

ROAD USER CHARGES: IMPROVING COMPLIANCE

Proposal

1. This paper seeks approval for legislation to improve:
 - 1.1. compliance with and the integrity of the road user charges system; and
 - 1.2. recovery of unpaid road user charges.
2. This paper is the fifth of five related Cabinet papers setting out proposals for a new Road User Charges Act and associated regulations to replace the Road User Charges Act 1977 (the RUC Act) and the Road User Charges Regulations 1978.

Executive summary

3. For a number of years governments have been concerned about the effect of road user charges (RUC) evasion on the integrity of the RUC system. The problems are revenue leakage of at least \$30 million per annum, delayed payment of road user charges and loss of credibility for the system when those who pay their full charges subsidise those who avoid payment.
4. The previous government established the Independent Review of the New Zealand Road User Charging System (the Review) which made recommendations to me to improve compliance. Government accepted in principle, the compliance-related recommendations of the Review.
5. The recommendations of the Review to change the definition of licence weight will have a major impact on managing compliance. The accompanying paper "Road user charges: Change to the definition of licence weight" seeks policy approval for these recommendations. Each vehicle will have its own permanent RUC weight, which will virtually remove opportunities for weight-based RUC evasion.
6. Distance-based RUC evasion, as covered in this paper, will be the main focus of compliance management. The new RUC compliance system will encourage users to pay on time and give authorities more effective measures to investigate and recover outstanding revenue.
7. The new system proposed in this paper will have the following features:
 - 7.1. a requirement for operators to create and retain records
 - 7.2. an assessment system based on the inland revenue approach, where there is an assessment process of underpaid RUC undertaken by the Chief Executive of the Ministry of Transport
 - 7.3. miscellaneous changes to improve compliance and assist enforcement

7.4. modernised offences and penalties.

Background

8. For a number of years government, officials, and members of the transport industry have been concerned about the effect of RUC evasion on the revenue in the National Land Transport Fund (NLTF) and on the integrity of the RUC system.
9. In 2006/07, the previous government agreed to a number of measures to address RUC evasion [CAB Min (07) 18/4B refers]. The Independent Review of the New Zealand Road User Charging System (the Review) was subsequently established in August 2008, before the measures were put into legislation.
10. The Review reported back to government in March 2009 and made recommendations to simplify and modernise the RUC system.
11. To improve compliance the Review recommended; “That the Government legislate to:
 - 11.1. provide for more stringent regulations around odometer tampering
 - 11.2. impose a duty on vehicle inspectors to report odometer readings to the New Zealand Transport Agency as part of the vehicle warrant of fitness and certificate of fitness inspection processes to provide the New Zealand Transport Agency with information that will assist with recovery of outstanding RUC
 - 11.3. impose a duty on relevant road users to create and retain records and give the Government access and assessment powers similar to those available under the income tax system
 - 11.4. institute proper safeguards and appeal rights and to carefully prescribe the powers and duties of Government officials
 - 11.5. decriminalise enforcement of RUC for vehicles with a gross laden weight less than 3.5 tonnes as part of a process of moving light vehicle RUC to a civil collection system¹.”
12. The government accepted these recommendations in principle [EGI Min (09) 16/8 refers].
13. The policy proposals in the accompanying paper “Road user charges: Change to the definition of licence weight” will have a major impact on the management of RUC compliance. This change, which will give each vehicle its own permanent weight, will virtually remove opportunities for weight-based RUC evasion, except where the vehicle has been given a permit under the Land Transport: Vehicle Dimensions and Mass Rule to run over normal weights.
14. The recommendations in the paper “Road user charges: A regulatory framework for electronic management systems” also have implications for enforcement and compliance with the RUC system.

¹The civil collection system refers to recovering outstanding road user charges through standard debt collection practices.

15. This paper contains policy proposals to improve compliance and government recovery of outstanding RUC. The proposals are based on previous work undertaken by officials and the recommendations of the Review. The recommendations in this paper assume Cabinet agreement to the recommendations contained in the papers referred to in paragraphs 13 and 14.
16. As the context has changed since the previously agreed decisions, this paper will recommend that the decisions in CAB Min (07) 18/4B should be rescinded (except for a noting recommendation relating to a prior rescinding in paragraph 17 of the Minute) and replaced with the proposals within this paper.

The current RUC compliance system

17. RUC licences apply to diesel and heavy vehicles. They raise approximately 35 percent of the total NLTF revenue. Licences are purchased in 1,000 kilometre increments at rates that vary according to the weight of the vehicle and its axle and wheel configuration.
18. Unlike fuel excise duty that is collected at the border and refinery, RUC has a voluntary compliance element (pre-purchasing the correct licences), which requires enforcement to minimise non-payment.
19. The New Zealand Police (Police) undertake roadside enforcement of RUC as part of their vehicle policing. The fines and infringement fees that apply have not been reviewed for many years and the Review considered they were not suitable for light vehicles.
20. The New Zealand Transport Agency investigates and audits underpayment of RUC from both light and heavy vehicle users and seeks recovery of outstanding RUC, with the user entering into an acknowledgment of debt agreement. Currently the only method for the government to obtain a binding assessment of a debt is by applying to a District Court Judge for an inquiry under the RUC Act.

Nature and size of the problem

Nature of problem

21. RUC evasion reduces both revenue and confidence in the system. It is not fair that willing payers subsidise evaders. I consider it important that we have a system that is fair, balanced and well managed. Compliance management plays a major role in achieving this objective.
22. As a result of the virtual removal of weight-based evasion, distance-based RUC leakage will in the future become the main focus of compliance management. Overrunning of the licence distance is common. This is recouped when the next RUC licence is purchased, because of the continuous recording system for distance readings. However, overrunning does result in a late payment, which involves an opportunity cost as the Crown does not have use of the revenue until it is paid.
23. Actual revenue loss occurs when the subsequent licence is not purchased or if the distance recorder under-records due to accidental malfunction or tampering. Loss of

revenue as a result of faulty and tampered distance recorders² is a serious matter. This lost revenue is not recovered unless actively pursued by government agencies.

