



Fair
Trading

Report to Minister

Fuel price differentials

July 2012



Published by:

NSW FAIR TRADING
PO Box 972
PARRAMATTA NSW 2124

Tel. 13 32 20

© NSW Fair Trading 2012

This publication is copyright. It may be reproduced in whole or in part for study or training purposes subject to the inclusion of an acknowledgment of the source. It may not be reproduced for commercial use or sale. Reproduction for purposes other than those indicated above requires written permission from NSW Fair Trading.

Disclaimer

Because this publication avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation. Further copies of this document can be downloaded from the NSW Fair Trading website www.fairtrading.nsw.gov.au

July 2012

OVERVIEW

On 20 April 2012, the Minister wrote to the Commissioner for Fair Trading requesting that he conduct a review into the price differential between E10 ethanol blended fuel and premium unleaded 95 fuel at a wholesale and retail level. The request was made under Section 9(2)(b) of the *Fair Trading Act 1987*, which provides that the Commissioner for Fair Trading shall report on matters relating to the interests of consumers that are referred by the Minister.

In that request to the Commissioner and in a response to a Question Without Notice in Parliament on 4 April 2012, the Minister referred to a submission made by the NRMA to the Independent Pricing and Regulatory Tribunal's review into ethanol supply and demand in NSW. The NRMA highlighted in its submission concerns about the widening retail price difference between premium unleaded and E10.

For the period September 2009 to February 2012, the NRMA states that the average Sydney price differential between premium unleaded 95 and E10 increased from approximately 9.5 cents per litre to 11.5 cents per litre. The NRMA argues that, as the demand for premium unleaded 95 petrol has grown, the relative cost of this fuel type should decrease. The NRMA also noted that the differential between Mogas 97 (identified as a benchmark for premium grades of petrol) and Mogas 95 (identified as a benchmark for regular unleaded petrol) is about two cents per litre. The NRMA submission states that:

“Clearly there is a huge gap between the Mogas differentials and the differential at the petrol bowser and this is not good for motorists”.

The full NRMA submission is available at: <http://www.mynrma.com.au/assets/About-PDF/independent-pricing-submission.pdf>

The aim of the review is to use the information submitted by fuel retailers, suppliers and other key stakeholders, to encourage greater price transparency and better enable consumers to make an informed decision on where and when to purchase their fuel. In letters to key industry stakeholders, the Commissioner sought views and advice on the factors that may have contributed to increases in the price difference between E10 ethanol blended fuel and premium unleaded 95 fuel.

This report highlights some of these issues, sets out the continuing role in the petrol industry of the Commonwealth Government primarily through the ACCC, and makes some recommendations to enhance transparency and disclosure on price issues for the benefit of consumers.

BACKGROUND

The Retail Petrol Industry

*IBISWorld 2012*¹ estimates that nationally, the retail sector of the fuel industry employs more than 35,000 people and generated revenue of approximately \$35.7 billion in 2011/12.

The retail petrol industry reflects a mix of ownership and operating structures and includes sites:

- operated or franchised by the four refiner/marketers operating in Australia: BP, Caltex, ExxonMobil and Shell;
- owned by independent chains such as 7-Eleven, Matilda and United;
- owned and operated by individuals; and
- owned or operated by major supermarkets (Woolworths and Coles) in partnership with refiner/marketers.

The Commonwealth Department of Resources, Energy and Tourism notes that, despite a large number of operators in the industry, approximately 84 per cent of retail premises are owned by, or directly affiliated with, the four major petroleum refining and marketing companies. Their share of retail petrol sales amounted to approximately 83 per cent of retail sales in 2010/11.

The role of the Australian Competition and Consumer Commission (ACCC)

The ACCC's primary responsibility is to ensure compliance with the Commonwealth competition, fair trading and consumer protection laws. In this role it administers the *Competition and Consumer Act 2010* and has powers to take action if there is evidence of anti-competitive behaviour in the market place. In relation to the petrol industry, the ACCC has three main roles:

- enforcing the provisions of the Competition and Consumer Act;
- monitoring the petrol industry; and
- informing the public about the petrol industry.

¹ IBISWorld Industry Report F4521 **Petroleum Wholesaling Market Research Report**

Automotive Fuel Retailing in Australia, Kate Convey, May 2012 pg 4

From time to time, the ACCC under Part VIIA of the Competition and Consumer Act, may also be required to hold price inquiries into specific industries.

