# Urban admonition - WestConnex inquiry Report

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**Statement of interest: the beagle, and its owner, live in the Macarthur district of Sydney and are among those the publicity says stand to benefit from WestConnex.**

*The* [*Parliamentary inquiry into WestConnex*](#_top) *– a program supposedly initiated to beautify Parramatta Rd – made a mistake in accepting the NSW Government’s nomination for infrastructure beatification.*

*Nonetheless, the inquiry is the type of thing that should happen – but before any major infrastructure project starts.*

*The fact of an inquiry and the apparently limited information made available by the Government because of, for example, claims of commercial confidentiality, raises important public policy issues. These include the relationship between Executive Government and (Legislature) Parliament.*

*While the WestConnex inquiry was useful, from now on such Parliamentary inquiries should be deeper and tougher. They could use a secular devil’s advocate. Infrastructure and transport ‘miracles’ should be challenged prior to canonisation.*

*As ever the beagle would welcome correction on any point.*

***‘The CHAIR: I repeat: Members of the audience who want to clap or boo should restrain themselves from doing so during this public inquiry’****[[1]](#endnote-1)*

## Introduction

Mr John Menadue AO and I argue for public inquiries into infrastructure projects.[[2]](#endnote-2)

Hence the beagle asked to consider the recent report of such an inquiry into WestConnex. And, as ever, the beagle would welcome correction of any point made below.

## WestConnex

### 2.1 The program

WestConnex was originally conceived in 2012 by Infrastructure NSW as urban renewal – ‘beautification’ of Parramatta Rd.[[3]](#endnote-3)

It has morphed into Australia’s most costly road program with improving Parramatta Rd now of less, if any, relevance.

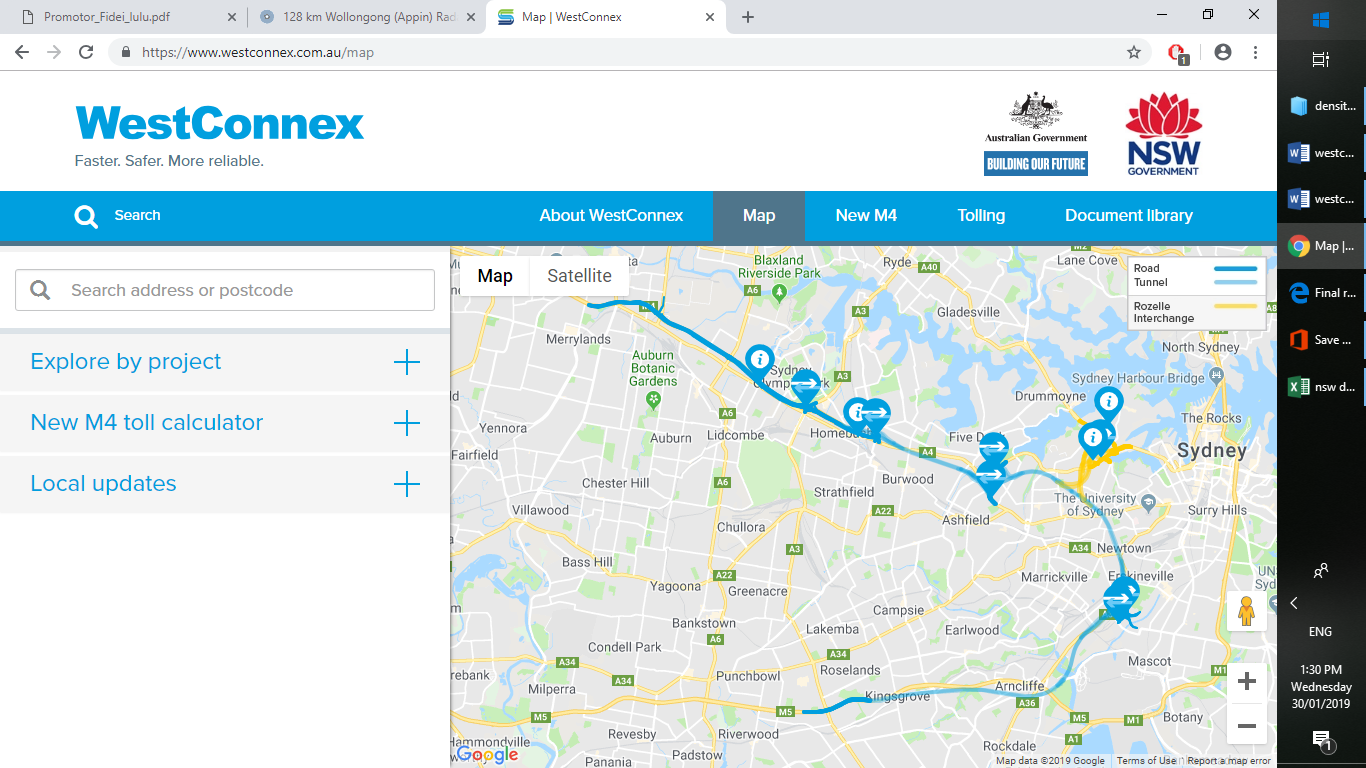
The program has attracted substantial criticism from experts and vociferous opposition from inner Sydney communities who raised concerns about traffic levels, amenity and health.

WestConnex comprises a staged series of mega road projects, much underground:

* extension of the M4 motorway from Strathfield towards Rozelle near Sydney’s CBD;
* duplication of the M5 motorway from near King Georges Rd to near Sydney airport; and
* a new underground motorway between the two.[[4]](#endnote-4)

It is illustrated in Figure 1 (Below) - Rozelle is shown by bright yellow lines.

**Figure 1: WestConnex (current program)**

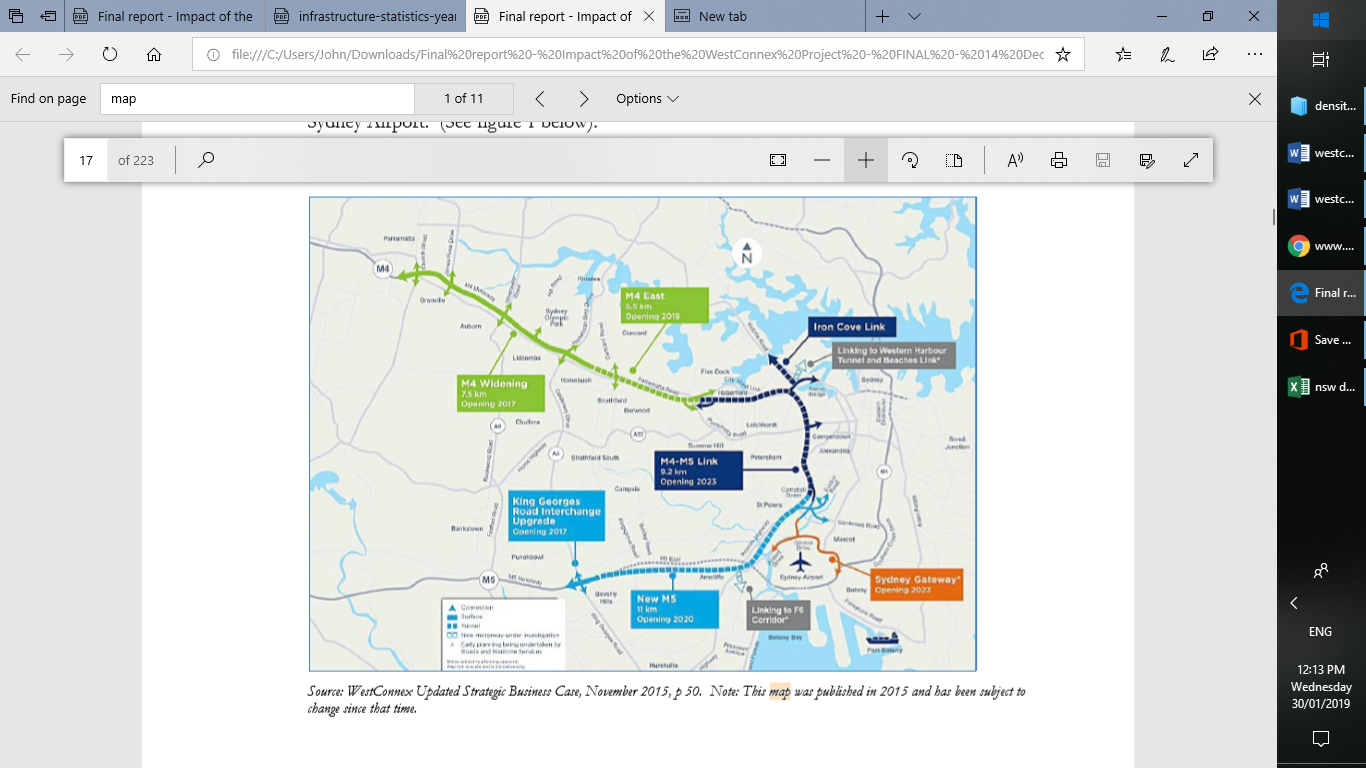


Its publicised purpose is easier driving between Sydney’s west, south-west and CBD; on Figure 1 between the left of Bankstown/Lidcombe A6 and Sydney.[[5]](#endnote-5)

The beagle welcomes this as raising the probability of the ever-enjoyable tat taas with the so-called master to the eastern suburbs / northern beaches. Not the city though - whose parkings and parks aren’t up to scratch. Hopefully his master’s voice is kept down despite former Prime Minister the Hon. Tony Abbott MP claiming WestConnex will encourage singing.[[6]](#endnote-6)

At one time it was claimed WestConnex had freight purposes. This was presumably related to a much-touted ‘Sydney Gateway’ between the above stages, Port Botany and Sydney Airport (Figure 2 below).[[7]](#endnote-7)

**Figure 2: WestConnex assessed by Infrastructure Australia - 2015 business case program**



This now-outdated program is the one assessed in 2016 by Infrastructure Australia, albeit as an ‘urban congestion’ relieving project. It received a positive recommendation.[[8]](#endnote-8)

The freight claim, implicit in even earlier consideration by Infrastructure Australia, was dubious. There is no public evidence of consideration of options such as a freight road/lane. Trucks carrying dangerous goods are not allowed in NSW motorway tunnels which is what most of WestConnex is to comprise.[[9]](#endnote-9)

There also is an issue of the relation of the program to Port Botany; a previous proposal for M5 expansion may have assumed lower than actual port capacity.[[10]](#endnote-10)

The Port Botany etc. link is now reclassed as a different project. The reason is commonly believed to be sensitivity of the State Government to claims of WestConnex cost overruns. The matter was considered by the inquiry.[[11]](#endnote-11)

### 2.2 Costs, funding, financing

WestConnex was initially costed at $11bn (in 2012 dollars). The most recent public estimate is around $17bn – reflecting 2015 estimates for a program now smaller (than in 2015) – excluding Sydney Gateway. The inquiry claimed this equates with a $2bn increase over initial costings. A present day (2019) cost estimate is not available, but there are claims of higher direct costs taking into account local roads and operations.[[12]](#endnote-12)

The (expected) final contribution from the NSW Government is unknown.

The Commonwealth’s contribution is a grant of $1.5bn and a concessional loan of $2.0bn. It was determined while Mr Abbott was Prime Minister.

