Submission to:	Joint Select Committee on Australia's Clean Energy Future Legislation
Title:	Clean energy legislative package
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AUSTRALIAN TRUCKING ASSOCIATION

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Summary of recommendations

Recommendation 1

The Government should not go ahead with its plan to extend the carbon price to heavy on-road vehicles from 1 July 2014.

Recommendation 2

In the Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, proposed section 43-8(2) of the *Fuel Tax Act 2006* should be amended so the amount of carbon reduction applied to fuel tax credits after 1 July 2015 is adjusted once a year on 1 July.

Recommendation 3

The carbon reduction amount should be determined based on auction prices for the 12-month period ending on 31 March each year. Division 4 of the Clean Energy Bill 2011 should be amended to require the Clean Energy Regulator to publish the average auction price for the 12-month period within 7 business days of the end of March.

Recommendation 4

Section 43-10 of the *Fuel Tax Act* 2006 should be amended to provide that:

- adjustments to the road user charge take effect from 1 July each year;
- the transport minister must issue the legislative instrument setting the amount of the charge within 7 business days of the end of March.

Recommendation 5

The ATO should publish a consolidated figure for the fuel tax credit rate applying to trucking operators as early as possible before 1 July.

Recommendation 6

The guidelines for the Information Assistance Grants program should be expanded to enable industry association like the ATA and its member associations to seek funding to develop standard contracts and invoices that reflect the introduction of carbon pricing.

1. About the Australian Trucking Association

The Australian Trucking Association is the peak body representing trucking operators. The ATA's direct members include state and sector trucking associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology.

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

2. The clean energy legislative package

The Australian Government's clean energy legislation package would establish a cap and trade system to reduce Australia's greenhouse gas emissions.

Although only the largest businesses would be required to buy carbon permits, many business fuel users, including small and micro businesses, would be subject to a carbon price through the fuel tax credit and excise/customs duty systems.

Under the *Fuel Tax Act 2006*, trucking businesses whose vehicles meet one of four environmental criteria are able to claim fuel tax credits through their business activity statements. The fuel tax credit rate is currently 15.043 cents per litre, equal to the total excise on fuel (38.143 cents per litre) less a road user charge determined by the Minister for Infrastructure and Transport.

The Fuel Tax Legislation Amendment (Clean Energy) Bill 2011 would establish a second reduction from the fuel tax credits available to a business: the carbon reduction amount. After the introduction of market-based carbon pricing on 1 July 2015, the carbon reduction amount would be determined twice a year by applying a conversion formula to the average carbon price over the previous six months.

Under this Bill, proposed section 43-8(4) of the *Fuel Tax Act* would exempt trucking operators from the carbon price (ie: their carbon reduction amount would be nil).

The Government has announced, however, that it will introduce legislation at a later date to bring heavy vehicles into the scheme from 1 July 2014, two years after other business fuel users like the aviation, rail and maritime sectors.

3. The ATA's position on carbon pricing

The ATA and its members have welcomed the industry's two year exemption from carbon pricing. The ATA considers the trucking industry should be **permanently exempt**, because:

Trucking businesses are predominately small businesses

The Australian Government has stated that carbon pricing will only affect around 500 polluters.[1] But the planned changes to the fuel tax credits system will impose an effective carbon price on every one of Australia's 47,000 trucking businesses. 85 per cent of these businesses are small businesses with fewer than five employees.[2] They are no different to the other small businesses that are permanently exempt from the carbon price, except they happen to operate trucks weighing more than 4.5 tonnes.

The trucking industry has already improved its environmental outcomes dramatically

Trucking businesses have already spent millions on improving their environmental outcomes. The ATA's recent environmental credentials report shows the industry's greenhouse gas emissions fell 35 per cent per billion tonne kilometres between 1990 and 2011, as a result of improvements in engine technology and the use of safer trucks with greater capacity.[3]

[1] Gillard, J. (Prime Minister) "Clean Energy Bill 2011," Second reading speech, House of Representatives, 13 September 2011.
[2] Bureau of Transport and Regional Economics, *An Overview of the Australian Road Freight Industry*. Working paper 60. BTRE, Canberra, 2003. pp44-45.
[3] Centre for International Economics, *Environmental Credentials of the Australian Trucking Industry*. Report prepared for the ATA. CIE, Canberra, 2011. p6.

As table 1 shows, emissions of carbon monoxide, hydrocarbons, nitrogen oxides and particulates from new engines fell dramatically between 1995 and 2010 as a result of steadily tightening emission standards. For example, particulate emissions from ADR80/03 engines (mandated from 1 January 2011 for all new trucks) are 92 per cent lower than the particulate emissions from new model trucks built in 1995.

