NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

Heavy Vehicle Charges Consultation Report 2021

12 March 2021

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the *Heavy vehicle charges consultation report*[1] (Consultation Report) released by the National Transport Commission (NTC) in January 2021.

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.

Economic Context

3. In the similar consultation process for the prior financial period, NatRoad indicated the problematic nature of an increase in heavy vehicle charges at a time of debilitating drought and bush fire devastation that added to already fierce cost pressures on heavy vehicle operators.

4. Subsequent to that submission, the COVID-19 pandemic hit the Australian economy hard, inclusive of the impact on the road transport industry. Recessionary conditions prevail.[2] There is now a minor recovery in the Australian economy, presaged on avoiding the continuing effects of the spread of the virus.[3] But the pandemic conditions are still entrenched and economic fragility cannot be underestimated. Conditions remain precarious. 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.

5. The pandemic has added to costs of operation because of increased levels of hygiene and cleaning regimes, the added costs of dissimilar yet prevailing State and Territory border crossing permits and related administration, the time and investment in testing of drivers and other personnel and frequent border disruptions and delays in the wake of sometimes

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1 https://www.ntc.gov.au/sites/default/files/assets/files/Heavy%20vehicle%20charges%20consultation%20report%202021-22_0.pdf

2 https://www.abc.net.au/news/2020-09-02/australian-recession-confirmed-as-economy-shrinks-in-june-qtr/12619950

3 https://www.reuters.com/article/australia-economy-budget/australia-hails-faster-economic-recovery-as-covid-19-outbreak-suppressed-idUSL4N2IX0OG

hurried border closures.[4] Recently, this rush following an announced border closure on short notice unfortunately led to tragic consequences.[5]

6. Assessing the cost of the pandemic in aggregate has not been undertaken. But qualitative data exists. For example, one member has advised NatRoad that an additional staff member has been employed merely to cope with, in his words, "permits required for going across borders and risk assessment on tasks going into different states plus all PPE gear required to keep safe." For that company, the cost estimate of the COVID related administration and additional materials is close to $100,000. For another, larger member the cost is estimated as being well in excess of that figure, given the administrative staff time allocated to permits, scheduling and cleaning rosters as well as the direct costs of items such as masks, hand sanitiser and the like. The costs of different cross-border regimes and the fact that members must tailor their compliance efforts to particular States and territories has also had an adverse effect on members' costs. That aspect of regulation has not been able to be costed.

7. The problem of congestion and its costs, now that the public seeks to avoid public transport because of fears of getting the virus when so travelling, are also emerging issues.[6]

8. In May 2020, Transport Ministers agreed to maintain the road user charge (RUC) and heavy vehicle registration charges at their current levels for the year 1 July 2020 to 30 June 2021.[7] NatRoad at the time commended that decision[8] and we reinforce the positive effects of that step, especially given the squeeze on profit margins that many in the industry have experienced, especially through matters such as increased payment times.

9. To substantiate the concerns expressed in the prior paragraph, we note that a 2020 survey of the industry found:

> *Average net profit (after tax) margins have fallen to around three per cent of revenue, increasing the pressure many fleets face when it comes to modernising their transport equipment.*[9]

10. The NatRoad view has not changed since this matter was previously examined by the NTC and considered by the Transport Ministers because at that time the main focus was on damage to the Australian economy from the bush fires then estimated at $110 billion.[10] The

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[4] One example was the sudden Victorian border closure in late December 2021 with Victorian citizens effectively locked out unless they returned to Victoria by an express date and time: https://www.abc.net.au/news/2020-12-22/victoria-nsw-coronavirus-border-permit-rules-create-confusion/13005364 This caused border delays of up to 4 hours and a large number of freight scheduling problems.