Commonwealth arrangements were the subject of ‘scathing’ criticism from the Australian National [Audit Office, notably about the premature payments of public monies.](#_top)[[13]](#endnote-13)

Sources of funds include tolls. The policy is:

*‘WestConnex is being built using finance from the Australian and NSW governments and the private sector.*

*WestConnex will be funded by motorists using distance-based tolling, similar to the M7. This means motorists will pay tolls only for the sections of motorway they use. Tolls for the entire WestConnex will be capped at a maximum amount ($9.30), for fairness. Free, alternative routes will be available for those not wanting to pay a toll.’[[14]](#endnote-14)*

Many a thesis could be written about Sydney road tolls. Recent ones might start noting the above policy statement is incomplete as, for example, roads leading to WestConnex such as the M5 ‘west’ are tolled too. Charges for use of the M5 will not be limited to WestConnex tolls. Also, some un-tolled WestConnex motorway segments will be tolled after expansion – the M5 ‘east’ is an example, as is part of the M4.[[15]](#endnote-15)

The public controversy about the fairness of such charges is not a new ‘debate’. Previous Government responses to such issues – by the Carr Labor Government in the 1990s, for example – included ‘cash-back’ schemes under which some people could claim a refund of tolls (minus the goods and service tax!) e.g. for the M5 ‘west’.[[16]](#endnote-16)

In late 2017, cash-back took a new turn with the NSW Government offer of car registration (partial) rebates for motorists who pay more than a certain amount in tolls each week. Duly noted by the beagle, the ante upped by the Premier in December 2018, and the Opposition calling for, or promising, more (rebates/discounts etc.)![[17]](#endnote-17)

The upshot: motorists may or may not effectively face the full WestConnex tolls.

Confused? Perhaps, but real confusion starts in ‘financing’ and ‘funding’ in the above quote.

In 2012, then doyen of infrastructure, Infrastructure Australia, made a thing about the difference between these two words: ‘finance’ relates to who organises the payment to the builder, ‘funding’ relates to who actually foots the bill.[[18]](#endnote-18)

The above quote has motorists, and truckers, funding WestConnex i.e. footing the bill. Yet if that is the case, what happens to Government - taxpayer – contributions, say from all over Australia via the Commonwealth’s $1.5bn grant? Or the NSW registration rebates? The money received by NSW from the sale of part of the scheme? The money ‘reinvested’?

Then there is the effect of different funding sources on traffic levels. The charge to be newly faced by the beagle owner on the M5 ‘east’ – each way - is more than the price of a packet of duck sticks at Minto Woolworths! This may put a damper on a tat taa or two, and countervailing effects of the registration rebate on such important decisions is unclear.[[19]](#endnote-19)

The expected impact of tolls/rebates etc. on aggregate traffic is a matter of modelling. However, modelling for the 2015 WestConnex business case presumably does not take into account the rebates etc. announced more recently.

Since at least year 2000 there have been negative stories about: traffic modelling for other roads including in the context of financial difficulties; ‘toll saturation’ in Sydney.[[20]](#endnote-20)

An implication of theory and common sense: the lower the toll, the more the traffic. Toll ‘relief’, cash-backs etc. tend to increase traffic on the relevant motorway. The effect on adjoining roads depends on circumstances; toll ‘relief’ on the M5 ‘east’ would likely increase traffic on M5 ‘west’ but reduce traffic on King Georges Rd.[[21]](#endnote-21)

Implications of funding choice, and rebates, go beyond finances and into economic ‘merit’ - which depends on traffic flow. Claims of benefits depend on assumptions about traffic and therefore tolls, funding etc. with and without the program – the latter being the ‘base case’.

Maximisation of benefits etc. compared with the base case might not coincide with maximisation of toll revenue; one of several reasons optimal charges may not equate with ‘negotiated’ tolls.

### 2.3 Policy

Project assessments, such as by Infrastructure Australia, make assumptions – knowingly or not – about actual and optimal road charges. Similarly, they make assumptions about: charges on other roads; the other charges for roads – principally fuel excise and registration fees; public transport fares etc.

That assumptions can differ among roads implies potential tilts in the road assessment playing field. Infrastructure Australia’s 2013-14 proposal of assessing projects ‘as if there was road pricing’ would have levelled the field but has not been adopted. If adopted it also would likely reduce assessed ‘road needs’.[[22]](#endnote-22)

While this seems abstract, there are profound national consequences, highlighted by WestConnex being seen as a nationally significant road program – Figure 3 (later).

For years, the Council of Australian Governments, transport and roads Ministers and their most senior officials have made noises about a ‘need’ for ‘road reform’ – direct charges for motorists akin to tolls instead of current indirect charges like excise and vehicle registration.

That is: Governments want to consider direct charges for the use of any road, not just toll roads. Among claimed motivations is a coming decline in excise due to the advent of electric vehicles.[[23]](#endnote-23)

At one time the Commonwealth proclaimed it would appoint an ‘eminent Australian’ to oversee some advisory process on the issues. That has been abandoned.[[24]](#endnote-24)

The principal obstacle in the way of such ‘reform’ is an extraordinary road fiscal deficit; spending on roads greatly exceeds road related revenue; by over $12bn in 2016-17 – prior to registration rebates. Road reform as envisaged cannot occur with this deficit.[[25]](#endnote-25)

The deficit is the opposite to the result sound public policy should seek.

It is also opposite the impression from organisations such as the Australian Automobile Association who argue for the return of Commonwealth road revenue. They don’t highlight the bulk of road spending for or by the States or the explosion in total Australian debt related to roads even if the Commonwealth collects more than it spends on own account.[[26]](#endnote-26)

The concerns about a ballooning deficit are heightened by simultaneous claims of ‘underfunded’ local roads – maintenance backlogs. Taken together, the deficit and claimed backlog suggest not only vast overspending on Australian roads, but spending skewed towards the wrong roads.[[27]](#endnote-27)

A secondary obstacle to road reform is the jumble of toll road arrangements across Australia. Each arrangement may need to be separately ‘renegotiated’.

There are at least three further implications for policy.

First, big spending road programs should have the most thorough, rigorous and national assessments. Advisers and advice should especially highlight implications of project proposals for the road fiscal deficit; implications which would be minimised by motorist funding as is claimed in the above quote for WestConnex, but brought back to life by cash-back and rebate schemes![[28]](#endnote-28)

Second, there should be a simple and visible pathway from current tolls on a few roads to more widespread future direct charges. Tollway deals should avoid: creating the potential of stranding assets if there is ‘road reform’ or road pricing; complexity and re-negotiation difficulty due to e.g. duration of the deal, contractual clauses, confidentiality arrangements, cross-subsidies. This is especially important for roads competing with railways.

Third, the significant problem of an enormous mismatch between spending and revenue must be made consistently clear to the public in word and deed. This must include: public acknowledgement of the current fiscal deficit and maintenance backlog; minimisation of any expectations of – promises for - ‘toll relief’. Especially problematic are registration rebates given the other principal source of revenue, excise, is supposedly under threat.

There is little evidence of any understanding of this in approaches to WestConnex by Commonwealth and State Governments and Oppositions.

Indeed, there are plenty of indications otherwise. These include: promises to deal with motorist expectations of ‘relief’; the claim of document confidentiality for 42 years (below); an idea that revenue from some segments of the program might support the whole program i.e. contribute to other segments.

The last of these - the transfer of monies between segments - may imply cross-subsidies which are incompatible with ‘road reform’ and may create further problems when competition law is applied to roads and/or railways complain.[[29]](#endnote-29)

That the Commonwealth – chief proponent of ‘road reform’ – provided funding for WestConnnex, exacerbating the above issues, speaks to an absence of national road policy – of one hand not knowing what that hand is doing.

These policy matters were not considered by the inquiry.

Enough on policy!

### 2.4 Governance

Governance, according to the beagle, concerns the effective exercise of lawful control.

Relevant aspects in the business world include ownership, contracts, regulation and financial reporting. In the Government world they include administrative procedures and Constitutional law.

The governance aspects of WestConnex attracting most comment relate to ownership and administrative procedures.

Regarding ownership, the program, part financed by privatising early stages/projects to pay for later ones, is being undertaken by a public-private partnership. The privatisation/sale attracted some attention. While the Government claimed success and highlighted the ‘very fortunate’ sale price, not all reviews were as positive. Of the $9.3bn sale price, some $5.3bn is to be put back into the program.[[30]](#endnote-30)

These arrangements were considered by the inquiry which concluded their effect, if not a purpose, was to reduce transparency and usual public sector controls over the future program.[[31]](#endnote-31)

On administrative procedures, the NSW Audit Office conducted a review of the assurance framework for the program, but not of the program’s merits.[[32]](#endnote-32)

It found the Government’s normal assurance framework for its projects was not followed. The first and presumably most important part of the framework – the initial ‘gateway’ process - was not undertaken. The Audit Office intends another audit in 2019-2020.

There is some secrecy around the ‘business case’ and ‘merits’ of WestConnex. The ownership and administrative arrangements contribute to this.

A ‘consequence’ is non-disclosure of many matters apparently of great public interest and importance, including program purposes. This has been ‘justified’ by Government claims of ‘commercial confidentiality’ which were accepted rather than substantiated by the inquiry.

The appearance might be of Executive Government constructing arrangements that preclude normal Parliamentary oversight. The inquiry held this as a reason for dissatisfaction about the program. It also raises questions of a more fundamental nature that go to Constitutional matters.

## The inquiry

### 3.1 Overview

This inquiry into the effects of the WestConnex project was established by the NSW Legislative Council (Upper House) in June 2018. Impetus for the inquiry apparently came from concerns about - and claims of damage by - the project to nearby communities.

A Committee chaired by the Hon. Fred Nile of the (minor) Christian Democratic Party undertook the inquiry. Its six other members comprised three from the Government’s Coalition parties, two from the Opposition Labor Party and one from the Greens.

Terms of reference were set by the Committee. The inquiry conducted public hearings in Sydney and took 568 submissions, allowed and put questions on notice and produced transcripts. The transcripts indicate the hearings comprised a short introductory statement by witnesses followed by some questions from Committee members.[[33]](#endnote-33)

The inquiry Report, released 19 December 2018, recommended WestConnex proceed.

### 3.2 Dissents

Dissents of four Committee members are appended to the Report.

The Hon. Daniel Mookhey and the Hon.Greg Donnelly (Labor) claimed the program was costing more and delivering less than expected. They expressed concerns about tolls and argued for a ‘cashback scheme’.

Ms Cate Faehrmann (Greens) did not support the finding that WestConnex is a vital road. In her view the program should never have gone ahead and coming stages should be stopped. She held privatisation to be a mistake and there had been a ‘sneaky’ attempt to disguise cost increases. She added:

*‘It is also concerning that senior government officials gave the committee vague and conflicting information regarding the scrapping of the Sydney Gateway Project, including not providing accurate dates and documentation.’*

The Hon. Dr Peter Phelps of the Coalition (Liberal) called into question the inquiry itself:

*‘this inquiry has, for the most part, simply been a litany from anti-car Green extremists, whinging Baby Boomers, and NIMBY's - and often people who are all three. The conduct of the public hearings, has had the aura of a Festivus in Balmain Town Hall, rather than the serious consideration of matters….’*

He claimed some presented objections to WestConnex were contradictory and concluded:

*‘The 1,000 words for a dissenting report is too few to adequately express just how dreadful this inquiry was, and a large part of its resultant report.*

*All that needs to be said is this: the Liberal/National Government has corrected the massive error committed by Neville Wran who, in 1977, bowed to pressure from inner-city luvvies, to cancel the M4 East and sell off the land. WestConnex should be built; and now it will be.’*

The other Coalition party members, the Hon. Trevor Khan (Nationals) and the Hon. Shane Mallard (Liberal) did not share in Dr Phelp’s dissent.

