



MTAA

THE AUSTRALIAN OIL INDUSTRY

An information booklet produced by MTAA

Introduction

This booklet has been prepared by the Motor Trades Association of Australia (MTAA) to provide parliamentarians of Australia with an overview of the Association's views on the Australian Government's proposed changes to the regulatory framework governing the Australian retail petroleum market.

As you may be aware, the Government's proposed changes include the repeal of the two retail petroleum market-specific Acts, the Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Marketing Sites Act 1980, and the introduction of a mandatory industry code of conduct ('the Oilcode').

While MTAA is not opposed to reform of the oil industry, as such, the Association and its Members cannot support the Government's proposed changes as currently proposed. This is because the Government's proposals do not, in MTAA's view, address a number of important matters, including:

- the maintenance of retailers' existing rights and obligations under the current regulatory regime (in particular, their existing statutory tenure);
- access for retailers to competitively priced wholesale supply of fuel;
- the current structure of the oil industry, from refining through to retailing;
- the increasing vertical and horizontal integration in the retail petroleum industry, particularly by the two large supermarket operators; and
- reform of the Trade Practices Act 1974.

MTAA considers that these issues must be addressed in any reform package for the industry.

The Australian Oil Industry - Who Does MTAA Represent?

- The Motor Trades Association of Australia (MTAA) is the peak national representative organisation for the retail, service and repair sectors of the Australian automotive industry.
- The Association is the largest 'stand-alone' small business association in Australia, representing over 80,000 business outlets and 250,000 employees in the retail motor trades with a combined annual turnover of \$88 billion.
- As part of its role as the peak national representative organisation for the retail, service and repair sectors of the Australian automotive industry, MTAA represents the interests of service station operators throughout Australia, including:
 - _ single site franchisees;
 - _ multi-site franchisees;
 - _ commission agents;
 - _ branded independents; and
 - _ non-branded independents.

This briefing paper has been prepared by MTAA for the information of elected parliamentary representatives around Australia. It contains the Association's views on proposals under consideration by the Australian Government for change to the Federal laws which provide service station operators with certain rights and responsibilities in their dealings with oil companies and which regulate the retail petroleum market in Australia.

The changes as currently proposed are opposed by MTAA, for the reasons set out in this paper.

MTAA's Position on Oil Industry Reform

- The Australian Government is proposing to repeal the Petroleum Retail Marketing Franchise Act 1980 and the Petroleum Retail Marketing Sites Act 1980 and to replace them with a mandatory Oilcode.
- MTAA supports, and has always supported, a competitive and efficient retail petroleum market.
- MTAA has never sought to secure 'protection' for its members. MTAA has simply sought a framework that will ensure that efficient operators, regardless of their size, can compete freely and fairly. Independent service station operators are efficient and effective competitors and do not need or want to be protected from competition by the Australian Government.
- MTAA acknowledges that the current regulatory framework governing the retail petroleum sector has failed to keep pace with developments in the structure of the market over the last twenty-five years and needs to be updated to ensure that it addresses those structural changes. MTAA has therefore been a willing participant in the negotiations that have taken place regarding the development of the Oilcode.
- MTAA does not however believe that the Oilcode, as currently drafted, will adequately address the significant structural changes that have occurred recently or secure the continuation of healthy competition in the market.

The principles underpinning the Oilcode were developed two years ago and they reflect the market conditions which prevailed at that time. Since then, the market has changed considerably and the grocers are no longer emerging players. Instead, they are now significant players with over fifty per cent, by volume, of the market.

The Level of Competition in the Market

- The retail petroleum market does not currently lack a healthy level of competition.
- The Oilcode will not provide a framework that ensures that the current level of competition in the market will continue in the long term.

This is because the Oilcode does not address the fundamental structural issues that have emerged in the market over the last two years.

That is, the increasing dominance of the grocer/oil major alliances and their ability to use grocery operations to cross-subsidise fuel retailing activities and to consequently drive more efficient and effective competitors, both large and small, from the retail petroleum market.

Myth: The Oilcode will ensure that the market remains competitive

- It is claimed that the Oilcode will ensure the continued presence of several large competitors and a viable small business sector in the market.
- The Oilcode does not address the fundamental threat to competition in the retail petroleum market; that is, the increasing dominance of Coles/Shell and Woolworths/Caltex and the long-term implications for consumers.
- There is therefore a significant possibility that, in the long term, the structure of the market will reflect that of the retail grocery market: a duopoly.

