



ICRC
INDEPENDENT COMPETITION AND REGULATORY COMMISSION

ISSUES PAPER

Inquiry into Motor Vehicle Fuel Prices

April 2001



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COMMISSION**

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Submissions

Public involvement is an important element of the Commission's processes. The Commission therefore invites submissions from interested parties to all of its investigations.

Submissions should have regard to the specific issues that have been raised, although additional issues that you feel are relevant may also be canvassed. Submissions should be made in writing and, if they exceed 15 pages in length, should also be provided on computer disk in word processor, PDF or spreadsheet format.

Confidentiality

Special reference must be made to any issues in submissions for which confidential treatment is sought and all confidential parts of submissions must be clearly marked. *However, it is important to note that confidentiality cannot be guaranteed as the Freedom of Information Act and section 44 of the Independent Competition and Regulatory Commission Act provide measures for possible public access to certain documents.*

Public access to submissions

All submissions that are not subject to confidentiality will be made available for public inspection at the Commission's offices immediately after registration by the Commission and also via the Commission's website.

Public information about the Commission's activities

A range of information about the role and current activities of the Commission, including copies of latest reports and submissions can be found on the Commission's website at www.icrc.act.gov.au

The Commission is headed by:

Mr Paul Baxter

Submissions to this inquiry should be received no later than 25 May 2001.

Comments or queries regarding this inquiry should be directed to:

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1 Introduction

1.1 *History of the inquiry*

There is a considerable body of popular opinion in the ACT and nationally that motor vehicle fuel prices are too high. The volatility of fuel prices and the rapidity with which they change are also major concerns. These concerns amongst ACT consumers led to the Legislative Assembly passing a motion ([Attachment 1](#)) recommending “that the Government issue to the Independent Competition and Regulatory Commission a reference to investigate and advise the Assembly on matters relating to motor vehicle fuel, including petroleum, diesel and gas prices in the ACT”. The Government has responded by issuing the reference to the Commission shown at [Attachment 2](#).

The issue of fuel prices is complex and not easily understood, particularly when information to the ordinary consumer about price movements is not freely available. This brief issues paper raises a number of issues to stimulate debate and to encourage members of the community to make submissions to the Commission’s Inquiry.

1.2 *Commission’s role*

The Commission is established under the ACT *Independent Competition and Regulatory Commission Act 1997*. Its objectives are to promote effective competition in the interests of consumers, facilitate an appropriate balance between efficiency and environmental and social considerations, and to ensure non-discriminatory access to monopoly and near-monopoly infrastructure. It does this for regulated industries by providing price directions, recommendations about price regulations and by providing advice on, registration of and arbitration for access to monopoly infrastructure. In non-regulated industries (such as petroleum) its role is investigating competitive neutrality complaints, government-regulated activities and matters referred by the Minister or other referring authorities.

The Commission’s role in this case is to report to the Legislative Assembly on each of the issues covered in the Terms of Reference and to recommend possible courses of action. As the petroleum industry is not a regulated industry under the Act, it is not the Commission’s role to impose price controls or introduce a new regulatory framework for the petroleum industry – these powers rest with the Government.

In addition to making recommendations on action that may be taken by the ACT Government, the Commission may also provide information to the Australian Competition and Consumer Commission (ACCC), the national regulator, if evidence of illegal price-setting activity is discovered.

2 Terms of Reference

The Terms of Reference for the Inquiry, in summary, requires an investigation of the following:

- Whether there are efficient retail prices in the ACT, including whether there is competition in distribution and retailing and any arrangements between retailers and distributors that restrict competition.
- Price comparisons with Queanbeyan and other capitals.
- Fluctuations in prices such as those before holiday periods.
- Whether reforms similar to those in Western Australia would benefit the ACT community.

2.1 *Efficient retail prices in the ACT*

Efficient retail prices reflect the total costs of supplying fuel including allowing businesses to make a reasonable, but not excessive, profit. They are desirable because they minimise the cost to consumers whilst keeping the industry viable.