The role of the ACCC Petrol Commissioner was established by the Federal Government in 2008, to work to improve the competitive outcomes of the fuel industry in Australia, oversee formal price monitoring and investigate petrol prices. In its 2012/13 budget, the Commonwealth Government announced that it would provide further funding to the ACCC to continue the role of the Petrol Commissioner and the formal monitoring of petrol prices under Part VIIA of the *Competition and Consumer Act 2010*. The key objectives of the ACCC petrol prices monitoring program are to:

- increase the level of information available and improve consumer awareness;
- provide a description and analysis of trends in prices, costs and profits; and
- identify any competition issues within the industry that may warrant further consideration by the ACCC.

In researching and developing these reports, the ACCC meets with industry representatives to discuss data requirements and monitoring processes. The information requested from refiner/marketers, importers, retailers and other industry participants include wholesale, import and retail transaction data, pricing benchmark data and financial data.

2011 Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia

In December 2011, the ACCC published its fourth monitoring report into the prices, costs and profits of unleaded petrol in Australia. The key issues from the report include:

- pre tax petrol prices reflect international prices and continue to be among the lowest in the OECD;
- Australian prices reflect the international benchmark price. The ACCC notes that most of the fuel imported into Australia (about 25 per cent of petrol consumed) comes from Singapore, and the most appropriate benchmark price is the price of Singapore Mogas 95 Unleaded (Mogas 95);
- world oil prices appear to have reached a new and significantly higher average price range;

- there is no evidence of excessive profits in the Australian refining, importing, distribution and marketing of petrol;
- higher regional prices for petrol are due to greater transport costs, lower turnover and in some cases lower levels of competition;
- retail price cycles tend to operate in a manner that does not reflect movements in underlying wholesale prices or international benchmarks; and
- retail prices over 2010/11 were higher and more volatile than in 2009/10 and were at their highest levels since October 2008.

Petrol as one of the major costs of living for most households

Fuel prices in Australia are not regulated. As is the case for the majority of goods and services, the price of fuel is subject to the competitive forces operating in the market, and suppliers are free to set their own price. Under the Australian Consumer Law, petrol retailers like other traders, must not mislead or deceive consumers on issues relating to the price, characteristics or features of their products.

However, as an internationally traded commodity, and more so than for most other goods and services, the retail price of fuel regularly fluctuates, leading to considerable frustration for consumers. Due to the fact that international benchmark prices are set in US dollars, retail petrol prices in Australia can be significantly impacted by changes in the Australian-US exchange rate. The 2011 ACCC price monitoring report noted that retail prices in Australia would likely have hit record highs during 2011, if the exchange rate had remained at the US dollar 0.86 mark. However, given the strength of the Australian dollar during this time, this scenario was avoided.

While the peaks and troughs of the petrol price cycle have been a feature of the petrol retail market for some time, consumers experiencing sudden increases of up to 10 cents a litre or greater, feel the immediate and additional pressures that these costs bring to bear on households. For a large number of consumers and small business owners, these price increases cannot be avoided.

As part of its role in monitoring the prices, costs and profits of unleaded petrol in Australia, the ACCC has studied these price fluctuations over several years. In its 2011 report, the ACCC notes that these cycles are now weekly or more frequent and tend not to be related to any movement in the underlying wholesale price or international

benchmarks. These sudden increases in price, and the often less pronounced reductions over the cycle, are the product of the pricing policies of Australian petrol retailers.

While there are certain retailers that appear to more frequently precipitate price increases during the cycle, there is generally a rapid response by competitors and a convergence of prices soon after. It is this behaviour that has led many consumers to believe that rather than free and fair competition prevailing at all times in the retail petrol market, participants act in concert, to the detriment of consumers.

In its December 2011 report, the ACCC stated that it was concerned about the degree of co-ordination exhibited through the price cycles and that it would analyse the likely effects of this behaviour on consumers.

The ACCC investigation into price information sharing arrangements

On 3 May 2012, the ACCC announced a formal investigation into price information sharing arrangements in the petrol industry. The ACCC has stated that it is concerned that price sharing has lessened price competition in petrol retailing to the detriment of consumers. It will consider whether price sharing arrangements amount to breaches of provisions of the *Competition and Consumer Act 2010* that prohibit arrangements or understandings that have the purpose, effect or likely effect of substantially lessening competition.