Such an outcome will not be in the best interests of consumers, who will pay higher prices at the pump.

- The Oilcode will not ensure that the market remains competitive.

Myth: The Oilcode will provide significant additional protections for vulnerable small business operators

- Service station operators have never sought protection from free and fair competition. They simply want a regulatory framework which provides for transparent and competitive retail and wholesale petroleum markets in which the most efficient and competitive operators, both large and small, can thrive.

Oil industry 'franchise' arrangements under which the initial investment is less than \$20,000 are also exempted from the minimum tenure provisions under the Oilcode. Oil companies could potentially restructure their agreements to take advantage of this exemption and avoid providing any statutory tenure at all for service station operators. Current legislation provides for 3 + 3 + 3 years tenure for franchisees irrespective of their investment.

- Operators could then be exposed to termination (without due cause) and with very little notice. That will represent a significant reduction in franchisees' rights (compared with the current regulatory framework).
- That is not an acceptable outcome for service station operators.

Myth: The situation for independents will be better under the Oilcode

- The Oilcode fails to address the most important issue faced by independents: access to supply. There is nothing in the Oilcode which requires the oil majors to provide supply at a competitive price to independents.
- Independents are more likely to thrive in a transparent, free and fair market in which anticompetitive behaviour, such as predatory pricing, is not tolerated. The Oilcode does not address issues relating to pricing behaviour. Nor is the Trade Practices Act to be amended to sufficiently address concerns about current pricing behaviour in the market.
- The current legislation (the Petroleum Retail Marketing Franchise Act and the Petroleum Retail Marketing Sites Act) was, in part, introduced to address concerns about vertical integration in the oil market. The Oilcode will not address those continuing concerns about vertical or more recent concerns about the degree of horizontal integration across the whole retail market.

Myth: Current laws hurt competition whereas the Oilcode will promote competition

- MTAA acknowledges that the current regulatory framework governing the retail petroleum sector has failed to keep pace with developments in the structure of the market over the last twenty-five years and needs to be updated to ensure that it addresses those structural changes.
- The retail petroleum market is extremely efficient and competitive.
- Unless the Oilcode addresses the increasing dominance of the two grocery/oil company alliances and also provides a framework, through strong misuse of market power laws, within which independents continue to have a presence in the market, it will not promote competition in the market.
- In his recent report of the NT Fuel Price Inquiry, Dr Thomas Parry noted that:

‘Experience in Australia and overseas suggests that the key to increased price competition in the petroleum industry is not government regulation or subsidies but the spread of effective independent operators.’

Myth: The current laws have forced oil companies into seeking alliances with supermarket retailers

- This simply is not true. The oil company/grocer alliance business model has been employed, and at the expense of small retailers, in a number of other countries, including the United Kingdom and France. In the United Kingdom, there is now concern that there is not an adequate number of service stations in more remote areas.
- Considering the positive returns that such alliances have generated for participating oil companies and grocers overseas, the introduction of the alliance business model into the Australian market was inevitable irrespective of the current regulatory framework.

Myth: The Oilcode will establish minimum standards for fuel reselling agreements and will deliver better contractual outcomes for operators

- The Oilcode simply restates many of the minimum standards that are already mandatory under the current legislative framework. Many in the industry are already covered by the Franchising Code of Conduct.
- The introduction of five years tenure for commission agents is however a welcome development; providing it can be secured.

Myth: Oilcode will adequately protect current tenure

- MTAA has seen contracts which would allow the relevant oil company to terminate, in certain circumstances, the contract upon the repeal of the current legislation.
- MTAA considers that it is essential that the Oilcode does not enable some parties to avoid their obligations under existing contractual arrangements.
- The Association is concerned that this has not been secured in the draft Oilcode.

