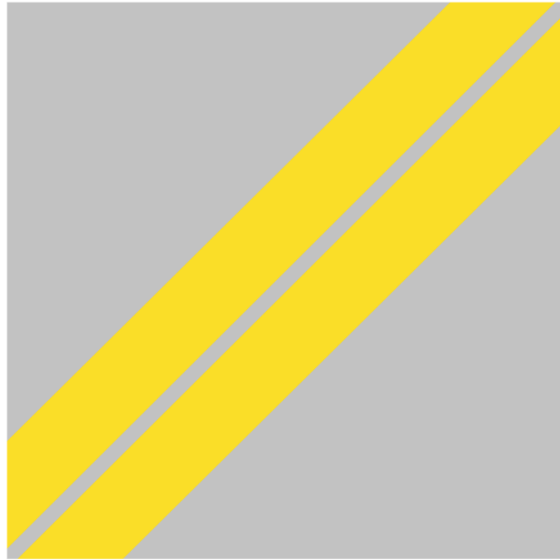


# **Motor Trades Association of Australia**



## **Submission to the Inquiry into the National Fuelwatch (Empowering Consumers) Bill 2008 and the National Fuelwatch (Empowering Consumers Consequential Amendments) Bill 2008**

**July 2008**

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# **1. Introduction**

## **1.1 Overview of the Motor Trades Association of Australia (MTAA)**

MTAA is the peak national representative organisation for the retail, service and repair sector of the Australian automotive industry. The Association represents the interests, at the national level, of over 100,000 retail motor trade businesses with a combined turnover of over \$160 billion and which employ over 308,000 people. The Association is a federation of the various state and territory motor trades associations, as well as the Service Station Association (SSA) and the Australian Automobile Dealers Association (AADA). MTAA also has a number of Affiliated Trade Associations (ATAs), which represent particular sub-sectors of the retail motor trades ranging from motor vehicle body repair to automotive parts recycling. All of the ATAs are composed of the relevant sections of each of the MTAA Member bodies and are represented, at a national level, by MTAA.

The Association's affairs are directed by a Board on which each of MTAA's Member bodies is represented. The role of the Association is to:

- raise awareness in the community of the retail motor trades' significant contribution to the Australian economy;
- convey and promote to governments the interests of the retail motor trades;
- promote improved working relationships and practices with the motor trades' unions;
- on behalf of the Members of the Association, provide information about the trades to governments, the public and the trades' employees;
- work with governments to plan the future of the retail motor trades and their role in the economy and other areas of national planning;
- extensively enhance training and to develop work opportunities within the trades in co-operation with education and training authorities, the unions and government generally; and
- promote and enhance the reputation of the trades with its customers and the general public.

## **1.2 MTAA's interest in the Inquiry**

MTAA's interest in this Inquiry stems from its representation of service station operators, which includes a significant number of independent motor fuel retailers. MTAA is generally supportive of initiatives that provide consumers with additional product information to allow for informed purchasing decisions; such as that which is being proposed in the Fuelwatch scheme. The Association of course is also mindful of the need to ensure that there is no undue compliance burden imposed on its members and that they are not unfairly disadvantaged in the market by regulatory requirements.

# **2. Independent Motor Fuel Retailers**

## **2.1 Operation of the Fuelwatch Scheme**

When the Government announced in April 2008, that it intended to introduce a national Fuelwatch scheme, MTAA stated that it supported any measure that would provide relief to motorists who have suffered from unfair oil company-set petrol prices, but noted that many of the costs borne by motorists were the product of decisions by those oil companies at the wholesale level.

MTAA believes however that a number of elements of the proposed Fuelwatch arrangements, particularly the impact on independent service station operators need to be carefully assessed.

MTAA would not like to see the proposed arrangements result in independent operators being disadvantaged when determining their daily pricing strategy because of their lack of access to the comprehensive and extensive in-house econometric pricing analysis the Association understands is undertaken by, and thus available to, the oil companies and Coles/Woolworths. Without that information, the capacity of independent motor fuel retailers to compete is further eroded because they cannot base their pricing strategy upon the same information available to other retailers.

The difficulty that MTAA then has is that for independent operators the proposed Fuelwatch scheme does not provide independents with the opportunity to lower their pricing in order to be competitive with other sites; in the event that they not get their individual pricing strategy 'correct' on any one day. The current market arrangements allow service station operators to react to competitors' (many of which will be large national chains) pricing strategies in 'real time'.

