



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Regulatory Backstop under the Fuel Industry Act 2020	<b>Date to be published</b>	9 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2022	Regulatory Backstop under the Fuel Industry Act 2020	Office of the Minister of Energy and Resources
3 August 2022	Regulatory Backstop under the Fuel Industry Act 2020 DEV-22-MIN-0170 Minute	Cabinet Office
29 August 2022	Supplementary Analysis Report: Regulatory Backstop under the Fuel Industry Act 2020	MBIE

### 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 reasons of Commercial information, Confidential advice to Government, and Privacy of natural persons.



# Cabinet Economic Development Committee

## Minute of Decision

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### Regulatory Backstop under the Fuel Industry Act 2020

**Portfolio**                      **Energy and Resources**

On 3 August 2022, the Cabinet Economic Development Committee (DEV):

#### Background

- 1        **noted** that the Commerce Commission's (the Commission) retail fuel market study final report 2019 (market study) recommended the development of a regulatory backstop to the wholesale fuel market;
- 2        **noted** that in February 2020, DEV agreed to defer the implementation of a backstop regime, and that officials continue to develop the regime to be implemented at a future point, due to the significant design requirements [DEV-20-MIN-0008];
- 3        **noted** that the Fuel Industry Act 2020 (the Act) gives effect to the Commission's recommendations from the market study, but that a regulatory backstop to the Act has not yet been implemented;

#### Further improvements to information disclosed

- 4        **invited** the Minister of Energy and Resources to report back to DEV on how existing information disclosure requirements could be further refined, including methodologies that must be applied in recording information such as how common costs are to be allocated and how assets are to be valued;

#### A regulatory backstop to promote wholesale competition in engine fuel markets

- 5        **agreed** that, subject to a supporting regulatory impact statement, a regulatory backstop to the wholesale fuel market should now be progressed, with the objective of promoting wholesale competition in engine fuel markets, which flows through to a more competitive retail market for the long-term benefit of consumers;

#### The threshold and process for triggering the regulatory backstop

- 6        **agreed** that the Commission be responsible for recommending to the Minister responsible for the administration of the Act (the Minister) whether price regulation should be imposed on one or more wholesale suppliers' terminal gate prices (TGPs) for a particular fuel type or fuel types, at a particular terminal or terminals, for a specified time;

- 7 **agreed** that the decision to impose price regulation, as referred to in paragraph 6 above, can only be made after the Commission considers whether TGPs at the terminal or terminals owned or operated by wholesale suppliers have been persistently higher than would be expected in a workably competitive market;
- 8 **agreed** that the decision to impose price regulation can only be made by the Commission after it considers views from interested persons;
- 9 **agreed** that an investigation leading to the decision to impose price regulation may be commenced by the Commission on its own initiative, or at the request of the Minister;
- 10 **agreed** that if the Minister receives a recommendation from the Commission to impose price regulation, the Minister must consider the Commission's recommendation and may request further information or advice or request the Commission reconsider any matter;
- 11 **agreed** that if the Minister receives a recommendation from the Commission to regulate one or more wholesale supplier with price regulation, and the Minister considers that regulation is in the public interest, the Minister may make a recommendation to the Governor-General to make an Order in Council, which would provide that one or more wholesale supplier is subject to regulated TGPs for the specified fuel type or types, at a particular terminal or terminals, for a specified time;

### **How price control regulation should apply**

- 12 **agreed** that if an Order in Council has been made that prescribes that one or more wholesale supplier is subject to regulated TGPs for specified fuel type or types, at a particular terminal or terminals, for a specified time, the Commission must set the pricing principle or methodology after it has consulted with interested persons;
- 13 **agreed** that:
- 13.1 the Commission have the discretion as to whether it prescribes a pricing principle or methodology;
- 13.2 the Commission may amend a pricing principle or methodology at any time after consulting with interested persons, and if the Commission considers that an amendment would better give effect to the purpose of the Act;
- 14 **agreed** that regulated TGPs must be set by a wholesale supplier for specified fuel type or types, at a particular terminal or terminals, for a specified time, consistent with the pricing principle or methodology determined by the Commission;

### **Compliance and enforcement**

- 15 **agreed** to extend the Act's existing injunction, Court order, and High Court pecuniary penalty provisions, and associated provisions, with appropriate modifications, to a breach of a pricing principle or methodology by a wholesale supplier subject to regulated TGP;
- 16 **agreed** that the Commission may, of its own accord or in response to a complaint referred or made to it, investigate whether a pricing principle or methodology has been correctly applied by one or more wholesale suppliers;
- 17 **agreed** that if the Commission finds that a wholesale supplier has not complied with a pricing principle or methodology in setting its TGPs, the Commission may apply to the Court to impose a pecuniary penalty, consistent with those provided under section 30(3) of the Act;

**Application of existing Commerce Act 1986 provisions**

- 18 **agreed** to incorporate certain Commerce Act 1986 administrative and information-requiring provisions into the Act, with appropriate modifications;

**Financial implications**

- 19 **agreed** that new ongoing funding is required to implement the above decisions, which will be sought as part of Budget 2023;

**Legislative implications**

- 20 **invited** the Minister of Energy and Resources to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;
- 21 **noted** that the decisions in paragraphs 5 to 18 above will be given effect through the Fuel Industry Amendment Bill, Confidential advice to Government [REDACTED]
- 22 **authorised** the Minister of Energy and Resources to make additional policy decisions, consistent with the decisions under DEV-22-MIN-0170, on any issues that arise during the drafting process;
- 23 **authorised** the Minister of Energy and Resources to make decisions on minor and technical matters that may arise during the drafting process.

Janine Harvey  
Committee Secretary

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**Present:**

Hon Dr Megan Woods (Chair)  
Hon David Parker  
Hon Damien O'Connor  
Hon Stuart Nash  
Hon Michael Wood  
Hon Dr David Clark  
Hon Meka Whaitiri  
Hon Kieran McAnulty  
Rino Tirikatene, MP  
Dr Deborah Russell, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV