29 May 2020

Energy Markets Policy
Building Resources and Markets
Ministry of Business Innovation and Employment
PO Box 1473
Wellington
Via email: energymarkets@mbie.govt.nz

Gull Submission Fuel Industry Bill

Many thanks for the opportunity to submit on the Fuel Industry Bill.

The genesis of this Bill started with public and government concern over a lack of competition and therefore a significant disparity of retail fuel pricing in various regions around New Zealand. Specifically noted was that prices were lower in areas where Gull operated and higher where there was less independent competition. The lack of access to fuel terminal infrastructure was the primary cause of this and a Terminal Gate Price (TGP) regime will rectify this issue as fuel importers can no longer legally refuse to supply fuel to a company such as Gull entering a new Geographic area. This is the case now and in Gull's view it has significantly restricted competition.

The TGP model already exists and has functioned basically without issue just next door in Australia for over 13 years. It enables a right to fuel for new entrants; this forces parties to accept supply to competitors will happen and because of this parties move to contract supply. As a result, few transactions ever happen under TGP regulations, but without the regulations access can be denied.

As the Australian system works and works well much of Gull's submission challenges why change the system for New Zealand. It is not broken, attempting unnecessarily to enhance it risks it not working and adds cost.

The balance of the Bill covers other matters that have crept in through the course of inquiry and submission and are in Gull's view less important that the TGP recommendation:

- Gull opposes the compulsory display of Premium petrol pricing, but has heard the Governments call for more advertising of high octane prices and as a result we have around 10% of our sites now voluntarily displaying premium fuel prices and have committed that all new sites built will display a premium price going forward. However, a compulsory retrofit cost of around $1,000,000 after SIGNIFICANT industry losses following Covid-19 lockdown is in Gull's view not justified. We ask that the Government review this requirement or at the very least look at a two-year phase in period for this portion of legislation given the support

the industry has given operating as an essential service with minimal turnover and thus at significant cost.

- Other proposed changes by the Bill involve contracts in the wholesale market and in principal Gull supports or does not oppose these changes.
- Gull does not support the continual provision of confidential information to Government.
- Gull does not support or see any need in a free market for a regulatory backstop.

As noted, changes to advertising of premium petrol price, backstop mechanisms, information requests and wholesale contract changes are “add-ins” from the original Inquiry focus. Gull has concerned that these are changes are being introduced in haste. There is no template as with TGP pricing and there is a well-documented history of hasty legislation being poor legislation. It is not acceptable that Regulations may be published without industry having an ability to review and give feedback Gull is concerned that this may be the case as it has been in the past causing specific issues despite Government assurances it would “all be fine”. For a Government that looks to engage with industry hasty legislation especially for minor issues should be an unacceptable process.

Attached is a copy of Gull’s full submission as per the template provided. As well as being available to discuss the submission Gull looks forward to and requests to speak to this submission at Select Committee.

Gull confirms that our full submission attached and this covering letter are approved for publication on the Ministry website and / or release under Official Information Act requests.

Yours sincerely

Dave Bodger
General Manager

Regulations under a Fuel Industry Bill and other matters - Have your say

Introduction

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

Dave Bodger

* 2. **Email**

[redacted]

* 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?**

☐ Iwi or hapū
☐ General public
☐ Environmental
☐ Local government
☐ Research institute / academia
☐ Industry or industry advocates
☐ Central government agency
☐ Other (please specify)

☒ Fuel importer or wholesaler
☒ Fuel retailer
☐ Large fuel user
☐ Other fuel sector stakeholder
☐ Oil and gas sector
☐ Consultant, financial services etc

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

Gull New Zealand Limited

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

[redacted]

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.

