AUSTRALIAN TRUCKING ASSOCIATION

HEAVY VEHICLE CHARGES DETERMINATION
CONSULTATION REGULATION IMPACT STATEMENT
NATIONAL TRANSPORT COMMISSION

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION
AUGUST 2021

1. About the Australian Trucking Association

The Australian Trucking Association and its member associations collectively represent 50,000 businesses and 200,000 people in the Australian trucking industry. Together, we are committed to safety, professionalism and viability.

2. Introduction

In June 2021, the National Transport Commission (NTC) published its consultation regulation impact statement on options for the 2021 PAYGO determination.[1]

The RIS considers technical options for amending the PAYGO model and updating its inputs. It sets out three implementation options: increasing the heavy vehicle cost base by 16.5 per cent, and two options for increasing charges over a three year determination period.

This submission responds to the questions of key relevance to trucking operators. Most notably, it argues that—

- the PAYGO expenditure template should be amended to require road authority CEOs to certify that the major project expenditure they report is endorsed by an independent infrastructure agency, based on integrated transport planning and includes rest areas and access improvements
- the NTC should not proceed with its preferred option for handling government expenditure on toll roads
- the NTC should not include road user charge exemptions in PAYGO. If it does proceed, it should simplify its modelling and exclude refrigerated trailers
- the CSO discounts in the model should be expanded and retained.

The submission concludes by arguing that charges should increase **2 per cent in 2022-23, followed by a 3 per cent increase in each of 2023-24 and 2024-25.**

To maximise certainty for the industry and governments, the legal instruments used to set the charges should cover the whole three year period, not just the first year.

The submission includes legal advice confirming that the Commonwealth transport minister could lawfully issue a road user charge determination covering the whole period.

[1] National Transport Commission, Heavy vehicle charges determination: consultation regulation impact statement. June 2021.

3. Confidence in expenditure data and expenditure categories

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

The ATA agrees with the NTC's recommendation to continue using the PAYGO expenditure categories.

The NTC expenditure template should be amended to require each organisation's CEO or equivalent to certify that the major projects included in categories F1, F2 and F3—

- have been endorsed by an independent infrastructure agency such as Infrastructure Australia
- are based on integrated transport planning, including trucking industry and community consultation
- include rest areas and access improvements in project planning and delivery.

The RIS observes that industry does not trust the expenditure data submitted by states and territories and that this has been a persistent issue across previous determinations.[2] Despite this, the RIS does not recommend any changes and leaves the issue to be addressed by Heavy Vehicle Road Reform (HVRR), which has an uncertain timetable.[3]

The ATA's concerns about the PAYGO expenditure inputs go beyond auditing or reviewing the data. PAYGO is entirely driven by governments' spending decisions, and requires heavy vehicle operators to pay—

- an outsize share of the cost of road investments that are not freight priorities
- higher costs due to inadequate project assessment and selection.

Alignment with industry priorities and freight routes

Expenditure data is currently included in the PAYGO model without industry consultation or alignment with freight priorities or planning.

Road infrastructure projects often focus on light vehicle priorities, such as—

- increasing capacity for light vehicle and passenger traffic
- opening up new residential development
- fulfilling election commitments, which often focus on specific electorates and commuter traffic.

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[2] NTC, June 2021. 32.
[3] NTC, June 2021. 28, 31.

Meanwhile, trucking industry road priorities struggle to obtain funding. Examples include—

- upgrading the Sheahan Bridge to allow permit-free access for high productivity freight vehicles on the Hume Highway
- gaps in road infrastructure and access on key freight routes, including the Newell and Princes highways
- investments to improve the resilience and quality of remote freight links.

Insufficiency of the existing transport planning process

The existing transport planning process does not establish the roads that industry needs and wants. The rationale that industry views can be incorporated in state and territory transport plans and consultation is reliant on what is an insufficient process.

There is no requirement in these planning processes that—

- trucking operators and drivers are included in transport planning consultation
- new road investments deliver improvements to heavy vehicle access approvals
- new road investments align with transport plans
- jurisdictions deliver integrated transport planning processes and outcomes.

The Victorian Auditor-General has reported that despite a legislated requirement for the state government to deliver an integrated transport plan—

- the government has not delivered an integrated transport plan during the last decade
- the government's assertion that its 40 separate plans and strategies represent an integrated transport plan does not withstand scrutiny
- most of the plans referred to as forming part of the plan are not available to the community or industry.[4]

In the case of Australia's two biggest highway duplications, the Hume and Pacific, both projects failed to be linked to delivering better gazetted, as-of-right road access for high productivity freight vehicles despite being major freight routes.

This is despite PBS 2B access being an objective of the NSW heavy vehicle access policy framework on both routes.[5]

Project assessment

In addition to the failure of project selection to address industry priorities, inadequate project assessment and selection frameworks lead to project cost blow outs. These also add to the heavy vehicle cost base.

The Grattan Institute has reported that—

[4] Victorian Auditor-General's Office, Integrated transport planning: independent assurance report to parliament. August 2021. 1, 4.
[5] NSW Government, Moving more with less: the NSW heavy vehicle access policy framework. September 2018. 14.

- cost overruns amounted to nearly a quarter of total project budgets during a 15 year period
- political project announcements – announced as a political commitment before projects were properly assessed – were responsible for 74 per cent of the value of cost overruns[6]
- governments are increasingly committing to megaprojects, with two thirds of government transport infrastructure being for projects worth $5 billion or more. These projects have an increased risk of cost overruns
- projects valued at $20 million or more have exceeded promised costings by 21 per cent during the past 20 years.[7]

Reforming expenditure data and categories

As a result, the ATA agrees with the NTC's recommendation to continue using the PAYGO expenditure categories.

The NTC's conclusion that there should be no changes to expenditure transparency should, however, be reconsidered. The existing problems undermine the entire cost base calculation and leaves a weak foundation for HVRR.

The NTC expenditure template should be amended to require each organisation's CEO or equivalent to certify that the major projects included in categories F1, F2 and F3—

- have been endorsed by an independent infrastructure agency such as Infrastructure Australia
- are based on integrated transport planning, including trucking industry and community consultation
- include rest areas and access improvements in project planning and delivery.

This approach would provide jurisdictions with a stronger foundation to eventually implement HVRR reform elements.

