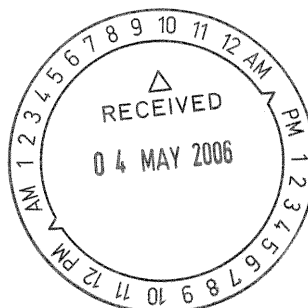




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3 May 2006

Mr Peter Hallahan  
Secretary  
Senate Economics Legislation Committee  
Suite SG.64  
Parliament House  
CANBERRA ACT 2600

Dear Mr Hallahan

### **Inquiry into the provisions of the Petroleum Retail Legislation Bill 2006**

At the public hearing of the Senate Economics Legislation Committee (the Committee) into the provisions of the Petroleum Retail Legislation Bill 2006 in Sydney on 19 April 2006 a number of Senators raised issues concerning the proposed Oilcode. I am writing to clarify some of those issues. They include:

1. The operation of a mandated industry code under the *Trade Practices Act 1974* (the Act)
2. The role of the ACCC in relation to the proposed Oilcode
3. The role of the Dispute Resolution Advisor
4. The Dispute Resolution Advisor's relationship with the ACCC and
5. The remedies available for industry participants under the proposed Oilcode

#### **1. The operation of a mandated industry code under the Act**

The proposed Oilcode will take the form of a prescribed mandatory industry code under section 51AE of the Act. When a mandatory industry code is prescribed under the Act, this has the effect of making the code law. A prescribed mandatory industry code is binding on all industry participants.

EXECUTIVE OFFICE



Section 51AD provides that a corporation must not, in trade or commerce, contravene an applicable industry code. Sub-section (2) of 51AD defines an applicable industry code. In brief, an applicable industry code is one that is declared by regulations under section 51AE, such as the proposed Oilcode. Hence, a breach of the prescribed mandatory industry code constitutes a breach of the Act.

For example the Franchising Code of Conduct is a prescribed industry code under section 51AE of the Act and regulates the relationship between Franchisors and Franchisees. The key objectives of this code are:

- disclosure of prescribed information
- access to cost effective mediation
- fair termination provisions.

The ACCC seeks to ensure that these key objectives are delivered.

## **2. The role of the ACCC in relation to codes mandated under the Act**

The primary role of the ACCC is to administer and enforce the Act and codes mandated under the Act to achieve industry compliance with those codes. In carrying out this role the ACCC uses a combination of enforcement and compliance strategies including educating and working with stakeholders.

Complaints about non-compliance with a prescribed code, that cannot be resolved through the dispute mechanism, should be directed to the ACCC. The ACCC is responsible for administering and enforcing section 51AD for breaches of all mandated codes under the Act.

It is also possible for a supplier, retailer or distributor who has suffered loss or damage as a consequence of a breach of the proposed Oilcode to take private legal action under section 51AD of the Act.

## **3. The role of the Dispute Resolution Advisor under the proposed Oilcode**

It is the ACCC's view that the Dispute Resolution Advisor (DRA) will provide a non-binding dispute resolution system for industry disputes. A key objective of the DRA is to provide a non-legalistic, cost effective, timely and commercially-orientated dispute resolution process.

There are two distinct types of disputes under the proposed Oilcode to which the dispute resolution system applies. The first applies to a wholesale supplier who fails to supply a declared petroleum product to a customer. The second applies to any other dispute arising from Part 2 (terminal gate price) or Part 3 (Fuel re-selling business) of the proposed Oilcode.

With respect to disputes relating to a failure to supply, the DRA may become directly involved in resolving disputes. There is no requirement in the case of such disputes for the parties to first attempt to negotiate a resolution.

With respect to all other issues covered by the proposed Oilcode negotiation between the parties is required before that dispute can be referred to the DRA. If negotiation between the parties fails, the Code provides that the DRA will appoint a mediator to mediate the dispute or provide other such assistance to enable the parties to resolve the dispute in an efficient manner.

#### **4. The DRA's relationship with the ACCC**

The relationship between the DRA and the ACCC will be similar to that of the ACCC and the Office of the Mediation Advisor (OMA) under the mandatory Franchising Code of Conduct.

The majority of the disputes alleging breaches of the Franchising Code of Conduct are resolved successfully by the OMA mediation process. Some of the disputes mediated by the OMA may involve a breach of the Code while others may be more contractual in nature. If the OMA is unable to successfully mediate an outcome and there is a possible breach of the Code, either of the parties in dispute may then refer the matter to the ACCC to enforce the Code and seek the appropriate remedy. The ACCC will also intervene promptly to enforce the Code in circumstances where there is a blatant disregard of the Code or where it appears that unconscionable conduct may have occurred.

Under the proposed Oilcode, the dispute resolution mechanism will apply to the following issues:

- failure to supply a declared petroleum product to a customer
- disputes arising from Part 2 (terminal gate price)
- or Part 3 (Fuel re-selling business) of the proposed Oilcode....

The industry may also raise other issues with the DRA who may pass them on to the ACCC where appropriate. It is also important to note that the dispute resolution mechanism available under the Code does not prohibit anyone from coming directly to the ACCC with concerns.

The ACCC will conduct a number of industry seminars jointly with the DRA which will include explaining the role of the DRA and the ACCC. The ACCC will also provide opportunities for the DRA to join the ACCC in other public education forums.

#### **5. The remedies available for industry participants under the proposed Oilcode**

Companies that breach section 51AD (by failing to comply with a prescribed code of conduct) are subject to a range of remedies under the Act. The court may make Orders including:

- damages
- injunctions to restrain companies from engaging in conduct in breach of a code
- orders requiring corrective advertising or the disclosure of information
- orders declaring a contract to be void or varying the terms of a contract
- orders requiring money to be refunded
- other orders the Court thinks appropriate.

It is hoped that the above has clarified some of the issues raised during the public hearing with respect to the administration and enforcement of the proposed Oilcode.

Please do not hesitate to contact me at (02) 6243 1124 or Nigel Ridgway, General Manager Compliance Strategies Branch, at (02) 6243 1223 if you require any further information regarding our potential role in administering and enforcing the proposed Oilcode.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Cassidy', with a long horizontal flourish extending to the right.

Signed on behalf of  
Brian Cassidy  
Chief Executive Officer