off the states to seek private financing of public infrastructure.

Chapter 1

Introduction

1.1 On 15 June 2017, the Senate referred the matter of the operations of existing and proposed toll roads in Australia to the Senate Economics References Committee for inquiry and report by 10 August 2017.

1.2 The terms of reference for the inquiry were:

Operations of existing and proposed toll roads in Australia, including:

a financial arrangements of existing and proposed private toll roads, and transparency, accountability and equity aspects of these arrangements;

b interaction of commercial considerations of private toll road operators with federal and state transport and infrastructure policy; and

c any other related matters.[1]

1.3 On 9 August 2017 the Senate agreed to an extension of the reporting date to 12 September 2017.[2] On 12 September it agreed to a further extension to 14 September 2017.[3]

Conduct of the inquiry

1.4 In accordance with its usual processes, the committee advertised the inquiry on its website, and wrote to relevant organisations to invite submissions. Thirty-seven submissions, including one confidential submission, were received. A list of submissions to the inquiry is at Appendix 1.

1.5 The committee conducted public hearings in Melbourne on 3 August 2017 and in Canberra on 17 August 2017. The names of witnesses who appeared at the hearings are at Appendix 2.

Structure of this report

1.6 This report comprises 6 chapters, including this introductory chapter:

- Chapter 2 presents background information on toll roads in Australia and in other countries.
- Chapter 3 examines the financial arrangements for existing toll roads and projects that are under development, and how those arrangements are arrived at.
- Chapter 4 focuses on equity aspects of toll arrangements, including
    - regional equity considerations for those areas serviced by toll roads, and

1 *Journals of the Senate*, No. 44, 15 June 2017, p. 1436.

2 *Journals of the Senate*, No. 50, 9 August 2017, p. 1634.

3 *Journals of the Senate*, No. 61, 12 September 2017, p. 1958.

- systems of enforcing toll payments and related administration charges.

- Chapter 5 examines the interaction of commercial considerations of the operations of private toll roads with federal and state transport and infrastructure policy.
- Chapter 6 summarises the committee's views and makes recommendations.

Chapter 2

Toll roads in Australia and elsewhere

Identifying the issues in the discussion

2.1 Some discussion of toll roads is confused because there are a lot of variables, which are not necessarily related, being discussed at the same time.

2.2 Further, from the committee's point of view, it is important to remember that transport is a state responsibility. The Commonwealth's involvement is largely through funding of infrastructure. Its responsibilities for the environment, health and general living standards (through social security and taxation), supervision of corporations and consumer protection also give it specific interests in the issues raised by toll roads.

Roads versus other solutions

2.3 First, there is the question of building roads versus other transport solutions. The objective of building a road is to improve transport and, possibly, the urban environment. In a perfectly logical approach, the transport problem would be examined, and all possible solutions would be compared on the basis of costs and benefits. The costs would include financial costs to government, to businesses and to individual citizens over the life of the solution, and environmental costs in terms of pollution and urban amenity. Similarly, the benefits would be assessed over the life of the asset and would include improvements in convenience and comfort as well as economic benefits.

2.4 Assessing the benefits and costs of transport infrastructure also requires a long time frame. For example, building new motorways frequently results in more car trips, because the new road reduces the cost of a trip, in time and possibly discomfort in the form of driving stress. The traffic from this induced demand puts further stress on other, smaller roads at the beginning and end of the motorway. The road may alter land uses: with good transport access it becomes convenient to establish factories in the outer suburbs. The new road may initially be a more attractive alternative to public transport, which thus becomes less economic with lower patronage. And eventually the volume of traffic on the new road may build to the point where the problem of congestion is as bad as it was at the time of the decision to build it.[1]

2.5 For a given transport problem there could be a rail alternative that needs to be compared to a road; or public transport services which reduce congestion and obviate the need for new building. Many arguments against toll roads are in fact arguments against building roads as solutions.

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1 For a brief summary of these arguments see C Standen, 'Big road projects don't really save time or boost productivity', *The Conversation*, 24 January 2014, https://theconversation.com/big-road-projects-dont-really-save-time-or-boost-productivity-21560 (accessed 29 August 2017).

Tolls versus more general road user charges

2.6 Second, the discussion of tolls should be seen in the context of road user charges more generally. The concession holder for a toll road charges tolls on a particular section of the road network because it can, on the basis of a commercial agreement with a government. Fuel excise and vehicle registration charges function to some extent as road user charges. There are arguments for charging for the use of roads more generally, and this is a matter of considerable policy discussion at present. For example:

- The Department of Infrastructure and Regional Development (DIRD) has published a paper, Independent price regulation of heavy vehicle charges, as part of a COAG process on heavy vehicle road reform.[2]
- DIRD is also participating in cross-jurisdictional investigation of cost reflective pricing for light vehicles.[3]
- On 24 November 2016 the Prime Minister announced that the Government would 'appoint an eminent Australian to lead extensive community consultation on the costs and benefits of road pricing for all vehicles'. (This process has not begun yet.)[4]

User charges for public services

2.7 It is important to specify the objectives of charging for road use. A road is a part of a transport network which includes other roads as well as train routes and possibly cycle and walk ways. It is a major piece of physical infrastructure which, because of its size and social function, necessarily involves government in its provision. For several centuries it has been assumed in the developed world that providing roads is a core function of government.

2.8 Governments provide many services. Some are free to users: for example, the Australian Broadcasting Commission, most parks, most policing and to a great extent public schools. Some, such as many medical services, require a partial contribution which does not purport to cover the whole cost. Some, especially those which cater to a specific identifiable group, including regulatory services and services where the government is operating in a commercial market, are intended to recover their costs in full.

2.9 User charging may have various rationales. Cost recovery for a very specific service may simply be fair, or an element in the costs of doing business. Sometimes it makes sense to use a service to generate revenue, because funds are always scarce and in particular cases a charge will not cause an appreciable reduction in demand. In

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2 Department of Infrastructure and Regional Development (DIRD), *Submission 16*; the paper is at https://infrastructure.gov.au/roads/heavy/files/IPR-Discussion-Paper.pdf (accessed 20 July 2017).

3 Department of Infrastructure and Regional Development, *Submission 16*.

4 M Turnbull (Prime Minister), *Ministerial Statement: Infrastructure*, House of Representatives *Hansard*, 24 November 2016, p. 4343.

other cases, the purpose of a charge is precisely to reduce demand, so that people will not over use a service. In economics, a market price in certain circumstances will drive the efficient level of demand for and supply of a good or service.

2.10 On the other hand, a decision not to charge for a service may be due to a perception that the service provides external benefits—benefits over and above what might be captured in a price. For example, it is generally agreed that the benefits to the whole community of a literate population make a case for free public education. Or it may be impossible to exclude people from using a service, such as the ABC, so it does not make sense to charge for it. Or one person's use of a service, such as a park, may have no impact on another person's use, so there is no cost involved. Or the benefits of a service may be so widely spread that in effect all taxpayers are users, so that it can just as effectively be funded from general revenue.

2.11 User charges may be complex where a network is involved. Telephone calls are charged to the maker of the call, but may be of equal benefit to the receiver. This is particularly relevant to a road, which is part of a complex transport network.

2.12 Some of the discussion of toll roads confuses the original rationale—that users of the particular section of road will pay for its construction—with other variables such as commercial returns and congestion management.

Separating the decision to build a road from the method of financing it

2.13 Because a road is a major piece of infrastructure with wide social functions, the construction of which will cause significant disruption, the decision to build a major road is arguably one for government. It would normally be a result of a long term city planning process, and would probably involve consultation with communities affected. The decision to build would arise from the calculation that building a road will result in a net benefit for the community. Questions of how to pay for it would logically follow the decision to build. As discussed later in this report, the community will pay for the road. The question is whether it is to be financed through taxes or tolls or some other method.

2.14 Many features of toll roads in Australia's cities are at least partly the result of decisions to finance the project through private involvement, often in a public-private partnership or PPP. To allow the private operator to recover the cost through tolls is a further, conceptually separate, decision from the decision to use private finance.

Some issues in the financing of infrastructure

Attracting private capital

2.15 Infrastructure Australia distinguishes between funding and financing infrastructure. Financing is the method of raising the money, which is paid back through funding from user charges or taxes—and only from them.[5] However, the building and operation of infrastructure may be financed in a variety of ways.

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5 Infrastructure Australia, *Australian Infrastructure Plan, Priorities and reforms for our nation's future*, February 2016, p. 90 http://infrastructureaustralia.gov.au/policy-publications/publications/files/Australian_Infrastructure_Plan.pdf (accessed 23 August 2017).

2.16 Since the 1980s, governments have become progressively more wary of debt. At the same time there has been (real or imagined) pressure to reduce taxation. Governments have sought ways of financing large projects which do not involve government borrowing, and which get the cost 'off the balance sheet'. The answer to this problem has been to involve private capital in the building of infrastructure.

2.17 There is some evidence that these trends are being reversed. The Commonwealth Treasurer, Mr Scott Morrison, in April 2017 made a distinction between 'good debt' and 'bad debt', and said that government borrowing to create future assets could be acceptable and even desirable.[6] Meanwhile, the Opposition has made several policy announcements which foreshadow an increase in tax revenue.[7]

2.18 In general, governments can borrow more cheaply than private sector entities. They also do not need to generate returns to shareholders. Given that transport departments are already operating, it is possible that they have lower administration costs. So direct provision by governments could involve lower costs.

2.19 On the other hand, the huge stock of superannuation assets available for investment suggests that attracting private capital to profitable and stable investments could be worthwhile to both government and investors. Public use infrastructure provides many examples of such investments.

2.20 There are several ways that private capital can be involved. Some examples are the sale of infrastructure bonds (to raise a general fund, or to finance specific projects) which then generate a return as interest; build-operate-transfer schemes by which the government takes ownership after the private partner has recouped its capital plus a return; and the sale of a right to raise funds from an asset. From information later in this chapter it is apparent that several major toll road projects began as the second type of scheme, the intention being to build-own-operate, but failed and were taken over essentially as the third type, a toll concession.

2.21 One principle which should guide the decision as to whether the public or the private sector should undertake an activity is that risk should reside with the party best able to manage it. Road provision involves project risks—acquiring the land, getting the road built—and patronage, or traffic, risks. In early discussions of toll roads it was argued that the private sector was best placed to manage these risks. Following failures which were largely due to over-optimistic traffic forecasts, this can no longer be assumed.[8]

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6 A McGhee and H Belot, 'Scott Morrison flags budget reporting changes, will allocate expenditure to individual portfolios', ABC News, 27 April 2017, http://www.abc.net.au/news/2017-04-27/budget-2017-scott-morrison-flags-reporting-changes/8474422 (accessed 1 September 2017).

7 M Farr, 'Taxing the rich isn't the simple solution Bill Shorten is claiming', 12 May 2017, News.com.au website, http://www.news.com.au/finance/economy/federal-budget/taxing-the-rich-isnt-the-simple-solution-bill-shorten-is-claiming/newsstory/3723269a3764c3441c89f3185ed29a33 (accessed 1 September 2017).