The ACCC investigation into the effect of 'shopper docket' discounts on prices and competition

On 18 July 2012, the ACCC announced a formal investigation into petrol price discounts offered by major supermarkets. The ACCC will specifically look at whether these discount offers have the effect of diminishing competition and ultimately lead to consumer detriment.

The price components of petrol in Australia

The ACCC has identified two key components that largely make up the price of petrol. These factors (estimated to contribute approximately 88 per cent of the price) are:

- the international benchmark prices for refined fuel; and
- federal excise and GST.

The remaining 12 per cent is accounted for in costs and margins. In its 2011 monitoring report, the ACCC estimates that from 2002/3 to 2010/11 net profit to the petrol companies on petrol products has averaged around 1.6 cents per litre and in 2010/11 it was approximately 2.2 cents per litre. The ACCC has ranked the local petroleum industry in terms of returns on sales as being relatively low compared to other industry sectors.

Independent Pricing and Regulatory Tribunal (IPART) Review of Ethanol Supply and Demand in NSW

Under the *Biofuels Act 2007*, administered by the NSW Minister for Energy and Resources, volume fuel sellers must ensure that the volume of ethanol sold is not less than 6 per cent of the total volume of all petrol sold by the seller in NSW each quarter. The objectives of the Act include: the promotion of regional development; to provide cheaper fuel for consumers; and to find renewable substitutes for imported petroleum based products.

In April 2012, IPART released its review into the current and projected levels of ethanol supply and demand. Of particular relevance to the issues outlined in this paper, the review found that:

- E10 sales have grown strongly since 2006 (slowing since mid 2010), while regular unleaded has declined; and
- sales for premium unleaded have increased, suggesting that as the availability of regular unleaded petrol has declined, consumers are switching to premium unleaded instead of E10.

The NSW Government has indicated that it will use the findings of the review to develop an exemptions policy under the Biofuels Act.

The NRMA submission and the views of industry

The information received by Fair Trading as part of this inquiry confirms the lack of agreement within the industry as to what is the proper basis on which to analyse retail petrol price movements. This is despite the ongoing work of the ACCC in monitoring and publishing data and issues related to petrol prices.

A number of submissions to this review have queried both the methodology used by NRMA to make its claim about the price differential between ethanol blended E10 and premium unleaded 95 and the actual wholesale price difference between the two petrol types. The factors raised in submissions to explain retail price differentials include:

- differences in the manufacturing or refining processes involved;
- differences in fuel composition/ingredients;
- different performance results; and
- marketing and operating costs.

In relation to wholesale price arrangements, industry participants nominate confidential commercial arrangements as to why critical elements of this information cannot be released. However, stakeholders were able to identify a range of factors affecting wholesale cost prices that must be considered, including:

- exchange rates;
- taxes;
- refiners costs and margins; and
- international product supply and demand.

There are a wide range of factors that impact on the wholesale and retail prices of petrol in Australia. While some of these such as marketing and operating costs can be set or at least influenced by operators in the industry, other factors such as exchange and taxation rates are outside their influence.

Government actions through taxation and industry policy as well as factors influencing international and local supply and demand for crude oil products, exchange rates, the marketing decisions of petrol retailers/marketers all come together to play some part in what consumers pay for petrol at the bowser in NSW.

