



***Submission on
Regulatory Impact Statement Consultation on
'Consumers and Fuel Price Boards'***

Submission to:

**The Policy & Research Advisory Committee
of Consumer Affairs Australia & New Zealand**

15 February 2013

INTRODUCTION: ABOUT AIP, AIP MEMBERS & THIS SUBMISSION

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards.

AIP provides a wide range of factual information and industry data to assist policy makers, analysts and the wider community in understanding the key market, industry and other factors influencing the downstream petroleum sector in Australia. AIP is represented on key statutory advisory bodies, sponsors or manages important industry health and environmental programs, and the Australian Marine Oil Spill Centre (AMOSC) is a wholly owned subsidiary of AIP.

AIP is pleased to present this Submission to the Policy & Research Advisory Committee of Consumer Affairs Australia & New Zealand on behalf of AIP's core member companies:

**BP Australia Pty Ltd
Caltex Australia Limited
Mobil Oil Australia Pty Ltd
The Shell Company of Australia Ltd.**

AIP member companies play a very significant role in the Australian transport fuels market – operating across the liquid fuels supply chain including crude and product imports, refinery operations, fuel storage, terminal and distribution networks, and retail outlets.

In the retail fuels sector, and based on the most recent published ACCC data, AIP member companies directly own and operate around 10% of retail sites in Australia, and there is a further 9% of retail sites operated under franchisee and commission agent arrangements by AIP member companies.

- However, a very significant proportion of fuel is sold at the retail level under the 'brand' of AIP member companies through fuel supply agreements to independent operators. For example, the ACCC has reported that *"while the refiner-marketers (ie. AIP member companies) brand names appear on the majority of petrol retail sites, it is important to note that mostly the businesses are actually owned and/or operated by supermarkets, independent retailers, franchisees, or commission agents"*.
- The importance of this is that any regulation of the retail fuels market will involve many hundreds of retail operators nationally, not just a limited number of large retail chains and major oil companies. As recently reported by the ACCC, there are between 6,000 and 6,500 retail sites nationally.

Given this background and their significant role in the Australian fuels supply chain and support to the broader economy, AIP member companies have a very strong interest in Government consultations related to proposed regulations and potential changes to the ongoing operation of the downstream petroleum industry.

In this light, this submission has been developed to assist with the Policy & Research Advisory Committee's consultations on 'Consumers and Fuel Price Boards' and, in particular, to the Committee's *"exploration of a consistent national approach to the display of information on fuel price boards"*.

AIP member companies may also make submissions to this consultation process, addressing specific matters raised in the RIS related to their commercial operation in the Australian retail fuels market.

Supporting this Submission is AIP's biennial publication 'Downstream Petroleum 2011' (DP2011) which provides an overview of the significant changes that have recently occurred in petroleum refining and marketing in Australia and the Asia-Pacific region, the challenges and competitive pressures facing the domestic industry, and the importance of the industry to Australia's economic prosperity and energy security. DP2011 is available from http://www.aip.com.au/pdf/Downstream_Petroleum_2011_Report.pdf.

AIP VIEWS & POSITIONS: CONSUMERS & FUEL PRICE BOARDS

In summary:

As members of the broader business community, AIP members are concerned about the increasing burden of red tape. In particular, we question the need for specific regulation in this area where:

- there are general laws already in place such as the Competition and Consumer Act;
- the retail fuels market is highly competitive and transparent;
- consumers have ready access to a wide range of relevant and timely fuel pricing information, and analysis by the ACCC confirms consumers respond efficiently to this information;
- the case for market intervention has not been supported by rigorous cost benefit analysis.

We further note that State/Territory and Commonwealth Governments are currently focused on efforts to reduce red tape for business.

AIP considers that a proportional 'consistent national approach' to fuel price boards could be achievable if a 'high level' and 'no/low industry cost' approach is taken, which focuses as a priority on national implementation of consistent information to consumers to make more efficient (including quicker) and safer fuel purchasing decisions on the road. However, such an approach must meet sound policy principles (see Page 7) and must also be cognisant of not encroaching into areas of legitimate and pro-competitive business operation, differentiation and competition nor stifling business innovation.

