



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

Petroleum Retailers Rights and Liabilities Act 1982

Statutory Review

May 2023

1. EXECUTIVE SUMMARY

The Department of Mines, Industry Regulation and Safety – Consumer Protection Division (Consumer Protection) has undertaken a review of the *Petroleum Retailers Rights and Liabilities Act 1982* (WA) (the PRRL Act). This review indicates that industry usage of the PRRL Act since its introduction has been minimal and changes in the regulatory environment have meant that the objectives of the legislation are now being met by other means. Practical difficulties associated with the use of the PRRL Act also mean that use by retailers is considered unlikely. Consultation with the industry indicated minimal interest in the rights provided by the PRRL Act and a majority of responses supported the repeal of the legislation.

Based on these findings, the review recommends the repeal of the PRRL Act.

2. BACKGROUND

The PRRL Act was introduced to increase the bargaining power of fuel retailers to better negotiate competitive prices for fuel supplies. The PRRL Act intended to give franchisees the right to purchase up to 50 per cent of their fuel supplies from suppliers other than their primary supplier under a franchise agreement. It also gave a right for franchisees to use a franchisor's storage and dispensing equipment for fuel purchased from other suppliers.

In the 1991 Supreme Court case of *BP Australia Limited v Dragoon Holdings Pty Ltd*, the court ruled that the PRRL Act only gave franchisees the right to use the franchisor's storage and dispensing equipment and did not provide any additional right to purchase fuel from other sources.

As a result of the 1991 Supreme Court decision, the PRRL Act failed to achieve part of its original objective. A Bill to amend the PRRL Act to overcome the Dragoon Holdings decision was introduced into Parliament in November 1991 but did not proceed.

On 1 May 2001, the Petroleum Legislation Amendment Bill 2001 (WA) (the Bill) was introduced to State Parliament, with amendments to the PRRL Act necessary to provide for the 50/50 rights contemplated. The Bill was passed by Parliament on 28 June 2001, and became the *Petroleum Legislation Amendment Act 2001* (WA) (the 50/50 legislation) upon Royal Assent.

The major provisions of the 50/50 legislation are as follows:

- the legislation is designed to operate in such a way as to override any existing contractual provisions (in a contract entered into, extended or renewed on or after

10 February 2001) that would preclude a retailer from purchasing up to 50 per cent of their fuel from any supplier(s) other than their primary supplier;

- extending the PRRL Act to apply to all retailers of motor fuel and not just to retailers who are tenants under a franchise agreement;
- providing a right for the retailer to nominate the primary supplier of particular kinds of motor fuel to which the 50/50 rights would apply;
- allowing motor fuel retailers to acquire up to 50 per cent of their retail fuel supplies from persons of their choice notwithstanding any other act, law or agreement to the contrary; and
- providing that the amendments will apply to any contract or agreement entered into, renewed or varied so as to extend its term, on or after 10 February 2001.

Additionally, the legislation placed obligations on fuel suppliers to comply with these rights and gave the Commissioner for Consumer Protection (Commissioner), in certain circumstances, the power to make determinations and resolve disputes.

The legislation commenced on 1 January 2002.

Section 14 of the PRRL Act requires the Minister to carry out a review of the operation and effectiveness of the Act as soon as practicable after the expiration of three years from the commencement of Part 2 of the 50/50 legislation.

Work began on the review in 2005 and at that time it was evident that the Act was not being used. The review was paused as Commonwealth regulatory changes were expected that would affect the need for Western Australian (WA) regulation.

3. ISSUES

The FuelWatch Branch of Consumer Protection has only recorded two enquiries connected to the PRRL Act since the 2001 amendments. The most recent was a dispute between a LPG retailer and a supplier in 2011. FuelWatch deemed this matter to be unrelated to the PRRL Act. A general enquiry was received in 2008. There is no evidence available that fuel retailers have used the PRRL Act in any significant way.

There are two issues that appear to contribute to the minimal use of the PRRL Act. Firstly, changes have occurred in the regulatory environment for fuel retailers since the introduction of the PRRL Act. Secondly, there are practical difficulties associated with using the PRRL Act which relate to supply relationships, environmental protection laws, and storage tank and dispensing equipment costs.

3.1. Changes in the regulatory environment

The Terminal Gate Pricing (TGP) system, introduced under amendments made to the *Petroleum Products Pricing Act 1983* (WA) (the PPP Act) and the introduction of the Commonwealth Downstream Petroleum Reform Package (2006) have increased transparency of wholesale fuel pricing.

In 2001, the then WA Government created FuelWatch as a fuel price monitoring service. This service monitors and reports on wholesale (sales to fuel resellers) and retail fuel prices under the PPP Act. The TGP system requires declared terminal operators to provide daily wholesale prices to FuelWatch.¹ These prices are then published on the FuelWatch website.