Wholesale prices

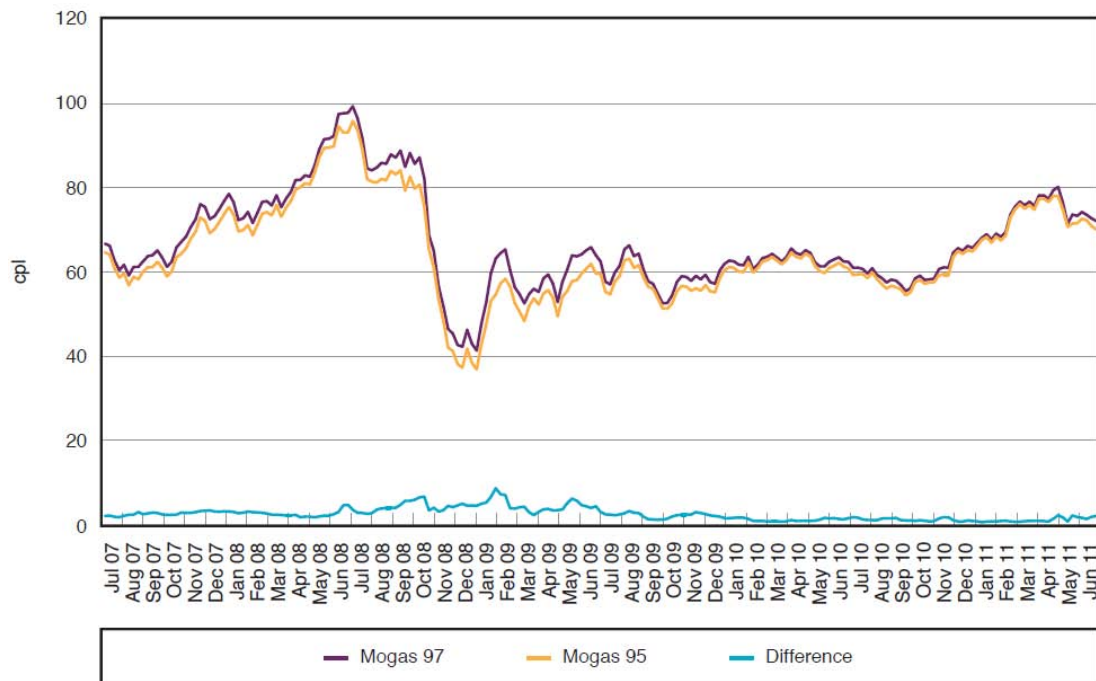
The wholesale price of petrol in Australia is comprised primarily of the cost of unrefined unleaded petrol and other costs related to the importing of petrol into the country – that is, the cost associated with acquiring petrol. The ACCC recognise that the import parity price benchmark is the fundamental basis for wholesale prices and is the notional price that is paid to import petrol (Monitoring of the Australian petroleum industry December 2011).

Refiner/marketers operating in Australia account for more than 90 per cent of total supplies of petrol (ACCC 2011). These businesses use what is called the import parity price (IPP) as the basis for setting wholesale and retail prices. The IPP together with taxes, other import associated costs and profit margins are the primary determinants of the wholesale price of petrol. The IPP prices locally refined petrol on the basis of the cost of importing refined petrol and reflects the landed cost of alternative overseas supply. The IPP is generally referred to as the base for all wholesale prices that flow to retail prices.

The ACCC has noted that the higher Mogas 97 price benchmark is used in the import parity price for PULP which reflects the additional processing required.

The higher benchmark price paid through Mogas 97, ensures that the retail price for PULP reflects a premium over the price of RULP.

Chart 7.7 Weekly average Mogas 95 and Mogas 97 prices: July 2007 to June 2011



Source: ACCC calculations based on Platts and RBA data.

The chart shows that between May 2008 and August 2009, the gap between these price benchmarks widened, declined on average up to April 2011, while there has been

a narrowing of the difference throughout 2010-11. While the prices have closely tracked each other, the products are part of distinct markets.

Over the four year period to June 2011, the wholesale prices of PULP have tracked the IPP benchmark price very closely (ACCC 2011). This consistency also extends to the retail price of PULP.

The ACCC acknowledged that even though the trends in retail, wholesale and benchmark prices are very similar there has been a widening of the difference between wholesale and retail prices. This has been attributed to the removal of fuel subsidies in Queensland and NSW in mid 2009 and the operation of the ethanol mandate.

In its submission to IPART, the NRMA highlight its concern that the price differential between PULP 95 and E10 has widened and state that “*One would expect that as the volume of PULP 95 sold increases rather than buying E10, the relative cost of the premium brand should be falling.*” This analysis does not however accurately reflect all the wholesale costs to petrol suppliers/retailers.

Demand for PULP and E10

When considering the price differential between these two types of fuel, the movement of both prices and the demand for both products should be considered.

More so than in the other states and Territories, demand for PULP and E10 has increased substantially in NSW. In its April 2012 report, the Independent Pricing and Regulatory Tribunal noted that since the introduction of the ethanol mandate in NSW in 2006, sales in E10 have grown strongly and sales of PULP have increased.

During 2011, the ACCC found that average E10 prices have increased relative to RULP. This reduction in the retail price difference between E10 and RULP was also noted in the NRMA submission.