[6] Grattan Institute, Cost overruns in transport infrastructure. August 2021. 3.
[7] Grattan Institute, The rise of megaprojects: counting the costs. November 2020. 3.

4. Treating innovative funding and financing under PAYGO

Question 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.

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

Question 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 (eg Pennant Hills Road in New South Wales)?

The NTC should not proceed with option 5 in table 6 of the RIS. Toll roads and financing models should not be included in the heavy vehicle cost base.

If the NTC does proceed with option 5, the cost of toll relief should be allocated to light vehicles in the PAYGO process and not form part of the heavy vehicle cost base.

The consultation RIS sets out principles and options for including government expenditure on toll roads to the heavy vehicle cost base. Currently, these costs are not included.

The ATA holds significant concerns about the NTC's preferred option, option 5, because it would—

- ignore the existing tolls paid by heavy vehicles, which vastly exceed the marginal cost of their road wear[8]
- could result in light vehicle toll relief paid out of government revenue being inappropriately attributed to heavy vehicles.

Existing heavy vehicle tolls

Heavy vehicles pay for toll road use through toll charges that are three times higher (or more) than light vehicle tolls.

The NTC's first high-level principle for innovative funding and financing is that the main aim is to achieve cost recovery.[9]

[8] ATA, Proposed acquisition of Westconnex. Submission to the ACCC. May 2018. 4.
[9] NTC, 2021. 39.

Toll roads do not meet this principle. Prior to the impacts of COVID-19, toll revenue consistently increased faster than traffic levels, fuelling significant profit growth for Transurban, who operate most Australian toll roads.[10] [11]

The ATA and our member associations have consistently argued that toll road charges should be regulated by an independent price regulator. Currently, the NTC recommendation would only establish partial cost recovery with no link to cost recovery (or over recovery) on other parts of the financing agreement or toll concession.

Without appropriate price regulation, the proposal to include toll roads in the heavy vehicle cost base would be a form of double taxation.

Paying for light vehicle toll relief

The ATA is also concerned that the proposal would result in the heavy vehicle cost base including some of the cost of toll relief for light vehicles.

State governments offer a number of measures for providing light vehicles with toll relief. These schemes invariably exclude heavy vehicles. An example is the NSW Toll Relief Program, which aims to reduce the cost of living for owners of private / light vehicles who are frequent toll road users.[12]

Under option 5, the cost of these measures would be included in the cost base.[13] Because heavy vehicles are not eligible for toll relief, the cost should be allocated in the PAYGO process to light vehicles and not form part of the heavy vehicle cost base.

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[10] ATA, May 2018. 2.
[11] Further detail on the common arguments for the heavy vehicle tolling charge levels – which far exceed cost recovery – is available in section three of the ATA submission to the 2019 Australian Infrastructure Audit.
[12] Service NSW, Claim your toll relief. Viewed 23 August 2021.
[13] NTC, 2021. 41.

5. Equivalent standard axles and average gross mass

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

The ESA and AGM values recommended in the PTT report should be adopted, subject to resolving—

- light vehicle ESAs
- ESAs for RFS equipped heavy vehicles.

The NTC engaged Pekol Traffic and Transport (PTT) to calculate new equivalent standard axle (ESA) and average gross mass (AGM) values for use in the PAYGO model. AGM measures the average total vehicle mass for each class of vehicle. ESA measures the relative payment wear associated with different loads, axle groups and tyre configurations.[14]

The AGM and ESA values for light vehicles were calculated using AGM information for the ten most popular make/model combinations in each light vehicle category.

PTT calculated AGM and ESA values for heavy vehicles using 208 million records from weigh in motion (WIM) sites across Australia (except the Northern Territory). The data cleaning process included the removal of outliers with extremely high or extremely low ESA values.[15]

The PAYGO model includes a separate unsealed road discount to reflect the 66 per cent of the road network that is unsealed. This discount is discussed further in section 9 (page 16).

The findings of the review would, if applied, increase the heavy vehicle share of ESA-km allocated costs in the model from 93.9 per cent to 98.6 per cent.[16] The updated ESA factors would increase the heavy vehicle cost base by $106 million per year.[17]

At the same time, however, the review would enable the model to include AGM data for light vehicles for the first time. The inclusion of this data would reduce the heavy vehicle cost base by $234 million.[18]

The ATA considers that the updated values in the PTT report should be adopted. In particular, PTT's work on light vehicle mass fills an important gap in the model; the ATA welcomes the NTC's advice that it will be explained in detail in the decision RIS.

[14] Pekol Traffic and Transport (PTT), *Review of equivalent standard axle values used in the PAYGO model*. Final report to the NTC, 28 May 2021. ii.
[15] PTT, 2021. 12.
[16] NTC, 2021. 49.
[17] NTC, 2021. 102.
[18] NTC, 2021. 102.

We do, however, have technical concerns about—

- the allocation of ESAs to light vehicles
- the need to discount heavy vehicle ESAs to reflect the use of road friendly suspension systems.
- other minor issues related to the ESA calculations, which could be resolved bilaterally between PTT and the ATA engineering team.

Allocation of ESAs to light vehicles

The PTT report calculates light vehicle ESAs using the baseline ESA of 1 for a single axle fitted with a single truck tyre (53 kN or a 5.4t reference load).

Using this reference load is likely to considerably understate the ESA of light vehicles.

The ATA Industry Technical Council advises that a light passenger vehicle (single axle single tyre) is likely to have an ESA reference load in the range of 30-34 kN, because of the much smaller road contact area of a light passenger vehicle tyre in combination with its lower inflation pressure.

Table 1 sets out the ESA implications of the reduced reference load.

Table 1: PTT and ATA ESA estimates, selected light vehicle categories

PAYGO category	Vehicle type	PTT report	ATA estimates 30 kN	34 kN
2	Passenger cars	0.001	0.010	0.006
3	Passenger vans and light buses	0.003	0.028	0.017
4	4WD passenger vehicles	0.005	0.045	0.027

Road friendly suspension systems

Road friendly suspension systems reduce the impact of laden axles on road pavements and most bridge structures. Accordingly, the PAYGO calculations should include an ESA reduction for RFS equipped combinations.

6. Cost allocation

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

The PAYGO cost allocation matrix should not be amended in this determination.

