NATROAD

NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

Heavy Vehicle Charges determination: consultation regulation impact statement

24 August 2021

Executive Summary:

The National Road Transport Association (NatRoad) is pleased to respond to the National Transport Commission's (NTC) consultation regulation impact statement relating to proposed heavy vehicle charges from 2022-23 (CRIS).

NatRoad strongly believes that road charging reform must take into account all road users and provide a better, more equitable system for paying for the costs of road construction.

Until the Heavy Vehicle Road Reform (HVRR) process is implemented, we support a fixed price increase of a 3.5% or CPI increase (whichever is lower) for heavy vehicle charges that provides cost certainty and better equity to the heavy vehicle industry.

Our industry has suffered from the impact of bush fires, floods and now COVID-19, as acknowledged by Transport Ministers. These events and difficult industry conditions have constrained the industry's ability to cope with increased costs, inclusive of government charges.

In simple terms, the PAYGO model for heavy vehicle charges is broken. It should not be used other than as a 2021-22 baseline on which to calculate future HV charges.

It assumes that all Australia's roads are sealed when the majority are not. It operates to include all costs incurred in one year in the next year's charges. Capital and current costs are not separated.

And it results in payments flowing to States and Territories that do not take into account the **real** cost recovery need for road construction and maintenance as that is related to heavy vehicle usage.

A new model is needed to underpin the HVRR process. In the meantime, a fixed price increase is a better outcome than PAYGO or alternative models.

Introduction

1. The National Road Transport Association (NatRoad) is pleased to respond to the National Transport Commission's (NTC) consultation regulation impact statement relating to proposed heavy vehicle charges from 2022-23 (CRIS).[1] We also thank the NTC for conducting a NatRoad webinar on this subject on 28 July 2021 where feedback on the CRIS was provided by participants. NatRoad is also a member of the Australian Trucking Association (ATA) and assisted with the development of that organisation's submission.

2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.

3. This submission responds to the options set out in the CRIS for setting heavy vehicle charges. A simple solution is proffered as an alternative to the CRIS' options. We submit that adding the rate of inflation to current HV charges until the Heavy Vehicle Road Reform (HVVR) proposals are in place would be a better outcome than any that might follow from the application of the CRIS' options.

4. We note, however, that a similar proposal has been set out in the CRIS. The CRIS has as an implementation option a three-year price path with a fixed percentage increase each year. The illustrations in the CRIS are respectively for a 3.5% and a 6% fixed price increase.[2] In this submission, we indicate our preference for the **current charges** to be increased at the rate of inflation or 3.5% (whichever is the lower) until the HVRR process delivers a new model for heavy vehicle charges. Alternatively, the lower cost fixed price increase of 3.5% set out in the CRIS is supported **no matter the particular interim model utilised. For simplicity, however, we recommend the charging model in place before HVRR is implemented remains the current PAYGO model despite its inadequacies, some of which are discussed in this submission.**

5. The NatRoad position is that it is futile to continue to attempt to determine cost responsibility based on ex post State and Territory road expenditure. This leads to the situation where charges are driven solely by governments' spending plans, even where those plans are inconsistent with the industry's requirements (such as the need for more expenditure on road maintenance or sealing rather than particular newly constructed roads) or industry's ability to pay.

6. This solution, we submit, is contemplated by the federal Government's cost recovery guidelines[3], in particular relating to partial cost recovery as follows:

   Australian Government entities should generally set charges to recover the full cost of providing specific activities. Partial cost recovery, which occurs when less than the full cost of a government activity is recovered, may be appropriate in some circumstances where:

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1 https://www.ntc.gov.au/sites/default/files/assets/files/Heavy%20Vehicle%20Charges%20Determination%202021%20-%20Regulation%20Impact%20Statement.pdf

2 Id at p82 et seq

3 https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304

a. *charges are being 'phased in'*

b. *full cost recovery would be inconsistent with community service obligations endorsed by the Australian Government.*

c. *the Australian Government has made an explicit policy decision to charge for part of the costs of an activity.* [4]

7. In relation to applying the specific factors in the prior extract to the current context: first, there is a "phasing in" from the current inadequate cost model to HVRR. Secondly, the provision of roads and deliveries by trucks on those roads is a vital community service especially for rural and regional communities. There is a community service obligation implicit in the provision of roads, albeit that there is debate about how that should be treated in the development of HVRR and the policy underpinnings to support the manner in which costing models should be amended to take that obligation into account, touched on below.

8. In relation to the third criterion, for the current financial year Transport Ministers have decided to adopt a similar approach i.e. to charge for a part of the assessed cost with a 2.5% annual increase endorsed.[5] It is worthwhile setting out the rationale for that action:

   Ministers agreed charges should rise by 2.5 per cent in 2021-22, to contribute to the construction and maintenance of roads. As part of the response to COVID in 2020, this increase was held back to ensure road transport operators could continue the vital task of getting freight delivered all over Australia despite the pandemic.[6]

9. The NatRoad proposed solution will best accommodate the balance of competing factors that are in play when considering an interim determination: the trade-off between cost recovery over time and the impact on the industry, particularly an industry that has been hit hard by a range of external factors. The industry has sequentially suffered from the impact of bush fires, floods and now COVID-19, as acknowledged by Transport Ministers. These events and difficult industry conditions have constrained the industry's ability to cope with increased costs, inclusive of government charges.

10. The factors mentioned in the prior paragraph point to the need to re-examine the current pricing mechanisms, that is heavy vehicle registration charges and the road user charge (RUC) applied to reduce the fuel tax rebate payable as a means of making fairer the fuel tax excise. However, the CRIS makes it clear that any changes to the underlying pricing mechanisms are out-of-scope of the NTC's considerations in the CRIS process[7], albeit policy changes to the RUC and the fuel excise legislation are discussed in the CRIS, as mentioned later in this submission.

11. Despite the NatRoad proposal providing a simple solution to the issue of the method of increase in heavy vehicle charges, we have, below, sought to answer the questions posed in the CRIS in order to assist the NTC. Before doing so we outline the NatRoad position regarding HVRR which will supersede any determination arising from the CRIS process. We note that the NTC indicates that the key question it would like to have answered is whether the current cost allocators should be changed. The NatRoad answer is, in general, "no" for

[4] Id at para 14

[5] https://www.infrastructure.gov.au/transport/infrastructure-transport-ministers/files/infrastructure-and-transport-ministers-30-march-2021.pdf

[6] Ibid

[7] Above note 1 at p16

the short term. We would prefer the solution mentioned in paragraph 4 to prevail. In looking at the detailed answers to the NTC questions in the CRIS, we have reinforced that view with minor changes only endorsed. But the HVRR model must be different and based on entirely different premises, the predominant one being that all road users must pay for the costs of roads.

Qualified Support for HVRR

12. NatRoad notes that the context for the CRIS and the subsequent determination involves the potential for HVRR to replace the PAYGO methodology[8] in the future – the determination seeks to provide a platform for the implementation of future reform.[9]

13. With some qualifiers, NatRoad supports a move to a new heavy vehicle charges model based on HVRR, for reasons set out in this submission. But we do not believe the results of the current exercise will lead to an appropriate "platform" for HVRR costing for the detailed reasons set out below.

14. NatRoad's support is given on the basis that HVRR reform occur contemporaneously with a review of infrastructure funding in order to de-politicise decisions about road construction. The primary goal of an HVRR system should be to have **all** road users contribute their fair share to the construction and maintenance of roads. Heavy vehicle charges should not be looked at in isolation from charges that should be applied to other road users. At present, members' feedback is that the heavy vehicle industry pays too much for the provision of roads and road maintenance, especially having regard to constrained access and "hit and miss" permit requirements currently in place.

15. The provision of basic road services to ensure social mobility, economic welfare, road safety and public security needs to be assessed against the main purpose of HVRR currently being implemented by Government. The stated purpose of the HVRR reforms is to turn the provision of heavy vehicle road infrastructure into an economic service where feasible.[10] To be effective and free of political interference, that process must be guided by an independent price regulator. Further, the extent to which heavy vehicle road infrastructure may be converted into an economic service should be fully explored having regard to the range of costs imposed on the heavy vehicle industry (including tolls and land side port charges) and taking into account community service obligations to provide road infrastructure[11] a matter discussed infra.

16. Any move to the provision of roads as an economic service must be undertaken with an appropriate transition period, as currently the underlying model is that the provision of roads is a public good, funded from consolidated revenue[12] with inadequate instruments, like the PAYGO model, underpinning heavy vehicle cost recovery. The HVRR model is to be one based on payment for the provision of a service and a service that is not confined to the trucking industry. Road charges for all users must be considered.

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[8] Discussed in detail, with suggested improvements here: ATA, Heavy vehicle charges—options for improving the accuracy and stability of the PAYGO heavy vehicle charges methodology, July 2016.

[9] Above note 1 at p27

[10] http://www.dotars.gov.au/roads/heavy/files/public-paper-on-HVRR-end-states.pdf

[11] An issue explored in a 2017 Austroad's report *Community Service Obligations Framework for the Roads Sector* https://austroads.com.au/publications/freight/ap-r545-17/media/AP-R545-17-Community_Obligations_Framework_for_the_Roads_Sector.pdf

[12] Above note 10 at p 3

17. All of the policy work relating to HVRR depends on agreement being reached about service level standards for roads. NatRoad is an active participant in work being undertaken to determine and implement those service level standards. That work will underpin the progress of the balance of HVRR reform proposals.

18. The CRIS summarises the progress of the HVRR process thus:

    Transport ministers have directed officials to prepare advice on heavy vehicle supply-side reforms. The reform elements include:

    ▪ *infrastructure and transport ministers set national service-level standards for roads to guide road expenditure decisions*

    ▪ *an independent body to review state and territory government road expenditure decisions*

    ▪ *an independent body to set heavy vehicle charges*

    ▪ *all governments dedicate (hypothecate) revenue from heavy vehicle charges to road expenditure.*

    Of these elements, transport ministers have agreed to develop the service-level standard framework, but no decision has been taken on other supply-side reform elements.[13]

19. In the meantime, the CRIS explores ways for heavy vehicle charges to be set until HVRR is implemented.

20. NatRoad believes that given the defects in the PAYGO model (which are touched on but not completely articulated in the balance of this submission) and the complexities identified in the CRIS in improving the flawed model, the simplicity and certainty in increasing the current model's cost outcome by the consumer price index/fixed price increases would be the fairest outcome until the HVRR model is able to be implemented. As noted in the CRIS[14], predictability of changes to heavy vehicle charges is important to permit operators to plan and reflect cost changes in their pricing and contracts (with the caveat that many smaller operators do not have the ability to pass on these costs).

21. In addition, the further the model utilised for costing views heavy vehicle charges as "stand alone," the more the system denies the fact of road use by light vehicles and others and ignores the exclusions from the road network for heavy vehicles based on a broken access system.

22. In all of the work to be done on road use charges, the goal must be to have all road users contribute their fair share to the construction and maintenance of roads in a system that better connects road demand and supply, and therefore should encompass reform of the contribution of light vehicles as well as the contribution of heavy vehicles.

Question 1: Do you agree with the NTC's recommendation to continue using the existing PAYGO expenditure categories? Why or why not?