The significant growth in demand for PULP has been driven primarily by the following factors:

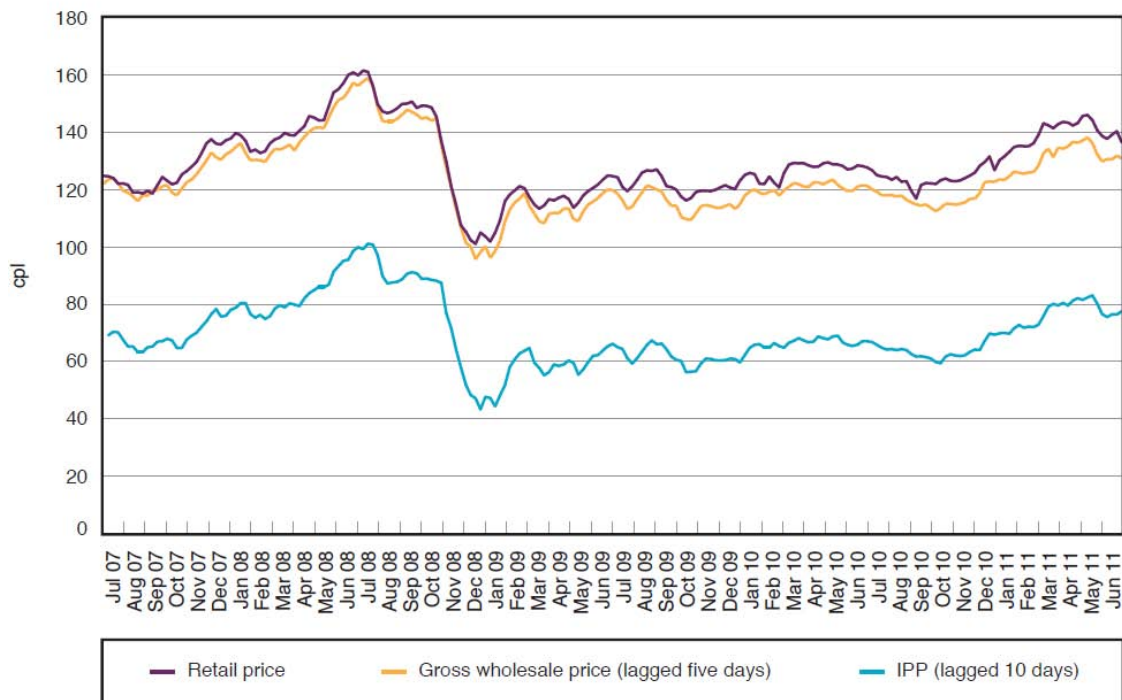
- consumers seeking performance enhancements associated with the use of PULP;

- manufacturers claims that PULP is better suited or necessary for particular vehicles; and
- consumer perception that E10 fuel is less economical and/or has a negative effect on the performance of their vehicle.

The ACCC observe that the growth of PULP may exert upward pressure on the supplies and prices of PULP into the future.

The chart below, taken from the 2011 ACCC monitoring report, shows that while overall the retail price of unleaded petrol has closely followed the movements in the wholesale price since 2007, since early 2009, the differential has increased (the report notes that Queensland and NSW fuel subsidies were removed in 2009).

Chart 8.9 Weekly average IPP, gross wholesale prices and retail prices for RULP in the five largest cities: July 2007 to June 2011



Source: ACCC analysis based on data obtained from firms monitored through the ACCC's monitoring process.

