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By email: Melissa.Campaniello@nt.gov.au

Dear Ms Campaniello

ACCC response to a question from the Public Accounts Committee of the Northern Territory Legislative Assembly on 5 May 2020

Thank you for your email of 6 May 2020 regarding the question on price mechanisms raised by the Chair of the Public Accounts Committee of the Northern Territory Legislative Assembly, Mrs Kate Worden MLA, at the public hearing on 5 May 2020.

A response to her question is below.

The Australian Capital Territory *Fair Trading (Fuel Prices) Act 1993* permits the government to determine the maximum base wholesale price, retail price and retail margin.

Do any other jurisdictions have similar price control mechanisms? [NB, NT has Price Exploitation Prevention Act 1949 that may be applicable]

Have any of those mechanisms ever been used?

The ACCC is aware that some state jurisdictions have legislation relating to price controls or regulation of petrol products. Some of these relate specifically to fuel prices. Others have application that is more general. Some also apply only at times of emergencies.

The legislation that we are aware of includes:

- **Western Australia** - the *Petroleum Products Pricing Act 1983*. It was introduced to prevent excessive prices being charged for wholesale and retail petroleum products by allowing for the fixing of maximum prices by the Commissioner.
- **Queensland** - the *Liquid Fuel Supply Act 1984*. It gives the Minister for Natural Resources, Mines and Energy the power to, among other things, fix the maximum price for the sale of refined petroleum products during periods of emergency.
- **South Australia** - the *Prices Act 1948*. If goods or services are declared (by proclamation) under section 19, the Minister for Consumer and Business Services may make an order fixing maximum prices in relation to those declared goods or services.

- **Victoria** - the *Fuel Emergency Act 1977*. During periods of emergency, the Governor in Council may declare a state of emergency exists in relation to any kind of fuel where that fuel is, or is likely to become, unavailable to meet the reasonable requirements of the community. During a period of emergency, the Minister has the power, among other things, to place conditions on the supply, distribution and sale of fuel.
- **Tasmania** - the *Petroleum Products Emergency Act 1994*. Under this legislation, the Governor can, by proclamation, declare that an emergency exists or is likely to exist where there are likely to be shortages of petroleum products in the State. The Minister may then give directions in relation to the production, supply, distribution and sale of the petroleum products in respect of which the period of emergency restriction is in force.

In response to the question about whether these mechanisms have ever been used, the ACCC understands that they have been, and are currently being, used in Western Australia.

Between April 1983 and April 1993, retail petrol prices in various regions of Western Australia were controlled by way of an order issued by the Commissioner under the *Petroleum Products Pricing Act 1983*.

The current Western Australian 24-hour rule at the retail level, and the terminal gate price arrangements, are also currently implemented under that Act. Under these rules, retailers must notify the Commissioner of their retail fuel prices for the following day by 2.00 pm, and keep notified prices unchanged for 24-hours from 6.00 am. With respect to terminal gate prices (TGPs), the legislation requires that they be set according to a specific formula and are fixed for a minimum of 24 hours.

We are not aware of any other instances where these price control mechanisms have been used in the states or territories, but that does not mean that they have not been used. For a comprehensive answer you may wish to consult with state jurisdictions.

Commonwealth arrangements

At the Commonwealth level, there are no powers to effectively regulate retail prices. Under Part VIIA of the *Competition and Consumer Act 2010 (CCA)*, price notification requirements may be applied to 'notified services' and 'declared persons'. These are general provisions that may apply to participants in selected industries and at present are not applied to the sale of petrol products

Under these provisions, where a declared person proposes to increase prices, it must notify the ACCC of the proposal. The ACCC must then consider the proposal and then notify the declared person whether it objects to the proposed price increase. The ACCC does not have the role of approving the proposed price increase.

This approach was used in the past to regulate wholesale petrol prices under the predecessor to Part VIIA of the CCA. Prior to 1 August 1998, the major oil companies were declared under section 22 of the *Prices Surveillance Act 1983* for sales of all grades of petrol and diesel. Under this section, the declared companies were required to formally notify the ACCC of proposals to increase wholesale prices above the previously endorsed wholesale price. Under the arrangements developed for the oil companies, the ACCC calculated maximum wholesale prices based on import parity and endorsed proposed prices by the oil companies provided they were not in excess of these calculated prices.

