



Motor Trades Association of Australia

The Secretary
Select Committee on Fuel and Energy
PO Box 6100
Parliament House
CANBERAA ACT 2600

SENATE SELECT COMMITTEE – FUEL AND ENERGY

MTAA is the peak national representative organisation for the retail, service and repair sector of the Australian automotive industry. As part of its representative role, the Association represents the interests, at a national level, of over 100,000 retail motor trade businesses which have a combined turnover of over \$160 billion and employ more than 308,000 people. MTAA is, therefore, the largest 'stand-alone' small business association in Australia. 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 farm machinery dealers to automotive parts recycling.

MTAA has for many years been a major stakeholder in the development of Australian fuel and energy policies and has an ongoing interest in the broad range of fuel and energy issues Australia faces. This submission is informed by the Associations' extensive insight and understanding of how the Australian fuel and energy industry has operated and by the experiences and reports of our many service station operators themselves. As such, this submission must be considered as an accurate assessment and illustration of some of the factors which influence the fuel and energy markets in Australia. MTAA cannot, however, comment on each individual Term of Reference in detail. This submission will, therefore, be focused on those aspects of the Terms of Reference which are of particular interest to MTAA and its Members.

1(b) – The role and activities of the Petrol Commissioner

In 2008 MTAA cautiously welcomed the appointment of the Petrol Commissioner. It is the understanding of MTAA that the Petrol Commissioner would, on behalf of the Australian Competition and Consumer Commission (ACCC), oversee the monitoring of petrol prices (including LPG and diesel) and report to the Government on the Commission's findings. In addition to these duties, the Association understands that the Petrol Commissioner has to examine buy-sell arrangements and monitor the use, leasing and sharing of import terminals.

MTAA understands that the powers of the Petrol Commissioner are no different to those of any other Commissioner. It is the role of the Commission to enforce the *Trade Practices Act 1974*. MTAA has long argued for a strengthening of *Trade Practices Act 1974*. MTAA also supports the continuing monitoring of both wholesale and retail petrol prices.

MTAA is, and always has been, concerned about the lack of transparency and competition at the wholesale level of the petrol market. The appointment of a Petrol Commissioner has done little to allay those concerns.

1(c) – The operation of the domestic petroleum, diesel and gas markets, including the fostering of competition and provision of consumer information

Retail competition

MTAA strongly supports the view that the best outcomes for consumers and society are delivered by strong competition in the marketplace. The Association believes that, to achieve this with regard to the Australian retail fuel industry, a diversity of outlets/ownership with freedom of access to a number of competing and competitive suppliers is required.

In MTAA's view, the retail petroleum market is highly complex and, in our view, highly concentrated. The significant structural changes which have occurred in the retail petroleum sector over the last decade, including the growing market share of Coles and Woolworths, the trend towards vertical integration and the more recent trend towards retail horizontal integration, mean that it is imperative that any reform package for the sector includes appropriate amendments to the misuse of market power provision contained in the *Trade Practices Act 1974* (including predatory pricing arrangements). This will help ensure the Act can provide for effective redress against all types of anti-competitive behaviour, including predatory pricing and the misuse of financial power. MTAA has a long history of support and advocacy for strengthening the Trade Practices Act to ensure the Australian fuel market and its conditions characterise a level playing field and for the existence of stable and fair rules for activity between all parties.

MTAA records here its concern that shop-a-docket promotions which provide large discounts (up to 20 cents per litre) for motorists who purchase other goods (such as wine) from supermarket owned outlets are contributing to the decline in the number of independent retail sites. Non-supermarket branded retail outlets cannot compete against service stations where motorists can present a docket and secure up to 20 cents per litre off the price of the fuel. Either the supermarket outlets are making a substantial loss on those retail sales (and thus one would wonder how they remain in business; if not for cross-subsidisation) or the wholesale price paid by those sites is significantly lower than that available to franchised and independent operators. This distortion of the retail market is of real concern to the Association and is not in our view conducive of long-term sustainable retail competition.

MTAA also believes that the Oilcode, in its current form, does not provide a framework that ensures that the current tenuous level of competition in the market (particularly from independents) will continue in the long term. This is because the Oilcode does not address the fundamental threat to competition in the retail petroleum market; that is, the increasing dominance of the supermarket/oil company alliances, which now account for well over fifty per cent of the market, 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. MTAA notes, however, the review of the Oilcode currently underway by the Department of Resources, Energy and Tourism. A copy of the Association's submission to that Review is attached for the Committee's information.

Wholesale competition

MTAA believes the introduction of a true Terminal Gate Price (TGP) would increase competition and transparency in the wholesale market. The wholesale market for petroleum products in Australia is dominated by the four major oil companies – Caltex, BP, Shell and Mobil – with independent imports only accounting for a small proportion of the market; notwithstanding that fuel imports now account for some 25 per cent of sales. MTAA indeed recalls that the ACCC, in the Report of its findings subsequent to its Inquiry into the price of unleaded fuel in Australia¹, evaluated the wholesale market for fuel as a ‘comfortable oligopoly’. As a result of this circumstance, there is little competition in the wholesale market and the market is defined by the lack of transparency in determining the wholesale pricing of petroleum products. The Committee must recognise that due to this lack of transparency, service station operators invariably become price-takers and are unable to contest the price either at the terminal or on delivery to their service station. MTAA believes that this lack of competition and transparency in wholesale pricing is not in the best interests of motorists or service station operators.