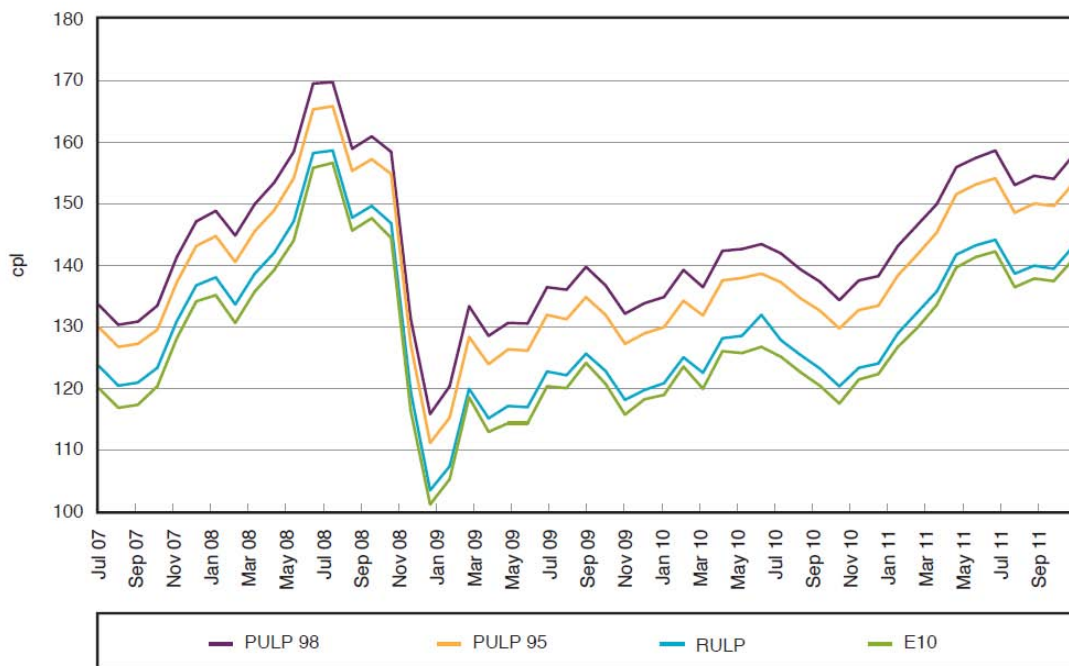
Retail prices

Retail prices of different petrol types tend to move in similar patterns as they are linked to international price benchmarks. However the markets for Mogas 95 and Mogas 97 are separate and accordingly price movements in one market may not be reflected in

the other. The retail prices of petrol are primarily determined by movements in the international price of refined petrol.

The ACCC notes that in 2010-11 retail costs for PULP and RULP were very similar while the wholesale costs and margins were considerably higher for PULP which in part reflects a higher fuel quality premium for PULP.

Chart 9.15 Monthly average retail prices of RULP, PULP 95, PULP 98 and E10 in the five largest cities: July 2007 to September 2011



Source: ACCC calculations based on Informed Sources data.

The terminal gate price (TGP) is often used as an indicative wholesale price by which to compare retail price differences. The TGP is the price(s) at which petrol can be bought from a supplier. However wholesale purchases of petrol are primarily made under contract, details of which are known only to the parties to that contract. The TGP may be used as an imprecise measure of wholesale against retail prices, however it will not reflect the actual cost of wholesale petrol as it does incorporate all retail operating costs.

What more can be done?

It is worth noting that the ACCC has found that profits achieved by the petrol industry are a small proportion of retail prices paid by consumers. However the increase in price differential between wholesale and retail prices for regular unleaded petrol since early

2009, is an area which the ACCC could examine to determine if the relative increase in retail prices is simply a reflection of greater retail margins achieved at the expense of consumers.

The NRMA are expressing the real concerns of many consumers. The common public perception of the price policies of petrol retailers, is that it is not a transparent process and that price cycles operate in such a way as to maximise retailer profits at the expense of consumers. One of the stated aims of the ACCC's petrol price monitoring program is to raise consumer awareness and the level of information available to the public. There appears to be some work still to be done in this area. The ACCC through its recently announced investigation into price information sharing in the industry seems to acknowledge this point.

Specifically the ACCC is urged to:

- focus more on the price differentials between the growth fuel types in particular PULP and E10 rather than the current emphasis on prices compared to RULP.
- disclose the discussion and any findings or recommendations of the ACCC Fuel Consultative Committee in its work on price differentials.
- better information for consumers. Consumers should have more confidence that the premium fuel products that they purchase, satisfy the performance claims made by the petrol companies.
- address the competition issues relating to petrol price cycles. The ACCC has found that the price cycle is not a response by retailers to changes in the cost of petrol, but rather deliberate pricing strategies.
- consider competition issues at the refiner/marketer level. The ACCC has already noted that the four refiner/marketer companies supply more than 90 per cent of total supplies of petrol. This analysis should consider the supply arrangements between supermarkets and refiners and if these arrangements in any way contribute to the cost of wholesale fuel to independent retailers.
- further consider competition issues at the retail level. While there are a number of retailers operating in the industry, more than 80 per cent of service stations are either owned, operating in partnership with, or affiliated to the four refiner/marketers.
- release the findings of its investigation into price information sharing including whether this has diminished competition to the detriment of consumers.

- release the findings of its investigation into the effect of shopper docket discounts on prices and competition.

THE ROLE OF NSW FAIR TRADING

NSW Fair Trading regulates the marketplace, safeguarding consumer rights and advising traders on fair and ethical business practices. As part of this work Fair Trading provides services directly to consumers and businesses as well as investigating unfair practices and ensuring that products sold in NSW are safe and meet relevant safety and other mandatory standards.