[5] https://www.abc.net.au/news/2021-02-11/fatal-truck-crash-sa-victoria-border-amid-coronavirus-travel-ban/13143024

[6] See for example the situation in Brisbane where congestion already exceeds pre-COVID levels https://www.abc.net.au/news/2021-02-09/coronavirus-queensland-brisbane-traffic-congestion-transport/13121108

[7] Noted at above note 1 p7

[8] https://www.natroad.com.au/news/freeze-heavy-vehicle-registrations

[9] https://www.isuzu.com.au/media/1253002/isuzu-future-of-trucking-report-the-road-ahead.pdf at p 17

[10] https://www.accuweather.com/en/business/australia-wildfire-economic-damages-and-losses-to-reach-110-billion/657235

pandemic's effects were only just beginning to bite. The proposed cost increases even at the level of 2.5% per annum would compound the problems which arise from the pandemic as well as underlining the fundamental unfairness of the current basis of heavy vehicle charging. The recent Victorian lock-down has added to cost pressures arising from COVID-19.[11]

11. A recent report by Borland for the Fair Work Commission[12] shows that for the Transport, postal and warehousing sector, in respect of the impact of the pandemic on jobs there was an initial decrease to mid-April 2020 and no recovery since that time. In early December the number of jobs remained about 5% below the level in mid-March. In addition, the gross value added, jobs and hours worked "in September quarter remained 10 to 18 per cent below pre-COVID-19 levels."[13]

12. Furthermore, a matter not contemplated by the Consultation Report, but which affects the perspective brought to the current process, is the mooted proposal for an increase in fuel duty or the imposition of a new fuel based levy to cover the cost of Government fuel security measures. At present this is an unquantified potential impost on the road transport industry that affects discussion of and decisions about other heavy vehicle charges. This issue is taken up further below.

13. Other areas of the economy are the subject of stimulus measures introduced by Government to assist with business survival during the pandemic. As Infrastructure Australia has noted:

    Significant stimulus and other support measures have been announced, with total expenditure of around $200b planned for FY2020 and FY2021 • While economic recovery will depend on the duration of the COVID-19 pandemic, it will also be impacted by the efficacy, duration and size of fiscal stimulus.[14]

14. The proposed cost increases set out in the Consultation Paper and the uncertain but likely additional fuel levy to fund fuel security measures will have the opposite effect on the road transport industry of stimulus measures that would assist recovery from the recession induced by COVID-19.

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[11] See for example https://www.mybusiness.com.au/management/7948-businesses-devastated-as-victoria-heads-back-into-lockdown?utm_source=MyBusiness&utm_campaign=15_02_21&utm_medium=email&utm_content=1&utm_emailID=5b0c5f530330f2342fb9d4c6242de3d393f0968ce4f363f72361684f6ca90c79

[12] J Borland *An assessment of the economic effects of COVID-19, Version 2* https://www.fwc.gov.au/documents/wage-reviews/2020-21/research/rr12021v2.pdf?utm_medium=email&utm_campaign=Annual%20Wage%20Review%20202021Website%20updated&utm_content=Annual%20Wage%20Review%20202021Website%20updated+CID_f98b42efa768c43df8a844fdc1cb944f&utm_source=campaign%20monitor&utm_term=Research%20report%2012021%20An%20assessment%20of%20the%20economic%20effects%20of%20COVID-19%20%20Version%202

[13] Id p 17

[14] https://www.infrastructureaustralia.gov.au/sites/default/files/2020-12/Final_COVID%20Impacts%20on%20Infrastructure%20Sectors%20Report_14%20Dec%202020.pdf slide 25

What is Proposed and what is the NatRoad stance?

15. The Consultation Report outlines the proposal as follows:

    ITMM agreed to consult on a potential 2.5 per cent increase to heavy vehicle charges, and for the National Transport Commission to run the consultation between 4 January and 12 March 2021. The proposal to increase heavy vehicle charges by 2.5% in 2021–22 is consistent with the previous decision expressed in November 2019. It represents a small increase to close some of the gap between the cost base and charges revenue.[15]

16. The proposal to increase these costs is opposed, particularly in light of the proposed fuel security levy that is not within the purview of the Consultation Report. We do concede that the 2.5% increase proposed is less than the NTC estimate of statutory cost recovery. The Consultation Report says that:

    (T)o ensure governments recover the amount spent on providing roads to heavy vehicles in 2019–20, current heavy vehicle charges would need to rise by 13.4 per cent for 2021–22. If no decision is taken by ITMM, heavy vehicle charges would be automatically increased by 13.4 per cent for 2021–22 under the annual adjustment formula contained in the Heavy Vehicle Charges Model Law (the Model Law).[16]

17. This submission sets out NatRoad's opposition to the increase in heavy vehicle charges by first referring the NTC to comments made in the prior submission dated 28 February 2020 (February Submission) on this subject, in particular the systemic issues that make the current methodology for determining heavy vehicle charges flawed. We secondly outline that these charges should not proceed in the context of a proposed fuel levy on the industry.