MTAA believes that the introduction of a true terminal gate pricing arrangement, where costs incurred after the terminal gate are itemised and charged separately and where access to terminals to purchase fuel at the terminal gate price is available to all suitably qualified buyers, would significantly increase the level of competition and the degree of price transparency in the wholesale market.

Australian fuel prices are based on input parity pricing. MTAA has continued to support import parity pricing, but believes that the benchmark price needs to be reassessed. While MTAA understands the reasons behind the use of import parity pricing, and the reasons leading to the Singapore price having been chosen as the benchmark, the Association has for some time held the view that the continuing appropriateness of the Singapore price as the Australian benchmark needs to be evaluated. There is a range of reasons for this, which in the main are concerned with more recent changes to Australian fuel standards, and the development of new refineries in Asia.

MTAA would also like to draw the Committee’s attention to the significant barriers to entry into the fuel import market. An entity wishing to be an independent importer of fuel might need to overcome a range of challenges in order to establish a viable and competitive operation in Australia. MTAA understands that the majority of the infrastructure along with the ability, or capacity, to be able to provide the services an independent importer might require is currently either owned or controlled by the major oil companies. It is clear, therefore, that there would need to be either a massive investment made in those terms for an independent importation operation to be viable, or for there to be some form of regulatory control mandating a certain amount of tankage be made available for this purpose and for access to appropriate offloading and handling facilities to be made available under certain circumstances.

MTAA accepts, however, that access to storage facilities alone will not be sufficient to sustain a viable independent sector. Importers need some certainty of distribution; in other words, access to retail outlets, at some scale. When considerations regarding available sources of fuel meeting Australian standards is added to this scenario, the ‘obstacles’ facing a potential independent importer become even more significant and, perhaps, insurmountable. Access to that retail network is of course further limited by the fact that the Australian retail market is highly concentrated.

¹ ACCC, 2007, *Petrol prices and Australian consumers: Report of the ACCC inquiry into the price of unleaded petrol* Canberra, ACCC p v

1(d) – The Impact of an emission trading scheme on the fuel and energy industry

MTAA considers the impact of the Australian Government's Carbon Pollution Reduction Scheme, to be of critical importance to the interests of its Members and the Australian fuel and energy market. MTAA is in the process of analysing the possible position and policy impacts on its Members as a result of climate change and the Australian Government's Carbon Pollution Reduction Scheme. MTAA is monitoring, with particular interest, the Australian Government's commitment to a "*. . . cent-for-cent offset for any fuel price impacts that occur as a result of the scheme*".

1(e) – The existing set of state government regulatory powers as the relate to petroleum, diesel and gas products

In the past MTAA has commented on many aspects of existing government regulation as it relates to petroleum, diesel and gas products. For instance, MTAA has elsewhere noted that temperature correction (the so-called 'L15') is an issue that requires review in this context. National trade measurement regulations in each jurisdiction require that wholesale sales of fuel to resellers by delivery direct from a 'primary storage facility' must be delivered on the basis of an L15 (temperature corrected) volume. The mandatory Oilcode requires suppliers to post an 'L15' price. Certain oil companies, through their own internal information technology (IT) systems, block this practice and the reseller is then forced to enter into the site system only the ambient volume. This is totally against the spirit of the Oilcode and L15 pricing and statute and practice. MTAA has proposed in the past that L15 must need then to be mandated as the receipted volume, not the ambient volume that oil company IT systems allow.

MTAA notes the variance, between states, of existing regulatory powers as they relate to petroleum, diesel and gas products and is aware that state government regulatory powers differ in several areas including those relating to the regulation of business, tax regimes and licensing arrangements. For example, the state of Victoria has legislation specifically dealing with terminal gate pricing (TGP) arrangements in that jurisdiction. The Association also notes that state regulatory powers have, for various reasons, developed differently.

1(f) – Taxation arrangements on petroleum, diesel and gas products

MTAA would like to draw the Committee's attention to the heavy impact increasing fuel prices are having on consumers. MTAA considers the application of the Goods and Services Tax (GST) to fuel that has already been subject to the application of an excise as a tax upon a tax. MTAA would ask the Committee, then, to consider the removal of GST from the excise portion of the fuel price.

1(g) – The role of alternative fuels to petroleum and diesel

MTAA believes the use of alternative fuels and bio-fuels should be encouraged. MTAA's policy considers that the widespread use of bio-fuels and alternative fuels could deliver substantial benefits to the environment. These fuels include liquefied petroleum gas, liquefied natural gas, ethanol blends, biodiesel and compressed natural gas. MTAA supports the introduction of measures that will help to increase the use of these fuels throughout Australia, including the use of sustainable practices by producers of alternative fuels and bio-fuels.

MTAA considers, however, that in the interest of consumer safety, the use of biofuel blends should be consistent with the maximum levels recommended by motor vehicle manufacturers and also with Australian fuel standards. To encourage uptake of alternative fuels and bio-fuels, the Association believes it is important that the government encourage the production of these fuels and assists in the development of the necessary infrastructure for the production of these fuels. MTAA considers that it is important that government policies dealing with all alternative fuels do not discriminate between the various fuels.

I trust that this information is of assistance to the Committee.

A handwritten signature in cursive script, appearing to read "Michael Delaney". The signature is written in dark ink and is positioned above the printed name.

MICHAEL DELANEY
Executive Director

September 2008