

*Submission to the New South Wales Independent Pricing and Regulatory Tribunal  
re Review of State Taxation*

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This submission like the one made in November 2007 to the current inquiry will draw on research conducted at the University of Wollongong. However, it does not necessarily reflect the views of the University. The present submission is brief and only addresses a few issues.

The draft report gives consideration to many issues. However, it is suggested that the final report could pay more attention to issues raised in submissions and at the Public Workshop held on 14 December 2007 at Sydney.

For example, although "*inefficient taxes*" are raised at least 14 times in the draft Report, and subsidies receive fewer mentions, nowhere does there appear to be mentioned "*inefficient subsidies*". For example, the issue of cash back for users of certain tollways in Sydney does not appear to be addressed in the draft report, but has had received some media comment this year including in Sydney Morning Herald.

The Parking Space Levy is the subject of an Appendix in the draft report. It was considered important by several participants in the Public Workshop, but it does not seem to rate a recommendation.

On page 2, re the GST, and horizontal fiscal equalisation, it is noted in part that "*For example, HFE results in around \$2.5 billion per annum in NSW-sourced GST revenue being transferred to other States (excluding Victoria and Western Australia). This is one reason why New South Wales must look to other options to raise revenue to fund services and infrastructure.*"

As noted by former NSW Premier Bob Carr, is the fact that Queensland is a beneficiary of such transfers, and at the same time can continue to operate a generous Queensland Fuel Subsidy Scheme costing in excess of \$500 million per annum. This scheme directly costs the NSW Government about \$40m per year through application of a rebate on the NSW side of the NSW/Queensland border. It would appear that Queensland Fuel Subsidy Scheme and its costs to NSW, both directly and possibly through transfer payments, could warrant further consideration by the NSW Government and possibly in the final report.

In 1988, both a Review of the New South Wales State Taxation System and a Commission of Audit, (Curran et al, and Collins) found undertaxation of heavy trucks. One

report in commenting on the poor financial performance of the State Rail Authority of New South Wales found that this Authority was disadvantaged by undertaxation of heavy trucks and such undertaxation leads to a non-level "transport playing field". The other report found under-recovery of road system costs amounting to a modest \$10 million for all articulated trucks, or about \$2000 for each six axle articulated truck.

Under-recovery of road system costs from heavy truck operations directly impact on Local Government by encouraging more freight onto local road. In time, this can result in closure of branch lines, this leading to even more freight on roads. If considered relevant to the present inquiry, more information can be supplied on request on this topic.

The comment on page 9 re **Possible New Taxes** is endorsed (While the potential for NSW to introduce new taxes in the short term is limited, IPART considers that there may be merit in considering possible new or increased environmental taxes to redress damage from pollution. For example, road usage and congestion charges (discussed above) could reduce externalities associated with private vehicle usage, by changing behavioural patterns and contributing to a more rational framework for public transport pricing. Over time, there is considerable scope for other environmental levies (eg, levies to address market failures in private road transport and household energy usage) to play an increased role in the State tax system)

However, recommendation 15 "*In the medium term, consideration should be given to increased use of environmental levies in the NSW tax system.*" could well be amended to make such consideration in the short term.

Charges are mentioned in the Draft Report, including the recommendation 17 on page 10.  
*In the short-term:*

- *NSW user fees and charges practices should be benchmarked with those in other States*
- *guidelines and principles for these fees and charges should be developed*
- *all NSW user fees and charges not currently subject to a periodic review or indexation arrangement should be indexed annually to movements in the CPI.*

This recommendation is supported. However, despite the large amount of subsidies to rail fares and these being the subject of another IPART inquiry, there does not appear to be any mention of rail charges and fares at all in the current review of taxation - in fact there does not appear to be any mention of rail at all. Public transport fares get one mention on page 121 "One

example of a concessional charge is lower public transport fares for pensioners and senior citizens."

**Appendix F.3 Section 92 - freedom of interstate trade** on page 244 of the draft paper notes in part "Section 92 has been relied on in several cases to strike down State taxes. The 1988 NSW Tax Task Force recognised that a body of law had developed on the relation between the guarantee enshrined in section 92 and the power of the States to tax. For instance, it showed that taxes and charges which had received consideration by the High Court in this regard included a tax on the poultry industry,<sup>126</sup> a primary products marketing levy,<sup>127</sup> a road tax on interstate hauliers,<sup>128</sup> and a stamp duty on motor vehicles.<sup>129</sup>"

Reference 126 is a 1968 case, Reference 127 is *Harper v Victoria* (1966) Reference 127 128 refers to *Hughes & Vale Pty Ltd v New South Wales* (1950s) and Reference 129 is *Finemores Transport Pty Ltd v New South Wales* (1978) 139 CLR 338. It is suggested that the situation has markedly changed since 1988 due to the case *Cole vs Whitfield* (see Coper, M (1988) *Encounters with the constitution*, CCH publishers, Sydney). To quote in part from a paper of this writer *A half-century of highway subsidisation – or 50 years after Hughes and Vale* Railway Digest, November 2004 p 26-29.

" In 1978, the High Court again upheld a wide interpretation of Section 92 in *Finemores Transport Pty. Ltd. v. New South Wales*. This was with a five to one decision that decided that vehicles used or intended to be used exclusively in the course of or for the purposes of interstate trade or commerce could not even be required to pay stamp duty. The five judges included Chief Justice Barwick, with Justice Murphy as the sole dissenter. However, in 1988, in the High Court decision of *Cole vs Whitfield* (Coper, 1988, *Encounters with the constitution*) with the unusual distinction of a unanimous seven nil judgement, the scope of Section 92 was confined to the prevention of laws that in effect promote state protectionism."

In view of the 1988 High Court decision of *Cole vs Whitfield*, it may well be that the view expressed in the draft paper may be unnecessarily outdated. It is recognised however, that the decision *Ha v New South Wales* (1997) 146 ALR 355. (cited in Appendix F.2) does support the view expressed that "*section 90 has a profound impact on the design of State tax systems.*"

