

## 2 ACCC activities related to the petroleum industry

### Key points

- The ACCC considered around 1000 complaints and inquiries about fuel issues in 2010–11. The most common issues raised by consumers were high prices, issues relating to the quality of fuel and allegations of anti-competitive conduct.
- The ACCC continued to monitor developments relating to biofuels and premium unleaded petrol.
- It continued to undertake its fuel monitoring activities including in regional Australia.
- The ACCC sought to improve consumer understanding about fuel issues by distributing fact sheets and other publications, providing information on its website and providing informed comment to the media.
- It actively engaged with stakeholders to identify opportunities to improve compliance with the *Competition and Consumer Act 2010* (the Act) and held two Fuel Consultative Committee meetings.
- In 2011, the ACCC issued two infringement notices and accepted court enforceable undertakings for conduct in the fuel industry that was likely to breach the consumer protection provisions of the Act.

### 2.1 Fuel industry and the Competition and Consumer Act

The ACCC's main role is to enforce the *Competition and Consumer Act 2010* (the Act) across the Australian economy, which includes the fuel industry. The ACCC's activities relating to the Act includes enforcement and compliance, mergers and acquisitions, authorisations and notifications and administration of the Oilcode.

One of the key fuel-related enforcement outcomes during 2010–11 for the ACCC was the issuing of two infringement notices and accepting a court enforceable undertaking from Prime Fuel Distributors Pty Ltd (Prime Fuel) for conduct that the ACCC considered was likely to breach the consumer protection provisions of the Act. This is discussed further in section 2.1.2.

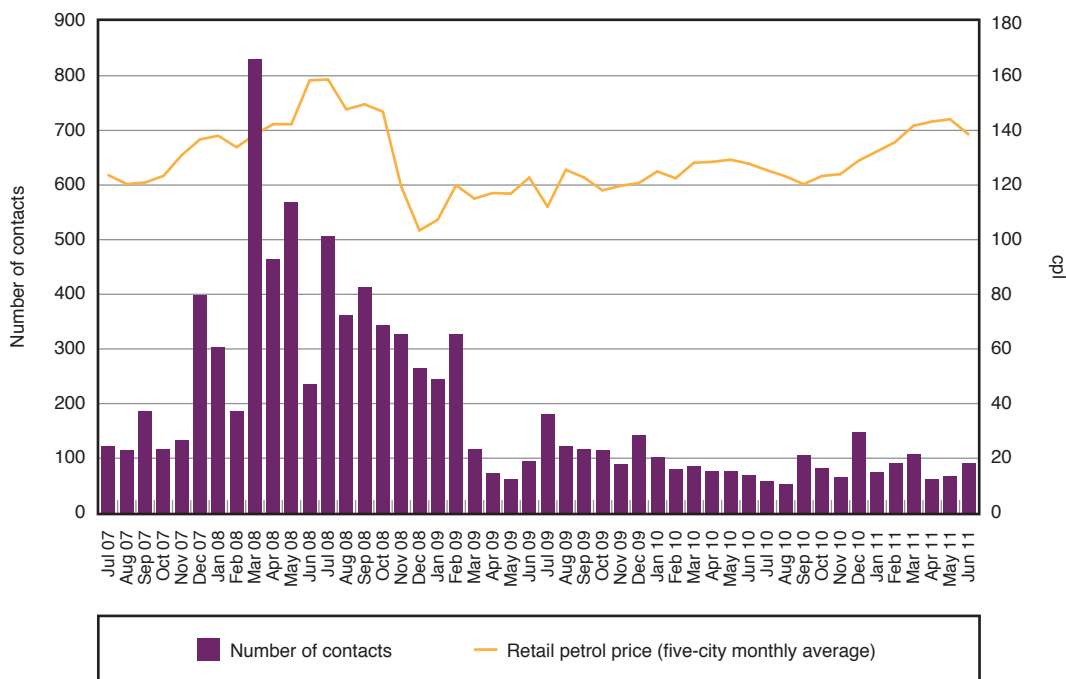
#### 2.1.1 Enforcement and compliance

##### Complaints and inquiries regarding fuel

The ACCC receives information about potential breaches of the Act from a wide variety of sources, however, the most common source is complaints and inquiries from consumers. During 2010–11, the ACCC received around 1000 complaints and inquiries about fuel issues, which is slightly lower than levels in 2009–10.