PAYGO uses a cost allocation matrix and usage data to allocate costs to each vehicle class. The cost allocation matrix has not been changed since 2005.[19]

The consultation RIS examines the merits of three approaches to cost allocation, which are—

- the current approach
- allocating 70 per cent of the costs in expenditure category B2, periodic maintenance of roads and shoulders, using ESA kilometres
- a more radical change using work commissioned by the Victorian Department of Treasury and Finance and the Victorian Department of Transport.

Changing the cost allocation in expenditure category B2

Option 2 is based on a 2017 report by HoustonKemp. In its review, HoustonKemp concluded that—

> The current PAYGO framework is consistent with the economic principles of avoidable and standalone cost.[20]
>
> We found that new research on the relationship between heavy vehicle road use and road costs since the last NTC review was insufficient, in and of itself, to support a departure from the current PAYGO cost allocators.[21]

The RIS argues that it would, nonetheless, be reasonable to interpret the HoustonKemp report as supporting a departure from the current cost allocation approach for expenditure category B2.[22]

The ATA does not agree with this interpretation.

[19] NTC, 2021. 50.
[20] HoustonKemp, *Review of the parameters used to allocate road infrastructure costs to heavy vehicles. Reported prepared for the NTC*. March 2017. 2.
[21] HoustonKemp, 2017. 3.
[22] NTC, 2021. 51.

HoustonKemp concluded that it would be reasonable to maintain the existing allocation approach in the PAYGO matrix, and pointedly said—

> in our opinion there exists no strong evidence for departing from the existing approach to allocating 'road pavement and shoulder maintenance' costs at this time.[23]

The cost allocations for expenditure category B2 should not be changed.

Victorian DTF/DOT cost allocators

The Victorian Department of Treasury and Finance and the Victorian Department of Transport commissioned ARRB to estimate renewal and routine pavement maintenance costs in the state.[24]

The research necessarily included the development of a cost allocation matrix for Victorian roads, which the NTC adapted to the PAYGO expenditure categories.

As the NTC concedes in the RIS—

> The research is based on Victorian data only to date – it is uncertain whether the recommended cost allocators would be representative of the national road network.[25]

Given that the Victoria accounts for only 17 per cent of the national road network,[26] this is not a minor consideration.

The Victorian estimates should not be used in the 2021 determination, but the ATA acknowledges that they may, with further development, be a valuable contribution to the future debate about heavy vehicle charging.

[23] HoustonKemp, 2017. 36.
[24] Martin, T. et al. *Estimation of renewal and routine pavement maintenance costs for a forward looking cost base (FLCB) for heavy vehicles*. ARRB project PRA18012. April 2019.
[25] NTC, 2021. 78.
[26] BITRE, 2020. Table T1.6a. 58-59.

7. MaxMan

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

The ATA agrees that the MaxMan module should be removed from PAYGO.

The MaxMan concept was introduced as part of heavy vehicle charge setting in 1998 to reduce the costs allocated to road trains, because they can only use part of the network and because those roads tend to be of lower quality.[27]

The RIS points out that MaxMan in fact—

- increases the heavy vehicle cost base by some $5.4 million per year
- increases the costs allocated to double and triple road trains, instead of reducing those costs. [28]

The MaxMan module adds to the complexity of PAYGO and does the opposite of what it was intended to achieve. It should be removed.

[27] NTC, 2021. 57.
[28] NTC, 2021. 58.

8. Road user charge exemptions

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?

The NTC should not adjust the SMVU fuel consumption estimates to take into account the RUC exemptions for auxiliary fuel use.

If, however, the NTC decides to press on with approach 2, it should recalculate its estimates of auxiliary fuel use to—

- completely exclude fuel used in refrigerated trailers with separate tanks
- use the BMHV rate of 1.6 per cent as a more representative rate.

An advantage of this approach is that would address many of the data quality concerns raised in the RIS.

The consultation RIS notes that some fuel used in road freight transport is now exempt from the road user charge because it is used to power auxiliary equipment (such as truck refrigeration units or bin lifters) or is used off-road.

The Administrative Appeals Tribunal held in 2012 that fuel used in trailer refrigeration units was exempt from the charge, on the basis that the fuel was used for refrigeration and not for travelling on a public road.[29]

After a consultation process, the ATO updated its key public ruling on fuel tax, FTR 2008/1, on 1 May 2013 to clarify the auxiliary fuel uses that are exempt from the road user charge.[30] The ATO introduced safe harbour rates for some auxiliary fuel uses later in 2013.

The RIS lists four approaches for dealing with the exemptions, ranging from taking no action (approach 1) to seeking an amendment to the *Fuel Tax Act 2006* (approach 4). Of these, the RIS rightly points out that only two would be workable—

- continue the status quo and retain the fuel consumption estimate from the SMVU for calculating the RUC rate (approach 1)
- use a best estimate of the RUC exemptions to recalculate the RUC rate based on the fuel that is actually subject to the RUC (approach 2).[31]

Rows 1 and 3 of table 2 (page 13) summarise the NTC's assessment of the two approaches.

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[29] Linfox Australia Pty Ltd and Commissioner of Taxation [2012] AATA 517.
[30] ATO, Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge (FTR 2008/1, Consolidation published 1 May 2013. Latest consolidation)
[31] NTC, 2021. 63-64.

Table 2: Assessment of potential approaches to treating RUC exemptions

Advantages	**Disadvantages**
1. Consultation RIS assessment of approach 1 (retain the fuel consumption estimate from the SMVU)	
Simple approach, which does not require any additional estimates or assumptions. Operators who do not currently benefit from the RUC exemptions are not impacted negatively by any potential policy change that could occur under the other options.	RUC revenue collected fails to achieve the cost recovery intended under PAYGO because the amount of fuel subject to the RUC is lower than the amount assumed for modelling purposes.
2. ATA assessment of approach 1 (retain the fuel consumption estimate from the SMVU)	
Consistent with the NTC's approach to registration charge concessions.	
3. Consultation RIS assessment of approach 2 (recalculate the RUC rate using a best estimate of the exemptions)	
The amount of RUC revenue recovered would be closer to the intended target than under the status quo. Using the ATO 'fair and reasonable' exemption rates is a conservative estimate, which would reduce the risk of over-recovering the heavy vehicle cost base.	Data availability to calculate fuel used by auxiliary equipment is imperfect (as outlined in the previous section). There could be some risk of inaccuracies being introduced because of poor-quality data or the need to use assumptions. Adopting this option would likely mean a rise in the general RUC rate, particularly affecting the large number of operators who do not use auxiliary equipment and benefit from the exemptions.
4. ATA assessment of approach 2 (recalculate the RUC rate using a best estimate of the exemptions)	
The ATO exemption rates would not deliver a conservative estimate— • using the rates without an adjustment would inappropriately recover the RUC on the fuel used in refrigerated trailers with their own tanks • many businesses do not claim the fair and reasonable percentages.	Data availability issues could be addressed by using the BMHV accepted percentage rate instead of the detailed exemption rates.

