

# **Consumers and Fuel Price Boards**

Consumer Affairs Australia and New Zealand

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## Part I INTRODUCTION

At the 6 July 2012 meeting of the Legislative and Governance Forum on Consumer Affairs (CAF), Ministers responsible for Consumer Affairs discussed fuel price board signage and agreed to explore a consistent national approach to the display of information on fuel price boards.

### Ministers responsible for Consumer Affairs (CAF)

The Legislative and Governance Forum on Consumer Affairs (CAF)<sup>1</sup> consists of Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading and consumer protection laws.

CAF's role is to provide an opportunity for Ministers to discuss matters of mutual interest concerning consumer policy, services and programs. CAF considers consumer affairs and fair trading matters of national significance and, where possible, develops a consistent approach to issues.

### Senior officials responsible for consumer protection (CAANZ)

Consumer Affairs Australia and New Zealand (CAANZ)<sup>2</sup> is made up of the senior officials responsible for consumer policy and enforcement in Australia and New Zealand.

CAANZ is seeking the views of stakeholders on options for developing a national approach to fuel price boards as outlined in this consultation Regulation Impact Statement (RIS). The paper provides stakeholders with the opportunity to detail the impact of government action, which will be considered by CAF when Ministers make their final decision. The outcomes of this consultation will form the basis for developing the decision-making RIS which will be considered by CAF Ministers.

This paper has been prepared in accordance with COAG regulatory impact analysis requirements.<sup>3</sup>

**The views expressed in this consultation paper do not reflect an agreed position of CAF, nor do they necessarily reflect the policy position of any of the Commonwealth, State or Territory governments.**

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1 CAF was formerly known as the Ministerial Council on Consumer Affairs (MCCA).

2 CAANZ was formerly known as the Standing Council of Officials on Consumer Affairs (SCOCA).

3 As outlined in Council of Australian Governments 2007, *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*.

### **Request for comments**

Responses are requested by Friday, 15 February 2013. Submissions should be addressed to:

**The Chair  
Policy and Research Advisory Committee of CAANZ**

and can be submitted to:

**australianconsumerlaw@treasury.gov.au**

or sent by post to:

The Chair  
Policy and Research Advisory Committee of CAANZ  
c/- The Manager  
Consumer Policy Framework Unit  
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It will be assumed that submissions are not confidential and may be made publicly available on the Treasury website ([www.treasury.gov.au](http://www.treasury.gov.au)) and the CAF website ([www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)). If you would like your submission, or any part of it, to be treated as confidential, please indicate this clearly. A request made under the *Freedom of Information Act 1982* for a submission marked confidential to be made available will be determined in accordance with that Act.



## Part II STATEMENT OF THE PROBLEM

### SUMMARY OF THE PROBLEM

- Concerns have been raised by a number of Australian motorists (via complaints data and consumer surveys), and expressed by Australian Consumer Law Ministers and regulators, about the display of price information on fuel price boards – namely, what information and how this information is displayed on price boards.
- One area of concern relates to how discounted prices (including shopper docket fuel discounts) are displayed on fuel price boards, often more prominently than their relevant terms and conditions and the undiscounted price.
- Other areas of concern for some Australian motorists include differences between the price displayed on fuel price boards and the actual price charged, the display of only one or two fuels on price boards, the lack of visibility of price boards, the lack of consistency in the way information is displayed between fuel retailers, and the display of prices for out-of-stock fuel.
- These concerns have resulted in financial and non-financial detriment for some motorists, including confusion about what prices are on offer, making price comparisons between fuel retailers more difficult, paying a higher price than what was originally observed on the fuel price board, and disputes with fuel retailers over price differences.
- Currently, only NSW and WA specifically regulate fuel price boards. However, the scope of the concern is national, with concerns about fuel price boards coming from a number of motorists around the country.
- There is currently no nationally specific approach to regulate the display of information to motorists on fuel price boards.
  - The Australian Consumer Law provides generic consumer protections against false, misleading and deceptive conduct, ‘bait advertising’ and multiple pricing.
  - There is no national law to specifically address concerns relating to the display of information on fuel price boards.
- Many of the concerns about fuel price boards appear to arise due to a form of information failure in that some consumers may be confused about what prices are available or face greater difficulty than necessary in making price comparisons due to the manner in which information is provided or the lack of consistency in the information provided.
- The extent of the ongoing nature of the problem is currently unclear. That is, it is unclear the extent to which consumers who are initially confused, can learn and adapt to how information is displayed on fuel price boards, and how this may vary as the ways in which information is displayed changes over time.

## FUEL PRICE BOARDS

Fuel price boards are commonly displayed by the roadside at fuel stations across Australia. They are used to provide motorists with information on the prices of fuels available at the particular site. In a 2012 survey conducted by NSW Fair Trading (NSW Survey), almost 92 per cent of over 1300 respondents indicated that they check the price of fuel on the price board before they enter a fuel station.

While the primary purpose of fuel price boards has traditionally been to display fuel prices to motorists, more recent trends in Australia have seen price boards play a greater role in the promotion of fuel discount schemes.

### Fuel discount schemes

The automotive fuel retailing industry in Australia has changed markedly over the past five years, with supermarket chains growing in presence.<sup>4</sup> With the entry of supermarket chains into the industry, there has been a growth of shopper docket fuel discount schemes. These schemes typically provide customers with a discount on fuel where they have spent over a nominated amount at an affiliated supermarket. Other schemes provide discounts to motorists where a fuel card is presented.

As at mid-October 2012, Coles operated 630 retail fuel sites selling Shell branded fuel, and Woolworths operated 604 sites selling Caltex branded fuel.<sup>5</sup> According to the 2011 ACCC petrol monitoring report, the sales volumes of these two retailers in 2010-11 accounted for around 45 per cent of the Australian retail fuel market.<sup>6</sup> In the past, other retailers, such as United, BP, Caltex and 7-Eleven, have also utilised shopper docket discount schemes. Some of these schemes have been linked to purchases at a local independent supermarket, while others combine purchases from the convenience store with offers of fuel discounts.<sup>7</sup>

Fuel retailers often advertise on their fuel price board that discount vouchers from an affiliated supermarket chain are accepted by the retailer. Another recent trend has been the increased prevalence of discounted prices being listed on fuel price boards. In the NSW Survey, almost 63 per cent of respondents indicated that they have participated in discount schemes.

This consultation is focused on consumer concerns relating to the display of information on fuel price boards including the display of discounted prices.

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4 IBISWorld, *Automotive Fuel Retailing in Australia*, Industry Report G5321, September 2012.

5 [http://media.corporate-ir.net/media\\_files/IROL/14/144042/WES12-063\\_2013\\_First\\_Quarter\\_Retail\\_Sales\\_Results.pdf](http://media.corporate-ir.net/media_files/IROL/14/144042/WES12-063_2013_First_Quarter_Retail_Sales_Results.pdf)

[http://www.woolworthslimited.com.au/icms\\_docs/136555\\_First\\_Quarter\\_Sales\\_Results\\_-\\_Financial\\_Year\\_2013\\_14\\_weeks\\_to\\_30\\_September\\_2012.pdf](http://www.woolworthslimited.com.au/icms_docs/136555_First_Quarter_Sales_Results_-_Financial_Year_2013_14_weeks_to_30_September_2012.pdf)

6 ACCC, *Monitoring of the Australian Petroleum Industry*, 2011.

7 Ibid, p357.

## NATURE OF THE PROBLEM

Concerns relating to the display of information on fuel price boards have been received by Australian Consumer Law regulators and motoring associations, raised in consumer surveys and expressed by Australian Consumer Law Ministers and regulators.<sup>8</sup> 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.

### Display of discounted prices

Australian Consumer Law regulators, including the ACCC, have received complaints from Australian motorists in relation to how discount prices are displayed on fuel price boards. Similar concerns have also been expressed by Australian Consumer Law Ministers and regulators.<sup>9</sup> The concerns relate to the prominent manner in which discounted prices are often displayed to passing motorists on fuel price boards, and the less prominent information that is provided about the associated terms and conditions (such as holding a valid shopper docket or buying a minimum volume of fuel).

It is often the case that the discounted price is the most prominent price that is displayed on the board. The discounted price often appears in illuminated text, larger font size or a different colour than the display of the undiscounted price. Confusion may also arise when the advertised discount does not apply to all varieties of fuel sold.

Some fuel retailers also use a combination of differently sized fuel price boards to display the price information, such as a larger board to display the discounted price and a smaller board with smaller sized font to display the undiscounted price. The types of boards used and how price information is displayed on those boards contributes to giving greater prominence to the discounted price.

Irrespective of whether the discounted price is displayed more prominently, concerns have also been expressed about the way in which the terms and conditions for the discounted price are displayed to passing motorists on fuel price boards (for instance, requiring motorists to hold a valid discount voucher, to spend a minimum amount or to purchase a minimum volume of fuel). For example, terms and conditions are sometimes not displayed, not displayed prominently or sufficient details not provided.