Policy Background: Current Retail Fuels Market Operation & Issues

AIP supports robust and national consumer protection laws like the Australian Consumer Law (ACL) and supports the prosecution of site operators engaged in unlawful conduct under the ACL (eg. false and misleading advertising).

- AIP considers that the ACL is sufficiently robust to address most of the concerns identified in the Consultation RIS where they can be clearly demonstrated as warranting attention.
- AIP also notes that jurisdictional Fair Trading Offices have been successful in addressing the specific practices or conduct of some market operators which they consider to be unlawful or to the detriment of consumers, and have sufficient powers to do so.
- In most cases, AIP believes that an "education" approach is likely to be effective as fuel retailers do not want to confuse (let alone mislead) their customers and are very likely to be responsive to advice from regulators on improved practices, as long as this is applied even-handedly.

AIP supports open, competitive and transparent fuel market operation.

- AIP notes that successive annual ACCC Formal Price Monitoring Reports have concluded that the Australian retail market is diverse and competitive and Australian consumers enjoy competitive and low retail fuel prices by international standards.
 - The ACCC's December 2012 Report (*'Monitoring of the Australian petroleum industry—Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia 2012'*) details the highly competitive nature of fuel retailing in Australia and its relatively low level of profitability. The retail petroleum industry is under intense competitive and cost pressure. Cost imposts from unnecessary regulation should be avoided, and if possible existing unjustified regulatory costs should be rolled back.

- The Australian fuels market is highly transparent with retail fuel prices being highly visible to the public and consumers have the ability to readily compare and monitor prices through a range of means to suit individual consumer preferences. The range and effectiveness of this information is highlighted by some consumers being able to find, respond and purchase fuel at a chosen retail site on the basis of a price advantage of only a fraction of a cent in many instances.

The ACL and Fair Trading laws should, in principle, be adequate to address limited or isolated instances of poor or unlawful business practice of individual operators to the detriment of consumers.

- Where a widespread market failure is clearly demonstrated, AIP supports government policy (and if necessary regulation) to support consumer protection and a more efficient and competitive market. However, such policy or regulation must be:
 - based on robust cost-benefit analysis and science, and also on sound health, safety and environmental practices;
 - demonstrably superior to the 'status quo' (ie. do nothing);
 - transparent with clearly defined and credible objectives;
 - applied and enforced consistently to all market participants (ie. a "level playing field");
 - harmonised across jurisdictions;
 - regularly reviewed, and where necessary amended, to ensure the objectives are still relevant;
 - implemented after a sufficient transition period.

AIP considers that a clear case for government regulation of fuel price boards is yet to be established (including in the context of the current ACL provisions and Fair Trading laws).

- AIP considers that the 'consumer surveys' which underpin this consultation and proposed government regulation do not meet some of the key criteria above and are not statistically valid.
- AIP also notes that ACCC complaints and associated data (which also supports this consultation and proposed regulation) do not appear to provide a compelling case for government intervention.
 - The most recent ACCC report on the industry indicated that:
 - *"the ACCC Infocentre received a total of 197 963 phone calls, 70 891 emails and 18 389 letters during 2011-12"*
 - *"Of these, just over 1300 contacts raised issues in respect of fuel"*
 - *"The majority of these complaints related simply to the fact that market prices were high rather than allegations of a breach of the Act."*
 - This suggests that despite millions of daily transactions in the retail fuels sector, the industry accounts for significantly less than one per cent of the total complaints made to the ACCC and indeed the majority of these complaints (53%) related to *"that market prices were high"* rather than allegations of a breach of the Act and the manner in which prices are displayed on price boards at retail fuel sites.

AIP therefore supports a robust consultation process, as proposed in the Consultation RIS, to better understand, have demonstrated and quantified, the extent and ongoing nature of 'the problem' identified in the RIS.