The Commission is required to investigate whether current motor vehicle fuel prices are efficient. Issues that may be considered include:

- any arrangements between retailers and distributors that restrict competition;
- whether there is effective competition in the retailing and distribution market sectors;
- the efficiency effects of government taxation on fuel prices;
- whether policies such as introducing independent retailers to the market have improved efficiency; and
- the possible effect on fuel markets of increasing competition from alternative fuel sources.

2.2 *Price comparisons with Queanbeyan and other capitals*

ACT consumers often compare ACT motor vehicle fuel prices to those in other areas such as Sydney, Marulan and Queanbeyan. Detailed information on prices for making regional comparisons is available to the Commission, as is information on common costs such as crude oil prices and refining costs. The Commission will seek to determine the drivers of any cost differences between Canberra and other regions such as:

- local transportation costs;
- distribution network efficiency including the storage/warehousing of fuels;
- whether there is any evidence of arrangements intended to artificially inflate prices beyond their efficient level that could be seen as opposed to the spirit of the *Trade Practices Act*;
- differences in market structures;
- differences in government regulations; and
- differences in pricing cycles between markets.

2.3 Fluctuations in prices such as those before long weekends

The Legislative Assembly motion addressed the widespread perception that prices increase before pay days and public and school holidays. The Commission will investigate these price fluctuations to determine whether they are indicative of an inefficient motor vehicle fuel market. In doing so, the Commission will refer to the current ACCC inquiry into such fluctuations nationally.

Issues that may be considered include:

- whether there is evidence to substantiate the perception that prices do actually tend to rise prior to holidays and pay days, and if so why; and
- whether there are regulatory mechanisms available to the ACT that would be effective in reducing fluctuations.

2.4 Western Australian reforms

Western Australia has recently introduced a wide range of policy initiatives impacting on fuel prices including controls over retailers' ability to alter their fuel prices, and the publishing of each retailer's fuel prices. The Commission is required to provide advice to the Government on whether similar reforms would benefit the ACT community.

Issues that may be considered include:

- how the schemes work, what are their objectives and what form of assessment procedures have been established;
- whether the reforms have been effective in increasing efficiency in retail fuel prices;
- how the scheme has altered price fluctuations and whether those changes have improved market efficiency;
- how the reforms relate to the Trade Practices Act;
- the cost to government of the reforms;
- whether such reforms would be effective in the ACT; and
- the risk of institutionalising an ineffective and costly system if the reforms fail.

3 Constraints on the Inquiry

3.1 The role of the ACT Government

The ACT is part of a global oil and gas market and is neither geographically nor economically isolated from other parts of that market. These factors impose constraints on the actions that the ACT might take to modify fuel retail prices, for example:

- Australian fuel prices are highly susceptible to fluctuations in international crude oil prices and the value of the Australian dollar, neither of which are under ACT control;
- the structure of the oil refining industry is a national issue over which the ACCC has control;

- overall market structure issues such as vertical integration between refiners and distributors is a matter for consideration by the Commonwealth and is outside the Territory's influence.

Further, whatever actions the Territory takes, it needs to ensure they are consistent with national policies and those of other states, particularly NSW. Failure to act consistently in the national context may harm the ACT economy.

In view of these constraints, the Commission will focus the development of its advice on three areas. Firstly, the Inquiry will look at local issues directly under the control of the ACT Government such the structure of the local industry, government regulations and the provision of information to ACT consumers. Secondly, the Inquiry will investigate issues which are amenable to joint action by State and Territory Governments, for example pricing controls. Thirdly, the Inquiry will investigate issues where the ACT can assist with national efforts such as action to combat any abuse of market power by industry players if this is found to exist.

3.2 Limitations in the reference

The Commission is required by the Terms of Reference to "restrain from unnecessarily inquiring into those issues under reference to the ACCC [Australian Competition and Consumer Commission]". The ACCC is currently investigating the motor vehicle fuel industry and this may limit the Commission's scope to investigate national factors such as vertical integration in the market. However, the ACCC Inquiry also opens possibilities for information sharing which may assist the Commission's work and it is expected that the Inquiry will be conducted in consultation with the ACCC.