24. The problem of pursuing this revenue is compounded by deficiencies in the legislation that hamper accurate assessment and efficient recovery of outstanding RUC.

Magnitude of revenue loss

25. It has always been difficult to measure RUC evasion. For heavy vehicles, the New Zealand Transport Agency now relies on the annual Police Heavy Vehicle Compliance Measurement Operations Survey (the heavy vehicle survey). In the 2009 survey the estimate of an order-of-magnitude of RUC revenue leakage was approximately \$30 million per annum (about 4 percent of the total RUC revenue from heavy vehicles). This includes both distance-based revenue leakage and loss due to users under-stating the weight carried under the licence. The estimate is likely to be conservative as it does not include evasion from under-recording hubodometers and fraudulent refund claims. The Road Transport Forum NZ told the Review that in its opinion the figure was considerably higher than this. In future the figure is expected to be less as weight-based loss is largely removed from the system.
26. The results of the heavy vehicle survey cannot be an accurate guide as to how much revenue is lost in any one year because of the constraints around the figures. The results are helpful in providing information on revenue leakage trends and in confirming that this is a significant problem. The survey will provide useful information for monitoring the success of the proposals in this paper.
27. With regard to light diesel vehicles and late payment, the Ministry of Transport (the Ministry) has recently conducted a survey of light diesel motor vehicle owners that helped to quantify the amount of RUC outstanding over the course of any year. The Ministry estimates that around a quarter of all light diesel vehicles (approximately 125,000) overrun at some point in each year. The New Zealand Transport Agency estimates that there is approximately \$13 million outstanding at any one time due to late payment of RUC, with the resulting opportunity cost.
28. Distance recorders in light diesel vehicles can be manipulated to conceal the true mileage of a vehicle. The scale and extent of this manipulation is hard to ascertain. Looking at the results of the light vehicle survey, the Ministry considers that less than two percent of light diesel vehicle owners have engaged in this behaviour at any time. Based on the survey results, the Ministry estimates lost revenue to be between \$0.5 million and \$2.5 million in any 12 month period.

A revised RUC compliance system

29. The RUC system should encourage users to pay on time and have measures in place to investigate and recover outstanding revenue.
30. The new RUC compliance system proposed in this paper will have the following features:
 - 30.1. a requirement for transport service operators to create, maintain and retain records

²Including odometers, used in light diesel vehicles, and hubodometers and electronic distance recorders, used in heavy vehicles.

- 30.2. an assessment system based on the inland revenue approach where the Chief Executive of the Ministry of Transport (Chief Executive) may assess underpaid RUC
- 30.3. changes to improve day-to-day compliance and assist enforcement
- 30.4. updated offences with modernised drafting of offences, new offences and additions and revised penalties.

Requirement for operators to create and retain records

- 31. The RUC Act requires vehicle operators to produce records for inspection by the Chief Executive to ensure compliance with the Act. These powers are currently exercised by the New Zealand Transport Agency under delegation from the Chief Executive. However, the Act neither requires records to be made or retained nor prescribes a penalty for failing to produce records. As a result the requirement for operators to produce records is not effective.
- 32. Failure to supply records is a significant impediment to the effective recovery of unpaid RUC by the New Zealand Transport Agency. When an operator has not retained records, or supplies only limited records, the New Zealand Transport Agency has little information from which to estimate unpaid RUC.
- 33. I recommend legislative change to:
 - 33.1. require transport service operators to create and retain for 7 years sufficient records (excluding wage and depreciation records) to demonstrate compliance with the RUC Act (this requirement will not apply to private and trade vehicles)
 - 33.2. provide that where an operator is already required (under the Land Transport Act 1998) to keep logbooks they must be retained for 3 years from the date of their last entry (There will be a consequential amendment to the Land Transport Rule 62001: Worktime and Logbooks to clarify this)
 - 33.3. provide penalties for not making, retaining, or producing the required records
 - 33.4. permit, in situations where vehicle operators have not kept records, the Chief Executive to have access to the third party business records of parties involved in the transport of goods
 - 33.5. circumscribe the potentially intrusive and wide ranging powers to access third party business records by providing that access to third party records may only be sought where the Chief Executive is unable to obtain records from the vehicle operator, or obtains falsified, incomplete or insufficient records to assess an operator's RUC obligations (there will be no compulsion for third parties to create and retain additional records: rather, they will be required to permit access to records that already exist)
 - 33.6. permit the Chief Executive to remove records from the inspection site for the purpose of making copies and to return the records as soon as practicable

- 33.7. create an offence applicable to the inspection of records, similar to that in clause 171 of the recently introduced Search and Surveillance Bill, of knowingly disclosing information acquired during the inspection, or the meaning of that information, other than in the performance of a person's duties.

Establish a chief executive assessment process to replace the current District Court inquiry

34. When New Zealand Transport Agency investigations indicate RUC has been underpaid, the investigators try to negotiate and reach agreement with the vehicle operator on amounts owing and on repayment arrangements. There is an implied power to enter into these agreements but there is no explicit statutory basis. I propose that legislation authorise the practice.
35. Currently, if the operator does not agree to pay, the only formal mechanism available is to apply under section 18A of the RUC Act for a District Court inquiry into the amount of RUC payable. This is a very time-consuming and costly process for all concerned and is not cost-effective.
36. Until an inquiry by the District Court is completed, there is no requirement for the operator to pay any of the outstanding RUC. The inability to enforce the payment of unpaid RUC is one of the core problems with the RUC Act and limits the New Zealand Transport Agency's effectiveness in addressing RUC revenue leakage.
37. To remedy these problems, this paper proposes to replace the District Court inquiry process with a new assessment system modelled on the New Zealand Inland Revenue Department assessment process. This change will make the collection of underpaid RUC more straightforward and should result in a significant improvement in collecting underpaid RUC.
38. The new process will empower the Chief Executive to conduct inquiries and issue binding assessments based on the inquiry. The Chief Executive will also be able to issue an assessment of an amount owing based on the Chief Executive having formed an opinion of the amount the person is liable to pay. I expect that this power will be exercised by the New Zealand Transport Agency under delegation from the Chief Executive.
39. The issuing of binding assessments is a significant power that requires checks and balances to ensure it is exercised reasonably. The legislation will contain checks and balances including review and appeal rights. The detail of the assessment process is set out in Appendix One.
40. I consider the checks and balances could be also enhanced by an open and transparent approach with assessment methodology and procedures developed in consultation with industry. This approach is consistent with that taken by the New Zealand Inland Revenue Department and New Zealand Customs Service.

