



**ROAD TRANSPORT FORUM NEW ZEALAND INC
SUBMISSION**

**IN RESPONSE TO
LAND TRANSPORT AND ROAD USER CHARGES
LEGISLATION AMENDMENT BILL 143-1**

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Submission of Road Transport Forum New Zealand Response to Land Transport and Road User Charges Legislation Amendment Bill 143-1

1.0 ROAD TRANSPORT FORUM NEW ZEALAND

1.1 Road Transport Forum New Zealand (RTFNZ) is a nationwide organisation of voluntary members drawn from the road transport industry and includes owner-drivers, fleet operators and providers of services to freight transport operators. The Forum provides services and public policy advocacy for its members.

1.2 The Forum's Constituent Associations include:

- ▶ *National Road Carriers (Inc)*
- ▶ *Road Transport Association NZ Region 2 (Inc)*
- ▶ *Central Area Road Transport Association (Inc)*
- ▶ *Road Transport Association NZ Region 4 (Inc)*
- ▶ *Combined Owner Drivers Association (S.I.) Inc*
(Trading as NZ Trucking Association)
- ▶ *Road Transport Association NZ Region 5 (Inc)*

1.3 The Forum's Associations have approximately 4,000 members and associate members who operate in excess of 17,000 trucks and truck combinations over 3,500 kg GVM/GCM^[1] or 80% of the hire and reward truck fleet in New Zealand. The road transport industry turns over approximately \$6 billion a year transporting more than 80% of New Zealand's land-based freight. Some 23,000 people or about 1.5% of the workforce are directly employed in road freight.

^[1] GVM Gross Vehicle Mass
GCM Gross Combination Mass

2. INTRODUCTION AND RESPONSE TO POLICY OBJECTIVES

- 2.1 As implied in the Bill's explanatory notes a primary feature of the Land Transport and Road User Charges Legislation Amendment Bill is that it sets out to provide a framework to capture RUC payments from vehicles that would otherwise not be making a contribution to the Land Transport Fund.
- 2.2 The second aspect presents a range of 'minor' amendments to aspects of the Road User Charges Act to largely improve compliance clarity for both vehicle owners and regulatory authorities.
- 2.3 The Road Transport Forum is supportive of many of the changes, however the Regulatory Impact Statement (RIS) does correctly allude to our opposition to the RUC relief proposed for agricultural goods trailers, being goods capable trailers towed by tractors operating at or below the 40kph speed threshold and therefore not subject to any form of registration or road user charges. The analysis in Appendix B of the RIS which covers the determination of the RUC charge applicable by trade plated unregistered heavy vehicles and fast tractors (over 40kph) is supported by the Forum. Given the lack of definitive data around the operation of fast tractors the assumption resulting in the proposed RUC charge payable with the registration and licensing fee appears to be a reasonable estimate.
- 2.4 However the changes proposed by the Bills provisions to collect some RUC from agricultural tractors offers nothing in terms of apportioning RUC that should be applicable to some types of heavy agricultural trailers. The proposals outlined for fast tractors and their trailers confirm the on-going deficiency and ambiguity of the legislation concerning agricultural vehicles and the trailers towed by these vehicles. Furthermore they simply highlight the conflict in the Registration and Licensing Regulations compared to the Land Transport Rules applicable to exempt tractors and the respective trailers towed by exempt tractors. In other words by comparison

an under 40kph tractor can tow a non-compliant heavy trailer of ostensibly any laden mass, paying neither registration or licensing fees nor RUC.^[2] The heavy trailers used in these combinations are often poorly constructed and maintained presenting not only serious safety issues but also unfair competition to bona fide transport service operators. This sort of compliance ambiguity alluded to above indicates the present legislative structure relating to these vehicles needs to be reworked to mitigate the expected exponential growth in under 40kph agricultural tractor and load carrying trailer operations. The growth in the use of the under 40kph tractor and trailers should not be under-estimated. Already operators of these vehicles have requested from NZTA access to overweight permits to operate significantly in excess of the axle weights of normal permit type operations. This action completely belies the understanding that these vehicles are operated within the normal confines of short distances between the farming properties of the same landowner. The alternative, and in our view necessary approach is to design a framework that captures these trailers in a registration/licensing/RUC compliance regime.