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	Regular 91 Grade Petrol, Premium 95 Grade Petrol and Diesel should be subject to a TGP regime in New Zealand. These are 'universally' available products not in short supply and cover 100% of retail automotive requirements for the New Zealand vehicle fleet. These are the three products where supply is required to enable additional retail competition. Premium grades of petrol other than 95 should not be subject to a TGP regime. These products are in scare supply across the Asia pacific area and thus in general proprietary to those with access to that refining or blending technology. There is not a loss of opportunity by for new entrants here as the well complied NZ Fuels regulations determine 'Premium' to be over 95 octane. Thus, new entrants have access to a suite of fuels that cover all options for all motor vehicles. Marine grades do not need access to a TGP regime as international marine vessels have access to alternate pricing in other countries. Local marine vessels have access to diesel at TGP pricing. Aviation supply has significant safety ramifications. As the vast majority of aviation grades are sold "into the wing" of an aircraft on an airport. TGP is not an appropriate mechanism for Jet fuel but the Government needs to address the extremely restrictive nature of access for new entrants to the Jet fuel market via the complicated access to Airport JUHI facilities (Joint User Hydrant Interface) and airport regulations.

2	If the regime should apply to other fuel products, what are the standards used by industry for defining these fuel products?
3	Should there be a notice period for changes in the TGP price during a day? The Australian Oil Code requires a price to be set and posted each day. A wholesale supplier may set more than one TGP per day as long as it is clear that the new TGP supersedes all previous prices. Parties selling under TGP in Australia naturally want to avoid unnecessary debate around what price applies when and so publish effective dates as well. The Australian system enables the flexibility for sellers to publish a price that fits in their existing systems and simply requires that price is both published and honoured (as it should be under fair trading regulations).
4	Do you have any comments on how terminal gate prices should be set and publicly posted? The Australian Oil Code requires a price to be published on a website or available by phone or facsimile if no web site exists. The Oil Code was drafted in 2006 when internet accessibility was significantly lower and fax-machines very common. Gull submits that publication just on the internet is completely adequate in 2020.

5

Is the prescribed minimum of 30,000 litres per week to one retailer or wholesaler appropriate?

The Oil Code in Australia does not subscribe a minimum and the system works well without one.

There is no need to prescribe a minimum. With only one terminal Gull is a prime candidate (the largest candidate?) currently trading in New Zealand and potentially stands to benefit most as a buyer under TGP regulations. Gull is very happy for the system to exist with no minimum requirement.

Gull has noted many times in this process there will be few transactions under TGP. TGP requires fuel to be available, given this, parties will move to contracting volume, possibly referencing TGP as a price and the volume of fuel available will be covered in those contracts.

Gull notes that all current importers are ultimately owned by listed companies. Any breach of law is a very serious offence for a listed entity and requires reporting to the relevant stock exchange. We believe breach of law is a significant persuader to compel importers to comply. Repeated refusal to sell due to a lack of supply should be able to be reported and investigated, which would then generate the desired end effect of suppliers meeting their obligation to fairly offer product at the TGP.

Should a minimum be part of the Act, defining a minimum by “wholesaler or retailer “ is not acceptable. By the consultation paper there are 19 brands currently operating at retail; assuming no more open up each supplier captured by the TGP mechanism would then have to have available 30,000 litres x 19 suppliers x (we assume) three products ; add to that a monthly replenishment cycle (4 weeks) this

equates to 2.3 million litres of each product or 6.8 million litres all up as a contingency

Any minimum imposed may actually limit competition – Existing wholesaler refuses a contract for greater volume outside of TGP but agrees to supply the minimum under TGP regulations say 30,000 litres per week – the new entrant is then limited to 1 small service station in that area as the wholesaler has met their obligation and can happily prove it but actually limited new competition in all practicality.

Potentially the legislation should ask that the seller and buyer should engage and develop communication around expected off takes to enable optimal supply for all parties.

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?

As noted, the minimum can never be sufficient and is a limit in itself.

6

The Australian Oil Code functions without a minimum and has enabled new entrants and independent distributors to access product required for their business needs.

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 Under the Australian process suppliers prescribe their own a minimum purchase amount. The volume limit is applied by companies, including Gull's parent company, completely independent of the legislation. It is noted this is not seen as an impediment to the system. Given that the buyer requires a truck there are natural drivers to putting a sensible quantity of fuel on each truck. This will drive transactions away from trivial quantities. The legislation should note any refusals must be accompanied by a reason. As noted, both buyer and seller should engage and where practical and give notice of their intentions to lift and estimate quantities.