Earlier this year, inspections of over 300 NSW fuel stations by NSW Fair Trading discovered that a number of stations only advertised prices which applied discount or membership

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<sup>8</sup> Assistant Treasurer David Bradbury, *Work proceeds on fuel price board regulations*, Media Release, 6 July 2012; NSW Fair Trading Minister Anthony Roberts, *NSW Minister welcomes fuel board backing*, Media Release, 28 June 2012; Speech by Rod Sims – Chairman of the ACCC, *Australian Convenience and Petroleum Marketers Association Annual Conference Breakfast*, Melbourne, 12 September 2012; NRMA 2012, *Half caught out by fuel price boards – NRMA Survey*, media release 6 July 2012; NSW Fair Trading, *Petrol Sign Survey*, 2012.

<sup>9</sup> Ibid

schemes.<sup>10</sup> The NSW Survey found that 90 per cent of over 1300 respondents agreed that prices displayed on fuel price boards should be free of any special terms and conditions.

The concern with how discounted prices are displayed on fuel price boards is compounded by the circumstances in which motorists read fuel price boards whilst driving. Some motorists may not be able to carefully and safely read all the information on a price board, including any terms and conditions, particularly if greater prominence is given to certain information over others (such as a discounted price). This can be contrasted with other situations where consumers are in a relatively better position to carefully read and consider the terms and conditions that accompany a price representation (for example, whilst reading an advertisement in a newspaper). This also means that much of the time motorists are unable to make price-based purchasing decisions in advance but are required to make quick purchasing assessments and decisions based on the information displayed on fuel price boards whilst driving.

Together, the prominent display of the discounted price, the less prominent display of discount conditions, the role of fuel price boards, and the circumstances in which passing motorists read fuel price boards, may result in some motorists being led to mistakenly believe that the most prominent discount price will be the one that is available to them unconditionally.

The National Roads and Motorists' Association (NRMA) found in a survey of over 800 respondents that 54 per cent indicated they had driven into a service station expecting a certain price only to discover it was more expensive, including where a discounted price has been advertised.<sup>11</sup> It is not clear if these motorists do or do not repeat this mistake again. In the NSW Survey, of over 1300 respondents, almost 60 per cent disagreed with the statement that it is generally clear what price you will pay for the type of fuel you wish to buy, and 90 per cent said they looked to check the price of fuel on the price board before entering a fuel station.

These attitudes are particularly relevant given that an increasing number of motorists do not make purchases under a fuel discount scheme. According to the 2011 ACCC petrol monitoring report, the volume of fuel sales made under shopper docket schemes have remained relatively stable over the last five years.<sup>12</sup>

Of those motorists who have been attracted by the prominent display of the discount price, some may realise the price difference before filling up their car, whilst others may continue to rely on the information on the fuel price board to inform their purchase without checking the bowser price. In such a case there is no information failure. Trade measurement legislation requires the retail price per litre to be displayed at petrol bowsers.<sup>13</sup>

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10 State Member for Tweed, Geoff Provest MP, *NSW Government cracks down on misleading petrol advertising*, Media Release, 23 March 2012.

11 NRMA 2012, *Half caught out by fuel price boards - NRMA Survey*, media release 6 July 2012.

12 ACCC, *Monitoring of the Australian Petroleum Industry*, 2011, p357

13 *National Measurement Act 1960 (Cth)*

## Other concerns relating to fuel price boards

Apart from the display of discounted prices, other complaints received by Australians Consumer Law regulators and the concerns of regulators about fuel price boards, relate to:

- price differences between the price displayed on the price board and the price at the bowser or checkout, with the price on the board being lower than the actual price charged. Often the price displayed on the price board may be lower because:
  - it is rounded down to less decimal places per litre (for example, 125c/litre on the board but charged 125.9c/litre);
  - price boards not updated in a timely manner to reflect price increases; or
  - for reasons not provided to motorists;
- price boards displaying prices for only one or two fuels;
- displaying prices for certain fuel types more prominently over other fuels;
- price boards displaying prices to passing motorists for fuels that are out-of-stock;
- the lack of visibility of fuel price boards;
- the lack of consistency in the manner in which information on fuel price boards is displayed between fuel stations, including the order which prices are displayed on the boards;
- unclear description of fuel types (for example, price boards not making it clear that the price on display relates to the price for an ethanol blend when advertising for unleaded petrol);
- the absence of a price board at fuel stations; and
- multiple price boards of different sizes and displaying information in a different manner, are located on the same site but situated apart.

These concerns relate to how the provision of better information may increase efficiency in the market. While the range of fuels available in Australia has grown (such as various new premium fuels and ethanol blends), fuel price boards have not kept up. Some fuel stations only display prices for one or two fuel types, and regular unleaded is not always displayed despite it being one of the most common types of fuel sold in the fuel retailing industry. For some fuel retailers, regular unleaded petrol sales account for 60-70 per cent of sales volumes. Earlier this year, inspections of over 300 NSW fuel stations by NSW Fair Trading discovered that many stations which sold unleaded fuel only displayed the usually cheaper e10 price.<sup>14</sup>

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<sup>14</sup> State Member for Tweed, Geoff Provest MP, *NSW Government cracks down on misleading petrol advertising*, Media Release, 23 March 2012; NSW Fair Trading Minister Anthony Roberts, *'New standard for NSW petrol price boards: What you see is what you get'*, Media Release, 22 August 2012.

Diesel sales are expanding as more diesel fuelled cars are entering the Australian market and as motorists switch to diesel vehicles with greater fuel economy.<sup>15</sup> To this end, the display of limited fuel types on price boards is particularly an issue for motorists that require LPG or diesel as there is no substitute for these fuels.

## CONSUMER DETRIMENT

Consumer detriment arises when market outcomes fall short of their potential, resulting in welfare losses for consumers. Identifying and measuring the nature and magnitude of consumer detriment (that is, how consumers are being affected and the number and extent of consumers being affected) is a component of evidence-based policy making.<sup>16</sup>

Elements of detriment include both financial and non-financial losses, time loss and stress. Where the bowser price is higher than the information displayed on the price board, a motorist who does not check the bowser price before filling will have paid a higher price. This financial detriment may be avoided if the motorist checked the bowser price before filling up. However, even where a motorist does check the bowser price before filling up and discovers a higher price, they are not able to avoid any non-financial detriment (such as the time spent lining up at the bowser, seeking clarification with the fuel retailer about the price difference and queuing at another fuel station).

Possible sources of information for assessing consumer detriment include complaints data and consumer surveys.<sup>17</sup> This paper seeks information on consumer detriment.

### Magnitude of the detriment

Shopper docket fuel discount schemes have been in place in Australia since 1996. While many motorists may now be familiar with how these scheme work, Australian Consumer Law regulators and motoring associations continue to receive concerns that the display of discounted prices on fuel price boards can be confusing or misleading.<sup>18</sup> Fifteen years on there is evidence that some motorists are confused and being caught out by the display of discounts on fuel price boards.

Some motorists may discover the actual price being charged at the bowser prior to filling up, whilst others will only discover the actual price at the checkout or on the receipt of payment and end up paying a higher price. The consequence of this is a consumer detriment as motorists may pay a higher price than expected. In 2012, there are almost 17 million<sup>19</sup> registered vehicles in Australia, with the vast majority of fuel station customers being drivers of passenger vehicles make up eight out of every ten registered vehicles in Australia.<sup>20</sup> The automotive fuel retailing industry generates revenues equal to approximately \$38.2 billion per year.<sup>21</sup> These figures suggest that on average an estimated \$2,300 is spent each year on fuel for every registered motor vehicle in Australia (or almost \$44 per week).

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15 IBISWorld, *Automotive Fuel Retailing in Australia*, Industry Report G5321, September 2012.

16 OECD, *Consumer policy Toolkit 2010*, p11.

17 Ibid, p12.

18 NRMA 2012, *Half caught out by fuel price boards – NRMA Survey*, media release 6 July 2012.

19 Australian Bureau of Statistics 2012, *Motor Vehicle Census*, cat. no. 9303.0, Canberra.

20 Australian Bureau of Statistics, 9208.0, *Survey of Motor Vehicle Use*, 12 months ended 31 October 2012.

21 IBISWorld, *Automotive Fuel Retailing in Australia*, Industry Report G5321, September 2012.

While motorists might be expected to gain familiarity with discount schemes over time, retailers may continue to modify how these schemes operate in order to promote their products. Therefore, it is not guaranteed that consumer confusion will reduce over time.

In relation to concerns which are unrelated to the display of discounted prices, the source of the problem lies with the fuel retailer and is not within the control of the consumer (for example, where there is a price difference between the fuel price board and the actual price charged). To this end, the occurrence and magnitude of the consumer detriment could be changed by the action of retailers (for example, by refunding the price difference or correcting price boards as soon as prices change).