8 Professor David Hensher, *Submission 1*, [p. 2].

2.22 When the private sector finances infrastructure, it allows governments to postpone paying for the asset until it is in use, and to have the people who use the asset pay for its building and its maintenance through tolls. This appearance of a 'user pays' arrangement with no apparent cost to government has been criticised as based on a perception:

> …that the government is independent and separate from the residents it's meant to be governing and representing.[9]

2.23 In the past, revenue for road building has been raised through road user charges including vehicle registration and fuel excise. Revenue from fuel excise has been falling consistently over the last decade. This trend can be expected to continue, largely because of better fuel efficiency of vehicles and the increase in alternatively powered vehicles like electric and hybrid vehicles. Even though these funds are not formally hypothecated, such a decline will add pressure for governments to find alternative sources of revenue to finance roads.[10]

Tolls to finance roads

2.24 The logic of using tolls to fund road construction is reasonable. The use of the price mechanism can theoretically drive optimal provision and consumption of goods or services. However, this basic economic theory applies to markets where there is no constraint on supply, and where there are alternative products to meet demand. Once either of those two conditions is unmet, the conditions for an optimal price change.

2.25 Sometimes there are constraints on supply, including limited or no alternative routes. In particular, heavy vehicles are often prevented from using suburban streets. Or charging a toll may direct traffic on to suburban streets which are less efficient carriers of the traffic. Once a road has been built, especially a major multi-lane motorway, it is efficient to encourage people to use it. One theoretical paper concludes:

> …economically optimal pricing in its purest form leads to major under-recovery of capital and maintenance costs for most of the road system.[11]

2.26 In many cases toll rates are determined in advance, with an agreed maximum rate of increase. But in fact the benefit to the user of the toll road changes over time:

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9 Mr Tony Harris (former New South Wales Auditor-General), interview with Ticky Fullerton for Four Corners, 20 February 2006, http://www.abc.net.au/4corners/content/2006/s1573798.htm (accessed 24 August 2017).

10 R Dossor, 'Revenue from road use', *Briefing Book for the 45th Parliament*, Parliamentary Library, 2016, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/FundingRoads (accessed 24 August 2017).

11 Department of Infrastructure and Regional Development, *Introduction to Road Economics*, Bureau of Infrastructure, Transport and Regional Economics, Background Paper for an ANZSOG Infrastructure Research Workshop, prepared by Dr Mark Harvey, September 2015, https://bitre.gov.au/publications/2017/files/sp_001.pdf (accessed 28 July 2017).

usually it increases as the volume of traffic in a city, and the congestion on alternative routes, increases.[12]

2.27 Tolls tend not to be simple user charges. First, in several cases, new roads have been funded by extension of the concessions on existing roads. Second, the difference in tolls between roads within a city does not reflect differences in the cost of provision.[13] It may simply reflect differences in the deal negotiated. Third, the benefit of a road does not accrue only to the person who drives on it. An employer whose work force can use a new road to get to work may benefit from the road even though she never travels on the road, and never pays a toll. Further, when a driver pays to use a toll road, she reduces the congestion on alternative minor roads (conferring a benefit on users of them for which they do not pay). But she may increase congestion on roads beyond the paid-for section, imposing a cost which is also not a component of the toll. A particular tolled road is useful only if there are other roads leading to it. The transport system is a network, not a collection of individual roads.

2.28 Road user charges can be used for broader purposes such as demand management. But such charges have to be applied with the whole network in mind. Submissions from areas dependent for access on toll roads have made this point.[14] Professor David Hensher believes that only the state has any incentive to think in terms of the network. But, he argues, governments, by agreeing to long term tolling contracts, have given away the pricing control that would have allowed them to optimise charging on the network.[15]

2.29 The Bureau of Infrastructure, Transport and Regional Economics (BITRE) appears to support this argument, concluding in its *Introduction to Road Economics*:

> The main message of this paper is to challenge ideas that economically efficient prices for roads in general are associated with cost recovery, and the roads could be managed efficiently on a commercial basis without a high degree of regulation.[16]

2.30 The use of tolls as a method of financing infrastructure is not only a way of postponing the cost to government. Some toll road projects have involved an up-front payment to government for the right to build and operate the road.[17]

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12 Professor David Hensher, *Submission 1*, [p. 2].

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

14 Western Sydney Regional Organisation of Councils, *Submission 2*, p. 3, p. 9; Hobson's Bay City Council, *Submission 29*, p. 4.

15 Professor David Hensher, *Submission 1*, [p. 2].

16 Department of Infrastructure and Regional Development, *Introduction to Road Economics*, Bureau of Infrastructure, Transport and Regional Economics, p. 22.

17 Bain, R. (2012) Twenty-One Limitations & Shortcomings with Traditional 4-Step Models, quoted in Professor David Hensher, *Submission 1*, fn 2.

Toll roads in Australia[18]

2.31 There are 16 toll roads in Australia: eight (41 per cent of total toll road length) in New South Wales, two (25 per cent) in Victoria and six (34 per cent) in Queensland. BITRE distinguishes three categories of toll roads: bridges or tunnels crossing barriers, like the Sydney Harbour Bridge and the Go-Between Bridge in Brisbane; roads incorporating tunnels which are intended to ease congestion on the surface, like the Sydney Cross-City Tunnel and the Brisbane Clem7; and intra-city links, some of which, like the Sydney M7, the Logan Motorway in Brisbane, and the Melbourne Eastlink, are over 35 kilometres long. This information is summarised in the table.

2.32 Most toll roads have been developed as public-private partnerships, with mixed success. Failures have generally been due to exaggerated forecasts of traffic volumes: this is often referred to as 'optimism bias'. This has been particularly true for the second type of freeways, those involving tunnels.

2.33 As several companies developing toll roads have failed, there has been an increase in concentration of ownership. Today Transurban operates, and has at least a majority ownership of, 13 of the 16 toll roads.

2.34 Most of the toll roads use fixed tolls. The exceptions are the Sydney Harbour Bridge and the Sydney Harbour Tunnel, which vary by time of day, and the Sydney M7, which has distance-based tolling. (WestConnex, including the new M4 lanes opening now, will also use distance based tolling.[19]) Tolls for cars vary from $2.70 for the 38.7 kilometre Logan Motorway to $8.70 for the 22 kilometre Melbourne CityLink. Tolls for trucks for those roads are $7.30 and $11.60 respectively.[20]

2.35 Four more major projects are currently proposed or in their early stages: Toowoomba Second Range Crossing, NorthConnex and WestConnex in Sydney, and the Westgate Tunnel project in Melbourne. Three major upgrade projects are proposed in Brisbane.[21] All of these except the Toowoomba Second Range Crossing are Transurban projects.

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18 Material in this section is derived from Department of Infrastructure and Regional Development, *Toll Roads in Australia*, Bureau of Infrastructure, Transport and Regional Economics, September 2016, https://bitre.gov.au/publications/2016/files/is_081.pdf (accessed 20 July 2017), unless otherwise indicated.

19 WestConnex, *Tolls for WestConnex stages*, https://www.westconnex.com.au/using-westconnex/tolls (accessed 21 July 2017).

20 The figures are for 31 August 2016.

21 T Moore, 'Trucks drive Brisbane's toll road revenue growth', *Brisbane Times*, 8 August 2017: 'The $1.14 billion Gateway Upgrade North project will be finished in late 2018. The $512 million Logan Enhancement project finishes in 2019, while the $60 million Inner City Bypass extension finishes mid-2018.' https://www.brisbanetimes.com.au/politics/queensland/trucks-drive-brisbanes-toll-road-revenue-growth-20170808-gxrzlt.html (accessed 28 August 2017).

Table: Toll Roads in Australia by Type

Type	*Name*	*State*	*Length (km)*	*Original owner*	*Majority Owner*	*Operator*
Harbour/river crossing	1. Sydney Harbour Bridge	NSW	1.1	NSW Dept. of Public Works	RMS	RMS
	2. Sydney Harbour Tunnel	NSW	2.7	Transfield Pty Ltd & Kumagai Gumi	Kumagai Gumi (50%)	Tunnel Holdings Pty Ltd
	3. Go Between Bridge	QLD	0.3	Brisbane City Council	Transurban	Transurban
Tunnels or roads with tunnels	4. Cross City Tunnel	NSW	2.1	CCT Motorways	Transurban	Transurban
	5. Lane Cove Tunnel	NSW	3.8	Connector Motorways	Transurban	Transurban
	6. Clem7	QLD	6.8	RiverCity Motorway	Transurban	Transurban
	7. Airport Link	QLD	6.7	BrisConnections	Transurban	Transurban
	8. Legacy Way	QLD	5.7	Brisbane City Council	Transurban	Transurban
Intra-city links - short	9. M1 (Eastern Distributor)	NSW	6.0	Airport Motorway Pty Ltd	Transurban	Transurban
- long	10. M2 (Hills)	NSW	21.0	Hills Motorway Pty Ltd	Transurban	Transurban
	11. M7 (Westlink)	NSW	40.0	Western Sydney Orbital Pty Ltd	Transurban (50%)	Transurban
	12. M5 (South-West)	NSW	22.0	Interlink Roads Pty Ltd	Transurban (50%)	Transurban
	13. CityLink	VIC	22.0	Transurban	Transurban	Transurban
	14. EastLink	VIC	39.0	ConnectEast	Horizon Roads Pty Ltd	Horizon Roads Pty Ltd
	15. Gateway Motorway	QLD	23.1	Queensland Investment Corp.	Transurban	Transurban
	16. Logan Motorway	QLD	38.7	Logan Motorways Pty Ltd	Transurban	Transurban

Source: Bureau of Infrastructure, Transport and Regional Economics, Toll Roads in Australia

2.36 Most tolls are collected electronically. The systems for collection vary among the roads and from state to state. Most involve an electronic sensor linked to an account and carried in the vehicle, but there is also provision for reading of vehicle number plates. There are several providers of tolling, and they have roaming arrangements whereby tolls can be paid by interstate drivers before or after a trip (within 48 hrs before incurring a fine) with one account working for all the freeways in a city.

2.37 However, as discussed in Chapter Four, there are considerable equity issues that impact those who use the roads less regularly, for example interstate visitors. Many operators require interstate drivers to register online, and there are issues regarding adequate disclosure. For example, in the case of Transurban, a $1.50 application fee is charged plus a 0.75c vehicle matching fee for each tollway accessed on top of the toll charge itself.

2.38 The Australian Competition and Consumer Commission has suggested that, while there is not a competitive market in toll roads, there is a competitive market in tolling service provision.[22]

Toll roads in other countries

2.39 In comparing Australia with other countries it is important to remember the interaction of tolls with other road user charges, aside from tolls. These include vehicle registration charges and fuel excise.

United States

2.40 The US has had a long history of toll roads, including an infrastructure boom before World War II financed largely by tolls. However, the 1956 legislation for a national highway system was based on tax funding. More recently, because of a growing infrastructure deficit and a perceived shortage of public funding, there is increasing interest in financing building by tolls, with a large number of federal demonstration and pilot programs.[23] In the 10 years from 2005 to 2015, toll road distances increased by about 18 per cent.[24]

- In 2005, the state of Indiana sold a 75-year tolling concession on the East–West Toll Road in order to raise funds for further road building. It was bought by a joint venture between Cintra, a Spanish construction firm, and Macquarie Atlas Roads for US$3.8 billion. This was $1 billion more than the next bid, and proved to be based on unrealistic traffic forecasts. The impact was borne by the buyers and their financiers.[25]

Canada

2.41 Canada has not made much use of tolls, although it has relied heavily on PPPs to build roads.[26]

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22 See for example Australian Competition and Consumer Commission, *Transurban consortium - proposed acquisition of BrisConnections including the AirportLinkM7 toll road in Brisbane*, 26 November 2015, http://registers.accc.gov.au/content/index.phtml/itemId/1191035/fromItemId/751043 and *Transurban Group - considering proposed acquisition of Connector Motorways Group* [former owner of Lane Cove Tunnel and Military Road E-Ramp in Sydney], http://registers.accc.gov.au/content/index.phtml/itemId/924507/fromItemId/751043 (both accessed 21 July 2017).