## The Report

The Report has been represented as both supporting and [opposing the project!](#_top)[[34]](#endnote-34)

It made 16 findings and 27 recommendations. The first recommendation: there should be a public inquiry into each major infrastructure project before construction starts.

The Report considered matters including health effects, traffic and tolls. It supported the program’s finance model, although the basis of its endorsement is unclear – the Report says the NSW Government’s financial contribution is unknown![[35]](#endnote-35)

It damned the process behind WestConnex in particular:

* failure to consider options, missing the first and most important step of the NSW project ‘assurance’ framework;[[36]](#endnote-36)
* a lack of transparency especially regarding the business case under a veil of ‘commercial confidentiality’;[[37]](#endnote-37)
* poor treatment of citizens severely affected by the project.[[38]](#endnote-38)

The Report implied the inquiry did not access some information, for example:

* the full business case;
* post 2015 updates (if any) to the business case;[[39]](#endnote-39)
* estimates of NSW Government financial commitments;
* estimates of costs were construction contracts halted.

The Report appeared to excuse this on the grounds of commercial confidentiality, a matter claimed by the NSW Treasury.

While the report did call for publication of a business case *‘appropriately redacted of commercial in confidence information’* it did not indicate testing of relevant NSW Government assertions, and did not discuss confidentiality in terms of policy or validity.[[40]](#endnote-40)

It listed witnesses and indicated there was some questioning of attendees. It cited comments by a number of witnesses. The names of some witnesses and submission authors were withheld. Infrastructure Australia does not appear on the witness list.

Given the above, the Committee presumably had some doubt about program merits.

Notwithstanding this, the Report recommended WestConnex proceed. The reasons:

* an assumption a motorway is needed;
* the fact it is being built;
* claims that compensation would be due to contractors were the program to stop.

Some witnesses disagreed with at least one of these points.[[41]](#endnote-41)

### 4.1 Findings

In summary, the Report’s findings were:

1. WestConnex is a vital road
2. it was not subject to independent assurance
3. its business case did not consider all costs such as to public health, amenity, biodiversity
4. the Government failed to consider alternative options, exacerbating opposition
5. transparency arrangements for the business case are unsatisfactory
6. project delivery mechanisms weakened accountability and disclosure
7. sale of a majority interest likely exacerbates transparency and accountability concerns
8. the funding model enabled the government to bring forward investment and improve the State's financial position
9. removal of the Sydney Gateway from the project changes the cost-benefit ratio
10. the Sydney Gateway project should be constructed
11. Stage 3 should be constructed because of financial penalties were it to be cancelled, and because without it the benefits of WestConnex would not be realised
12. community members should not feel it necessary to undertake air quality monitoring
13. the additional green space that WestConnex will provide is welcomed
14. various construction noise mitigation measures by agencies are inadequate
15. Local government should not have to step in to alleviate concerns held by residents in relation to State Significant projects, such as WestConnex
16. consultation for WestConnex has been ineffective and lacks empathy.

Eleven of these findings directly related to the manner in which the program has been conducted. Only two related to the program’s merit and these were implicitly positive.

The overall picture presented is of a necessary project which has a poor public reputation because of Government haste, secrecy and lack of empathy.

### 4.2 Recommendations

In summary, the Report’s recommendations were: the NSW Government should:

1. for future large infrastructure projects: hold public planning inquiries; prepare options analysis; have analysis peer reviewed; publish the analysis and peer review prior to commencement of construction
2. have a public health impact analysis as part of the wider economic analysis
3. publish business cases, redacted of commercial in confidence information; publish the base-case financial models and benefit cost analysis 18 months after commencement of construction, or after the opening of the first stage of a project
4. immediately publish the base-case financial model for WestConnex
5. ensure delivery of projects be subject to the same levels of transparency and accountability that would be required if delivered by a public sector body
6. ensure the Audit Office has resources to undertake an audit of WestConnex 2019/2020
7. establish 'follow the dollar' powers for the Audit Office of New South Wales
8. conduct an advertising campaign and work with community stakeholders to ensure that the toll relief program is fully utilised by eligible parties
9. review the Industrial Relations Act to establish cost-recovery mechanisms
10. proceed with Stage 3
11. immediately publish all costs to be incurred by taxpayers if Stage 3 was cancelled
12. improve engagement and consultation with communities concerning air quality monitoring and ensure the real time publication of all air quality data for WestConnex
13. install on all motorway tunnels filtration to reduce pollutants
14. review Air Quality Community Consultative Committees and the locations for air quality monitoring for the New M5
15. establish a WestConnex mental health support and wellbeing service
16. conduct a safety compliance review of WestConnex construction
17. honour commitments for establishment or rehabilitation of green and open spaces
18. publicly report on its new noise minimisation measures for WestConnex
19. ensure acquisition Notices are only issued when there is a need to acquire property
20. ensure clear and consistent information about compulsory acquisition by
21. consider a process where compensation offers are administered by the Valuer General
22. devise a mechanism for property owners to seek review of compulsory acquisition
23. provide clear and consistent information to affected residents about: the process to claim compensation for property damage as a direct result of WestConnex construction
24. consider extending the zone of influence from 50 metres to 100 metres, and change the dilapidation survey process to an opt-out or compulsory process.
25. ensure the Community Complaints Mediator is independent from involved parties
26. publicly report on the new Community Complaints Mediator for the WestConnex project
27. ensure projects have a centralised complaints management system accessible 24/7.

In common with most official inquiries, there is a large number of apparently carefully worded recommendations with little indication of their significance. Eighteen relate to the availability of information, three to physical characteristics of motorways and one to merit.

Not all recommendations appear related to the findings.

## Assessment of the Report

The Report was more confident on straightforward matters where there was direct evidence for example: local residents disadvantaged by construction; the WestConnex process omitting critical steps. These tend to relate to ‘implementation’ - processes associated with construction of projects.

Its consideration of program merit was far more limited, drawing on ‘independent’ assessments by SGS Economics and Infrastructure Australia. It was seemingly unaware of national road policy issues.

The Report overlooked the two central questions:

1. the transport effect of WestConnex;
2. why ‘independent’ experts disagree on pivotal matters.

There are implications for broader public policy.

### 5.1 Transport effects

The key to the merit of programs such as WestConnex are transport effects. It is these effects that lead to potential changes in land-use and ‘wider economic benefits’ town planners and ‘economists’ are increasingly fond of citing in support of transport projects.

Nonetheless, invariably the ‘economic’ justification for major road projects like WestConnex depends almost wholly on theoretical and hypothetical ‘travel time savings’.

WestConnex, post the idea of beautification of Parramatta Road, has been presented by both NSW and Commonwealth Governments as making driving easier and faster between Sydney’s south west suburbs and CBD. That is, travel time savings.[[42]](#endnote-42)

Confusingly, presentations also refer to it constituting a by-pass of inner Sydney.[[43]](#endnote-43)

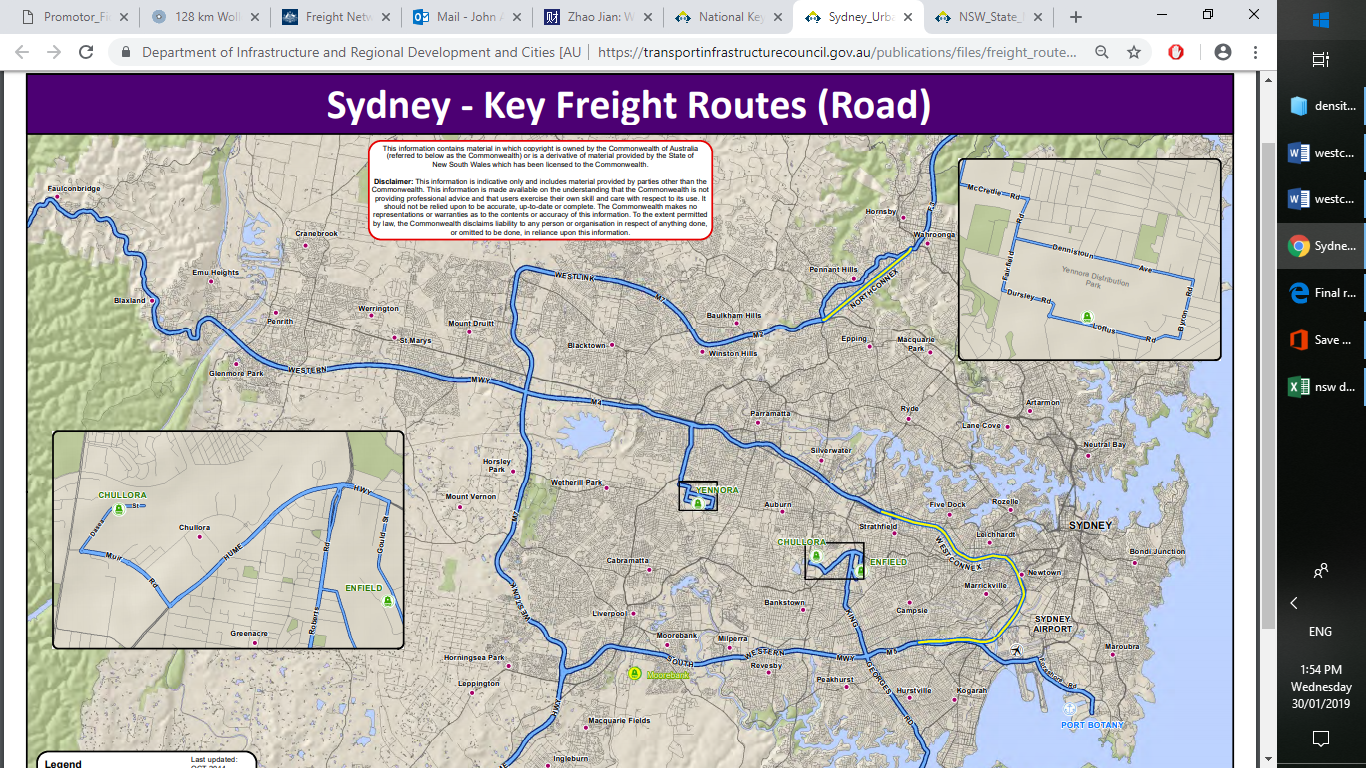
In contrast to a by-pass, Figures 1 and 2 (above) show that from a metropolitan perspective WestConnex runs into, and partly through, inner Sydney.

From this perspective, it appears an intention of by-passing inner Sydney would have been better pursued by connection of M4 and M5 motorways further west than the WestConnex route, noting the demographic centre of Sydney is not the CBD but near Parramatta 25km to the west. A better ‘link’, if needed, may have been along the line of the A3 or A6 in Figure 1.

For example, ‘freight’ would be better served by such a route joining the M4 and M5 through Sydney’s intermodal terminal area at Chullora (near Bankstown) like depicted on the ‘national freight network’ – Figure 3 (below).

This would have more proximate and ready connections with the other principal interstate route M1 / Northconnex (north). A route through inner Sydney – such as followed by WestConnex does not appear the most obvious approach to provide through-routes for freight – of ‘joining’ the blue lines in Figure 3 between Chullora and the M4 and between Silverwater and NorthConnex.