Myth: The Terminal Gate Price (TGP) provisions of the Oilcode will improve wholesale price transparency

- MTAA would welcome the introduction of a nationally consistent approach to TGP arrangements.
- The proposed TGP arrangements will not however improve transparency in wholesale pricing as it allows suppliers to discount the price at the terminal gate. Such a pricing structure is hardly transparent and is little different to the wholesale pricing structure currently in place in the market.
- It is proposed that the TGP provisions will 'allow access for all customers...to petroleum products at TGP'. However while operators may theoretically have access to petroleum products, they may not be able to secure supply of those products. Without access to supply, the TGP provisions are meaningless.

Myth: Dispute resolution provisions of the Oilcode will be of significant benefit to industry participants

- Many operators currently have access to the dispute resolution mechanisms established under the Franchising Code of Conduct.
- The dispute resolution provisions of the Oilcode will not therefore provide additional benefits to many operators. Any ability of a dispute resolution advisor to refer allegations of predatory pricing to the ACCC is of little benefit to affected operators if the ACCC cannot act on those allegations due to the ineffectiveness of the relevant provisions of the Trade Practices Act 1974.

Myth: Others oppose the rights of others to sell below cost, solely for the reason that it might hurt their own business, and also believe that they should be protected from competition

- Independent operators do not oppose below cost selling per se – it is a natural part of an efficient, competitive market. Sustained and targeted below cost selling is not part of normal competition.
- Independent operators therefore do not want, and have never sought, for there to be a ban on below cost selling or to be protected from competition. They do however expect that the Australian Government will ensure that market participants do not abuse their market power or engage in anticompetitive behaviour, including predatory pricing.
- ‘Predatory pricing’ does not mean cheaper prices for Australia’s motorists. There may be some short term gains, but in the long term, prices will rise in response to the reduced level of competition in the market.

Myth: Failure to implement the Oilcode will withhold important benefits from small business operators

- The \$20,000 investment threshold for minimum tenure rights under the Oilcode may also actually deprive many small business operators of access to two of the most important benefits: statutory tenure and protection against unwarranted termination.

Myth: Failure to implement the Oilcode could lead to just two major suppliers in the retail market, with the possibility of “stranded franchisees”

- The Oilcode does not address the issue of the increasing dominance of the two grocer/oil company alliances. It therefore does very little to prevent the move towards a duopoly situation in the market.

Myth: The Trade Practices Act protects consumers from illegal industry practices such as predatory pricing and collusion

- Section 46 of the Trade Practices Act is ineffective and a number of High Court cases have further highlighted the ineffectiveness of the section in relation to predatory pricing matters.
- At the section 46 briefing that the Department of Industry, Tourism and Resources (DITR) organised for industry stakeholders, DITR's own legal advisor admitted that the section did not effectively address predatory pricing and that the Australian Government's proposed amendments to section 46 would not address those shortcomings.
- Without an effective section 46, the Australian Competition and Consumer Commission is powerless to stop market participants from engaging in predatory pricing and/or misuse of market power.
- MTAA would question whether some market participants are using their substantial power in other retail markets to increase their market share and power in the petroleum retailing market. The Oilcode does not prevent this type of cross-subsidisation and the Trade Practices Act also does not adequately address the issue of misuse of financial power.
- As more independent operators leave the market, the level of competition in the industry is likely to diminish and the competitive pricing pressure on market participants will subside. It is unrealistic to assume that the remaining market participants, as profit driven entities, will not seek to raise prices and improve their profitability.

Myth: The implementation of the Oilcode and the repeal of the Sites/Franchise Acts will remove restrictions on competition that impose higher costs on industry and motorists

- Australian motorists currently enjoy low (pre and post tax) prices by world standards.
- Low retail margins do not suggest that the current regulatory environment is imposing high costs on motorists.

Conclusion

MTAA considers that, to be effective, any reform package for the retail petroleum industry must address the following issues:

- the maintenance of retailers' existing rights and obligations under the current regulatory regime (in particular, their existing statutory tenure);
- access to competitively priced wholesale supply of fuel;
- the current structure of the oil industry, from refining through to retailing;
- the increasing vertical and horizontal integration in the retail petroleum industry;

and

- reform of the Trade Practices Act 1974.

While MTAA and its Member bodies are not opposed to change in the oil industry, they cannot support the Government's current proposals, as those proposals do not address the matters identified above.

MTAA would therefore urge you to consider your position on the Government's proposed changes to the regulatory framework governing the retail petroleum industry in light of the industry's concerns about those proposals.

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