18. In particular, we reiterate the observation made in the February Submission that the relevant taxes and charges are not structured in a manner that is conducive to building a cost recovery model; rather they are set up as part of the general taxation regime, albeit one that is increasingly unsustainable.

19. The PAYGO model that is utilised by the NTC to calculate the RUC and heavy vehicle registration charges is a regulatory attempt to provide a cost recovery mechanism linked to those taxes and charges. In the prior submission we noted the current inadequacies of the PAYGO model and its propensity to over or under charge the industry in a particular year. This is especially the case having regard to the admitted two-year lag between expenditure occurring and the charges based on that expenditure being collected. In fact, the model is fundamentally inadequate given the overpayments in certain years and now the potential for large underpayments when measured against the percentage increase noted in paragraph 16 above increase and the percentage increase now proposed as a compromise. There is no carried forward credit for the monies overpaid in prior years.

[15] Above note 1 at p 18
[16] Id at p6

20. We remain of the view that the inadequacies of the current process discussed in detail in the prior submission are at the nub of federal Government policy considerations in this context, as well as an issue explored in detail by the ATA in a 2016 submission that shows categorically that the PAYGO model has not succeeded in delivering predictable and stable heavy vehicle charges,[17] an issue reinforced in the current context. Just as the commendable decision to freeze charges in respect of the current financial year was a political decision, the current decision about the percentage changes proposed and the timing for their implementation is a political decision. Divorcing heavy vehicle charging from political decision-making is one of the aims of heavy vehicle reform proposals, again discussed in detail last year.

21. In the Consultation Report there is the question as to what the views of stakeholders are in relation to the proposal to increase the RUC and heavy vehicle registration charges by 2.5% in 2021-22? Then follows this request:

In support of your responses to this question, we are interested in any evidence which you can provide about the following issues: ▪ Which costs are typically passed through to customers (and to end consumers) and which costs are absorbed by vehicle owners or operators? ▪ Is the pump price of fuel a cost that is charged separately under typical hire-and reward contracts (such that fuel price fluctuations do not impact profit margins)? ▪ Does the answer depend on the size of the business and their contract bargaining power? Any information provided on these questions will help inform Ministers about the broader context in which their final decision on heavy vehicle charges will be made.[18]

22. In order to obtain a non-partisan view of these issues, NatRoad sought input from a highly experienced transport contract lawyer Gillian Bristow of Bristow Legal. The following is what Ms Bristow provided to NatRoad[19], first with her indicating that any changes to price are often regulated in contracts that are prepared by the customer. Customers having significant buying power almost always have a standard form contract that they require transport providers to agree to. These contracts can be longstanding agreements, or the standard contract can form the basis for a 'Request for Quotation' or tender process. We note that Ms Bristow's experience emulates NatRoad's experience:

Fuel price increases

Within such contracts, I have seen the following methods for allocating risks associated with fuel price changes:

1 No fuel levy or review process at all, with the operator simply expected to absorb the risk associated with fuel price changes;

2 A process whereby a base fuel price is nominated and the operator is expected to absorb all price rises to nominated point and for a nominated period. For example, no fuel levy will apply unless and until the fuel price increases beyond the base price by more than 5% for a period of more than three months.

[17] https://www.truck.net.au/advocacy/submissions/heavy-vehicle-charges%E2%80%94options-improving-accuracy-and-stability-paygo-heavy

[18] Above note 1 at p 3

[19] Private email correspondence

3 *A process whereby a base fuel price is nominated and the operator has a right to 'consult' about price changes where a significant increase to fuel prices occurs. These sorts of clauses do not guarantee any rate review.*

4 *A formal process for setting a fuel levy which will apply to either increase or decrease the rates based on movements in diesel fuel prices, usually on a monthly basis. This is clearly the preferable outcome for operators.*

Increases to other charges

The process for managing other changes to charges is similar, but often less formalised than arrangements for dealing with fuel prices. The sorts of methods for dealing with cost increases include:

1 *No process at all - many contracts are for fixed terms and specifically require the operator to absorb all increased charges, other than fuel.*

2 *Linking 'material change' to a right to seek to be consulted about price increases. The definition of 'material change' or the equivalent term varies from contract to contract. These contracts often only give the operator a right to raise the issue or to negotiate – any price rise is not contractually mandated.*