23. This question is posed one-third of the way through the CRIS. It is preceded by, amongst other things, a detailed analysis of both the actual and perceived inadequacies of the PAYGO model. The question arises as part of a comparison of the ongoing utilisation of the PAYGO

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[13] Above note 1 at p28
[14] Id at p25

model or the adoption of expenditure categories under a Forward Looking Cost Base (FLCB). The latter will become an essential element of HVRR.

24. NatRoad supports the development of an FLCB. The FLCB will permit the separation of capital and operating expenditure (something that the PAYGO model does not achieve) and therefore enable road assets to be funded over their economic life. This is a better and more equitable basis for funding than currently prevails. However, in the current analysis it does not appear that there would be a translation of the FLCB model potentially used by the NTC to the model used in the HVRR process.

25. The complexities and costs involved in applying the NTC prototype FLCB model, having regard to the fact that it may not be used as part of HVRR, weigh against moving away from the current PAYGO model. In essence, it's a question of "the devil you know."[15] In addition if the FLCB devised by the NTC cannot be guaranteed to be utilised in the HVRR process then devoting resources to its implementation is not warranted.

Questions 2 to 4:

2. Do you agree that option 5 in Table 6 is the best option for treating innovative funding and financing under PAYGO? Please provide reasons to support your views.

3. Are there any other options for treating innovative funding and financing not presented in Table 6 that the NTC should consider?

4. Should the PAYGO expenditure guidelines be modified to specify that expenditure should not be reported where it occurs on roads that heavy vehicles cannot use (e.g. Pennant Hills Road in New South Wales)?

26. The CRIS seeks to stop perceived "cost leakage" in the application of heavy vehicle charges. But the NatRoad perspective is one focused on the revenue side. The current PAYGO expenditure guidelines do not capture some government revenue sources, such as tolls which are excessive for heavy vehicles. In addition, NatRoad does not have confidence in the integrity of the data from the States and Territories that comprises the reported road expenditure from which the revenue required to be paid by the industry is derived.

27. As a result of these issues, the current expenditure guidelines lead to an incorrect measurement of the heavy vehicle cost base, and therefore result in the allocation of incorrect heavy vehicle charges. It is on this basis that questions 2-4 in the CRIS are posed, preceded by the discussion in Chapter 4. The CRIS puts it that this area of examination is set out to "identify a methodology for treating PPPs, toll roads and other innovative financing approaches in a pragmatic and non-distortionary way."[16]

28. NatRoad does **not** support Option 5 in Table 6 as the best way to treat innovative funding and financing under PAYGO. The aim in this exercise is expressed to be thus: "Intended treatment would be to ensure that any net road related costs incurred by governments would be included in the cost base."[17] For the reasons that follow, the mechanisms for achieving this aim are not clear and therefore are not supported.

[15] https://www.collinsdictionary.com/dictionary/english/better-the-devil-you-know#:~:text=If%20you%20say%20better%20the,person%20you%20don't%20know.
[16] Above note 1 p37
[17] Above note 1 at p41

29. NatRoad's view is that the manner of identifying the "net cost" to government at any particular time would be difficult and variable. This is acknowledged in the CRIS where the notes in Option 5 indicate "Some types of innovative funding and financing will be difficult to foresee and/or develop detailed guidance for ahead of time."[18]

30. Further, the data and its impact on the cost base is not able to be considered as part of the CRIS: "It is not possible to estimate by how much the proposed approach under option 5 would change the heavy vehicle cost base going forward."[19] NatRoad cannot therefore support a proposal designed to further allocate costs to the industry in a manner, and to an extent, not able to be properly assessed or calculated and therefore our answer to question 2 is "No."

31. The better view, we contend, would be to exclude from the cost base all road financing costs and all revenue raised via tolls or through the agency of tailored funding mechanisms. This is our response to Question 3.

32. The answer to question 4 is yes: put simply heavy vehicles should not have to pay for the cost of roads that they are prohibited from using and/or where they pay for the use of that road via a toll. In addition, roads that various classes of truck are unable to access should not be paid for either: the whole basis of the system is intended to be one of user pays. It is therefore axiomatic that if use is proscribed then payment should not be required.

Questions 5 and 6:

Do you agree the NTC needs to take action now to ensure the ongoing availability of usage data? Why or why not?

Are there any options relating to potential alternative sources of usage data that the NTC has not considered? If so, what are they?

33. Questions 5 and 6 are posed because the CRIS foreshadows the discontinuance of an essential source of data for the PAYGO model. The ABS Survey of Motor Vehicle Use (SMVU) is set to be discontinued. As the CRIS notes: "Discontinuing the SMVU after 2020 means the PAYGO model could become inoperable unless an alternative approach to source the essential usage data is found."[20]

34. The answer is simple: the NTC and/or the jurisdictions should pay for the continuation of the SMVU. If that does not occur then an inflation based indexation of the current HV charges, as proposed in paragraph 4 above, makes even more sense. Assuming that data will need to be tailored to operate the charges model that results from the HVRR process, then the sort of source data needed to feed into that model will become more important than transfusing blood into the near-corpse of the PAYGO model via an alternative source to the SMVU. It is anticipated that data of the kind generated by the SMVU will be needed under the HVRR system.

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[18] Ibid
[19] Id at p42
[20] Id at p44

Question 7: Do you agree that the PAYGO model should use new, updated ESA values for this determination? Why or why not?

