



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Response to the Commerce Commission's Retail Fuel Market Study: Fuel industry bill	Date to be published	27 February 2020

List of documents that have been proactively released

Date	Title	Author
12 February 2020	Response to the Commerce Commission's retail fuel market study: Fuel industry bill	Office of the Minister of Energy and Resources
12 February 2020	Response to the Commerce Commission's Retail Fuel Market Study: Proposed Fuel Industry Bill DEV-20-MIN-0008	Cabinet Office
12 February 2020	Annex One Regulatory Impact Statement for the Government Response to the Commerce Commission's retail fuel market study: Fuel industry bill	MBIE

Information redacted

YES / NO

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Some information has been withheld for the following reasons:

- Confidentiality
- Constitutional conventions



Cabinet Economic Development Committee

Minute of Decision

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Response to the Commerce Commission's Retail Fuel Market Study: Proposed Fuel Industry Bill

Portfolio Energy and Resources

On 12 February 2020, the Cabinet Economic Development Committee:

New regulatory framework for the fuel industry

- 1 **noted** that following a market study into retail fuel under the Commerce Act 1986, the Commerce Commission has found that fuel companies have been making persistently higher profits over the past decade than would be expected in a competitive market, leading to consumers paying higher pump prices for petrol and diesel than they should;
- 2 **noted** that on 2 December 2019, Cabinet invited the Minister of Commerce and Consumer Affairs to ensure that a proposed Fuel Sector Industry Bill (the Bill) is progressed with a view to its enactment in 2020 [CAB-19-MIN-0640];
- 3 **noted** that on 16 December 2019, Cabinet agreed in principle to responses to the Commerce Commission's market study, and invited the Minister of Energy and Resources to report back in February 2020 to seek final agreement to the responses [CAB-19-MIN-0680];
- 4 **agreed** that the Bill should promote competition in fuel markets for the long term benefit of end-users of fuel products;

Terminal gate pricing

- 5 **agreed** that the Bill establish a terminal gate pricing regime applying to all wholesale suppliers who have a right to draw specified products (diesel, 91 and 95 octane, plus any other fuel as specified in regulations) from terminals or equivalent facilities;
- 6 **agreed** that the terminal gate pricing regime:
 - 6.1 require wholesale suppliers of specified fuel in relation to a storage terminal to publicly post a price at which they will sell that fuel to fuel retailers or wholesalers at storage terminals on a spot basis, and provide for a regulation-making power to prescribe those requirements;
 - 6.2 require wholesale suppliers of specified fuel to supply a prescribed minimum of fuel product per week or per month to retailers or wholesalers of fuel products upon request unless there are reasonable grounds for refusal, and provide for a regulation-making power to prescribe those requirements;

6.3 provide for regulation-making powers to prescribe standard terms and conditions for sales, what constitutes reasonable grounds for refusal, which taxes or costs can be included in the terminal gate price, the prescribed minimum of fuel to be supplied, and requirements for publication of the terminal gate price;

7 **agreed** that the terminal gate pricing regime should come into effect on a date appointed by order in council, and no later than 12 months after the date of Royal Assent;

8 **agreed** to provide for civil pecuniary penalties for breaches of the requirements of the terminal gate pricing regime, with maximum penalties of \$500,000 for an individual or \$5,000,000 in any other case;

Backstop regime for terminal gate pricing

9 **agreed** to defer implementation of a backstop regime at the present time;

10 **agreed** that officials continue to develop a backstop regime to be implemented at a future point;

Wholesale contractual terms

11 **agreed** that the Bill include a regime governing contractual terms in fuel supply contracts between wholesale suppliers and their distributors and dealers, as relevant, that:

11.1 requires contract terms to be written in clear and concise language;

11.2 requires contracts with dealers and distributors to contain transparent pricing methodologies, and provides for a regulation-making power to deem certain methodologies to be transparent pricing methodologies;

11.3 prohibits the unilateral ability of one party to change the transparent pricing methodology, and provides for a regulation-making power to permit reasonable exceptions, such as when the other party has sufficient notice, and the right to terminate the contract if the change is unacceptable to it;

11.4 allows distributors to terminate their wholesale supply contract on reasonable notice if they are longer than a prescribed length, and provides for:

11.4.1 a regulation-making power to set the prescribed length;

11.4.2 reasonable exceptions, such as when the contract duration, or any renewal, beyond the prescribed period is reasonably necessary to enable specific investment for the benefit of the distributor, or the contract is non-exclusive and contains no minimum purchase requirements;

11.5 prohibits any exclusivity provision in a distributor's wholesale supply contract applying to more than a prescribed share of the distributor's annual requirement, and provides for:

11.5.1 a regulation-making power to set the prescribed share;

11.5.2 distributors to give sufficient notice of their intention to take supply from another supplier, or to require them to provide reasonable forecasting;

- 11.6 prohibits terms that limit the ability of the dealer or distributor to compete with the supplier or other parties from being included in contracts, and provides for:
- 11.6.1 a regulation-making power to prescribe a list of terms that are likely to have such an effect;
 - 11.6.2 reasonable exceptions, such as when they are reasonably necessary in order to protect the commercial interests of the supplier or any other person;

12 **agreed** that commercial customers not be included in the regime;