**Figure 3: National freight network, Sydney[[44]](#endnote-44)**



To the extent WestConnex makes motorist driving – rather than freight - easier, existing and new traffic will be attracted to its localities and its ‘feeder’ roads. These feeder roads include some in inner Sydney and the CBD; for example, the Anzac Bridge.

It will attract traffic to within several km, and therefore most likely into – through – Sydney’s CBD and surrounds via, for example, the dark blue arrows shown in Figure 2.

Traffic will not be limited to trips already passing through central Sydney. It will include new trips and diversion of trips from suburban routes. For example, a beagle’s journey from the Badlands to Bondi, currently via – or even below - the light blue arrows (near Kingsford Smith airport) in Figure 2 will be via the dark blue arrows; through the inner city. Similarly, a trip to the northern beaches, now undertaken by the M7 and M2 which are outside the areas depicted on Figures 1 and 2 will be via M5 and harbour bridge.

One implication: more motorways will be ‘needed’ to re-divert traffic just diverted into the city area. For example, to divert the beagle’s aforementioned trip over the harbour bridge. Re-diversion appears to be a ‘strategic’ purpose of a mooted northern beaches link and the F6 to the south towards Wollongong. Construction of these roads is estimated at $32bn.[[45]](#endnote-45)

This scheme of diversion into then later re-diversion out of the central city area is so perverse as to imply real motivations for WestConnex are not merely transport or urban renewal. Likely to be among them: road building for its own sake.

Together with:

* failure to conduct the first stage of the assurance framework;
* unwillingness to consider options, especially options other than road construction;
* non-disclosure of business case details;
* sensitivity to criticism;
* deletions from the program to avoid perceptions of endless cost overruns;

the picture is beatification of motorways rather than beautification of Parramatta Rd.

Beatification might be no exaggeration – claims that inner-city motorways will bust congestion fly in the face of long world-wide experience and might be miracles.[[46]](#endnote-46)

Any inquiry into the effects of a multi-billion infrastructure program should question its hagiography, making the inquiry – and ‘independent’ program assessments - analogous with advice on beatification.

Can inquiries/assessments learn from processes for real beatification? For those interested there is an Appendix on those processes. Make what you like of the details. However, in totality it can be said that most assessments of supposed infrastructure miracles bear little relation to methods of confirming real miracles.

And what could be learned for infrastructure assessments from inquiries into serious religious matters? Plenty. More on that in a later article.

For now:

* road building buffs! Your patron saint – extended family in heaven - is Sebastian of Aparicio (Mexico), beatified 1789;[[47]](#endnote-47)
* motorists! St Francis of Rome (!), canonised in 1608.[[48]](#endnote-48)

### 5.2 Expert disagreement

The Report observed, but did not resolve, conflicts among officials and - more importantly - opposing views of ‘independent experts’ SGS Economics and Infrastructure Australia. The latter supported the program, the former did not.

SGS Economics is a specialist economic consultancy firm in Sydney. It was commissioned to review the program’s 2015 business case separately by Leichardt and Sydney City Councils.

In early 2016 it produced detailed reports critical of the business case for two basic reasons:

* failure to consider options, made more significant by non-alignment with stated State transport and land use strategy;
* methodological doubts and errors.[[49]](#endnote-49)

It argued, after accounting for the latter, the benefit/cost ratio – the supposed ‘key’ to economic decision making – would decline from a (mis-specified) satisfactory 1.7 to being unsatisfactory i.e. marginal at best, possibly negative.

SGS concluded the decision to proceed with WestConnex was questionable.

Some other expert witnesses at the inquiry made similar points and added that a number of substantial costs were ‘omitted’ from the business case.[[50]](#endnote-50)

SGS claimed non-release of an earlier business case, in 2013, precluded independent assessment of thinking and modelling. The base-case – which is fundamental for assessment of the program - has not been seen by SGS or the public. This is due to NSW Treasury views about commercial confidentiality, claimed for another 42 years.[[51]](#endnote-51)

Infrastructure Australia is a Commonwealth statutory authority with the rare – unique – situation of an advisory organisation having a ‘board’ rather than commissioners.[[52]](#endnote-52)

Its published assessment of WestConnex was relatively brief – 6 pages compared with 48 pages by SGS. It recommended the program under the heading urban congestion - rather than a national freight network under which it was earlier placed.[[53]](#endnote-53)

Its assessment was concluded in April 2016, after the two SGS reports. While it did not reference the SGS reports, this is Infrastructure Australia’s usual practice.

Its assessment cited an ‘updated’ 2015 strategic business case, which appears to be the one considered by SGS.

Like SGS, it noted the lack of analysed options. However, on the benefit/cost matter it came to the opposite conclusion to SGS, being ‘confident’ benefits would exceed costs.

There seems little objective basis for such confidence, although similar confidence appeared in Infrastructure Australia’s assessment of Sydney Metro – published around the same time – which did not cite a final cost estimate.[[54]](#endnote-54)

In any event, such confidence should have disappeared by the (mid 2017) decision of NSW to excise a most significant part of the WestConnex program – Sydney Gateway - which includes ‘links’ to Port Botany and Kingsford Smith Airport.[[55]](#endnote-55)

Benefits of the Gateway were not separately identified by Infrastructure Australia but its costs were (then) estimated at $0.8bn. Public reports have those costs currently in the order of $2.2 to 2.6bn.[[56]](#endnote-56)

One effect of the NSW Government’s excision of Gateway is to substantially alter any calculation - if not result - of WestConnex’s benefit/cost assessment.

Notwithstanding this most significant change to program circumstances, there is no indication of Infrastructure Australia revising its assessment.[[57]](#endnote-57)

Nor is there public indication of further revision to the WestConnex business case which might be expected after – indeed before! - such a substantial amendment to the program.

The WestConnex public inquiry could hardly fail to notice the conflict between SGS and Infrastructure Australia as their views were treated sequentially in Chapter 2 of its Report.

It is unsatisfactory for the Report to leave such a fundamental conflict unresolved. The job of a public inquiry is to determine such questions and tell the public which view is correct and, preferably, why.

It is unclear if and how the conflict between experts was explored. The Report indicates the inquiry did examine a witness from SGS but does not indicate a submission from, or inquiry attendance by representatives of, Infrastructure Australia.

While Infrastructure Australia’s assessment was somewhat more recent than SGS, timing does not resolve the matter. The same basic information was available to both assessors, and Infrastructure Australia did not rebut SGS’s views.

The result is the inquiry did not see unchallenged evidence of the merit of WestConnex. Moreover, the ‘independent’ business case assessment evidence produced in support of WestConnex is irrelevant because it relates to a different program from the one underway.

The onus of proof of the merit of an infrastructure project should lie with its proponents – there is no presumption that ‘infrastructure is good’. The onus should be proportionate with the significance of the project and the seriousness of questions about it.

Not only was this burden not discharged re WestConnex, some evidence cited in the Report suggests a lack of merit. Opportunities to clear up this matter, for example examination of Infrastructure Australia’s views, subpoena of relevant ‘confidential’ documents or fresh assessment in the light of conflicting views, were not taken.

### 5.3 Roads policy

Roads policy issues were identified in sections 2.2, 2.3 and 2.4 (above). Relevant questions relate to how a particular road project ‘fits’ with road policy directions including hopes for ‘reform’ that introduces direct charges across important roads and perhaps congestion pricing for some places.

The matter of ‘fit’ was not directly addressed in the inquiry, and the above sections suggest it has not been a highly prominent issue in the development or assessment of the WestConnex program. For example, the roads fiscal deficit – and whether WestConnex would worsen or improve it - avoided mention. Also, the NSW registration rebates do not readily align with the distance based tolling regime to be applied for WestConnex – why not distance based rebates?

Similarly, the question of a national regulator of direct charges (for heavy vehicles at this time) – previously raised by the Commonwealth in conjunction with States – or its ‘fit’ with various toll roads, was not raised.[[58]](#endnote-58)

The inquiry Report’s welcoming of financing arrangements as accelerating WestConnex needs to be considered in this light: potential new but long-lasting challenges for policy and national ‘reform’ directions affecting all roads.

### 5.4 Broader public policy

The fact of a Parliamentary inquiry into activities of a Government raises questions regarding the relation between Parliament and the Executive.

In Australia, and in NSW, the relation is part of a system of ‘responsible government’.

In this, Parliamentarians are responsible to the people with accountability exacted at elections. The (Executive) Government is formed from Parliamentarians who enjoy majority support in the lower house. The Government is responsible to the Parliament.

This ‘Westminster’ system is different from, for example, the United States where the Executive President is elected by the people separately to members of the lower house Congress and the Senate.[[59]](#endnote-59)

The relation between Parliament and Executive Government in Australia impinges more on democratic accountability than in the United States. At the furthest extent of relations are grave matters - Australia’s most notable jurist observed:

*‘History and not only ancient history, shows that in countries where democratic institutions have been unconstitutionally superseded, it has been done not seldom by those holding the executive power.’[[60]](#endnote-60)*

In some respects, the Government, while ‘separate’, could be considered as a type of exclusive agent of the legislating Parliament. This is consistent with doctrines of Parliamentary supremacy. For example, in most cases the Commonwealth Government’s legal ability to spend depends on legislative authority – not merely Appropriations – which is a matter for Parliament and of its powers.[[61]](#endnote-61)

Commentators have expressed concern about a tendency for the Executive to seek to effectively dominate Parliament in various jurisdictions. Examples include the use of ‘subordinate’ legislation, regulations, and propositions regarding ‘implied Executive powers’. At issue is the ability of the Government to undertake activities without regard to Parliament, and the consequences thereof.[[62]](#endnote-62)

The longest serving Clerk of Australia’s Senate, Mr Evans, put it:

*‘One of the principal functions of a legislative assembly is to ensure that the holders of the executive power are accountable, that is, that they are required to explain to the legislature and the public what they are doing with the power entrusted to them. This requirement is an essential safeguard against mistake and malfeasance in government.’[[63]](#endnote-63)*

An inability of Parliamentarians to see what a Government is doing must decrease Parliament’s potential control and alter the operation of responsible government. A Government’s withholding information from Parliament can be viewed as an attempt to change its relative power whether or not this is a primary aim. Mr Evans again:

*‘The accountability function of the legislature clearly depends on obtaining information. Much of that information is in the hands of the executive government. In the temptation to conceal its mistakes and misdeeds, the executive government may refuse to give up the information. Thus many of the contests between legislatures and executives are, or become, battles over the disclosure of information.’*

And:

*Said Professor, later President, Wilson: “Unless [the legislature] have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the*

*government, the country must be helpless to learn how it is being served; and unless [the legislature] both scrutinise these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct.’[[64]](#endnote-64)*

In this light a Parliamentary inquiry could be expected to insist a Government honour the primacy of Parliament. That is: Government not undertake manoeuvres which preclude Parliament viewing important information, even if – perhaps especially when – information is politically contentious, or if the tactics are constitutionally valid.

This is among reasons a Parliamentary inquiry should be equipped with powers such as to subpoena documents and representatives from the Government, including current and previous relevant officials. Good Evans again!

*‘The basic aim of all of these measures is to disclose information about the activities of the executive government to enable a judgment to be made about its performance. The Senate, like other legislatures, has frequently encountered executive refusals to produce information.’*

Evans argued Government representatives were reluctant to answer questions before the bar of Parliament – in question time or upper houses.

