

Introduction

*** 1. Name (first and last name)**

Mark Stockdale

*** 2. Email**

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*** 3. Is this an individual submission, or is it on behalf of a group or organisation?**

- Individual
 On behalf of a group or organisation

*** 4. Which group do you most identify with, or are representing?**

- | | |
|--|---|
| <input type="checkbox"/> Iwi or hapū | <input type="checkbox"/> Fuel importer or wholesaler |
| <input type="checkbox"/> General public | <input type="checkbox"/> Fuel retailer |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Large fuel user |
| <input type="checkbox"/> Local government | <input type="checkbox"/> Other fuel sector stakeholder |
| <input type="checkbox"/> Research institute / academia | <input type="checkbox"/> Oil and gas sector |
| <input checked="" type="checkbox"/> Industry or industry advocates | <input type="checkbox"/> Consultant, financial services etc |
| <input type="checkbox"/> Central government agency | |
| <input type="checkbox"/> Other (please specify) | |

***5. Business name or organisation (if applicable)**

NZ Automobile Association

***6. Position title (if applicable)**

Principal Advisor - Regulations

*** 7. Important information about your submission (important to read)**

The information provided in submissions will be used to inform the Ministry of Business, Innovation and Employment's (MBIE's) work on *Regulations under a Fuel Industry Bill and other matters*.

We will upload the submissions we receive and publish them on our website. If your submission contains any sensitive information that you do not want published, please indicate this in your submission.

The Privacy Act 1993 applies to submissions. Any personal information you supply to MBIE in the course of making a submission will only be known by the team working on the *Accelerating renewable energy and energy efficiency*.

Submissions may be requested under the Official Information Act 1982. Submissions provided in confidence can usually be withheld. MBIE will consult with submitters when responding to requests under the Official Information Act 1982.

We intend to upload submissions to our website at www.mbie.govt.nz. Can we include your submission on the website?

Yes

No

*** 8. Can we include your name?**

Yes

No

*** 9. Can we include your organisation (if submitting on behalf of an organisation)?**

Yes

No

10. All other personal information will not be proactively released, although it may need to be released if required under the Official Information Act.

Please indicate if there is any other information you would like withheld.

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Areas you wish to provide feedback on

The *Regulations under a Fuel Industry Bill and other matters* discussion document seeks feedback on proposed content of regulations under a Fuel Industry Bill and on options for a regulatory backstop to be included in a Fuel Industry Bill at a later date. The document is divided into four sections:

- **Introduction**
- **Wholesale fuel markets**
- **Consumer information**
- **Information disclosure and monitoring**

You are invited to provide feedback and respond to questions in as many, or as few of the sections as you would like, depending on your interests.

Section 2 on wholesale fuel markets seeks feedback on a number of proposed aspects of wholesale market regulation. The section seeks feedback on the content of regulations in the following areas:

- Terminal gate pricing
- Regulating terms in wholesale contracts
- Dispute resolution processes for wholesale markets

Submissions on these proposed regulations together with feedback on consumer information and information disclosure and monitoring are sought by **5pm, Friday 25 April**.

Section 2 also includes a section for feedback on a regulatory backstop regime to be included in legislation at a later date. Submissions on the issues specifically relating to a regulatory backstop are sought by **5pm, Friday 15 May**.

Wholesale markets

Terminal Gate Pricing

Should fuel products other than regular 91 grade petrol, premium 95 grade petrol and regular diesel be subject to the TGP regime, for example, aviation and marine fuels, or premium 98 grade petrol? Please give reasons.

1

We agree with the inclusion of these products, including 95 octane. Consideration should be given to enabling other retail fuel products to be included in future, if the fuel market/product mix changes. This should especially include biofuels (both petrol and diesel blends) if these become more commonplace or are mandated under future government regulations. Likewise, there should also be some provision to enable the inclusion of 98 octane, if this product were to be sold by importers to other distributors, although this is not currently the case – as we understand it, the importers only supply it to their own retail outlets which would suggest it does not need to come under the TGP regime (although we note that there is currently no transparency on the 'landed cost' of 98 octane, unlike 91, 95, diesel, biodiesel and ethanol, which makes it harder to monitor the retail price of 98 octane).