## **2.2 Compliance Costs**

MTAA is concerned with the potential costs involved for independent motor fuel retailers in the establishment and on-going operation of the Fuelwatch scheme. Most independent motor fuel retailers are already operating on incredibly tight margins and any increase in operating costs could have a detrimental affect on their business. A number of the small independent motor fuel retailers may not have the required information technology equipment and services to lodge their prices online with the Australian Competition and Consumer Commission (ACCC) and such an investment may prove burdensome on their business.

MTAA acknowledges that, under the proposed Fuelwatch scheme, there is also going to be a toll-free number, which can be called by businesses to lodge their daily prices with the ACCC. As the Association understands matters, however, there has been no clear indication of how this telephone service will operate. It may prove to be quite time consuming for businesses if it is operated as a call centre, as one would anticipate there would be a large influx of calls as the time, on any given day, approaches 2.00 pm. This could lead to lengthy waiting periods in telephone queues, which would require a staff member to be removed from their normal duties; something which has flow-on effects on staffing arrangements for the operator.

## **2.3 Proposals to Assist Independent Operators**

MTAA has long supported the role of independent operators in the retail petroleum market. The Association believes that a diversity of outlets/ownership in the retail market will ensure that the market remains competitive; thus delivering the best possible outcome for motorists. The Association is therefore concerned that in some instances under the Fuelwatch proposal, smaller independent operators could find themselves in a situation of having posted a price above the general market price in their area and not being able to then react to that situation.

To eliminate the difficulties that such a situation might have on independent operators MTAA believes that Fuelwatch should allow for one intraday pricing adjustment by independent operators. This would allow independents to respond to pricing strategies of the larger fuel retailers. This would not only be of benefit to consumers, as a more competitive price could be offered, but would allow for a more even distribution of market share rather than independents being priced out of the market for a 24 hour period. Furthermore, the Association does not believe that intraday price reductions would result in a situation whereby sites would open with a high price then lower that price during the course of the day. MTAA believes the ability for independent fuel retailers to lower their price once per day would be of benefit to consumers and those operators.

Such an arrangement could also provide smaller operators with some flexibility in the face of targeted pricing strategies of the larger market participants.

The criteria which an independent motor fuel retailer must meet to be granted the one price change a day, is an issue which would require some further consideration. Industry consultation would also be necessary to determine the more specific details of this proposal, such as at what time the price change would be allowed to occur and the processes involved for lodging that price change. For example it could be that an 'independent' service station operator could be able to notify by mid-day its intent to lower a price which could then be effective for the remainder of that 24 hour period.

It should also be noted that independent fuel retailers who have relatively small volumes in actual fuel sales, could become financially unviable if their ability to react to market changes is restricted. MTAA understands that its Member Association, the Service Station Association, supports the introduction of a volume threshold, above which sites would be captured by the Fuelwatch arrangements. MTAA is aware that the threshold proposed by SSA is 3.5 million litres of fuel sales per year. MTAA could support the introduction of such a threshold.

## **2.4 Regional and Rural Implications**

MTAA understands from the ACCC's appearance before the Senate Economics Committee on 5 June 2008 that the Government has advised the ACCC that should a regional council wish to participate in the Fuelwatch scheme, it will need to apply to the Commission for inclusion. Upon receipt of a council's application, the ACCC will review the number of service stations and determine the level of competition within the area and provide advice to the Minister whether the area should be included within the scheme. MTAA is of the view that the criteria the ACCC uses to determine whether particular retailers ought to be included in the Fuelwatch scheme or not, needs to be made publicly available.

The criteria needs to be open for public scrutiny so that it may be determined whether items such as the number of fuel retailing sites, the location of those sites and the proximity of one site to the next, are appropriate for the ACCC to base its recommendation.

## **3. Price Transparency and Discounting**

### **3.1 Price Transparency**

MTAA believes the key to creating fair and transparent motor fuel pricing is to have true transparency at the wholesale level. MTAA believes that optimal benefits to society are derived from outcomes that encourage diversity in market competition and choice. A starting point to achieve those benefits is outcomes that support a freedom to compete in the market.