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?

New entrants seeking TGP supply should determine what terminal access requirements are prior to requiring fuel; naturally there is time for this as new retail and commercial locations need to endure a consenting process of many months.

There must be a right to refuse supply on the day it is sought if the tanker does not meet safety requirements and/or the driver has not meet terminal induction requirements. The onus must be on the customer to resolve these matters first to the supplier's satisfaction and not expect immediate supply.

8 Fuel terminals are major hazard facilities under NZ Health and Safety legislation and adherence to safe operating equipment and practices is a must.

Continual breaches of terminal regulations and safety requirements must be expected to be met with a blanket and ongoing refusal to load

Credit must be cleared prior to loading. This is not expected to be an issue as the TGP legislation will move parties to contract relationships where credit is covered as millions of dollars per month will be transacted.

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.

	Trucks and drivers must be preapproved, and credit terms agreed prior to loading. As a back stop a supplier must not be able to refuse prepayment. Key to note is that most of the existing independent fuel tanker operators already have access agreed for equipment and operators to most oil company terminals in New Zealand. A new entrant can simply meet access requirements by contracting the services of these transport operators.
9	What other standard terms and conditions should be prescribed for sales by a wholesale supplier for the TGP at the storage facility? The Oil Code in Australia is prescriptive noting many details that are actually required under existing New Zealand legislation. Invoicing regulations already require parties names, price, sales tax component etc. Gull submits existing legislation and a seller's own requirements to document a sale are sufficient here.

	Please provide comments on any other matters related to the terminal gate pricing regime.
10	Subject to the release of draft regulation Gull has concerns with the language utilised in the consultation paper around who would be required to post a terminal gate price under the new framework. Within the consultation paper it was indicated that the fuel industry bill would establish a terminal gate pricing regime applying to all wholesale suppliers who have a right to draw specified products from terminals or equivalent facilities. While we do not believe it is the intent of Government to capture market participants who are able to draw product, without selling it themselves, this could be the impact if this language is not addressed. As an example if Gull were to have a supply contract to draw product from a competitors terminal on the South Island solely for the purposes of our own supply we would be required to post a TGP, and conceivably also make other arrangements to comply with the proposed bill, despite there being no prospect of Gull selling product from that terminal. Gull would recommend that the Australian equivalent be utilised as a benchmark whereby wholesale suppliers, being a company, which sells declared products by wholesale from a wholesale facility (i.e. terminal), are the parties covered. This would acknowledge that a company has to be able to hold title to product at the terminal, and sell the product ex. terminal, in order to be captured by the regulations.

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? The use of MOPS data cannot be used as a transparent pricing reference point. The contracts that parties hold with suppliers of MOPS data are very strict in prohibiting the publication or sharing of this data. Thus, publishing this data is illegal for the industry. All the variations of TGP will evolve to be reference points for all parties in the industry. The very existence of a TGP system also enables comparison against other published TGP's. Gull notes when dealing in biodiesel in Australia it was common for biodiesel sales to be referenced against Shell's TGP although Shell was unrelated to either party in the transaction. Some parties even simply replicate another's TGP as their own to simplify the publication process. Gull effectively prices to its contracted distributors and dealers under a formula now, simply our replacement cost plus margin. This is however confidential and not disclosed as a formula. Referencing this to TGP would be possible but would require the updating of all of Gull's contracts and this will take time. Gull does not support the compulsory referencing of contracts to a transparent pricing methodology. Gull believes that should parties want, simple analysis of a purchasers own price from their supplier against the suite of published TGP's or against the existing MBIE imported cost is possible. Should a purchaser wish there is also at least one existing independent agency who can complete this for them.