The principal piece of legislation that sets out the rights and responsibilities of consumers and businesses is the Australian Consumer Law (ACL), a national law that commenced on 1 January 2011. Fair Trading together with other State and Territory consumer protection agencies and the ACCC, jointly enforce the ACL.

While the ACL has replaced most of the general fair trading provisions in State and Territory legislation, each State and Territory Act retains its own enforcement and administrative provisions. The NSW *Fair Trading Act 1987* also retains several provisions which apply to specific industries and are not covered by the general fair trading provisions of the ACL. These include provisions that regulate specific aspects of the activities of petrol retailers.

The Fair Trading Regulation 2007 sets out the operational and administrative detail to support the objectives of the Fair Trading Act. Among other things, the Regulation provides for the petrol price sign information standard.

The NSW Petrol Information Standard

The NSW Fair Trading Regulation 2007 mandates that price boards at petrol stations be positioned and lit in a way that can be seen by motorists approaching the petrol station at any time it is open for business. The standard applies to the sale of regular unleaded petrol supplied at a petrol station and requires service stations to ensure that price signs:

- are positioned and so lit that any price and other matter displayed will be readily seen by motorists approaching the petrol station at any time that it is open to sell petrol; and
- display the price as a price per litre of petrol.

The petrol information standard commenced in 2000 and was introduced to increase competition and facilitate consumer choice by requiring petrol stations to disclose their price to a consumer before they entered the station. The basic policy principle is that consumers should be able to clearly discern the price of the most commonly sold fuel before they make a commitment to buy from a particular service station.

In addition to the specific obligations under the standard, petrol station operators are also subject to the ACL provisions that prohibit traders from making false or misleading representations.

Fair Trading's compliance activities

In February 2012, Fair Trading conducted initial inspections of more than 300 service stations across NSW, to check compliance with the petrol information standard and to determine whether any operators were engaging in misleading or deceptive conduct.

In March 2012, Fair Trading conducted further inspections at service stations identified during the first stage and from complaints or other referrals to the agency. This work included review of those operators who may be engaging in unfair practices, including poor signage and obscuring the price of premium fuels, thus making it difficult for consumers to make an informed decision. Fair Trading also established a hotline and online complaint service that allowed consumers to report any instances where they considered they has been mislead by advertising posted by service station operators.

Fair Trading is considering a range of actions in response to breaches of the petrol information standard and breaches of the ACL. Under the ACL, the maximum fine for making false or misleading representations about goods and services is \$220,000 for an individual and \$1.1 million for a corporation.

Review of the petrol price information standard

In 2000 when the standard commenced, regular unleaded fuel was, by a considerable margin, the most commonly purchased fuel. However consumer demand for different fuel types has changed since this time. This change has primarily arisen through the ethanol mandate which requires that 6 per cent of the total volume of petrol sold in NSW is ethanol based, consistent with requirements of the *Biofuels Act 2007*.

While regular unleaded still appears to consistently be the most commonly sold fuel in NSW, consumers now also have access to a far greater range of fuels. Premium fuels and diesel are now accounting for an increasingly larger share of total motor vehicle fuel sales.

The accuracy and display of pricing is of fundamental importance to consumers when purchasing an essential commodity such as petrol. In circumstances where petrol stations do not display the price of fuels on petrol price signs, consumers are unable to effectively compare the prices of different operators and can potentially pay more than they otherwise would.

The Fair Trading Regulation 2007 is set to be automatically repealed and remade on 1 September 2011 as per the requirements of the *Subordinate Legislation Act 1989*. The new Regulation is to be remade and commence on 1 September 2012.

Through a public consultation process held in July- August 2012, Fair Trading sought the views of industry and consumers on changes to the existing petrol price information standard that could enhance the information available to consumers on the cost of fuel.

As part of the remake process a Regulatory Impact Statement was publically released for stakeholder comment and meetings with petroleum industry representatives were held to discuss potential changes to the petrol information standard. A consumer survey was also published with more than 1300 consumers responding to questions about their use of petrol and price disclosure.

The consultation process included an examination of possible changes to the petrol information standard including whether regular unleaded petrol should remain subject to the standard and whether any additional fuels should be subject to the standard.

Many service station operators already publish the price of other fuels. This is the choice of the petrol station owner. Any or all other fuel types the station sells can be displayed on a price board. Price boards may display the price of unleaded petrol, E10, diesel, LPG and sometimes premium grade fuels.

