

**Submission to:** Department of Climate Change and Energy Efficiency

**Title:** Draft clean energy legislative package

**Date:** 22 May 2011



## **Summary of recommendations**

### **Recommendation 1**

The amount of carbon reduction applied to fuel tax credits should be adjusted once a year on 1 July.

### **Recommendation 2**

The carbon price regulator should be required to publish the carbon price adjustment figure at least three months and preferably six months before the 1 July adjustment take place.

### **Recommendation 3**

The *Fuel Tax Act* should be amended to provide that:

- adjustments to the road user charge take effect from 1 July each year;
- the transport minister shall issue the legislative instrument setting the amount of the charge by the same date the official carbon reduction figure is required to be announced.

### **Recommendation 4**

The ATO should publish a consolidated figure for the fuel tax credit rate applying to trucking operators as early as possible before 1 July (and 1 January if recommendation 1 is not adopted).

### **Recommendation 5**

The guidelines for the Information Assistance Grants program should be expanded to enable industry association like the ATA and its member associations to seek funding to develop standard contracts and invoices that reflect the introduction of carbon pricing.

## 1. About the Australian Trucking Association

The Australian Trucking Association is the peak body representing trucking operators. The ATA's direct members include state and sector trucking associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology.

In total, the ATA represents many thousands of trucking businesses, both large and small.

## 2. The clean energy legislative package

The Australian Government's clean energy legislative package would establish a cap and trade system to reduce Australia's greenhouse gas emissions.

Although only the largest businesses would be required to buy carbon permits, many business fuel users, including small and micro businesses, would be subject to a carbon price through the fuel tax credit and excise/customs duty systems.

Under the *Fuel Tax Act*, trucking businesses whose vehicles meet one of four environmental criteria are able to claim fuel tax credits through their business activity statements. The fuel tax credit rate is currently 15.043 cents per litre, equal to the total excise on fuel (38.143 cents per litre) less a road user charge determined by the Minister for Infrastructure and Transport.

The draft *Fuel Tax Legislation Amendment (Clean Energy) Bill 2011* would establish a second reduction from the fuel tax credits available to a business: the carbon reduction amount. After the introduction of market-based carbon pricing on 1 July 2015, the carbon reduction amount would be determined twice a year by applying a conversion formula to the average carbon price over the previous six months.

Under this Bill, trucking operators would be exempt from the carbon price (ie: their carbon reduction would be nil).

The Government has announced, however, that it will introduce legislation at a later date to bring heavy vehicles into the scheme from 1 July 2014, two years after other business fuel users like the aviation, rail and maritime sectors.

## 3. The ATA's position on carbon pricing

The ATA and its members have welcomed the industry's two year exemption from carbon pricing. In our view, the trucking industry should be **permanently exempt**, because:

- 85 per cent of trucking businesses are small businesses with fewer than five employees. These businesses are entirely comparable to the other small businesses that are exempt from the carbon price, except they happen to operate trucks weighing more than 4.5 tonnes.
- Trucking businesses face incredibly tough business conditions. Freight rates are lower in real terms than they were in the 1970s, but business costs have increased substantially.
- Increasing the effective price of fuel for trucking operators will increase the price of almost everything. The trucking industry carries 75 per cent of Australia's domestic freight, including every item on the shelves of every supermarket.
- The trucking industry has already spent millions on improving its environmental outcomes. A recent report commissioned by the ATA shows:
  - the industry's greenhouse gas emissions fell 35 per cent per billion tonne kilometres between 1990 and 2011, as a result of improvements in engine technology and the use of safer trucks with greater capacity.
  - emissions of carbon monoxide, hydrocarbons, nitrogen oxides and particulates from new engines fell dramatically between 1995 and 2010. For example, particulate emissions from Euro 5 engines (mandated from 1 January 2011 for all new trucks) are 92 per cent lower than the particulate emissions from new model trucks built in 1995.

The ATA will continue to press its arguments for a permanent exemption in other forums. The recommendations in this submission are premised on the Government proceeding with its existing policy.

#### **4. Ensuring that trucking operators can pass on the carbon price**

Under the Government's plan, the carbon price would be set by the market from 1 July 2015.

The draft *Fuel Tax Legislation Amendment (Clean Energy) Bill 2011* and section 196 of the draft *Clean Energy Bill* set out how the amount of carbon reduction applied to fuel tax credits would be adjusted.