It is not entirely clear at this stage the precise magnitude of the consumer detriment resulting from how information is displayed on fuel price boards. This consultation is seeking further information to assist to measure the magnitude of the detriment.

## SCOPE OF THE PROBLEM

The large majority of fuel station sites in Australia maintain fuel price boards. The Australian Institute of Petroleum member companies – major oil companies like BP, Caltex and Shell – display fuel price boards at their sites.

The complaints and concerns from some motorists about fuel price boards are not confined to or concentrated in any particular jurisdiction, region or fuel retailer. They are spread across the country, although naturally most of the complaints come from motorists in states with higher populations which account for the majority of retail sales of fuel – namely, NSW, Victoria and Queensland. In 2012, these three states combined account for over three-quarters of retail sales of fuel sold in Australia.<sup>22</sup> At this stage, the proportion of complaints from each jurisdiction is unable to be provided to give insight on the relative magnitude of the concerns around Australia.

In 2011, there were an estimated 6,300 fuel station sites in Australia.<sup>23</sup> The information gathered from complaints data and consumer surveys do not give a precise picture of the extent of the problem, particularly about whether motorists' concerns relate to a few fuel retailers or if the problem is broader, and whether the problem varies between different areas (metropolitan, non-metropolitan, regional). To this end, this consultation paper is seeking further information on the precise scope of the problem.

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<sup>22</sup> IBISWorld, *Automotive Fuel Retailing in Australia*, Industry Report G5321, September 2012.

<sup>23</sup> Australian Institute of Petroleum, *Downstream Petroleum 2011*, Canberra.

### Consultation questions

- 2.1 How common is it for a fuel price board not to be present at a fuel station? Where in Australia does this occur?
- 2.2 To what extent do consumers rely on information on fuel price boards to make a purchasing decision?
- 2.3 How useful for motorists is the information that is currently being displayed on fuel price boards?
- 2.4 Is information on fuel price boards being displayed in a clear and adequate manner for passing motorists to read and understand?
- 2.5 How common is the practice for discounted prices to be displayed on fuel price boards? How common is the practice of displaying discounted prices as the most prominent price on the price board?
- 2.6 How common is it for limited information to be provided on fuel price boards – for instance, when no price is displayed or only one or two fuel types are displayed?
- 2.7 In what ways do the presentation of discounted prices and/or discount schemes on fuel price boards impact on motorists?
- 2.8 How often do motorists use fuel discount vouchers on average over a year?
- 2.9 How easy is it for motorists to compare prices between different fuel stations when a mixture of discounted and undiscounted prices is displayed on fuel price boards?
- 2.10 Are some fuel types displayed more prominently than others? If so, how does this impact on motorists?
- 2.11 Have motorists encountered any financial or non-financial detriment as a result of the way information has been provided on fuel price boards? How often does this arise and what is the extent of the detriment (for example, how much extra was paid for fuel)?
- 2.12 Where in Australia have motorists encountered difficulties with assessing information on fuel price boards or encountered a detriment (financial or non-financial) as a result of the information displayed on fuel price boards.



## CURRENT LAWS

Currently, specific laws exist in NSW and WA relating to fuel price boards, and a national general consumer law provides protections to consumers in Australia.

### Fuel Regulations

There are a number of regulations that apply specifically to the display of information on fuel price boards and more generally to the provision of fuel information.

#### New South Wales Regulations

The NSW *Fair Trading Regulations 2007* (NSW (2007) Regulations) require the price of unleaded petrol to be displayed on one or more signs at a fuel retailer. The sign(s) must be positioned and lit to be readily seen by approaching motorists. These requirements commenced on 24 March 2000 to promote transparency and assist consumers shopping around for unleaded petrol.<sup>24</sup>

In 2012, to reflect changing fuel consumption patterns, the requirements in NSW were changed. Under new requirements in the *Fair Trading Regulations 2012* (NSW (2012) Regulations), NSW fuel retailers that sell up to four fuels must display the price of all of those fuels. Where a fuel retailer sells more than four fuels, they must display the prices of at least four fuels, including LPG and diesel (if these are sold), together with the two top-selling fuels for that station, so as to add up to a total of four fuels. The prices to be displayed are the price per litre without any discounts or special offers.

In addition, the octane rating for ethanol blend petrol and each type of unleaded petrol supplied must be displayed on the bowser. Fuel retailers are able to display fuel prices on one or more signs. Signs must be positioned and lit to be readily seen by approaching motorists. The objective of the requirements in the NSW (2012) Regulations is to ensure that consumers are aware of the cost of different fuel types as they approach a fuel station.

The requirements in the NSW (2012) Regulations are subject to the requirements of planning laws. Any requirement to obtain development consent or any other approval before erecting a fuel price sign must be complied with, and if development consent or any other relevant approval is refused, the sign cannot be erected. Any applicable environmental planning and local government laws must also be complied with.

The new requirements in the NSW (2012) regulations will come into effect on 1 September 2013

#### Western Australia Regulations

In 2001, Western Australia introduced requirements for the display of fuel prices in certain regional areas. Under the *Petroleum Products Pricing Regulations 2000* (WA Regulations), non-metropolitan retailers within WA's FuelWatch boundaries are required to display their fuel prices in a suitable position that is sufficiently illuminated and clearly legible to passing motorists. These requirements were introduced to encourage price transparency, increase competition and help to reduce fuel price differences between areas.

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<sup>24</sup> Under the NSW *Fair Trading (Product Information Standards) Amendment (Petrol Prices) Regulation 1999*.

Under the WA Regulations, where three or more fuel types are sold then the prices for at least three fuel types must be displayed, one of which must be unleaded petrol and the other LPG (if both are sold at the location). If the fuel retailer sells fewer than three fuel types, they must display the prices for all the fuels sold. These requirements only apply to sites in the FuelWatch boundary that are outside the metropolitan area.

### Fuel quality labelling requirements

The *Fuel Quality Standards Act 2000 (Cth)* regulates the quality of fuel supplied in Australia. The objectives of the Act are to regulate the quality of fuel supplied in order to:

- reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems;
- facilitate the adoption of better engine technology and emission control technology;
- allow for the more effective operation of engines; and
- ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

Fuel quality standards are used in situations where the objects of the Act may not be met without information being provided about the fuel. For example, as not all petrol engines can operate effectively on a blend of petrol and up to 10 per cent ethanol, a requirement to label ethanol blended petrol was introduced in 1 March 2004 under the *Fuel Quality Information Standard (Ethanol) Determination 2003* and amended in January 2006 to simplify the labelling standard.

The ethanol labelling standard applies to all ethanol blended petrol and requires retailers to display advice on every fuel pump dispensing ethanol blended petrol that the fuel supplied contains ethanol, including either the words:

- 'Contains up to x% ethanol' (where x is no less than the percentage of ethanol in the petrol); or
- 'Contains y% ethanol' (where y is the percentage of ethanol in the petrol).

The ethanol labelling standard does not generally regulate the display of information contained on fuel price boards.

While one of the objects of the Act is to ensure that, where appropriate, information about the fuel is provided when the fuel is supplied, the Act does not have an express consumer protection objective.

### Consultation questions

- 2.13 What are motorists' experiences with reading and understanding the information displayed on fuel price boards in NSW and in non-metropolitan WA?
- 2.14 What impact have the NSW (2007) Regulations and the WA Regulations had on motorists' ability to assess fuel price boards?
- 2.15 How will the NSW (2012) Regulations impact on motorists?

### The Australian Consumer Law

The Australian Consumer Law (ACL)<sup>25</sup> commenced on 1 January 2011 as the principal consumer protection legislation in Australia. The ACL harmonised the consumer protection provisions across Australia by replacing the consumer protection provisions in the *Trade Practices Act 1974* and most of the fair trading provisions in State and Territory fair trading laws, with a single national law.

The ACL sets out the rights and obligations of consumers and suppliers in relation to the supply of goods and services. The ACL includes:

- core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms;
- specific prohibitions of unfair practices, including particular instances of false or misleading representations, unsolicited supplies of goods and services, component and multiple pricing rules, and the provision of bills and receipts;
- a national system of statutory consumer guarantees;
- a national legal framework for unsolicited selling, including door-to-door trading and telephone sales;
- a national law for consumer product safety;
- a national system of information standards for goods and services; and
- enforcement and consumer redress provisions.

The ACL applies generically to all consumer transactions and in all states and territories. Some requirements of the ACL may apply to the display of information on fuel price boards, such as requiring fuel retailers to ensure representations as to price are not misleading or deceptive and that no false or misleading representations are made on the boards.

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<sup>25</sup> Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*

## False, misleading or deceptive conduct

Under the ACL, it is unlawful for a person to make statements, in trade or commerce, that are misleading or deceptive, or would be likely to mislead or deceive.<sup>26</sup> Failing to disclose relevant information may also be misleading or deceptive depending on the circumstances. Individuals can enforce their rights under the ACL. Commonwealth, State and Territory regulators may also seek a range of remedies in relation to misleading or deceptive conduct, including injunctions, declarations, damages and compensatory orders.

In addition, it is unlawful for a person to make false or misleading representations, in trade or commerce, in relation to the supply, possible supply or promotion of a good or service and with respect to the price of that good or service.<sup>27</sup> Whether a representation is false or misleading depends on the circumstances.

Conduct is misleading or deceptive if it induces, or is capable of inducing the error of a reasonable person in the circumstances in which the conduct occurs. A representation will be false or misleading if it is a statement that is contrary to the truth or contains or conveys a misrepresentation. Whether or not a particular conduct or a representation is misleading is a question of fact to be determined having regard to the context in which the conduct takes place and the surrounding facts and circumstances.

It is not always straightforward to establish that how information is displayed on a fuel price board constitutes a breach of the false, misleading or deceptive conduct prohibitions in the ACL. Rather than relevant information being withheld, often the discounted price is displayed (albeit most prominently) on price boards together with the discount terms and conditions and the undiscounted prices (albeit less prominently), or the price for one fuel is displayed most prominently over other fuels.

It is also not straightforward to establish what information is displayed (or not displayed) on price boards satisfies all the requirements to amount to false, misleading or deceptive conduct under the ACL – for instance, where the price for only one fuel sold is displayed.

## Clarity in pricing

Requirements exist under the ACL to provide consumers with clarity in pricing where it is not otherwise provided for under the prohibitions of misleading or deceptive conduct and false or misleading representations. This includes the single pricing requirement in the ACL which provides that if a component of a price to purchase a good or service is advertised by a retailer, then the retailer must also provide consumers in a prominent way the total price to purchase that good or service as a quantifiable single dollar amount.<sup>28</sup>

The single pricing requirement, however, does not specifically prohibit the advertising of discounted fuel prices because the total price is not quantifiable as a single figure. This is because the discounted price is conditional on whether a consumer holds a valid discount voucher and on the total volume of fuel purchased.

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<sup>26</sup> Section 18 in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

<sup>27</sup> Section 29(1)(i) in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

<sup>28</sup> Section 48 in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

The ACL also contains provisions that relate to the display of more than one price for the supply of a good. Under the multiple pricing requirements in the ACL, if more than one price is displayed for the supply of a good, then the retailer must not supply that good for a price that is not the lowest of the displayed prices.<sup>29</sup>

The multiple pricing requirements apply to displayed prices that are used in connection with the supply of goods. While prices that are displayed on fuel price boards may come within the definition of a 'displayed price', a price that appears on a receipt of payment may not. Accordingly, it is unlikely that the multiple pricing requirements apply where there is a difference between the price displayed on a fuel price board and the price on a receipt for payment, for the same fuel type.

### **'Bait advertising'**

Under the ACL, a retailer must not advertise goods at a specified price if they will not be able to supply those goods at that price for a period and in quantities that are reasonable ('bait advertising').<sup>30</sup> What is 'reasonable' depends on the nature of the market and the nature of the advertisement.

However, it is not always the case that a fuel retailer will engage in 'bait advertising' whenever they are unable to supply fuel to a motorist at the price advertised on their price board. The circumstances of each case need to be considered on a case-by-case basis. Further, it needs to be established that:

- there are reasonable grounds for believing that fuel cannot be supplied at the advertised price for a reasonable period and in reasonable quantities; and
- the retailer is aware (or ought reasonably to be aware) of those grounds.

In some instances fuel stations are unable to supply the fuel at the price advertised on the board because it is out-of-stock, because the fuel is temporarily unavailable or the price cannot be manually changed on the price board. These circumstances are relevant in determining whether there has been a breach of the ACL for bait advertising by a fuel retailer, and it is not always a straightforward case that there has been a breach.

### **Adequacy of Current Laws to Address the Problem**

There is currently no national law to specifically address concerns relating to the display of information on fuel price boards. The ACL does not currently contain specific requirements to address concerns relating to how information is displayed on fuel price boards. Regulations relating to fuel price boards only currently exist in NSW and WA, and the requirements differ between both states.

It is not always straightforward to establish how information is displayed, or what information is displayed, on fuel price boards will amount to a breach under the ACL of the prohibitions against misleading or deceptive conduct and false or misleading representations. It is also not straightforward to establish a breach of the multiple pricing or 'bait advertising' provisions in the ACL with respect to prices displayed on fuel price boards.

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<sup>29</sup> Section 47 in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

<sup>30</sup> Section 35 in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

The following concerns relating to fuel price boards may not be directly addressed (or easy to address) under the ACL:

- absence of fuel price boards;
- lack of visibility of price boards;
- inconsistent manner in which information is displayed between retailers;
- the more prominent display of discounted prices over other prices;
- the limited display of information for only one or two fuels;
- difference between the price advertised and the actual price charged on the receipt of payment; and
- multiple price boards of different sizes located at the same site.

## Market Failure

A number of the concerns about the display of information on fuel price boards relate to the quality of information being provided to motorists by fuel stations and retailers – such as advertising out-of-stock fuels, displaying prices for only one or two fuels, the lack of display or the less prominence of the discount terms and conditions, and when the advertised price is different to the actual price charged.

In addition, some of the concerns relating to fuel price boards can give rise to costly information – for instance, the search costs associated with driving around to compare prices, seeking clarification from a retailer about prices or fuel availability, or lining up at a bowser only to discover the price is higher than expected or that the fuel is out-of-stock.

According to the Office of Best Practice Regulation's *Guide for Best Practice Regulation*, in some cases, government intervention in a market may be justified on the basis of 'market failure' which can arise where there is imperfect or costly information.<sup>31</sup>

## CONCLUDING REMARKS

Based on the complaints made by motorists to Australian Consumer Law regulators and the concerns raised in consumer surveys, some motorists are confused or concerned by the information displayed on fuel price boards at some fuel stations around the country. In line with COAG's best practice regulation principles,<sup>32</sup> the primary purpose of this consultation paper is to solicit information from stakeholders on key aspects of the issue. This includes obtaining broader-based evidence on:

- the number of fuel retailers who do not have fuel price boards or who display information in a way that may be confusing to some;

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31 Office of Best Practice Regulation, *Best Practice Regulation – A guide for Ministerial Councils and National Standards Setting Bodies*, October 2007, p10.

32 Council of Australian Governments, *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, October 2007.

- the scale of any detriment suffered by motorists and the extent to which detriment can be avoided or mitigated;
- the extent to which current concerns can be adequately addressed under current laws, including the ACL and specific regulations in NSW and WA; and
- whether the introduction of any new regulation might have the unintended effect of causing different types of confusion or concerns for motorists, especially for those that are frequent users of discount vouchers.

Obtaining further information on these and other aspects will help establish whether there is a case for government action. Through the consultation process, other options (including non-regulatory ones) may also be identified which would, if implemented, be effective and proportional to the issue under consideration.





## Part III OBJECTIVES

The intended outcome of government action is to ensure consumers are sufficiently well-informed to benefit from and stimulate effective competition. This outcome is aligned with a CAF objective.<sup>33</sup> To assist in achieving this outcome with respect to fuel price boards, a number of supporting objectives are listed below:

- (i) to ensure clarity, accuracy and transparency in the manner in which information is displayed to motorists on fuel price boards;
- (ii) to assist motorists to discern the different fuel prices on offer;
- (iii) to reduce confusion around the fuel prices on offer from the way information is displayed on fuel price boards;
- (iv) to assist motorists to compare prices between different fuel retailers and different locations;
- (v) to facilitate competition between fuel retailers;
- (vi) to encourage a nationally consistent approach to the way in which information is displayed to motorists, irrespective of where in Australia they are located; and
- (vii) to minimise disproportionate costs to industry in achieving the above objectives.

### ENSURE WELL-INFORMED CONSUMERS

The operation of efficient markets generally relies on well-informed consumers. This helps to ensure consumers are better able to make purchases that reflect their needs, preferences and budget. Given that fuel is an essential purchase for many Australians, it is important to ensure that consumers have access to clear, accurate and appropriate information to assist them to compare prices and make informed purchasing decisions, and to also facilitate competition.

Fuel is viewed by most consumers as a homogenous product, with little brand loyalty given to a particular fuel retailer or station. Rather, most motorists make fuel purchasing decisions on the basis of price. Unlike other products, fuel prices fluctuate daily and between fuel stations. Motorists are unable to research the prices from home and can only discover prices by driving between fuel stations. Accordingly, fuel price boards are the main source for motorists to identify and compare fuel prices. Fuel price boards can also play a role in assisting to reduce search cost for motorists when clear, adequate and accurate price information is provided.