Complementary changes to improve compliance and assist enforcement

Removal of faulty hubodometers

41. I propose that the Police power to remove tampered hubodometers for the purposes of any criminal proceedings be extended to include faulty, inaccurate or obscured

hubodometers, or a hubodometer with no serial number, or serial number common to that of another hubodometer, or an obscured serial number. The Police and New Zealand Transport Agency enforcement officers should also have the ability to issue a notice requiring a vehicle to have a compliant hubodometer fitted within a distance not exceeding 500 kilometres.

Search warrant extension

42. The RUC system collects approximately \$1 billion per annum. For some vehicle owners there are significant amounts involved so the risk of potential loss of revenue through fraud needs to be managed. In this paper I propose that serious financial penalties, but not a term of imprisonment, apply to those offences in the nature of fraud. This means that the offences would not be eligible for a search warrant to be issued to the Police under section 198(1) of the Summary Proceedings Act 1957. I therefore propose that the Police be given the power to apply for search warrants for criminal proceedings relating to those offences under the RUC Act that attract a financial penalty of more than \$15,000 in the case of an individual, and \$75,000 for a corporate. I note that despite section 198(1) there are other examples in legislation where search warrants can be issued for offences that attract only financial penalties.

Limited waiver to deal with situations where the person liable for the debt is not responsible for accruing the charge

43. Currently, when the Ministry of Justice seizes or confiscates a vehicle and needs to sell it to recover unpaid fines, it must first pay any outstanding RUC owed by the owner of the vehicle (it is an offence under the RUC Act to sell a vehicle without a current RUC licence). To deal with this situation, I propose to include a limited waiver provision in the legislation. This will enable the Chief Executive to waive outstanding RUC where the person who is liable for the debt is not the person actually responsible for accruing the unpaid charges. This waiver provision will enable flexible administration. It will apply in a number of situations, such as waiving unpaid RUC accrued on stolen vehicles and when the Ministry of Justice wishes to sell seized and confiscated vehicles. I expect the waiver power to be delegated to the New Zealand Transport Agency.
44. The Ministry of Justice is investigating a proposal that would enable unpaid RUC and vehicle licence fees to be paid out of surplus vehicle sale proceeds after fines or civil debts have been paid. At present, any surplus money is returned to the former owner. If approved, this change will be added to the Courts and Criminal Matters Bill, which is currently before the Law and Order Committee.

Odometer readings taken at vehicle safety checks

45. Vehicle inspectors enter odometer readings for all vehicles into the New Zealand Transport Agency computer system at the time of their six or twelve monthly safety inspection, (warrant of fitness or certificate of fitness). The New Zealand Transport Agency could use this odometer information to help recover unpaid RUC. Currently there is no express legislative authority for inspectors to pass odometer information to the New Zealand Transport Agency or power for the New Zealand Transport Agency to act on this information.

46. I propose that the legislation give the New Zealand Transport Agency the legal authority to act on this information, for the purposes of RUC recovery. The Chief Executive will be able to issue binding assessments based on information provided from a vehicle inspection.
47. The implementation of this proposal would enable the New Zealand Transport Agency a one-time gain in revenue of about \$13 million by invoicing these amounts. Officials also anticipate that invoicing will reduce late payment and non-payment in the future, since non-payers could theoretically be invoiced after their vehicle inspection (provided they maintain a current warrant/certificate of fitness for their vehicle).

Updated offences, defences and penalties

Treatment of infringement offences

48. The Ministry of Justice Infringement Offence Guidelines were used in setting the new infringement fees and updating the existing fees. The newly created fees will comply in all respects with the guidelines.
49. I propose that the legislation contains new infringement offences. The table in Appendix Two specifies those summary offences that I consider should also be infringement offences.
50. Currently an infringement fee schedule in the Transport Act 1962 imposes penalties for weight-based RUC offences depending on the extent that the weight carried exceeds the maximum weight specified in the RUC licence. For RUC distance offences the infringement fee is three times the amount of the outstanding RUC payable.
51. The proposals in the paper "Road user charges: Change to the definition of licence weight" allow a new approach to the penalty regime for the RUC system. There will no longer be an offence or penalty for RUC weight infringements because each vehicle will have a designated RUC weight. As this will be built into the New Zealand Transport Agency's computer system the owner will have no discretion to nominate a weight.
52. The overall approach to RUC penalties has not been reviewed since the 1980s. The aim of the regime should be to encourage people to pay the RUC on time. The penalties should be sufficient to provide this incentive but not so onerous that they become unnecessarily punitive and bring the RUC system into disrepute.
53. I consider that the existing infringement fee for RUC distance offences that is set at three times the outstanding amount of RUC payable is unduly high in many cases. This level of penalty may well have been considered appropriate for its deterrent effect before the introduction of a computerised registry, but now that government will recover outstanding charges through continuous RUC licensing it is no longer appropriate. It is still useful to have penalties for deterrence purposes but they do not need to be set at the current levels.
54. I propose that the legislation provides that where a person commits a RUC distance offence the person must pay the prescribed infringement fee. This approach is modelled on section 43(3) of the Land Transport Act 1998, which ensures that offenders do not appeal to the courts solely on the basis of the level of the infringement fee.