23 US Federal Highway Administration, *Toll Facilities in the United States*, 2016, https://www.fhwa.dot.gov/policyinformation/tollpage/, History, Current Policy (accessed 28 August 2017).

24 US Federal Highway Administration, *Toll Facilities in the United States*, 2016, https://www.fhwa.dot.gov/policyinformation/tollpage/, Toll Mileage Trends (accessed 28 August 2017).

25 R Puentes, 'The Indiana Toll Road: How Did a Good Deal Go Bad?', *Forbes* magazine, 3 October 2014, https://www.forbes.com/sites/realspin/2014/10/03/the-indiana-toll-road-how-did-a-good-deal-go-bad/#2c7ae80d2087 (accessed 28 August 2017).

26 T Ahmad, *National Funding of Road Infrastructure: Canada*, Library of Congress, 2014, https://www.loc.gov/law/help/infrastructure-funding/canada.php (accessed 24 August 2017).

England and Wales

2.42 Transport is a devolved responsibility in the United Kingdom so Scotland and Northern Ireland operate separately. There is very limited use of toll roads in England and Wales, although the government has the legislative power to impose tolls on major roads, and has used PPPs for road building. There has been some use of shadow tolls, where the government pays a private operator a fee per vehicle.[27]

France

2.43 France makes extensive use of tolls: about three-quarters of highways are tolled. However, in 2014 the French government announced the introduction of an Eco-charge on heavy goods vehicles on non-tolled routes and installed gantries for collecting it, only to abandon it in the face of opposition from the transport industry. Tolls are distance based and vary with type of vehicle. In the absence of tolls on minor roads, local governments are beginning to force heavy vehicles onto the (main) tolled routes by regulation.[28]

Germany

2.44 Germany has not in the past used tolls. Legislation has been passed in the lower house of parliament to impose tolls on autobahn routes from 2019. In effect they will be a tax on foreign users, because German drivers who pay annual registration will have their tolls refunded. There has been strong opposition within the EU to this measure, which has been debated for several years.[29]

Italy

2.45 Italy has an extensive system of toll roads. In 2009 administration of the national highway system was transferred from regional governments to the federal government. Of the tolls collected, 2.4 per cent is paid to the government and a proportion of this is devoted to road maintenance. Italy has also made use of PPPs, sometimes in conjunction with tax concessions.[30]

China

2.46 Tolling is fairly widespread, and has enabled rapid expansion of the road network in the last 20 years. Some toll roads are funded by loans to local governments

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27 C Feikert-Ahalt, *National Funding of Road Infrastructure: England and Wales*, Library of Congress, 2014, https://www.loc.gov/law/help/infrastructure-funding/englandandwales.php (accessed 24 August 2017).

28 N Boring, *National Funding of Road Infrastructure: France*, Library of Congress, 2014, https://www.loc.gov/law/help/infrastructure-funding/france.php (accessed 24 August 2017); About-France.com website, *HGV / truck driving in France*, https://about-france.com/hgv.htm#charges (accessed 24 August 2017).

29 DPA/The Local, *What the new 'foreigner toll' on the autobahn will mean for you*, https://www.thelocal.de/20170324/what-the-new-german-autobahn-toll-will-mean-for-you (accessed 24 August 2017).

30 D Figueroa, *National Funding of Road Infrastructure: Italy*, Library of Congress, 2014, https://www.loc.gov/law/help/infrastructure-funding/italy.php (accessed 28 August 2017).

and tolls are directed to repaying the cost of building the road. Some are privately commercially operated. Tolls may be collected for up to 20 years on government roads and up to 25 years (with possible extension to 30 years) on commercial roads. In some cases the right to collect tolls on government roads is assigned to a private operator.[31]

Japan

2.47 The Japanese expressway system consists mostly of toll roads. The system was originally intended to become toll free as soon as the national expressway network was completed and construction debts repaid, partly from tolls. Highways were constructed by statutory highway corporations from the 1950s. However, the corporations accumulated huge debts and were reorganised in the early 2000s, with a government body to hold the existing assets, and six private companies to build new roads—and collect tolls. The private companies pay the government body a lease fee which depends on the volume of traffic, so the risk remains with the government.[32]

Spain

2.48 Some regions of Spain use toll roads extensively, and many toll roads are controlled by local authorities. The logic of planning is that it is possible to travel around cities on good alternative routes without using tolled roads, but they are harder to avoid on intercity routes.[33]

Overall comparisons

2.49 Transurban's submission estimates that 0.5 per cent (240 kilometres) of Australia's motorways are tolled, compared with 3 per cent of China's and the US's, 13 per cent of Japan's and 18 per cent of Spain's.[34]

2.50 Tolls vary widely, both within and between countries. Some examples of national average tolls (in US currency) are: Japan, 24 cents per kilometre; France 11–13 cents per kilometre; Italy 7 cents per kilometre.[35] Tolls in Spain are about 10.5 cents per kilometre.[36]

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31 L Zhang, *National Funding of Road Infrastructure: China*, Library of Congress, 2014, https://www.loc.gov/law/help/infrastructure-funding/china.php (accessed 24 August 2017).

32 S Umeda, *National Funding of Road Infrastructure:Japan*, Library of Congress, 2014, https://www.loc.gov/law/help/infrastructure-funding/japan.php (accessed 28 August 2017).

33 Rhino Car Hire website, *Spanish Toll Roads - A Guide to Toll Roads in Spain*, http://www.rhinocarhire.com/Car-Hire-Blog/August-2015/Spanish-Toll-Roads-A-Guide-to-Toll-Roads-in-Spain.aspx (accessed 28 August 2017).

34 Transurban, *Submission 27*, p. 12.

35 S Umeda, *National Funding of Road Infrastructure:Japan*, Library of Congress, 2014, section IIB Tolls.

36 Derived from Rhino Car Hire website, *Spanish Toll Roads - A Guide to Toll Roads in Spain*, http://www.rhinocarhire.com/Car-Hire-Blog/August-2015/Spanish-Toll-Roads-A-Guide-to-Toll-Roads-in-Spain.aspx (accessed 28 August 2017).

Chapter 3

Financial arrangements for toll roads

3.1 This section considers financial arrangements for building roads including contracts for future tolls and the way they are framed, negotiated and changed. According to Infrastructure Australia:

> …through facility-based tolling on urban motorway networks…the government competitively tenders the right to levy tolls for a fixed period (a concession) in return for the provision of infrastructure. In turn, the tolls collected reflect the cost of designing, financing, building, operating and maintaining the asset, plus a risk-weighted return to investors.[1]

Separating the decision to build from the method of financing

3.2 Infrastructure Australia's description suggests a private provider building the asset and then getting its money back. However, there is no necessary link between the contract to build a motorway and the tolling arrangements later. The successful takeover and operation by Transurban of several toll roads built by other companies (see the table in Chapter 2) demonstrate that the two activities can be quite separate.

3.3 Transparency would be improved if the two decisions were made separately.[2] At present, it is difficult for the public to know what the relationship between tolling and investment is:

> One of the other things with tolling is that it's an important input in understanding the VCR [value to cost ratio] and other aspects of an economic appraisal for a candidate project. The states and territories are always very careful about the extent to which they want to share their tolling arrangements with the Commonwealth. For example, Infrastructure Australia tried a number of times, with the East West Link, to obtain information from the Victorian government on what the proposed tolling arrangements for the East West Link would be. It couldn't [get] that information out of the Victorian government.[3]

3.4 Error in traffic forecasts is a well-established phenomenon. A paper by the Bureau of Transport and Regional Economics notes that forecasting errors are asymmetrical: they are much more likely to forecast too high rather than too low volumes of traffic. Significantly, forecasting for toll roads is worse than for toll-free roads. BITRE suggests that:

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1 Infrastructure Australia, *Australian Infrastructure Plan, Priorities and reforms for our nation's future*, February 2016, p. 100, http://infrastructureaustralia.gov.au/policy-publications/publications/files/Australian_Infrastructure_Plan.pdf (accessed 25 July 2017).

2 EcoTransit Sydney, *Submission 13*, p. 6.

3 Mr Brian Boyd, Executive Director, Performance Audit Services Group, Australian National Audit Office, *Committee Hansard*, 3 August 2017, p. 8.

> Forecasting errors can be caused by many factors including inadequate models, data limitations, uncertainties in socio-economic and land use forecasts, ramp-up risks, and optimism bias and/or strategic misrepresentation.[4]

3.5 In some cases the successful bidder for a toll road contract makes an up-front payment to the government. This distorts the whole process. In particular, it creates an incentive for a proponent to increase its traffic estimates:

> In Australia, a number of the toll road concessions were awarded to the bidder offering the largest upfront payment to the state. That's a recipe for disaster. Without checks and balances in place the bidding process simply turns into a competition on traffic numbers. Toll road traffic generates revenue, and the largest upfront payments can be justified by those with the highest traffic forecasts.[5]

3.6 Inflation of traffic forecasts, for this reason or for other reasons, does not merely distort the projected returns to businesses, leading to numerous failures of toll road ventures including the Cross-City Tunnel and the Lane Cove Tunnel in Sydney, the Clem7 and Airport Motorway projects in Brisbane, and the EastLink project in Melbourne. It also distorts the whole cost-benefit analysis, suggesting at the decision stage that a project is actually of more value to the community than it really is.[6]

3.7 Professor David Hensher suggests that traffic forecasts have been so inaccurate, especially for the first few years after the opening of a toll road, that:

> …there is a case to be made for focusing on debt financing until the risk profile of patronage is better established and stabilises and then invite private equity…[7]

3.8 Often the tolling contractor does not pay the whole capital cost of the road but shares it with government. There is no theoretical reason why this should not happen, as long as it is transparent and the private returns from tolls reflect only the capital and maintenance contributions of the private operator.

Tolling contracts

3.9 Many submissions complained of the lack of transparency in negotiation of toll contracts.[8]

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4 BITRE, 'Review of Traffic Forecasting Performance, Toll Roads', June 2011, Executive Summary, https://infrastructure.gov.au/infrastructure/infrastructure_reforms/files/Attach_A-BITRE_Literature_Review.pdf (accessed 29 August 2017); see also *Optimism Bias* prepared by Transport and Infrastructure Council, Australian Transport Assessment and Planning Guidelines, https://atap.gov.au/public-consultations/files/ATAP-Optimism_bias.pdf (accessed 29 August 2017).

5 Bain, R. (2012) Twenty-One Limitations & Shortcomings with Traditional 4-Step Models, quoted in Professor David Hensher, *Submission 1*, fn 2.

6 Mr William McDougall, *Submission 37*.

7 Professor David Hensher, *Submission 1*, [p. 2].

3.10 Generally the arrangements surrounding tolls are very specific and detailed.[9] They set out a starting price per vehicle, and permissible increases over the years. For example, tolls for WestConnex, including stages not yet opened, are specified on its website. They can be increased at 4 per cent or the CPI, whichever is higher, until 2040, after which the CPI will be the maximum increase.[10] The arrangements negotiated in 1995 for Melbourne's CityLink provided for increases at 4.5 per cent or the CPI for the first fifteen years, then CPI for the next 15 years.

