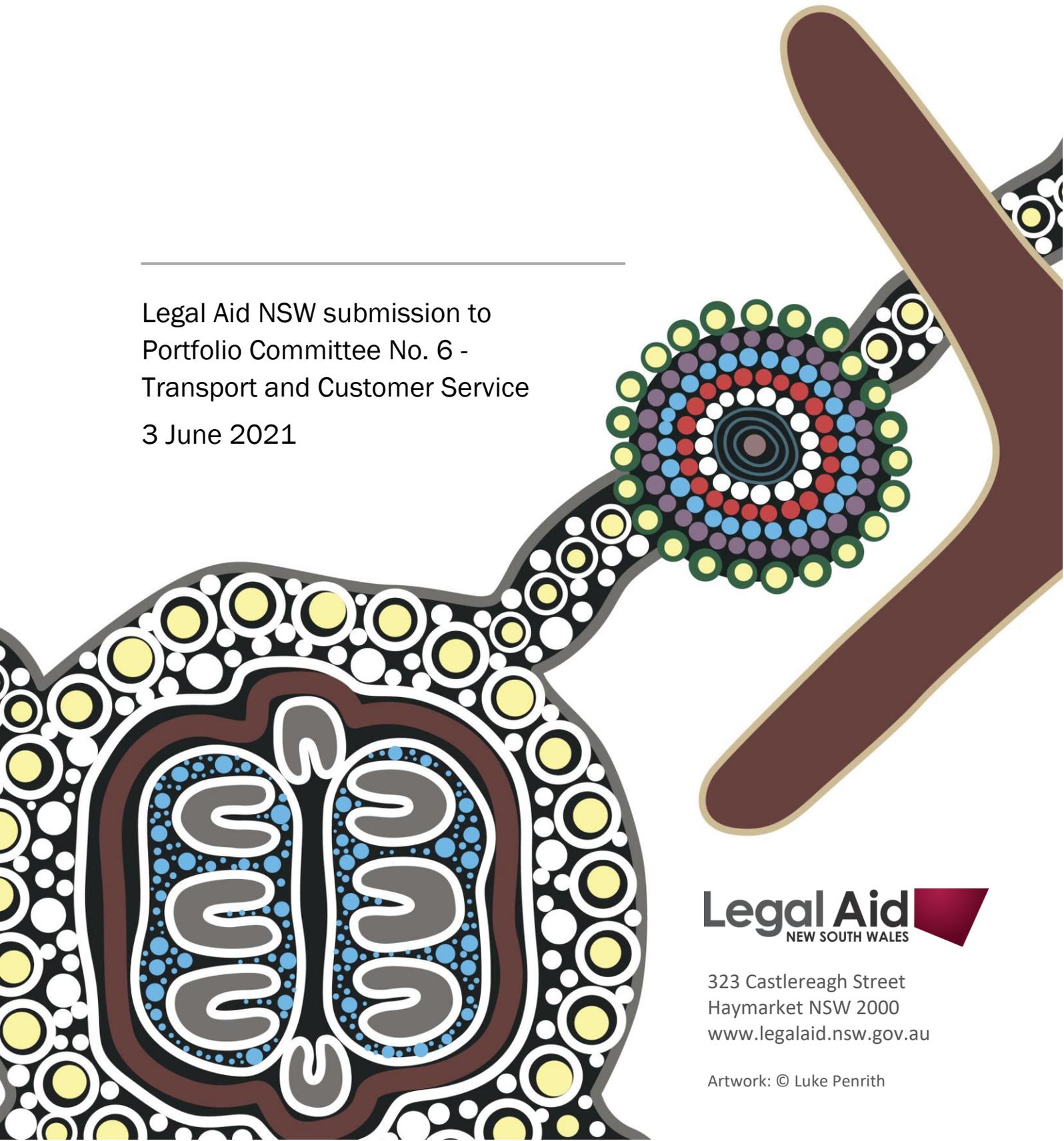


Inquiry into road tolling regimes

Legal Aid NSW submission to
Portfolio Committee No. 6 -
Transport and Customer Service
3 June 2021



Legal Aid
NEW SOUTH WALES

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Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law. Specialist services focus on the provision of Family Dispute Resolution Services, family violence services and the early triaging of clients with legal problems through the Family Law Early Intervention Unit.

Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

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2. Executive Summary

Legal Aid NSW welcomes the opportunity to provide a submission to the NSW Legislative Council Inquiry into road tolling regimes (Portfolio Committee No.6 – Transport and customer service). The Civil Law Division of Legal Aid NSW provides advice clinics, outreach services and legal representation to some of the most vulnerable clients in NSW. Legal Aid NSW is well placed to identify challenges that vulnerable people are facing in accessing the toll roads. A significant proportion of our clients across all our practice areas have a disability or are victims of domestic and family violence.

