



Government of **Western Australia**
Department of **Commerce**
Consumer Protection

CONSULTATION

OPTIONS PAPER

REGULATION OF FUEL PRICE BOARDS IN WESTERN AUSTRALIA

October 2013



TABLE OF CONTENTS

1. INTRODUCTION
2. NATURE OF PROBLEM
3. REGULATION UNDER THE AUSTRALIAN CONSUMER LAW
 - 3.1 Generic ACL provisions
 - 3.2 Information standards
4. SPECIFIC REGULATION OF FUEL PRICE BOARDS
 - 4.1 Regulation in Western Australia
 - 4.2 Regulation in New South Wales
 - 4.3 Regulation in South Australia
 - 4.4 Proposed national information standard
5. OPTIONS
6. IMPACT ANALYSIS
7. SUBMISSIONS

1. Introduction

Fuel price boards are commonly displayed by the roadside of fuel stations across Australia. Traditionally their main purpose has been to provide consumers with information about prices of different fuels. However, in recent years they have played a greater role in the marketing of fuel, and in particular the promotion of fuel discount schemes.

On 6 July 2012, Commonwealth, State and Territory Ministers responsible for consumer protection agreed to consider a national approach to the display of information on fuel price boards. The agreement by Ministers was based on concerns that had been raised by Australian consumers (supported by complaints data and consumer surveys) about the content of price information on fuel price boards and how this information was displayed.

Amongst other things, consumers reported: confusion about prices on fuel price boards that made it difficult to make price comparisons between retailers; paying higher prices than that originally observed on price boards; and disputes with retailers about price differences. One of the key concerns stemmed from advertising of discounted prices.

Ministers responsible for consumer affairs around Australia are seeking views from stakeholders on a proposed national standard for fuel price boards that would allow only undiscounted prices to be displayed, as well as requiring all prices to be of equal prominence. Feedback from that process will inform Ministers in deciding what action it should take at the next meeting of the Minister's Consumer Affairs Forum (CAF) in late 2013. The purpose of this paper is to obtain views from the public as to whether Western Australia should support the introduction of the proposed national information standard. Additionally, this paper is seeking views on whether Western Australia should also retain, concurrently, its own regulatory requirements in relation to the use of sign boards in regional areas.

2. Nature of problem

In a consultation paper released by the Commonwealth Treasury in December 2012¹ Australian Consumer Law regulators, including the ACCC, are reported to have received complaints from Australian motorists in relation to how discount prices are displayed on fuel price boards. The concerns related to the prominent manner in which discounted prices are often displayed to passing motorists on fuel price boards, and the less prominent information that is provided about the associated terms and conditions, such as holding a valid shopper docket or buying a minimum volume of fuel.

¹ *Consumers and Fuel Price Boards*

Shopper docket discount schemes have been established in Australia for about 15 years and while they may be well known, consumers still report concerns about discounted prices on fuel price boards being confusing or misleading².

Discounted prices often appear as the most prominent price displayed on fuel price boards, sometimes appearing in illuminated text, larger font size or a different colour than the display of the undiscounted price. Potential confusion is compounded where discounts are restricted to particular fuels.

It has also been reported that some fuel retailers use combinations of different sized price boards to separately display the discount price for fuel and the undiscounted price, in a smaller less prominent font size. Concerns have also been expressed about the way in which terms and conditions relevant to discounted prices are displayed, such as requiring motorists to hold a valid discount voucher, to spend a minimum amount or to purchase a minimum volume of fuel, or, in some cases, a complete failure to display any terms and conditions.

In early 2012, inspections of over 300 NSW fuel stations by NSW Fair Trading discovered that a number of stations only advertised prices that applied with cash back rebates, shopper dockets or membership/voucher schemes³. In response to a survey conducted by NSW Fair Trading in July 2012, 90 per cent of over 1300 respondents agreed that prices displayed on fuel price boards should be free of any special terms and conditions.

A further concern with the way in which discounted prices are displayed is the circumstances in which fuel price boards are intended to be read ie. by passing motorists who have limited opportunity to safely assess the information displayed including any terms and conditions attached to discounted prices.