3.11 The logic of indexing the payment is not clear, but it is worth noting that since March 1995 inflation has touched 4 per cent once (during the Asian financial crisis) and has exceeded 3 per cent on only one other occasion.[11] But it is very likely that the expected increasing value of the toll road, as other roads get more congested, also justifies the increase in real prices.

3.12 The practice of specifying tolls in detail has been criticised for reducing flexibility in road pricing, given that the contracts are generally for 30 years or more. Such flexibility might be required in order to use tolls for demand management or other purposes.[12]

3.13 The tolling contracts also specify how unpaid tolls will be dealt with. This has resulted in different arrangements from state to state, and has had some perverse results. It is considered further in Chapter 4.

3.14 Many people accept tolls as a way of paying for a particular road that they use and value. But they resent changes to arrangements which extend the tolling period or increase tolls for a particular road in order to pay for a new road. This has happened with CityLink tolls in Melbourne, which will be extended to part-fund the Westgate Tunnel project. Transurban proposes to increase tolls on roads in Brisbane to fund the upgrade to the Inner City Bypass (which will not itself be tolled).[13] At the time of writing there is anger at the re-imposition of tolls on Sydney's M4, which has been widened as part of the WestConnex project.[14] In addition, the owner of WestConnex

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8 For example, Ms Wendy Bacon, *Submission 32*, p. 19; Grattan Institute, *Submission 23*; No WestConnex Public Transport, *Submission 25*.

9 See, for example, Victorian Government, Western Distributor Project Tolling Structure, Department of Treasury and Finance, nd, http://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0007/1237273/Western-Distributor-Attachment-F-Tolling-Options-Report_Redacted.pdf (accessed 25 July 2017).

10 WestConnex, *Tolls for WestConnex stages*, https://www.westconnex.com.au/using-westconnex/tolls (accessed 29 August 2017).

11 Australian Bureau of Statistics, *Consumer Price Index, Australia, Jun 2017*, Cat. No. 6401.0, 26 July 2017,Index Numbers All Groups CPI, Australia,

12 Professor David Hensher, *Submission 1*, [p. 2].

13 T Snowdon, 'Tolls in Brisbane: Transurban to increase tolls to pay for Inner City Bypass upgrade', *The Courier Mail*, 21 March 2017, http://www.couriermail.com.au/news/queensland/tolls-in-brisbane-transurban-to-increase-tolls-to-pay-for-inner-city-bypass-upgrade/news-story/c3f1e71203e600d7237ca0dcddfeb2ba (accessed 29 August 2017).

14 Ms Wendy Bacon, *Submission 32*, p. 18; WestConnex Action Group, *Submission 26*, p. 5.

will apparently be granted the toll concession for the existing M5 West from 2026 (when the current concession ends) until 2060.[15]

3.15 Some freeway agreements have included clauses which restrict the government's freedom of action, in order to reduce risk for the private operator. The original tolling contract for the Sydney M2 (later revised) included 'no compete' clauses which would discourage the building of a competitive railway line for decades to come.[16]

3.16 The agreement for CityLink in Melbourne included the right to seek redress if improvements to public transport reduced the traffic using the road or if freight was carried on the airport rail link. Transurban used this material adverse effects clause to sue the Victorian Government over the 1.9 km Wurundjeri Way road Docklands Development, claiming it was competing with CityLink. Transurban was unsuccessful in this case.[17] However, the government did agree to pay compensation for the widening of the Westgate freeway and the Monash freeway.[18] Transurban resisted deletion of the CityLink clause as a condition of the Westgate Tunnel project agreement.[19]

3.17 No provision of this sort was included in Melbourne's Eastlink agreement, but the agreement is framed in terms which create an incentive for government to increase road traffic.[20]

3.18 The clauses mentioned above transfer the patronage risk to the government. In the case of the extension to the CityLink tolls to fund the Westgate Tunnel project, the Grattan Institute's submission suggests [p. 3] that the tolling period can vary according to the actual cost, not the contracted price, of building the road. That is, the project risk is also transferred to the government.

Specific example: Westgate Tunnel project, Victoria

3.19 The submission of Mr William McDougall makes a detailed criticism of the processes the Victorian government used in assessing the proposal for the Westgate Tunnel project. He also argues that the actual model used does not allow sufficiently for changes in traffic flows as a result of the effect of the new road on the transport

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15 WestConnex Action Group, *Submission 26*, p. 5.

16 EcoTransit Sydney, *Submission 13*, p. 5.

17 S Thomsen, 'Victoria's premier posted this cool look at Melbourne's new Western Distributor bridge', *Business Insider*, 11 May 2016, https://www.businessinsider.com.au/victorias-premier-posted-this-cool-look-at-melbournes-new-western-distributor-bridge-2016-5 (accessed 29 August 2017).

18 F Pretorius, S Surup, A McDougall, 'Private-Public Partnerships: Transactional Analysis and the Case of Urban Motorways' in K Wellman, M Spiller, *Urban Infrastructure: Finance and Management*, Wily-Blackwell, 2012.

19 J Gordon, 'Western Distributor: Compensation clause threatens $5.5 billion road plan', *The Age*, 9 May 2016, http://www.theage.com.au/victoria/western-distributor-compensation-clause-threatens-55-billion-road-plan-20160509-goq3ts.html (accessed 29 August 2017).

20 Friends of the Earth, *Submission 20*, p. 2.

network, and thus has produced higher forecast traffic flows. He asserts that reviewers' comments on this were not addressed in full.[21] Mr McDougall also criticised the methodology for a cost-benefit analysis prepared by PwC. Specifically, he took issue with the assumptions regarding motorists' valuation of time saved, the treatment (or non-inclusion) of induced traffic, and the treatment of land use changes which produced more favourable results in the early years of the project.[22]

3.20 He concludes that the work of assessing the Westgate Tunnel and other projects was actually a process of justifying them after the decision was made. He considers that there was at least 'optimism bias'—and possibly deliberate distortion and misrepresentation of traffic forecasts and the economic benefits that flow from them in the appraisal process. He asserts that the process lacked transparency, objectivity and completeness.[23]

3.21 The Grattan Institute also criticises the processes associated with the Westgate Tunnel project. It argues that the cost of financing the project through a PPP is higher than if it were funded by government, because government can borrow more cheaply than private players. This higher cost would be justified if the private sector were bearing the risk, but in fact:

> …there is a reasonably foreseeable risk of a cost overrun, such an overrun could be substantial, and this risk is being borne by future Victorian motorists.[24]

3.22 The Grattan Institute also says that there has been a lack of transparency in the processes. It asserts that the government committed to the project '…before the newly-established Infrastructure Victoria was in a position to assess its merits'. It notes that the business case that has been released is heavily redacted, and that funding the project through extension of concessions on other projects makes it difficult to work out how much the Victorian public will be contributing. It notes that the consultation on the Environmental Effects Statement is limited to 30 days.[25]

Setting the levels of tolls

3.23 Tolls are set at the outset of an agreement. It is primarily a commercial negotiation, not a policy decision:

> Sydney's motorway tolling arrangements are an easily demonstrated eclectic mix of policy and protocols substantially based on specific financing arrangements driven on the day by questions of economics and politics. The public see this and are frustrated by those patronising

21 Mr William McDougall, *Submission 37*, p. 2.

22 Mr William McDougall, *Submission 37*, p. 4.

23 Mr William McDougall, *Submission 37*, p. 6.

24 Grattan Institute, *Submission 23*, [p. 4].

25 Grattan Institute, *Submission 23*, [p. 4].

> assurances that toll roads and the method of charging are necessary and appropriate, they want transparency and genuine dialogue.[26]

3.24 One result of the separate project-linked tolling agreements is that there is little relationship between a specific toll and the cost of provision or the added amenity of the road.[27] Another is that the rules vary from state to state, so that some vehicles that are classified as cars in Queensland and New South Wales are classified as 'commercial vehicles' in Victoria and charged twice the car toll.[28]

3.25 Tolls for heavy vehicles are usually higher than those for cars. On an uncongested road, the marginal cost of an extra car is virtually zero, whereas heavy vehicles cause pavement wear and damage. The amount of wear and tear increases exponentially with weight.[29] However, there are often only two rates of tolls, for cars and trucks, even though truck sizes vary considerably.[30]

3.26 Despite the explicit contracts, the National Road Transport Association says that tolling methods are not transparent. It says that there is in effect no competitive alternative because in many cases trucks are banned from side roads. If the gains to the user were sufficient, there would be no need to force trucks onto the motorway.[31]

3.27 In particular, it seems that specific tolls such as those for heavy vehicles can apparently rise much more than the formula. For example, the day rate for light and heavy commercial vehicles on the CityLink in Melbourne were raised by 128.2 per cent on 1 April 2017.[32] Similarly, in Brisbane:

> …the latest toll increase publicized for HV in Brisbane on the Clem7, Legacy Way, Go Between Bridge toll roads. A comparison was made with car tolls, which was now 2.65 times for HV and will reach 3 with the new hike. All these examples highlight the fact that there seems to be no scientific basis or model available for governments to negotiate with toll companies in PPPs or to determine optimal toll for trucks looking at system optimisation, which leads to [a] very inefficient HV transportation system.[33]

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

27 Associate Professor Russell Thompson, *Submission 9*, p. 2; Alexandria Residents Action Group, *Submission 10*, [p. 3]; Mr Brendan Long, Chief Executive Officer, Infrastructure Partnerships Australia Ltd, *Committee Hansard*, 3 August 2017, p. 32.

28 Amarok Club of Victoria Inc, *Submission 21*.

29 DIRD, *Introduction to Road Economics*, BITRE, Background Paper for an ANZSOG Infrastructure Research Workshop, prepared by Dr Mark Harvey, September 2015, p. 7.

30 For example, WestConnex, *Tolls for WestConnex stages*, where the 'truck multiplier' is three: any vehicle defined as a truck incurs a toll three times the toll for cars. https://www.westconnex.com.au/using-westconnex/tolls (accessed 29 August 2017).

31 National Road Transport Association, *Submission 7*, p. 1.

32 'Motoring' website, *Toll road operator announces significant price increases from April 1*, 10 March 2017, http://www.motoring.com.au/melbournes-citylink-toll-prices-increase-again-106356/ (accessed 25 July 2017).

33 Professor Russell Thompson, *Submission 9*, [p. 3].

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…[1]

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.[2]

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.[3]

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.[4] 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,[5] or 20 per cent of the minimum weekly wage.[6] Transurban's submission indicates that 4 per cent of its New South Wales consumer account holders pay between $50 and $125 a week.[7]

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.[8]

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'.[9]

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.[10]

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.[11]

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-

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.

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

4.9 The association calls for a national approach to tolls and an independent pricing regulator.[13]

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.[14]

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.[15]

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.[16] 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.[17]

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.[18] The fines, when they are paid, divert money from already disadvantaged local economies.[19]

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.[20] 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.[21]

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.[22]

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.[23]

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.[24]

4.23 This submission points out that toll notices are often not received by the person for whom they are intended.[25] 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.[26]

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.[27]

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.[28]

4.26 The system has elements of a lottery, but it does mean that the overall impact is considerably less.[29] 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.[30]

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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.[31]

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.[32]

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.[33] Toll Redress points out that the hardship policy does not apply to business or commercial customers.[34]

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.[35] 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.[36]

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.[37] 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.