The Australian Government announced the deregulation of wholesale petrol prices effective from 1 August 1998. The Government's statement noted that:

Price surveillance of petrol prices and the setting of a maximum endorsed wholesale price has had an adverse effect on the retail petrol market. In the capital cities, the maximum endorsed wholesale price has acted as a target for prices at the end of a

discount cycle. In the country, the maximum endorsed wholesale price has acted as a price floor underwriting the price paid by country consumers.

Does the very high GIRD in the ACT show that such measures do not work, or is it due to other factors?

We understand the premise of the question is that the ACT Government has made maximum price determinations under its legislation. As noted above, while legislation provides for such determinations, we understand that no such determinations have been made. Should we have misunderstood the question we would be pleased to assist upon further clarification. We otherwise provide further information below that may assist.

The ACCC uses the concept of gross indicative retail differences (GIRDs) to be the difference between average retail prices and average wholesale prices. There are four broad components to GIRDs: freight, operating costs at the retail level, retail margins, and GST at the retail level. Examples of the calculation of these components in various locations are included in the ACCC's regional petrol market studies, available at: <https://www.accc.gov.au/publications/petrol-market-studies>.

It is important to note that GIRDs are a broad indicator of gross retail margins, and should not be confused with actual retail profits. GIRDs reported by the ACCC are averages in various locations over time. The level of prices, costs and profits vary significantly between retail operations and not all retail petrol sites will be achieving the calculated gross margins. Some will be achieving higher gross margins, others lower.

As noted at the Public Hearing on 5 May 2020, high relative prices and GIRDs may be influenced by the lags between changes in TGPs and changes in retail prices, which are influenced by the frequency of retail site turnover of fuel. The degree of competition in a location is also a factor in how quickly there are changes in retail prices. An additional factor that may be exacerbating the lag between changes in TGPs and changes in retail prices is that, in the current COVID-19 environment, with the community encouraged to stay and work from home, there are fewer motorists purchasing fuel from retail sites.

In 2019, there were two reports prepared on petrol prices in the ACT. One was a report of the ACT Legislative Assembly Select Committee on Fuel Pricing and the other was a report prepared by the ACT Independent Competition and Regulatory Commission (ICRC).

The ICRC report noted the following reasons for higher petrol prices in Canberra compared with Sydney:

- delivery costs of fuel are higher in Canberra
- retail operating costs in Canberra appear to be higher
- profit margins of retailers are higher in Canberra than in Sydney and the towns around Canberra.

The ICRC report stated that relatively higher profit margins in Canberra likely reflect weaker competition in Canberra. Similar observations were made by the ACT Legislative Assembly inquiry.

These factors, along with lags, have been contributing to the relatively high GIRDs in Canberra.

What are the costs and benefits of such price control mechanisms?

Price controls are generally used in industries or sectors where competitive pressures are not sufficient to achieve efficient prices and protect consumers. For example, the ACCC has previously expressed concerns about the selling of monopoly or near monopoly assets

without appropriate access and/or pricing controls, such as Part IIIA undertakings or robust state or territory access regimes. When considering price control type mechanisms, it is important that price regulators fully understand the cost structure of the industries on which price controls are to be set.

There are over 7700 retail fuel sites in Australia that operate under a range of business models. The variety of business models and ownership structures mean that there are different pricing strategies and offerings among retail sites, as well as different capital structures and cost bases.

Benefits

A benefit of price controls in the context of the retail fuel market may be that they give the community confidence in how prices are being set. They may also lead to less variation in prices between retail sites (which some may regard as a benefit).

Costs

It can be difficult to determine the appropriate level of prices in an industry that has a range of business operations. If the price is set too low, it may drive some retailers out of business. Depending on their location, this may reduce the availability of fuel to some consumers or mean they have to drive further to obtain it.

If the price is set too high, prices may be higher than they otherwise would be without the controls and consumers, particular those that are more price sensitive, may be worse off. This was broadly the conclusion of the Australian Government when they removed the regulation of wholesale petrol prices in 1998.

There are additional costs for the price regulator, associated with the administration of the price controls, as well as compliance costs in ensuring that the relevant firms are abiding with the arrangements. Regulation also imposes costs on industry.

Generally speaking, absent market failure, competition between market participants is the better mechanism to determine efficient prices for the ultimate benefit of consumers. In seeking to address market failure or deliver upon other policy objectives, governments and legislators should carefully assess the costs and benefits of such proposals.

If you require further information about any of the above please do not hesitate to contact me.

The ACCC has no objections to this letter being published on the Public Accounts Committee's website.

Yours sincerely



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Infrastructure and Transport – Access and Pricing