Under the draft Bills, the amount of carbon reduction would be adjusted on 1 July and 1 January of each year.

The carbon price applying in the half-year beginning 1 July would be the average of the auction results in the six months from the previous December to May.

The carbon price applying in the half-year beginning 1 January would be the average of the auction results in the six months from the previous June to November.

Under section 196 of the draft *Clean Energy Bill 2011*, the carbon price regulator would publish the official versions of those average figures within seven days of the end of May and November respectively.

This would give businesses about three weeks to notify their customers and adjust their rates before the effective fuel tax rate changed on 1 July or 1 January.

This adjustment mechanism would create serious difficulties for trucking operators seeking to adjust their freight rates, because of the contract arrangements used in the industry.

##### **4.1 Rate setting in the trucking industry**

Freight rates and fuel surcharges in the trucking industry are set through a range of mechanisms, with different sectors in the industry taking very different approaches to price setting. The one constant is that it would be very difficult for businesses to adjust their rates within the three week period envisaged by the draft Bills.

The methods of setting prices in the industry include:

###### *Pricing on a per job basis*

In the livestock transport sector, freight rates are commonly set on a per-job basis between the trucking operator and the primary producer involved. Long-term contracts are not common even among larger operators.

The agreed price is often struck on the basis of what seems fair given the relationship between the transporter and the primary producer rather than a transactional calculation of costs and profit margins. As primary producers are in a trade-exposed industry, livestock transporters can find it takes a lengthy period to persuade them to accept an adjustment in their rate.

These businesses need to know about carbon reduction adjustments as far ahead as possible. Ideally, those adjustments need to occur at the same time as other tax changes, so both customers and operators are focused on tax issues when they talk about the price of the next job.

###### *Fixed price contracts*

In some sectors of the industry, including retail distribution, many ATA and association members work on fixed price contracts. These are typically struck once a year, and require the operator to forecast how its costs will change over the period.

Some contracts include clauses for varying prices, but there may be restrictions on how often this can occur. For example, some retail contracts only allow price changes every six months, so the retailer can offer its customers fixed prices for a foreseeable period of time.

Other contracts, such as the standard terms and conditions for a well known hardware retailer, require 45 days notice of any price change and ban price changes during December-January.

#### *Fuel levies*

The ATA's recommended approach to dealing with changing fuel prices, and changes to the fuel tax credit rate, is for trucking businesses to impose a fuel levy on top of their contracted freight rate.

Fuel levies are typically calculated as a percentage adjustment to the contracted rate, based on the change in the price of fuel and the fuel tax credit rate, as well as the contribution of fuel to the trucking company's total costs.

Some ATA and association members adjust their fuel levies every week. Others make fortnightly or monthly adjustments.

For subcontractors, fuel levies are often set by the prime contractor or even by the customer. The formulas used to determine these fuel levies are not necessarily transparent.

The ATA's feedback from its members and association members is that three weeks' notice is not long enough for most businesses to secure fuel levy adjustments from their customers.

#### *Arbitrated freight rates*

NSW, Victoria and Western Australia have laws in place that regulate owner drivers. The Victorian and Western Australian laws set guideline rates; the NSW system involves the arbitration of award-like contract determinations.

The freight rates in these contract determinations can be varied on application to the NSW Industrial Relations Commission. These applications can involve a considerable lead time.

For example, the General Carriers' Contract Determination prescribes that the TWU can apply to the Commission for a variation in sufficient time for it to be made on or before 1 June and 1 December each year. These variations take into account movements in costs occurring up to the preceding 31 October (for the 1 December variation) or 30 April (for the 1 June variation).

These 1 June and 1 December dates have only rarely been met.

As with any tribunal process, there is often vigorous debate between the parties about the adjustment that should be applied. It is not unknown for these debates to take many months to be resolved as an adjustment to a determination. Determinations are likely to take even longer to adjust now most state awards have been replaced by modern awards under the national award system.

It is most unlikely that the contract determination process in New South Wales could be timed to take place within a three week window in June and December each year.