3 *A process allowing for an annual 'consultation' about possible price rises (or price decreases). These sorts of clauses do not guarantee that the operator will be able to pass on these charges.*

4 *A process whereby the operator's rates (other than the component that is linked to fuel) are increased or decreased on an annual basis having regard to an index such as CPI (All Groups) or the indices published by Transeco.*

5 *Clauses that require the operator, year on year, to nominate and participate in 'innovation projects' with a view to decreasing base prices by a nominated percentage. These clauses mean that the operator may be able to argue that statutory charges have increased, only to be faced by an argument by the customer that any increase should have been offset by the operator taking steps in another area to decrease costs.*

Contract bargaining power

As I have set out above, customer contracts often offer the operator limited ability to negotiate. NTC has queried whether the negotiating power of an operator depends on business size. In my experience, larger transport operators have no more contract bargaining power than smaller operators. This is because the larger operators are often very dependent on their existing work. For example, a large operator may generate 20% or more of its revenue from one customer. The result of losing that work would be financially ruinous because of the capital investment in vehicles and the cost of staff redundancies if the operator were to lose that work.

In my experience, an additional complicating factor is that most transport contracts do not guarantee the operator exclusivity or a particular volume of work, such that the customer is free to use other carriers. Thus, where there is no guaranteed price rise, but an operator is theoretically able to 'negotiate' to recover costs, the customer can simply choose to use an *alternative carrier for the work. The operator is therefore is reluctant to insist on passing on cost increases in circumstances where this might result in loss of work.*

23. NatRoad notes that the preceding analysis debunks the view which indicates that as fuel prices increase, industry revenue typically rises as road freight operators pass on fuel surcharges. In that flawed scenario, increased revenue from surcharges is expected to outweigh any loss of demand from rising road freight prices. This view is contrary to the evidence provided by Bristow Legal and NatRoad. Our experience of increased fuel charges is that they compress profit margins, a matter evidenced in the current COVID-19 induced recession: see paragraph 9 above for substantiation. In essence, the gap between road freight cost increases and price increases is widening and the costs imposed by Government can be expected to further widen that gap.

24. Further NatRoad experience is that with ongoing, longer term contracts, the customer builds in a decline in prices for the transport operator under an assumed productivity increase in the range of 5% per annum. These contracts are often presented on a "take it or leave it" basis and accordingly reform of the unfair contract law is high on NatRoad's policy agenda. [20]

Whole of Government Charges

25. In the prior submission, we set out detailed arguments about the need to consider a range of other charges which apply to the heavy vehicle sector when assessing costs in the current context. That discussion focused on mandatory tolling, unacceptable landside port charges and stamp duty. These areas remain concerns, particularly as stevedores' revenues and profit margins increased overall in the last financial year despite the global pandemic causing the largest contraction in container volumes in a decade.[21]

26. The pressing issue, however, is the proposed fuel levy that is likely to be imposed by the federal Government as a means to recover the costs of ensuring fuel security for the entire economy. In January 2021, the federal Government launched a competitive grants program to build additional onshore diesel storage, the *Boosting Australia's Diesel Storage* program.[22] The program aims to support the construction of an additional 780 megalitres of onshore diesel storage, with projects to commence construction from mid-2021 and be completed within three years. Applications closed on 22 February 2021. At the date of writing, NatRoad is aware that a fuel levy is proposed as a means of funding this programme, albeit that it benefits the community at large rather than just users of diesel fuel.

27. At the date of writing the extent of that fuel levy and the tax base associated with its application remain moot. However, in order to properly inform Transport Ministers, we urge the NTC to be fully briefed by the Department of Industry, Science, Energy and Resources about the nature and extent of a proposed increase in fuel duty to fund the Commonwealth's measures to boost fuel security in this country. Whilst this Damoclean sword hangs over industry's head, the 2.5% increase proposed should not proceed.

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[20] See https://www.natroad.com.au/news/natroad-hails-unfair-contract-law-reform-move by way of example

[21] https://www.accc.gov.au/media-release/stevedores-revenues-grow-despite-largest-drop-in-container-volumes-in-a-decade

[22] https://business.gov.au/grants-and-programs/boosting-australias-diesel-storage-program

Conclusion

28. Any additional Government charges on the heavy vehicle industry should, at the least, be postponed until the fuel security levy issue is resolved.