Table 1: Emission standards on heavy vehicles through time

Standard	**Date introduced[1]**	**Emission limits[2]**			
		CO	**HC**	**NOx**	**PM**
ADR70/00 (Euro 1)	1/1/95 – 1/1/96				
g/KWh		4.5	1.1	8.0	0.36
ADR80/00 (Euro 3)	1/1/02 – 1/1/03				
g/KWh		5.45	0.78	5.0	0.16
Per cent reduction compared to ADR 70/00			-29	-38	-56
ADR80/02 (Euro 4)	1/1/07 – 1/1/08				
g/KWh		4.0	0.55	3.5	0.03
Per cent reduction compared to ADR 70/00		-11	-50	-56	-92
ADR80/03 (Euro 5)	1/1/10 – 1/1/11				
g/KWh		4.0	0.55	2.0	0.03
Per cent reduction compared to ADR 70/00		-11	-50	-75	-92

[1] The first date shows when the standard applied to new vehicle models; the second date shows its date of applicability to all new vehicles.
[2] ESC test limits for Euro 1; ETC test limits for Euro 3-5.

Trucking operators have a limited ability to reduce their greenhouse gas emissions further

Although the trucking industry has reduced the intensity of its greenhouse gas emissions in the last twenty years, individual trucking operators now have limited scope to reduce their greenhouse gas emissions – and their exposure to the effective carbon price – further.

The best way that trucking operators can reduce their emissions is to use larger truck combinations.

For example, an operator using 3-axle rigid trucks would need 77 trips to transport 1,000 tonnes of freight. An operator using B-triples – a prime mover towing two A-trailers and a standard semitrailer linked by turntables – would need only 20 trips to move the same amount of freight. Those 20 B-triple journeys would produce only 63 per cent of the greenhouse gas emissions as the fleet of smaller trucks needed to do the same task.[4]

The industry's ability to use larger truck combinations is restricted by government regulation and the need for permits. Despite advocacy from the industry, the planned national heavy vehicle laws will not include mechanisms to enable trucking operators to appeal against local authorities that unreasonably restrict the use of these combinations.

[4] Australian Trucking Association and Barkwood Consulting, *Truck Impact Chart*, 2010.

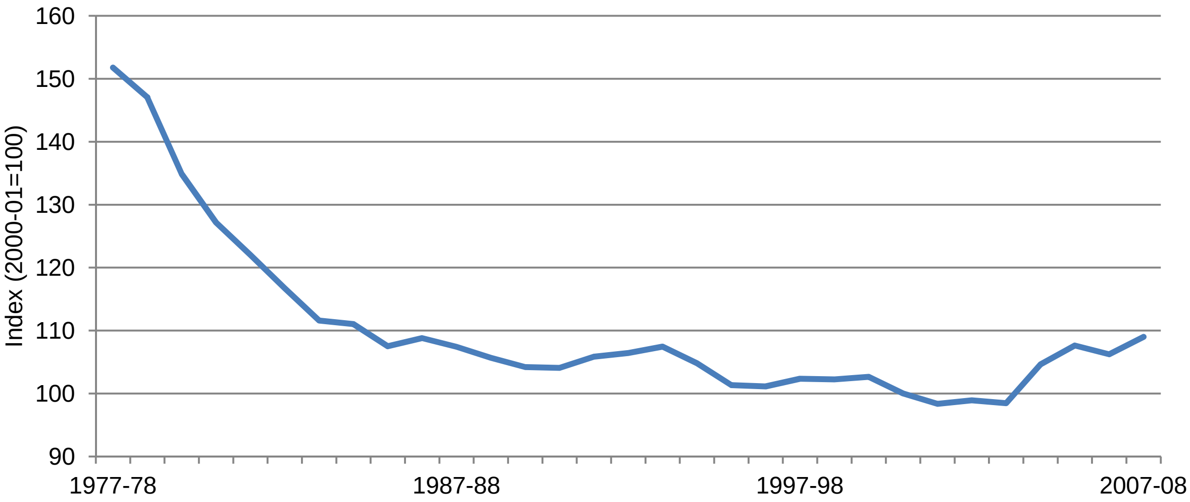
The Government's modelling predicts that trucking operators would reduce their greenhouse gas emissions and exposure to the carbon price by switching to biodiesel blends (in the case of articulated vehicles) and electricity (in the case of rigid trucks). By 2030, biodiesel blends would become the dominant fuel used in heavy vehicles and represent more than 75 per cent of total fuel use by 2050, the modelling predicts.[5]

These optimistic headline figures mask the great amount of work that would need to be done by the fuel industry to deliver these biodiesel blends to fuel users. At present, the availability of biodiesel is an issue, and manufacturers still have concerns about its impact on vehicle engines.[6]

Trucking operators face difficult business conditions

The trucking industry is facing difficult business conditions. Figure 1 shows that real freight rates declined 28 per cent in the three decades from 1977-78 to 2007-08, despite a substantial increase in business costs during this period. Many small trucking operators find it difficult to pass on changes in their costs.