Motor vehicle fuel prices in the ACT have been the subject of a number of previous reports, not least by the Legislative Assembly. The Terms of Reference for the Inquiry require a focus on "changes that have occurred since previous Inquiries into the ACT motor vehicle fuel...market". As a number of the issues in the market have been covered by previous Inquiries, this Inquiry will review those issues and identify material changes. The Commission is thus particularly interested in information from industry and the public on recent changes within the industry that reflect on the contents of previous reports.

4 Timetable for completing the Inquiry

The Commission is required to conclude the Inquiry by 30 June 2001. A report is to be presented to the Legislative Assembly as soon as possible following this.

The Commission is interested in receiving the views of members of the industry, community groups and other interested parties. To meet the Commission's reporting obligations, the period for making submissions will close on 25 May 2001.

ACT Legislative Assembly motion to establish the Inquiry

Motion moved by Mr Rugendyke:

“That the Legislative Assembly recommends that the Government issue to the Independent Competition and Regulatory Commission a reference to investigate and advise the Assembly on matters relating to motor vehicle fuel, including petroleum, diesel and gas prices in the ACT. The reference should require the Independent Competition and Regulatory Commission to have regard to the following in its advice:

- (1) whether an efficient retail price for petroleum is being delivered in the ACT;
- (2) whether there is a higher average cost of fuel in the ACT compared to other capital cities and neighbour Queanbeyan;
- (3) whether there is efficient competition in the ACT distribution and retail sectors in the ACT;
- (4) whether the fluctuation of ACT fuel prices, particularly prior to public service pay days and peak holiday periods, is indicative of a failure in the retail market that disadvantages consumers;
- (5) the efficacy of the *Petroleum Products Pricing Amendment Act 2000* passed in Western Australia and whether similar reforms would provide a net benefit to the community as a whole in the ACT;
- (6) whether there are tied arrangements between retailers and distributors in the ACT fuel market that have the effect of restricting competition;
- (7) any other related matter.”

AUSTRALIAN CAPITAL TERRITORY

INDEPENDENT COMPETITION AND REGULATORY
COMMISSION ACT 1997

REFERENCE FOR INVESTIGATION UNDER SECTION 15
AND
SPECIFIED REQUIREMENTS IN RELATION TO INVESTIGATION UNDER
SECTION 16

INSTRUMENT NO. 69 OF 2001

Reference for Investigation Under Section 15

Pursuant to subsection 15(1) of the Act, I refer to the Independent Competition and Regulatory Commission (the "Commission") the matter of an investigation into motor vehicle fuel, including petroleum, diesel and gas, prices in the ACT.

Specified Requirements in Relation to Investigation Under Section 16

Pursuant to subsection 16(1) of the Act, I specify the following requirements in relation to the conduct of the investigation:

The Commission is to have regard to the following in its report on the Inquiry:

- (1) whether an efficient retail price for petroleum is being delivered in the ACT;
- (2) whether there is a higher average cost of fuel in the ACT compared to other capital cities and neighbour Queensland;
- (3) whether there is efficient competition in the ACT distribution and retail sectors in the ACT;
- (4) whether the fluctuation of ACT fuel prices, particularly prior to public service pay days and peak holiday periods, is indicative of a failure in the retail market that disadvantages consumers;
- (5) the efficacy of the Petroleum Products Pricing Amendment Act 2000 passed in Western Australia and whether similar reforms would provide a net benefit to the community as a whole in the ACT;
- (6) whether there are tied arrangements between retailers and distributors in the ACT fuel market that have the effect of restricting competition; and
- (7) any other related matter.

In undertaking the inquiry, the Commission is to:

- (i) conclude the Inquiry by 30 June 2001 and report as soon as practicable thereafter;
- (ii) note the ACCC Inquiry and restrain (sic) from unnecessarily inquiring into those issues under reference to the ACCC;
- (iii) focus the Inquiry to those changes that have occurred since previous Inquiries into the ACT motor vehicle fuel, including petroleum, diesel and gas, market;

- (iv) have regard to the Government's view that the reasonable costs of the Inquiry ought not exceed \$60,000; and
- (v) have regard to the Inquiry report being advice to the Legislative Assembly.

Dated this 14th day of April 2001

GARY HUMPHRIES
TREASURER