	Gull submits the key issue in this area is other oil companies setting their sell price to their own branded dealer sites off observed retail competitors or off indicative retail market prices. Alternatively to requiring a reference to TGP, Government could review whether pricing sales to independent service station operators by what is observed in the retail market in that area is morally correct or has simply been used as a value dam by other oil companies at the expense of their operators and the market. That said, should Government deem it is necessary, Gull is accepting of a move to price independent dealers and distributors by reference to TGP however all existing contracts should have time to be updated to this new pricing system. Gull submits 2 years should be mandated from Royal Assent for this change to be made for existing contracts.
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?

As noted, MOPS data including freight components cannot be publicised Other “offshore” components such as insurance and loss are subject to commercially confidential supply contracts. All other price components excluding profit margin (Excise, Wharfage, GST, ETS, FX rate) are publically available figures.

Gull notes that MBIE’s own publication of importer costs / margin is very accurate on average. This data is available publically for anyone to compare with published TGP. Also, there are independent agencies who publish, at very reasonable rates their own estimated of a landed cost should purchasers require this.

Given this there is no need to for a price break down to be itemised. There is no itemisation under the Australian Oil Code.

Note as with any wholesale sale what is not included will be disclosed by the seller as this is required under fair trading practices. Stating including or excluding GST; Some parties may choose to state the price excluding excise tax some may note including tax.

15

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

Gull has only one new start up wholesale distributor as a customer. The 7 years suggested by the commission appears fair.

Caution must be taken in drafting this legislation. If two parties agree to a 5 year contract with a date of termination. After 4.5 years both parties agree to a new 5 year contract. Gull submits that second 5 year contract cannot be broken (apart from by mutual agreement) as there has been an opportunity to exit the contract that is less than every 7 years.

16

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

This is not cut and dried. If a Distributor is using their suppliers brand Gull submits there should be no provision for fuel from a third party to be used under another's brand.

No supplier's brand should be dealing with claims that may come from another party's fuel should that be off specification.

Assuming no brand use. Then the proposed 20% is a fair volume.

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

Our interpretation of this question is whether the proposed percentage of sales excluded from exclusive supply is across a whole year or the term of a contract.

Volumes may increase and decrease over the term of a contract.

Suppliers, both primary and secondary value rateability (reliability of off take) and need to be sure they can contract that.

The issues here are difficult to legislate. Gull notes caution on hasty legislation for what in Gull's view are side-line issues on the original intent of the fuel enquiries

17 By way of discussion:

- Gull would happily supply a competitor's customer 20% of their volume evenly every month for a year, or two years but would probably be unable to supply it all in one month with little notice.
- Should a distributor estimate their 20% exemption in litres and contract that to a second supplier, with an even off take every month for a 4 year period. The secondary supplier should have every expectation that the distributor will fulfil that off take and make a purchase. Should the distributors total volumes fall there are contractual issues for all parties.
- If a distributor has a 5 year contract and purchased 100% of their volume in each of the first four years from one supplier does this effectively discharge the contract a year early?

Gull notes that existing distributors should have ample opportunity to review final drafting in this area before it is enacted.

18	Should the exclusivity requirement apply to the total fuel requirement of distributors, or to each fuel type? A total requirement which the distributor can purchase across grades as they see fit probably gives the distributors the most leverage. However as noted above There should be detailed review of the proposals by those directly involved in this sector.
19	Do these terms hinder the ability of dealers or distributors to compete? This external purchase percentage would be at the distributors option so if an issue they do not do it.
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? Gull prioritises supply to its own sites at the same level as contracted sites. Uncontracted customers and uncontracted service stations (and TGP customers) and contracted customers outside of payment terms are lower considerations. The ability to prioritise supply on basis of contract and payment risk must remain the right of the supplier.

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? In general no, and we note we do not recall a significant dispute with a Gull branded retail site.
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? Existing system is fine. As noted, we do not see an issue nor a need for an external service. We encourage contact to be made to discuss this with Gull outlets.
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? For supply contract disputes Gull would be happy to agree to a compulsory mediation. There must be steps outlined before mediation is required. Retaining legal rights after mediation must be available to both parties.