Similar to previous years, during 2010–11 the number of fuel-related complaints and inquiries received by the ACCC moved broadly in line with movements in retail fuel prices. In particular, the ACCC has generally found that when prices increase, complaints and inquiries to the ACCC also increase. In early 2011, while prices were similar to price levels in early 2008, there were far fewer complaints than in 2008. This could be due to the steady price rises in 2011, as compared to the sharp price rises in 2008, which may demonstrate consumer sensitivity to rapid price rises (see chart 2.1).

**Chart 2.1 Fuel contacts received by the ACCC by month and average petrol prices in the five largest cities: July 2007 to June 2011**



Source: ACCC and Informed Sources data.

## High prices

The ACCC does not set wholesale or retail fuel prices in Australia. Retailers are free to set their prices according to market conditions. As detailed in chapter 9, retail fuel prices are largely driven by movements in international market prices for oil and refined petroleum products.

Despite this, in 41 per cent of the complaints and inquiries received about the fuel industry, the primary issue raised was that the price of fuel was ‘too high’. Similar to 2009–10, common issues included complaints or inquiries about:

- differences in fuel prices between suburbs, towns or retail sites
- differences in fuel prices for one type of fuel compared to another
- the relationship between retail fuel prices in Australia and international benchmark prices.

- While the ACCC's primary role is to enforce the provisions of the Act it also currently monitors fuel prices. In doing this, the ACCC seeks to educate consumers on what influences domestic retail prices by providing fact sheets, information on its website and by responding to contacts with its Infocentre. Further information on these activities can be found in section 2.3.

### Potential compliance issues

About 59 per cent of complaints and inquiries received about the fuel industry related to potential compliance issues under the Act. The ACCC examined these contacts carefully and made further inquiries or assessments in respect of over 20 matters.

## 2.1.2 Misleading conduct and false representations

Many of the contacts the ACCC received in 2010–11 related to alleged misleading and deceptive conduct and false or misleading representations. Conduct will be in breach of the Act where it misleads, deceives or is likely to mislead or deceive consumers. Such conduct may include lying to consumers, leading them to a wrong conclusion, creating a false impression or making false or inaccurate claims.

Similar to 2009–10, the main issues raised by consumers in 2010–11 included concerns about pricing practices, labelling on fuel pumps, advertising promotions (such as discount schemes), fuel quality claims and concerns about inaccurate fuel measurements. Of the total complaints further assessed, the ACCC achieved an enforcement outcome in relation to Prime Fuel (see text box below). A number of other matters remain under investigation.

### **Service stations misled motorists about petrol type**

In 2011, the ACCC issued two infringement notices to Prime Fuel totalling \$13 200. It also obtained court enforceable undertakings from the company directors restraining them from engaging and promoting or selling different fuels as the same fuel, requiring them to implement a trade practices program and publish corrective notices in major newspapers and at two retail sites.

The ACCC alleged that between May and October 2010 Prime Fuel sold the same petrol as both unleaded and E10 unleaded 95 at the two retail sites. It considered that by selling the same petrol as two different products at different price points, Prime Fuel was likely to have breached the *Trade Practices Act 1974*, known as the *Competition and Consumer Act 2010* from 1 January 2011. It further considered that the price board signage and different coloured labelling on bowsers gave the impression that two different petrol products were available when both products had the same octane rating and ethanol content of around 10 per cent.

Following the ACCC's investigation, Prime Fuel took immediate corrective action at both retail sites, by withdrawing one of its unleaded products from sale and correcting promotional signage and labelling on petrol bowsers to reflect this change.

Further information about this matter is available on the ACCC website.