We have no view on the inclusion of marine or aviation fuels.

If the regime should apply to other fuel products, what are the standards used by industry for defining these fuel products?

2

Should there be a notice period for changes in the TGP price during a day?

3

Do you have any comments on how terminal gate prices should be set and publicly posted?

4

We agree with the proposals on how the TGP should be set, and that it should be posted on a public website. We agree that additional charges, fees and taxes should be itemised separately, and that they should be disclosed.

5	Is the prescribed minimum of 30,000 litres per week to one retailer or wholesaler appropriate?
6	Should the prescribed minimum be able to be changed, or varied? For example, could the prescribed minimum be different for different storage facilities, given some terminals supply larger fuel volumes than others?
7	Should there be any additional grounds for refusal, such as the quantity demanded being below a de minimis amount, or reasons of force majeure? If you consider there should be, please suggest a de minimis amount or identify which force majeure reasons should apply
8	<p>We seek your feedback on whether occupational, health and safety requirements and creditworthiness could be determined on the day TGP supply is sought with minimal impact on the customer or the wholesale supplier?</p> <p>If not, is it necessary to specify a pre-certification process with potential terminal gate customers in advance to allow an efficient assessment of whether these grounds for refusal have been met.</p>
9	What other standard terms and conditions should be prescribed for sales by a wholesale supplier for the TGP at the storage facility?
10	Please provide comments on any other matters related to the terminal gate pricing regime.

Regulating terms in wholesale contracts

11

Should either or both of the TGP or an industry-recognised price reporting agency's price based (MOPS or equivalent) pricing methodologies be deemed to be transparent pricing methodologies?

12

Should any other pricing methodology be deemed a transparent pricing methodology?

13

Should there be any other reasonable exceptions?

14

What cost elements of a deemed pricing methodology should be itemised?

We support itemising other cost elements including the shipping costs (to cover the cost of transporting fuel to a port), and margin (above TGP). If the MOPS is used, then the 'premium' for refining fuel to the regulated NZ fuel specification should also be itemised.

15

What would be an appropriate prescribed period after which distributors can terminate their wholesale fuel supply contracts?

16

What proportion of a distributor's annual requirements should be permitted to be subject to exclusive supply provisions?

17

Should the maximum exclusivity requirement apply as an average across the whole length of the contract? If not, how should it be applied?

18

Should the exclusivity requirement apply to the total fuel requirement of distributors, or to each fuel type?

19

Do these terms hinder the ability of dealers or distributors to compete?

20

Are there any other terms that are likely to hinder the ability of dealers or distributors to compete?

21

Should a term in wholesale contracts which prioritises supply to a supplier's own retail sites over that of a term customer be considered as likely to limit the ability of the dealers or distributors to compete?

There is a risk that such a term could limit competition, particularly in instances of tight supply, and such events have occurred in the South Island in recent years, for diesel in particular.

Dispute resolution processes for wholesale markets

22

Do your wholesale supply contracts currently provide for a means of dispute resolution? If so, what does this look like?

23

Do you consider the existing arrangements for dispute resolution to be sufficient? If not, how much use do you think would be made of a new dispute resolution scheme?

24

Should participating in mediation be mandatory for the other party if one party wishes to attempt to resolve the dispute using this dispute resolution process?

25

Should the dispute resolution scheme apply if a wholesale supplier refuses to supply fuel at TGP?

Yes, failure to supply at the TGP should be included.

26

Should the dispute resolution scheme apply to disputes that result from the new wholesale contract terms?

Yes.

27

Should the dispute resolution scheme apply to disputes that result from any provision that relates to the terminal gate pricing regime?