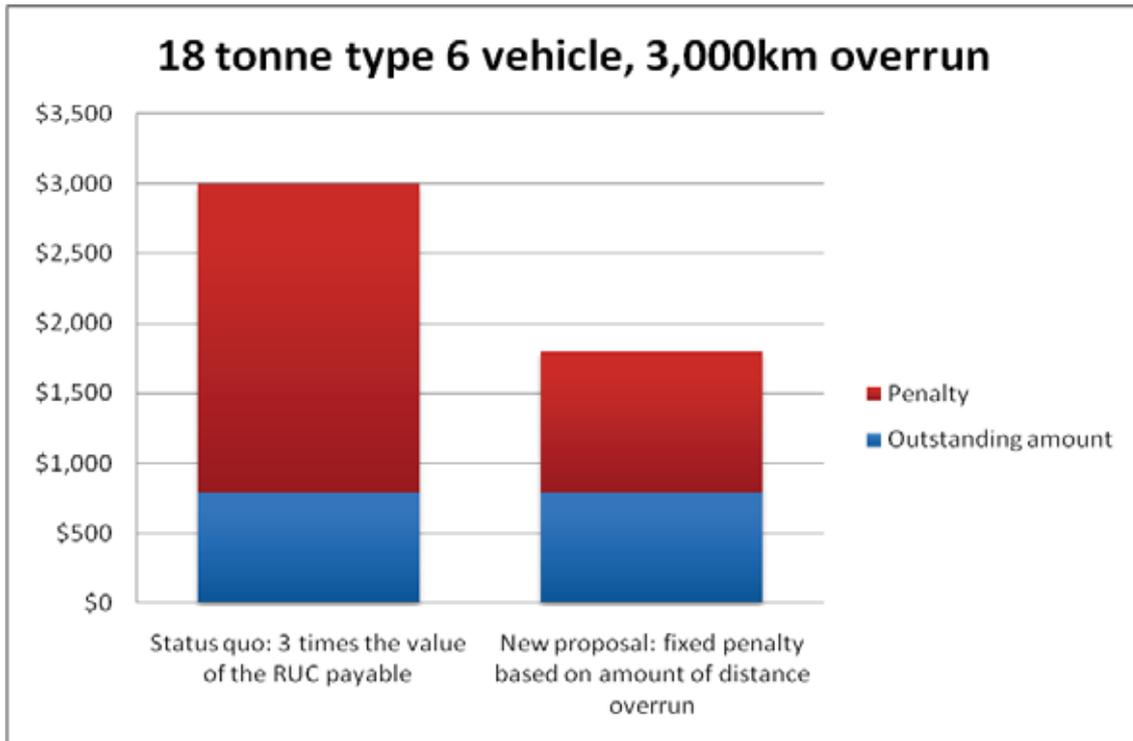
Infringement fees for heavy vehicles

55. I propose that the infringement fees for heavy vehicle RUC distance offences should be set according to the distance that is overrun rather than the amount of RUC payable. The purpose of this approach is to address the behaviour involved in failing to purchase a RUC licence rather than the actual amount of the RUC owing. The proposal is:

Distance overrun	Penalty
Up to 500km	\$0
501 to 1,000km	\$300
1,001 to 2,500km	\$600
2,501 to 5,000km	\$1,000
5,000km onwards	\$1,500

56. The approach outlined above implements a simple 500km tolerance which will replace an existing defence discussed in paragraph 69.

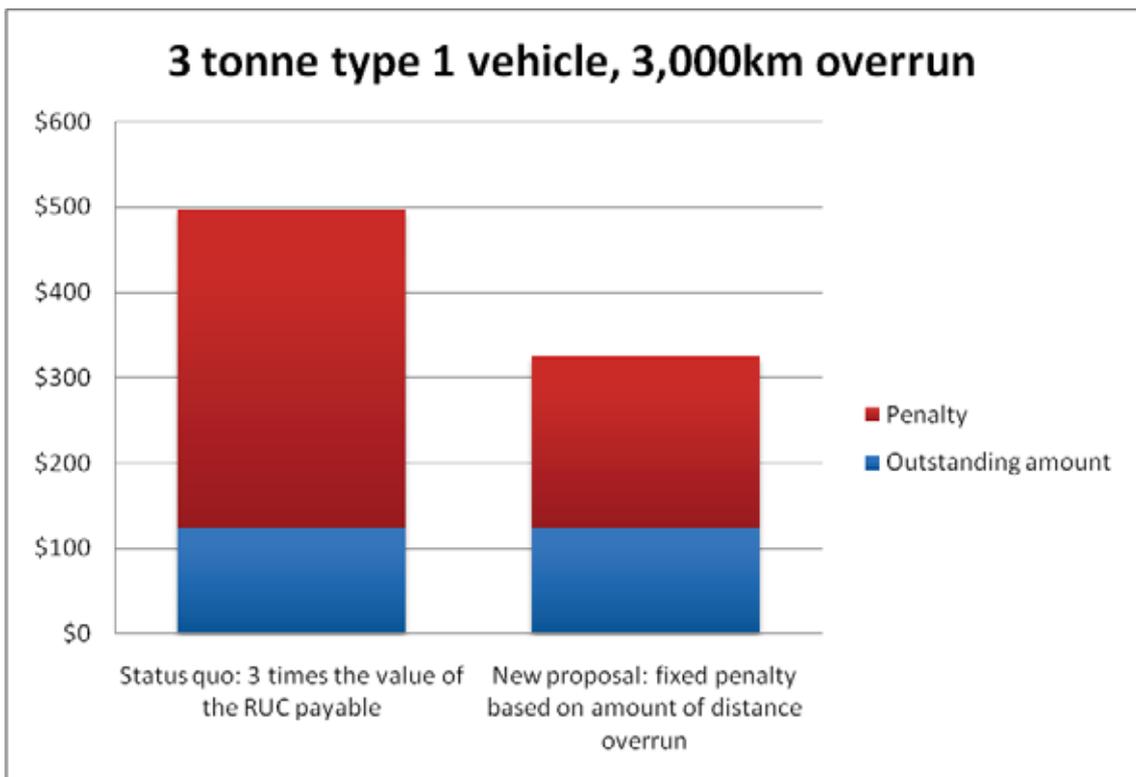
57. The following graph illustrates the impact of the current and proposed penalty regimes on a typical goods distribution vehicle which is 3000km overrun on its RUC distance licence.