Perhaps a reason is perception of Parliament as political theatre where some participants act as if the purpose is to score points on relatively trivial and transient matters while being entertaining enough to appear on the media – easy when targets cannot ‘fight back’.

It would be understandable if those targets sought to contribute as little as possible to the spectacle and the public were sympathetic with their reluctance.[[65]](#endnote-65)

The introductory quote to this article - the Committee Chair (rightfully) chastising clapping and booing - and Dr Phelp’s observation of the ‘aura of a Festivus’ suggest some in the ‘audience’ saw the proceedings in such a light. That behaviour is not conducive to the proper role of Parliament and, for those seeking the best outcomes, is self-defeating.

Nonetheless, it could be expected any failure of Government to fully co-operate with a Parliamentary inquiry would lead to stern adverse findings designed to draw the electorate’s attention to the issue and of a potential Government ‘cover-up’.

The present inquiry did not access significant information. The Report made extensive comments about a lack of ‘transparency’ about the program and its arrangements.

Included in those comments were suggestions that program ‘governance’ effectively diminished – by accident or design – the practical influence of Parliament.

Yet the inquiry did not appear to avail itself of all opportunities to address the matters. For example, it did not apparently subpoena documents and it is not clear if it strenuously tested officials’ claims of commercial confidentiality’.

Confidentiality claims at inquiries should be individually assessed in their proper context: ‘public interest’, with the better reported Australian practice being: such claims must be made by a Minister (who is also a member of Parliament). Commonwealth practice was described:

*‘The proper basis of every claim for non-disclosure: that the disclosure would be harmful to the public interest in some specific way…..*

*The position of the Senate and every comparable legislature, however, has always been that it is for the legislature to determine whether a claim of public interest immunity is sustained……. ‘the Senate shall consider and determine each such claim.’**…..*

*claims of commercial confidentiality……….must be made by a minister and be based upon a statement of the apprehended harm to commercial interests…’[[66]](#endnote-66)*

Like other restrictions on information in political processes, such confidentiality claims by the Executive or even Parliament should be treated with caution. Caution regarding the acceptance of even legislative restrictions on political communication was a matter recently and firmly reiterated by the High Court.[[67]](#endnote-67)

The argument that Government arrangements for ownership and control of a project can of itself place information beyond the reach of Parliament is a challenge to Parliamentary supremacy. It is difficult to imagine claims of confidentiality gaining validity simply by a Government moving information from its own to somebody else’s hands.

## Conclusions

### 6.1 Conclusions

The WestConnex public inquiry is beneficial in bringing significant matters – and failures - to public attention. It provides a good summary of what was publicly known about WestConnex. It allowed some in the community to have a very public say on WestConnex.

The electorate is now in a somewhat better position to pass judgement.

However, the Report case missed the essence of WestConnex – a ‘need’ to build more motorways in Sydney.

The inquiry was entitled to recommend the program proceed. However, in my opinion, such recommendation:

* was not supported by the substance of the Report;
* is in conflict with substantive matters the Report overlooked;
* is unwise as effectively endorsing behaviour the Report chastises.

The central reason for the supportive recommendation - that the road is vital - while presented as a finding is opinion.

Again, it is possible for the inquiry to hold this opinion, however, it conflicts with some factual findings e.g. that assurance processes and options were not appropriately considered.

The absence of an uncontested factual basis about merit does not entirely refute the inquiry’s reasons for recommending the program proceed – it rebuts only one of the main reasons for that recommendation. The other main reason, the project is underway, is true.

However, the fact a program is underway does not mean it should be supported. Least of all by those arguing the Government continues to keep them in the dark about the program.

On the information in the Report my view is the inquiry should have refrained from any support of WestConnex.

This does not mean the inquiry should have recommended against the program or that the program should cease. However, it does mean a supportive recommendation should have been considered only if and after the Government provided the inquiry with all relevant information and substantial doubts – including about wider roads policy - were removed.

### 6.2 The future

The NSW Labor Opposition promises a judicial inquiry – a special commission – into WestConnex if elected to Government. The promise was made at the time the Parliamentary inquiry was established.[[68]](#endnote-68)

The purpose of a judicial inquiry into WestConnex is unclear.

Typically, such an inquiry is for the most serious matters or where there are suspicions of substantial wrong-doing (even if not criminal). They should be used most sparingly. They suffer drawbacks of being initiated – terms of reference set - by the Executive Government, making some susceptible to claims of partisanship. They are also generally limited by strict rules of legal evidence.[[69]](#endnote-69)

The matters not resolved by the WestConnex inquiry are:

* program merit and transport consequence;
* relationship between road projects and policy;
* availability of information to the Parliament.

In my view these questions do not merit a further judicial inquiry. Sydney Metro is a different matter.

All these issues are amenable to Parliamentary led resolution. Only Parliament can address the last.

In popular conception, judicial inquiries are ‘tougher’ with greater powers to seek information, assistance by subject matter experts, and elucidation and evaluation of evidence – especially testing of assertions - by skilled practitioners, ‘devils advocates’.

There are no reasons other public inquiries into major transport projects and controversies cannot do the same. Future Parliamentary inquiries could. Mr Christie’s examination of Sydney public transport planning (2010) shows what is readily achievable by a public inquiry even without the benefit of legal counsel.[[70]](#endnote-70)

As a postscript, on 2 February 2019 the Premier reportedly committed to ‘improve transparency with the NSW political system’:

*‘The NSW community has a right to know who their politicians are meeting with….’.[[71]](#endnote-71)*

Perhaps one day there might be a right to know what politicians have committed the community to, rather than just who they have met. Commitments on important matters like WestConnex, Newcastle Port …..

Perhaps such a right might also be accompanied by observation of an infrastructure version of Urban’s (VIII) admonition.[[72]](#endnote-72)

J Austen

10 February 2019

## Appendix: Advocatus diaboli

Given the beagle’s interest in encouraging catholic reading tastes it draws your attention to Promotor Fidei whose antecedents while ‘*shrouded in the darkness of more remote antiquity’*, stretch back to martyrs in the Roman Empire. For this the beagle draws largely on an article in a ‘traditionalist’ blog Unam Sanctam Catholicam (2013) which is frequently internet-cited and a doctoral thesis by Jason A Gray (2015).

The Promotor was:

*an office first attested during the pontificate of Leo X (1513-1521) and formally established by Sixtus V in 1587 during the Counter-Reformation…… to oversee every aspect of the beatification and canonization process, ensuring that no person received the honors of sainthood rashly, that proper juridical form was observed, and that every potential weakness or objection to the saints canonization was raised and evaluated in order that only those who were truly worthy would be raised to the dignity of the altars.[[73]](#endnote-73)*

Duties reflected tenets of Roman law: petition of a cause, a contradictorium and three in judgement: actor, the petitioner or postulator; ius or judge; reus or opponent to test the petition. The last was the Promotor.

Some saw the Promotor as opposed to canonisation – saint making:

*Because the Promotor Fidei took a juridical position against the canonization of any given saint, it was joked that he was taking the devil's part in the proceedings, hence the common appellation "Devils' Advocate" (*advocatus diaboli*).[[74]](#endnote-74)*

A more nuanced view had the Promotor assisting the search for truth:

*a distinction must be made between the desire to oppose the candidate and the goal of protecting the faith. In both circumstances, the promoter presented those obstacles that he saw to the cause of canonization, but not for the same reason. If the promoter sought only to oppose the candidate, he would be motivated principally by the desire to damage the reputation of the servant of God, impugning his or her character and virtue, and using any lack of clarity as a pretext to presume the worst. If he sought primarily to protect the faith, he would raise objections for the sake of the Church, but only insofar as those objections were rooted in sound reasoning and a concern for the truth. The second perspective, and not the first, was both fitting and more naturally desirable.[[75]](#endnote-75)*

And:

*postulator and the promoter were not diametrically opposed to one another, but collaborators of a kind with the Church, each one fulfilling the duties that were proper to their respective roles. The promoter served the faith and was therefore bound to protect the integrity of divine cult by raising objections when a candidate seemed unworthy for the honor of the altars*

The Promotor was culmination of centrist evolution from local saint cults in the early church. Creation of the office occurred at a time of increasing formality in the church to seek greater harmonisation of practices, encouraged later by criticisms in the Reformation. It aimed to bring discipline to claims of sainthood instead of decisions based on matters such as public opinion.

Some scholars saw analogies between inquisition and canonisation notwithstanding their different aims; trials, in the latter case with the proposed saint as defendant. In a sense canonisation was law for saint-making, law applied to heresy was via inquisitorial courts. The ‘prosecutor’ of saint ‘trials’ was the advocate and:

*[T]*o***prevent any rash decisions concerning miracles or virtues of the candidates*** for the honours of the altar. All documents of beatification and canonization processes must be submitted to his examination, and ***the difficulties and doubts he raises over the virtues and miracles are laid before the congregation and must be satisfactorily answered*** before any further steps can be taken in the processes. [[76]](#endnote-76)

In 1630, Urban VIII made compulsory the role of the advocate:

*in order that the causes of canonizations and beatifications be handled in a more efficient and timely manner, the Promoter of Faith must propose in writing whatever problems are involved in any process regarding Servants of God.[[77]](#endnote-77)*

Implying:

*Any documents or processes not submitted to the scrutiny of the Promotor Fidei become null and void by that very fact…... He thus served as a kind of filter to screen out candidates whose sanctity was not beyond doubt, or who were perhaps being canonized out of rashness, popular appeal, or the moods of the day.[[78]](#endnote-78)*

In 1634 Urban VIII issued a document which

*concentrated on preventing the abuse of prematurely attributing cult to someone who had not yet been canonized. A saintly depiction, a book about supposed miraculous signs, or testimonials erected at the tomb of a candidate could lead the faithful to conclude that the person was already considered to be a saint, even before any declaration had been made by the Church. The presence of unapproved cult could give the false impression that a candidate had already been found worthy of this honor, thereby generating an artificial or manufactured reputation of holiness*

Advice to the Pope on potential saints was based on inquiry into the candidate’s writing, heroic virtue (or martyrdom) and ‘absence’ of cult (referred to above). In the inquiry, the Promotor was to raise objections on the important issues. One authority put it:

*regarding the difficulties to be raised in at least the more important matters, even if they are only slight. On account of this severity, which is certainly most prudent, promoters of the faith are commonly called the devil’s advocates; moreover whoever says so seriously understands that to ignore a difficulty, which at first seems light, is often determined to be proven serious.[[79]](#endnote-79)*

Little changed in the centuries up to the Code of Canon Law 1917 which set out details of the process:

*the postulator presented a favorable argument for the cause of canonization in the articles, on which the witnesses were to be interrogated. The promoter of the faith, however, composed the interrogatory that sought the truth above all else about the servant of God. The postulator presented the list of witnesses to be examined who could support the arguments in favor of the canonization. The promoter of the faith, however, chose other witnesses to be heard ex officio in order to arrive at a more complete understanding of the servant of God. During the evaluation of the cause, the advocate for the petitioner was responsible for presenting the arguments in favor of the canonization in the positio. The positio could be compared to a position paper that set out the facts and the arguments related to the cause. During the various stages of discussion, the promoter of the faith raised his objections.[[80]](#endnote-80)*

Other matters of probable interest to the beagle’s readers include:

* the cause – the saint’s nomination – needed to initiate from the faithful by e.g. reputation of holiness which would then be investigated;
* requirements to consider all writings whether published or not;
* oaths, including to prevent collusion;
* severe penalties – excommunication – for those who breached oaths;
* exclusion of the postulator from hearings;
* a standard of proof being ‘moral certainty’;
* a two-tiered process – locally and then in Rome – with similar stages, described as a juridic.

