

27 July 2020

Mr Peter Graham
Executive Director
Consumer, Building and Occupational Services
Department of Justice
PO Box 56
Rosny Park TASMANIA 7018

Via email: [REDACTED]

Dear Mr Graham

Re: Code of Practice for Fuel Price Reporting

Thank you for your letter of 7 July 2020 in relation to the consultation draft of the *Australian Consumer Law (Tasmania) Code of Practice for Fuel Price Reporting) Regulations 2020* (The Code of Practice).

The Australian Institute of Petroleum (AIP) appreciates the opportunity to provide feedback on behalf of its core members:

- Ampol Limited
- BP Australian Pty Ltd
- Mobil Oil Australia Pty Ltd
- Viva Energy Australia Pty Ltd.

AIP remains of the view that mandatory price reporting is not necessary in Tasmania given highly visible price boards, the pricing information provided by AIP and the ACCC, and the range of freely available third-party applications. AIP has also consistently noted that should the Government decide to introduce such a scheme, it should only do so in a light touch manner that imposes least cost on retail fuel operators. This is likely to be a system consistent with those introduced in Queensland and New South Wales.

AIP welcomes the intent of the Tasmania Government, to the extent possible, align with the NSW fuel reporting scheme, including through obtaining access to that State's IT (and related) infrastructure. AIP agrees that this is likely to reduce compliance costs, assuming both consistency of implementation and associated appropriate consultation on the operation of the reporting system.

In that context, AIP notes that the Code of Practice is essentially enabling legislation, providing limited guidance on the actual mechanics and operation of the scheme. While AIP is supportive of this approach that places only the key necessary elements into the Code of Practice, AIP's experience with both Queensland and New South Wales was that there were both design and operational challenges with the systems in each jurisdiction and we would seek to avoid these prior to the launch of the scheme in Tasmania. AIP appreciates that these are likely to be limited given the intent to use the New South Wales system which has been in operation for some time, but sufficient lead times will be necessary to ensure liable parties have the internal systems in place to meet the reporting requirements for their operations in Tasmania.

Similarly, AIP encourages the government to introduce an initial period of six months for compliance and enforcement activities to allow companies the time to ensure their systems operate as planned and requirements are met.

As guiding principles for the operation of the scheme, AIP encourages the government to ensure the following key elements are included:

- requirement for all market participants to report prices at scheme commencement to avoid distortions in the market and to ensure competitive neutrality – there should be no exceptions
- responsibility for reporting fuel prices be placed on those operators who set the price of fuel
- an appropriate balance between the “real time” needs of consumers and the technical reporting constraints by fuel retailers (somewhere between 30 minutes and 2 hours to notify of a change in price)
- flexibility for all market participants to report in a manner that best meets their needs and imposes the least regulatory burden (e.g. via bulk upload, existing company websites/apps, email, phone). Bulk uploads, potentially via third party providers, is a critical design feature for those companies who operate multiple sites and has been an effective and efficient function built into both the New South Wales and Queensland reporting systems to provide timely updates to changes in fuel price.
- proven stable, robust, simple and verifiable data systems.

In relation to the Draft Code of Practice, AIP provides the following comments:

- Definition of a fuel retailer:
 - AIP recommends amending this section to reflect that the person who reports the fuel price should be the person who sets the price. The responsible fuel retailer should be “a person who decides the normal fuel price for a type of fuel offered for retail sale at a service station”.
 - This approach reflects differing business structures in the retail fuels market and is consistent with the approach adopted in other jurisdictions.
 - AIP also recommends that an additional provision be included that allows companies/entities to assume responsibility for reporting on behalf of another liable parties. This could be achieved through a mutually agreed communication to the data aggregator or regulator.
- Scheme commencement and registration
 - AIP notes that the scheme will commence “on the day in which the regulations commence”, and retailers will have 14 days to register
 - Appropriate awareness raising and communications with retailers will be necessary to ensure compliance with this provision
 - Although reporting of prices into the system could occur following registration, AIP encourages public publishing of a retailer’s prices to commence at least 7 days after registration to ensure successful integration with the reporting system
- Reporting at the commencement of trading
 - Schedule 1, Clause 3(2)(a)(i) stipulates that that reporting must be made “on commencement of trading by the fuel retailer”.
 - It is not clear whether this is an initial requirement once a fuel retailer is registered with the scheme, or whether this clause requires retailers to report a price each and every morning upon commencement of trade irrespective of whether a price change has occurred or not.
 - AIP opposes the requirement to report a price at the commencement of trade if that price has not changed, consistent with the objectives of minimising the regulatory burden.
 - The requirement to report a price change should only be required if a change has occurred.

- Defence against prosecution
 - AIP notes that the NSW Fair Trading Act includes a defence against prosecution that has not been included in the Tasmanian Code of Practice. This may be due to the differing natures of the legislation vs a code of practice. However, AIP encourages inclusion of a similar provision to that in NSW, as replicated below:
 - *(5) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves that the commission of the offence was due to causes over which the defendant had no control and that the defendant took reasonable precautions and exercised due diligence to prevent the commission of the offence.*” (NSW Fair Trading Act, 1987, No 68: Division 6, 58 (5))

AIP urges the Government to engage with industry at its earliest opportunity on the operation and mechanics of the scheme to minimise any likelihood of unforeseen circumstances, to ensure that the reporting and aggregation systems operate as intended, and that consumer confidence in the system is not undermined.

Should you wish to discuss anything further, do not hesitate to contact me on [REDACTED] or via email at [REDACTED]

Yours sincerely



Peter Gniel
General Manager, Policy