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.[38]

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

Chapter 5

Interactions of commercial considerations and government policy

5.1 The arrangements for toll roads in Australia interact with a large number of areas of government policy. The most obvious are infrastructure and urban amenity, but there are also impacts on environment, health and general living standards and the legal system. There may also be broader considerations around safeguarding the revenue stream and also about transparency and the danger of corruption of processes.

Selection of projects, builders and operators

5.2 Tollways are by their nature major pieces of urban infrastructure which link with other infrastructure. They involve many considerations which cannot be resolved simply.

5.3 In general, the need for a transport link will be identified years in advance in high-level planning processes.

5.4 In years gone by, governments would make a series of decisions: what priority to attach to the problem, whether the link would be rail or road, the various technologies to be employed, how people affected by the project would be treated (including consultation processes), when the project would go ahead, and whether funds from general revenue or a special loan or bond would be used for the project. Tenders would be called with detailed specifications, and contracts would be let to private sector construction companies. At least in theory, all of these processes would have been public.

5.5 Public-Private Partnerships or PPPs have been an important element in risk-sharing between government and business, and they have been used particularly in road provision. Toll roads have emerged as a way for governments to save money, or at least move expenditure out of the budget, in times of fiscal constraint. While this may have been effective in ensuring finance, it may also have led to a reduction in scrutiny of how proposals are adopted.[1]

5.6 The old linear planning process is not necessarily followed now. Processes vary from state to state, so the following discussion proceeds largely by reference to specific examples. A project by project approach is suggested by the operations of Infrastructure Australia, the body established by the Commonwealth Government in 2008 'with a mandate to prioritise and progress nationally significant infrastructure'.[2] This approach is also suggested by the establishment, announced in the 2017–18 Budget, of the 'Infrastructure and Project Financing Agency, to assist in the identification, development and assessment of innovative financing options for

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1 See, for example, Inner Melbourne Planning Alliance, *Submission* 35, p. 2.; Transurban, *Submission 27*, pp. 9–14.

2 Infrastructure Australia website, http://infrastructureaustralia.gov.au/ (accessed 21 July 2017).

investment in major infrastructure projects'.[3] It is possible that this project-by-project approach, rather than holistic planning processes, is itself a function of reliance on PPPs.

5.7 A series of commercial failures of toll roads has confirmed that there are issues in the scrutiny process. In particular, the failures have confirmed the well-established observation of 'optimism bias'. The forecasts of traffic on a proposed new road are frequently far too high, especially for the first few years after completion. One submitter suggests that it is realistic to assume that traffic will be 60 per cent of the forecast.[4]

5.8 Similarly, there is a systematic tendency to underestimate the costs of building a motorway. Costs are projected with an estimate of the probability of overruns. The Grattan Institute says that what proponents say is a cost level that has a 90 per cent chance of being achieved is actually more likely to have an 81 per cent chance.[5]

5.9 While these errors have been treated as commercial issues, they are also relevant to the decision to build a road at all. Inflated traffic forecasts mean that the forecast overall benefits to the community are also inflated; cost estimates that are too low similarly understate the cost to the economy. The fact that the errors in forecasting are greater for toll roads does suggest that the commercial interests involved may be influencing the calculation of value.[6]

Market-led proposals

5.10 The Westgate Tunnel project and the proposed NorthConnex link in Sydney are both the result of unsolicited proposals by Transurban. Several other major Transurban projects, including the CityLink Tulla widening in Melbourne and the Logan Enhancement project in Queensland, were also market led proposals.[7] As Transurban's submission points out, both of the current projects are consistent with longstanding transport master plans, and both state governments have requirements in place for rigorous assessments of such 'market led' proposals.[8]

5.11 It is important that the market led proposal process explore alternative ways of achieving similar outcomes. This is to ensure that public outcomes are maximised and that private interests do not dominate the motivation of proposals.

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3 Commonwealth of Australia, *Budget Measures: Budget paper no. 2 2017–18*, p. 141.

4 Professor David Hensher, *Submission 1*, [p. 2].

5 Ms Marion Terrill, Transport Program Director, Grattan Institute, *Committee Hansard*, 3 August 2017, p. 3.

6 Bureau of Infrastructure, Transport and Regional Economics, Review of Traffic Forecasting Performance, Toll Roads, June 2011, Executive Summary.

7 Transurban, *Submission 27*, p. 28.

9 Department of Infrastructure and Regional Development, *Toll Roads in Australia*, Bureau of Infrastructure, Transport and Regional Economics, September 2016.

Impacts on planning and urban amenity

5.12 Modelling by Ernst & Young and KPMG shows that motorways have created benefits for individual drivers and for cities, largely by reducing travel times. The adoption of the toll road model has enabled the bringing forward of beneficial projects.[9]

5.13 Transurban notes that:

> In all of our project proposals, we look for ways to address broader policy considerations such as providing active transport corridors, and urban green spaces, and reducing vehicle emissions at the ground level, while avoiding the need for the compulsory acquisition of homes.[10]

5.14 Professor David Hensher observes that toll roads are often required to meet conflicting objectives of community welfare and profit maximisation.[11] Similarly, the City of Sydney says:

> The opportunity for a project to be delivered and funded by user charges can overwhelm considerations of need, or whether a project is the best approach to fixing an identified problem. A project may make financial or commercial sense and still not be aligned with agreed economic, environmental and social outcomes.[12]

5.15 It has been pointed out above that the acceptance by governments of market-led proposals for motorways has potential to disrupt orderly planning processes. It was also noted that many of the processes, and much of the discussion, around toll roads encourage a focus on individual projects. This could be at the expense of broader questions of urban design, as well as limiting the state government's ability to fund other projects.

5.16 The Westgate Tunnel project's community consultation process was criticised as providing a framework for trading the benefits and impacts of the proposal between the toll road and non-toll road users and between different communities within the region, rather than for overall strategic assessment.[13]

5.17 Some submitters expressed concern that big-picture issues such as the objective of reducing the total amount of road traffic had been neglected.[14] On some projects there had been no full comparison with alternatives such as rail. It has been argued that this is the case with the proposed F6 motorway linking Sydney and Wollongong:

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9 Department of Infrastructure and Regional Development, *Toll Roads in Australia*, Bureau of Infrastructure, Transport and Regional Economics, September 2016.

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

11 Professor David Hensher, *Submission 1*, [p. 1].

12 City of Sydney, *Submission 33*, p. 1.

13 Alison and James Whitten, *Submission 11*, p. 7.

14 Dr John Stone, *Submission 15*; [name withheld] *Submission 4*.

> The planned toll road linking Sydney and Wollongong has been costed at an extraordinary $18 billion – almost $12 billion more than the rail alternative that would cut the journey to about one hour.[15]

5.18 EcoTransit Sydney argued that reliance on motorways at the expense of rail would reduce the attractiveness of Sydney as a global city, especially its liveability and capacity to attract large scale investors.[16] Mr Paul Jeffery also judged them to have negative effects:

> Spending vast amounts of public money on toll roads systems at the cost of public transport is a blight on Australia [and] will reduce the liveability of our cities with every kilometre built.[17]

5.19 A common criticism of tollways, and of the process of deciding to build them, is the failure to account for induced traffic. New roads may make marginal trips more possible, they can result in land use changes, and they can extend city boundaries. Along with the 'optimism bias' in forecasts is an overstatement of the cost of doing nothing.[18]

5.20 A further criticism is that tolls cause people to travel on alternative routes, which may be residential and are certainly smaller and less able to cope with a high volume of traffic. This is particularly the case with trucks, where the tolls are much higher. This causes problems of noise and safety as well as wear and tear on less well made roads.[19]

5.21 In some cases the two effects, induced traffic and rerouted traffic, coincide. For example both the Melbourne Westgate Tunnel and the Sydney Cross City Tunnel have been criticised for bringing more traffic into city areas, where local councils are trying to discourage traffic.[20]

5.22 The CityLink project is an example of profound impacts on urban form. The initial problem to be solved was gridlock in Melbourne streets in the early 1990s:

> …all these unconnected freeways were depositing unprecedented volumes of traffic into the CBD. The freeways were linked by residential and city streets, which were handling traffic volumes up to 80 per cent greater than their capacity.[21]

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15 P Martin, ' More than Westconnex: F6 Extension to cost $18 billion', *Sydney Morning Herald*, 4 July 2017, http://www.smh.com.au/nsw/more-than-westconnex-f6-extension-to-cost-18-billion-20170704-gx49zp.html (accessed 11 September 2017).

16 EcoTransit Sydney, *Submission 13*, p. 1, p. 2.

17 Mr Paul Jeffery, *Submission 14*.

18 Public Transport Users Association, *Submission 30*, p. 5.

19 Associate Professor Russell Thompson, *Submission 9*, p. 1.

20 Public Transport Users Association, *Submission 30*, p. 3; City of Sydney, *Submission33*, p. 3.

21 Institution of Engineers Australia (Victoria Division), *Journey and Arrival: the story of the Melbourne CityLink*, 2002, Parliamentary Library link http://dpl/Books/2002/114407.pdf

5.23 The CityLink project did not just relieve congestion, but changed the dynamics of the city:

> CityLink was not just important to the Melbourne road network, it was its new spine, linking its far flung south-eastern suburbs with its west, and Melbourne Airport to the north.[22]

Impacts on living standards

5.24 The impact of tolls on household budgets has been dealt with in Chapter 4. Tolls exacerbate other factors that adversely affect living standards, including stagnant wages and rising housing and energy costs.

5.25 Tolls are more inequitable than these other factors. People living in some places pay tolls, while those in other places do not. In many cases the inequity is exacerbated by the fact that toll roads serve areas that are less affluent than the average. Thus, tolls function as a regressive tax.[23] In general, governments in Australia espouse equal treatment and progressivity in taxes.

5.26 The enforcement of tolls and the treatment of unpaid tolls place a further burden on individuals, who are often faced with debts which are disproportionate to both their infringement and their means. This might attract the interest of government consumer protection bodies, except that the handling of unpaid tolls is dealt with in the original toll concession agreements, and the actions that lead to very bad outcomes are made by state governments or courts. It can be disowned by toll road operators:

> Similar to a traffic infringement or a parking fine, it goes through the state…once our customers fall into that system it's not good for our customers and it's not good for Transurban…[24]

Impacts on the courts

5.27 The impact of the enforcement of tolls on the court system has been discussed in Chapter 4. In Victoria, it is such that it is delaying the processing of other, more serious matters.

5.28 It appears that toll road operators do not pay for the enforcement of fines—properly so, in the sense that the enforcement is part of the criminal justice system.[25] But the costs they impose are an implicit subsidy to the operators.[26]

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22 R Millar and B Schneiders, 'Transurban: the making of a monster', *The Age*, 14 May 2016, http://www.theage.com.au/victoria/transurban-the-making-of-a-monster-20160512-gotjm9.html (accessed 26 July 2017).

23 Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 3 August 2017, p. 61; see also the description of the transport planning task by Mr Richard Bolt, Secretary, Department of Economic Development, Jobs, Transport and Resources (Victoria), *Committee Hansard*, 3 August 2017, p. 62.

24 Mr Scott Charlton, Chief Executive Officer, Transurban, *Committee Hansard*, 3 August 2017, p. 42.

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

Impacts on environment and health policy

5.29 To the extent that toll roads increase the amount of car traffic by both increasing the total number of trips and by substituting for public transport, they increase the difficulty of meeting carbon emissions targets. They may also lead to reduced air quality.[27]

5.30 Motorways may also substitute for walking or cycling, or make walking or cycling more difficult. This has been argued with regard to the Westgate Tunnel project.[28] Most governments aim to promote cycling and walking for health reasons.