Through our casework, we see many vulnerable clients who are faced with significant debt as a result of toll road usage which they are unable to manage. Legal Aid NSW frequently sees clients in crisis who have debts of over \$10,000. It is common for approximately two thirds of this debt to consist of administration fees, and one third toll fees. This is because where a toll road user is travelling without an e-tag, each trip incurs a \$10 fee when a toll notice is issued. Up to two notices can be issued for each trip. In our experience, this type debt is often accrued when other aspects of our client's lives are in crisis and clients are struggling with managing day to day affairs. We see clients who are victims of family and domestic violence including elder abuse, clients who are struggling with mental health conditions, clients who have a disability, and clients that are living in financial hardship. Some of our clients are young people, or very elderly. Legal Aid NSW is concerned that the current regime does not respond appropriately to people whose lives are in crisis, and have accrued, or are accruing, significant debt as a result of toll road usage.

Legal Aid NSW considers that three reforms could make a significant difference. First, high administration costs could be reduced if multiple trips could be included on a single notice, avoiding multiple fees and alerting vulnerable customers earlier to the amount of debt that they are accruing. Second, Legal Aid NSW recommends that all toll operators in NSW be subject to a Code of Practice, which includes principles for managing customers who are in financial hardship, and sets out an appropriate approach to dealing with customers who are victims of family and domestic violence and those experiencing elder abuse. Finally, such a Code of Practice should be enforceable against all toll road operators and administered by the Toll Customer Ombudsman.

We provide more detailed feedback to the Committee below.

Recommendations

Recommendation 1

That the Committee consider whether there are existing legislative or other barriers in NSW to allow multiple tolling events to be included on one toll notice, so as to reduce administrative costs. The Committee may be guided by the reforms in the *Tow Truck and Other Legislation Amendment Act 2018* (Qld), to determine whether similar legislative amendments are required in NSW.

Recommendation 2

That NSW adopt a Code of Practice for all toll operators, which includes a framework for managing debt of vulnerable consumers.

Recommendation 3

The role and jurisdiction of the Toll Customer Ombudsman should be expanded to enable it to resolve disputes against all toll road operators in NSW and enforce a Code of Practice, which includes a framework for managing debt of vulnerable consumers.

3. The road tolling regime in NSW and high administration fees

In cases where a vehicle drives on a tollway without a working electronic tag, arrangements must be made with the toll provider to pay the toll within three days. If this is not done, the toll recovery process will start, and the toll road operator will issue a toll notice. If the user does not have an electronic account, a \$10 administrative fee is levied. If the user does not respond to the first toll notice, a final notice may be issued with an additional \$10 fee, which brings the total notice to \$20. The Transport for NSW website states that the administration fee of \$20 is to cover the cost of collecting the toll in this manner.¹ We note that the fee can be reduced from \$20 to \$2.20 by opening and transferring the debt into a toll operator account.

There are steps that a consumer can take to minimise administration fees. For example, they can open an electronic account, or obtain a temporary pass within three days of first travelling on a motorway. However, the clients that we see have multiple crises. For example, the clients that we see are prioritising financial commitments and may be choosing between responding to toll notices and other financial stress such as utilities, food and housing. In our experience, many clients do not understand how much debt they are amassing. Each individual notice is for one toll road use only. Although a \$20 fee may be applied, the overall total may not appear as significant as other debts in our client's lives, such as a utility notice. The total figure is never sent to the consumer on one notice. A notice detailing the total amount owing is not sent to the consumer until recovery action or court proceedings are started. This may consist of contact from a debt collection agency, or Court documents initiating proceedings.

The following case studies demonstrate how some clients that experience vulnerability can easily accrue very large debts, including high administrative fees, which they cannot repay.

¹ See: [Toll notices - Sydney Motorways - Roads and Waterways – Transport for NSW](#)

Case Study: Fina

Fina is a single mother who is a social housing tenant living in the outskirts of Sydney. She is unemployed and had been struggling with mental health issues after a family bereavement. Fina was unable to manage her day-to-day affairs. She received a number of toll notices, but did not pay them.

She attended her local Legal Aid NSW office after she received a Local Court Examination Notice. She found out that judgment had been entered against her for an amount over \$30,000. Fina said that she was unaware that legal action was being taken against her—she did not receive a statement of claim or any notice about default judgment being entered.

Legal Aid NSW helped Fina to find out more about the court action and discovered that only about \$8,000 of the judgment debt related to unpaid tolls. The rest of the debt was for administration fees and legal costs. We applied to have the judgment set aside and eventually settled with the toll debt collection agency.