ATA assessment of approach 1

The ATA's assessment of approach 1 is set out in row 2 of table 2.

The NTC assessment does not take into account a major advantage of retaining the status quo: it is internally consistent with the NTC's recommended approach to registration charge concessions.

The NTC rightly views registration charge concessions as a matter for each state and territory government. The concessions are not factored into the heavy vehicle charging system. The NTC's approach discussed further in section 11 (page 19).

There is no conceptual difference between the registration charge concessions and the RUC exemptions. They both represent a positive legislative or quasi-legislative decision to forego revenue in favour of achieving a valued objective.

ATA assessment of approach 2

The ATA's assessment of approach 2 is summarised in row 4 of table 2.

The NTC's approach to recalculating the fuel consumption figure is not conservative. It would overestimate the fuel use that is now exempt from the road user charge and over recover the heavy vehicle cost base.

Refrigerated trailers with their own fuel tanks

The NTC's modelling assumes that all heavy vehicle claims for off-road and auxiliary equipment use are at the ATO's fair and reasonable percentage rates.[32]

The 10 per cent rate for refrigerated vehicles includes all fuel used in the vehicles – **including fuel sourced from trailer fuel tanks.**[33]

But this fuel use is not included in the SMVU fuel consumption figures, **because the SMVU excludes trailers**. As the SMVU survey guide states—

> The SMVU excludes caravans, **trailers**, tractors, plant and equipment, defence services vehicles, and vehicles with diplomatic or consular plates. Vehicles registered as vintage and veteran cars are also excluded.[34]

The NTC's approach to calculating the RUC leakage would add in the fuel used in refrigerated trailer fuel tanks – when it was never included in the SMVU in the first place.

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[32] NTC, 2021. 61.
[33] ATO, 2016. [9].
[34] ABS, Survey of motor vehicle use survey guide, 2019. 1.

It would be more reasonable to use the BMHV percentage rate

The NTC modelling assumes that all businesses who claim fuel tax credits claim for off-road use at the relevant percentage rate.

In the ATA's view, it is not reasonable to assume that small businesses are aware of their ability to claim auxiliary equipment exemptions. In fact, the ATO recently introduced the basic method for calculating fuel tax credits for heavy vehicles (BMHV) to address the underclaiming by small businesses.

The BMHV includes a standard 1.6 per cent allowance for off road and auxiliary equipment.[35]

Preferred approach

The ATA's preferred approach is approach 1, which would avoid cross-subsidisation between businesses and would be consistent with the NTC's approach to registration charge concessions.

If, however, the NTC decides to press on with approach 2, it should recalculate its estimates of auxiliary fuel use to—

- completely exclude fuel used in refrigerated trailers with separate tanks and
- use the BMHV rate of 1.6 per cent.

An advantage of this approach is that would address many of the data quality concerns raised in the RIS.[36]

[35] ATO, Fuel tax credits – basic method for heavy vehicles. PCG 2021/2.
[36] NTC, 2021. 62.

9. Unsealed road travel discount

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?

Yes. The NTC should retain the unsealed road travel discount, but its value should be reviewed based on evidence gathered through the 2021 unsealed road travel survey.

The PAYGO model cost allocators assume that the entire road network is sealed. Of course, this is not the case. Some 66 per cent of the road network is unsealed,[37] so the model includes a discount for road train and B-triple travel on these roads.

In the RIS, the NTC argues that the discount addresses a legitimate issue concerning the PAYGO cost allocator assumption that the entire network can be treated as sealed, but that a new industry survey should be conducted to review its value.[38]

The ATA agrees with this approach. We provided the NTC with technical comments on its draft survey, and it has now been distributed through relevant ATA member associations.

[37] BITRE, Australian infrastructure statistics yearbook 2020. Table T1.6d. 61.
[38] NTC, 2021. 65

10. Community service obligation discount

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

The CSO discount in the PAYGO model should not be discontinued.

It should be retained and expanded, as part of a whole of government response to the report of the House of Representatives Indigenous Affairs Committee on food pricing and food security in remote Indigenous communities.

In 2005, the NTC adopted a 5 per cent community service obligation (CSO) for double and triple road trains to reflect the road expenditure needed to support remote communities. The CSO is some $14 million per year; the rate has not been reviewed since it was introduced.[39]

The NTC proposes to end the discount, on the grounds that its measurement is uncertain and its impact small.

The ATA does not agree. There is a very strong case for retaining and expanding CSOs for remote communities, as the House of Representatives Indigenous Affairs Committee heard in its inquiry into food pricing and food security in remote Indigenous communities.[40]

In its submission to the inquiry, the Northern Territory Council of Social Service (NTCOSS) noted that—

> A healthy food basket purchased from an NT Remote Store will require 34 per cent of the household income for a family of six (more than double the national household average of disposable income required for food and non-alcoholic beverage expenditure (13.9 per cent). In some remote communities, a healthy diet cost more than half the disposable income of a family on income support.[41]

The cost of freight can be as high as 20.4 per cent of sales in some remote communities.[42]

At the same time, the quality of remote roads is extremely poor, as figure 1 illustrates.

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[39] NTC, 2021. 66.
[40] House of Representatives Standing Committee on Indigenous Affairs, Report on food pricing and food security in remote Indigenous communities. November 2020.
[41] Northern Territory Council of Social Service, NTCOSS submission to the inquiry into food pricing and food security in remote Indigenous communities. July 2020. 5.
[42] House of Representatives Indigenous Affairs Committee. 21.

Figure 1: Serving the Nhulunbuy community on the Central Arnhem Road

Source: NTRTA

The poor quality of remote roads leads to higher maintenance costs for trucking businesses, which pushes up the cost of freight even more. Businesses quoting on remote contracts commonly multiply their usual maintenance and tyre costs by 2.5 to get a workable estimate.