25	Should the dispute resolution scheme apply if a wholesale supplier refuses to supply fuel at TGP? There is no need for a dispute's resolution process for TGP. Finding an expert may be a challenge in this case. Parties using TGP will be large parties who are able to move to legal remedies should a dispute prove of such size it cannot be resolved by standard communication.
26	Should the dispute resolution scheme apply to disputes that result from the new wholesale contract terms? It could do but noting legal rights post mediation must be retained.

27	Should the dispute resolution scheme apply to disputes that result from any provision that relates to the terminal gate pricing regime? No Gull believes several details have been overlooked in resolving disputes around TGP: • There has not been an issue that requires a disputes resolution service in Australia. • Media exposure for a party refusing supply under a TGP regime would reflect very badly on that party. • All current importers are listed companies or subsidiaries of listed companies to be in breach of a government's legislation is an issue that needs to be reported to the listing authority on the local stock exchange. This is type of external factor is key in ensuring major corporates follow the law. • All parties who will be involved in TGP transactions are substantial entities and capable of legal action to resolve issues should that be necessary, Gulls view that for TGP disputes this is preferable than establishing a potentially poorly skilled and uninformed arbitration process.
28	Are there any other aspects of the new regime you think the dispute resolution scheme should apply to? As above, No

29	In your view, how can we ensure the dispute resolution scheme is affordable, easily accessible, and timely for all parties involved? Mediation is the most cost effective resolution step and should be the regulated option if one is required. As noted, Gull does not see it as appropriate under TGP disputes. If parties agree mediation should be able to be bypassed.
30	Should each party to a dispute be required to pay half the cost of the mediation or arbitration process? We do not support arbitration as noted we see the field as specialised and do not believe there is adequate depth of experts available. In general parties will split the costs of the mediator and pay their own costs for mediation.
31	In your view how can we ensure the dispute resolution scheme is effective? In Gulls view before legislating a system for a small segment of the whole economy we would like to understand where the current system is actually ineffective. We submit this was not established in the Inquiry We note that arbitration and or an 'independent nominating authority' will both be expensive steps for parties involved. These costs will be passed to the consumer and or restrict interest in supply to certain segments.

32	Who should provide the dispute resolution services set up under the new regulations? As noted, Gull does not understand or see the issue here that requires legislation. That said Gull happy to include mediation in all supply contracts. Mediation gives the best opportunity to hear grievances and limits costs for both parties. The system or each contract should note that parties either agree to a mediator or if they cannot have one appointed by the New Zealand Law Society
33	Should the dispute resolution scheme appoint an independent nominating authority to appoint dispute resolvers under the scheme? No, Gull does not accept that there are sufficient independent parties with the experience to arbitrate. This is not like rental disputes where there are literally tens of thousands of leases in NZ and thus many skilled experts in a focussed area. Mediation however will compel both parties to listed to the other and this will likely assist understanding and dispute resolution more effectively than the risk and major cost of an authority or Arbitrator

34	Is there a specific skillset / background the mediator / arbitrator should have? Yes, there are specific but different skills required for both mediation and arbitration We do not believe people holding the technical skills for the fuel industry exist in sufficient numbers to arbitrate a dispute and thus we do not support it. Mediation is a skill of communication and drawing parties to an understanding rather than technical knowledge and there are many parties skilled in this area.
35	Please feel free to provide comments on any other matters related to the dispute resolution process.

Regulatory backstop

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.

36

Gull again respectfully notes that the Australian Oil Code delivers the outcomes the New Zealand Government is looking for in opening up markets to create competition. There is no backstop regulation required in Australia.

Further Gull draws the Governments attention to the period pre 1987 with the highest domestic mark up on imported price was imposed on the New Zealand motorist by the Government setting fuel prices.

Should the TGP regulation not deliver a more competitive market is it at that point in time that a Government should look at further intervention rather than effectively guessing and attempting to pick a winner now.

Gull notes all signals are that this legislation will continue to be fast tracked and raises concerns that hasty legislation especially in this question that is attempting to guess a solution to an issue that does not exist is naïve and could well lead directly to poor legislation.