35. The Equivalent Standard Axle (ESA) and the Standard Axle Repetition (SAR) values comprise the Austroads' method[21] of determining a standardised wheel load and a correlation for different wheel load configurations using the material damage exponent theorem for pavement damage. ESA calculations are a method of standardising various axle configurations and loads and their effects on road pavements. ESAs are assessed by calculating the ratio of a load on an axle or axle group divided by a reference load and then raising the ratio to the fourth power.[22]

36. ESA values are a key cost allocator in the PAYGO model, particularly for heavy vehicles. According to the CRIS "ESA values measure deep road wear by vehicles, with heavy vehicles traditionally accounting for around 94 per cent of ESA-kilometre (ESA-km) allocated cost in aggregate across the entire heavy (sic) vehicle fleet."[23]

37. The CRIS and the PAYGO methodology does not refer to the SAR methodology in assessing pavement damage. The design traffic loading for flexible pavement design is – for each relevant damage type – the total number of Standard Axle Repetitions (SAR) during the design period which cause the same damage as the cumulative traffic. Without that element the use of ESA data by itself is, we contend, not indicative of real world experience, a matter made clear in Queensland where the SAR concept has supplemented the ESA calculations on this basis:

    The methodology to calculate ESAs and SARs is generally the same. The only difference is that SAR accounts for the exponential load damage by different pavement type such as for granular pavement (SAR4), asphalt (SAR5) and cement stabilised pavements (SAR12).[24]

38. The use of both capital and operating expenditure in a particular year to determine costs under the PAYGO model has already been identified as a relevant shortcoming in the discussion above. In our understanding the SAR calculation seeks to identify, over a 50-year life cycle, typical pavement costings including maintenance, rehabilitation and reconstruction. As such, the aim of applying the calculation is to obtain an estimate or a 'marginal cost' per SAR for the life of the pavement (i.e. typical costs over 50 years divided by a pre-determined SAR loading).

39. Unfortunately, the SAR calculations developed in Queensland include a problematic variable. The main SAR values used in the relevant publication are based on the full payload for each axle group type. If the payload was reduced (i.e. trucks not at 100% of their legal capacity), the SAR value would also reduce.[25] Frequently trucks operate at below their legal capacity and therefore NatRoad has reservations about the use of the relevant model. But the underlying assumption that the full life cycle costs should be used, we note, fits in with the intent of HVRR.

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[21] Austroads *Guide to Pavement Technology – Part 2: Pavement Structural Design (AGPT02-12)*, February 2012.

[22] Described in this ATA submission https://www.pc.gov.au/inquiries/completed/regulatory-impact-analysis-benchmarking/submissions/submissions-test/submission-counter/sub023-ria-benchmarking.pdf

[23] Above note 1 at p46

[24] Queensland TMR *Guide to Traffic Impact Assessment Practice Note: Pavement Impact Assessment* (2018) at p 6

[25] Id at p9

40. The March 2014 NTC determination had this to say about ESA values:

The PAYGO model assumes that light vehicles (vehicles weighing less than 4.5t) cause no pavement wear. This assumption is made on the basis that a well-built road designed for trucks will not be damaged by cars. Industry raised doubts about this assumption; however, after reviewing the latest research into the issue, the NTC has concluded that the assumption does hold and ESA values for light vehicles should remain at zero as part of this determination. The NTC may reexamine this assumption in a future determination if new research becomes available.[26]

41. NatRoad continues to reject the assumption that heavy vehicles are responsible for close to 100% of pavement damage, especially in light of the fact that the re-examination foreshadowed in the above quoted paragraph that is now announced as being undertaken via the discussion in the CRIS, has led to the outcome that the heavy vehicle sector ESAkm attributable cost are recommended to be increased from 94 per cent currently to 99 per cent.[27] The assumptions that lead to this outcome are that articulated and light vehicles are now attributed an ESA value. But this analysis is controversial, especially as it does not encompass matters such as "road friendly suspension" or other damage ameliorating technology. In addition, the underlying assumption that roads built for heavy vehicles will not be damaged by light vehicle traffic, we believe, does not hold, as clearly volume of traffic is a relevant variable and the volume of light vehicle traffic must be taken into account.

42. Rather than rely on a change that increases costs to the heavy vehicle sector, NatRoad's view is, as previously articulated in this submission, that the current charges plus inflation should be used until HVRR is introduced. This view is further reinforced by the controversy around ESA and SAR values with the need to ensure that HVRR is underpinned by the most robust and up-to-date research and methodologies about pavement damage. That work requires a great more detailed research and analysis that better reflects the actual damage caused by trucks, along the lines of the outcomes reflected in the ATA's Truck Impact Chart.[28]

43. Our answer to question 7 therefore is no, use the former ESA values until the parameters for an HVRR FLCB are established and better accompanying work on pavement damage is done that reflects real world experience. That is particularly the case in light of the difference between the PAYGO model's ESAkm calculations and cost allocation being based on the entire road network being sealed, when, as the below discussion shows, only about 40% of the network is sealed.

Question 8: Do you agree that the options for this determination should centre on the three alternative cost allocation approaches identified above?

44. Three cost options are considered in the CRIS. Question 8 arises from a consideration of whether any of the three options should be used for the next determination. We agree with the observation in the CRIS that "the motivation for considering change may include that some options may be more accurate than others. On the other hand, the value of added

[26] https://www.ntc.gov.au/sites/default/files/assets/files/HV-charges-determination-RIS-2014.pdf at xv
[27] Above note 1 at p49
[28] https://www.truck.net.au/resource-library/truck-impact-chart-second-edition

precision is likely to be limited by the highly averaged nature of heavy vehicle charges."[29] This is another fundamental problem with the extant cost models: that high level of averaging is not necessarily reflective of reality.

45. The CRIS in Table 13 shows the estimated revenue gap 2021-2022 in monetary and percentage terms between the estimated revenue for 2021-2022 and that which would be collected under the three options under consideration. The three options show respectively an estimated gap or shortfall of 10.7% (current method), 14.1% (modified current) and 21.3% (new -the Victorian model). If translated to the proposed determination, these levels of increase are all well beyond what the industry is able to absorb, a key consideration in answering question 8 and in reinforcing the NatRoad solution to the problem of how to set heavy vehicle charges until the HVRR model can be implemented.