The rub? According to some, the Promotor’s:

*job was to ensure that canonizations remained a matter of objective fact.[[81]](#endnote-81)*

Decisions on saint making were reserved to the pontiff; the process was advisory and there was no duty for the Pope to canonize a ‘recommended’ candidate. The process advised, the Pope decided. Hence it would be more accurate to observe the Promotor’s job as **ensuring advice to the Pope was a matter of objective fact.**

The 1917 code was reputedly regarded as perfect into the 1950s. A reported maxim from drafter Gasparri:

*‘what is not in the code, is not in the world’*.

Viewed with hindsight, this is said to have been followed by legal positivism with more emphasis on text and less emphasis on doctrine.

There was some frustration with ‘slowness’ of process; tension between desire to ‘streamline’ consideration and ensuring a ‘successful’ candidate’s heroic virtue etc. had ‘moral certainty’ - was beyond doubt.

As the 20th century progressed there emerged a school of thought that improvements in historical and scientific methods – and reliance on experts - could facilitate processes while retaining moral certainty. Some argued greater credence to documents rather than just witness testimony could streamline matters – certainly in the cases of ancient causes whose witnesses had long passed.

A contest between competing views – ‘juridic’ and ‘scientific’ - emerged in the context of Vatican II which John XXIII initiated concurrently with review of the code.

His predecessor, Pius XII:

*’ pondered whether those technical means, available today, should be adopted which would notably simplify the processes in causes of canonization……recognizing the need for a maximum of scientific rigor adapted to the circumstances of the time’. [[82]](#endnote-82)*

A critique of excessive legalism emerged in the 1960s. For example, Amore:

*compared the modern developments of historical criticism to the technological developments that produced modern cars and highways. Just as no one would give up rapid modern transportation for older and slower systems, so he questioned why anyone would prefer to treat causes of canonization using the clumsy and lumbering juridic methods of the past when modern scientific methodology was available.[[83]](#endnote-83)*

In 1967, Paul VI introduced a ‘subtle shift’ from a juridic system to a more administrative one, emphasising a purpose of saint-making was to provide examples to the faithful:

*So that the splendid examples of this holiness may be properly discerned and that their pure light may fully shine forth, canonical investigations are necessary, carried out indeed with the highest zeal and attention, as required by the importance of the topic. Our predecessors, especially Benedict XIV of happy memory, in consideration of their own times, strengthened [these investigations] with most wise laws that were later received in the Code of Canon Law. But, as the way of life and circumstances have changed, it seems suitable and fitting to reconsider the path and the method of the investigation mentioned above, and even to adapt it to our time, so that the supreme authority of the Supreme Pontiff, associated effectively with the authority of the Bishops, might make the path more level and unencumbered in the instruction of causes of beatification and canonization of servants of God.*

Parts of the two-stage process were reduced to one. Nonetheless, this announcement continued the code and its model of a trial, and therefore retained Promotor functions. The underlying idea involved some tensions:

*The treatment of causes of canonization was to be juridic though less rigid. The investigation into the servants of God was to be streamlined while remaining thorough. Causes of canonization were to follow canonical principles but were also to incorporate the modern scientific method. The principle of subsidiarity called for the instruction of these causes to take place under local authority without surrendering the sole and unique competence of the Holy See in these matters.*

However:

*the canonical safeguards that once seemed essential to the search for the truth had been re-evaluated. Rather than promoting the search for the truth, the traditional norms came to be seen as obstacles that would be better exchanged for a historical critical methodology.[[84]](#endnote-84)*

Paul VI established a special review of the code’s provisions about saint-making. Drafts of the mid 1970s resulted in a 1980 proposal which:

*sought only to state in canonical language the norms that were in force at the time, that is, the norms of the 1917 code with the modifications promulgated by Pius XI and Paul VI….*

*the schema maintained a degree of formalism that appeared, to some, to be without merit. On June 27, 1980, the plenary assembly of the Congregation did not approve the proposal, thereby giving encouragement to those who wanted to see the legislation move in a more radical direction.[[85]](#endnote-85)*

A debate was underway. On one side was Veraja who:

*hoped for a radical revision of the entire legislation….. With the critical study of scholars trained in modern scientific methodology, he anticipated that the observations of the Promoter of the Faith and the corresponding responses of the Advocate would be rendered superfluous*.

However, D’Alfonso:

*argued for the fundamental importance of the dialectical process between two opposing parties. From the confrontation or the dialectical contraposition of the two opposed positions, represented by the Promoter General of the Faith and by the Advocate, is born the so-called contradictorium, the only suitable means of arriving at moral certitude regarding the object of the cause.*

Neither were considered conclusive:

*Veraja failed to understand the argument presented by D’Alfonso who was appealing to centuries worth of canonical tradition that he was hoping to conserve. At the same time, D’Alfonso appealed to a legal tradition that was not of apostolic origin, but which began only in the 13th century when Roman Pontiffs began to apply the model of the contentious trial to these causes because it seemed to be the most effective method of determining who should be canonized.*

Amore weighed in with:

*recognition of heroic virtue or martyrdom was a problem that was fundamentally theological and historical, though it had been classically treated in a juridic manner. For Amore, the time had come to evaluate whether the juridic method was best suited to these causes.*

Serafini called for better understanding among competing views:

*.. each discipline will tend to develop on its own, without systematic ties with the other [fields of study]…… This situation leads the scientist (or a group of scientists) to a greater and greater isolation, insofar as it provides a language, a set of problems, and a methodology that is altogether incomprehensible to those outside the same area of specialization. Those who have worked on causes of beatification over the past decades know well how concrete and real this difficulty of communication has been and continues to be between jurists and historians.*

Others offered a view that greater specialisation by assessors might expedite the truth:

*… Polish bishops made a perceptive observation. Given the variety and complexity of causes of canonization, it seemed unreasonable to expect one Promoter General to evaluate each cause at every stage of study. Rather, it appeared advantageous to have a group of promoters who specialized in particular subject matters. For example, one promoter might deal particularly with the canonical norms…..another promoter might deal with the arguments regarding heroic virtue or martyrdom, while yet another might focus specifically on the details for the investigation of an alleged miracle.[[86]](#endnote-86)*

New proposals were prepared in 1981 which:

*modified the role of the Promoter of the Faith, who was simply designated to preside at the meetings of the theological consulters…. the Promoter General of the Faith was liberated from much of the work involved in the preparation of the written observations…..the office of the Promoter General was to be dismembered, and the Promoter of the Faith was to take his position at the head of the theological consulters, guiding the study of the positiones and giving his opinion on the causes.*

It also proposed to change some language:

*The process (processus) was replaced by an inquiry (inquisitio). The judge (iudex) was replaced by a delegate (delegatus). There was no mention of a tribunal (tribunal) but only of the officials (officiales) who carried out the instruction.*

A further (1982) text:

*called for the appointment of groups of experts to advise the Congregation in theological and historical matters, as well as medical experts for the study of miracles.*

It also abrogated previous laws:

*Our statutes and rules should be, now and hereafter, binding and effective and, insofar as is necessary, we abrogate the Apostolic Constitutions and Regulations published by Our Predecessors and all other rules, including those which are worthy of special mention and derogation.*

Among other changes were:

*references to the promoter of the faith were changed to the promoter of justice in the diocesan inquiry.*

This took effect in late 1983.

The change in language led some to a view that the ‘trial’ had been abandoned and that collaboration instead of contest was the order of the day. However:

*it was made clear that it was not the intention …. that the function exercised by these advocates should be entirely suppressed. Rather, they continue to serve in an analogous capacity as collaborators. The advocate had traditionally served as an important interlocutor with the Promoter of the Faith in the contradictorium. The participation of the advocate, even in a modified form, represents a sign of continuity with past practice.*

This implies the old ways were not to be entirely abandoned. Confirming this was an answer to a question on whether witnesses could now see questions before testifying: ‘no’, although a chronology of the candidate’s life could be viewed.

Similarly, detailed instructions were issued, about which the prefect of the relevant area of the church observed (2008):

*After the current legislation in causes of saints took effect … the idea had spread, though without foundation, that the traditional procedural methodology employed in [these causes] had been substituted by an inquiry of a historical critical character. … Without denying, and indeed confirming the need and the importance of rigorous historical research, which is obviously intrinsic to the collection of the proofs in a cause of canonization, the Instruction vigorously reaffirms the procedural substance of these same causes, and underscores with precision the norms that must be observed.[[87]](#endnote-87)*

However, some point to ‘new’ saints – in the last 30 or so years outnumbering those of several centuries - to suggest the changes had been more fundamental:

*Under John Paul II's reforms, the role of the Promotor Fidei is replaced by a Secretary, whose job is mainly that of a chairman to ensure that procedure is followed. The theological writings of a saint are examined by theological censors……others, called Relators, prepare reports documenting virtues and a medical board documents alleged miracles.*

So:

*instead of a candidate being on trial and having to face accusations by the Promotor Fidei as the Church's "prosecutor", the procedure now takes the form of a committee meeting where experts present reports. Glaring problems with a candidate's life or miracles still must be accounted for, but the inquisitorial aspect of the procedure is now gone..*

*Nor is there any mandate for the Promotor Fidei to personally approve all evidence and documentation in the procedure on pain of nullity. …the Congregation for the Causes of Saints now becomes more of a committee that collects favorable testimonies of candidates and issues reports on them.. The result is that the modern Congregation has been unfavorably compared to a "saint making factory."*

Among the suggested motives:

*to showcase the universal call to holiness taught at Vatican II.*

A view that supposedly implies:

*canonization is no longer about whether a candidate truly meets the Church's standard of holiness, but on what role models the modern Church "needs".?[[88]](#endnote-88)*

Others do not agree that procedures have been dispensed with:

*causes of canonization could be served both by the insights offered through modern methodology and by the precision and structure of a canonical approach. The reconciliation of these two forces continues to be a work in progress, as the respective roles of the canonist and the historian are refined.[[89]](#endnote-89)*

1. <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2089/Transcript%20-%2015%20October%202018%20-%20Uncorrected.pdfTransc> [↑](#endnote-ref-1)
2. <https://johnmenadue.com/john-menadue-the-best-of-2018-sydney-metro-a-forty-billion-dollar-deception/#comments>

   <https://johnmenadue.com/john-austen-public-inquiries-into-nsw-infrastructure-projects/> [↑](#endnote-ref-2)
3. <https://www.thejadebeagle.com/wonderland-glory-and-evaluation.html>

   <https://www.thejadebeagle.com/macro-micro-westconnex-and-westies.html> [↑](#endnote-ref-3)
4. <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2497> [↑](#endnote-ref-4)
5. <https://www.thejadebeagle.com/macro-micro-westconnex-and-westies.html>

   <https://www.smh.com.au/national/nsw/the-good-news-westconnex-will-cut-travel-times-in-2031-20130922-2u7zh.html>

   <https://www.stuartayres.com.au/media/media-releases/westconnex-provide-benefits-western-sydney>

   using travel time calculator no longer at the WestConnex website. [↑](#endnote-ref-5)
6. <https://www.smh.com.au/national/nsw/tony-abbott-and-mike-baird-turn-first-sods-for--westconnex-20150308-13y859.html> [↑](#endnote-ref-6)
7. The original WestConnex submission to infrastructure Australia was placed under the national freight network heading: <https://infrastructureaustralia.gov.au/policy-publications/publications/files/R359_Infrastructure_Australia_National_Infrastructure_Plan_2013_Ch10-App.pdf> [↑](#endnote-ref-7)
8. <https://www.thejadebeagle.com/wonderland-glory-and-evaluation.html>

   <https://johnmenadue.com/john-austen-doubts-about-infrastructure-go-beyond-sydney-metro/> [↑](#endnote-ref-8)
9. The question of dedicated freight routes and lanes for motorways to port was raised in Infrastructure Australia’s national ports and national land freight strategy documents. <https://infrastructureaustralia.gov.au/policy-publications/publications/files/NLFS_220211.pdf>

   Curiously little seems to have been done in relation to this question, which is similar to one raised regarding the application of the national access regime to certain roads as part of creating ‘freight rights’. That matter was ignored on the basis that the regime could not be applied to roads; a basis repeated including by the Productivity Commission but nonetheless false as the legislation specifies roads as one of two examples of what the for such regime applies to. Another suggested reason was a (false) proposition that such arrangements would need to apply to all roads – an echo of the ongoing ‘road reform’ which again conflicts with the provisions of the regime which applies only to nationally significant – not all - infrastructure.