Almost 88 per cent of respondents to the NSW Survey indicated that the price of fuel influences where they purchase fuel.

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<sup>33</sup> CAF Charter 1 July 2011, p6.

Concerns relating to the display of information on fuel price boards continue to exist 15 years after the introduction of shopper docket fuel discounts, which suggests that rather than the issue being motorists' lack of familiarity with how these schemes operate, there remain ongoing concerns with how information is displayed on fuel price boards to passing motorists.

The extent of the ongoing nature of the problem is currently unclear. That is, it is unclear the extent to which consumers who are initially confused, learn and adapt to how discount schemes work and how information is displayed on fuel price boards, and how this varies as the way in which discounts operate and how information is displayed changes over time.

While some responsibility should rest with motorists to inform themselves of the correct price before filling up, access to this information rests solely with fuel retailers. Motorists should be able to confidently rely on information that is displayed on fuel price boards to inform their purchasing decision, and to expect that such information is correct and will be provided to them in a clear and transparent manner.

The objective of government action is not to prohibit the use of fuel discount schemes. The benefits that such schemes provide to some motorists are recognised. They provide an opportunity for eligible motorists who present a valid discount voucher to purchase fuel at a price discounted to that available to other motorists who do not hold a voucher. Whilst the benefits of fuel discount schemes for consumers are recognised, it is equally important that discounted prices are not displayed more prominently over other relevant information to passing motorists.

Based on the complaints and concerns received by Australian Consumer Law regulators and motoring associations, the absence of appropriate and clear information on fuel price boards has resulted in consumer confusion. This can make it more difficult for motorists to compare prices between fuel stations and to make informed purchasing decisions. Clarity in pricing can also promote competition between fuel stations which benefits motorists.

## ENCOURAGE NATIONAL CONSISTENCY

Fuel is a product that is supplied nationally in all states and territories. The scope of complaints received by Australian Consumer Law regulators about fuel price boards is also national, with complaints made by motorists from around Australia. There is currently no nationally consistent approach to address concerns relating to fuel price boards. NSW and WA currently have regulations in place relating to fuel price boards, however, the requirements in both these states are different. In most cases it is not straightforward to address concerns about fuel price boards via the existing rules in the Australian Consumer Law, and there currently is no national law to address these specific concerns.

The absence of a national approach to the display of information on fuel price boards, can impact on both motorists and fuel retailers in the following ways:

- **Motorists** are not provided with information on fuel price boards that is displayed in a consistent manner throughout Australia, irrespective of where they travel, to assist them to compare prices.

- **Fuel retailers and petrol companies** that operate nationally or in more than one state or territory could be subject to two different regulatory requirements relating to fuel price boards. Fuel companies would need to satisfy both the NSW and the WA regulations if they maintain applicable fuel price boards in both those states.

Accordingly, for consumers, consistency in how information is displayed may reduce confusion among the affected motorists and improve the comparability of prices between different fuel stations. For retailers, consistency will reduce the regulatory differences between jurisdictions and minimise compliance costs.

Consistency in fuel price board information provides motorists with information in a manner that can be easily compared between fuel retailers no matter where they travel in Australia. By providing consistent information, motorists are able to more easily discern relevant and important information without having to carefully read all of the information on the fuel price board whilst driving. For example, if a passing motorist was only interested in the undiscounted price for regular unleaded petrol, they would be able to easily identify the correct price as it would be presented in the same manner across all fuel sites.



## Part IV OPTIONS

The problem identified in Part II about how price information is displayed on fuel price boards is based on complaints from Australian motorists, concerns raised in consumer surveys and concerns expressed by Australian Consumer Law Ministers and regulators. It is not straightforward for the current national laws to adequately address the specific concerns relating to fuel price boards.

Accordingly, a number of options have been identified to respond to the identified problem (as outlined in Part II) and to wholly or partly achieve the stated objectives (as outlined in Part III). The options vary both in coverage and the magnitude of their regulatory impact.

The options considered in this consultation paper are:

*No new regulation* – relying on current laws, industry-led efforts and market incentives;

*Basic national standard* – ensuring only undiscounted prices can appear on fuel price boards, while allowing information about the availability of a discount scheme to be disclosed; and

*Detailed national standard* – prescribing what information and how this information should be displayed on fuel price boards, including prescribing that only undiscounted prices can appear, while allowing information about the availability of a discount scheme to be disclosed.

The details and the impacts of each option in achieving the stated objectives and addressing the identified problem are outlined in this Part. To inform CAF Ministers on these options, this consultation paper is seeking stakeholder feedback on the costs and benefits of each option.

## **OPTION 1 — NO NEW REGULATION**

Option 1 relies on current laws, voluntary industry-led efforts and market incentives to address the identified problem and to partly or wholly achieve the stated objectives.

### **Relying on current laws**

As discussed in Part II, there are laws currently in place which either directly or indirectly relate to the display of information on fuel price boards. The ACL contains national consumer protections that include prohibiting false, misleading or deceptive representations. The ACL applies generically to all consumer transactions and nationally in all states and territories. However, there is currently no specific requirement in the ACL regulating how fuel price information is to be displayed to consumers. For the reasons outlined in Part II, in most cases the ACL is not easily able to address the specific concerns relating to fuel price boards.

In addition to the ACL, NSW and WA have specific regulations that prescribe what price information and how this information should be provided to motorists on fuel price boards. The regulatory requirements in both states differ. Accordingly, there is currently no nationally consistent approach to regulate how information is provided to motorists on fuel price boards.

### **Market incentives**

In the absence of government intervention, there are market incentives that regulate participants' behaviour, such as reputation and customer loyalty. Option 1 relies on market incentives to ensure that information contained on fuel price boards is clear, accurate and transparent. A business that is unable to respond appropriately and in a timely manner to consumer concerns, or that behaves in a manner that appears contrary to general consumer interests, can affect their reputation and customer base.

Most motorists buy fuel according to price, and accordingly, fuel retailers focus on pricing to remain competitive. Apart from pricing, the ability to keep customers is another key factor in securing retail sales. Accordingly, these factors are motivators for fuel retailers to maintain fuel price boards that display clear and accurate information to consumers. This also mitigates the likelihood of confusion and any subsequent dispute over prices, and to retain customers. Retailers who are able to provide an adequate response to motorists' concerns can also reduce the occurrence or magnitude of consumer detriment (for example, by offering a refund or explanation about a price difference).

### **Industry-led responses**

In response to concerns with how information is displayed on fuel price boards, fuel retailers may collectively develop industry-led responses to the problem. These industry-led responses could include, for example, voluntary standards or a voluntary code of practice setting out how information should be displayed to motorists on fuel price boards. This would rely on industry leading the way, widespread membership of industry associations and effective self-regulation.

At this time, there are no known efforts to develop an industry-led response to the identified problem.

## Quasi-regulation

The Office of Best Practice Regulation defines quasi-regulation as including ‘...a wide range of rules or arrangements where governments influence businesses to comply, but which do not form part of explicit government regulation.’<sup>34</sup>

A quasi-regulatory response to the identified problem could involve governments encouraging fuel retailers to adopt an industry-led response to avoid regulatory intervention. Quasi-regulatory actions can apply in addition to current laws and market incentives to achieve the stated objectives, including the display of fuel price information in a clear, accurate, transparent and consistent manner. For example, governments could encourage industry to develop an education campaign to improve motorists’ understanding on how to interpret information on fuel price boards, or to develop a voluntary standard or code of practice.

## Impact Analysis of Option 1

### Benefits

Option 1 would not impose any additional costs on fuel retailers, except where they voluntarily choose to make changes to fuel price boards to help achieve the stated objectives.

Option 1 would also incur less cost for government as there is no new regulation to administer and enforce.

### Limitations and Costs

Relying on industry-led responses to achieve the stated objectives is subject to a number of limitations. These include that they are voluntary in nature, not all fuel retailers may agree to sign up, and achieving broad consensus can be difficult.

To wholly or even partly achieve the stated objectives, Option 1 would rely on widespread support from at least the major oil companies and larger retailers to agree to adopt a nationally-consistent approach in displaying fuel price board information. This would place the onus on industry to establish voluntary standards or codes of practice. To this end, the majority of the fuel retailing industry belongs to an industry association and this would assist with adopting an industry-led approach. For instance, member companies of the Australian Institute of Petroleum, including major oil companies like BP, Caltex and Shell, display fuel price boards at their sites.

A challenge associated with relying on market incentives is that they do not always align with consumer interests. For example, a fuel retailer may have incentives to display the discounted price to appear relatively cheaper than its rivals. Where the discounted price is available only to motorists who hold a valid voucher, the fuel retailer may attract those motorists who rely on the most prominent discounted price.