In summary, the concerns are:

- how discounted prices, such as “shopper docket” discounts, are displayed and the prominence of those reduced prices relative to the terms and conditions upon which they are based;
- differences between prices displayed and the actual prices charged;
- the display of only one or two fuels on price boards;
- lack of visibility of price boards;
- lack of consistency in the way information is displayed; and
- the display of prices for fuel that is out of stock.

² NRMA 2012, *Half caught out by fuel price boards – NRMA Survey*, media release 6 July 2012.

³ State member for Tweed, Geoff Provest MP, *NSW Government cracks down on misleading petrol advertising* Media Release, 23 March 2012.

3. Regulation under the Australian Consumer Law

3.1 Generic ACL provisions

The Australian Consumer Law (ACL) is a nationally consistent consumer law that is applied as a law of Western Australia under the *Fair Trading Act 2010* (WA). In Western Australia it is referred to as the Australian Consumer Law (WA).

Under the ACL, consumers have the same protections, and businesses have the same obligations and responsibilities across Australia. The ACL protects consumers through a range of ways, including: regulating the conduct of businesses (eg. misleading advertising); providing statutory consumer guarantees for goods and services; restricting the sale of unsafe goods; and setting information standards for goods to ensure that consumers are provided with information to aid decision making.

In addition to general protections regulating conduct, the ACL includes a range of specific protections on a range of matters, including the making of false or misleading representations in relation to price. It is unlawful for a person to make a statement in trade or commerce that is misleading or deceptive or is likely to mislead or deceive. An omission of relevant information may also be misleading or deceptive depending on the circumstances in which it occurs. A breach of this provision of the ACL carries a maximum penalty of \$1.1 million for bodies corporate and \$220,000 for persons other than bodies corporate.

3.2 Information standards

The ACL provides the responsible Commonwealth Minister with a power to prescribe standards about the information required to be provided by suppliers. An information standard can be made in respect of any subject matter and not necessarily for the purpose of consumer safety.

Although the ACL contains generic provisions to deal with misleading or deceptive conduct, the value of an information standard under the ACL is that it not only assists consumers in decision making, but also provides certainty for traders who may otherwise have a different view about the interpretation or effect of information that is displayed. Having an information standard can obviate the need for courts to be involved in determining whether or not information and the form in which it is displayed constitutes a breach of the generic provisions of the ACL. The value of an information standard is that by imposing a positive obligation on how information should be provided there is no need to rely on the deterrent effect of a less certain generic prohibition against making false or misleading representations.

Remedies available for a breach of an information standard requirement include injunctions, damages, compensatory orders, non-punitive orders and adverse publicity orders. Civil pecuniary penalties of up to \$1.1 million for bodies corporate and \$220,000 for persons other than bodies corporate can also apply. Disqualification orders, infringement notices, redress for non-parties and public warning notices are also available.

4. Specific regulation of fuel price boards

At present, only Western Australia, New South Wales and South Australia have specific laws regulating the usage and content of fuel price boards. Other jurisdictions rely on general consumer protection laws, principally the Australian Consumer Law.

4.1 Regulation in Western Australia

In Western Australia the *Petroleum Products Pricing Act 1983* (PPP Act) requires fuel retailers within prescribed areas to notify their next day's fuel prices on a daily basis. The purpose of the regulation is to increase price transparency at the wholesale and retail levels of the Western Australian fuel market and create price certainty for WA motorists, allowing them to make informed decisions on their fuel purchases. On any given day, consumers are able to access fuel price information for the following day from FuelWatch: a price monitoring service created and administered by the WA Government under the PPP Act. Prices are accessible via a range of methods including SMS, on-line, television and newspapers.

In 2001, Western Australia introduced the Petroleum Products Pricing Regulations 2000 under the PPP Act which requires fuel retailers within certain town and regional boundaries to display their fuel prices in a suitable position and sufficiently illuminated, if necessary, to enable the description and price of each fuel to be clearly legible to passing motorists. Where three or more fuel types are available for sale, the prices for at least three types must also be displayed, one of which must be unleaded petrol and the other LPG (if both are available). Where a retailer sells fewer than three fuel types, the prices for all fuels available must be displayed. These requirements were introduced to further encourage price transparency and competition in regional areas. Price signs for fuels were not mandated for the Perth metropolitan area as almost all metropolitan retailers already displayed fuel price boards at the time.