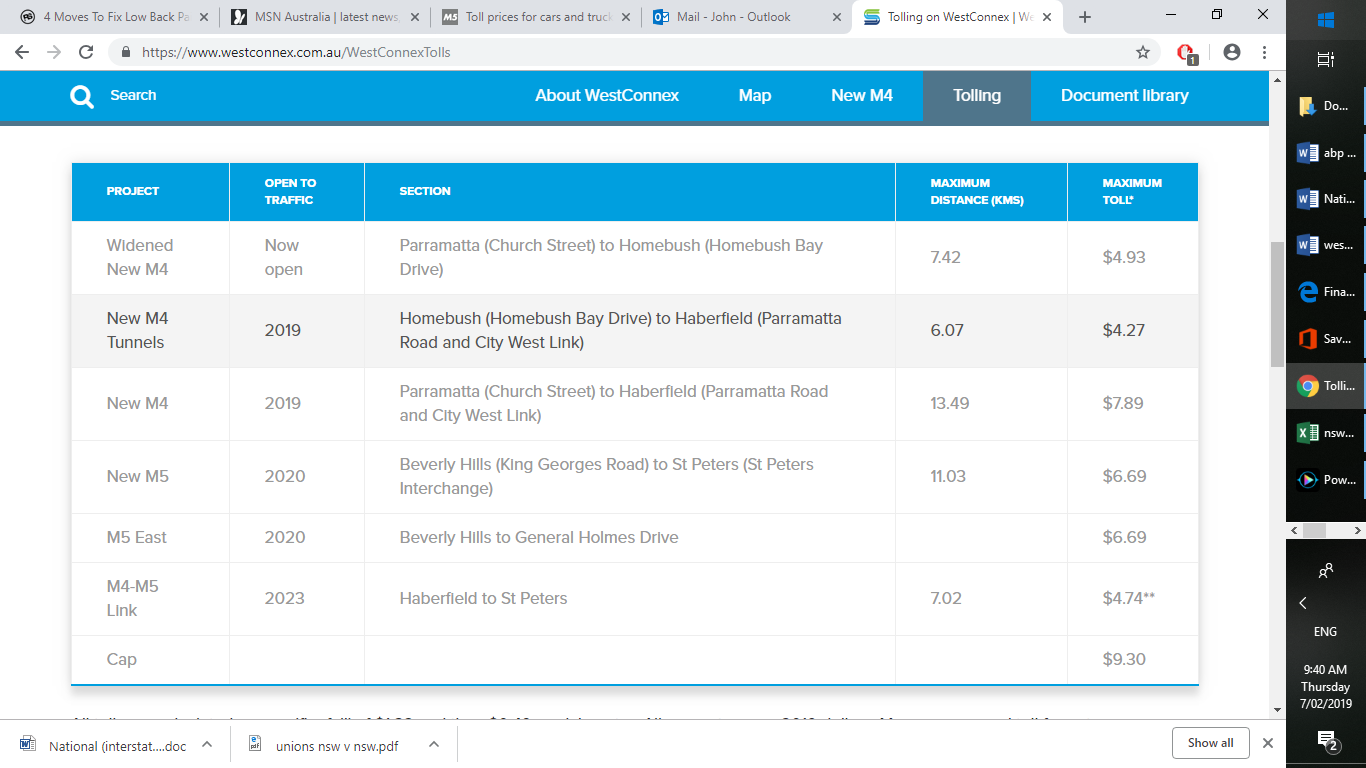
   Inferences of the above include: an unwillingness of government authorities to lessen their control over roads; a habit of officials positing ‘straw men’ to avoid attention being paid to real issues. These matters are reported in the roads articles at thejadebeagle.com.

   The matter of ‘dedicated freight’ took a similar curious turn, with the Commonwealth Department’s research branch, the Bureau of Transport etc. Economics publishing a study purporting to show non-viability of construction of new dedicated freight roads based on the experience of Melbourne and Brisbane ports. It did not consider the most likely candidate for such a road (or lanes) – to Port Botany. Consideration of such a road might have undermined the then announced rationale for at least parts of WestConnex and would certainly have highlighted the failure of the NSW Government, and Infrastructure Australia, to consider reasonable options. See: <https://bitre.gov.au/publications/2014/files/cr_001.pdf> [↑](#endnote-ref-9)
10. At one time there was a ‘planning cap’ on the number of containers allowed to pass through Port Botany – 3.2million twenty-foot equivalent unit (teu) supposedly due to a ‘planning’ view as to the capacity of the land transport system comprising roads such as the M5 and the Botany rail line. This implies the port’s actual capacity was higher than the ‘cap’. The cap was removed prior to the sale of Port Botany.

    <https://portbotany.wordpress.com/2017/11/17/port-botany-growth-predictions-transport-for-nsw-vs-nsw-ports/>

    <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-49434>

    <https://infrastructureaustralia.gov.au/policy-publications/publications/files/M5_F3_M2_Corridors_in_Sydney_final_report.pdf> [↑](#endnote-ref-10)
11. Report, Chapter 3. [↑](#endnote-ref-11)
12. The $16.8bn estimate cited in the Report relates to the 2015 business case. This is the figure cited in Infrastructure Australia’s assessment, which includes Sydney Gateway at a cost of $0.8bn. The Gateway is no longer included in the program, however its cost is more recently estimated at between $2.2bn to $2.6bn i.e. an increase of $1.4bn to $1.8bn. The result would be a WestConnex figure – comparable to the one assessed by Infrastructure Australia of $18.2bn to $18.6bn. This may need some further adjustment, perhaps upwards as the base (excluding Gateway) reflects 2015 costs while the Gateway estimate was reported three years later in 2018: <https://www.rms.nsw.gov.au/documents/projects/sydney-south/sydney-gateway/sydney-gateway-community-update-2018.pdf> [↑](#endnote-ref-12)
13. <https://www.anao.gov.au/work/performance-audit/approval-and-administration-commonwealth-funding-westconnex-project>. [↑](#endnote-ref-13)
14. <https://www.westconnex.com.au/WestConnexTolls>

     [↑](#endnote-ref-14)
15. For M5 west, presently $4.74. <https://m5motorway.com.au/toll-price>. [↑](#endnote-ref-15)
16. <https://www.rms.nsw.gov.au/roads/using-roads/motorways-tolling/paying-tolls/m5-cash-scheme.html> [↑](#endnote-ref-16)
17. <https://www.thejadebeagle.com/paradise-revisited.html>,

    <https://www.smh.com.au/politics/nsw/half-priced-car-registration-for-nsw-drivers-who-spend-15-per-week-on-tolls-20181210-p50l9h.html>

    <https://www.nswlabor.org.au/no_tolls_on_the_m4> [↑](#endnote-ref-17)
18. <https://infrastructureaustralia.gov.au/policy-publications/publications/files/IFWG_Report_FINAL.pdf>

    *‘It is important to differentiate between financing and funding. The term funding, as used in this report, refers to how infrastructure is paid for. Ultimately, there are only two sources of funding for infrastructure, government investment or direct user charges. This is opposed to financing which refers to the way in which debt and/or equity is raised for the delivery and operation of an infrastructure project.’* [↑](#endnote-ref-18)
19. <https://www.woolworths.com.au/Shop/Browse/pet/dog-puppy/dog-treats-milk> [↑](#endnote-ref-19)
20. [**Toll roads - Parliament of Australia** https://www.aph.gov.au/Parliamentary\_Business/.../TollRoads/~/.../TollRoads/c02.pdf](file:///C:\Users\John\Documents\Toll%20roads%20-%20Parliament%20of%20Australia%20https:\www.aph.gov.au\Parliamentary_Business\...\TollRoads\~\...\TollRoads\c02.pdf)

    <https://sydney.edu.au/business/__data/assets/pdf_file/0004/258853/ITLS-WP-16-03.pdf> [↑](#endnote-ref-20)
21. Because King George Rd is the last road before a toll applies and links to roads that are alternative to the M5. See Figure 1. [↑](#endnote-ref-21)
22. See roads articles at thejadebeagle.com [↑](#endnote-ref-22)
23. <https://www.ntc.gov.au/Media/Reports/(68BBFA97-3FAF-4266-A478-5ED625F7559E).pdf> [↑](#endnote-ref-23)
24. <https://johnmenadue.com/john-austen-roads-another-year-of-congestion-causing-deficits/>

    <https://johnmenadue.com/luke-fraser-the-roads-that-ate-the-australian-economy-part-1-of-2/> [↑](#endnote-ref-24)
25. For example:

    <https://www.thejadebeagle.com/if-only-governments-spent-what-they-collected-from-roads.html>

    <https://www.thejadebeagle.com/a-tiresome-chore.html>

    <https://www.thejadebeagle.com/broken-record.html>

    <https://johnmenadue.com/luke-fraser-the-roads-that-ate-the-australian-economy-part-2-of-2/> [↑](#endnote-ref-25)
26. <https://www.aaa.asn.au/wp-content/uploads/2019/01/AAA-Federal-Election-Policy-Platform.pdf> [↑](#endnote-ref-26)
27. <https://www.mynrma.com.au/-/media/documents/advocacy/funding-local-roads.pdf?la=en&hash=16AFA58605854AB57AB944E6F565DAB215304D76> [↑](#endnote-ref-27)
28. <https://johnmenadue.com/john-austen-roads-another-year-of-inaction-and-congestion-causing-deficits/>

    <https://johnmenadue.com/john-austen-the-roads-club-is-having-a-great-spend/>

    road reform as envisaged has road users paying the financial costs of providing roads; an extra $12.3bn in 2016-17. If this scheme followed what was proposed for heavy vehicles, the ‘regulator’ would merely collate road spending bills and allocate them to motorists. The proposed heavy vehicle scheme is at: <https://infrastructure.gov.au/roads/heavy/independent-price-regulation.aspx> [↑](#endnote-ref-28)
29. A potential cross subsidy is implied by the Report’s comment (3.59):

    ‘*tolls raised on each individual section of the WestConnex project will go towards the cost of funding the entire WestConnex scheme*’. [↑](#endnote-ref-29)
30. <https://www.smh.com.au/business/companies/transurban-wins-bid-for-majority-control-of-sydney-s-westconnex-20180831-p500ws.html>

    <https://www.afr.com/business/nsw-treasury-very-fortunate-on-westconnex-sale-20181008-h16d8d>

    <https://theconversation.com/privatising-westconnex-is-the-biggest-waste-of-public-funds-for-corporate-gain-in-australian-history-102790> [↑](#endnote-ref-30)
31. Report, Chapter 3. [↑](#endnote-ref-31)
32. <https://www.audit.nsw.gov.au/ArticleDocuments/351/01_Westconnex_Full_Report.pdf.aspx?Embed=Y>. [↑](#endnote-ref-32)
33. See note iv (above) and e.g. <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2089/Transcript%20-%2015%20October%202018%20-%20Uncorrected.pdf> at p.35. [↑](#endnote-ref-33)
34. <https://www.smh.com.au/national/nsw/westconnex-toll-road-project-panned-for-lack-of-transparency-20181217-p50moa.html> [↑](#endnote-ref-34)
35. Report 3.47. [↑](#endnote-ref-35)
36. Report 2.25. [↑](#endnote-ref-36)
37. Report findings 5, 6, 7. [↑](#endnote-ref-37)
38. Report chapters 5, 6, 7. [↑](#endnote-ref-38)
39. The most recent ‘business case’ the Report refers to is 2015. [↑](#endnote-ref-39)
40. The Report call for this in recommendations 3 and 4. It was discussed in sections 2.75 to 2.88.