46. In the NatRoad submission dated 12 March 2021 to the NTC on heavy vehicle charges[30] we emphasised the inability of the industry to absorb cost increases. In particular, the pandemic conditions are still entrenched and economic fragility cannot be underestimated. Conditions remain precarious, especially in light of the now extended NSW/Greater Sydney and Victorian lock downs. We continue to rely on the March 2021 submission.

47. The demand for freight services is derived. Demand follows from the industry's major markets which span the entire economy. Hence, demand for road freight transport services is a leading indicator for changes in economic growth. Businesses hold less stock prior to and following economic downturns and this generally reduces demand for transporting goods. Whilst there have been surges in some supply chains (retail supermarkets, for example) the general economic downturn is reflected in road transport industry conditions.

48. Annual growth over the past 5 years has been estimated as minus 3.2%, with the industry profit margin at 2.4%.[31] Accordingly, even with the NatRoad suggestion that the current charges be indexed for inflation annually or be indexed at the lower fixed percentage proffered by the NTC, many industry members will be adversely affected even by this increase because it is an increase in operating costs that they have little or no ability to absorb or pass on to customers.

49. Accordingly, the NatRoad answer to Question 8 is utilise the current model and apply the solution proposed in paragraph 4 of this submission. Increasing costs by the percentage figures shown in paragraph 45 of this submission would have an adverse effect on NatRoad's members, particularly its smaller members.

Question 9: Do you agree with the NTC's proposal to remove MaxMan from the PAYGO model? Why or why not?

50. This question arises from another complexity in the PAYGO model where reflections of reality are questionable. The question derives from an analysis of a current separate

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[29] Above note 1 at p56
[30] https://www.ntc.gov.au/submission_data/1040
[31] IBISWorld February 2021

methodology for applying cost allocations to road trains under a system known as MaxMan (with that label being applied for now defunct, historical reasons).

51. The CRIS notes:

The original rationale for introducing MaxMan was that road trains do not use the entire road network because they are not allowed to operate in certain states or territories or are only allowed on certain parts of the network in other jurisdictions. There was a view that cost allocation for road trains should be performed separately because of this.

52. Encapsulated in the extract is the very rationale (but not just in respect of road trains) that should underpin a revised cost model under HVRR and a problem with the current model. The NatRoad strong position is that where any truck or combination can't use a road, the cost of that road should not be applied to the heavy vehicle cost base for that vehicle or vehicle type.

53. Whilst NatRoad generally holds to the view that no changes to the PAYGO model should be made in light of our suggested solution set out in paragraph 4, in this instance we would agree with the removal of MaxMan.

54. Road trains are the only vehicle classes treated separately through the MaxMan system. No adjustment is made for any other vehicle classes, even though there are frequently restrictions preventing use or which constrain operators' choices not to use other vehicle combinations in certain areas. That factor alone indicates that the model will not be adversely affected by the removal of MaxMan. This observation also emphasises the principle which underpins the stance taken in this submission: denial of access should mean that no payment for the relevant road's construction applies to heavy vehicles.

Question 10: Do you agree that the NTC should adjust the estimated fuel consumption used to set the RUC rate to take into account RUC exemptions for auxiliary fuel use based on the ATO's 'fair and reasonable' fuel tax exemption rates (approach 2 in Table 16)? Why or why not?

55. The short answer is "No". NatRoad has previously indicated to the NTC (and as recently as during the NatRoad webinar on 28 July 2021) that a comprehensive re-assessment of the fuel tax system should be undertaken as an urgent policy reform. We note that the NTC has concluded that changes to the road user charge as a tax base are out of scope in the current exercise.

56. At the same time as reaching that latter conclusion, however, in the CRIS the NTC sets out a critique of some aspects of the fuel tax regime claiming "leakages" from the fuel tax system that affect the cost base. Essentially, the NTC is saying that the system is losing revenue because of the proper, legal application of the fuel tax system. That analysis encompasses proposed legislative change, that is a change to the *Fuel Tax Act, 2006 (Cth)* "to make all fuel used on public roads subject to RUC (even if used for auxiliary equipment)**."**[32]

[32] Above note 1 at p63

57. The ATO recently released its tax gap analysis[33] – the difference between the amount of tax collected and its assessment of what should have been collected. Overall, it shows a $31 billion gap (revenue which should have been collected if every taxpayer was fully compliant with the law). For fuel tax credits, it actually shows a negative gap of $7.1 million (meaning FTC was underclaimed by claimants, the opposite of a "leak" from the system). This latter finding accords with NatRoad's view of the poor utility of the fuel tax credit system, a matter separately communicated to the NTC on 30 June 2021.[34]

58. Clearly, the fuel tax system is in need of reform, a matter that the Commonwealth has recognised. The Commonwealth Parliamentary Budget Office report *Trends affecting the sustainability of Commonwealth taxes*[35] examines the sustainability of fuel tax. The issues encompassed in the following extract from that report show that there are several factors which point to the need to re-frame this tax regime as soon as possible**:**

> *Continued improvements in the fuel efficiency of the passenger motor vehicle fleet in Australia are likely to contribute to a further slowing of the growth in total fuel consumption, further constraining growth in fuel excise. The uptake of electric vehicles could further accelerate the rising fuel efficiency of the passenger motor vehicle fleet in Australia. Electric vehicles are only a small proportion of the market and are therefore having little effect on fuel excise receipts at the present time. However, under the Australian Energy Market Operator's neutral scenario for electricity consumption, electric vehicles are projected to represent around 19 percent of the light vehicle fleet in Australia by 2036–37 (AEMO 2018). The impact on fuel consumption of an increasing uptake of electric vehicles would further erode the fuel excise base.*[36]

59. Hence, the NTC has strayed into recommending a policy change, apparently out-of-scope in relation to underlying policy issues but still contemplated by the NTC. That policy change would be biased against NatRoad members and other transport operators when a full review of the fuel tax system is a pressing reform and a matter that we believe the NTC should be advocating rather than the sort of reform proposed in the CRIS. There is no "leakage" per se, merely the application of current tax policy.