Yes.

28

Are there any other aspects of the new regime you think the dispute resolution scheme should apply to?

29

In your view, how can we ensure the dispute resolution scheme is affordable, easily accessible, and timely for all parties involved?

30

Should each party to a dispute be required to pay half the cost of the mediation or arbitration process?

31

In your view how can we ensure the dispute resolution scheme is effective?

32

Who should provide the dispute resolution services set up under the new regulations?

33

Should the dispute resolution scheme appoint an independent nominating authority to appoint dispute resolvers under the scheme?

We favour an independent authority being appointed to nominate professional mediators. We query whether mediation could also be conducted or overseen by MBIE or the Commerce Commission.

34

Is there a specific skillset / background the mediator / arbitrator should have?

35

Please feel free to provide comments on any other matters related to the dispute resolution process.

Regulatory backstop

36

What should be the threshold and process for whether backstop regulation should be imposed on the TGP supply of specified fuel products at a terminal or terminals? Please give reasons.

*We favour **Option 1** as we consider this would be quicker means of intervention than Option 2. Whereas under the latter's more detailed assessment, an unreasonable TGP would persist for longer, ultimately resulting in higher costs for consumers for a longer duration than under Option 1. We favour the assessment of supply costs being referenced to both a cost-based pricing methodology (such as MOPS) and compared to TGPs at other terminals.*

37

How should the backstop price control regime be designed to apply to specified fuel products at a terminal or terminals? Please give reasons.

*We would favour either **Option 2** or **Option 3**. As with our answer to Q36 above, we consider either of these would provide a quicker means of intervention than Option 1, and thus minimise the length of time that unreasonable TGPs persist. We support the Commerce Commission being responsible for making the determination on regulated prices.*

Consumer information

Do you have any comments on the costs of or time required to modify or install price boards?

38

We consider 18 months from the date of Royal Assent is a long lead time to implement this change, and the longer the delay the longer the status quo will remain, which means less price transparency and disproportionately higher prices for premium petrol – at some brands more so than others (an anomaly that this mandate hopefully will resolve). We consider the industry have been given ample forewarning of this mandate, first from the clear recommendation in the Commerce Commission market study report, and secondly from a communication in December 2019 from the Minister of Commerce and Consumer Affairs to the fuel companies encouraging them to begin displaying premium petrol prices ahead of the regulations. With the Fuel Industry Bill yet to be introduced, this deadline means the fuel companies will have had over 2 years notice to display premium fuel prices, and for all that time, the approximately 20% of petrol car owners that buy premium petrol will continue to pay higher prices than under full price transparency – although we acknowledge that many companies have already begun to rollout premium price signage. Given that, the NZAA would have preferred a shorter timeframe of 12 months after the date of Royal Assent, but we acknowledge the impact of Covid-19 may make this more difficult.

Which grades of fuel should the requirement to display apply to? Should it apply to all grades of fuel including premium, or to premium fuels only?

39

The NZAA believes this requirement should apply to all grades of fuel. We suggest the regulations refer to displaying the price of all liquid fuels (that are dispensed from a bowser) – there should no reference to the word ‘premium’ (which could have different interpretations e.g. 95 or 98) or specific octane ratings. We consider the wording in the Bill should be future-proofed for future fuel variations (e.g. biofuel blends) or fuel types (e.g. hydrogen). Simply by requiring retailers to display the price of every liquid fuel they sell, this will not only cover the current issue of the non-display of ‘premium’ petrol, but future fuels.

Do you consider that an obligation to display price should apply to all grades of premium fuel, or only to the main grades of premium fuel sold?

40

The NZAA recommends this obligation should apply to all grades of premium fuel (95 and 98 octane, plus 100 octane, E10 and E85 where sold). As above, the requirement should be for the retailers to display the price of all liquid fuels they sell (at the pump). If they sell two grades of ‘premium’ petrol – both 95 and 98 octane – then both prices should be displayed (in addition to 91 octane petrol, and diesel).