5.31 These are, of course, products of motorways in general, not specifically toll roads. The existence of a commercial consideration does create proponents with strong vested interests.

Constraints on flexibility

5.32 All of the impacts on policy discussed above are exacerbated by the nature and length of the contracts negotiated.

5.33 The most obvious examples are the restrictive provisions such as 'no compete' clauses and compensation clauses which have been mentioned above. They take away certain options, such as the development of effective and efficient public transport.

5.34 Toll concessions tend to be contained in long term contracts, typically 30 to 40 years. This puts a huge constraint on the ability of governments to operate flexibly. A particular example in this inquiry has been with regard to the impacts of unpaid tolls and the actions taken to pursue infringements. Mr Denis Nelthorpe told the committee:

> We are currently talking to the state government about changing that law, but it has been consistently said…that if the state government does anything that reduces road usage or compliance then it is suggested that there are clauses in the concessions agreements that would allow clawback by the toll companies.[29]

5.35 Professor David Hensher notes this inflexibility particularly with regard to the ability to move to a more rational system of fixing tolls:

> One of the great errors in the current tolling model has been the political decision to prescribe a unit toll rate which is indexed over time by the consumer price index. This has resulted in ring fencing on a crucial mechanism that is capable of recognising the need to adjust the toll to ensure that the travel time savings are delivered commensurate with the

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

27 Friends of the Earth and Public Transport Not Traffic, *Submission 20*.

28 Alison and James Whitten, *Submission 11*, p. 15.

29 Mr Denis Nelthorpe, Chief Executive Officer, WEstjustice, *Committee Hansard*, 3 August 2017, p. 56.

> value (to the users) of those time savings relative to the non-tolled route(s), given travellers' value of travel time savings.[30]

5.36 More generally,

> The overwhelming majority of the toll road corridors we have are privately held and are the subject of either a sovereign contract or a sovereign concession deed. That means the price to motorists was set at the time those roads tendered and is set in the contract.[31]

5.37 This inflexibility will obviously be a problem in any attempt to develop network-wide road pricing.

Impacts on transparency

5.38 In the 'old' model of planning and commissioning infrastructure outlined above, there would have been consultation at each stage. The decision to build a road would have been subject to debate, before commercial considerations arose.

5.39 The commercial dealings would have been by public tender. The outcome desired would have been publicly specified. While each tender document would have been confidential, the tendering process would have been governed by strict rules and would have been fully auditable. Further, the tendering process itself, while never perfect, imposes a pricing discipline on tenderers: they have to assume that a rival tender will be for the lowest possible cost plus margin.

5.40 Evidence to this inquiry suggests that processes for toll roads have been less transparent. A market led proposal by its nature is made before open consultation. If the state government is immediately placed into a position where it is negotiating conditions with a commercial operator, confidentiality on both sides makes sense in terms of the bargaining situation:

> Certainly, in disclosing information…the need to balance public transparency versus valid commercial-in-confidence considerations is weighed by the state in deciding how much to disclose.[32]

5.41 Further, Transurban argues that commercial confidentiality is necessary to protect companies' competitive advantage, and diluting it would reduce the attractiveness of infrastructure projects to investors such as superannuation funds. It might also contravene rules governing listed companies, which are limited in what prospective financial information they can disclose.[33]

5.42 The Victorian government has a process of preparing business cases for various proposals, encompassing all transport modes, and comparing the costs and

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30 Professor David Hensher, *Submission1*, [p. 2].

31 Mr Brendan Lyon, Chief Executive Officer, Infrastructure Partnerships Australia, *Committee Hansard*, 3 August 2017, p. 34.

32 Mr Richard Bolt, Secretary, Department of Economic Development, Jobs, Transport and Resources (Victoria), *Committee Hansard*, 3 August 2017, p. 62.

33 Transurban, *Submission 27*, p. 22.

benefits of the alternatives. In order to increase transparency, the business cases are published. The process allows for independent scrutiny and peer review.[34]

5.43 However, the processes have been criticised by Mr William McDougall, who in the past has worked for the Victorian government as a peer reviewer for the economics of the Westgate Tunnel project. His reservations about the project have been discussed in Chapter 3. When he raised questions about some techniques, all of which tended to increase the modelled benefit of the road, he was moved to another area of work.[35]

5.44 Mr McDougall had also worked for project proponents. His experience suggested that the government was working to justify the Transurban proposal rather than to analyse it objectively.

> I worked for one of the bidding teams on CityLink and then I worked briefly on another team bidding for EastLink, on modelling and forecasting processes. And that was on the other side of the fence, if you like, working for private sector teams bidding to win a contract to build these projects. And in those processes there was a lot of concern that we had about the way the modelling and forecasting was being made to look as optimistic as possible. I think that sort of issue is well known, but I had never really come across it before, on this side of the fence in particular. On the government side of the fence, where this was supposed to be an independent assessment by the government of a proposal presented to them by Transurban, the private sector, it seemed to me to be geared up as a process really of seeking ways to get the project up rather than doing a properly independent and [impartial] assessment of the project's benefits. The way I was taken off the work when we did raise those concerns confirmed, for me anyway, that there was more interest in getting the project through than on doing the work properly.[36]

5.45 A lack of transparency makes it difficult for the public to understand the decisions of government, or to mobilise against particular proposals. EcoTransit Sydney argues that when public money is being used, commercial confidentiality is irrelevant:

> …Sydney Motorways Corporation remains absolved of all public scrutiny because its status is that of a private corporation, even though the government is funneling billions of dollars directly into its development of WestConnex…[37]

5.46 Infrastructure Australia establishes a priority list of infrastructure proposals or projects—they are described as both—which it says:

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34 Mr Richard Bolt, Secretary, Department of Economic Development, Jobs, Transport and Resources (Victoria), *Committee Hansard*, 3 August 2017, p. 62.

35 Mr William McDougall, *Committee Hansard*, 3 August 2017,pp. 17–23.

36 Mr William McDougall, *Committee Hansard*, 3 August 2017, p. 25.

37 EcoTransit Sydney, *Submission 13*, p. 3.

> …supports transparent, evidenced-based decision making, enabling decision-makers to select the projects that deliver the most community benefits.[38]

5.47 The priorities appear to be generated by a benefit-cost assessment of proposals submitted to it, by federal, state and local governments, and by private proponents. Projects are added to the list only when a business case is submitted. It does not appear to compare alternative solutions to infrastructure problems that are being addressed by the proposals.

Specific example: WestConnex, Sydney

5.48 The WestConnex project in Sydney has also attracted criticism. The submission of NoWestConnex Public Transport (NoWPT) points out that several of the parties involved with the WestConnex proposal had been associated with previous failures: AECOM had a history of wrong traffic forecasts, and Leighton Holdings (now CIMIC Group) had been involved with the Clem7 project in Brisbane:

> The basis of their selection is unknown. What is known is that after both large multinational corporations were involved in the first phase of planning WestConnex they were both awarded contracts for major parts of the design and construction of stages 1 and 2, and in the case of AECOM, for delivering the critical element of public scrutiny, the Environmental Impact Statements for both stages.[39]

5.49 Ms Wendy Bacon also points to the involvement of these companies and others including Macquarie and suggests poor public policy decision making, exacerbated by commercial interests.[40] She argues that there has been no evaluation of WestConnex in comparison with public transport or other solutions.[41] She concludes that the decision was made to go ahead with the road before the analysis was done. The project was declared to be of 'critical state significance' and the processes were abbreviated.[42] Ms Bacon argues that modellers decide first what answers are needed and then develop a model to arrive at them.[43]

5.50 The Australian National Audit Office was critical of the Commonwealth's role in funding the WestConnex project:

> The upfront payment and approach to agreeing and adjusting milestones for later payments did not adequately protect the Australian Government's financial interests. Additionally, the provision of the concessional loan did

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38 Infrastructure Australia, Infrastructure Priority List, February 2017, http://infrastructureaustralia.gov.au/policy-publications/publications/files/Australian-Infrastructure-Plan-2017.pdf (accessed 30 August 2017).

39 NoWestConnex Public Transport (NoWPT), *Submission 25*, p. 2.

40 Ms Wendy Bacon, *Submission 32*, pp. 11–13.

41 Ms Wendy Bacon, *Submission 32*, p. 2.

42 Ms Wendy Bacon, *Submission 32*, p. 3, p. 4.

43 Ms Wendy Bacon, *Submission 32*, pp. 8–9.

not achieve the Australian Government's objective of bringing Stage 2 of the project forward by approximately two years. The WestConnex project had not proceeded fully through the established processes to assess the merits of nationally significant infrastructure investments prior to Australian Government funding being committed.[44]

44 Australian National Audit Office, *Submission 5*, [p. 2].

Chapter 6

Committee view and recommendations

The need for objective and transparent transport planning

6.1 The committee notes that transport and urban planning are primarily state issues. However, the Commonwealth has an interest in these matters by virtue of the importance of cities to the economic and social wellbeing of Australians, the Commonwealth's role in funding some infrastructure, and its responsibilities for the environment, health and general living standards (through social security and taxation), supervision of corporations and consumer protection.

6.2 The committee also notes the need to separate decisions to build certain kinds of infrastructure from decisions about how they are to be financed. In particular, some opposition to toll roads is primarily opposition to the building of motorways.

6.3 A wealth of material was provided to the inquiry demonstrating the importance of transport to the efficient functioning of cities. While scrutiny of individual projects is necessary, transport has to be analysed in terms of networks. Only governments have an incentive to think in terms of the network.

6.4 Toll roads have been a useful response to budget constraints and unwillingness to borrow in the past, and toll road projects such as CityLink have contributed markedly to the efficiency and amenity of cities. However there was a good deal of concern expressed about the benefits and costs of some current proposals, and particularly about the lack of transparency in the development of those proposals.

6.5 The moves by some governments, including Victoria's, to publish the business cases for competing alternatives are welcome. Evidence presented to the inquiry suggests that there could be further and earlier transparency regarding the consideration and modelling of proposed projects.

6.6 As the committee understands the role and functioning of Infrastructure Australia, it appears that there may be scope for more comparative consideration of projects. The organisation conducts audits of Australia's infrastructure needs, the latest one being 2015.[1] However, its priority list is in terms of specific projects, and in updating the priority list Infrastructure Australia invites specific proposals.[2]

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1 Infrastructure Australia, *Australian Infrastructure Audit*, May 2015, http://infrastructureaustralia.gov.au/policy-publications/publications/Australian-Infrastructure-Audit.aspx (accessed 12 September 2017).

2 Infrastructure Australia, *Infrastructure Australia Priority List – Call for submissions*, http://infrastructureaustralia.gov.au/projects/IPL-call-for-submissions.aspx (accessed 1 September 2017).

Recommendation 1

6.7 That Infrastructure Australia take a system-wide, mode-neutral approach in its consideration of any project and consider alternative ways of solving the problem being addressed.

Recommendation 2

6.8 That the government reaffirm that Commonwealth funding (by way of grants or loans) will not be applied to any project which is not high on Infrastructure Australia's priority list.

