



Attention: Peter Graham - Executive Director of Consumer, Building and Occupational services.  
Department of Justice  
30 Gordons Hill Road, Rosney Park, TAS, 7018

Correspondence via email: [REDACTED]

27 July 2020

Dear Peter,

**RE: Draft Australian Consumer Law (Tasmania) (Code of Practice for fuel price reporting) Regulations 2020**

On behalf of Viva Energy Australia Pty Ltd ("Viva Energy"), thank you for the opportunity to provide comments on the draft Australian Consumer Law (Tasmania) (Code of Practice for fuel price reporting) regulations 2020 ("The Proposed TAS Regulation") received on Friday 10th July 2020.

### About Viva Energy

Viva Energy is one of Australia's leading energy companies and supplies approximately a quarter of the country's liquid fuel requirements. It is the exclusive supplier of high quality Shell fuels and lubricants in Australia through an extensive network of more than 1,290 service stations across the country.

Viva Energy owns and operates the strategically located Geelong Refinery in Victoria, and operates bulk fuels, aviation, bitumen, marine, chemicals and lubricants businesses supported by more than 20 owned terminals and presence at more than 50 airports and airfields in major cities and regional locations.

From 1 March 2019, after a change in the Alliance Agreement with Coles Group Limited ("Coles"), Viva Energy assumed responsibility for retail fuel pricing at the more than 700 Shell Coles Express branded service stations across the country and have invested heavily in being more competitive and consistent with fuel pricing since that time. In Tasmania, there are 15 Shell Coles Express Service Stations where Viva Energy is responsible for pricing and another 16 Shell/Liberty branded service stations where the operator of the site is responsible for retail pricing.

### Comments on Fuel Price Transparency

Viva Energy supports fuel price transparency and, like the broader Australian market. The wholesale and retail fuels market is and has increasingly become more transparent due to a range of initiatives including:

- Posting of wholesale terminal gate prices on company websites (noting that underlying retail prices are closely linked with wholesale prices);
- Detailed weekly pricing data provided on the AIP website;
- ACCC price monitoring, quarterly and annual reports and Regional Market Studies;
- A multitude of fuel price apps that are readily available to consumers; and
- Regular reporting of fuel price information on television and in print media.

This information continues to empower consumers through a better understanding of daily pricing as well as retail price cycles where they exist. Price cycles occur as a result of competition between fuel retailers and can vary between different markets in terms of frequency and amplitude. Information about

[Viva Energy Australia Pty Ltd – ABN 46 004 610 459](#)

price cycles allows consumers to take advantage of the bottom of the cycle to buy cheaper fuel which is often sold at or below the wholesale cost price. The expanding range of third party services and IT applications has built on this information by providing real time and personalized price comparison information to further inform consumer purchasing decisions.

The display of highly visible price boards at service station sites also enables consumers to make quick price comparisons on the road if they are not using this information technology.

We do remain concerned about the increasing burden of red tape and costs of doing business in the fuel retailing sector, particularly in a challenging market environment that has been exacerbated by the recent Covid-19 pandemic events which has seen demands for fuel products fall sharply in line with community restrictions. We strongly oppose unjustified regulation that imposes costs on business and ultimately consumers and that any regulation should not encroach into areas of legitimate and pro-competitive business operation, nor stifle business differentiation and innovation.

While we believe there is sufficient transparency in the market to not justify Government intervention, we appreciate the Government's desire to assist consumers to make informed purchasing decisions in relation to fuel through the implementation of fuel price reporting regulations.

## Comments on the draft Regulation

We note that the draft Proposed TAS Regulation for fuel price reporting aligns with other the operation of similar schemes in other State jurisdictions and we welcome this harmonisation in approach which will negate the need for developing new processes and procedures within our business.

However, we have noted one key difference between the existing NSW legislation in force (*Fair Trading Act 1987* (NSW)) and Proposed TAS Regulations for reporting fuel pricing. The NSW legislation includes a defense (replicated below) but the TAS draft regulation received does not. Viva Energy would therefore like to recommend that the below (or similar) be included within the draft regulations.

*Extract from Fair Trading Act 1987 (NSW):*

*“(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.”*

*Recommended defence to be included in the Proposed TAS Regulation:*

*“A fuel retailer shall not be in breach of section 3 if the fuel retailer fails to comply with section 3 due to causes over which the fuel retailer had no control and that the fuel retailer took reasonable precautions and exercised due diligence to prevent the failure.”*

If you have any questions regarding the contents of this letter please contact [REDACTED] on [REDACTED] or [REDACTED].

Yours Sincerely,

[REDACTED]  
On Behalf of

[REDACTED]  
Executive General Manager - Consumer