4.2 Regulation in New South Wales

Since March 2000 fuel retailers in NSW have been required to display the price of unleaded fuel on one or more signs, and those signs must be positioned, and lit if necessary, so that they can be readily seen by approaching motorists.

The relevant Fair Trading regulations were amended in 2012 to reflect changes in fuel consumption patterns so as to require retailers to display the price of at least four fuels (if four are sold) including LPG and diesel (if sold) as well as the top two selling fuels for that outlet. The displayed price for each fuel must be the undiscounted price without any discounts or special offers. The 2012 amendments came into force on 1 September 2013.

4.3 Regulation in South Australia

In South Australia the *Fair Trading (Fuel Industry Code) Regulations 2013* came into force on 1 October 2013. The regulations prohibit fuel retailers from displaying a discounted fuel price on price boards. The regulations also prescribe the order in which prices on fuel bowsers and price boards must be amended when price differences occur, to ensure that the price on the bowser is always equal to or lower than that displayed on a price board.

4.4 Proposed national information standard

The national information standard for fuel price boards that is currently being considered was informed by responses to a consultation paper that was released by the Commonwealth Treasury in December 2012⁴. The proposed information standard has the following features:

- use of fuel price boards would not be compulsory – the standard would only apply to fuel retailers that maintain a fuel price board;
- only undiscounted prices can be displayed (discounted offers can be displayed but not the discounted price);
- all prices displayed must be of equal prominence and be able to be readily seen by motorists approaching the fuel station at any time that fuel station is open for business;
- only in-stock fuel prices can be displayed; and
- transitional arrangements would apply to give retailers a reasonable time in which to comply (6-12 months).

Standardisation of information on fuel price boards along the lines currently being considered, is intended to help passing motorists identify more easily the price they will pay for fuel before making their decision to stop. Consumers in possession of discount vouchers, or who are otherwise entitled to claim a discount, would know that the board is displaying the undiscounted price enabling them to calculate the actual price they will pay. Even where a consumer is unable to make that calculation, they can be assured that they will not be charged more than the price displayed.

⁴ *Consumer and Fuel Price Boards* op cit

The proposed national information standard:

- will not require fuel retailers to display a fuel price board;
- will not require fuel retailers to display a minimum number of fuels; and
- will not prohibit retailers from including details of fuel discount schemes on signboards.

Although the Commonwealth Minister has the legislative power to prescribe standards, under the terms of the *Intergovernmental Agreement for the Australian Consumer Law*, amendments to the ACL (which includes making or amending information standards) are determined by a voting arrangement which require amendments, other than minor or inconsequential amendments, to be approved by the Commonwealth Government and four other parties, of which at least three must be States.

Commonwealth, State and Territory Ministers responsible for consumer protection have yet to formally consider and vote on the proposed information standard.

5. Options

The Department of Commerce is seeking views on the proposed national information standard for fuel price boards and whether Western Australia's existing regulatory requirements in relation to price boards should be maintained so as to operate concurrently, or whether these requirements should be repealed. Importantly, there would be no change to the requirement for fuel retailers to provide daily price notifications to the WA Government's FuelWatch service under any of the three options below.

The three options are:

Option 1: Maintain the status quo (ie. retain Western Australia's existing regulatory requirements in relation to fuel price boards)

OR

Option 2: Support the introduction of the proposed national information standard and cease existing price board requirements in the regions.

OR

Option 3: Support the introduction of the proposed national information standard and maintain Western Australia's existing price board requirements in the regions.

