



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Release of Discussion Document on Fuel Industry Bill and associated regulations	Date to be published	8 June 2020

List of documents that have been proactively released

Date	Title	Author
11 March 2020	Release of Discussion Document on Fuel Industry Bill and associated regulations	Office of the Minister of Energy and Resources
11 March 2020	Fuel Industry Bill and associated regulations: Release of Discussion Document DEV-20-MIN-0029	Cabinet Office

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the following reason:

- Constitutional conventions

In Confidence

Office of the Minister of Energy and Resources
Chair, Cabinet Economic Development Committee

Release of Discussion Document on Fuel Industry Bill and associated regulations

Proposal

1. This paper seeks approval to release a discussion document seeking feedback on the regulations that are proposed to be made under the Fuel Industry Bill.

Background

2. On 17 February 2020, Cabinet confirmed the Government's Response to the Commerce Commission's Retail Fuel Market Study set out at Annex A. Cabinet invited me to issue drafting instructions to the Parliamentary Counsel Office to give effect to a Fuel Industry Bill [CAB-20-MIN-0031 refers]. The Bill will introduce a new regime for regulating fuel markets. Drafting is underway and Cabinet approval for introduction of the Bill is expected to be sought in May 2020.
3. Some of the details of the regime will be prescribed in regulations. The details will have a significant impact on how the regime is operationalised by industry participants.

Scope of Regulations

4. The regulations may prescribe:

Terminal gate pricing

- 4..1. which fuel products other than diesel, regular 91 and premium 95 should be covered by the terminal gate pricing regime;
- 4..2. requirements as to how wholesale suppliers would publicly post a price at which they will sell fuel at storage terminals on a spot basis;
- 4..3. requirements for wholesale suppliers to supply a prescribed minimum of fuel product at storage terminals per week or per month upon request, unless there are reasonable grounds for refusal;
- 4..4. standard terms and conditions for sales, what constitutes reasonable grounds for refusal other than the grounds specified in the Bill, 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 terminal gate prices;

Wholesale supply contracts

- 4..5. certain methodologies that will be deemed to be transparent pricing methodologies for the purposes of wholesale supply contracts;
- 4..6. reasonable exceptions to a prohibition on the unilateral ability of one party to a wholesale supply contract to change the pricing methodology (for example, when the other party can terminate the contract in response);
- 4..7. the length of time after which distributors can terminate their wholesale supply contract on reasonable notice;
- 4..8. the maximum share of a distributor's annual requirement which may be required to be provided exclusively by a wholesale supplier;
- 4..9. a list of terms in a wholesale supply contract that are likely to limit the ability of a dealer or distributor to compete with the supplier or other parties.

Dispute resolution

- 4..10. the details of mediation and arbitration dispute resolution schemes.

Transparency of consumer information

- 4..11. requirements for display of information relating to the price of fuel at retail fuel outlets
- 4..12. power to 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.
- 4..13. initially, regulations will be developed to prescribe requirements for the display of premium fuel prices on price boards

Information disclosure and monitoring

- 4..14. obligations for certain fuel industry participants to collect and disclose certain information periodically and/or on request.

Discussion Document

5. To avoid unintended consequences that could have a negative impact on consumers, I propose to undertake public consultation. This consultation will cover the approach the Government proposes to take in relation to regulations on each of the matters set out in paragraph 4 above and seeks views on these proposals.
6. I seek Cabinet's agreement to the release of a discussion document titled 'Consultation paper - Regulations under a Fuel Industry Bill' and Other Matters. The issues covered in the document are largely technical in nature, with the primary audience being fuel industry stakeholders. I do not anticipate significant interest from the wider public.
7. The Fuel Industry Bill is being developed in response to the significant competition problems identified by the Commerce Commission in its Market Study on Retail Fuel, and I expect it to be enacted in 2020. In order to meet this time frame, some processes that are usually undertaken sequentially will need to be done in parallel. In

this case, I am proposing that consultation is undertaken on the proposed content of the regulations before industry participants have visibility of the Bill itself, which is still being drafted. I propose to release the consultation document for 5 weeks, with consultation closing in late April.