60. Accordingly, we do not agree with the suggestion encompassed by question 10.

Question 11 Do you agree that the NTC needs to update the percentages used for unsealed road travel discounts in the PAYGO model? Why or why not?

61. The discussion that leads to the posing of this question contains a statement that reveals another weakness/defect in the PAYGO model:

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[33] https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/australian-tax-gaps-overview/?anchor=Whywemeasurethetaxgap#Whywemeasurethetaxgap

[34] Private email correspondence

[35] https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Publications/Research_reports/Trends_affecting_the_sustainability_of_Commonwealth_taxes

[36] Id at p 10

The PAYGO model assumes that all the road network is sealed in the application of its cost allocators, which is particularly relevant to the ESA-km cost allocator.[37]

62. This is a brave assumption when in 2019 one expert estimated that around 500,000 km (60% of the total road network) of public roads are unsealed.[38]

63. In the discussion NTC poses the question as to whether a discount that has been historically appllied to road trains travelling on unsealed roads should continue. NTC isolates that the issue, in its view, is "whether the application of this discount is still appropriate and, if so, whether an updated industry survey on unsealed road travel is required."[39]

64. The discussion in the CRIS then shows the effects of applying the discount to road trains and B triples (the discount is not more widely applied) whether MaxMan is used or not. The result is that the attributable costs for these vehicle classes is 14-17 percent lower than would otherwise apply. The application of that discount is supported. But the discount should be better applied to not just the indicated vehicle types but to all journeys by heavy vehicles on unsealed roads.

65. Given the position outlined in the prior paragraph, we believe that the recommendation in this context doesn't go far enough:

The unsealed travel discount has not been reviewed since its inception in 2005. It does address a legitimate issue concerning application of the ESA-km cost allocator and the PAYGO model assumption that all the network can be treated as being sealed. We propose to conduct a review of this discount based on a new survey of industry in time for application to the final decision RIS.[40]

66. The use of a survey is supported (and was assisted by NatRoad in line with the request made by the NTC on 2 August 2021 and subsequently where we sought member feedback on a form of survey agreed by the NTC)[41] and the process is supported so long as it leads to a fundamental reduction in heavy vehicle charges that better reflect the use of unsealed roads for all categories. That broader consideration should not, in any way, affect the discount provided to road trains or B triples and they should benefit from its application. Survey results will be communicated post the 31 August 2021 closing date for receipt of responses.

Question 12: Do you agree that the CSO discount should be discontinued in the PAYGO model? Why or why not?

67. The issue of community service obligations has already been touched on in this submission. NatRoad supports work being developed in this subject area that builds on the Austroads' report[42], referenced in paragraph 14 of this submission. That work should form part of the

[37] Above note 1 at p64
[38] https://espace.library.uq.edu.au/data/UQ_9bf3b87/s4375376_MPhil_thesis.pdf?dsi.
[39] Above note 1 at p64
[40] Above note 1 at p 65
[41] Private email communication and see https://www.natroad.com.au/survey/news/
[42] Above note 11

HVRR process, noting that the relevant Austroads' report sets out a number of bases on which policy might be advanced[43] depending on a number of underlying assumptions.

68. The work to best determine the philosophical and/or economic basis for the community service obligation is for the future. The NatRoad view for the present is that the policy basis set out in the CRIS for taking into account community service obligations is narrow and reactive. The CRIS notes that the matter was considered solely on the basis that a discount should apply to remote areas because road expenditure is often not warranted by traffic levels but is necessary to support these communities.[44]

69. The manner in which the relevant discount was calculated is somewhat opaque and is described as follows:

Accurate estimates were not possible, but approximate estimates of 2 per cent to 7 per cent were provided for the share of arterial road expenditure that could be considered CSO-related. The NTC adopted a rate of 5 per cent for both double and triple road trains.[45]

70. This discount rate for double and triple road trains has not been reviewed since it was introduced in 2005 nor has the rationale been substantially re-examined.

71. The difficulty in dealing with the issue of community service obligations arises because there is no agreed basis for applying those obligations amongst governments or amongst industry participants more generally. But that is not a reason to discontinue the application of the discount, as proposed by the NTC.

72. Whilst the current discount is assessed as lowering the cost base by 2 per cent when compared with what it would otherwise be, that is also not a sufficient justification for its removal. NatRoad is of the firm view that the industry's community service obligations have been highlighted in the current pandemic. There should remain at least the current discount for this element of the reality of the transport task. Hence, in answer to the question, we say "No." We do not agree with the discontinuance of the relevant discount. Again, we would counsel against disturbing the current model given the solution we have proposed.

Question 13: Do you agree that this determination should not consider heavy vehicle concessions?

73. NatRoad is opposed to market distorting concessions by way of discounts offered to some charities and to primary producers. It is the latter concession in particular that is opposed given the unlevel playing field that eventuates and having regard to the number of complaints NatRoad receives about the abuse of the primary production concession.

74. The CRIS indicates that because the financial impact of concessions is borne by the jurisdictions that offer them, concessions have been treated as a matter for states and territories to decide individually in previous determinations. Concessions are not reflected in estimated revenue figures calculated using the PAYGO model and this is obviously an area where revenue falls below expected revenue on an unquantified basis. That is a weakness in

[43] Id especially at p40 where 5 models for taking CSOs into account are set out.
[44] Above note 1 at p66
[45] Ibid

the current system. That amount should be quantified but not to increase the registration costs to those who don't enjoy any concession.