58. This proposal will mean that there will generally be a reduction in the level of the penalty. However, there will be a higher probability of owners being given infringement notices, as the issuing of notices will be less of a specialist task because no calculations of outstanding amounts owed are required. The proposal addresses the simple distance overrun and would not apply to offences involving deliberate tampering or fraud.

Infringement fees for light vehicles

- 59. The infringement fees that currently apply to light vehicle owners who overrun their RUC licence are particularly onerous for light vehicle owners and disproportionate compared to other transport penalties. It appears that the high penalties mean that those who have the penalty imposed (especially light vehicle owners) are left with a feeling that the system is unfair in relation to the gravity of the conduct and other transport penalties. The Review recommended the government “decriminalise enforcement of RUC for vehicles with a gross laden weight less than 3.5 tonnes as part of a process of moving light vehicle RUC to a civil collection system.”
- 60. I consider the system should be fair and credible. It is not feasible to move light vehicle enforcement completely to civil collection but with the new assessment mechanisms contained in this paper it is possible to reduce the penalty. I propose that a light vehicle that has a distance recorder that has overrun the maximum distance contained in its RUC licence should be liable to a flat infringement fee of \$200 with a tolerance of 500km. This is the same fee as that imposed for failure to have a warrant of fitness.
- 61. The following graph illustrates the impact of the current and proposed penalty regimes on a light passenger vehicle, which is 3,000km overrun on its RUC distance licence.



Treatment of summary offences

- 62. The existing RUC offences have not been reviewed for many years. I propose a number of changes to the offences. These are set out in the table in Appendix Two.
- 63. Most of the existing offences will be retained, but in some cases I am recommending that the penalties should be increased, especially in the case of fraud and tampering with distance recorders. I expect modernised drafting of the legislation to give greater clarity.

The proposals also impose a higher penalty for corporate offending. The corporate penalty replaces the current higher penalty imposed on vehicle owners.

64. The Review recommended that government enact legislation against odometer tampering. I propose that the Land Transport Act 1998 be amended to include (in both cases without reasonable excuse) offences to install in or to operate a vehicle with a mechanism able to cause a distance recorder to under-record the distance travelled.
65. I am also proposing new offences for breach of the record keeping duties discussed in paragraph 33. The offences relating to failure to keep and produce records should have a high monetary penalty. The potential for lost RUC revenue is very high and the penalties must have a deterrent effect to ensure that government officials have access to the records to pursue outstanding RUC.
66. The new regime will require new offences directed at the new electronic distance recorders and breaches of duty by an electronic system provider. These are also in the table in Appendix Two.

Defences

67. The defences to offences under the RUC Act are set out in Appendix Two.
68. The RUC Act has a defence to the offence of operating a vehicle over the maximum reading of the RUC licence if the excess reading was less than 500km and the defendant bought a licence as soon as reasonably practicable after the offence was drawn to his or her attention. I propose that this defence be removed and replaced with a simple 500km tolerance as discussed in paragraph 56.
69. The RUC Act also contains a defence to an offence of operating a motor vehicle on a road without the appropriate licence if the defendant proves that it was not possible to obtain the licence during the period when the need for the licence arose and the time when the offence was committed and an appropriate licence was obtained immediately after the offence was committed.
70. The defence has been mainly used when the vehicle displays a licence that is under-weight. The need for the defence will be greatly diminished when the new approach to RUC weights comes into force because a vehicle owner will only be required to anticipate the distances the vehicle may travel and not the weight it will carry. There are also more avenues for purchasing RUC licences than was the case in 1977.
71. The purpose of the defence is to address the situation where an operator has genuine problems in obtaining a licence. It has been used as a systematic means to avoid the payment of RUC. I consider that the defence gives the wrong signal about owners' responsibilities to purchase RUC. I propose that this defence be removed and replaced by adding "without reasonable excuse" to the offence provision for operating a vehicle without the appropriate RUC licence.

Implementation of these proposals

72. These proposals are directed at improving the credibility of the RUC system and safeguarding revenue. As the reform covered in these papers involves a number of changes there will be no comparative baseline to measure the success of the proposals in

actual amounts saved. Furthermore, improvement in credibility can not be quantified but can be assessed through customer surveys.

73. I would expect effectiveness to increase over time as the benefits of the record keeping duty for operators become established and the new compliance procedures are implemented. In order to assess the effectiveness of the proposals, I consider that officials should provide the Ministers of Transport and Finance a monitoring report 2 years after the measures come into force.
74. The Ministry of Transport, the New Zealand Police and the New Zealand Transport Agency have formed an inter-agency steering committee to guide improvement of the RUC system. This work of this group will include assessing the contribution of the level of on-road enforcement in managing the RUC system.

Transferring Transport Act 1962 provisions into the Road User Charges Act 1977

75. The Transport Act 1962 contains some provisions relating to RUC. The Land Transport Amendment Bill, which is being prepared for introduction this year, will repeal the Transport Act and consequentially amend the RUC Act so that the RUC provisions from the Transport Act are included in the RUC Act.