8. I acknowledge that this is unusual, and that it may attract some criticism. However, potential submitters will have the benefit of having available the Cabinet paper that authorises the key features of the Bill, as I released it publicly on 27 February 2020. This information will allow them to understand the proposed scheme of the Bill, which will provide helpful context for their understanding of the more detailed regulations.
9. I propose to undertake targeted consultation on the Bill itself in April. While I could defer consultation on the content of the regulations until then, that would result in either significant delays to the implementation of the Bill or significant constraints on the opportunities of stakeholders to submit on important issues.

Regulatory backstop power

10. The Commission suggested in its final report that a credible threat of further regulatory action should be available to provide incentives for the majors to offer competitive terminal gate spot prices, as a supplement to the regulatory regime in the Bill. The Bill does not contain a backstop of this kind because that would require a significant amount of time to design and draft, and could delay other reforms. However, officials are still working on a backstop regime, and the discussion document seeks feedback on possible options for a regulatory backstop.

Fuel supply reliability and resilience

11. The Inquiry into the Auckland Fuel Supply Disruption recommended establishing statutory powers to promote jet fuel resilience at Auckland Airport, among other things. Constitutional conventions

12. Constitutional conventions

13. Constitutional conventions

Consultation

14. The Ministry of Transport, the New Zealand Transport Agency, the Ministry of Justice, the Ministry for the Environment, the Treasury and the Commerce Commission were consulted on the attached discussion document.

15. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

16. There are no financial implications from the proposals in this paper.

Legislative implications

17. Regulations will be developed to implement the proposals following consultation. Development of regulations will be subject to the passage of the Fuel Industry Bill.

Proactive release

18. I propose to proactively release this Cabinet paper and minute within 30 business days.

Impact Analysis

19. The discussion document for consultation purpose substitutes for a Regulatory Impact Assessment. A quality assurance panel from MBIE has reviewed the consultation document and has confirmed that it is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to support subsequent decisions.

Climate Implications of Policy Assessment

20. The Ministry for the Environment was consulted on the Fuel Industry Bill Cabinet paper and confirmed that the Climate Implications of Policy Assessment (CIPA) requirements did not apply to the proposal to set up a new regulatory regime through the Fuel Industry Bill. Initial analysis of greenhouse gas emissions impacts showed that the impacts will be below the CIPA threshold of 250,000 tonnes per annum.

Publicity

21. The attached discussion document will be released for consultation for a period of five weeks. I will issue a media release noting the release of the discussion document for consultation.

Recommendations

The Minister of Energy and Resources recommends that the Committee:

1. **note** that on 17 February 2020, Cabinet confirmed the Government's Response to the Commerce Commission's Retail Fuel Market Study at Annex A [CAB-20-MIN-0031 refers];
2. **note** that Cabinet invited the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to a Fuel Industry Bill;
3. **note** that consultation on the Fuel Industry Bill is expected to take place in April 2020;

4. **agree** that public consultation take place on the content of the regulations in advance of the consultation on the Bill;
5. **note** that I will report back with any proposed amendments to the Bill in relation to provisions for the disclosure of information for the purpose of monitoring fuel reliability and resilience;
6. **agree** to release the attached discussion document for consultation for a period of five weeks.

Authorised for lodgement
Hon Dr Megan Woods
Minister of Energy and Resources

PROACTIVELY RELEASED

Annex A: Government Response to Commerce Commission’s final report on retail fuel

Improving wholesale competition for fuel

Commerce Commission Recommendation	Government Response
<p>1 Institute a terminal gate pricing regime</p> <p>The Government should make regulations enabling a terminal gate pricing regime¹ as part of an enforceable industry code (similar to what exists in Australia). The terminal gate price would act as a benchmark for wholesale customers negotiating their wholesale supply agreements.</p> <p>The recommendation should be considered with recommendation five: To support a terminal gate pricing regime, the Government should also introduce backstop regulatory powers that could be invoked if the regime does not deliver competitive outcomes in a reasonable period of time.</p> <p>2 Change wholesale supply agreements</p> <p>The Government should make regulations that limit the use of certain terms in wholesale supply contracts. In particular:</p> <ul style="list-style-type: none"> • all wholesale contracts should be written in clear and concise language, and should include a transparent cost-based pricing methodology; • wholesale contracts should permit a distributor to take a prescribed minimum percentage of their fuel from other suppliers (e.g. at least 20 per cent of supply); • distributors should not be committed to wholesale contracts exceeding a maximum period (suggested not longer than five years) without a right to terminate on notice, unless a longer term is reasonably necessary for relationship specific investment to occur; and • other terms of wholesale fuel supply contracts should be regulated to prevent unjustifiable limitations on the ability of 	<p>AGREE</p> <p>The Government considers that a terminal gate pricing regime will increase wholesale price transparency and create the potential for a liquid wholesale spot market to develop.</p> <p>The Government will introduce legislation to enable such a regime.</p> <p>The Government supports introducing backstop regulatory powers. This will be added to the legislation at a future point.</p> <p>AGREE</p> <p>The Government considers that greater contractual freedom and fair contract terms will facilitate wholesale competition, and in turn facilitate competition in the retail market.</p> <p>The Government will introduce legislation to enable a regime which requires certain pro-competitive contractual terms to be included and certain anti-competitive terms to be excluded.</p>