Transport operators in the Northern Territory report that repairs, maintenance and damage bills have doubled due to extreme corrugated road conditions. On the Tanami Road, operators struggle to keep equipment roadworthy and compliant. Operators increasingly report that repairs and damage bills are making the freight task unviable.[43]

The Public Health Association of Australia and the Cancer Council of Australia jointly recommended to the House of Representatives inquiry that the Australian Government should—

- investigate subsidisation of core healthy food freight to remote communities to assist with the high freight costs
- implement subsidies on logistic operations (transport, freight, maintenance of stores, equipment, staffing etc) of remote stores.[44]

The Australian Government is considering the committee's report now; the NTC should participate in that whole of government process.

[43] Information provided by the NT Road Transport Association.
[44] PHAA and CCA, Public Health Association of Australia and Cancer Council Australia submission on inquiry into food pricing and food security in remote Indigenous communities. July 2020. 11.

11. Registration concessions

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

Agreed. The 2021 PAYGO determination should not consider registration charge concessions; however, the NTC should publish an annual estimate of their cost.

State and territory governments offer a range of heavy vehicle registration concessions, including to primary producers[45] and, in NSW, small operators.[46] There are also concessions for converter dollies;[47] these are particularly important for livestock and rural transporters.

The cost of the revenue foregone from these concessions is borne by the governments that offer them. The lost revenue is not recovered from other heavy vehicle users through the PAYGO model.

The ATA supports the NTC's decision to exclude registration charge concessions from the determination.[48] Consistent with best practice, however, the NTC should publish an annual estimate of cost of those concessions.

[45] See, eg, *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (Qld), r 124.
[46] See, eg, *Road Transport (Vehicle Registration) Regulation 2017* (NSW), sch 4 r 11.
[47] See, eg, *Motor Vehicles Regulations 2010* (SA), r 90(3).
[48] NTC, 2021. 67.

12. Electric heavy vehicles

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?

Electric and hydrogen fuel cell heavy vehicles should not be included in the 2021 determination.

The states and territories should collect consistent registration data on electric and hydrogen fuel heavy vehicles, which should then be reflected in the ABS motor vehicle census or a NEVDIS equivalent.

The ATA welcomes the consideration of electric heavy vehicles in the consultation RIS, but stronger actions are needed to prepare for the transition of the heavy vehicle fleet.

Specifically –

- electric heavy vehicle numbers are expected to grow substantially[49]
- while not yet applying to heavy vehicles, state governments have begun implementing road user charges on electric vehicles
- the pace of development and release of new zero emission heavy vehicle models is accelerating. In recent months, Volvo has introduced a new electric truck into Melbourne[50] and Hyzon have announced plans for hydrogen fuel cell trucks in Wollongong.[51] The Fuso eCanter has been available since early 2021[52] and SEA Electric has revealed five new electric truck models in Australia.[53]

But there is no reliable data on the number of electric and hydrogen fuel-cell heavy vehicles.[54]

The ATA agrees with question 14 in the consultation RIS. The small number of heavy vehicles in the fleet today, the complexity that adjustments would cause to the PAYGO model and the difficulty in obtaining accurate data mean that electric heavy vehicles should not be included in this determination.

[49] NTC, 2021. 67.
[50] The Driven, VB beer deliveries go green with Volvo electric truck. 9 July 2021.
[51] Hyzon, Hyzon Motors to deliver Australia's first hydrogen-powered trucks to Coregas, a Wesfarmers company. 14 July 2021.
[52] Owner Driver, Fuso eCanter now available full specs released. 30 March 2021.
[53] Big Rigs, Aussie-run SEA Electric floods light-duty sector. 12 August 2021.
[54] ATA, Future fuels strategy. April 2021. 5.

The ATA agrees with question 15 – the NTC should collect data on electric heavy vehicles – but a stronger plan is needed to position governments to incorporate zero emission heavy vehicles in the next determination or the FLCB pricing model. This should include –

- reform by the states and territories to collect consistent registration data on electric and hydrogen fuel cell heavy vehicles
- reflecting this data in the ABS motor vehicle census or a NEVDIS equivalent.[55]

This would also assist the design and evaluation of public policy for incentivising zero emission vehicles.

[55] See NTC, 2021. 42.

13. Recovery of regulatory costs

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?

Regulatory charges under this determination should be set using the existing methodology, but with updated information on weight, distance travelled and the registered heavy vehicle fleet.

Regulatory charges should not, however, be adjusted on a yearly basis. They should follow a set pricing path throughout the three year determination period recommended in this submission.

Infrastructure and transport ministers should approve the NHVR's budget on a three yearly basis, not on a yearly cycle.

87 per cent of the NHVR's budget is recovered from heavy vehicle operators through a regulatory component that is added to registration charges.[56] The states and territories participating in the HVNL collect the charge, which is then swept from their working accounts on a daily or monthly basis and transferred to the NHVR.

The consultation RIS considers three options for setting regulatory charges under this determination, and, separately, two options for adjusting the charges each year.[57]

Setting regulatory charges in future years

The NTC proposes to retain the existing methodology for setting regulatory charges, but to use the updated information on weight, distance travelled and the registered heavy vehicle fleet that will be used in the rest of the determination.

The ATA agrees that the existing formulas for recovering the NHVR's charges work well, and that it would be appropriate to recalculate the charges using the latest information.

[56] NHVR, Annual report 2019-20. 50.
[57] NTC, 2021. 71.

Approving regulatory charges each year

The consultation RIS examines two options for adjusting regulatory charges throughout the life of the determination. These options are—

- continue with the current approach of ministers approving the regulatory charges each year
- implement an automatic adjustment mechanism that would scale the regulatory charges up or down each year to reflect changes in the NHVR's budget and changes in the heavy vehicle fleet.[58]

The ATA agrees with the NTC that asking ministers to approve both the NHVR's budget and then the necessary regulatory charges is pointless and onerous.

There is, however, a third option.

Section 14 of this submission recommends that the pricing path for the road user charge and registration charges be set over a three year pricing period.

To maximise certainty for business and reduce administrative costs for governments—

- regulatory charges should also follow a set trajectory throughout the period
- the NHVR's budget should be approved on a three yearly basis, not every year. Approving the NHVR's budget for three years at a time would give it more ability to implement its corporate plan and achieve effective, value for money results for industry, governments and the community.