Consultation

76. The following government departments and agencies were consulted on this paper: the Treasury; the New Zealand Transport Agency; the New Zealand Police; the Ministry of Justice; the Ministry of Economic Development and the Privacy Commission. The Department of the Prime Minister and Cabinet has been informed of this paper.
77. In 2007 the then government consulted industry on the record-keeping and assessment process. Some of the proposals were modified to take into account the views of industry, especially in relation to the cost of record-keeping. Officials have recently consulted with industry on revised record-keeping proposals. The Road Transport Forum NZ has been informed of these proposals.

Financial implications

78. RUC revenue leakage from heavy vehicles is conservatively estimated to be up to \$30 million per year. Late payment from light diesel vehicles is estimated to be up to \$13 million per year at any given time. The proposed legislative amendments should increase revenue for the NLTF.
79. There will be establishment costs for the new assessment system. These are covered in the financial proposal in the paper "Road user charges: Overview and introduction to legislation proposals." The New Zealand Transport Agency advises that it can meet the ongoing costs of the system within the current financial baselines.
80. I do not expect the volume of summary prosecutions and/or infringement notices to increase significantly but if they do increase the Ministry of Justice may need to seek additional funding in the future.

Human rights implications

81. There are no Human Rights Act 1993 implications arising from the proposed amendments. The Ministry of Justice advises that although the proposals within this paper may raise some issues under the New Zealand Bill of Rights Act 1990, they are either unlikely to infringe a right or are likely to be justifiable.

Legislative implications

82. This paper proposes changes to the RUC legislation to improve compliance with the Act. It also proposes that those provisions in the Transport Act 1962 that are relevant to RUC enforcement will be transferred to the RUC Act.
83. [withheld]

Regulatory impact statement

84. The Ministry confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation requirements, have been complied with. A regulatory impact statement has been prepared and is attached to this paper. The regulatory impact statement was circulated as part of the departmental consultation.

Publicity

85. I intend to issue a media statement announcing a package of reforms that will simplify and modernise the RUC system.

Recommendations

86. I recommend that the Committee:

Background

- 1) **note** that this is the fifth of five related Cabinet papers setting out proposals for new road user charges legislation to replace the Road User Charges Act 1977 and the Road User Charges Regulations 1978;
- 2) **note** that in May 2007 the previous government made decisions in relation to road user charges enforcement [CAB Min (07) 18/4B] refers;
- 3) **agree** that those decisions which are contained in CAB Min (07) 18/4B should be rescinded (except for a prior rescinding in paragraph 17 of the minute) and replaced with the proposals within this paper;

Nature and size of problem

- 4) **note** that these proposals are part of a package designed to strengthen the integrity of the road user charges system, encourage timely payment and assist recovery of revenue which is estimated to involve a loss of at least \$30 million per annum;

Requirements for operators to make and retain records

- 5) **agree** that the road user charges legislation requires transport service operators to make, and retain for 7 years (excluding wage and depreciation records) sufficient records to demonstrate compliance with the road user charges legislation;
- 6) **agree** that, where a transport service operator is already required to retain logbooks, they must retain them for 3 years from the date of their last entry;
- 7) **agree** that the Land Transport Act 1998 and the Land Transport Rule 62001:Worktime and Logbooks 2007 be amended to clarify that the road user charges legislation requires certain logbooks to be retained for 3 years;
- 8) **agree** that the road user charges legislation permit access to third party business records, where these exist, when a transport service operator's records are not produced, are incomplete, insufficient to assess an operator's road user charges obligations or the operator's records have been falsified;
- 9) **agree** to extend the current powers of the Chief Executive of the Ministry of Transport to inspect records to enable the removal and retention of for the purpose of copying them;

New assessment process for underpaid road user charges

- 10) **agree** that the road user charges legislation replace the current section 18A Road User Charges Act 1977 District Court inquiry process, with an assessment process as set out in Appendix One;

Other changes to improve compliance and assist enforcement

- 11) **agree** that the road user charges legislation empower the New Zealand Police, for the purposes of any criminal proceedings, to remove a faulty, inaccurate or obscured hubodometer, a hubodometer with no serial number, or serial number common to that of another hubodometer or an obscured serial number or distance reading and to issue a notice to have a compliant hubodometer fitted within a distance not exceeding 500 kilometres;
- 12) **agree** that the road user charges legislation empower the New Zealand Police to apply for a search warrant in cases where they have good reason to expect the commission of an offence under the road user charges legislation that would attract a financial penalty of more than \$15,000 in the case of an individual, and \$75,000 for a corporate;
- 13) **agree** that the road user charges legislation include provision for the Chief Executive of the Ministry of Transport to waive a road user charges debt when the Chief Executive of the Ministry of Transport is satisfied that the person held liable for the debt was not the person responsible for accruing the debt;
- 14) **agree** that the road user charges legislation include a requirement for vehicle inspectors, and enforcement officers to pass relevant odometer information to the New Zealand Transport Agency;

Updating offences and penalties

- 15) **agree** to the offences and penalties for the road user charges system set out in Appendix Two;
- 16) **agree** that for a road user charges distance offence, that is where the vehicle's distance recorder exceeds the maximum distance specified in the licence, the courts must, subject to any applicable defence, impose the prescribed infringement fee;
- 17) **note** that the proposed financial penalties for record keeping offences are high to reflect the financial risk to the Crown through road user charges evasion;
- 18) **agree** to the removal of two defences by replacing the defence to the road user charges distance offence with a simple 500km tolerance and replacing the defence to a road user charges licence offence with a "without reasonable excuse" element in the offence;

Implementation of Proposals

- 19) **agree** that officials provide a report to the Ministers of Transport and Finance on the effectiveness of the new regime in improving recovery of revenue, 2 years after the legislation comes into force;

Transferring Transport Act 1962 provisions into the Road User Charges Act 1977

- 20) **note** that the road user charges provisions from the Transport Act 1962 are to be transferred to the Road User Charges Act 1977 through the Land Transport Amendment Bill;

Issuing drafting instructions

- 21) **[withheld]**;
- 22) **invite** the Minister of Transport to issue instructions to the Parliamentary Counsel Office to draft legislation to give effect to these changes including any necessary consequential and savings provisions.