¹ A terminal gate pricing regime requires all suppliers of fuel at storage terminals to set a spot price each day at which they will supply a minimum quantity of fuel on demand to buyers.

distributors and dealers to compete.

3 Improve information on infrastructure sharing arrangements
The parties to infrastructure sharing arrangements including the Coastal Oil Logistics Ltd joint venture and 'borrow and loan'² inventory sharing arrangements should publish the existing process and criteria for third party participation in the infrastructure sharing arrangements.

NOTED
The Government has written to parties and expects the parties to respond to these recommendations.

4 Review infrastructure sharing arrangements
The parties should also review aspects of the 'borrow and loan' inventory sharing arrangements that may be disincentivising investment in shared storage. Regulation to enable participation in infrastructure sharing arrangements is not recommended at this time.

NOTED
The Government has written to parties and expects the parties to respond to these recommendations.

5 Adopt an enforceable industry code of conduct
Legislation should be introduced to create an enforceable mandatory industry code by regulations to give effect to the recommendations that require regulatory intervention.

AGREE
The Government will introduce an enforceable regulatory regime.

Facilitating informed consumer choice

	Commerce Commission Recommendation	Government Response
6	Improve transparency of premium fuel prices The Government should make regulations to require retail sites to display premium petrol prices on price boards to better enable consumers to compare available prices.	AGREE The Government has written to participants in the retail fuel industry to encourage them to put premium prices on price boards at their sites now, ahead of regulations.
7	Improve information on when premium fuel should be used The Government should make regulations to require fuel cap or fuel flap stickers specifying the minimum octane level required for a vehicle.	TO CONSIDER FURTHER While the cost of producing and attaching labels is unlikely to be a significant cost for sellers of vehicles, there are some challenges in getting the relevant information for all vehicles. The Government considers that further policy work needs to be undertaken before action is taken.
8	Monitor the display of discount pricing on price boards	AGREE

² A 'borrow and loan' scheme allows major fuel suppliers to routinely access fuel at each other's terminals.

<p>Regulation of display of discount pricing is not recommended at this time. The Government should monitor the display of discount pricing on price boards to assess whether this practice benefits consumers or limits competition.</p> <p>Fuel retailers are also encouraged to consider the potential for their discount and loyalty programmes to cause consumer detriment.</p>	<p>The Government considers monitoring to be the appropriate response at this time.</p> <p>Powers will be added to the legislation to make regulations to regulate or prohibit the display of discounted pricing at retail outlets if the need arises.</p> <p>The Government expects the parties to respond to the second part of the recommendation</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Improving monitoring of the fuel market

	Commerce Commission Recommendation	Government Response
9	<p>Improve information and record keeping</p> <p>The Government should make regulations requiring improved, standardised information to be collected and retained in New Zealand for a certain period of time.</p>	<p>AGREE</p> <p>The Government considers that this will improve the timeliness, cost and accuracy of any future study or regulatory intervention in the fuel sector.</p>

Other recommendations for the fuel industry

	Commerce Commission Recommendation	Government Response
10	<p>Change the Coastal Oil Logistics Ltd joint venture to reduce the potential for coordination</p> <p>The Coastal Oil Logistics Ltd joint venture should review and change any information sharing arrangements that may lead to softening of competition.</p>	<p>NOTED</p> <p>The Government has written to parties and expects the parties to respond to this recommendation.</p>
11	<p>Change refinery capacity allocation</p> <p>Refining NZ's Technical Committee should review and change any information sharing arrangements and mechanisms for allocation of refinery capacity that may lead to softening of competition.</p>	<p>NOTED</p> <p>The Government has written to parties and expects the parties to respond to this recommendation.</p>