    The Report includes a curious comment:

    *‘The committee is not persuaded by NSW Treasury's refusal to publish the base-case financial model for the next 42 years for reasons of commercial confidentiality’*.

    It then claims the (Treasury) reasons would effectively abate over this period, which implies either the Committee is guessing or has a detailed view about the appropriateness of criteria for commercial in confidence redactions and the application of these to information in the (unseen) base case.

    The more likely situation is guesswork as there was no challenge to – rather simply trust of – claims of commercial confidentiality. The Report’s concern appears to be about the length of time confidentiality is claimed, rather than any question about confidentiality itself. [↑](#endnote-ref-40)
41. See the community views sections of Chapters in the Report. [↑](#endnote-ref-41)
42. Infrastructure Australia estimated travel time savings to be $12.9bn, 58% of benefits. To this should be added $1.6bn in travel time reliability or 7% of benefits. Also see: <https://theconversation.com/modelling-for-major-road-projects-is-at-odds-with-driver-behaviour-63603> [↑](#endnote-ref-42)
43. [https://www.abc.net.au/news/2018-04-27/westconnex -stage-three-gets-approval/9704092](https://www.abc.net.au/news/2018-04-27/westconnex%20-stage-three-gets-approval/9704092) [↑](#endnote-ref-43)
44. <https://transportinfrastructurecouncil.gov.au/publications/freight_route_maps.aspx> [↑](#endnote-ref-44)
45. <https://www.smh.com.au/national/nsw/beaches-link-should-not-be-built-transport-expert-20181102-p50dmx.html>

    <https://www.smh.com.au/national/nsw/more-than-westconnex-f6-extension-to-cost-18-billion-20170704-gx49zp.html> [↑](#endnote-ref-45)
46. There is an extensive literature on the topic with one of the more graphic examples being <https://www.citylab.com/transportation/2018/09/citylab-university-induced-demand/569455/>.

    Similarly, closure of some highway lanes has improved traffic in some circumstances – follow the references in <https://en.wikipedia.org/wiki/Braess%27s_paradox> [↑](#endnote-ref-46)
47. <https://catholicsaints.info/patron-saints-of-occupations/> [↑](#endnote-ref-47)
48. <https://www.franciscanmedia.org/saint-frances-of-rome/> [↑](#endnote-ref-48)
49. <https://www.cityofsydney.nsw.gov.au/__data/assets/pdf_file/0008/251891/Report-SGS-Westconnex-Business-Case-Final-Report-160204.pdf> [↑](#endnote-ref-49)
50. Report Chapter 2. [↑](#endnote-ref-50)
51. For the importance of a base case see the Bureau of Infrastructure etc. Economics Bulahdelah By-pass case study in: <https://bitre.gov.au/publications/2018/files/rr_145_vol2.pdfbitre>.

    While the Bypass is considered an ‘achievement’ by the NSW Roads and Maritime Services <https://www.rms.nsw.gov.au/projects/planning-principles/centre-for-urban-design/achievements/pacific-highway-bulahdelah-bypass.html> it would be interesting to hear the Bureau’s thoughts on this in the light of its findings:

    *‘The estimated ex-post NPV was $65m, $738m lower than the ex-ante estimate. Errors made in the ex-ante CBA in relation to travel speed, section length and VOC estimation (E1) were the largest source of over-estimation of the NPV, contributing 81% (or –$599m) to the difference between the ex-ante and ex-post results. The second largest source of variation was from the traffic update (E3), which reduced the NPV by a further $165m.’*

    The benefit cost ratio claimed to by 3.2 was reduced to between 0.7 and 0.5 depending on discount rate i.e. in economic terms – including improvements in safety - the project was a mistake, even with it coming in under budget. The beagle, enjoying the quicker trip the by-pass offers to the Palms (2428), has some issues with the Bureau’s review, which will be discussed in a later article.

    [↑](#endnote-ref-51)
52. <https://johnmenadue.com/john-austen-revolving-doors-at-the-infrastructure-club/> [↑](#endnote-ref-52)
53. <https://www.thejadebeagle.com/wonderland-glory-and-evaluation.html> [↑](#endnote-ref-53)
54. Metro <https://www.thejadebeagle.com/sydney-metro.html>. [↑](#endnote-ref-54)
55. Report Chapter 3. [↑](#endnote-ref-55)
56. <https://www.rms.nsw.gov.au/documents/projects/sydney-south/sydney-gateway/sydney-gateway-community-update-2018.pdf> [↑](#endnote-ref-56)
57. <https://infrastructureaustralia.gov.au/projects/files/Final_WestConnex_Project_Evaluation_Summary.pdf> [↑](#endnote-ref-57)
58. <https://infrastructure.gov.au/roads/heavy/independent-price-regulation.aspx>

    <https://www.thejadebeagle.com/heavy-vehicle-price-regulator.html> [↑](#endnote-ref-58)
59. <https://www.abc.net.au/news/2010-08-27/unwritten-conventions-of-government/960476>

    <https://www.peo.gov.au/learning/fact-sheets/separation-of-powers.html>

    <http://www.law.uwa.edu.au/__data/assets/pdf_file/0006/3096744/03-Robert-French,-Executive-Power-in-Australia-COMPLETED-PDF.pdf>:

    *‘When the draft Constitution was further considered at the 1897 Australasian Federal Convention in Adelaide, Edmund Barton characterised the executive power of the Crown as ‘primarily divided into two classes: those exercised by the prerogative … and those which are ordinary Executive Acts, where it is prescribed that the Executive shall act in Council.’ The second class he characterised as ‘the offsprings of Statutes’’*

    And of a later High Court Case, several of:

    *‘Their Honours also observed that the Commonwealth’s submission on this point appeared to proceed from an assumption that the Executive branch had a legal personality distinct from the Legislative branch with a result that it was endowed with the capacities of an individual. The legal personality, as they said, is that of the Commonwealth of Australia.’*  [↑](#endnote-ref-59)
60. <http://www.law.uwa.edu.au/__data/assets/pdf_file/0011/3090566/CHAPTER-3.pdf> [↑](#endnote-ref-60)
61. <https://www.thejadebeagle.com/williams-case.html> and forthcoming. [↑](#endnote-ref-61)
62. <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_15> [↑](#endnote-ref-62)
63. <https://www.aph.gov.au/senate/~/~/link.aspx?_id=17EF4947DD5D4214BC6C1162200D893E&_z=z> [↑](#endnote-ref-63)
64. <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/The_Biographical_Dictionary_of_the_Australian_Senate/Papers_by_former_Clerk_of_the_Senate_Harry_Evans/Accountability_and_Corporate_Governance_in_the_new_Parliament> [↑](#endnote-ref-64)
65. <https://www.abc.net.au/news/2018-02-28/michaelia-cash-forced-to-withdraw-threats/9492838> [↑](#endnote-ref-65)
66. See notes xliv and xlv (above). [↑](#endnote-ref-66)
67. Unions NSW v New South Wales [2019] HCA 1:

    Gagelar J said:

    *‘ the High Court "should be astute not to accept at face value claims by the legislature and the Executive that freedom of communication will, unless curtailed, bring about corruption and distortion of the political process". Mason CJ said:*

    *"Experience has demonstrated on so many occasions in the past that, although freedom of communication may have some detrimental consequences for society, the manifest benefits it brings to an open society generally outweigh the detriments. All too often attempts to restrict the freedom in the name of some imagined necessity have tended to stifle public discussion and criticism of government."*

    Edelman J said a ‘reform agenda’ did not justify restrictions on communication:

    *’ ….did not suggest that the voices of candidates or political parties at previous elections had been drowned out by campaigns ….. in relation to coal seam gas or electricity privatisation. Indeed, as will be explained below, there was no suggestion of any drowning out caused by a co-ordinated campaign, within the existing caps, against privatisation during the subsequent 2015 election period. The concern was simply that, unlike parties or candidates, third-party campaigners should not have a voice that was significant enough to "work against reformist governments". This second concern echoes the language of the proscribed purpose described by Keane J in Unions NSW v New South Wales, which is the partial suppression of political communication "by reference to the political agenda"*. [↑](#endnote-ref-67)
68. <https://www.smh.com.au/politics/nsw/foley-will-end-secrecy-around-major-sydney-transport-projects-20180620-p4zmof.html> [↑](#endnote-ref-68)
69. <https://johnmenadue.com/john-austen-public-inquiries-into-nsw-infrastructure-projects/>

    <https://www.thejadebeagle.com/the-hair-brained-and-the-otiose.html> [↑](#endnote-ref-69)
70. <https://www.smh.com.au/national/finally-a-plan-that-will-get-sydney-moving-20100212-nxm0.html> [↑](#endnote-ref-70)
71. *“Premier to crack down on disclosures, corruption’,* Sydney Morning Herald, February 2-3 2019.

    [↑](#endnote-ref-71)
72. See Appendix reference to Urban VIII. [↑](#endnote-ref-72)
73. <http://www.unamsanctamcatholicam.com/history/79-history/351-devil-s-advocate.html> below as ‘da’ [↑](#endnote-ref-73)
74. da [↑](#endnote-ref-74)
75. <http://www.jgray.org/docs/promoterfaith.html> below as ‘t’ [↑](#endnote-ref-75)
76. da [↑](#endnote-ref-76)
77. t [↑](#endnote-ref-77)
78. da [↑](#endnote-ref-78)
79. t [↑](#endnote-ref-79)
80. t [↑](#endnote-ref-80)
81. da [↑](#endnote-ref-81)
82. t [↑](#endnote-ref-82)
83. t [↑](#endnote-ref-83)
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86. t [↑](#endnote-ref-86)
87. t [↑](#endnote-ref-87)
88. da [↑](#endnote-ref-88)
89. t [↑](#endnote-ref-89)