Hon Steven Joyce
Minister of Transport

Dated: _____

Appendix One

Details of assessment process

The proposed new assessment process will:

1. authorise the Chief Executive to enter into settlement agreements in relation to payment of outstanding RUC which become a debt payable to the Crown;
2. give the Chief Executive the power to conduct an inquiry into a person's obligation to pay RUC;
3. give the Chief Executive the power to issue binding assessments for unpaid RUC which sets a debt payable to the Crown;
4. enable the Chief Executive to issue a binding assessment upon forming the opinion that a person is liable to pay a charge or if an inquiry establishes that a person is liable to pay the charge;
5. provide that evidence before an inquiry is to be given on oath;
6. provide that those appearing before an inquiry are not excused from answering questions on the grounds of self-incrimination but that answers are inadmissible in criminal proceedings;
7. apply an administrative penalty to be assessed at a flat rate of:
 - a) 10 percent of the amount of RUC that remains unpaid 1 month after the date of assessment;
 - b) 10 percent of the amount of RUC and penalty charges that remain unpaid 2 months after the date of the assessment;
8. give the Chief Executive the power to remit penalty interest to provide flexibility in managing the system;
9. give the person 10 working days to challenge the Chief Executive's assessment, with challenges to be considered by the Chief Executive within 1 month;
10. give the person a right of appeal to the District Court (burden of proof on appellant);
11. grant the person the right of a further appeal on points of law to the High Court, Court of Appeal and the Supreme Court;
12. provide that the obligation to pay the assessed amount is not suspended by appeal;
13. provide that interest on RUC refunded on appeal is to be payable at a rate determined by the Tax Administration Act 1994; and
14. include a provision expressly authorising the ability of the Chief Executive to enter into instalment payment arrangements.

Appendix Two: Offences, Defences and Penalties

The table below contains current and proposed offences under the RUC Act and the penalties to be applied. Summary offences are those that are heard by the District Court and infringement offences commence with the issuing of a notice (ticket) by the enforcement authority.

The current RUC Act has an offence of not complying with section 5. Section 5 has a number of elements. The proposed offences and penalties regime splits the section 5 elements into the first three offences in the table below. There are also a number of other offences.

The current RUC Act generally has the same penalty structure regardless of whether the offence is of a technical nature, (for example not displaying the licence in accordance with the legislation), or of a more deliberate nature (for example operating a vehicle with an altered licence). The penalties for the existing section 5 offence which were set in 1979 are \$3,000 with \$15,000 for the owner of a vehicle. The proposal for penalties for technical offences is \$3,000 for an individual and \$15,000 for a corporate.

Higher penalties are proposed for those offences where there is more deliberate offending. The proposed level is \$15,000 for an individual and \$75,000 for a corporate. The level of adjustment (5 times) for the more deliberate offences equates to a 1979/2010 CPI adjustment.

Except for the distance offence (no 3 in the table) the proposed penalties apply to all who are required to purchase RUC licences. The distance offence, which is expected to be the most common, distinguishes between light and heavy vehicles.

The adopting of a corporate penalty in these proposals aligns the RUC legislation with other transport legislation.

Table containing proposed offences and penalties

	Offence	Infringement fee \$	Summary offence fine \$	Comment
	General offences			
1	To operate on a road without reasonable excuse a vehicle not carrying the RUC licence required under the Act and regulations.	400 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	An offence that is based on the existing section 5 offence but is described differently. The offence now contains the words "without reasonable excuse" which replace an out-dated defence. A new infringement offence is proposed.

	Offence	Infringement fee \$	Summary offence fine \$	Comment												
2	To operate a vehicle without a properly working distance recorder authorised and fitted in accordance with the Act and regulations.	400 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	An offence that is based on the section 5 offence but is described differently. A new infringement offence is proposed. The current defence to this offence will continue (see defence no 2 below).												
3	To operate a vehicle where the reading of the distance recorder is more than the maximum reading, specified in the licence.	200 for a light diesel vehicle over 500 km Heavy vehicle fee table <table border="1"> <thead> <tr> <th>Distance overrun</th> <th>Penalty \$</th> </tr> </thead> <tbody> <tr> <td>Up to 500 km</td> <td>0</td> </tr> <tr> <td>501-1,000km</td> <td>300</td> </tr> <tr> <td>1,001-2,500km</td> <td>600</td> </tr> <tr> <td>2,501-5,000km</td> <td>1,000</td> </tr> <tr> <td>5,000km and above</td> <td>1,500</td> </tr> </tbody> </table>	Distance overrun	Penalty \$	Up to 500 km	0	501-1,000km	300	1,001-2,500km	600	2,501-5,000km	1,000	5,000km and above	1,500	3,000 for an individual 15,000 for a corporate	An offence that is based on the section 5 offence but is described differently. The offence proposes a different formula for infringement fees than the current formula of 3 times the amount payable. The 500km defence will be replaced with a 500km tolerance. It will be a RUC distance infringement offence where the prescribed infringement fee must be imposed.
Distance overrun	Penalty \$															
Up to 500 km	0															
501-1,000km	300															
1,001-2,500km	600															
2,501-5,000km	1,000															
5,000km and above	1,500															
4	To deface or alter a licence.	NA	15,000 for an individual 75,000 for a corporate	Other than modernised drafting, this is an existing offence but a 5 times increase of the penalty, which was set in 1979.												
5	When selling a vehicle to fail to deliver to the purchaser on or before the date of delivery of the vehicle a current RUC licence.	NA	15,000 for an individual 75,000 for a corporate	Other than modernised drafting, this is an existing offence but a 5 times increase of the penalty, which was set in 1979.												
6	To operate on a road any motor vehicle bearing a licence that has been altered or defaced.		15,000 for an individual 75,000 for a corporate	Other than modernised drafting this is an existing offence but a 5 times increase of the penalty, which was set in 1979.												
7	To operate on a road any motor vehicle for which a licence is required that does not have such a licence displayed as required by the Act and Regulations.	200 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	An existing offence that has modernised drafting and cross references. A new infringement offence is proposed.												
8	To operate on a road any motor vehicle bearing a RUC licence that is obscured or not easily distinguishable.	200 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	An existing offence that has modernised drafting. A new infringement offence is proposed.												