[58] NTC, 2021. 71.

14. Implementation options

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?

The determination should be implemented through a fixed three year pricing period, with charges increasing 2 per cent in 2022-23, followed by a 3 per cent increase in each of 2023-24 and 2024-25.

To maximise certainty for businesses during the determination period—

- the NTC should publish the details of the road user and registration charges for each year of the determination period
- the Heavy Vehicle Charges Model Law should be amended to set registration charges for 2022-23, 2023-24 and 2024-25
- the 2022 road user charge determination should set the road user charge for 2022-23, 2023-24 and 2024-25.

The heavy vehicle charges set under PAYGO should not be replaced with different FLCB charge rates during the three year period of the determination.

The RIS examines three options for implementing the determination, which are summarised in table 3.

Table 3: RIS implementation options

Option	2022-23 (%)	2023-24 (%)	2024-25 (%)
Direct implementation	16.5	N/A	N/A
Multi-year pricing path: example 1	3.5	3.5	3.5
Multi-year pricing path: example 2	6.0	6.0	6.0

Direct implementation option

As table 4 shows, the 16.5 per cent headline increase in the cost base under the direct implementation option masks a 22 per cent increase in the road user charge and very large increases in some registration charges.[59]

Table 4: Registration charges and road user charge, direct implementation option

Vehicle type	2021-22 ($)	2022-23 ($)	Increase (%)
Two axle rigid >12.0t	993	1,804	81.7
Three axle rigid up to 16.5t	968	1,792	85.1
Four axle rigid up to 20.0t	983	1,822	85.4
Six axle semitrailer	6,369	6,420	0.8
Nine axle B-double	15,102	15,225	0.8
Road user charge (cents per litre)	26.4	32.2	22.0

The NTC notes that the economic consequences of a significant increase in heavy vehicle charges may be more severe than usual, and that heavy vehicle operators may not be able to pass on significant increases in heavy vehicle charges.[60]

The ATA agrees with the NTC's assessment, although the consequences of a 16.5 per cent increase in heavy vehicle charges would be severe at any time.

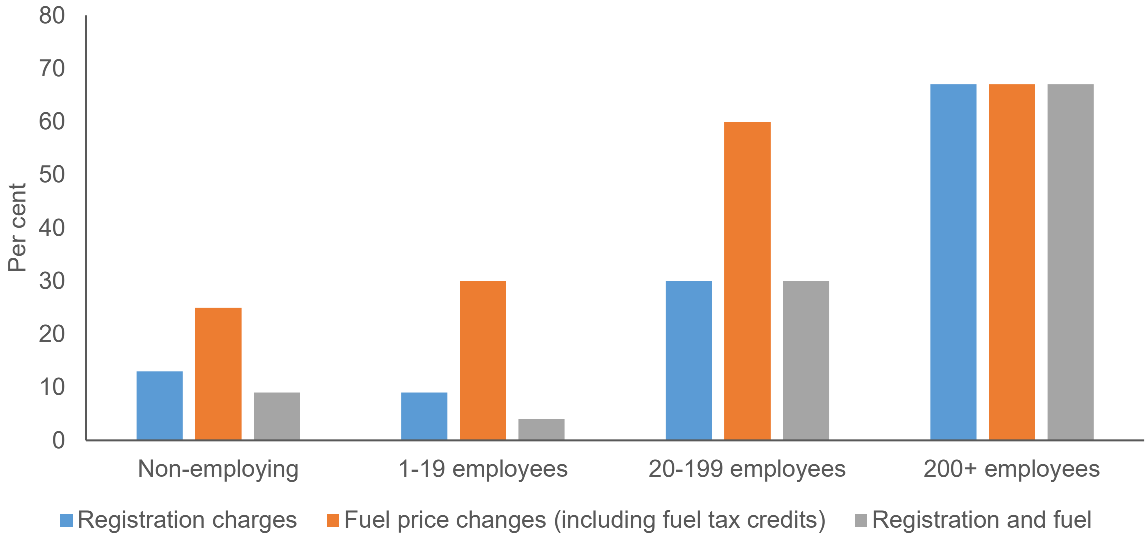
In our 2021 truck charges survey,[61] we asked participants about their ability to pass on registration charges and changes in the fuel price (including changes in fuel tax credits). Overall—

- 16 per cent of the businesses we surveyed could pass on registration changes
- 34 per cent could pass on fuel price changes and
- 13 per cent were able to pass on both registration and fuel price changes.

Figure 2 breaks down the survey results according to the size of the participating businesses.

[59] NTC, 2021. 85.
[60] NTC, 2021. 81.
[61] The full details of the survey are in ATA, 2021 heavy vehicle charges consultation report. Submission to the NTC. March 2021.

Figure 2: Ability of trucking businesses to pass on cost increases by size



In the qualitative section of the survey, small trucking businesses shared their difficulties with passing on costs—

> It's near impossible for me to pass on costs, as I don't set the rates as a subcontractor. It’s either take what's offered or go without.
>
> [General freight business, non-employing]

> Being a very small family business, increasing our costs to customers increases our chances of losing those customers indefinitely to bigger companies who have the ability to undercut our prices.
>
> [Refrigerated freight business, 1-19 employees]

Larger businesses told us they had more ability to pass on costs, but that the market was still very difficult—

> If we are lucky we can review our rates on an annual basis to cover CPI increases.
>
> [General freight business, 20-199 employees]

Multi-year pricing period options

The RIS includes two sample options for setting charges over a defined three year pricing period: an increase of 3.5 per cent per year or an increase of 6 per cent per year.

The ATA has long argued that heavy vehicle charges should be set over a fixed, multi-year determination period, with the NTC able to determine a smooth path for charges throughout each period.[62]

The RIS ably explains the advantages of moving to a fixed determination period. The move would—

- recognise that moving to full cost recovery immediately would impose an unreasonable burden on industry
- provide industry with certainty about the heavy vehicle charges that would apply in the medium term, allowing vehicle operators to make better pricing decisions and reflect them in contracts
- reduce administrative and compliance costs for both governments and industry.[63]

Length of the pricing period

The RIS proposes that the pricing period be set at three years, as a compromise between providing certainty and reducing the risk of the gap between the cost base and charges revenue widening significantly.[64]

Although the ATA has previously argued for a five year determination period,[65] we consider a three year period workable.

