



REVIEW OF THE OWNER DRIVERS AND FORESTRY CONTRACTORS ACT 2005

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 31 JANUARY 2017

1. About the Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body representing trucking operators. Its members include state and sector associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology. Through its members, the ATA represents many thousands of trucking businesses, ranging from owner drivers to large fleets.

2. Introduction

The *Owner Drivers and Forestry Contractors Act 2005* (Vic) and its subordinate legislation establish a light-handed regime for supporting the state's owner drivers.

The regime includes indicative rates and costs schedules, which are developed under s 14 of the Act and revised at least annually. The schedules assist owner drivers and hirers to better understand the typical operating costs of an owner driver business and to inform their negotiations.

The schedules make it clear that the rates are indicative, and that there can be substantial differences in cost due to:

- the age, current capital value (or both) of the vehicles involved
- the vehicles' financing arrangements
- the number of hours worked each year.¹

The schedules also leave it up to owner drivers to determine their desired return on investment.²

The ATA supports this approach to assisting owner drivers in their commercial dealings.

This submission raises three issues with respect to the regime: technical issues concerning its handling of fuel tax credits (section 3) and recipient created tax invoices (section 4) and, more broadly, the ATA's concerns about the possible introduction of fixed instead of indicative rates (section 5).

¹ Transport Industry Council, "Rates and cost schedule 2016-17: semi-trailer (bogie drive, 6-axle)," in *Victoria Government Gazette*, 13 October 2016, 2577.

² Transport Industry Council, 2583.

3. Inclusion of fuel tax credits in the indicative rates

Under the *Fuel Tax Act 2006* (Cth), on-road users of heavy vehicles weighing more than 4.5 tonnes can claim fuel tax credits through the BAS system. Heavy diesel vehicles used on public roads must meet one of four environmental criteria.³

From 1 August 2016 to 31 January 2017, the fuel tax credit rate for fuel used for travelling on public roads was 13.7 cents per litre. The rate will increase to 14.2 cents per litre on 1 February 2017 to reflect the biannual indexation of the fuel tax rate.

These tax credits are a vital part of the cost structure of many small trucking businesses, and are generally factored into their freight rates.

The rates and cost schedules issued under the Act do not provide owner drivers with advice on the potential impact of fuel tax credits on their cost structures. The fuel prices for the vehicles potentially eligible for the credits are based on ex-GST diesel prices only.⁴

To increase their usefulness, the rates and costs schedules should be amended to include information about fuel tax credits. The schedules should warn owner drivers of the environmental criteria for heavy diesel vehicles and the need to be aware of the current fuel tax credit rate, given it can vary up to three times per year.

The Victorian owner driver information booklet should also be updated.

Recommendation 1

The rates and cost schedules for vehicles weighing more than 4.5 tonnes should include information about fuel tax credits.

The Victorian owner driver information booklet should also be updated.

4. Recipient created tax invoices

Section 14 of the Owner Drivers and Forestry Contractors Code of Practice warns that a contract term allowing a hirer to pay an owner driver more than 30 days after the presentation of a properly completed invoice is likely to be considered unjust under s 44(1)(g) of the principal Act.

The ATA strongly supports this guidance, and has separately argued that 30 day payment terms for small trucking businesses should be mandated through a code of conduct under Part IVB the *Competition and Consumer Act* (Cth).⁵

³ *Fuel Tax Act 2006* (Cth), s 41-25.

⁴ See, eg, Transport Industry Council, 2580, where the schedule is based on the retail diesel fuel price as at 3 June 2016.

⁵ ATA, *Code of conduct the answer to truck market power issues*. Media release, 13 April 2016. [Link](#).

The guidance in the Victorian code is written on the basis that owner drivers issue their own tax invoices. Commercially, however, some large hirers choose to issue recipient created tax invoices (RCTIs).

The use of RCTIs could enable hirers to artificially extend their payment terms by delaying the issue of those invoices.

The ATA considers that s 14 of the code should be amended to provide guidance warning against this practice.

Recommendation 2

Section 14 of the Owner Drivers and Forestry Contractors Code of Practice should be amended to warn against using RCTIs to artificially extend payment terms beyond 30 days.