	Offence	Infringement fee \$	Summary offence fine \$	Comment
9	To display or cause to be displayed on any motor vehicle or to operate any motor vehicle that has displayed on it anything (not being a licence) that is likely to be mistaken for a licence.	400 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	An existing offence that has modernised drafting. A new infringement offence is proposed.
10	To fail without reasonable excuse to comply with any requirement made in relation to documents supporting a refund application.		3,000 for an individual 15,000 for a corporate	An existing offence that has modernised drafting.
11	To fail to produce any licence when required to do so under the Act or regulations.	400 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	An existing offence that has modernised drafting. A new infringement offence is proposed.
12	To make any application under this Act that the applicant knows or ought to know is incorrect in a material particular.		15,000 for an individual 75,000 for a corporate	Other than modernised drafting an existing offence but a 5 times increase of the penalty, which was set in 1979.
13	To operate a motor vehicle with a hubodometer with no serial number or an obscured serial number or distance recorder.	200 for an individual 800 for a corporate	3,000 for an individual 15,000 for a corporate	New offence. A new infringement offence is proposed.
14	To operate a motor vehicle to which the Act applies which is fitted with a hubodometer that under records because it is designed for a tyre size other than that on the wheel to which the hubodometer is fitted, and the prior written approval of the Secretary for Transport has not been obtained.		15,000 for an individual 75,000 for a corporate	Other than modernised drafting an existing offence but a 5 times increase of the penalty, which was set in 1979.

	Offence	Infringement fee \$	Summary offence fine \$	Comment
15	To operate a motor vehicle on a road in circumstances in which the operator of the vehicle knew or ought to have known that the distance recorder fitted to that vehicle has been damaged in a manner that affects its accuracy, or has been tampered with, or has been modified or repaired other than as permitted under this Act.		15,000 for an individual 75,000 for a corporate	This is an existing offence applying to hubodometers. It has been adjusted to apply to all distance recorders.
16	To alter or wilfully damage any distance recorder fitted to a motor vehicle to which this Act applies.		15,000 for an individual 75,000 for a corporate	Other than modernised drafting an existing offence but a 5 times increase of the penalty, which was set in 1979.
17	An offence covering the installation of mechanisms designed to cause the distance recorder to under record.			New offence.
	Search and surveillance offence			
18	To knowingly disclose information acquired during search and seizure other than in performance of a person's duties.		25,000 for an individual 100,000 for a corporate.	New offence that applies to officials exercising the power.
	Electronic distance recorder offences			
19	To operate a motor vehicle on a road displaying a thing (not being an electronic distance recorder) where the operator knew or ought to have known that it was likely to be mistaken for an electronic distance recorder.		15,000 for an individual 75,000 for a corporate	New offence.

	Offence	Infringement fee \$	Summary offence fine \$	Comment
20	Offences of breaching the duty to keep and produce RUC information to the Chief Executive of the Ministry of Transport and to reporting tampering with electronic distance recorders to the Chief Executive of the Ministry of Transport.		15,000 for an individual 75,000 for a corporate	New offence
21	Offence of electronic system provider giving false or misleading information to the Chief Executive of the Ministry of Transport .		15,000 for an individual 75,000 for a corporate	New offence
	Record keeping offences			New offences.
22	Offence of operator failing without reasonable excuse to make and retain or produce records when requested		25,000 for individual 100,000 for corporate	A substantial fine is needed to avoid operators considering the penalty is more attractive than not keeping records and paying the correct RUC.
23	Offence of third party failing to produce records		15,000	
24	Offence of knowingly producing false or wrong documents		15,000 for individual 75,000 for corporate	
	Offence associated with new inquiry and assessment procedure			
25	To fail to answer questions in an inquiry		1,000 for individual 5,000 for corporate	There is a similar offence under the current RUC Act for failing to answer questions.

Defences:

1 **Defence to RUC distance offence:** The Court must be satisfied that the reading of the distance recorder did not exceed by more than 500 kilometres the maximum reading on the licence and as soon as reasonably practical after the offence was drawn to the attention of the defendant, a licence was purchased for a

distance of not less than the amount by which the reading of the distance recorder exceeded the maximum reading of the licence displayed in the vehicle at the time of the offence.

The proposal is to replace the above defence with a simple 500km tolerance.

2 **Defence to distance recorder offence:** The defendant must prove that a distance recorder was fitted to the motor vehicle at the time; and it was not possible to obtain a working distance recorder or repair the distance recorder fitted to the motor vehicle, during the period between the time of the malfunction of the distance recorder and the time when the alleged offence was committed; and the vehicle had a working distance recorder fitted as soon as possible.

The proposal is to retain the above defence.

3 **Defence to licence offence:** It shall be a defence in proceedings for an offence of operating a motor vehicle on a road without the appropriate distance licence ... if the defendant proves that (a) it was not possible to obtain the licence at any time during the period between the time when the need for the licence was reasonably foreseeable by the defendant or any employee or agent thereof, and the time when the alleged offence was committed; and (b) an appropriate licence covering the distance for which the motor vehicle was on a road in contravention of this Act was obtained for the motor vehicle forthwith after the commission of the alleged offence.

The proposal is to replace the above defence. The offence will contain a "without reasonable excuse provision".

4 **Defence to licence offence:** It shall be a defence in proceedings for this offence if the defendant produces proof of purchase of a licence under section [...] of this Act.

The proposal is to retain this defence.