If widespread support does not emerge amongst industry to voluntarily introduce consistent and clear price display practices, the identified problem and subsequent consumer detriment

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<sup>34</sup> Office of Best Practice Regulation, *Best Practice Regulation Handbook*, Australian Government, Canberra, 2010, p.34.

will remain unaddressed. Subsequently, the costs to government may remain in responding to disputes and consumer complaints.

### Consultation questions

- 4.1 What steps could be taken by industry to develop a widespread response to address concerns relating to the display of information on fuel price boards? How long would it take to achieve these?
- 4.2 What is the extent of membership of fuel retailers with industry associations?
- 4.3 If an industry-led response was to be adopted, what are the advantages and disadvantages for motorists compared to a regulatory response (for example, compared to introducing a new law)?
- 4.4 What costs for industry would be associated with an industry-led response?
- 4.5 How would an industry-led response (such as a voluntary standard or code) be self-regulated?
- 4.6 What benefits would Option 1 provide to motorists?

## OPTION 2 — BASIC NATIONAL STANDARD

Under this option, an information standard could be made under the Australian Consumer Law (ACL) to assist in addressing the identified problem and achieving the stated objectives. Option 2 would ensure that where a fuel price board is present at a fuel station site, only undiscounted prices can appear on the board, while allowing information about the availability of a discount scheme to be disclosed.



### Information standards under the ACL

An information standard under the ACL is a written notice made by the Commonwealth Minister and published on the internet.

Under section 134 of the ACL, an information standard can be made to:

- require the provision of specified information about particular kinds of goods;
- make provision in relation to the content of the information provided;
- provide for the manner or form in which the information is to be given;
- provide that the information cannot be given in a specified manner or form;
- provide that information of a specified kind cannot be given; and/or
- assign meaning to specified information.

A person who fails to comply with a relevant information standard may be subject to pecuniary penalties of up to \$220,000 if they are an individual or \$1.1 million if they are a body corporate.

An information standard made under the ACL is a legislative instrument that applies nationally in all jurisdictions in Australia. The *Intergovernmental Agreement for the Australian Consumer Law* sets out the procedure for introducing a new information standard under the ACL. Any proposal to introduce a new standard must be supported by the Commonwealth and four other jurisdictions, three of whom are States.

### Requirements under Option 2

Under Option 2, the information standard would contain the following requirements:

- The information standard would apply to fuel stations that maintain a fuel price board.
  - ‘Fuel station’ would be defined as a place where motor fuel is offered for retail sale, but it does not include a place where the primary business of the place is the hiring, leasing or sale of motor vehicles.
  - ‘Fuel price board’ would be defined to include a board, sign or other similar display at a fuel station that displays to passing motorists the price of fuel sold at that place.
  - The information standard would not mandate that fuel price boards must be maintained by all fuel retailers.
- Only undiscounted fuel prices can be displayed on a fuel price board and not discounted prices.
- The undiscounted price is the price per litre for fuel that is in-stock and available for retail sale, with a description of the fuel type.
- There will be no express requirement for fuel prices to be displayed in any particular order on the fuel price board.

- The information standard will not expressly preclude the display of fuel discounts or special offers, provided that only undiscounted prices and not discounted prices are displayed.
- The information standard would not mandate that fuel price boards must meet specific legibility or size requirements.
- The information standard would not prescribe the minimum number of fuels or types of fuel that must be displayed on fuel price boards.
- The information standard would outline transitional arrangements for its commencement and application.

### **Not mandate the maintenance of fuel price boards**

It is estimated that in 2011, there were around 6,300 fuel station sites in Australia.<sup>35</sup> Most of these sites already maintain a fuel price board (or a similar display) to display price information to passing motorists. For instance, member companies of the Australian Institute of Petroleum, including major oil companies like BP, Caltex and Shell, display fuel price boards at their sites. This leaves a small number of fuel sites with no board, and of these some may not be able to maintain a price board due to local planning and development requirements.

Given that the vast majority of fuel stations already maintain a fuel price board, and those that do not may be subject to other requirements which exempts them from maintaining a price board, Option 2 will not mandate all sites in Australia to maintain a price board. This would balance the additional compliance costs to industry with ensuring adequate coverage.

Market incentives will make it unlikely that fuel stations will adopt anti-avoidance measures, such as removing their existing board in order to avoid having to comply with the requirements under Option 2. Market incentives would continue to encourage fuel stations to use fuel price boards and display useful information to promote their products to motorists.

### **Display only undiscounted prices**

To ensure that motorists are provided information about undiscounted prices in a prominent manner, Option 2 would prevent discounted prices from being displayed on fuel price boards. This would assist in ensuring that discounted prices do not have the potential to be easily mistaken by some motorists as representing the undiscounted price.

Discount schemes offer price savings to those motorists who are able to satisfy the conditions of the discount (such as holding a valid discount voucher). Motorists who hold discount vouchers may be interested in information contained on fuel price boards about discount schemes. Option 2 would not preclude fuel retailers from continuing to offer such discounts to benefit motorists, nor will it preclude fuel stations from advertising information about the availability of these schemes on fuel price boards.

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<sup>35</sup> Australian Institute of Petroleum, *Downstream Petroleum 2011*, Canberra.

In contrast, the display of discounted prices often appears most prominently on fuel price boards than the display of undiscounted prices or the discount conditions, and this can cause detriment to consumers (such as confusion and paying a higher price as a result, although the financial detriment may be avoidable if motorists check the bowser price before filling up).

Under Option 2, where undiscounted prices and discount schemes can be displayed on fuel price boards, it will require motorists who wish to use a discount scheme to calculate the discounted price by deducting the discount amount from the undiscounted price. For other motorists, they can refer to prices on the fuel price board which will always be the undiscounted price. In contrast, currently at some fuel stations, the discounted and undiscounted prices are often both displayed, albeit the discounted price is displayed often more prominently.

Accordingly, in light of the fact that the volume of fuel sales made under non-shopper docket schemes has been rising relative to the volume of sales under shopper docket schemes,<sup>36</sup> a more conservative approach would be to only allow for the display of undiscounted prices whilst allowing the advertisement of discount schemes to continue.

### **No prescription of minimum number of fuels and fuel types**

Most fuel price boards contain information on a range of different fuel types. Option 2 would not remove the discretion of fuel retailers to decide which fuel types to display on fuel price boards and what prominence they give to each fuel type, provided that no discounted price is displayed. To this end, there will be no complete consistency in what information is displayed on fuel price boards at fuel stations around the country, although Option 2 would ensure that only undiscounted prices are displayed to reduce some motorists' confusion around prices.

### **Display only prices for available fuel**

A common concern for motorists received by Australian Consumer Law regulators relate to the display on fuel price boards of a price for a fuel that is out-of-stock or is not otherwise available for supply. Sometimes this price is either the only price on display or is the price that is most prominently displayed on the price board, and some motorists enter the fuel station believing the fuel being advertised is available for purchase.

To address these concerns, where a fuel station maintains a fuel price board, Option 2 will only allow prices (undiscounted) to be displayed on price boards for fuels that are in-stock and available for retail sale to motorists. Where a fuel is out-of-stock or temporarily unavailable, the price for that fuel must not be displayed on the price board. The fuel station must either remove or cover up the price. Inserting an 'out-of-stock' sign (or similar) on the price board whilst the price of the out-of-stock fuel is still displayed, could create more rather than less confusion for passing motorists.

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<sup>36</sup> ACCC, *Monitoring of the Australian Petroleum Industry*, 2011, p357.

## Transitional arrangements

Option 2 would be implemented in a manner that provides adequate time and sufficient flexibility for retailers to comply with the requirements and to minimise compliance costs. An information standard under Option 2 would allow fuel stations that already have fuel price boards to make whatever changes are necessary to comply with the requirements – this may involve no change, making minor alterations to an existing board (such as applying a sticker), updating or replacing the board.

As part of the transitional arrangements, an adequate period of time would be provided for fuel stations to make any necessary changes to comply with Option 2.

## Impact Analysis of Option 2

### Benefits

Option 2 would partly achieve the stated objectives, and thereby benefit consumers, by facilitating a national approach to assist consumers to compare prices and make informed decisions. This in turn will facilitate competition in the industry. Limiting the display of discounted prices would result in undiscounted prices being displayed prominently to passing motorists and reduce the consumer detriment associated with confusion around what prices are on offer.

Motorists who wish to participate in discount schemes would continue to be able to do so as fuel retailers could still advertise that they offer fuel discounts to eligible motorists.

Option 2 should address the following identified concerns of some motorists with fuel price boards:

- the more prominent display of discounted prices than other prices;
- the display of prices for out-of-stock fuel;
- inaccurate description of fuel types; and
- consistency in the display of information.

While Option 2 may offer little benefit to those motorists who do not currently suffer a consumer detriment with how information is displayed on fuel price boards, it would not create detriment for these motorists but go towards addressing many of the concerns of other motorists.