Do you consider that there should be specifications in regulations on the layout, size or other requirements of a price board?

- For example, should there be a requirement for a particular ordering or colour coding of prices that are displayed on a price board?
- Are there any other requirements you consider should be applied consistently across price boards?

We can see merit in requiring prices to be displayed in a particular order, specifically, that the most common petrol grade (91) should be displayed first, then other petrol grades, then diesel (as is the current industry-wide practice). Whilst the NZAA is neutral on the relatively new practice of displaying the (loyalty) discounted price of 91 octane petrol, this is an optional feature. We propose that the regulations should require the 'standard' (undiscounted) retail price of all fuels be displayed in the order above, but permit the optional display of any other prices (such as discounted prices or other products) underneath these.

Further, it should also be a requirement to display the octane rating of all petrol grades (or blends) alongside the corresponding price, as is presently the case for 91 octane ('regular'). This will make it easy for passing motorists to identify, and then compare, prices. Currently, whilst most service stations do not display the premium price, they do advertise that they stock a premium fuel – but this is commonly referred to by a brand name such as Synergy 5000 or 8000 (Mobil 95 or 98 respectively) or Ultimate (BP 98), or ZX (Z 95), or Gull Force 10 (Gull 98 with 10% ethanol). These brand names may be confusing and do not readily identify the octane rating. This in itself is confusing if a motorist only wished to purchase 95 octane but bought 98 instead – which costs even more, further exacerbating the issue of unfair premium prices this regulation aims to address. Transparency of octane rating should virtually eliminate these errors. Whilst the NZAA does not oppose the inclusion of particular brand names, the minimum requirement should be to list the fuels, by octane rating, in the order suggested above. For biofuel blends, these would also need to be identified by the regulated definition – that is E10 for a 10% ethanol/petrol blend (or E85 for an 85% blend) and B5 for a 5% biodiesel/diesel blend.

As for colour coding, there is some merit in regulating standard colours for different fuel grades, but this will require a significant change in the branding at many services stations, both on price boards and at the pumps, where the handles and bowsers are currently colour-coded. Currently the industry is uniform in using black to signify diesel, which helps minimise mis-fuelling, but there is no uniformity for the various petrol grades (although using the wrong grade is far less serious than using the wrong fuel). This may be complex to introduce, and a more significant upheaval for service stations to comply with, especially within the proposed timeframe. In the NZAA's view, displaying the price of all liquid fuels, identified by octane rating, is far more important to achieve the goal of price transparency. Uniform colours for different grades is not essential and should not be part of the signage specifications at this time. We would support investigating the industry agreeing a common colour grading for voluntary implementation in future, but such a proposal should not delay the introduction of this Bill.

As for other price board requirements, we recognise that there is some variability in the size of price boards at present, and the corresponding font sizes, and the use of digital displays versus older analogue displays. The NZAA's goal is for all fuel prices to be displayed. If this can be achieved more easily, more quickly or at lower cost using the current sign infrastructure, then that should be permitted. In that sense, the requirements should be less prescriptive, and simply require the display of the standard retail price, by grade (octane), in

ascending order as noted above. Further, we support the price board specifications providing a level of flexibility to accommodate individual brand design, which would include permitting different sizes.

Should there be an exception from the requirement to display a price of a particular grade of fuel if the volume of that type of fuel being sold at a particular retail site is below a certain minimum volume? If so, why, and what would be a reasonable threshold for such an exception?

42

The NZAA's view is that if a certain stations sells several liquid fuels, then the price should be displayed, regardless of turnover. Some remote service stations do not sell premium petrol at all, because of low demand. That is their business choice. But if they sell it, passing motorists should be readily able to determine (and compare) the price, as this regulation intends. Even in remote locations, if a passing motorist can identify the price, they might decide the price is too high and defer filling up until they reach a more populous destination ahead where they might reasonably expect the price to be cheaper. Displaying the price gives them that choice.