The ATA does not, however, agree with the NTC's argument that—

> The heavy vehicle charges set under this methodology could be replaced at any time with charges set under a new methodology introduced as part of HVRR.[66]

The point of having a fixed pricing period is to deliver a smooth, certain path for heavy vehicle charges. Setting charges under a new methodology – unless the new charges for remainder of the pricing period matched the old PAYGO charges – would not deliver this outcome.

Determining the year on year increases in charges

The evidence from the ATA's 2021 charging survey confirms that businesses have difficulty passing on charge increases, with even large businesses struggling to secure increases in line with CPI.

[62] ATA, Heavy vehicle charges—options for improving the accuracy and stability of the PAYGO heavy vehicle charges methodology. Submission to the NTC, 18 August 2016. 18-19.
[63] NTC, 2021. 81-82.
[64] NTC, 2021. 82.
[65] ATA, 2016. 18.
[66] NTC, 2021. 82.

Based on the RBA's August 2021 output growth and inflation forecast,[67] a reasonable pricing path would be a 2 per cent increase in 2022-23, followed by a 3 per cent increase in each of 2023-24 and 2024-25.

Maximising certainty for business

One of the goals of moving to a fixed multi-year pricing period is that it would provide industry with information about future heavy vehicle charges so they could plan with certainty.

Businesses cannot use information about future charges unless they can find it.

In the ATA's view, the NTC should restructure the heavy vehicle charges information on its website to provide authoritative information about the charges that are to apply in each year of the determination.

It would also be desirable for the legal instruments determining the charges to cover the whole of the determination and not just a single year.

Accordingly, the ATA considers that the Heavy Vehicle Charges Model Law should be amended to set registration charges for whole of the three year determination period.

Similarly, the 2022 road user charge determination should set the road user charge for 2022-23, 2023-24 and 2024-25 and not just a single year.

The ATA is satisfied that a three year determination would meet the requirements of sections 43-10(9)-(12) of the *Fuel Tax Act 2006* (Cth). The ATA's legal advice is attached.

[67] RBA, Statement on monetary policy. August 2021. Table 5.1.

HOLDING REDLICH

Memorandum

To:	Bill McKinley
From:	Nathan Cecil
Date:	25 August 2021
Subject:	Implications of the *Fuel Tax Act 2006* (Cth) s 43-10 for setting road user charges
Matter No:	19730021

Can the Minister issue a single determination setting the rate of the road user charge for 2022–23, 2023–24 and 2024–25 given the consultation requirements in ss 43-10(9)-(12) of the Act?

1. Yes, subject to the considerations in this advice.

2. The consultation requirements in ss 43-10(9)-(12) of the *Fuel Tax Act 2006* (Cth) (**Act**) pose no legislative bar in principle to the Minister issuing the rate of road user charge for 2022–23, 2023–24 and 2024–25.

3. Section 43-10(9) of the Act requires the Minister to engage in public consultation before the Minister "determines" an increased rate of road user charge. While the Act requires the Minister to follow these processes each time the Minister determines an increased rate of road user charge, it does not preclude the Minister from determining several increased rates for successive years at the same time. Regardless of whether the Minister makes a determination relating to one or more years, the Minister may only make one determination each financial year in respect of any increase in that financial year.

4. To set increased rates for 2022–23, 2023–24 and 2024–25 in the one determination, the Minister would first need to publish the proposed rates for each year and the information relied upon in determining those rates for at least 60 days and consider the public's responses in relation to those rates, in accordance with s 43-10(9) of the Act.

Does the NTC's consultation process on the PAYGO determination satisfy the requirements of s 43-10(9) or would a further round of consultation be required?

5. No, a further round of consultation would be required.

6. While the Heavy Vehicle Charges Determination: Consultation Regulation Impact Statement (**RIS**) (here) details various implementation options for increased rates of road user charges over 2022–23, 2023–24 and 2024–25 (see e.g. page 87), we do not consider this sufficient for the purposes of s 43-10(9). That is because:

   (a) The purpose of the RIS is stated to be to review "*the method used to set heavy vehicle charges. This is also known as the 'pay as you go' model, or PAYGO*" and to "*explore if the method we currently use to calculate charges is still fit for purpose. We'll also explore how possible changes could be implemented.*" That is, the consultative purpose of the RIS is not to consult on a 'proposed' increase to the rate of road user charge.

(b) The RIS does not directly endorse any of the three implementation options explored within, such that it could be said to 'propose' the increased rates of road user charge. Rather, it invites comment on the implementation options generally (see e.g. Questions 18–24). There needs to be a definite 'proposal' of particular increased rates, along with the information relied upon in determining those rates, in order for the public consultation requirements to be satisfied.

(c) In the RIS, the NTC itself contemplates that a further consultation process would be necessary before a determination can give effect to increased rates of road user charges for upcoming financial years. On page 13 of the RIS, under the heading "consultation and next steps", the NTC states:

> *"Following the end of the consultation period, we will analyse the information we receive and formulate recommendations for a decision RIS. The decision RIS will make recommendations to transport ministers at the Infrastructure and Transport Ministers' Meeting (ITMM) in November 2021 for a new determination to apply for heavy vehicle charges applying from 2022–23. Following the meeting,* ***Ministers will consult further on any proposed increase, in line with the Fuel Tax Act 2006****."*

(d) In any case, section 43-10(9) of the Act requires "the Transport Minister" to engage in public consultation. While NTC reports and is accountable to Australian transport ministers through the Infrastructure and Transport Ministers' Meeting (**ITMM**),[1] it is operationally independent of the Commonwealth Transport Minister and Transport Department as defined by the Act. Unless the Transport Minister can and has delegated the task of consultation to the NTC for this purpose (matters which we have not verified), the NTC's consultation arguably may not meet the consultation requirements of the Act.

This position appears to have been recognised in practice. Even when the NTC has engaged in public consultation on a direct proposal for increased rates of road use charge, the Transport Department has followed this up with its own 60-day public consultation process prior to the Minister making a determination. For example, in its Heavy Vehicle Charges Consultation Report published in January 2021 (here), the NTC sought submissions in relation to the ITMM's proposal to increase heavy vehicle registration and road user charges by 2.5% in 2021–22. Submissions to the NTC closed on 12 March 2021. The ITMM considered those submissions and on 30 March resolved to raise registration and road user charges as proposed (here). Then, the Transport Department engaged in its own consultation process from 14 April – 14 June in respect of the same proposal (here), before the Minister issued the Fuel Tax (Road User Charge) Determination 2021 (here) on 31 May. This was despite the NTC appearing to suggest in its consultation report that its own process satisfied the Minister's public consultation requirements under the Act (see page 7–8).