#### **4.2 A better process for adjusting the carbon reduction amount**

Given the commercial and arbitral arrangements for setting contracts in the trucking industry, the ATA considers that a better approach to adjusting the carbon reduction amount would be as follows:

##### *Adjust the carbon reduction amount once a year on 1 July*

It is clear from the review of trucking industry contracts in section 4.1 that expecting businesses to adjust freight rates on 1 January with three weeks' notice is unrealistic. Some contracts explicitly prevent rate changes during December and January, for sound business reasons.

In contrast, businesses expect tax changes to occur on 1 July, including fuel tax credit changes, where trucking operators and their customers now have three years of experience with the road user charge changing on this date.

Many contracts are also renegotiated in the lead up to 1 July, with the new contract commencing in the new financial year.

### **Recommendation 1**

The amount of carbon reduction applied to fuel tax credits should be adjusted once a year on 1 July.

#### *Provide operators with more time to prepare for rate changes*

It is also clear from section 4.1 that three weeks' notice of changes to the carbon reduction amount is not sufficient for most operators to pass on the change in their costs.

For example, operators on fixed term contracts need time to renegotiate them; operators subject to contract determinations must wait until the arbitral process has completed its work.

### **Recommendation 2**

The carbon price regulator should be required to publish the carbon price adjustment figure at least three months and preferably six months before the 1 July adjustment take place.

## **5. Interaction between the road user charge and the carbon price**

The fuel tax credit rate for trucking operators is also affected by the road user charge, set by the Minister for Infrastructure and Transport under section 43-10(8) of the *Fuel Tax Act*.

The Act does not specify when the road user charge is to be adjusted, although it cannot be changed more than once in a financial year. The Act does not specify how much notice needs to be given of a change to the road user charge, although the minister must consult with the industry for at least 60 days before determining the rate.

There have been three adjustments to the road user charge as a result of instruments made under section 43-10. In all these adjustments, the legislative instrument was made and registered just days before the rate change took effect, as the table below shows:

**Road user charge determinations, 2009-2011**

|      | Date made | Date registered | Date of effect |
|------|-----------|-----------------|----------------|
| 2009 | 24 June   | 26 June         | 1 July         |
| 2010 | 24 June   | 28 June         | 1 July         |
| 2011 | 20 June   | 22 June         | 1 July         |

This practice causes difficulties for both the industry and the Australian Taxation Office.

It is easier for trucking operators to convince their customers of the merits of a rate change when they have an official instrument from the Government rather than a consultation figure. Many customers and operators look for guidance about the fuel tax credit rate to the ATO website, but the ATO is unable to alter its published information until the legislative instrument is issued.

The introduction of a second adjustment to the fuel tax credit rate, the carbon reduction amount, would have the potential to compound the confusion, particularly if the adjustment figures are available at different times. To avoid this confusion, the ATA recommends that:

### Recommendation 3

The *Fuel Tax Act* should be amended to provide that:

- adjustments to the road user charge take effect from 1 July each year;
- the transport minister shall issue the legislative instrument setting the amount of the charge by the same date the official carbon reduction figure is required to be announced.

### 6. Informing trucking operators and customers about carbon pricing issues

Given the way contracts are determined in the trucking industry, it is particularly important for the Government and industry associations to develop effective ways of notifying businesses of the carbon reduction amount as it changes over time.

Because of the interaction between the road user charge and the carbon reduction amount, it would be particularly important for the ATO can provide a consolidated figure for the fuel tax credits available to trucking operators as early as possible before they are adjusted.

There is also a need for trucking businesses to consider changing their contract arrangements, if these can be negotiated. Trucking businesses may well see value in providing their customers with standard invoices that specify the amount of effective carbon tax payable in each bill.

The Government has announced a \$40 million program of Information Assistance Grants to enable industry associations and non-government organisations to bid for assistance to inform their members about practical measures they can take to reduce their energy costs.

The guidelines for this program should be expanded to enable industry association like the ATA and its member associations to seek funding to develop standard contracts and invoices that reflect the introduction of carbon pricing.

### Recommendation 4

The ATO should publish a consolidated figure for the fuel tax credit rate applying to trucking operators as early as possible before 1 July (and 1 January if ATA recommendation 1 is not adopted).

### Recommendation 5

The guidelines for the Information Assistance Grants program should be expanded to enable industry association like the ATA and its member associations to seek funding to develop standard contracts and invoices that reflect the introduction of carbon pricing.