



Australian  
Competition &  
Consumer  
Commission

# An overview of the Oilcode for fuel resellers

Fuel resellers should be aware of their rights and obligations under the Trade Practices (Industry Codes—Oilcode) Regulations 2006 (the Oilcode). Fuel resellers can include distributors, retailers, franchisees, commission agents, independent chains and independent operators who buy and on-sell declared petroleum products in the downstream petroleum retail industry.

The Oilcode is a mandatory code that has the force of law and forms part of the Downstream Petroleum Reform Package which came into effect on 1 March 2007. The package included the:

- repeal of the *Petroleum Retail Marketing Sites Act 1980*
- repeal of the *Petroleum Retail Marketing Franchise Act 1980*
- prescription of the mandatory Oilcode under s. 51AE of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*).

## Objectives of the Oilcode

The Oilcode aims to help industry participants make more informed business decisions, improve transparency in wholesale pricing and provide access to declared petroleum products at a published terminal gate price. The Oilcode also aims to improve the operating environment for industry participants by providing access to a cost-effective and timely dispute resolution scheme as an alternative to litigation.

## Who does the Oilcode apply to?

Broadly, the Oilcode applies to all wholesalers and fuel resellers who are involved in the sale, supply or purchase of declared petroleum products—for example unleaded petrol and diesel.

However, it does not apply to fuel re-selling agreements of fewer than 30 000 litres per month.

## What are your rights and obligations under the Oilcode?

Depending on your business arrangements, as a fuel reseller you have certain rights and obligations under the Oilcode.

### Fuel resellers with fuel re-selling agreements

Most fuel resellers will have a fuel re-selling agreement with a supplier. For example, franchisees and commission agents usually have formal fuel re-selling agreements.

Under the Oilcode, fuel resellers with fuel re-selling agreements have certain rights regarding:

- Disclosure
  - A disclosure document and a copy of the Oilcode must be given to a fuel reseller proposing to enter, renew or extend a fuel re-selling agreement at least 14 days before that event.
  - Fuel resellers must be informed of any materially relevant facts about fuel reselling agreements (for example certain court proceedings) within 14 days after the supplier becomes aware of it.
  - A copy of a current disclosure document must be given to a fuel reseller within 14 days after a written request to the supplier, as long as only one request has been made within 12 months.
  - A copy of any lease of premises and annual financial statements regarding a marketing or other cooperative fund under the agreement must be provided to a fuel reseller.

- Advice

- Before entering a fuel re-selling agreement, a fuel reseller must obtain legal, accounting, business advice, be given advice from a relevant trade association, or be informed that they should obtain such advice. A statement must then be provided by the fuel reseller to the supplier indicating that they have either obtained such advice or decided not to seek it.

- Cooling-off period

- A fuel reseller may terminate a fuel re-selling agreement within seven days after entering the agreement or payment of money, whichever is the earlier. If the fuel reseller chooses to exercise their cooling-off rights, they must be given a refund minus any reasonable expenses incurred by the supplier within 14 days.

- Tenure

- Fuel re-selling agreements entered before the commencement of the Oilcode retain the duration of the original agreement.
- Fuel re-selling agreements entered after the commencement of the Oilcode must have:
  - > a duration of at least five years
  - > an option to extend the agreement for at least a further four years if the agreement requires the fuel reseller to buy fuel from a certain supplier and the retail site is owned or leased by the supplier.

- **Renewal**
  - The supplier must not fail or refuse to renew a fuel re-selling agreement unless the supplier intends to operate or lease the site occupied by the fuel reseller for a purpose other than the sale of motor fuel or intends to dispose of the site.
- **Renegotiation or variation of agreement**
  - Under the conditions set out in the Oilcode, parties to an agreement may renegotiate or vary a fuel re-selling agreement.
- **Termination and expiry**
  - Where a supplier intends to terminate an agreement they must notify the other party and provide an opportunity to remedy the alleged breach of the agreement within a reasonable time (except in limited circumstances specified in the Oilcode).
  - Parties may agree to terminate a fuel re-selling agreement before it expires.
  - Parties must discuss the procedures that will apply to settle their commercial arrangements at least 60 days before the expiry of a fuel re-selling agreement.
- **Association**
  - A supplier must not inhibit a fuel reseller from forming an association or associating with other fuel resellers where it is for a lawful purpose.

### Fuel resellers without a fuel re-selling agreement

Fuel resellers that do not have a fuel re-selling agreement may buy declared petroleum products at the wholesale price. The wholesale price is also known as the terminal gate price (TGP).

Under the Oilcode, fuel resellers without a fuel reselling agreement (for example spot sales) have certain rights regarding:

- **Disclosure**
  - A wholesale supplier's TGP must be posted daily and must not include any discounts or amounts for additional services (for example delivery). Discounts or additional costs should be disclosed separately.
  - The Oilcode provides that a wholesale supplier must issue a fuel reseller with particular details of the transaction after buying a declared petroleum product.
- **Supply of declared petroleum products**
  - A fuel reseller must not unreasonably refuse the supply of a declared petroleum product. A supplier can refuse supply if the supplier:
    - > does not have sufficient supplies
    - > reasonably believes the fuel reseller is unable to pay for the supply
    - > reasonably believes the fuel reseller is unable to receive or transport the declared petroleum product in compliance with all applicable occupational, health and safety requirements.

### Dispute resolution procedures

The Dispute Resolution Adviser (DRA) has been appointed to organise the resolution of disputes that arise under the Oilcode.

The parties to mediation must act in good faith and, unless the parties agree otherwise, each party will be equally liable for costs associated with mediation or help to resolve the dispute.

If you require further information about the dispute resolution process, visit [www.oilcodedra.com.au](http://www.oilcodedra.com.au).

### ACCC contacts

Dispute Resolution Adviser  
[www.oilcodedra.com.au](http://www.oilcodedra.com.au)

ACCC Infocentre  
1300 302 502

Small business helpline  
1300 302 021

ACCC website  
[www.accc.gov.au](http://www.accc.gov.au)

For inquiries about government policy regarding the Oilcode, contact the Department of Resources, Energy and Tourism at [www.ret.gov.au](http://www.ret.gov.au).

For other business information go to [www.business.gov.au](http://www.business.gov.au)

### The ACCC's role

Contraventions of the Act, including contraventions of the Oilcode, can cause serious detriment to businesses, consumers and the economy. The role of the ACCC is to ensure compliance with the Oilcode and the Act by informing traders of their rights and obligations under the law and by enforcing the law if necessary.

### Other publications about the Oilcode

For more detailed information about rights and responsibilities under the Oilcode, the ACCC has published *The guide to the Oilcode*. This publication can be requested by phoning the ACCC Infocentre or can be downloaded from the ACCC website.

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### Important notice

This fact sheet gives you basic information. It does not cover the whole of the Competition and Consumer Act, including the Oilcode, and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be some generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining the application of the Act.