We strongly recommend that Government discuss any real requirement for this with independent purchasing parties operating in Australia and thus determine if there is a need to intervene further at this point or to more simply wait and observe.

	How should the backstop price control regime be designed to apply to specified fuel products at a terminal or terminals? Please give reasons.
37	Gull submits price intervention should not be considered now and in haste when there is proof in a very similar market that basic TGP legislation achieves the objective of increasing competition.

Consumer information

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

It will cost Gull approximately $1 million to retrofit one additional double sided price board to each of our sites. We have 97 outlets at time of writing, 10 of which have premium prices displayed. A change of font or colour on existing prices could potentially double or triple this requirement.

Given significant recent major trading losses and expected ongoing marginally profitable trading in part due to remaining operational as an essential industry under Covid 19 Levels 3 and 4; Gull questions whether the Government should still be looking to impose this additional expenditure on the industry? Or if it is such an important measure should Government fund this directly?

38

If it is still a requirement for industry to move forward with this change now, we would appreciate a two year period to retrofit these signs from Royal Assent. Gull commits to continue to install premium price signs on new build sites over this period as we have since Minister Faafoi's letter on this matter in December 2019. We have two sites under construction now with another 12 (or more sites) planned for construction in the next 18 months so there will continue to be an expanding presence of Premium Price Boards.

We suggest that given significant trading losses, by the whole industry, under Covid -19 lockdown that should the whole industry be responding as Gull has to Minister Faafoi's letter this would be a fair compromise as opposed to compulsion in this situation.

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?

Noting Gull's opposition to the compulsory display. We deem it would be a bizarre situation to legislate the compulsory display of premium petrol prices for it to be met by changing the current diesel price display to premium.

39

Indicatively 10% to 25% of total volume sales are premium while diesel may be 25 to 50% of sales on site.

We note that market forces and common sense has got the market to the current situation where most sites display two prices for the grades that cover 80 to 90% of the sites sales. Compulsion for the lowest selling item does not seem correct in a free society.

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

Gull notes fundamentally the more detailed messages on site the less information the motorist has the opportunity to absorb. A number of staff at Gull noted this portion of legislation was supported by parties who in Gull's eyes are less likely to discount fuel and thus less visibility of discount may well be their goal.

Gull does not support the loss of property rights in this legislation but submits that if there is to be compulsion then full information must be given, if a site sells four grades of fuel, they must display four grades of fuel. If the site sells LPG this price should be displayed.

If this is too difficult or installing a new fuel price display is not affordable a site can have the right to display no grades. All or nothing is fair to all.

We note that in 6 out of 8 jurisdictions in Australia there is the provision for fuel price board regulations (and what must be displayed) but that these regulations only apply if a site has a price board.

So, a site operator has the choice as to whether they install a price board or not, but the regulations only apply if a price board is installed.

Also, if unable, through space or price to display all prices equitably an operator can choose to display none on the roadside.

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?

41 All grades must be equally visible. This is simple to enforce and fair to all. This will force fonts and sizes to be similar but enables some choice for the owner of the sign to reflect their own personality. Should a party choose a poor font or size that this their issue, but it will apply across their whole menu of fuel grades

Gull struggles with this point, currently there are no rules apart from those governing fair competition; now by passing additional rules requiring specific colours and order of prices potentially existing nonregulated price boards will not comply. This is would be a bizarre outcome indeed.

42	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? No The situation in NZ now is that sites either have a price sign or they do not. In general, the do nots are because the cost did not justify it. The Government should give sites enough time to justify installing an addition price panel, but should they not wish to then they have a choice of displaying no price for any grades Legislating exemptions gives parties opportunity to game the system and also adds further complexity where it is not required.
43	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? As noted, Gull believes the simplest solution is all prices or no prices. Smaller sites in general currently do not display prices at all, this approach would maintain the status quo. As noted above the Australian regulations enable no price to be displayed roadside.