Figure 1: Real road freight rates, 1997-98 to 2007-08



Source: BITRE.

Ultimately, increased fuel costs would increase prices throughout the economy

Increasing the effective price of fuel for trucking operators would ultimately increase the price of almost everything. The trucking industry would need to pass on an extra $510 million in costs in 2014-15.[7]

Recommendation 1

The Government should not go ahead with its plan to extend the carbon price to heavy on-road vehicles from 1 July 2014.

4. Reducing the difficulty of passing on the carbon price

Under the clean energy package, the carbon price would be set by the market from 1July 2015.

The Fuel Tax Legislation Amendment (Clean Energy) Bill 2011 and section 196 of the Clean Energy Bill set out how the amount of carbon reduction applied to fuel tax credits would be adjusted.

Under the Bills, the amount of carbon reduction would be adjusted on 1 July and 1 January of each year.

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[5] Australian Treasury, *Strong Growth, Low Pollution: modelling a carbon price*. Treasury, Canberra, July 2011. p132.
[6] Centre for International Economics, *ibid*, p22.
[7] Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*. Australian Government, Canberra, 2011. p135.

The carbon price applying in the half-year beginning 1 July would be the average of the auction results in the six months from the previous December to May.

The carbon price applying in the half-year beginning 1 January would be the average of the auction results in the six months from the previous June to November.

Under section 196 of the Clean Energy Bill 2011, the Clean Energy Regulator would publish the official versions of those average figures within seven days of the end of May and November respectively.

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

If the Government does go ahead with its plan to apply a carbon price to heavy on-road vehicles, this adjustment mechanism would create serious and unnecessary difficulties for trucking operators seeking to adjust their freight rates. This is because of the contract arrangements used in the industry.

4.1 Rate setting in the trucking industry

Freight rates and fuel surcharges in the trucking industry are set through a range of mechanisms, with different sectors in the industry taking very different approaches to price setting. The one constant is that it would be very difficult for businesses to adjust their rates within the three week period envisaged by the current Bills.

The methods of setting prices in the industry include:

Pricing on a per job basis

In the livestock transport sector, freight rates are commonly set on a per-job basis between the trucking operator and the primary producer involved. Long-term contracts are not common even among larger operators.

The agreed price is often struck on the basis of what seems fair given the relationship between the transporter and the primary producer rather than a transactional calculation of costs and profit margins. As primary producers are in a trade-exposed industry, livestock transporters can find it takes a lengthy period to persuade them to accept an adjustment in their rate.

These businesses need to know about carbon reduction adjustments as far ahead as possible. Ideally, those adjustments need to occur at the same time as other tax changes, so both customers and operators are focused on tax issues when they talk about the price of the next job.

Fixed price contracts

In some sectors of the industry, including retail distribution, many ATA and association members work on fixed price contracts. These are typically struck once a year, and require the operator to forecast how its costs will change over the period.

Some contracts include clauses for varying prices, but there may be restrictions on how often this can occur. For example, some retail contracts only allow price changes every six months, so the retailer can offer its customers fixed prices for a foreseeable period of time.

Other contracts, such as the standard terms and conditions for a well known hardware retailer, require 45 days notice of any price change and ban price changes during December-January.

Fuel levies

The ATA's recommended approach to dealing with changing fuel prices, and changes to the fuel tax credit rate, is for trucking businesses to impose a fuel levy on top of their contracted freight rate.

Fuel levies are typically calculated as a percentage adjustment to the contracted rate, based on the change in the price of fuel and the fuel tax credit rate, as well as the contribution of fuel to the trucking company's total costs.

Some ATA and association members adjust their fuel levies every week. Others make fortnightly or monthly adjustments.

For subcontractors, fuel levies are often set by the prime contractor or even by the customer. The formulas used to determine these fuel levies are not necessarily transparent.

The ATA's feedback from its members and association members is that three weeks' notice is not long enough for most businesses to secure fuel levy adjustments from their customers.

Arbitrated freight rates

NSW, Victoria and Western Australia have laws in place that regulate owner drivers. The Victorian and Western Australian laws set guideline rates; the NSW system involves the arbitration of award-like contract determinations.

The freight rates in these contract determinations can be varied on application to the NSW Industrial Relations Commission. These applications can involve a considerable lead time.

For example, the *General Carriers' Contract Determination* prescribes that the TWU can apply to the Commission for a variation in sufficient time for it to be made on or before 1 June and 1 December each year. These variations take into account movements in costs occurring up to the preceding 31 October (for the 1 December variation) or 30 April (for the 1 June variation).