Should there be an exception from the requirement to have a price board displaying fuel prices if the total volume of fuel sold at a particular retail site is below a certain minimum volume? If so, why, and what would be a reasonable threshold for such an exception?

43

As noted above, our preference is that the prices should be displayed. After all, retailing fuel is their main reason for being in business, and for most service stations it will be their highest turnover product. If small sites in remote locations do not display the price, it will make it harder for motorists to compare prices and make decisions about whether to fill up there or not. This is particularly relevant for motorists, including tourists, who may be passing through, but have the option of continuing on to a subsequent destination where there may be more competition. Even locals in remote areas, who may not have any choice but to buy fuel from the only retailer in the area, may still use this price information to decide to fill up whenever they are visiting a larger centre which has lower prices.

Whilst some motorists could obtain this price information from the Gasp app, there is not widespread utilisation of this app, and this is more problematic in remote areas where the data is likely to be less reliable or even non-existent. Thus we concur with the Commerce Commission that roadside price boards are even more critical for motorists in remote locations with low fuel sale volumes as the Gasp app may not be an option.

The only exception to this could be locations that are so isolated that motorists do not have the choice of travelling elsewhere. We would consider that off-shore islands like Waiheke Island, Stewart Island and the Chatham Islands could therefore be exempt for the requirement to display (any) prices, but this would not apply anywhere on either the North or South Islands.

Is an exception needed for the situation where sellers must comply with NZTA requirements for signage on state highways?

Are there any other situations where an exception might be needed? For example:

- is an exception required in relation to local authority bylaws?

are you aware of any issues that would mean that requirements on the display of price boards would conflict with local council requirements for signs under bylaws or the Resource Management Act? If so, describe these issues?

44

The NZAA supports exceptions for signage on state highways or due to local bylaws if these prohibit the installation of signage on the roadside. We also support the ability of individual services stations to apply (to MBIE) for an extension or even exemption for extraordinary circumstances, such as consenting delays, or where there are physical constraints to installing any signage, or where the owner plans to disestablish the retail site within a few years.

Are there any other issues that you think should be considered in development of regulations relating to the display of prices on price boards?

As noted above, the signage specifications should avoid references to fuel grade names like "premium" (or "regular") and instead require the octane number to be displayed (for petrol) or otherwise just the fuel type (e.g. diesel or hydrogen), and fuel blend in the case of biofuels (e.g. E10).

45

We can see merit in the regulations having the ability to prohibit the display of loyalty-discounted prices if subsequent monitoring shows this to be necessary (although the consultation paper does not describe how this would be done). The NZAA is agnostic on the optional display of these prices, although we do not consider it to be 'bait advertising' provided the undiscounted price is displayed. But if all undiscounted prices are displayed in the order proposed above (Q41), with any optional prices underneath those, then we consider any possible confusion will be minimised.

Do you have any comments that you wish to make on other matters relating to transparency of information for consumers?