The distinction between funding infrastructure and financing it

6.9 Many submissions noted the difference between funding of infrastructure—which will always be by the community, from tolls or other user charges or from taxes—and the method used to finance it. Several pointed out that even in PPPs the government is still likely to bear the risk of the project not being completed on time and on budget, and also the patronage risk, which is considerable given the extensive literature on optimism bias and strategic misrepresentation. Others submitted that governments can borrow more cheaply than the private sector, so that it makes sense for government rather than the private sector to finance and own infrastructure.

6.10 Several submissions suggested that, if governments do want to call on private capital, there are various ways to do it, including simple borrowing or specific infrastructure bonds. The committee notes a suggestion by Mr Tony Harris that governments could allow the private sector to fund, maintain and develop an infrastructure project, which it would lease to the government for a payment which might reflect wear and tear. The government could then retain control as to whether tolls or other user fees were levied.[3]

Impact of tolls

Impact on individual drivers

6.11 Tolls can form a substantial item in a household budget. They have equity effects, in that some people travel free on the roads they use while others pay tolls. This is exacerbated by the fact that many of the roads that are tolled are in effect the only feasible form of transport for people living in outer suburbs to get to work. In general, these people are not in the highest income brackets. So some tolls are highly regressive.

Unsustainable toll infringement debts

6.12 Arrangements for recovering unpaid tolls are clearly unsustainable. Evidence was heard of total debts of $1 billion arising from state pursuit of tolls plus penalties. These are debts to state governments for penalties in the criminal justice system, arising from enforcement activities that are provided for in toll concession contracts.

3 New South Wales Parliament, Health and Community Services Committee, Inquiry into Road Tolling, Submission 111, Mr Tony Harris, 22 March 2017, [p. 4–5].

In the last resort they can end in a custodial sentence. In many cases the debts are disproportionate to the means of the offender and the severity of the offence.

6.13 The arrangements vary from state to state, such that in New South Wales most enforcement is in the civil system through debt collection agencies. In Victoria and Queensland, unpaid tolls are within a matter of months caught up in the criminal system—as can a limited number of cases in New South Wales.

6.14 It is likely that much of this debt will remain unpaid.[4] However, the accumulation of cases is such that it is adversely affecting the work of the Magistrates' Court in Victoria, and presumably imposing considerable cost on the taxpayer. Even worse, in the committee's view, is the cost to households in terms of anxiety and stress of having those debts hanging over them.

Recommendation 3

6.15 That the Commonwealth make it a condition of any further infrastructure funding that states ensure that the systems for pursuing unpaid tolls and related charges are consistent with the treatment of comparable offences, if necessary by insisting on variation of the toll concession contracts.

Interaction of toll roads with other policy issues

6.16 The commercial nature of past toll road projects has created a case for commercial confidentiality which, in the committee's view, makes it difficult to ensure that the process is as transparent as possible and to maintain public trust.

6.17 Toll road projects can interact with environmental and health policies, as well as with the transport plans of city councils. Any costs in these areas should be taken into account in a sophisticated benefit-cost analysis of a project.

6.18 The most egregious constraint on other policy areas is through the inclusion of 'non-compete' clauses and undertakings to compensate for loss of traffic through government actions.

6.19 The long time frames of toll concession contracts create the possibility that they will inhibit long term policy development. For example, the current interest in road user charging being pursued by the Council of Australian Governments and also separately by the Commonwealth will have to take account of sections of road which are separately, and generally not efficiently, already charged for. The difficulty of reforming the arrangements for pursuing unpaid tolls and associated charges is also a function of the concession contracts.

6.20 The Australian National Audit Office's submission draws attention to serious irregularities in the making of Commonwealth payments to New South Wales and Victoria for the WestConnex and East-West Link projects respectively. It notes that the Department of Infrastructure and Regional Development gave proper advice which was not followed.

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4 Mr Scott Charlton, Chief Executive Officer, Transurban, *Committee Hansard*, 3 August 2017, p. 43: 'It sits on a balance sheet and they never recover it.'

Recommendation 4

6.21 That the Commonwealth reiterate the processes for making payments to the states for infrastructure projects, especially the necessity for milestones to have been met.

Recommendation 5

6.22 That the Commonwealth take account, in any funding decision, of the degree to which an infrastructure project might constrain future government action, either by the building of the project itself or by clauses in the project contract.

Recommendation 6

6.23 That the Commonwealth lift the amount of infrastructure grant funding to an extent that takes pressure off the states to seek private financing of public infrastructure.

Senator Chris Ketter

Chair

Dissenting Report by Government Senators

1.1 Coalition Senators are of the view that this Inquiry was a poor use of the limited resources of the Senate considering that the licensing and construction of Toll Roads is exclusively within the purview of State Governments. Government Senators note that the majority report makes this very point at paragraph 2. The commercial decisions of State Governments to engage with Toll Road operators in order to augment their infrastructure spending is a valid and sensible response to growth in metropolitan populations, and to ensuing the enhanced transport needs of the populace.

1.2 Government Senators take the view that road and other surface transport solutions remain critical to the transport matrix in the cities and regions of Australia. There is no persuasive argument being put forward at this time to dissuade policy-makers away from surface transport solutions.

1.3 The Australian electorate expect to be able to get to and from work with relative ease and safety. At this time, road transport is the best way to deliver on these expectations.

1.4 The argument that roads are public assets and should therefore not attract user-based charges is redundant. Governments do not want to raise taxes, nor do they want to increase public debt. The do, however, want to provide excellent services and infrastructure for the community. Meeting the needs and expectations of the community sometimes requires a cost-recovery or user-pays model to be adopted.

1.5 Identifying urban infrastructure needs is an exacting science however locating the best form of financing for such infrastructure is often a more arcane endeavour. Government Senators caution strongly against any proposal to increase public debt to facilitate transport solutions when there are economically and socially viable alternatives, such as toll road arrangements, available.

1.6 Government Senators agree with the majority report at paragraph 2.24 that 'The logic of using tolls to fund road construction is reasonable.'

1.7 Government Senators are of the view that in most cases members of the public have the option of using the toll road or an alternative route and, as such, do not subscribe to the suggestion that toll roads create financial disadvantage. On the contrary, toll roads create options and provide the opportunity to make occasional decisions based on individual situations.

1.8 Government Senators acknowledge that economies of scale may result in metropolitan residents receiving a disproportionate level of access to publicly funded roads; however, programs under the Northern Australian development banner are addressing any perceived inequity between metropolitan and regional Australians in the infrastructure space.

1.9 Government Senators do not imagine that toll roads are intended for use for all residents at all times. It would be sensible to expect that people will exercise discretion regarding their use of toll roads in alignment with their needs and their

situation. Accruing a toll road debt is no different to an unpaid parking fine or other statutory remittance: getting into such a situation is inadvisable. Toll roads should only be used by persons who can afford to manage the costs of such use. Government Senators note that the principal operator of the toll roads, Transurban, have themselves established a Tolling Customer Ombudsman to assist people who find themselves in such situations. The impact of the cost of tolls on businesses would no doubt be offset by the reduction in task completion time, fuel costs, vehicle maintenance and driver fatigue that would be achieved by using high-quality toll roads.

1.10 Regarding the majority report's criticism of the WestConnex project at paragraph 6.9, Government Senators note that the report fails to recognise that the project has already been assessed by Infrastructure NSW and by Infrastructure Australia as delivering positive economic benefits—and the project is listed as a High Priority Project on IA's Infrastructure Priority List.

1.11 Government Senators disagree with recommendation 3 as they note that tolling is a state issue and any policy regarding the recoupment of unpaid tolls is a matter for state governments.

1.12 Government Senators disagree with recommendation 5 on the grounds that it is vague and ambiguous. Generic phrases like 'take account' and 'might constrain' makes the intent of this recommendation unclear. Such a broad and unclear recommendation adds little to the validity of the majority report.

1.13 Government Senators disagree with recommendation 6, because as signalled in the most recent federal Budget, and as the Prime Minister has said on multiple occasions, the Commonwealth will no longer be an ATM to the states for grant funding for infrastructure projects.

1.14 The Government is committed to using innovative funding and financing measures, where appropriate, to complement traditional approaches to providing grants to state and territory governments for infrastructure, particularly for roads and rail.

1.15 Government Senators also note that there is a significant grant component as part of our infrastructure commitment and this profile is largely dependent on the states and territories. The Government is being an active partner with state government on major infrastructure projects. This early involvement in the planning process will allow the Government to better plan and manage its forward infrastructure commitments

Senator Jane Hume
Deputy Chair

Senator the Hon Ian Macdonald
Senator for Queensland

Additional Comments by the Australian Greens

1.1 We support the very thorough and insightful report and the recommendations. We have the following additional comments.

The need for objective and transparent transport planning

1.2 We believe that it is critical that any proposals for Commonwealth contribution to toll road projects need to be assessed in the context of an integrated transport plan which has been developed through a transparent and accountable process.

1.3 In particular we reiterate the important observation made in the report that only governments have an incentive to think in terms of the network.

1.4 We believe that it is critical that all details of transport modelling and any reviews of this modelling for toll road projects are publicly available. There is no case for 'commercial in confidence' and 'cabinet in confidence' provisions being brought to bear to preclude this information being made available to the community and indeed to Infrastructure Australia. This is the case for the Westgate Tunnel project currently planned for Melbourne, where independent peer reviews of the transport modelling have not been publicly released, nor made available to Infrastructure Australia.

1.5 The Greens agree with the submission from the Grattan Institute that:

> A lack of transparency gives rise to suspicion that the deal may not be in the best interests of the public. The strongest argument for secrecy – that secrecy leads to lower costs to the public – has not been made. On the contrary, there are indications that the secret deal may not offer the best value deal to the public.[1]

1.6 We accept that in the case of economic modelling there is an argument that some of this information may be legitimately 'commercial in confidence'. However we believe that all information related to the economic modelling should be made available to Infrastructure Australia and the default should be for it to be publicly available.

Market led proposals

1.7 Market led proposals pose particular difficulties with regard to open, objective and transparent planning

1.8 The adoption of a major proposal by the government without its inviting tenders or expressions of interest, or even announcing a timeframe for an infrastructure outcome, suggests that the private sector, and not the government, is setting priorities; and these priorities will be set with profitability rather than the public interest in mind. In the case of the Westgate Tunnel, the Grattan Institute observes:

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1 Grattan Institute, *Submission 23*, [p. 5].

> The government only made the case for a much smaller road project, the $500 million West Gate Distributor; it did not identify the underlying problem warranting a $5.5 [billion] mega-project linking a number of freeways and arterial roads.[2]

1.9 Further, the consideration in isolation of a proposal means that there is no comparison with competitors. Since competition is generally supposed to be one of the major drivers of superior efficiency in the private sector, this way of operating seems perverse.

Recommendation 1

1.10 That Infrastructure Australia require projects to be assessed as part of integrated transparent and objective transport planning processes which have strong community involvement.

Recommendation 2

1.11 Assessment processes should include assessing how individual projects contribute to the meeting of overall objectives for the transport system in the region.

Recommendation 3

1.12 That there be a moratorium on Commonwealth funding of toll road projects until such planning processes have been undertaken for particular regions.

Recommendation 4

1.13 That the Commonwealth not make any financial contributions to any projects worth over $100 million unless all details of the transport modelling underpinning these projects is public, and all information related to the business case and economic modelling is made available to Infrastructure Australia.

The distinction between infrastructure funding and financing

1.14 As is noted in the report, regardless of the method of funding a road, whether through direct funding from government or through private sector financing the community will pay for the road. The question is whether it is to be financed through taxes or tolls or some other method.