6. Impact analysis

	Option 1	Option 2	Option 3
Regional fuel retailers offering fuel discounts	No change	<ul style="list-style-type: none"> • Would no longer be required to maintain a fuel price board • Would not be permitted to display discounted prices if a fuel price board is displayed. • Possible compliance costs to change existing signage to comply with new requirements. 	<ul style="list-style-type: none"> • Would still be required to maintain a fuel price board • Would not be permitted to display discounted prices. • Undiscounted prices of a number of fuels would still have to be displayed. • Possible compliance costs to change existing signage to comply with new requirements.
Metropolitan fuel retailers offering fuel discounts	No change	<ul style="list-style-type: none"> • Would still <u>not</u> be required to maintain fuel price boards • Would not be permitted to display discounted prices if a fuel price board is displayed. • Possible compliance costs to change existing signage to comply with new requirements. 	<ul style="list-style-type: none"> • Would still <u>not</u> be required to maintain fuel price boards • Would not be permitted to display discounted prices if a fuel price board is displayed. • Possible compliance costs to change existing signage to comply with new requirements.
Regional fuel retailers <u>not</u> offering fuel discounts	No change	<ul style="list-style-type: none"> • Would no longer be required to maintain a fuel price board 	<ul style="list-style-type: none"> • Would still be required to maintain a fuel price board. • Undiscounted prices of a number of fuels would still have to be displayed.
Metropolitan fuel retailers <u>not</u> offering fuel discounts	No change	No impact	No impact
Regional consumers with discount vouchers	No change	<ul style="list-style-type: none"> • Fuel retailers may no longer maintain fuel price boards. • Discount schemes could continue to be displayed on fuel price boards, however all prices displayed would have to be undiscounted prices. 	<ul style="list-style-type: none"> • Discount schemes could continue to be displayed on fuel price boards, however, all prices displayed would have to be undiscounted prices. • Undiscounted prices of prices of a number of fuels would still have to be displayed by the retailer.

	Option 1	Option 2	Option 3
Metropolitan consumers with discount vouchers	No change	<ul style="list-style-type: none">Discount schemes could continue to be displayed on fuel price boards, however all prices displayed would have to be undiscounted prices.	<ul style="list-style-type: none">Discount schemes could continue to be displayed on fuel price boards, however all prices displayed would have to be undiscounted prices.
Regional consumers without discount vouchers	No change	<ul style="list-style-type: none">Fuel retailers may no longer maintain fuel price boards.	<ul style="list-style-type: none">Undiscounted prices of prices of a number of fuels would still have to be displayed by the retailer.
Metropolitan consumers without discount vouchers	No change	No impact	No impact

7. Submissions

The Department of Commerce is interested in receiving your comments. To make an effective submission it is recommended that you:

- provide a clear and concise submission outlining your opinions, the reasons for them and your suggestions;
- substantiate your points of view with evidence or examples to make your submission more effective;
- where references to any factual data such as reports or statistics are provided, include the author's name, the name and date of the publication, where the information or article can be located and the relevant page references; and
- ensure your submission addresses only matters that relate to fuel price board signage.

Submissions should be addressed to:

Consultation on Fuel Price Boards
Strategic Policy & Development
Consumer Protection Division
Department of Commerce
Locked Bag 14
Cloisters Square WA 6850

Or may be emailed to the Department at responses@commerce.wa.gov.au

For all inquiries please contact the Consumer Protection advice line on 1300 30 40 54.

Closing date for submissions is Friday 25 October 2013.

Department of Commerce

Consumer Protection Division

219 St Georges Terrace, Perth, Western Australia 6000

Advice Line: 1300 30 40 54

Admin: 9282 0777

Facsimile: 9282 0850

Email: consumer@commerce.wa.gov.au

National Relay Service: 13 36 77

www.commerce.wa.gov.au/consumerprotection

Regional offices

Great Southern

Unit 2, 129 Aberdeen St
ALBANY WA 6330
PO Box 832
ALBANY WA 6331
Ph: 9842 8366

South West

8th Floor, 61 Victoria St
BUNBURY WA 6230
PO Box 1747
BUNBURY WA 6231
Ph: 9722 2888

Mid West

Shop 3, Post Office Plaza
50-52 Durlacher St
GERALDTON WA 6530
PO Box 1447
GERALDTON WA 6531
Ph: 9920 9800

Goldfields/Esperance

Suite 4, 37 Brookman St
KALGOORLIE WA 6430
PO Box 10154
KALGOORLIE WA 6433
Ph: 9026 3250

North West

Shop 40, Karratha Village Shopping
Centre
Sharpe Ave
KARRATHA WA 6714
PO Box 5
KARRATHA WA 6714
Ph: 9185 0900

Kimberley

Woody's Arcade
7/15 Dampier Terrace
BROOME WA 6725
PO Box 1449
BROOME WA 6725
Ph: 9191 8400