### 2.1.3 Business-to-business dealings

In 2011, the ACCC continued its focus on examining allegations of anti-competitive conduct in the retail fuel industry. If warranted by the information provided in support of the allegation, the ACCC undertakes further analysis of fuel prices in the metropolitan and regional locations in the context of such allegations. Where there is information to suggest a breach of the Act may have occurred, the ACCC will investigate by making targeted inquiries. If the information available to the ACCC shows that a breach of the Act may have occurred, it can take action.

While most matters were addressed directly with the complainants, the ACCC identified a number of matters concerning allegations of anti-competitive conduct for further investigation over the 2010–11 financial year. Despite further investigating these matters, to date no allegations have been able to be substantiated.

### 2.1.4 Improving business practices

From the complaints and inquiries received, the ACCC analysed emerging trends to identify issues of concern for consumers. In September 2011, the ACCC wrote to the major petrol companies and industry associations to request that they review their business practices and take corrective action where necessary. The practices raised in these letters included the following:

- Labelling of fuel containing ethanol—consumers raised concerns about fuel containing ethanol not being adequately differentiated from regular unleaded petrol (RULP) and where a single or prominent price appears on a price board, consumers reported that their understanding was that the price related to RULP as opposed to ethanol blended petrol (EBP).
- Restrictive trade practices—after receiving concerns from consumers about potential anti-competitive conduct, the ACCC again reminded businesses of their responsibilities under the Act. The ACCC reiterated that it takes these allegations very seriously and will take action if there is evidence to establish a breach of the Act.
- General advertising, labelling and pricing—consumers raised concern about the presentation of labelling and signage at retail sites as well as advertising of discounts and other offers. There were also general concerns relating to price boards and prices at the fuel pump.
- Petrol price cycles—consumers raised concerns about the movement of prices as a result of the price cycle and prices rising on weekends and around public holidays. It should be noted that the degree of coordination exhibited in the price cycle is a concern for the ACCC and it is analysing the likely impact of this behaviour on consumers.
- Fuel quality, grade and composition—consumers raised concerns about purchasing fuel which did not meet the advertised characteristics. One investigation resulted in the ACCC issuing two infringement notices and obtaining court enforceable outcomes (Prime Fuel).

The ACCC will continue to monitor these issues and take enforcement action where it is appropriate.

In addition, as a result of discussions with industry about specific compliance issues, the ACCC was requested to contribute an article about predatory pricing in the Australasian Convenience and Petroleum Marketers Association magazine. This article was published in mid-2011 to assist industry players to understand their rights and obligations under the Act.

## 2.1.5 Markets in regional Australia

As part of its monitoring activities in 2010–11, the ACCC considered regional fuel price issues. The ACCC monitors prices in around 150 regional locations throughout Australia. It also actively collects information about regional fuel pricing issues from industry groups and members of the public.

The ACCC uses this information to assess the competitiveness of fuel prices in regional locations. Where there is an allegation of anti-competitive conduct, it will make targeted inquiries to investigate the issue. After making inquiries, if there is information available to the ACCC that a breach of the Act is likely to have occurred, it can take action to enforce the Act.

In addition, the ACCC pays particular attention to any potential changes in the ownership of retail sites in regional locations. Given many regional locations have a limited number of retail sites, the ACCC actively monitors such changes to ensure that the sale will not substantially lessen competition in that particular market.

Further information about the ACCC's activities relating to fuel price issues, including in regional locations, can be found in sections 2.2 and 2.3.

## 2.1.6 Emerging market for biofuels

In its 2010 petrol monitoring report, the ACCC reported that biofuels (particularly EBP and biodiesel) were becoming an important part of the fuel product mix in Australia. Developments in this emerging market continued to be of interest to the ACCC during 2010–11.

During late 2010 and early 2011, the ACCC received concerns from key stakeholders about the lack of supply of ethanol after the floods in Queensland had reportedly disrupted some of the key ethanol processing plants. The ACCC highlighted its concerns in a media release in January 2011.