1.15 The Greens are not opposed per se to private sector financing in infrastructure. Indeed, given the level of resources available in private superannuation funds there is a strong case that this money should be invested in productive infrastructure.

1.16 There are assumptions that the private sector is forced by competition to be efficient in building infrastructure, and because it is directly involved it will be more likely to deliver on time and on budget. However most major projects are one-offs, and anyway the toll road industry in Australia is virtually monopolistic, in that it is

2 Grattan Institute, *Submission 23*, [p. 5].

almost completely run by one company, Transurban. Most of the actual building is outsourced to other firms. So is highly likely that these assumptions do not hold.

1.17 We do not believe that acceptance of private sector funding means that we should accept tollroad developments, financing arrangements, and setting of tolls that have perverse consequences and are not aligned with agreed economic, environmental and social outcomes

1.18 The initial logic of toll roads was that a company would be engaged to build a toll road, and would be paid for it by way of a right to collect tolls until the capital cost with interest and the maintenance costs for the period were recovered.

1.19 The report outlines that there is no necessary connection between building and paying for a road. In particular, Transurban, the dominant toll road operator in Australia, operates a number of roads which it did not build, and has negotiated extensions to existing contracts to pay for different roads.

1.20 Transurban has been a highly profitable company. This is partly due to skilful bargaining; it is partly attributable to windfall gains from increased population in the major cities where it operates; and it partly suggests that tolling is, in fact, a profitable business. The former New South Wales Auditor-General, Mr Tony Harris, suggests that 'super profits…are a common outcome for Sydney toll road owners'.[3]

Toll contracts

1.21 The specificity of toll contracts frequently seems to operate only in the interests of the tolling company. The contracts have often proved flexible enough, or governments have been amenable to changing them, to allow for extensions or further increases.

1.22 While Transurban proposes to fully fund NorthConnex in Sydney, according to one submission:

> …the contract for this also allows Transurban to be bailed out, if NorthConnex fails to generate the expected level of traffic.[4]

1.23 Clauses like this raise doubts about the logic of PPPs. It would make sense for a government to negotiate all stages of a build-own-operate (and charge tolls) contract before the beginning of a project if it was a way of transferring the business risk to the private operator.

Tolls as taxes

1.24 Given that there is clearly a disconnection between the cost of building and operating a road and the toll paid, the Greens support the observation made by many submitters to the inquiry that is valuable to view tolls as taxes. Viewing them as taxes also underlines that it is responsible and appropriate to set and manage them with issues of equity uppermost, and from a holistic and network wide perspective.

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3 New South Wales Parliament, Health and Community Services Committee, Inquiry into Road Tolling, Submission 111, Mr Tony Harris, 22 March 2017, [p. 5].

4 EcoTransit Sydney, *Submission 13*, p. 4.

1.25 Viewing tolls as taxes also leads to the observation that agreeing to a tolling arrangement is similar to handing a taxing power and future revenue stream to a private operator - which has significant and ongoing repercussions.

1.26 We note the submission of the Alexandria Residents Action Group:

> The way tolls are administered leads to a failure to properly account for moneys collected on behalf of the State, and a failure to properly account for money disbursed by the State.
>
> Where the state grants a concession to collect a toll, the money collected should be considered, for accounting purposes, to have been collected by the State, and any money not handed over to the State should be considered, for accounting purposes, to have been a payment by the State.[5]

1.27 That tolls are effectively operating as taxes is also supported by the actions of the New South Wales government which gives a rebate to residents for tolls on the M5 motorway.[6] According to one report, the subsidy to motorists through the scheme is over $1 billion a year.[7] On the face of it a better scheme would involve a simple payment by the state from general (tax based) revenue for maintenance of the road, and any residual capital cost. It would be more transparent, cheaper to operate, and possibly involve a smaller subsidy to the road operator.

1.28 There is no obvious reason why, if tolls are to be collected, the tolling should not be done by government. On the face of it, it might seem to be more efficient than to have a private operator involved. Tolls on Sydney Harbour crossings are already administered by the New South Wales government. Mr Jeff Kennett, the former Premier of Victoria who negotiated the CityLink deal, is quoted as saying:

> Money, instead of going to government, is going to the private sector; that is a total waste.[8]

1.29 It would make sense to hand over the tolling power if the private sector were bearing considerable risk. But it has been argued above that most of the risk is transferred to government.

1.30 The rebating of tolls on the M5 at the rate of $1 billion a year by the New South Wales government suggests that the whole system has come full circle and it

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5 Alexandria Residents Action Group, *Submission 10*, p. 1.

6 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).

7 M O'Sullivan and J Robertson, 'Taxpayer bill for cashback scheme on Sydney toll roads hits $1.5 billion - and climbing', *Sydney Morning Herald*, 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 (accessed 28 July 2017).

8 R Millar and B Schneiders, 'Transurban, the making of a monster', *The Age*, 14 May 2016, http://www.theage.com.au/victoria/transurban-the-making-of-a-monster-20160512-gotjm9.html (accessed 30 August 2017).

might simply have been better for the government to pay for the road from tax revenue.

Monopoly

1.31 A further concern about toll roads and the appropriateness of private sector provision of these roads is the concern of monopoly.

1.32 Clearly, there is a constraint on supply. There is almost never a new alternative route available in urban areas. By definition, a new motorway is a monopoly. Monopolists will always charge more and supply less than the socially efficient quantity of a service.

1.33 As several companies developing toll roads have failed, there has been an increase in concentration of ownership. Today Transurban operates, and has at least a majority ownership of, 13 of the 16 toll roads.

1.34 This level of concentration may reduce the usefulness of PPPs as a future method of financing roads. Having few alternative private sector partners would increase the risk to state governments. It may strengthen the case for governments to finance and build under contract rather than engage in PPPs.

1.35 Inflexibility in government policy is introduced by the dominance of one company in the toll roads business. Transurban have built such expertise, both technical and tactical, that it would be difficult for other companies to compete in bidding for new projects. In effect, it creates a barrier to entry in the market for toll road projects.

Recommendation 5

1.36 That the issue of competition in the toll road operation and toll road financing market be referred to the ACCC for review.

Recommendation 6

1.37 That the Government leverage record low interest rates for Commonwealth debt to increase overall direct financial contributions to productivity enhancing infrastructure.

Senator Janet Rice

Greens spokesperson for Transport & Infrastructure

Appendix 1

Submissions and additional information

Submissions

1 Professor David Hensher FASSA
2 Western Sydney Regional Organisation of Councils Ltd (WSROC)
3 WEstjustice
4 Name Withheld
5 Australian National Audit Office
6 Penrith City Council
7 National Road Transport Association (NatRoad)
8 Mr James Murphy
9 Associate Professor Russell Thompson
10 Alexandria Residents Action Group
11 Alison and James Whitten
12 Confidential
13 EcoTransit Sydney
14 Mr Paul Jeffery
15 Dr John Stone
16 Department of Infrastructure and Regional Development
17 Blacktown City Council
18 ConnectEast Pty Ltd
19 RACQ
20 Friends of the Earth and Public Tranport Not Traffic
21 Amarok Club of Victoria
22 Liverpool City Council
23 Grattan Institute
24 Royal Automobile Club of Victoria (RACV)
25 No WestConnex Public Transport (NoWPT)
26 WestConnex Action Group
27 Transurban
28 NRMA
29 Hobsons Bay City Council
30 Public Transport Users Association
31 Infrastructure Partnerships Australia (IPA)
32 Ms Wendy Bacon
33 City of Sydney
34 Inner West Council

35 Inner Melbourne Planning Alliance Inc

36 Toll Redress

37 Mr William McDougall

Additional information

1 Additional information provided by Professor Russell Thompson: Opening statement from a public hearing in Melbourne on 3 August 2017.

2 Additional information provided by the Department of Infrastructure and Regional Development: Opening statement from a public hearing in Melbourne on 3 August 2017.

3 Additional information provided by Transurban: Opening statement from a public hearing in Melbourne on 3 August 2017.

4 Additional information provided by Transurban: Melbourne road usage study report.

5 Additional information provided by ConnectEast: Opening statement from a public hearing in Melbourne on 3 August 2017.

6 Additional information provided by WEstjustice: Briefing paper - Our plan for a fair and effective toll enforcement system for Victoria.

7 Additional information provided by VIC Government: Briefing paper - Presentation to Senate Economics References Committee Inquiry, Toll Roads in Australia.

8 Additional information provided the Department of Infrastructure and Regional Development: Disincentivising overbidding for toll road concessions.

9 Additional information provided the Department of Infrastructure and Regional Development: Review of Traffic Forecasting Performance Toll Roads.

10 Additional information provided by the Queensland Government: Queensland State Penalties Enforcement Registry on the tolling enforcement process.

11 Additional information provided by Alexandria Residents Action Group: following a public hearing in Canberra on 17 August 2017.

Answers to questions on notice

1 Transurban: Answers to questions taken on notice from a public hearing on 3 August 2017 (received 18 August 2017)

2 Department of Infrastructure and Regional Development: Answers to questions taken on notice from a public hearing on 3 August 2017 (received 21 August 2017)

3 Transurban: Answers to questions taken on notice from a public hearing on 3 August 2017 (received 21 August 2017)

Tabled documents

1 Document tabled by Wendy Bacon at a public hearing in Canberra on 17 August 2017.

2 Document tabled by Wendy Bacon at a public hearing in Canberra on 17 August 2017.

Appendix 2
Public hearings and witnesses

Melbourne VIC, 3 August 2017

Members in attendance: Senators Hume, Ketter, Rice

BOLT, Mr Richard, Secretary, Department of Economic Development, Jobs, Transport and Resources

BOYD, Mr Brian, Executive Director, Performance Audit Services Group, Australian National Audit Office

BYRNE, Mr Henry, Group General Manager, Corporate Affairs, Transurban

CALVERT, Ms Fiona, Director, Transport Analysis and Assessment, Transport for Victoria, Department of Economic Development, Jobs, Transport and Resources

CHARLTON, Mr Scott, Chief Executive Officer, Transurban

FRASER, Mr Michael, Director, Toll Redress

GRIPLAS, Charles, Managing Director, ConnectEast

HALL, Ms Jessica, Acting Executive Director, Infrastructure Investment Division, Department of Infrastructure and Regional Development

HERBST, Tami, General Counsel and Company Secretary, ConnectEast

HUDSON, Mr Nicholas, Director, Economics and Policy, Infrastructure Partnerships Australia Ltd

JOHNSTONE, Ms Maddison, Director, Toll Redress

LYON, Mr Brendan, Chief Executive Officer, Infrastructure Partnerships Australia Ltd

McDOUGALL, Mr William, Private capacity

NELTHORPE, Mr Denis, Chief Executive Officer, WEstjustice

PITTAR, Mr Roland, General Manager, Major Infrastructure Projects Office, Department of Infrastructure and Regional Development

SPENCER, Ms Nicole, General Manager, Land Transport Market Reform Branch, Department of Infrastructure and Regional Development

TERRILL, Ms Marion, Transport Program Director, Grattan Institute

THOMPSON, Associate Professor Russell, Private capacity

WEBSTER, Mr David, Deputy Secretary, Commercial Division, Department of Treasury and Finance

Canberra ACT, 17 August 2017

Members in attendance: Senators Hume, Ketter, Rice

AVELING, Mr Ben, Co-Convenor, Alexandria Residents Action Group

BACON, Ms Wendy, Private capacity

NASH, Professor Christopher (Chris), Private capacity