13 **agreed** that the wholesale contractual terms regime come into effect:

13.1 for new contracts, on a date appointed by order in council, and no later than 12 months after the date of Royal Assent;

13.2 for existing contracts, on a date appointed by order in council, and no later than 24 months after the date of Royal Assent;

14 **agreed** to provide for civil pecuniary penalties for breaches of the requirements or prohibitions of the regime governing contractual terms between wholesale suppliers and their customers, with maximum penalties of \$500,000 for an individual or \$5,000,000 in any other case;

Dispute resolution

15 **agreed** that the Bill provide that industry participants have a right to access mediation and, if agreed, arbitration dispute resolution schemes as set out in regulations;

16 **agreed** that the Bill provide for a regulation-making provision to prescribe the details of the mediation and arbitration dispute resolution schemes, including, but not limited to, the circumstances the dispute resolution system must be used in, who must use them, the process the parties must follow, and who must provide the dispute resolution schemes;

Display of price information

17 **agreed** to include in the Bill a requirement for display of certain prescribed information relating to the price of fuel at retail fuel outlets, in the form and manner prescribed in regulations;

18 **agreed** that the Bill provide for regulation-making powers to:

18.1 set out the specific requirements for the display of information relating to the price of fuel (including setting out any requirements to prohibit the display of certain pricing information) and to prescribe the form and manner in which that information is to be provided;

18.2 allow exceptions to be made to prescribed requirements for display of information relating to the price of fuel, for example, for small sites below a defined annual sales volume;

19 **agreed** that these requirements come into effect on a date appointed by order in council, and no later than 18 months after the date of Royal Assent;

- 20 **agreed** to provide for civil pecuniary penalties for breaches of the requirement for the display of certain prescribed information relating to the price of fuel at retail fuel outlets in the form and manner prescribed in regulations, with maximum penalties of \$500,000 for an individual or \$5,000,000 in any other case;

Record keeping and information disclosure

- 21 **agreed** to include in the Bill a requirement for certain fuel industry participants to collect and disclose certain information periodically and/or on request to:
- 21.1 the Minister of Energy and Resources and/or the Commerce Commission, to enable monitoring of the market and assessment of the regulatory regime;
 - 21.2 the Commerce Commission to enable enforcement of the regime;
- 22 **agreed** to provide for regulation-making powers setting out the specifics of these obligations, including (but not limited to):
- 22.1 to whom the obligation to collect/disclose information applies;
 - 22.2 the specific information to be collected/disclosed;
 - 22.3 how long information must be held for/when disclosure must take place;
 - 22.4 the form in which information must be held in/disclosed;
- 23 **agreed** to provide for civil pecuniary penalties for breaches of the obligations to collect and disclose information, with maximum penalties of \$500,000 for an individual or \$5,000,000 in any other case;
- 24 **agreed** to include in the Bill the ability for the Minister and Commerce Commission to share information for the purposes outlined in paragraph 22 above, and to publish information disclosed, and analysis of this information, subject to appropriate protections;
- 25 **agreed** that these requirements come into effect on a date appointed by order in council, and no later than 18 months after the date of Royal Assent;
- 26 **agreed** to provide for civil pecuniary penalties for breaches of the obligations to collect and disclose information, with maximum penalties of \$500,000 for an individual or \$5,000,000 in any other case;

Other recommendations

- 27 **agreed** that the Commerce Commission will enforce contraventions of the Commerce Act, drawing on its enforcement powers and the regime in the Act, including the power to demand information and accept enforceable undertakings, and the offence for obstructing the Commerce Commission;
- 28 **agreed** that the court may make orders in relation to conduct that contravenes or may contravene the Commerce Act, including granting injunctions, requiring compliance with the Act, and other orders in relation to contracts, including compensation for affected parties;

Tabling of government response

29 **invited** the Minister for Commerce and Consumer Affairs to table the government response, set out at Annex A to the paper under DEV-20-SUB-0008, as the official government response to the Commerce Commission’s market study on retail fuel;

Financial implications

30 Constitutional conventions [Redacted]

31 Constitutional conventions [Redacted]

Constitutional conventions [Redacted]

32 Constitutional conventions [Redacted]

Constitutional conventions [Redacted]

33 Constitutional conventions [Redacted]

34 Constitutional conventions [Redacted]

Legislative implications

35 **invited** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

36 **authorised** the Minister of Energy and Resources to make decisions, including decisions on minor and technical matters, consistent with the proposals in the above paragraphs, on any issues that arise during the drafting process;

- 37 **agreed** to release a draft of the Bill for the purposes of targeted consultation with key stakeholders;
- 38 **agreed** to defer consideration of improving information available to consumers on when premium fuel should be used in motor vehicles until further policy work has been undertaken;
- 39 **noted** that the potential for restrictive covenants that prevent future owners from being able to use properties as retail fuel sites to be used for anticompetitive purposes is being explored as part of the review by the Minister of Commerce and Consumer Affairs of section 36 of the Commerce Act and other matters.

Janine Harvey
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Tracey Martin
Hon Shane Jones
Hon Kris Faafoi
Hon Willie Jackson
Hon James Shaw
Hon Julie Anne Genter
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Hard-copy distribution:

Minister of Energy and Resources