Another key issue raised in the Regulatory Impact Statement was the proposed change to the Standard that would prohibit service stations from advertising any price other than the normal price of petrol available to all consumers. The display of discounted petrol prices, often without any clear indication of the terms and conditions associated with that price, can potentially mislead consumers.

A national approach to petrol price information

The petrol information standard has proved to be an effective way of improving outcomes for consumers. Transparency in price and full disclosure by traders of any relevant terms and conditions are essential elements in ensuring that consumers are able to make informed choices.

While NSW will consider options for improving the information available to consumers through the review of the Fair Trading Regulation this year, a co-ordinated national approach to this issue should be considered. While there are some geographical differences in price across different parts of Australia, particularly in regional areas, the cost of petrol and the need for price transparency are common issues across all jurisdictions.

Section 134 of the ACL allows the responsible Commonwealth Minister to publish a mandatory information standard which may cover the content, provision, manner and form of information to be provided with specific goods or services, as well as assign a meaning to specified information about goods and services.

Mandatory information standards under the ACL require suppliers to give consumers prescribed information when they purchase specified types of goods or services to assist consumers to make informed purchasing decisions. A mandatory information standard for goods or services can:

- require particular information to be provided, or not;
- set the form or manner of this information; or
- give a meaning to certain information.

The COAG Legislative and Governance Forum on Consumer Affairs (CAF) is the appropriate forum for consumer protection Ministers to discuss possible ways of

ensuring a better deal for consumers through a consistent approach to these issues.

Key issues that could be discussed include:

- industry practices such as the labelling of fuels;
- transparency of price and related issues including a possible national approach to a petrol price information standard; and
- competition issues including matters relating to the ongoing ACCC inquiries into information sharing in the industry and the effect of shopper docket discounts.

Recommendations arising from this review

The retail and wholesale price differentials between E10 ethanol blended fuel and premium unleaded 95 fuel highlighted by the NRMA, are perhaps unsurprisingly, contested by industry participants. In submissions, a range of cost factors that influence the retail prices of E10 ethanol blended fuel and premium unleaded 95 fuel were identified. The retail price of a litre of petrol in Australia is a product of a complex process that involves the exchange rate, crude oil prices, profits, operating and infrastructure costs, world oil supplies and peak oil, together with local levels of supply and demand. However consumer concerns remain constant and primarily relate to four key issues:

- the continued rise of petrol prices and the price difference between fuel types;
- the impact on consumers of price increases on what is for many, an unavoidable and significant weekly expense;
- the lack of transparency of retail prices and what is known as the petrol price cycle; and
- competition in the Australian petroleum industry.

As the consumer protection regulator in NSW, Fair Trading can and does take action against traders who breach the provisions of the Australian Consumer Law and other consumer legislation. This report has highlighted some of this work in the retail petroleum industry where instances of non-compliance with the petrol price information standard and false or misleading advertising or representations have been identified.

Consistent with its regulatory responsibilities Fair Trading will work to enhance the proper disclosure of price information by petrol retailers to consumers. This work will include ongoing compliance, education and enforcement work in the sector and analysis and amendment of the petrol price information standard.

Issues of competition and the behaviour of petrol retailers in relation to their pricing behaviour are outside the legislative scope of NSW Fair Trading. In May 2012, the Australian Competition and Consumer Commission announced that it had commenced a formal investigation into possible breaches of the *Competition and Consumer Act 2010*, noting concerns that it had held for some time. As part of this investigation, the ACCC will consider if petrol retailers have engaged in conduct that has lessened

competition to the detriment of consumers. Fair Trading supports the work of the ACCC in this area.

In addition to this investigation, further work by the ACCC in relation to ensuring that there are adequate levels of disclosure and transparency on petrol prices and to address the issues raised on pages 14-16 of this report, is essential.

Recommendations:

1. That the Minister take the issue of the petrol information standard to the Legislative and Governance Forum on Consumer Affairs agenda for consideration of a possible national approach.
2. That the Minister requests the federal Minister provide an update on the status of the ACCC inquiries into price signalling, and the effect of shopper docket discounts on competition and prices in the petrol industry.
3. That the Minister support proposals to include a greater range of fuels on price board signage at service stations to improve information for consumers and enhance competition.



NSW Department of **Finance & Services**

NSW Fair Trading
PO Box 972
Parramatta NSW 2124
T: 02 9895 0111
F: 02 9895 0222
TTY: 1300 723 404
www.fairtrading.nsw.gov.au