75. NatRoad believes that all concessions should be uniform between States and Territories and, in relation to the primary production concession, there should be "farm plates" in use to show that the concession has been applied for and granted to the relevant heavy vehicle operator. All concessions should be costed.

76. NatRoad believes that there should also be a focus on tightening the rules around the primary producer registration concession at the same time as introducing uniformity in the concession around Australia. NatRoad receives frequent complaints about the abuse of this concession which has a major impact on competition because of high heavy vehicle registration costs and the industry's general low profit margins, discussed above. NatRoad does not oppose the concession being extended to genuine primary production endeavours but there is growing concern amongst NatRoad members that the abuse of the concession is rife.

77. Accordingly, we ask the NTC to better focus on this matter and to seek from each State and Territory government the following policy underpinnings:

- Recording of exemption conditions on the NHVR vehicle registration database, with those exemptions made publicly accessible;
- Making this exemption information available to authorised officers on the roadside;
- During roadside intercepts, authorised officers should check if registration conditions apply, and if so, are these being complied with and this should be done as a matter of course;
- A clear legislated, consistent offence for misuse of primary producer registration;
- More frequent risk-based checking of known offenders; and
- A penalty that is a multiple of the registration costs avoided.

Question 14

Do you agree with the NTC's recommendation to disregard electric heavy vehicles for the purposes of this determination? Why or why not?

Question 15

Do you agree that the NTC should collect data on alternative fuel vehicles to monitor whether their number becomes sufficiently large to warrant further action?

78. The current PAYGO model does not deal with electric vehicles, as acknowledged in the CRIS.[46] The CRIS identifies only 153 electric heavy vehicles registered in Australia that are solely electric or hybrid-powered.[47]

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[46] Above note 1 at p67
[47] Id at p68

79. The NTC recommends that given the insignificance of the heavy vehicle electric fleet at present that no adjustments be made in the current determination – hence, question 14 is posed. We agree.

80. We also agree that this area of change needs to be monitored, so our answer to Question 15 is also yes. The technology in this area is accelerating at a much greater rate for light vehicles than for heavy vehicles. Part of the issue is that for electric heavy vehicles to be a realistic technology, there is the need for the establishment of a network of charging facilities both privately and publicly. In the USA, a recent survey found that 92 percent of survey respondents said their facility is not "very well equipped" to accommodate commercial charging needs.[48] We believe that this percentage would also be high in Australia. In contrast, most light vehicles will simply be able to be charged at home, most likely overnight.

81. As discussed above, the current fuel tax regime needs a substantial overhaul. There are several factors which point to the need to re-frame this tax regime as soon as possible. Continued improvements in the fuel efficiency of the light vehicle fleet in Australia are likely to contribute to a further slowing of the growth in total fuel consumption, in turn constraining growth in fuel excise in general and therefore placing more of the incidence of the tax on heavy vehicles and making the heavy vehicle charging regime even more onerous for the heavy vehicle sector as the tax base shrinks.

82. The uptake of electric vehicles will further accelerate the rising fuel efficiency of the light vehicle fleet in Australia. Electric vehicles are currently a small proportion of the market and are therefore having little effect on fuel excise receipts at the present time. But electric vehicles are projected to represent around 19 percent of the light vehicle fleet in Australia by 2036–37.[49] The impact on fuel consumption of an increasing uptake of electric vehicles will further erode the fuel excise base, underlining that this is not a sustainable tax and one where the whole basis of the RUC is called in question.

Question 16
Do you agree with the NTC's recommendation to recalculate the regulatory component of registration charges using the existing methodology and updated data? Why or why not?
Question 17
Do you agree that the regulatory component of registration charges should be adjusted from year to year to reflect the approved NHVR budget using an automatic adjustment provision in the Heavy Vehicle Charges Model Law?

83. The CRIS notes the following:

As part of this determination, we have reviewed the current approach to ensure it meets the following key objectives of ensuring that: ▪ the regulatory component of registration charges continues to provide the NHVR with enough revenue to fund its approved budget ▪ the costs of operating the NHVR are allocated between different heavy vehicle types on a reasonable basis.[50]

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[48] Discussed here: https://www.natroad.com.au/electric-vehicle-tax-paying-for-road-use/news/
[49] Discussed Ibid
[50] Above note 1 at p69

84. We are not sure how the notion of reasonableness has been applied in this context. It is not articulated. Nor do we understand what evidence exists for two relevant assertions.

85. The first assertion is that "the process of scaling regulatory charges up or down to reflect changes in the NHVR's budget or the vehicle fleet have also worked."[51] What is the evidence for this statement? How was that view reached? Is it the position of the State and Territory regulators? The industry view is that there is insufficient transparency in the process.

86. The industry view accords with the findings of the Productivity Commission as follows:

There is some degree of cost recovery of regulatory services in heavy vehicles, where operators are levied via a portion of heavy vehicle registration charges. However, it is unclear to what extent these revenues ultimately cover the costs of the NHVR's service delivery (box 10.5). States and Territories are expected to pass on the regulatory charge, collected from industry via their registration charges, to the NHVR (NTC nd). However, the lack of transparency as to the amount payable by States and Territories to the NHVR (as collected from industry), means that it is difficult to determine whether these amounts are sufficient to cover the costs of regulation. Reporting is based around actual amounts collected and passed on by States and Territories, rather than amounts payable based on the Transport and Infrastructure Council's (TIC) fee schedule and the number of registrations. Increased transparency over the degree of cost recovery present in heavy vehicles would be beneficial, to both the NHVR and industry, in determining whether the cost of regulatory services by the NHVR is fully and correctly recovered from industry via the heavy vehicle registration charges.[52]

