

Submission to: Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education

Title: Proposed methodology for setting the international reference price for the per-tonne carbon price equivalent: position paper

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1. Introduction

The trucking industry is currently exempt from the carbon price; however, the Government intends to bring the heavy vehicle industry into the carbon price system from 1 July 2014.

The tax would be administered through a reduction in the fuel tax credit industry can claim through business activity systems. Once the fixed price period ends the carbon reduction amount would be determined twice a year by applying a conversion formula to the average carbon price over the previous 6 months.

The implementation section of the department's position paper presents the same issues for the trucking industry that were identified in the 2011 submission to the Department. The Department did not address these issues in 2011, nor were they addressed in the joint party inquiry into the clean energy package.

2. Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body that represents the trucking industry. Its members include the state and sector based trucking associations, some of the nation's largest transport companies, and businesses with leading expertise in truck technology.

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

3. Recommendations

Recommendation 1

If a carbon price is to be implemented, the carbon price 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 takes place.

Recommendation 3

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

- adjustments to the road user charge take effect from 1 July each year
- the Minister for Transport 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.

4. The ATA's position on carbon pricing

The trucking industry and its clients welcomed the current two year exemption from the carbon price. The ATA believes the trucking industry should be permanently exempt from the carbon tax because:

- 85 per cent of trucking businesses are small businesses with fewer than five employees. These businesses are entirely comparable to other small businesses exempt from the carbon price, except they happen to operate trucks weighing more than 4.5 tonnes.
- 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.

- 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
- Industry has already spent millions on improving its environmental outcomes. A report commissioned by the ATA shows¹:
 - 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 from the proposed tax in other forums. The recommendations in this submission are premised on the Government proceeding with its existing policy.

5. Implementation issues for trucking operators and the industry

Industry contract setting

The *Fuel Tax Legislation Amendment (Clean Energy) Act 2011* and section 196 of the *Clean Energy Act 2011* set out how the amount of carbon reduction applied to fuel tax credits would be adjusted. Under the Bills, the amount of carbon reduction would be adjusted on 1 July and 1 January each year.

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

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

This would mean contract arrangements would have to change drastically for the trucking industry and its clients. It would also compromise business forecasts of turnover and profit since rates would only be stable for six months.

The trucking industry is diverse, and uses many mechanisms that are used to set freight rates and fuel surcharges. Different sectors of the industry take very different approaches to price setting. However, regardless of the sector or the mechanism for setting rates, it is very difficult for businesses to adjust their rates within the three week period envisaged by the Bills.

Contracting on a per job basis

The livestock transport sector commonly sets freight rates 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 on a prescribed calculation of costs and profit margins. As primary producers are in a trade-exposed industry, livestock transporters find it may take a lengthy period to persuade customers to accept an adjustment in their rate.

Such 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.

¹ Environmental credentials of the Australian trucking industry - Centre for International Economics Canberra & Sydney - 30 May 2011
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For example, some retail contracts only allow price changes every six months, so the retailer can offer 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

Fuel levies are also used by some businesses to deal with changing fuel prices, and changes to the fuel tax credit 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 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

Finally, state legislation which dictates contract practices of owner drivers should be taken into account by the Department. 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.

It is clear from the review of trucking industry contracts 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.

The ATA considers that a better approach to adjusting and implementing the carbon price amount would be to adjust the carbon reduction amount once a year on 1 July. The Carbon price regulator should also publish the carbon price adjustment figures at least three months before the 1 July adjustment.

Recommendation 1

If a carbon price is to be implemented, the carbon price 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 takes place.

5.2 Fuel excise 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 responsible minister must consult with the industry for at least 60 days before determining the rate.

There have been four adjustments to the road user charge as a result of instruments made under section 43-10. In most of 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, 2009-2012

	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
2012	10 May	14 May	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 on 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.

Recommendation 3

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

- *adjustments to the road user charge take effect from 1 July each year*
- *the Minister for Transport 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.*

5.3 Informing trucking operators and customers about the fuel tax credit rate

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 any carbon price 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 to provide a consolidated figure for the fuel tax credits available to trucking operators as early as possible before they are adjusted.