- 2.5 This could be achieved by resolving the conflicts in legislation by specifying trailers designed for the purpose of carrying loads (as opposed to purpose designed agricultural harvesting trailers) be subject to registration, licensing and RUC accordingly.
- 2.6 The explanatory note also highlights another administrative folly and this concerns the new offence provisions for light vehicles granted under *Section 40* of the RUC Act. If the intent of the RUC Act was to simplify compliance one has to question why the 10km radius exemption for light RUC vehicles used from a farming domicile needs not only the support of its own interpretational regulations (e.g. Road User Charges (exemption for certain classes of light RUC vehicles) Regulations 2013/107) when the compliance process could be served by having vehicle owners source a periodic

^[2] *An example picture is attached as addendum (A)*

RUC refund for travel assessed under the prescribed operational framework. It would be of interest to contemplate a cost/benefit analysis of the amended requirements of the regulations compared to the simpler off-road RUC recovery process that is already currently imbedded in New Zealand Transport Agency processes. These comments are not to suggest the Forum doesn't support the penalty regime for breach of operational conditions. On the contrary the penalty regime should be in place as one of the tools of a prudent RUC compliance management system that is constructed upon the current 10km radius scheme and arguably should still be in place even if the present scheme can be displaced by an administratively cleaner model.

SUBMISSION ON CLAUSES IN THE BILL

3.0 PART 1 – AMENDMENT TO LAND TRANSPORT ACT Clause 4 – insertion of new Section 269A (1) (2) additional fee for certain RUC vehicles

Comment

- 3.1 The new provisions which are enabling provisions are supported by the Forum. The conundrum is that despite the merit of these new provisions to collect RUC from the vehicle types, trade plated unregistered heavy vehicles and agricultural tractors the underlying issues around RUC compliance in respect of the latter remain unresolved. Furthermore the 40kph threshold requiring RUC compliance and vehicle registration/licensing has only served to amplify the inequity issues between bona fide transport service operators and would be transport services utilising tractors and heavy goods transporting trailers the latter being attracted to the exempt 40kph and under tractor/trailer environment. The Forum's concerns are outlined more specifically in our introductory comments where we also offer a suggestion on how the issues might be better resolved.

4.0 PART 2 - AMENDMENTS TO ROAD USER CHARGES ACT 2012: Clauses 6, 7, & 8 Amendments to Section 12

Comment

- 4.1 The concept of “temporary vehicle combinations” and the proposed agreement with the RUC collector who will determine the specific RUC rate appears a viable solution to assisting the functionality of the RUC system. The concept of introducing additional processes to accommodate not only atypical but unique types of vehicle deployment illustrate that simplifying the RUC system hasn’t been entirely successful. In fact the changes to *Section 12* while warranted illustrate the complexity of the new system in contrast to the simplicity of a diesel tax regime.
- 4.2 In the discussion on *Section 12* the need to import specific defence provisions for individual and temporary vehicle combinations utilised for extraordinary loads raises a similar question around *Section 9(4)*. The question is why can’t *Section 9(4)* similarly be expanded to set out “what might be a reasonable excuse”^[3] in respect of the operation of a solo H type (or specified RUC type vehicle) powered unit e.g. open and laden without trailer. In the 1977 RUC Act a number of defences were laid out in *Section 23* including one referred to as “aggregation”. We accept this is not available under the 2012 RUC Act but the principles of aggregation may still assist toward fully utilising an operator’s vehicle fleet.
- 4.3 In spite of recent but positive discussions with officials the possibility of illuminating *Section 9(4)* appears problematic without more detail being imported into *Section 9(4)*.
- 4.4 We accept the following comments on *Section 9(4)* are outside the brief of the Bill’s proposed amendments but nonetheless from an industry perspective they are of considerable importance.

^[3] Note the provision in 9(4) refers to the term without reasonable excuse as a defence catchall

- 4.5 We recognise the 2013 RUC Regulation amendments allowing specified truck/tractor units to operate unladen without their respective trailers was very useful step forward in terms of alleviating some of the equipment deployment problems inherent in the original 2012 RUC Act and Regulations. However it has become obvious that using any specified truck laden without its trailer or a tractor unit and a single trailer from a specified B train set when laden or partially laden is against the Regulations, the only defence being the provisions in *Section 9(4)* of the Act e.g. the reasonable excuse option. For these situations and for this defence provision to become available court action is required and the court will then determine if the reasonable excuse put forward in mitigation is justified.
- 4.6 Discussions with officials have revealed that the previous *Section 23* defences (a key example being aggregation) were bundled into *Section 9(4)* of the new Act's reasonable excuse provision. Court action for either the prosecution or defence is an expensive business and the outcome could, in these reasonable excuse cases, be unhelpful to either party. What we suggest is that just as the MOT and Agency have laid out some criteria for the application of *Section 53*, RUC recoveries by the RUC Collector, it should be possible to add some additional words into *Section 9(4)* as examples of reasonable excuse principles.
- 4.7 The first could provide for a specified solo truck to operate laden as long as it doesn't exceed class 1 mass limits and it has an H licence or specified licence that is equal or greater in charge value than the standard licence for that vehicle. (Please note 'specified' is a term used in the regulations). It then should follow if a specified towing vehicle and one B train semi-trailer^[4] is laden then as long as the RUC paid is equal or greater than what otherwise should be paid for this towing vehicle and single trailer combination then there is no offence. What we are illustrating is another aspect of aggregation