In December 2010 and again in June 2011, the NSW Government postponed an increase in its ethanol mandate from 4 per cent to 6 per cent. The government cited ethanol supply shortages and the need to consult with its stakeholders to enable it to consider the best way forward. In September 2011, the government announced that it would proceed to increase the mandate to 6 per cent from 1 October 2011.<sup>17</sup>

The ACCC has made its concerns over the potential supply and price impacts of the ethanol mandate known to the NSW Government. Given ongoing supply and price issues, the ACCC will continue to closely monitor the ethanol and EBP markets in the coming year.

The Queensland Government had also planned to introduce an ethanol mandate on 31 December 2010. However, on 28 October 2010, the Queensland Government announced that they would suspend the implementation of the ethanol mandate. To date, no further announcements have been made regarding the future of this mandate.

The Australian Government's *Taxation of Alternative Fuels Legislation Amendment Act 2011* was passed in June 2011.<sup>18</sup> As a result, the Ethanol Production Grants Program was extended to allow qualifying ethanol producers to continue to receive grants to offset the applicable fuel excise.

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17 C Hartcher MP, 'NSW ethanol mandate rises to 6 per cent from 1 October 2011', Ministerial media release, NSW, 28 September 2011. Available at <http://www.biofuels.nsw.gov.au/>, accessed 30 November 2011.

18 *Taxation of Alternative Fuels Legislation Amendment Act 2011* (No. 68 of 2011).

After 30 June 2021, the Australian Government will conduct a review of the taxation arrangements for biofuels.<sup>19</sup>

The ACCC continued to receive numerous complaints and inquiries about EBP in 2010–11. The issues that have been brought to the ACCC's attention regarding EBP include concerns about:

- the NSW Government's mandate for the use of EBP and the associated withdrawal of RULP from many retail sites in NSW
- advertising of EBP by retailers, such as prices for RULP and EBP not being sufficiently differentiated on some roadside price boards or advertising EBP on price boards when it was not available
- labelling of EBP at retail sites and changes by some retailers to the colours of pump handles used to dispense fuel products, including EBP
- the decreasing price differential between EBP and petrol.

In light of its role to ensure consumer protection and to promote competition, the ACCC will continue to monitor developments in the emerging biofuels industry and take action where it is necessary.

See chapter 6 for more detail on biofuels, as well as chapter 9 and appendix D for more information on the retail price of E10.

## 2.1.7 Mergers and acquisitions

Section 50 of the Act prohibits acquisitions that would have the effect, or likely effect, of substantially lessening competition in a market. The ACCC administers and enforces the merger provisions under Part IV of the Act.

During 2010–11 the ACCC completed a public review of one fuel-related merger proposal.

[Caltex Australia Petroleum Pty Ltd: proposed acquisition of the Mobil assets at the Caltex–Mobil joint fuel terminal Gladstone](#)

Caltex proposed to acquire the Mobil assets at the Gladstone fuel terminal, which was operating as a joint fuel terminal by Caltex and Mobil.

On 15 October 2010, the ACCC commenced a public review of the acquisition. The ACCC published a Statement of Issues on 2 December 2010 seeking comments by 23 December 2010. The ACCC initially proposed to announce its findings on 27 January 2011, but this was extended to allow the merger parties to provide further information.

On 26 May 2011, the ACCC decided to allow the merger to proceed, as it was determined that it was unlikely to substantially lessen competition.

## 2.1.8 Authorisations and notifications

In certain circumstances, the ACCC can grant immunity from legal action for potential anti-competitive conduct. Businesses may obtain immunity by applying for an authorisation or submitting a notification with the ACCC.

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<sup>19</sup> B Shorten MP, 'Introduction of alternative fuels legislation', Ministerial media release, Parliament House, Canberra, 12 May 2011. Available at: <http://www.dpm.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/078.htm&pageID=003&min=brs&Year=&DocType=0>, accessed 30 November 2011.

## Authorisations

Authorisation is a process under which the ACCC can grant immunity for potential breaches of the competition provisions of the Act if it is satisfied the conduct delivers a net public benefit. There were no fuel-related authorisations lodged with the ACCC in 2010–11.