AIP supports clear and transparent information being provided to consumers so they can make informed and timely purchasing decisions without jeopardising their or others safety whilst operating a vehicle. Because the retail fuels market is highly competitive and successful businesses depend on attracting customers from competitors, it should be expected that the market will ensure consumers receive the information they require to make informed purchasing decisions. It is most unlikely that consumers, who make frequent fuel purchasing decisions, are ill-informed about fuel prices.

- ACCC analysis and published reports have concluded that the majority of Australian motorists take the opportunity to purchase fuel at low points of the retail price cycle in metropolitan areas (with most fuel sold on these low price days). This clearly (and quantitatively) demonstrates that retail consumers are already using effective and timely information to make efficient fuel purchasing decisions and any 'confusion by motorists' is not reflective of the majority of the market.
- AIP considers that, in addition to price boards, there are a range of freely available and timely information services available to consumers to assist with their purchasing decisions and to make price comparisons across retail sites in different regions or localities (eg. mobile phone applications, websites, newspapers, local radio and TV etc) without raising road safety concerns. This information is likely to expand greatly over the near to medium term, with smartphone apps already pointing to the likely direction of a further expansion of fuel price information being available for consumers.
- The public safety of road users from consumers making purchasing decisions is a very important consideration, as such decisions are often made in the course of driving a vehicle on a public road. Thus, negative externalities and costs could result from 'price discovery and comparison' by consumers on the road if there are traffic incidents and consumer detriment related to this consumer activity, including if fuel price comparisons are made difficult for consumers/motorists (eg. if price boards are not clear, concise, prominent and well lit to support quick visual observation by motorists).

Subject to the above concerns AIP supports, in-principle, well targeted national efforts to demonstrably strengthen the efficiency, transparency and consistency of pricing information provided to consumers on fuel price boards, as long as such efforts lead to greater market efficiency and competition and improved consumer information and safety (ie. a demonstrated clear net benefit to consumers, communities and the economy).

However, in the context of the retail fuels market already being highly competitive, pricing highly transparent, and consumers clearly demonstrating this in their effective weekly purchasing decisions, we consider the scope to achieve further consumer benefits is limited. If there is regulation, a critical issue will be avoiding cost to industry in particular through the specific design features of such regulation.

AIP member companies consider that the magnitude and incidence of 'the problem' (as defined in the consultation RIS) has not been substantiated. Since costs to industry could well be very high they would be unjustified on the basis of limited unsubstantiated consumer benefits. Any response needs to be proportional to 'the problem' and the net-benefits generated.

The consultation paper states that "the problem can be broadly grouped into two categories: how discounted prices are displayed on fuel price boards; and other concerns relating to what information, and how this information, is displayed on fuel price boards" (page 3).

In relation to discounted prices, NSW regulation bans display of a discounted price although discount offers may still be advertised on price boards. Some stakeholders, notably some motorists' associations, appear to support this position. It is difficult to see how banning the display of a market price can be pro-competitive, although it is recognised (and legally required) that display of such prices must not mislead consumers. In practice, we understand this relates to communication of the conditions attached to a discounted price offer.

AIP does not have a position on display of discounted prices (other than the general considerations discussed in this paper) and members have not sought to arrive at any position. AIP therefore remains open to the consideration of policy positions on the display of discounted prices being put forward by regulators as part of the consultation process.

For industry, the main consideration is cost in dealing/responding to issues related to other information displayed on price boards, the physical characteristics of price boards, and the operation of the boards. This includes the capital cost of new or modified price boards, and administrative costs and complexity of modified operating procedures. In a highly competitive industry, it should be recognised that increased costs may be passed on to consumers.

For example, a key issue is likely to be the number of price lines to be displayed.

- The most common number of lines used across the retail fuels sector is three, typically base grade petrol (E10 or ULP), diesel and LPG. Display of two grades is also fairly common, but display of four grades is limited to some larger and newer sites. As a result, we understand there is widespread retailer resistance to mandatory display of more than three price lines because of the costs involved in the construction and erection of new compliant price boards capable of displaying four prices.
- AIP notes that while there are some retail sites which currently display more than three fuel products, the ability for all sites to do this is dictated by the size and layout of the site, its location, the number of products on the forecourt, market conditions including number of customers and local area competition etc. AIP considers that the market has been successful to date in deciding how to deal with these dynamics and site-specific characteristics.