44	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? Gull believes that in general it is the square area of signage that has been approved by authorities, via Resource Consenting or Existing Use Rights. This proposed law is simply reallocating the messages and removing the property rights of the sign owner to make their own choice. A reallocation of the messages on the sign should not require further consent. If there are issues specific to individual sites, then the relevant oil company should advise this now or when councils raise this as an issue.
45	Are there any other issues that you think should be considered in development of regulations relating to the display of prices on price boards?

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

We reiterate our other submissions on this matter.

Gull serves just under 1 million customers per month, we have senior staff at Gull with over 14 years' experience in retail at Gull.

We do not recall a single complaint received about the lack of a Premium petrol price on the roadside.

46 We note that EVERY dispenser of EVERY brand in NZ that sells premium grade fuel has a price for premium displayed on it. People are very mobile in vehicles and can view that and exit the site should they not like it. There are modern mobile 'phone apps that give very accurate reports of fuel price to the consumer wherever they are not when just adjacent to an outlet.

The 'real estate' of sign advertising at a service station is controlled either by resource consent or existing use rights and is thus limited. Gull believes it is not correct that an entity's own choice over what it displays on its own sign is impacted by this proposed regulation. Especially when there is not a perceived need for it.

We submit the lack of actual complaints proves that this removal of property rights is unjustified and unlikely to have any material benefits for consumers.

Information disclosure and monitoring

47

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

Gull does not support the release of private and confidential information to Government. Gull submits the Government bureaucracy has paid little attention to the fuel industry over the past 15 years other than a brief interest in biofuels and well thought through fuel quality regulation.

We believe that after this legislation passes Government will unfortunately move to actively supervise the industry given it now collects regular information. This will add significant cost and complexity that will pass through to the consumer but also be a barrier to entry for new competitors.

We refer again to the period pre 1987 when the Government supervision of the fuel industry was constant and definably inefficient to the consumers cost.

We note that in Gull's view paragraph 169 of the discussion document is straying well outside the reference terms of the fuel Inquiry.

48

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

All the information requested, excluding the retail pricing information would cost Gull approximately half a day per month in additional time.

The retail pricing information as requested would itself require a further two days per month. Should this information be able to be provided on a daily average basis including fixed Government charges this process would be very simple. The requests as noted do not align with Gull's pricing system. This was apparent during the Fuel Market Inquiry and Gull provided very similar but alternate data at that stage we would request the ability to do so again.

Gull's total accounting administration team, excluding management is only a total of only seven full time and one part time staff member. Thus, the additional cost is in hours quite small but actually a significant increase across a small pool of staff.

Gull notes that the existence of this information will lead to review and discussion with Government which will in our view be a significant time constraint on senior management.

Gull currently and successfully operates and increases retail competition without a Public Relations Department or a Government Affairs Department. The creation of a system that collects this information will lead to subsequent discussion and review both with Government and externally. This review will take senior management time and will lead to the need for additional resource thus being an additional cost to be recovered from the motorist and a further barrier to new entrants.

49	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? As noted, the retail pricing information is not collected as noted by the consultation paper. Provision in this form will be a significant issue for Gull. Discussion with officials and provision of very similar information would be a significant improvement for Gull's systems.
50	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? A party making a retail sale should be responsible for providing information if it is required to be disclosed. Gull notes that the requirement to collect and disclose the retail market data for independent dealers; this will be a significant impost on these small businesses. Many will simply not be able to do or so or will refuse. This information cannot default to the wholesaler brand they represent as the retail sale by definition is not 'seen' by the wholesaler.

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? They must be set in consultation with the individual parties in the industry.
55	Do you have any comments on proposals for agencies to develop templates to ensure that information is disclosed in a consistent format? Requiring consistency across companies will impose unknown costs on all companies disclosing information.
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? As noted, Gull has key concerns that this information will result in the Government wanting to manage the industry once it has this information. This process is inefficient for Government, oil industry and most importantly the motorist. Collection when needed would be a positive sign that the Government is looking to minimise costs for the industry and motorists.

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