^[4] 'B' train picture attached as addendum (B)

which hinges on the appropriate payment. This would mean such a combination would typically be a type 6 or 14 towing vehicle and type 33 semi-trailer (operating at the type 33 standard RUC rate) which would mean any concerns by authorities around the use of discount trailer RUC rates for this type of option would be avoided.

- 4.8 Another variation is the towing unit interchangeability aspiration utilising the type 6 RUC rate within the H97 RUC combination. The willingness by some operators to pay a higher than necessary RUC charge e.g. the type 6 rate for better equipment utilisation is worth considering further.
- 4.9 The final point of defences relates to equipment using lifting axles when carrying a load. These axles are typically fitted to quad semis but the new 5 axle full trailer's used in the 50 max combinations are seen by the industry as lift axle candidates. Obviously the Act and Regulations don't provide for lift axles except when the vehicle is operating unladen as set out in Section 78 of the Act. The old incremental RUC system could be tailored to ensure that even if an axle was lifted as long as the gross weight imposed on the road being the VDAM limit for the remaining axles was covered off by the appropriate and adequate payment for the weight then there was no offence. A variety of vehicles had access to this concession by way of specific approval.
- 4.10 The lack of any defined defence provisions around *Section 9(4)* doesn't help vehicle deployment or efficiency and it is our opinion this section needs significant review to ensure the efficiency and productivity aspirations of government's transport policy are achievable.
- 4.11 **Clause 9, Section 19 amended – Display of licences on vehicles**

Comment

The Forum supports this common sense amendment.

4.12 **Clause 10, Section 32 – Surrender of licence**

Comment

The Forum agrees with explanation in the explanatory notes and therefore supports this amendment.

4.13 **Clause 11, New Section 38A – relating to enabling powers to specify RUC exempt vehicles**

Comment

The Forum supports the changes.

4.14 **Clause 12, Section 40 amended – Light RUC vehicles, penalty**

Comment

The Forum supports the new penalties in respect of not complying with the conditions of any exemption granted with respect to the use of a light RUC vehicle.

4.15 **Clause 13, Section 57 amended – relating to outstanding RUC payment obligations**

Comment

The amendment proposed is a sensible approach where an instalment arrangement is in place and the party concerned is meeting the prescribed obligations.

4.16 **Clause 14, Section 79 – Changes the legislative reference in respect of issuing the search warrants for RUC related offending to the Search and Surveillance Act 2012**

Comment

The Forum accepts this change is necessary and also recognises the provisions apply only in respect of a constable.

4.17 **Clauses 15 & 16**

We have no comment on these clauses or the sections affected by the proposed amendments.

4.18 **Clause 17 – New Sections 90A and 90B**

Comment

This appears to be a solution to assist the setting of unique rates for unique vehicles and combinations of vehicles not identified in the current rate tables and is in essence part of the public disclosure approach. On the surface it appears a sensible solution given the problems of using *Section 33* for the same purpose, which according to officials, it wasn't designed for. The approach of using Gazette notifications, while procedurally better and more open than using *Section 33* to set discreetly alternative rates, confirms the RUC Act and its regulations plus the core compliance framework have missed the mark in terms of being a simple solution to the recovery of infrastructure costs.

5.0 CONCLUDING COMMENTS

5.1 The key objective of a simplified RUC regime appears lost even at these early stages of the 2012 Acts development to a never ending myriad of amendments and changes to ensure there is a reliable model for business. The inherent difficulties of reconciling equity and efficiency with an average of the average cost recovery regime suggests there is little hope of having a RUC model that satisfies the goal of administrative simplicity for both operator and regulator.

ADDENDUM (A)



ADDENDUM (B)