The Association believes that a transparent and competitive wholesale fuel market delivers the best outcomes for all participants involved in fuel reselling and, indeed, for consumers. In the Association's view the current Terminal Gate Pricing (TGP) arrangements under the mandated Oilcode, rarely offer an accurate representation or reflection of actual wholesale buying prices. This is due to the fact that the vast majority of motor fuel reseller's purchases are not made at TGP nor do the regulatory structures around TGP allow for the 'offset' of any rebates, that might subsequently be paid to a reseller; in the event that the reseller does purchase at TGP.

MTAA believes that any introduction of a scheme which supports retail price transparency needs to be accompanied by a scheme which introduces transparency at the wholesale pricing level. Without that arrangement in place, any ‘discounts’ offered to large retailers will not necessarily be passed on to motorists, but will in all likelihood simply be captured by the retailers.

The other essential element of ensuring a competitive retail petroleum market is a strong Trade Practices Act and in particular a strong section 46 dealing with misuse of market power and predatory pricing. MTAA notes that the Government has introduced legislation to strengthen aspects of section 46.

### **3.2 Discounting**

MTAA is of the view that the Fuelwatch scheme will have little to no effect on the impact of discounting, in terms of the shopper-docket programs. The Association believes Coles and Woolworths will continue to operate these programs as presently.

MTAA is concerned that the combination of the operation of those schemes and the limitations placed on independent operators being able to react to market pricing strategies means that it is likely that the large retailers will be able to further consolidate their position in the market.

Currently small operators who, for whatever reason, find themselves ‘out of the market’ at a given point in time can immediately adjust their pricing to meet the market. That flexibility is not currently provided within the proposed Fuelwatch scheme. MTAA is concerned that through the use of national pricing strategies, larger retailers will selectively target, in their pricing arrangements, independent retailers. The larger retailers will of course be able to ‘average’ the cost of such action across their national networks. The independent operator will be powerless to react, in a market sense, to that pricing strategy.

Consequently, they would be locked into selling fuel at a price that was set without the benefit of access to the type of information available to their larger competitors. MTAA believes that the Government needs to ensure that any measures it introduces to assist transparency in the retail petroleum market do not adversely impact on smaller and independent operators.

## **4. Economic analysis of the Fuelwatch Scheme**

MTAA is unable to comment on any impact that the proposed Fuelwatch scheme might have on motorists or the price of fuel. MTAA is of the view that should the Government require data on the potential impacts of Fuelwatch it could commission further independent analysis. Any such analysis should consider the fact that the Western Australian market has one refiner/marketer and that in the eastern states, where the large population base is, the market is structured quite differently – with a larger number of suppliers and in some markets a higher proportion of independents and/or a stronger market presence by the two major supermarket retailers in the retail petroleum market.

## **5. Conclusions and Recommendations**

MTAA generally supports the introduction of initiatives designed to allow consumers greater access to information, so that they may make more informed product purchasing decisions. The Association is therefore anxious to ensure that the introduction of this Government initiative is not detrimental to its members; particularly independent service station operators.

MTAA therefore recommends that the Committee take into consideration:

- that independent service station operators could be disadvantaged when determining their daily pricing strategy because of their lack of access to the comprehensive and extensive in-house econometric analysis undertaken by the oil companies and Coles/Woolworths;
- the potential costs involved for independent motor fuel retailers in the establishment and on-going operation of the Fuelwatch scheme, with particular attention to the potential requirement for I.T. investment and additional labour;
- that MTAA believes that any introduction of a scheme which supports retail price transparency needs to be accompanied by a scheme which introduces transparency at the wholesale pricing level;
- that a possible solution to counter the disadvantages facing independent motor fuel retailers, in relation to lodging a competitive price 16 hours in advance, is to allow independents one price change, to meet the market, within the 24 hour period;
- that fuel retailers who sell less than 3.5 million litres per year be excluded from the Fuelwatch scheme;
- that MTAA does not believe that the Fuelwatch scheme will have any impact on shopper-docket schemes;
- that MTAA is concerned that through the use of national pricing strategies, there is potential for larger retailers to selectively target, in their pricing arrangements, independent retailers. Thus MTAA believes that there needs to be strong provisions within the Trade Practices Act dealing with misuse of market power and predatory pricing behaviour.

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**11 July 2008**