It is anticipated that there will be no or little additional compliance costs for fuel retailers to satisfy the requirements of Option 2. If no discounted price is displayed on the fuel price board then the retailer does not have to alter their existing board, whilst if a discounted price is displayed then in most cases they will only need to alter their existing board rather than to replace it.

Compliance costs for fuel retailers in complying with Option 2 would be less than if all fuel stations in Australia were required to maintain a fuel price board and if the information standard prescribed specific requirements (such as the minimum number of fuels and specific fuel types).

Option 2 also does not require a large volume of information to be provided on the board which would not only impose additional costs on fuel retailers to comply, but may also make it harder for consumers to ascertain from the board what information is relevant to them.

### Limitations and Costs

In 2011, there were an estimated 6,300 fuel station sites in Australia.<sup>37</sup> And most of these sites maintained fuel price boards. Option 2 would only affect a proportion of these sites – namely, those that have a fuel price board and that display discounted prices on the board.

Compliance costs may include any alterations that need to be made to existing fuel price boards by some fuel retailers. These are initial costs associated with achieving compliance where existing boards are not compliant with the requirements. Beyond these initial costs it is not expected there would be any or much ongoing compliance costs associated with Option 2. Option 2 does not prescribe certain information to be included on fuel price boards or that price boards must be maintained at all fuel stations, which will reduce compliance costs for fuel retailers. In the majority of cases it is anticipated that existing fuel price boards will only need to be altered, rather than replaced, in order to comply with the requirements under Option 2. Transitional arrangements would also assist to minimise compliance burdens for retailers.

Option 2 would incur some compliance costs, however, at this stage it is unclear what these costs would be. This consultation paper seeks further information on this.

Under Option 2, it is not clear what effect the removal of the discounted price would have on motorists who rely on this information to help inform their purchasing decision (for instance, whether motorists would be able to quickly and accurately calculate the discounted price to help inform their purchasing decision).<sup>38</sup>

Option 2 would respond to some but not all of the concerns relating to fuel price boards. It would not address the absence of a fuel price board, the lack of visibility of price boards, display of limited information on price boards (displaying only one or two fuels) nor the price difference between the price board and the price at the bowser or checkout. Motorists would need to continue relying on Australian Consumer Law if they believe the information on a price board is false, misleading or deceptive. Market incentives would encourage fuel retailers to maintain fuel price boards to promote their products to motorists. These incentives would also encourage fuel stations to update fuel price boards in a timely manner in order to limit disputes with motorists and retain customers.

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<sup>37</sup> Australian Institute of Petroleum, *Downstream Petroleum 2011*, Canberra.

<sup>38</sup> For example, if the discount amount is 4c and the undiscounted price is 147.9c, a passing motorist who is eligible for the discount would have to quickly decide whether they wish to pay the discounted price at that site or go to another station where the price for the same fuel may be 144c.

### Consultation questions

- 4.7 Would limiting the display of discounted prices on fuel price boards improve the ability of motorists to identify the undiscounted price for different fuels? If so, how?
- 4.8 How does the advertising of discount schemes on fuel price boards impact on motorists' understanding of the prices that are on offer?
- 4.9 Have motorists been affected by the display on price boards of fuel that is out-of-stock or otherwise not available for sale? How often does this arise and what was the extent of the impact?
- 4.10 What benefits would Option 2 provide to motorists? How would these differ from Option 1?
- 4.11 What are the practical issues and likely costs associated with altering existing fuel price boards to comply with the requirements under Option 2?
- 4.12 Are there practical measures that fuel retailers could adopt to alter existing fuel price boards in order to comply with Option 2? If so, what compliance costs would be associated with these measures?
- 4.13 How much time would be needed for industry to comply with the requirements under Option 2?
- 4.14 What impact would there be on fuel retailers if multiple regulations were to apply to them concurrently (for example, if Option 2 and the NSW/WA regulation was to apply at the same time)?

## OPTION 3 — DETAILED NATIONAL STANDARD

Under Option 3, an information standard would be made under the ACL to address the identified problem and to achieve the stated objectives. Option 3 would prescribe what information and how this information should be displayed on fuel price boards in order to ensure the most useful information is provided to motorists in a prominent manner.

### Requirements under Option 3

Under Option 3, the information standard would contain the following requirements:

- Fuel station sites in Australia would be required to maintain a fuel price board.
  - ‘Fuel station’ would be defined as a place where motor fuel is offered for retail sale, but it does not include a place where the primary business of the place is the hiring, leasing or sale of motor vehicles.
  - ‘Fuel price board’ would be defined to include a board, sign or other similar display at a fuel station which displays to passing motorists the price for fuel that is in-stock and available for retail sale at that place.
  - Partial or complete exemptions could be prescribed from complying with certain requirements.
- Only undiscounted prices, and not discounted prices, would be allowed to be displayed on a fuel price board.
- The undiscounted price is the price per litre for a fuel with a description of the type of fuel.
- The actual price charged must not be higher than the price displayed on the fuel price board.
- The information standard would require the undiscounted price to be displayed for a specified minimum number of fuels and for specific fuels.
- Undiscounted prices on fuel price boards must be displayed in a clear and transparent manner to passing motorists at all times the fuel retailer is open for business.
- All undiscounted prices must be displayed with equal prominence on fuel price boards.
- The information standard will not mandate specific sizes and legibility requirements for price boards.
- There will be no express requirement for fuel prices to be displayed in any particular order.
- The information standard will not expressly preclude the display of fuel discounts or special offers for passing motorists, provided that only undiscounted prices and not discounted prices are displayed.

- The information standard would outline transitional arrangements for its commencement and application.

### **Requirement to maintain fuel price boards**

Option 3 would require fuel station sites across Australia to maintain a fuel price board. This is similar to the approach adopted in NSW. Although fuel stations are not the only retail outlets for fuel (other sellers include wholesalers, car retailers and some convenience stores and grocers), fuel stations do account for the vast majority of fuel sales.<sup>39</sup>

As a generic national law, the ACL applies to all consumer transactions and applies nationally in all states and territories. The starting basis for Option 3 is that it applies to all areas rather than attempting to define what sites, what areas and in what circumstances the standard would apply to (that is metropolitan, regional, country).

Option 3 could also prescribe partial or complete exemptions from complying with certain requirements. For example, one possible exemption could be that Option 3 applies subject to the requirements of local planning and development laws. To allow fuel price board requirements to override planning and development requirements would lead to inappropriately located or designed boards which may create additional confusion for consumers.

### **Only display undiscounted prices for available fuel**

Similar to Option 2, under Option 3, only undiscounted prices for fuel that is in-stock and available for retail sale to motorists can be displayed on fuel price boards. Information about the availability of discount schemes may continue to be advertised on price boards.

### **Prescribing the minimum number of fuels and fuel types**

Under Option 3, fuel stations would be required to maintain fuel price boards for a specified minimum number of fuels and for specific fuels that are sold at the location. The information standard under Option 3 would:

- *Prescribe the minimum number of fuels to be listed on a fuel price board* – for example, the information standard could prescribe that a minimum of three fuels must be displayed on a fuel price board at a fuel station, and if the station sells less than three fuels then they must display all fuels sold at that location. If more than three fuels are sold then a minimum of three fuels sold at the site must be listed on the price board, although this would not preclude the station from displaying more fuels provided the requirements under Option 3 are complied with.
- *Prescribe the type of fuels that must be displayed* – for example, the information standard could prescribe that the top-three selling fuels at a fuel station must be displayed on a fuel price board, or that three specific types of fuel must be displayed on the board (such as LPG, diesel and regular unleaded).

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<sup>39</sup> IBISWorld, *Automotive Fuel Retailing in Australia*, Industry Report G5321, September 2012.



Option 3 will enable motorists to view the undiscounted price of popular fuels at all fuel station sites. This allows for consistency in the information being provided and assists motorists to compare prices between different retailers and fuel types.

Fuel retailers would not be required to display prices for all fuel types sold if they sell more than the specified minimum number of fuels. Retailers will also not be required to display prices in any particular order on the fuel price board. This would provide fuel retailers the flexibility to determine how they display price information to minimise compliance burdens, whilst ensuring that prices for popular fuels are still provided to motorists.

Almost 96 per cent of over 1300 respondents to the NSW Survey agreed that the price of every fuel sold by a fuel retailer should be included on a fuel price board. While the provision of useful and clear information is beneficial to consumers, there may be a number of reasons why it is not practical to provide consumers with all of the available information. For example, there may be limitations as to how much information can be displayed in a reasonable size on a fuel price board. In addition, providing too much information in certain circumstances can make it more difficult for consumers to discern which information is most relevant to them.

### **Displaying clear and transparent information**

Under Option 3, fuel price boards would need to be displayed in a manner that is clear and transparent – that is, information must be displayed in a manner that is visible, clearly legible and in plain English so that it is sufficiently prominent to be easily read by passing motorists at all times the fuel retailer is open for business. Depending on the circumstances, this may involve fuel boards being positioned and lit for 24 hours if they are open for 24 hours, subject to planning laws.