These 1 June and 1 December dates have only rarely been met.

As with any tribunal process, there is often vigorous debate between the parties about the adjustment that should be applied. It is not unknown for these debates to take many months to be resolved as an adjustment to a determination. Determinations are likely to take even longer to adjust now most state awards have been replaced by modern awards under the national award system.

It is most unlikely that the contract determination process in New South Wales could be timed to take place within a three week window in June and December each year.

4.2 A better process for adjusting the carbon reduction amount

Given the commercial and arbitral arrangements for setting contracts in the trucking industry, the ATA considers that a better approach to adjusting the carbon reduction amount would be as follows:

Adjust the carbon reduction amount once a year on 1 July

It is clear from the review of trucking industry contracts in section 4.1 that expecting businesses to adjust freight rates on 1 January with three weeks' notice is unrealistic. Some contracts explicitly prevent rate changes during December and January, for sound business reasons.

In contrast, businesses expect tax changes to occur on 1 July, including fuel tax credit changes, where trucking operators and their customers now have three years of experience with the road user charge changing on this date.

Many contracts are also renegotiated in the lead up to 1 July, with the new contract commencing in the new financial year.

Recommendation 2

In the Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, proposed section 43-8(2) of the *Fuel Tax Act 2006* should be amended so the amount of carbon reduction applied to fuel tax credits after 1 July 2015 is adjusted once a year on 1 July.

Provide operators with more time to prepare for rate changes

It is also clear from section 4.1 that three weeks' notice of changes to the carbon reduction amount is not sufficient for most operators to pass on the change in their costs.

For example, operators on fixed term contracts need time to renegotiate them; operators subject to contract determinations must wait until the arbitral process has completed its work.

Recommendation 3

The carbon reduction amount should be determined based on auction prices for the 12-month period ending on 31 March each year. Division 4 of the Clean Energy Bill 2011 should be amended to require the Clean Energy Regulator to publish the average auction price for the 12-month period within 7 business days of the end of March.

5. Interaction between the road user charge and the carbon price

The fuel tax credit rate for trucking operators is also affected by the road user charge, set by the Minister for Infrastructure and Transport under section 43-10(8) of the *Fuel Tax Act*.

The Act does not specify when the road user charge is to be adjusted, although it cannot be changed more than once in a financial year. The Act does not specify how much notice needs to be given of a change to the road user charge, although the minister must consult with the industry for at least 60 days before determining the rate.

There have been three adjustments to the road user charge as a result of instruments made under section 43-10. In all these adjustments, the legislative instrument was made and registered just days before the rate change took effect, as the table below shows:

Table 2: road user charge determinations, 2009-2011

	Date made	Date registered	Date of effect
2009	24 June	26 June	1 July
2010	24 June	28 June	1 July
2011	20 June	22 June	1 July

Source: www.comlaw.gov.au

This practice causes difficulties for both the industry and the Australian Taxation Office.

It is easier for trucking operators to convince their customers of the merits of a rate change when they have an official instrument from the Government rather than a consultation figure. Many customers and operators look for guidance about the fuel tax credit rate to the ATO website, but the ATO is unable to alter its published information until the legislative instrument is issued.

The introduction of a second adjustment to the fuel tax credit rate, the carbon reduction amount, would have the potential to compound the confusion, particularly if the adjustment figures are available at different times. To avoid this confusion, the ATA recommends that:

Recommendation 4

Section 43-10 of the *Fuel Tax Act* 2006 should be amended to provide that:

- adjustments to the road user charge take effect from 1 July each year;
- the transport minister must issue the legislative instrument setting the amount of the charge within 7 business days of the end of March.

6. Informing trucking operators and customers about carbon pricing issues

Given the way contracts are determined in the trucking industry, it is particularly important for the Government and industry associations to develop effective ways of notifying businesses of the carbon reduction amount as it changes over time.

Because of the interaction between the road user charge and the carbon reduction amount, it would be particularly important for the ATO can provide a consolidated figure for the fuel tax credits available to trucking operators as early as possible before they are adjusted.

There is also a need for trucking businesses to consider changing their contract arrangements, if these can be negotiated. Trucking businesses may well see value in providing their customers with standard invoices that specify the amount of effective carbon tax payable in each bill.

The Government has announced a $40 million program of Information Assistance Grants to enable industry associations and non-government organisations to bid for assistance to inform their members about practical measures they can take to reduce their energy costs.

The guidelines for this program should be expanded to enable industry association like the ATA and its member associations to seek funding to develop standard contracts and invoices that reflect the introduction of carbon pricing.

Recommendation 5

The ATO should publish a consolidated figure for the fuel tax credit rate applying to trucking operators as early as possible before 1 July.

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