5. Fixed payment rates

The rate of fatal articulated truck crashes fell 80 per cent between 1982 and 2015, despite the enormous growth in the number of trucks on the road.⁶

Despite the industry's improving safety record, it has been asserted – most notably in the debate about the *Road Safety Remuneration Act* (Cth) – that fixed rates would improve safety by ensuring that drivers do not have remuneration related incentives to work in an unsafe manner.⁷

In reality, the link between fixed rates and safety outcomes is not so clear, because:

- truck drivers and trucking businesses work in an environment where many safety hazards are out of their control.

In its 2015 major accident investigation report, for example, Australia's leading truck insurer, NTI, concluded that other vehicles were at fault in 84 per cent of the fatal multi-vehicle accidents in its sample.⁸

On another front, the intergovernmental road research agency, Austroads, has concluded that the road is a causation factor in about 30 per cent of all crashes, and is known to be a factor in the severity outcome of 100 per cent of crashes.⁹

- the relationship between work hours, fatigue and accidents is complex. NTI's 2015 major accident research, for example, showed that more than 60 per cent

⁶ ATA, *Fatal truck crash rate falls 80 per cent*. Media release, 17 May 2016. Figures sourced from the University of Adelaide Centre for Automotive Safety Research. [Link](#).

⁷ *Road Safety Remuneration Act 2012* (Cth), s 3.

⁸ National Transport Insurance, *2015 major accident investigation report*, NTI, Brisbane, 2015, 7. [Link](#).

⁹ Austroads, *Road Geometry Study for Improved Rural Safety*, Technical report AP-T295-15, 2015, 1. [Link](#).

of the 2013 calendar year crashes it examined occurred within 250 km of the point of departure.¹⁰

The National Transport Commission (NTC) and the CRC for Alertness, Safety and Productivity are now collaborating on a research project to evaluate scientifically the impact of the current HVNL fatigue laws.

Against the complexity of the asserted link between fixed rates and safety, PricewaterhouseCoopers found in 2016 that the Commonwealth road safety remuneration system had an overall **BCR of only 0.38, with a net cost of \$2.3 billion in NPV terms over 15 years from 2012.**¹¹

In other words, the road safety remuneration system cost resources that could have been used for other purposes, including practical, evidence-based road safety measures that would have been more effective.

PwC pointed to submissions to the Road Safety Remuneration Tribunal finding that its payments order would increase costs by 20-30 per cent, making owner drivers uncompetitive.¹²

The PwC also noted practical concerns about setting fixed rates, particularly in relation to backloading and split loads.¹³

It should be noted that the review deliberately sought to maximise the number of accidents imputed to heavy vehicle drivers in its analysis, to allow a generous estimation of the benefits attributable to the road safety remuneration system.¹⁴

Given the very poor BCR of the Commonwealth road safety remuneration system, and the likely similar result if fixed rates were introduced in Victoria, the ATA recommends:

Recommendation 3

To maintain a competitive and fair operating environment for small trucking businesses in Victoria, the review should recommend against the imposition of fixed rates.

Owner drivers should be able to set their own rates, guided by the indicative rates and costs schedules published under s 14 of the Act.

¹⁰ NTI, 22.

¹¹ PricewaterhouseCoopers, *Review of the road safety remuneration system: final report*. January 2016. v. [Link](#).

¹² PwC, 50.

¹³ PwC, 52.

¹⁴ PwC, 84.

6. Practical measures to increase safety

The Victorian Government and the trucking industry are supporting a host of practical measures to improve road and truck driver safety. These measures include:

- the Victorian Government's **\$1.1 billion investment in its Toward Zero road safety strategy**, which is based on safe system concepts and proven measures, such as the roll out of barriers or audio-tactile line marking on more than 2,500 km of the rural road network.¹⁵
- **reforms to the heavy vehicle chain of responsibility laws**, which will now include a strong general safety duty. The reforms will extend chain of responsibility to vehicle maintenance and roadworthiness, and massively increase maximum penalties for the most serious cases to bring them into line with the other national safety laws. The reforms will come into effect in the HVNL states, including Victoria, in the first part of 2018.
- engaging with industry, including the ATA and VTA, through its Truck and Vulnerable Road Users Working Group process to develop **special measures and education campaigns to improve the safety of the construction vehicles** involved in its Melbourne infrastructure rollout.

The Victorian Government and industry should press on with these practical, evidence-based safety measures.

7. ATA contact

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¹⁵ Victorian Government, *Towards Zero 2016/2020: Victoria's road safety strategy and action plan*. 5. [Link](#).