The requirement to display the price of “premium” petrol (preferably all fuels) is a positive development for consumers of premium grade petrol. But other proposals in this regulations, in particular the disclosure of the TGP, will also help improve price transparency for consumers. However the TGP/wholesale price is only part of what makes up the final price and there is a need for improved public education on how fuel prices are determined, in order that the public can interpret this information accurately. For example, most recently when the price of West Texas Intermediate oil went “negative” there was an assumption from some that this would result in (substantially) lower pump prices, but this was not the case. Aside from the fact the WTI is not a global benchmark, it overlooks the long-held misunderstanding between oil prices and refined prices, the latter which help determine retail prices (oil prices being merely one influence on refined prices). The TGP may very well become the benchmark (landed cost plus wholesale margin), but the public will need to understand this instead of referring to global oil prices or refined prices. Even then, there is also a lack of understanding as to why service stations adjust their prices in response to a change in the global refined price (or TGP in future), when that was not the purchase price of the stock in their underground tanks. Further education is also needed about what is the “margin” (which should be more accurately referred to as the “gross margin”). Some believe this is the fuel company net profit, not realising that much of it covers fixed and variable operating costs. Similarly, there is a need to distinguish between the overheads of a traditional “full service” station which employs staff and has large covered premises and other facilities, and a “no frills” brand which does not. This latter model has grown and brought with it the lower prices to many parts of NZ. Ordinarily these two models would have different retail prices to reflect their differing operating models but they have in fact induced price competition with the full-service brands despite the different overheads, and the competitive market pressures which bring this about are not well understood by the public (i.e. why competition influences retail pricing behaviour and not solely commodity prices or taxes). Finally, the large contribution of tax in the make-up of the retail price of petrol is not universally understood.

Whilst fuel companies should do more to educate the public and explain their pricing, they have largely failed to do so (and indeed, as with any business, nor are they obliged to). We believe there is a need for MBIE to not only improve its monitoring for fuel prices and margins, but to also explain what the data means.

Information disclosure and monitoring

Do you have any specific feedback or comments on the information identified in the above table that industry participants would be required to collect and disclose?

Is there any other information not identified above that should be collected and disclosed to enable monitoring?

The proposed list of information in Table 1 is comprehensive. This includes collecting daily retail revenues and volumes by region, but to assist in analysing gross margins, it will be necessary to assess the volume of fuel sold at a given price, including fuel sold at a discount to the advertised price. It is not enough to simply aggregate daily fuel volumes and retail prices on a given day across a region. To accurately assess gross margins, we need to know how much fuel is sold at what price. It may be that in some regions, some high-turnover stations are selling fuel at a comparatively low price, compared to several smaller stations selling lower quantities at a higher price (probably reflecting economies of scale) – or vice versa. Likewise, it will also be necessary to distinguish unmanned (“no frills”) service stations from the traditional “full service” retailers, as the overheads – and thus gross margins – should be lower at unmanned outlets.

This will obviously affect the assessment of fuel companies’ gross margins, and this level of transparency is not available under MBI’s current margin monitoring which only averages retail prices based on a selection of retail sites, and an average discount, without understanding the volume of fuel sold at different prices or different retail models. This makes it harder to analyse the reasonableness of margins and fully assess the reasons for movements in margins (such as a shift in the quantum of discount pricing).

For Fuel Industry participants, what costs would there be for your business to collect and disclose this information?

For Fuel Industry participants, is the information outlined above currently collected by your business?

- If so, is it collected in a form or manner that would be consistent with what’s outlined above, or would changes to your information collection processes be required?
- If not, what costs would be incurred in collecting this information?

Are there any other factors not discussed above that could have an impact on the compliance cost of collecting and disclosing information? What are these factors?

51

Are there any importing costs not captured in Table One that are relevant to understanding the cost of supplying fuel from a terminal in New Zealand?

52

Have the proposed parties outlined as the owners and suppliers of information in Table One been correctly identified?

- Could data returns for dealers who sell fuel under the brand of a wholesaler, and do not set their own price, be completed by suppliers? If not, do you have any comments on options for minimising compliance costs in this situation?

53

Do you have any comments on the proposed frequencies for collection and disclosure of information outlined in Table One?

54

Do you consider that the proposals outlined above strike the right balance between certainty and adaptability? Would you prefer that requirements such as frequency of information collection are set by agencies or set out in regulations?

55

Do you have any comments on proposals for agencies to develop templates to ensure that information is disclosed in a consistent format?

56

For information that is proposed to be used for periodic analysis:

- Should such information still be required to be disclosed on a regular basis, or should that information be held by the companies until needed?

57

Do you have any other comments that you wish to make on matters relating to information disclosure and monitoring?