## Exclusive dealing notifications

Notification of exclusive dealing conduct, which includes conduct such as requiring a person to purchase goods from a third party supplier (known as third line forcing) or requiring a person not to purchase goods from other competitors, provides immunity for potential breaches of the applicable sections of the Act.

Immunity for third line forcing conduct takes effect 14 days after the notification is lodged with the ACCC and remains unless it is revoked by the ACCC. Immunity for other exclusive dealing conduct takes effect from the date on which the notification is validly lodged with the ACCC.

In 2010–11, the ACCC considered 15 fuel-related exclusive dealing notifications and allowed immunity to continue in each case. The notifications fall into two broad categories:

- proposed shopper docket third line forcing arrangements
- third line forcing arrangements in relation to acquiring goods or services from a nominated preferred supplier.

## 2.1.9 Administration of the Oilcode

The Oilcode came into effect on 1 March 2007 as a prescribed industry code of conduct under the Act. The Oilcode formed part of the Australian Government's Downstream Petroleum Reform Package. In general terms, the Oilcode aims to regulate the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry.

The ACCC's role is to ensure compliance with the Oilcode and the Act by informing downstream petroleum industry participants of their rights and obligations under the law and by enforcing the law if necessary.

In 2010–11, the ACCC received four Oilcode-related complaints and six inquiries. The complaints related to the supply of declared petroleum products and fuel re-selling agreements. Of the four complaints, one complainant was advised to pursue private legal action, two complaints were not pursued because the evidence was insufficient to establish a breach of the Oilcode or the Act and one was referred to the police.

In 2009, the Department of Resources, Energy and Tourism released its review of the Oilcode and made 11 recommendations.

In 2011, the government accepted all the recommendations. A further review of the Oilcode will be conducted in 2013.<sup>20</sup>

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<sup>20</sup> Further information is available on the Department of Resources, Energy and Tourism website at [http://www.ret.gov.au/resources/fuels/petroleum\\_refining\\_and\\_retail/downstream\\_petroleum\\_legislation/oilcode\\_review/Pages/OilcodeReview.aspx](http://www.ret.gov.au/resources/fuels/petroleum_refining_and_retail/downstream_petroleum_legislation/oilcode_review/Pages/OilcodeReview.aspx), accessed 30 November 2011.

## 2.2 Monitoring activities

As part of its monitoring activities during 2010–11, the ACCC monitored petrol, diesel and automotive LPG across the majority of Australia on a daily basis. It also undertook its formal monitoring activities, including the production of this report, in response to the direction by the Minister.

The extensive fuel price information collected by the ACCC to inform its monitoring program includes:

- retail prices of RULP, diesel and automotive liquefied petroleum gas (LPG) in the capital cities and around 150 regional locations
- premium unleaded petrol (PULP) 95/96 and PULP 98 prices in all capital cities and available regional locations
- E10 petrol (RULP with up to 10 per cent ethanol) prices across Australia
- international crude oil and relevant international refined fuel prices
- data on wholesale transactions related to petrol
- published terminal gate prices (TGPs) of the oil companies and some independent wholesalers
- certain financial information from firms monitored under the formal monitoring program.

## 2.3 Informing consumers

Throughout 2010–11, the ACCC expanded its public information activities to provide a broad range of information to consumers.

### 2.3.1 Website

During 2010–11, the ACCC continued to review its fuel-related content on its website and improve the accessibility of the information it provides. The website is located at [www.accc.gov.au/fuel](http://www.accc.gov.au/fuel).

### 2.3.2 Fact sheets

The ACCC had five fuel fact sheets available in 2010–11:

- What influences the price of unleaded petrol?
- What influences the price of automotive LPG?
- What influences the price of diesel?
- Petrol price cycles in Australia
- Fuel prices in regional Australia

The ACCC updated the above fact sheets and published two additional fact sheets in 2011:

- A guide to biofuels in Australia
- How do international factors influence petrol prices?

These fact sheets are available on the ACCC website.