87. The second assertion is that "The process of asking ministers to approve both the NHVR's budget and, subsequently, the resulting regulatory charges, has proven to be relatively onerous."[53] There is no data or argument about how this proposition is reached; relative to what? But on the strength of that assertion it is then argued that: "It could be desirable to develop a process that would automatically adjust regulatory charges to recover the approved NHVR budget."[54]

88. We disagree that automatic adjustments should be made. Increased transparency and appropriate benchmarking of regulatory costs are necessary. The Productivity Commission again:

Regarding the NHVR, greater transparency around cost recovery would help to achieve consistency with CRGs, as it would be easier to ascertain whether full cost recovery is in place. The NHVR has undertaken recent work in this area, despite preferring to 'consider appropriate fee arrangements on a case by case basis': … during 2018-19 the NHVR undertook a review of costs of a number of core service transactions based on the Australian

[51] Id p70
[52] https://www.pc.gov.au/inquiries/completed/transport/report/transport.pdf p 303
[53] Above note 1 at p71
[54] Ibid

Government Cost Recovery Guidelines to establish base lines and to gauge the cost efficiency and extend of cross subsidisation within service areas. (sub. DR72, p. 12)[55]

89. The CRIS does not confront the notion of better scrutiny of the NHVR's budget nor greater transparency along the lines suggested by the Productivity Commission. Instead it says:

    While there is no empirical research of cost drivers underpinning the allocation percentages, the regulatory charges have successfully recovered the cost of operating the NHVR. From this perspective, the NTC considers there is limited benefit in developing a completely new methodology. This view also reflects that regulatory charges are only a relatively small part of total heavy vehicle charges and the impact of any change is likely to be minimal.[56]

90. We believe further work needs to be undertaken to better increase transparency of funding and accountability. We therefore agree that the current mechanism of Ministers agreeing the regulatory charges each year should be continued. Further, the NHVR budget should continue to be met from the heavy vehicle charges that are set and indexed in the NatRoad preferred method. But these steps should be accompanied by greater transparency measures both in the flow of funds from State and Territory governments and in relation to levels of expenditure for regulation of the industry.

91. Hence our answer to Question 16 is yes. But with the caveat that greater transparency must be applied to the regulatory charges (at the very least the jurisdictions must separately show that amount in their accounting to industry). And on the basis of the prior discussion our answer to Question 17 is no.

Question 18
Do you agree that the three options outlined should be considered as the options to be assessed for this determination?

Question 19
If not, what other option(s) should be considered?

Question 20
Which cost allocation option is the best option to calculate the heavy vehicle cost base for this determination? What are the reasons for your preference?

92. The main issue that NatRoad highlights in consideration of these questions is that the CRIS notes:

    Given that the cost base under all options is significantly above the revenue currently provided by heavy vehicle charges, it is unlikely that full cost recovery of the heavy vehicle cost base could be achieved immediately in 2022–23 under any of the three options.[57]

93. NatRoad believes that using the status quo and increasing the cost base by a fixed percentage, as outlined in paragraph 4 of this submission, is the best model whilst the HVRR process is bedded down. Hence our answers are that the status quo should be used for this

[55] Above note 51 at p305
[56] Above note 1 at p71
[57] Above note 1 at p 77

determination but that there should be a fixed percentage increase only passed on to the sector.

Question 21
Has the NTC identified the right implementation options? If not, what other options should be considered?

Question 22
Do you agree with the NTC's initial assessment of the implementation options and examples against the combined pricing principles? If not, how would your assessment differ?

Question 23
Do you have any views or comments on the likely implications of each of the implementation options and examples on industry or governments?

Question 24
Which implementation option do you prefer? Why do you believe it strikes the best balance in furthering the pricing principles?

94. The CRIS notes that the cost bases for all options "exceed the revenue from current heavy vehicle charges by a range of between 8.2 per cent and 27.6 per cent."[58]

95. As indicated earlier, implementing a significant increase in heavy vehicle charges of even the smallest magnitude would be more severe than would otherwise be the case given the current uncertain economic climate and the ongoing impact of the pandemic.

96. Moving to a better measure of cost recovery for all road users should form part of the HVRR process.

97. The CRIS indicates that: "The increases of 3.5 per cent shown in example 1 of the three-year fixed price path option are intended to reflect the actual average annual growth rate in the heavy vehicle cost base from 2012–13 to 2021–22."[59] That percentage increase or the rate of inflation, whichever is the lower, therefore remains the NatRoad preferred outcome. We therefore agree with fixed percentage price increases, a smooth pricing path for implementation.

98. We agree with the observation in the CRIS that:

    Example 1 of the three-year fixed price path implementation approach (3.5 per cent increase per annum) would minimise the impact on industry and makes some progress towards increasing heavy vehicle charges in line with the recent average yearly growth in the heavy vehicle cost base. While it is unlikely to fully comply with the cost recovery mandate provided

[58] Id at p81
[59] Id at p83

by the pricing principles, it scores highly in terms of considering the impact on industry and regional and remote communities.[60]

99. Accordingly, our answers to the questions are in relation to Question 21 and 24 are yes, but the 3.5% figure should be at that level or the level of inflation, whichever is the lower, as outlined at paragraph 4 of this submission. Question 22 is not relevant having regard to our answer to Questions 21 and 24. In response to Question 23, we believe that the NTC should assist to move to a new model for HVRR that does not rely on PAYGO, given its defects. Plus work needs to be done on reforming the tax base, especially in relation to the fuel tax excise.

Conclusion

100. Road charging reform must take into account all road users and provide a better, more equitable system for paying for the costs of road construction. Until HVRR is implemented (inclusive of having a new charging system for light vehicles that incorporates electric vehicles) a fixed price increase that provides cost certainty and better equity to the heavy vehicle industry is supported.

[60] Id at p92