Case Study: Lee

Lee had significant mental health issues and was unemployed. A toll operator filed a statement of claim against her for toll charges spanning a period of over three years. The toll operator was claiming about \$6,000 in unpaid tolls and almost \$15,000 in administration fees.

Case Study: Ally

Ally is a single mother living in social housing premises. She received a Local Court Statement of Claim for about \$3,000 in unpaid tolls and \$8,000 in administration fees. She said that she did not receive the toll notices and in the period that the tolls were charged her car was being used by someone else. Legal Aid NSW defended Ally in the proceedings, but the court eventually made judgment against her.

Legal Aid NSW submits that monthly notices showing the entire amount owed for the month may be of benefit in encouraging consumers to take action sooner, and would assist vulnerable consumers to understand the significance of each notice received. Where consumers are clearly accruing debt, including regular \$20 administration fees,

notices could include contact details for financial counsellors such as the National Credit and Debt Helpline. Consumers who approach Legal Aid NSW for help are often only seeing the total amount owed for the first time when enforcement action is commenced.

While it is unclear as to whether the *Roads Act 1993* (NSW) or the *Roads Regulation 2018* (NSW) create a barrier to allow multiple tolling events to be included on one toll notice, Legal Aid NSW urges the Committee to consider whether legislative or other policy reform is needed to facilitate this practice, so as to reduce administrative costs. The Committee may be guided by similar legislative reforms in Queensland. The *Tow Truck and Other Legislation Amendment Act 2018* (Qld) amended the *Transport Infrastructure Act 1994* (QLD) that enabled multiple toll events to be included on one toll notice. This aimed to reduce the administration fee associated with the toll notices. The explanatory note to the *Tow Truck and Other Legislation Amendment Bill 2018* states the following:

“The tolling compliance process operates under a legislated framework in the Transport Infrastructure Act 1994 (TI Act). Under this framework when a toll is unpaid, the toll road operator issues a toll invoice to the registered operator of the vehicle. The toll invoice includes unpaid tolls incurred over a set number of days, an image processing fee per unpaid toll, and one casual user invoice fee for issuing the invoice.

If the toll invoice remains unpaid, the toll road operator previously issued an individual demand notice for each unpaid toll, each attracting an administration charge. Consequently, there can be a significant escalation in the amount payable to the toll road operator if multiple tolls remain unpaid after the issue of a toll invoice and multiple demand notices are issued each attracting an administration charge. Amendments to the TI Act are required to provide a clear statutory basis for aggregating unpaid tolls (and associated image processing fees) on demand notices, putting beyond doubt a toll road operator’s ability to issue a single demand notice for multiple unpaid tolls with only one administration charge.”²

The changes introduced to the *Transport Infrastructure Act 1994* (QLD) were that:

1. The administration charge introduced by the gazette cannot exceed the reasonable cost of issuing notice about an unpaid toll, image processing fee and the administration charge
2. The administration charge cannot exceed the cost of administering and collection of the toll
3. Multiple toll events can be incorporated into one toll notice

² Tow Truck and Other Legislation Amendment Bill 2018, Explanatory Note, 2.

Recommendation 1

That the Committee consider whether there are existing legislative or other barriers in NSW to allow multiple tolling events to be included on one toll notice, so as to reduce administrative costs. The Committee may be guided by the reforms in the *Tow Truck and Other Legislation Amendment Act 2018* (Qld), to determine whether similar legislative amendments are required in NSW.

4. Code of Practice for toll operators

In our casework experience, some vulnerable consumers, particular those experiencing domestic and family violence or elder abuse, experience rapidly compounding toll debt because they don't have the capacity to pay the debt, or they do not understand what is needed to take early steps to prevent the situation from escalating further. For example, we have seen victims of family and domestic violence who are fearful of nominating a family member as the driver at the time of receiving the toll notice, because the car was being driven by the perpetrator at the time. By the time debt collection agencies become involved, the size of the debt is often unmanageable. Consumers can also be overwhelmed by the process, because a consumer who is receiving toll notices needs to dispute each individual toll notice, which means repeating their story and circumstance several times over.

Our casework experience suggests that toll operators and third-party debt collection agencies do not always have a framework or process for dealing with victims of domestic and family violence, or consumers experiencing acute financial hardship, in relation to significant toll debt. While Legal Aid NSW has achieved some positive outcomes for our clients, it is unclear whether outcomes in individual cases result in any systemic change across the industry more broadly. Legal Aid NSW supports the creation of a Code of Practice for toll debt that provides a clear framework for managing debt accumulated by vulnerable consumers, including victims of family and domestic violence and elder abuse, and those experiencing mental health issues. The Code of Practice should be binding on toll operators, third party debt collection agencies used by toll operators, and enforced by the Toll Customer Ombudsman. The issues faced by our clients are illustrated by the following case studies.