### 2.3.3 Ministerial correspondence

In 2010–11, the ACCC addressed 27 pieces of correspondence from Commonwealth and State parliamentarians on fuel issues. The most common topics were:

- the level of competition in the retail fuel markets
- fuel price differentials between various (usually regional) locations
- the relationship between domestic fuel prices and relevant international benchmarks
- price differentials between different fuel types.

### 2.3.4 ACCC Infocentre

During 2010–11, the ACCC responded to around 1000 fuel-related complaints and inquiries received by the Infocentre. Issues arising from these calls were discussed in section 2.1.

### 2.3.5 Enhancing consumer understanding

The ACCC regularly engages with newspapers, television, radio and internet media outlets with the objective of making information about its analysis and developments in the petroleum industry more accessible to consumers. In 2010–11, the ACCC distributed news releases and provided informed comment on a variety of issues including:

- the potential impact of the floods in Queensland on the supply of ethanol in Australia
- movements in fuel prices and how international factors have influenced such movements
- labelling and promotion of fuel products at retail sites
- differences in fuel prices between regional locations
- predatory pricing in the retail fuel industry.

The ACCC also distributed the 2010 formal monitoring report and summary to key stakeholders.

## 2.4 Engagement with key stakeholders

In 2010–11, the ACCC continued to engage with key stakeholders, including consumers, industry and government organisations on fuel issues.

### 2.4.1 ACCC Consultative Committees

In addition to ongoing liaison with key stakeholders as part of its broader role, the ACCC formally consulted with industry and consumer groups through its consultative committees.

#### Fuel Consultative Committee

In 2010–11, the Fuel Consultative Committee (FuelCC) met on two occasions and discussed issues including industry consolidation, availability of pricing information to consumers, state government mandates on biofuels, price cycles, fuel supply concerns, broader industry regulation and the profitability of the fuel industry.

The ACCC formed the FuelCC in 2010 to:

- provide an opportunity for meaningful dialogue between the ACCC, the fuel industry and motoring organisations
- provide information to increase the ACCC's understanding of fuel industry issues and to assist the ACCC in undertaking its role under the Act on issues related to competition and consumer protection in the fuel industry.

There are currently 16 members on the FuelCC including fuel retailers, refiner-marketers, industry associations and motoring organisations.

#### Consumer Consultative Committee

In 2011, the Consumer Consultative Committee discussed the ACCC's role in monitoring specific industries, using its experiences in monitoring the fuel industry as an example.

### 2.4.2 Other government bodies

As part of its broader role, the ACCC liaises and shares information in accordance with its Information Sharing Policy with the following government bodies to fulfil its functions under the Act:

- the Commonwealth Treasury concerning fuel pricing issues and the fuel industry broadly
- the Commonwealth Department of Resources, Energy and Tourism concerning the fuel industry broadly and fuel supply, including security of supply
- the Commonwealth Department of Sustainability, Environment, Water, Population and Communities in relation to the quality of fuel supplies, including allegations of contamination
- the National Measurement Institute in relation to concerns regarding fuel trade measurement practices
- state government bodies, such as state offices of fair trading and the FuelWatch monitoring service administered by the Western Australian Government, concerning consumer protection and other related issues.

### 2.4.3 Consumer groups

In addition to meetings of the FuelCC and its efforts to increase consumer understanding about fuel prices, the ACCC corresponds and meets with consumer groups and motoring organisations to address concerns raised about the conduct of fuel retailers which affect consumers. In 2010–11, the ACCC engaged with organisations which included the motoring organisations across Australia. Issues raised by these groups and considered by the ACCC included:

- labelling of petrol pumps at retail sites
- proposals for increasing fuel pricing information available to consumers
- cost differentials between RULP and PULP
- retail price differentials between metropolitan and regional locations
- allegations of anti-competitive conduct
- new and emerging issues in the fuel industry.

#### 2.4.4 Industry associations

The ACCC regularly corresponds and meets with industry associations to address key issues in the fuel industry. Organisations that the ACCC has engaged with in 2010–11 include the Australasian Convenience and Petroleum Marketers Association, the Australian Institute of Petroleum, the Service Station Association of Australia, LPG Australia and the Biofuels Association of Australia.