[1] *National Transport Commission Act 2003* (Cth) s 8.

Section 43-10(11) of the Act prevents the Minister from applying a method for indexing the charge. Would setting a multi-year path for the road user charge breach this prohibition?

7. In principle, no. It would depend on the underlying method for increasing the rate of road user charge over the multi-year path.

8. Section 43-10(11) of the Act provides "*In determining the road user charge, the Transport Minister must not apply a method for indexing the charge.*"

9. Accordingly, the Minister would be prevented from embedding into a determination an indexation formula by which the rate of increased road user charge would be set across several successive years.

10. On the other hand, the section does not preclude the Minister from determining actual increased rates over a multi-year period based on forecasting according to typical and appropriate prediction models.

11. The reasons for the rule against indexation for setting rates of road user charge are reflected in the explanatory material to the *Road Charges Legislation Repeal and Amendment Act 2008* (Cth) (**2008 Amendment Act**), which introduced s 43-10(11) to the Act.

12. When the Act was amended in 2008, it was originally proposed to permit the Minister to prescribe a method of indexation of the rate. In the original bill for the amendment to the Act, a proposed s 43-10(8) read, "*The regulations may prescribe a method for indexing the road user charge.*" However, in the final version of bill, which became the 2008 Amendment Act, this subsection was abandoned and s 43-10(11) in its current form was added. The supplementary explanatory memorandum explained the change as follows:

> *"This amendment reverts the setting of the rate of the road user charge from a rate prescribed by regulation to a determination by the Transport Minister. Removing the ability to automatically index the rate by regulation allows reversion to a determination by the Minister. This determination would be a disallowable legislative instrument."*

13. The change followed a report of the Senate Standing Committee on Rural and Regional Affairs and Transport on the original bill. The report noted concerns in relation to the indexation model for proposed annual adjustment of road user charges. The model proposed at the time involved adjusting the road user charge to reflect movements in annual road expenditure (measured by the seven-year average of road expenditure in real dollars) and road use. Stakeholders raised concerns about the transparency of this automatic indexation model in a context in which it would be embedded in regulation rather than implemented by the Minister's determination, which would be subject to Parliamentary disallowance. In a dissenting report, Opposition Senators noted the concerns of the Australian Trucking Association and Australian Livestock Transporters Association:

> *"Their submissions point out that if the National Transport Commission's indexing model is applied, the Road User Charge could go up, without Parliamentary approval, every year at a rate of over seven percent per annum. This would occur without industry consultation until the National Transport Commission makes another Determination. This could be five years. The argument that defends an automatic indexing arrangement – administrative convenience -seems inadequate.*

The Opposition Members of the Inquiry regard the failure of this bill to preclude the prospect of automatic indexation as a significant weakness."

14. Although the ability for regulations to prescribe a method for indexing the road user charge in proposed s 43-10(8) was abandoned in the final version of the bill, s 43-10(11) was also added. This makes clear Parliament's intention that an indexation method is not permitted, whether implemented under regulation or by the Minister's determination (i.e. a disallowable instrument).

15. However, this differs from a situation in which the Minister determines increased rates of road user charge prospectively over a three-year period and records those actual rates in a determination. In other words, the Minister is free to apply the Minister's usual method of determining increases to rates in a determination to span a multi-year period, as the Minister has done in the past on an annual basis.

Appendix – Section 43-10 of the *Fuel Tax Act 2006* (Cth)

“43-10 Reducing the amount of your fuel tax credit

Road user charge

(3) To the extent that you acquire, manufacture or import taxable fuel to use, in a vehicle, for travelling on a public road, the amount of your fuel tax credit for the fuel is reduced by the amount of the road user charge for the fuel.

Note: Only certain motor vehicles whose gross vehicle mass is more than 4.5 tonnes are entitled to any credit (see sections 41-20 and 41-25).

(4) However, the *amount is not reduced under subsection (3) if the vehicle’s travel on a public road is incidental to the vehicle’s main use.

Working out the amount of the reduction

(6) The amount by which a fuel tax credit for taxable fuel is reduced under subsection (3) is worked out by reference to the rate of fuel tax or road user charge in force on the day worked out using the table in subsection 43-5(2A).

Determining the rate of road user charge

(7) The amount of road user charge for a taxable fuel is worked out using the rate determined under subsection (8) that applies to the taxable fuel.

(8) The Transport Minister may, by legislative instrument, determine a rate of road user charge for the following classes of taxable fuels:

(a) taxable fuels for which duty is payable at a rate per litre of fuel;

(b) taxable fuels for which duty is payable at a rate per kilogram of fuel;

(c) taxable fuels for which duty is payable at a rate expressed in a unit of measurement that is not mentioned in paragraph (a) or (b).

Note 1: A different rate may be determined for each class of taxable fuels.

Note 2: For the purposes of determining whether duty is payable for a taxable fuel at a rate per litre, per kilogram or per another unit of measurement, see whichever of the Excise Tariff Act 1921 and the Customs Tariff Act 1995 is applicable to the taxable fuel.

(9) Before the Transport Minister determines an increased rate of road user charge, the Transport Minister must:

(a) make the following publicly available for at least 60 days:

(i) the proposed increased rate of road user charge;

(ii) any information that was relied on in determining the proposed increased rate; and

(b) consider any comments received, within the period specified by the Transport Minister, from the public in relation to the proposed increased rate.

(10) However, the Transport Minister may, as a result of considering any comments received from the public in accordance with subsection (9), determine a rate of road user charge that is different from the proposed rate that was made publicly available without making that different rate publicly available in accordance with that subsection.

(11) In determining the road user charge, the Transport Minister must not apply a method for indexing the charge.

(11A) In determining the road user charge, the Transport Minister must determine the rate to one decimal place of a cent.

(12) The Transport Minister must not make more than one determination in respect of a class of taxable fuel in a financial year if the effect of the determination would be to increase the road user charge for that class of taxable fuel more than once in that financial year.

Note: For the classes of taxable fuel, see subsection (8)."