It is not proposed that detailed requirements will be prescribed with respect to size and font requirements, the minimum distance away from the board that the information can be easily read, or lighting or positioning requirements. What is clear and transparent will vary with circumstances and will be left for individual fuel retailers to determine based on location and other factors.

### **Price charged must not be higher than the price on the fuel price board**

Under Option 3, fuel stations must ensure that the actual price charged for fuel must not be higher than the price displayed for the fuel on the fuel price board at the same decimal place. This would not preclude a lower price being provided to motorists (for instance, where they hold a valid discount voucher).

Requiring fuel stations to ensure the actual price paid does not exceed the price on the fuel price board would ensure that motorists can be confident that the price they see on the board is the maximum price they will be charged. This would also help address complaints from some motorists that fuel price boards advertise a price lower than the actual price paid. This would also facilitate more accurate price comparisons by consumers and thereby promote price competition between fuel retailers.

This requirement may mean that in some instances a lower price would need to be offered to customers before fuel price boards can be updated. If fuel retailers are experiencing difficulties with updating their price board (for example, because of an electrical fault on an

illuminated display), then the retailer would need to find alternative ways to ensure the price being charged at the checkout does not exceed the prices on display on the price board (for example, by applying a corrective sticker on the board).

### **Transitional arrangements**

As with Option 2, transitional arrangements could be provided to minimise compliance burdens associated with the requirements under Option 3. As part of the transitional arrangement, an adequate period of time would be provided for fuel stations to make any necessary changes to comply with the requirements under Option 3.

## **Impact Analysis of Option 3**

### **Benefits**

Option 3 would fully achieve the stated objectives to benefit consumers through the provision of clear, accurate, transparent and consistent price information for popular fuels. This would reduce confusion, assist motorists to compare prices between different fuel retailers and different areas, and thereby facilitate competition in the industry.

Option 3 would address the following identified concerns with fuel price boards:

- the absence of a board;
- the more prominent display of discount prices over other prices;
- price differences between the fuel price board and the price at the bowser;
- displaying prices for only one or two fuels sold;
- displaying certain fuel types more prominently over other fuel;
- the lack of visibility of fuel price boards;
- the display of prices for out-of-stock fuel;
- inaccurate description of fuel types;
- inconsistency in the display of information; and
- multiple price boards of different sizes located on the same site.

While Option 3 may offer little benefit to those motorists who do not suffer a consumer detriment with how information is displayed on fuel price boards, Option 3 would not create detriment for these motorists but will address many of the concerns of other motorists. It is not clear, however, whether the presentation of new or different information on fuel price boards and the removal of discounted prices, would cause different forms of confusion or concerns for some motorists, including those that are frequent users of discount vouchers.

## Limitations and Costs

There were 6,300 fuel retailer sites in Australia in 2011.<sup>40</sup> Installing a new fuel board or significantly modifying an existing board to comply with Option 3 would add to overhead and operating costs for most of these retailers. Retailers that would be affected are those who currently have no price board and would be required under Option 3 to maintain one, and retailers who currently have a price board but need to modify it to comply with Option 3.

The costs of complying with Option 3 would vary depending on whether a new price board needs to be installed, the size and design of the board, and the amount and degree of changes that would need to be made to comply with Option 3. Additional costs may be incurred when acquiring or leasing land to display a fuel price board, application costs for development approval, and design costs for boards. However, Option 3 would not prescribe the type or material of the fuel board nor the specific dimensions for the board; only that the information on the board is visible and clearly legible.

To help minimise compliance costs, transitional arrangements would be provided to give sufficient time for fuel stations to make any necessary changes to comply with Option 3.

Prescribing a minimum number of fuels and fuel types under Option 3 may require the information standard to be updated if fuel consumption patterns change in the future. Alternatively, by prescribing that top selling fuels are to be displayed on fuel price boards, this would provide a greater degree of flexibility in responding to changes in consumption patterns. However, prescribing top selling fuels would result in variations between fuel stations based on what their top selling fuels are, and there would not be complete consistency between fuel stations around Australia.

While Option 3 is likely to incur higher compliance costs compared to Options 1 and 2, Option 3 would provide motorists with improved price information on popular fuels. This would have a greater positive impact on price transparency and competition than Option 2

It is not clear what proportion of fuel retail sites would need to make changes to fuel price boards, or the extent and cost of these changes, to comply with Option 3. The consultation paper invites feedback from stakeholders on this.

### Consultation questions

- 4.15 What is the estimated number or proportion of fuel stations that do not currently have a fuel price board?
- 4.16 Have motorists been affected by the display of only some types of fuel on fuel price boards? How often does this arise and what has been the impact on motorists?

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<sup>40</sup> Australian Institute of Petroleum, *Downstream Petroleum 2011*, Canberra.

### Consultation questions (continued)

- 4.17 What (if any) are the practical issues for industry with a requirement that fuel price boards must display a minimum of:
- (a) three fuels?
  - (b) four or more fuels?
- 4.18 What are the three and four top selling fuels sold by fuel stations? Are these likely to change over time or across areas?
- 4.19 Would a requirement for a fuel price board to contain prices for popular fuels provide useful information to motorists?
- 4.20 What benefits would Option 3 provide to motorists? How would these differ from those provided under Option 1 and Option 2?
- 4.21 What are the practical issues and costs associated with displaying prices for popular fuels (for example, LPG, diesel, regular unleaded, e10)?
- 4.22 What are the issues associated with requiring the price charged for fuel not to exceed the price displayed on the board for that fuel?
- 4.23 What are the practical issues and likely costs for industry to comply with the requirements under Option 3?
- 4.24 What are the practical measures that fuel retailers could adopt to alter existing fuel price boards to comply with Option 3? What costs would be associated with adopting such measures?
- 4.25 How could the costs of complying with the requirements under Option 3 be minimised?
- 4.26 How much time would be needed for industry to comply with the requirements under Option 3? How would this vary if a minimum of three or four fuel needs to be displayed?
- 4.27 Under what circumstances should fuel retailers be granted exemptions from the requirements under Option 3?
- 4.28 What impact would multiple standards relating to fuel price boards have on fuel retailers?

## Part V SUMMARY OF IMPACTS OF EACH OPTION

Stakeholders are likely to be impacted in a number of different ways by each option. For example, not all fuel retailers would be affected in the same way. These impacts are summarised below.

| Impact with respect to...                      | Option 1 (No new regulation)                                   | Option 2 (Basic National Standard)   | Option 3 (Detailed National Standard)   |
|--|--|--|---|
| <b>Fuel retailers with fuel discount</b>       | No impact if no widespread voluntary industry action is taken. | Would not be able to display discounted prices. May incur compliance costs to alter existing non-compliant price boards.         | Would not be able to display discounted prices. Likely to incur compliance costs to install new compliant price boards or to alter existing non-compliant price boards.             |
| <b>Fuel retailers with no fuel discount</b>    | No impact.   | No impact.   | Likely to incur compliance costs to install new compliant fuel price boards or to alter existing non-compliant price boards.  |
| <b>Motorists with fuel discount voucher</b>    | No impact  | Discount schemes could continue to be displayed on fuel price boards, however, all prices displayed must be undiscounted prices. | Discount schemes could continue to be displayed on fuel price boards, however, all prices displayed must be undiscounted prices. Provided with price information for popular fuels. |
| <b>Motorists with no fuel discount voucher</b> | No impact if no widespread voluntary industry action is taken. | Undiscounted prices provided on fuel price boards.   | Undiscounted prices for popular fuels provided on fuel price boards.  |
| <b>Government</b>                              | Continue to respond to disputes and complaints.                | Medium costs to administer and enforce the new requirements.   | Medium costs to administer and enforce the new requirements.  |

**Consultation questions**

- 5.1 Would small businesses be impacted differently by the options? If so, how?
- 5.2 Are there any other key stakeholder groups that may be affected by the options in this consultation paper? If so, how?

## Part VI EVALUATION AND CONCLUSION

This consultation paper has outlined a number of options that could be pursued in order to achieve the stated objectives outlined in Part III.

Option 1 describes no new government regulation, where motorists would continue to rely on existing laws in relation to how information is displayed on fuel price boards. Option 2 outlines how an information standard under the ACL could require only the display of undiscounted prices on fuel price boards. Option 3 describes how an information standard under the ACL could be used to prescribe only the display of undiscounted prices of popular fuels.

Further evidence on the likely impact of these options is required to conduct an informed evaluation of the options and to determine which approach should be pursued. Each option presents benefits and costs that may be experienced differently by different stakeholders. To support CAF Ministers in making their final decision, this consultation paper is inviting stakeholders to provide further evidence and information on the benefits and costs of each option. This evidence and information will be used to inform the decision-making RIS for consideration by CAF Ministers.