It is also quite possible that regulatory intervention could interfere with competition and make the display of information more confusing, rather than less.

- Retailers use price boards to attract customers, so are best placed to determine what information is of most relevance to their customers and will allow them to best compete with neighbouring retailers.
- AIP notes that the *“top selling fuels by site”* varies between businesses, localities and retail sites, and can change over time. For example, due to mandates, E10 has a much higher market share in NSW than in other states and retail diesel sales have increased with the growing popularity of diesel vehicles. It is important that retailers retain flexibility over what fuels are advertised, which may not necessarily be the highest volume sellers, to optimise their fuel business and ensure consumers are receiving the information they need.
- Retailers and their fuel suppliers seek to innovate in relation to the fuel products offered and the information displayed on price boards, and poorly designed regulation would inevitably limit such innovation.

Nevertheless, there may be a case for guidelines (not necessarily regulated) to assist retailers in ensuring price boards are compliant with the law and are not inadvertently confusing.

More importantly, such guidelines could help guard against poor regulation by individual jurisdictions. AIP believes the greater threat to competition and efficient markets is not retailers’ practices in relation to sign boards but ad hoc and poorly considered regulation.

A case in point is NSW, where recent price board regulation was rushed through with no robust regulatory impact assessment, poor consultation, and an inadequate implementation period, and this has resulted in adding further significant red tape and industry (and therefore consumer) costs, and may stifle competition and a strengthening of information to consumers.

An agreed, nationally consistent approach to fuel price board information could guard against this.

If a case for regulation cannot be clearly established through this consultation process, this would suggest that jurisdictions should consider rolling back any regulation relating to price boards that currently exists given the stated commitment of all governments to reduce red tape for business.

Policy Principles

AIP considers that to achieve a 'consistent national approach' to fuel price board presentation which is efficient and produces a net benefit overall, would require any changes to current market operation and settings to:

- (1) be proportional to the extent of the demonstrated and quantified problem in the market;
- (2) be nationally agreed and universally and consistently applied across jurisdictions - to underpin improved overall market efficiency and consistent information to consumers;
- (3) provide improved and meaningful information to the majority of motorists in making their fuel purchase decisions;
- (4) be durable and flexible as the retail market continues to evolve over time and not impede innovation and competition;
- (5) not result in a significant increase in the capital and operational costs for industry operators (given the 'problem' is unclear and any benefit to consumers is yet to be quantified);
- (6) not lead to a significant increase in red tape and local approval requirements, nor create ongoing concerns for motorist safety;
- (7) allow for a suitable transition period to enable market operators to adjust to any changes in the most effective manner; the importance of a sufficient transition period is underlined by the potentially significant capital expenditure needed on these assets which have long life spans;
- (8) maintain a level playing field amongst competitors during and after the transition period.

Policy Details & Implementation

AIP member companies would support, in principle, fuel price boards providing nationally consistent information, which may or may not be regulated as industry guidelines or an information standard. This assumes that the responses to the consultation RIS, and further consideration of costs and benefits by Treasury, justify progression towards guidelines for such information.

This could include, for example, 'base' price board guidelines focusing on:

- the ordering of fuels to be displayed (eg. regular grade petrol (ULP or E10), diesel, LPG);
- base standards for the form/location of price boards (eg. lighting, height, legibility);
- a minimum number of fuels to be displayed.

Options in each of these areas, should be assessed by the Committee, in detailed consultation with industry and fuel retailers, against their ability to:

- provide improved and more consistent information to consumers;
- not create unnecessary capital and operational costs for the industry;
- not create safety concerns;
- allow industry to innovate and advertise new or improved fuel products for motorists on price boards;
- improve efficiency and competition in the retail fuels market more broadly.

AIP would be happy to work closely with Treasury, the Committee and other industry representatives to seek to identify workable options for a 'consistent national approach' which meets the above policy principles and which addresses demonstrated problems in an effective way.