Case Study: Sandra

Sandra is a victim of domestic and family violence who is currently a protected person in an Apprehensive Domestic Violence Order. When they were together, her partner had bought Sandra a car that was registered in her name. However, her partner exclusively used the car to travel to work using the toll roads. After their separation, Sandra's ex-partner retained the car and continued to use the car. She asked her ex-partner through text messages to pay the tolls but in the context of all her other problems, each individual toll was not a priority for her. She had contacted the Tolls Operator who stated that she can only be assisted through their hardship program if the car was de-registered from her name. However, Sandra could not cancel the car's registration without being able to access the vehicle. Within a period of three months her toll debts increased to over \$10,000. Legal Aid NSW was able to assist Sandra to negotiate an outcome directly with the Hardship Team from the Toll Operator.

Case Study: Tadic

Tadic is a recipient of the Disability Support Pension, and a victim of elder abuse. Her daughter had registered her car in Tadic's name so registration would be cheaper. Tadic was afraid of her daughter, who had a history of violence. Tadic received a number of toll notices, and tried to pass them on to her daughter without directly confronting her. Eventually, Tadic was contacted by debt collectors who asked her to pay nearly \$800 in toll debts. Tadic said that she explained her circumstances to the debt collector, but they were not interested in hearing her story. The debt collectors were pressuring her to enter into a payment plan and were threatening to take her to court to recover the money. She came to Legal Aid NSW to ask for help. Legal Aid NSW had to contact Service NSW to get the details of her car registration. Our solicitors prepared a statutory declaration outlining her circumstances to ask Transurban to recall the debt from the debt collectors and cancel the debts. Eventually the toll debt was waived. However, the process was very traumatic for Tadic.

Legal Aid NSW recommends that NSW adopt a Code of Practice for all toll operators, which includes a framework for managing debt of vulnerable consumers. Sectors such as the banking and insurance sectors, energy and utility have Codes of Practice, which include sections on dealing with vulnerable customers. The Australian Banking Association has an Industry Guideline on identifying and responding to financial abuse,

which provides guidance on appropriate family and domestic violence policies.³ We suggest that similar guidelines should be adopted for toll operators in NSW.

Recommendation 2

That NSW adopt a Code of Practice for all toll operators, which includes a framework for managing debt of vulnerable consumers.

³ https://www.ausbanking.org.au/wp-content/uploads/2019/05/ABA_Industry_Guideline_-_Financial_Abuse_and_Family_and_Domestic_Violence-Nov-2016.pdf

5. The role of the Tolling Customer Ombudsman

The Tolling Customer Ombudsman (TCO) is not a government agency and can only deal with disputes against toll road operators who have agreed to be part of the TCO dispute resolution scheme. In NSW, the only toll operator signed up to the TCO scheme is Linkt Sydney. This leaves toll roads operated by Transport for NSW and westlinkM7 as not part of the scheme. Legal Aid NSW considers that Ombudsman schemes can provide an accessible, efficient and effective forum for dispute resolution. The creation of a Code of Practice would provide a clear framework for managing financial hardship and vulnerable customers and expanding the role of the Tolling Customer Ombudsman would ensure there is an appropriate agency to enforce the Code of Practice.

The following case study demonstrates the need for an alternative dispute resolution forum, to resolve toll debt.

Case Study: Janet

Janet is an Aboriginal woman. She had a toll debt of over \$21,000 that included \$16,000 in administrative fees. In 2017, Janet had negotiated with the debt collector and reached an arrangement to \$8,000 in full settlement of the debt. However, this arrangement was never confirmed in writing and later she received another letter of demand from a different debt collector for the rest of the debt. She tried to call the toll operator who denied the existence of any arrangement. Legal Aid NSW assisted the client to submit a complaint to the Tolling Customer Ombudsman. Janet stated that the Tolling Ombudsman recommended a significant discount from the remaining debts, but she remained liable for toll debts. Legal Aid NSW assisted Janet and we were able to negotiate an outcome, so the matter did not proceed to Court.

Legal Aid NSW recommends that consideration be given to expanding the role of the TCO to enable it to resolve disputes against all toll road operators and enforce Codes of Practice, including a framework for responding to debt incurred by consumers struggling with financial hardship, mental illness, and domestic and family violence.

Recommendation 3

The role and jurisdiction of the Toll Customer Ombudsman should be expanded to enable it to resolve disputes against all toll road operators in NSW and enforce a Code of Practice, which includes a framework for managing debt of vulnerable consumers.



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