

Legislative Statement: Fuel Industry Amendment Bill

Presented to the House of Representatives

In accordance with Standing Order 272

Introduction

1. This legislative statement supports the first reading of the Fuel Industry Amendment Bill 2022 (the Bill) and is presented to the House of Representatives in accordance with Standing Order 272.
2. The Bill introduces the prospect of price regulation, in the wholesale fuel market to incentivise wholesale fuel suppliers to offer competitive pricing at the terminal gate. This more competitive wholesale fuel market will flow through to a more competitive retail fuel market for the long-term benefit for consumers.

Background

3. In December 2019 the Commission published its final report on its retail engine fuel market study. The report concluded that engine fuel companies have been making higher profits than would be expected in a workably competitive market.
4. To give effect to the Commission's recommendations, the Fuel Industry Act 2020 introduced interventions to improve competition in both the wholesale and retail markets for engine fuel.
5. These interventions included the terminal gate pricing (TGP) regime which requires wholesale suppliers that draw fuel from wholesale terminal storage to post a daily spot price at which they must supply fuel. The creation of this wholesale spot market encourages new entry into the market and expansion into new areas by existing market participants.
6. The Commission identified several potential risks to the successful implementation of the TGP regime, for example, the use of published terminal gate prices as a vehicle for price coordination or wholesale suppliers setting terminal gate prices that incorporate a return on market power. These would lead to excessive terminal gate prices that would deter market expansion and new entrants.
7. The Bill mitigates these risks by providing a prospect of price regulation should anti-competitive behaviour be identified in the wholesale market.
8. It is important to progress the regulatory backstop to give full effect to the recommendations made by the Commerce Commission and ensure the successful implementation of the TGP regime.

Key features

9. The Commission may be required by the Minister to hold an inquiry into whether to regulate terminal gate prices, or it may choose to undertake an investigation on its own initiative.
10. The Commission may recommend that price regulation should be imposed on terminal gate prices only if it is satisfied that the relevant wholesale supplier has posted terminal gate prices, for the relevant specified engine fuel and bulk storage facility, that were not consistent with what would be expected in a competitive market.

11. At the conclusion of its inquiry, the Commission must make a recommendation to the Minister on whether, in its opinion, price regulation should be imposed on all or any of the terminal gate prices that were the subject of the inquiry.
12. If the Commission recommends that price regulation should be imposed on particular terminal gate prices, the recommendation must state which terminal gate prices should be regulated and how long the regulation should be in place. The Commission's recommendation must be made publicly available.
13. The Minister must consider any recommendation of the Commission and as part of that consideration the Minister must consult the Ministers of Commerce and Consumer Affairs, and Transport. The Minister may also request further advice from the Commission and may request that the Commission reconsider any matter.
14. Having considered the recommendation, the Minister must decide whether, in the opinion of the Minister, price regulation should be imposed on all or any of the terminal gate prices recommended by the Commission and, if so, make a recommendation to that effect.
15. The Minister may recommend that the Governor-General make an Order in Council imposing regulation on particular terminal gate prices.
16. The Commission must then make determinations specifying how price regulation applies to wholesale terminal suppliers and regulated terminal gate prices. Determinations must be made only after consultation with interested parties and as soon as practicable after the Order in Council is made.
17. Determinations must set out for each regulated terminal gate price, the pricing principles or pricing methodologies that apply, the requirements that apply to wholesale suppliers, and set out any time frames that must be met or that apply.
18. If the Commission finds that the requirements of a determination have been breached, it may apply to the Court for an order imposing a pecuniary penalty on the relevant wholesale supplier.
19. The time it takes for the Commerce Commission to set a pricing principle or methodology will depend on the complexity of the pricing principle or methodology. For example, setting a pricing principle or methodology for multiple wholesale suppliers, multiple fuel types and multiple terminals would be more complex than setting a pricing principle or methodology for a single wholesale supplier, for one fuel type at one terminal.

Conclusion

20. The Bill ensures the success of the terminal gate pricing regime by removing the risks that the Commerce Commission identified that could threaten the regime's implementation, including that it is used as a vehicle for price collusion. A successful terminal gate pricing regime will ensure that the wholesale fuel market is more competitive.
21. Ultimately, a more competitive wholesale fuel market will benefit consumers at the pump ensuring that New Zealanders have access to fuel that is priced at a competitive level.