

29 October 2009

Mr Michael Sheldrick
General Manager
Fuels and Uranium Branch
Resources Division

C/O
Manager
Transport Fuels Section Fuels and Uranium Branch
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Via email: oilcodereview@ret.gov.au

Dear Mr Sheldrick,

Re: Statutory review of the Trade Practices (Industry Codes - Oilcode) Regulations 2006

Thank you for your letter dated 31 August 2009 seeking views on the Trade Practices (Industry Codes – Oilcode) Regulations 2006 Review recommendations.

The Australasian Convenience and Petroleum Marketers Association (ACAPMA) is a petroleum distribution and petrol convenience industry advocate, representing 91 member businesses. ACAPMA members are typically small-to-medium sized businesses in regional Australia. These businesses collectively represent more than 230 depots and 2500 fuel retail sites that they either own and operate directly or deliver fuel to under contract.

ACAPMA members appreciate that to produce an effective marketplace all industry stakeholders must be armed with information, only then will businesses, large or small, feel equal when negotiating and competing. Oilcode, with its prescribed contractual conditions, pricing mechanisms, Dispute Resolution Scheme and Dispute Resolution Advisor has gone some way to producing this result.

ACAPMA's objective for Oilcode has always been to deliver a cost effective, workable and fast dispute resolution process, to stamp out predatory pricing conduct and other anti-competitive practices in the petroleum distribution and retail industry in Australia.

ACAPMA has been a strong supporter of industry reform and we find it encouraging that the Department of Resources, Energy and Tourism has taken the steps to continue the review process of Oilcode.

ACAPMA Members know that the process of reform is a long road. We believe that there is further to go to reach both our objectives and those of the Australian Government. By responding to the recommendations, we hope to clarify the dynamics of the petroleum distribution and retail industry, to aid the development of Oilcode.

I would look forward to the opportunity to discuss these topics further and take the opportunity to thank Minister Ferguson and his Department for allowing our input.

Yours Sincerely

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

Nic Moulis
General Manager

GENERAL COMMENTS

As part of its process to develop an appropriate Government response to the Trade Practices (Industry Codes – Oilcode) Regulations 2006 (Oilcode) review, the Department of Resources, Energy and Tourism (RET) has requested interested parties such as The Australasian Convenience and Petroleum Marketers Association (ACAPMA) to provide their views on the Review's recommendations, namely:

- Contract Terms and Conditions – Disclosure
- Collective Bargaining
- Dispute Resolution Scheme

1. Contract Terms and Conditions – Disclosure

ACAPMA's comment relating to this recommendation is brief, as our original submission on Oilcode and the comments to the Review made little reference to Part 3 of the Regulations.

As we have stated previously information is key for all stakeholders large or small to feel equal when negotiating and competing. ACAPMA members believe that any conditions that will increase the disclosure of information are warranted.

2. Collective Bargaining

There has been a lot of talk about the importance of the improved collective bargaining process. Nevertheless, as we stated at a Roundtable meeting in April 2005, this process is of little benefit to the distributors and retailers in the Petroleum Industry.

The Australia Competition and Consumer Commission (ACCC) in its report into the Australian Petroleum Industry December 2008 stated, "The industry is concentrated at the refining and wholesale levels" and "There are impediments to the large-scale importing of petrol by an independent."¹ Furthermore, figures indicate that in 2008-09, the volume of sales of Automotive Gasoline and Diesel equalled 37,321.2 mega litres² and imports of the same products were 12,333.4 mega litres³. Therefore, during 2008-09, local refining capacity was short 33% of total volume sold.

Both facts indicate that Australia is very much a 'sellers market', with local refineries at their full capacity and importers having ample customer avenues. The point is that, while there remains an issue in the 'supply balance' in Australia, a local refiner and importer has no real interest in groups negotiating collectively.

¹ Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia, December 2008 page xiii

² Australian Petroleum Stats August 2009, Table 3A 'Sales of Petroleum Products, Australia'

³ Australian Petroleum Stats August 2009, Table 4 'Imports of Petroleum Products'

Distributors are the real collective in the Petroleum Industry. Distributor businesses have individually corralled the end users – retail sites, industrial enterprise, primary producers and transport businesses – into what is best described as collective supply points. Pooling this volume means that an average ACAPMA member supplies over 120 million litres each year in regional and rural Australia. This is where the positive effect of collective pricing occurs, not only at retail sites, but also at the heart of production in Australia – agriculture, mining and transport – ensuring that prices paid by consumers are as low as possible.

It is because of the wholesale ‘supply balance’ and the collective nature of a distributor’s business, that ACAPMA agrees with the recommendation that the Government work with industry associations on collective bargaining. This focus should include discussion on a more transparent Terminal Gate Price (TGP). The Australian Government needs to work with associations to better define the TGP formulae. A national and more transparent TGP provides a stronger foundation for robust negotiations, collective or individually.

3. Dispute Resolution Scheme (DRS)

As stated in previous submissions, the DRS - Part 4 of Oilcode - with its appointment of the Dispute Resolution Advisor (DRA) is the section with real significance for ACAPMA members. Our objective has always been for a strong and enforceable Oilcode, and effective collaboration between the DRA and the ACCC. This would provide speedy and cost effective protection for petroleum distributors and retailers against breaches of the TPA and Oilcode.

In achieving ACAPMA’s objective for Oilcode, it was hoped that the review recommendations would enhance the DRA role with the scope to,

1. compel parties to conduct mediation as prescribed in Part 4 of the Oilcode, and
2. work closely with the ACCC, including matters relating to the Trade Practices Act (TPA).

The recommendation of revised wording of Oilcode Sections 44 and 45 have gone some way to further enhance the DRA’s position to compel parties in a dispute to conduct effective mediation. We would agree that by adopting this recommendation the Oilcode DRS would be strengthened.

ACAPMA agrees with the recommendation that the ACCC and the DRA should develop enhanced information material concerning the nature and expected outcomes of DRS Non-Binding Determinations. We would suggest, that this recommendation be taken further and a Memorandum of Understanding be entered into between the RET, the ACCC and the DRA. This will facilitate an information transfer on outcomes of DRS determinations, as well as the allocation of resources and the sharing of information.