The TGP provides for competition in the wholesale fuel market and provides distributors and retailers (subject to their contractual arrangements) the option to purchase directly from a declared terminal at competitive prices. Suppliers selling fuel to retailers and distributors from a declared terminal are able to set their own price as long as it complies with a specific formula. This TPG formula is based on an import parity pricing model, effectively ensuring the price of fuel in Australia is competitive with the price that could be earned if the fuel was exported.

There are 17 declared terminals in WA, operated by BP (6), Caltex (5), Gull (1), Mobil (2) and the Shell Company of Australia (4).

¹ *Petroleum Products Pricing Act 1983 – Division IIIA.*

In 2007, the Commonwealth Government introduced the Trade Practices (Industry Codes - Oilcode) Regulations 2006 (Cth), now the Competition and Consumer (Industry Codes – Oil) Regulations 2017 (Cth) (the Oilcode), as part of its Downstream Petroleum Reform Package. The aims of the Oilcode are:

- to improve transparency in wholesale pricing and access to petroleum products at a published terminal gate price;
- to set minimum standards in relation to contract requirements; and
- to assist participants to make informed decisions when managing fuel re-selling agreements.

The Oilcode is a mandatory code covering the sale, supply or purchase of declared petroleum products, regulating the conduct of suppliers, distributors and retailers. The regulatory changes have improved transparency in the market and have assisted fuel retailers in negotiating contracts.

The terminal gate, wholesale price for a declared petroleum product is calculated on a temperature correct basis² and expressed in cents per litre. All wholesale suppliers must set a TGP and display it each day on a website.³

Declared petroleum products include unleaded petrol, a blend of unleaded petrol and ethanol, a blend of unleaded petrol and one or more biofuels other than ethanol, premium unleaded petrol and diesel fuel.

The Oilcode fuel re-selling agreements are contracts between supplier and retailer. These agreements have a minimum duration and the following terms:

- the supplier grants the retailer the right to conduct a fuel re-selling business – the supplier has significant say over the operation of that business;
- the business will be associated with a trademark, commercial symbol or advertising owned, used, licensed or specified by the supplier; and
- before starting business, the retailer pays or agrees to pay a fee.

The supplier must give a copy of the Oilcode and disclosure document to the retailer at least 14 days before entering into a fuel selling agreement or the retailer pays non-refundable money to the supplier in connection with the agreement.

² Expressed in cents per temperature corrected litre (at 15 degrees Celsius) for each declared petroleum product sold.

³ If the TGP cannot be displayed on a publicly accessible website, the TGP must be made available by phone or fax.

To enter a fuel re-selling agreement, a retailer must provide a statement to the supplier confirming the retailer has either obtained advice or has decided not to seek it.⁴ The Oilcode requires two sets of sales documents to be provided to retailers. The first document must be given at delivery and contain information on the declared petroleum product supplied, volume supplied, price per temperature corrected litre and the applicable TGP (if not made available on a website). The second document must be given within 30 days of delivery and contain the supplier's name, the customer's name, transaction date, declared petroleum product supplied, volume supplied, the applicable TGP, total price charged (worked out on a temperature corrected basis), details of any charges for extra services and the details of any discounts.⁵

The changes made by FuelWatch and the TGP system in WA, as well as the introduction of the Oilcode mean that the wholesale market for fuel resellers is more transparent than when the PRRL Act was introduced. A key objective of the PRRL Act, to increase the bargaining power of fuel retailers to better negotiate competitive prices for fuel supplies, is arguably being achieved by these other regulatory mechanisms. As a result, the Oilcode and the TGP system render the PRRL Act less relevant now than when it was introduced and in fact, better achieve the PRRL's intended objectives.

3.2. Practical Difficulties in using the PRRL Act

Consumer Protection understands from the fuel retailing industry that there are significant practical difficulties associated with using the PRRL Act, which relate to supply relationships, environmental protection laws, and storage tank and dispensing equipment costs.

It appears that retailers are not using their right to buy up to 50 per cent of their fuel supplies from other suppliers because of the importance of maintaining firm supply relationships with primary suppliers. Exercising rights under the PRRL Act may put these relationships at risk.

Commonwealth and state environmental protection laws also mean that there are mandatory minimum quality standards for each type of fuel. The risk of fuel contamination deters retailers from mixing fuel from different suppliers. Retailers who wish to utilise the provisions of the PRRL Act face the need to install a separate storage tank and dispensing equipment for fuel purchased under this scheme. This is cost prohibitive.

⁴ Legal, accounting, business and advice from their relevant trade association.

⁵ [Oil Code of Conduct | ACCC](#).

Changes in the marketplace suggest that the TGP system under the PPP Act and the requirements under the Oilcode now achieve the objectives of the PRRL to increase the bargaining power of fuel retailers to better negotiate competitive prices for fuel supplies. The apparent lack of use of the PRRL Act and the practical difficulties associated with using the Act suggest that the PRRL Act is no longer required.

Additionally, under section 44, the Oilcode provides for a broader dispute resolution scheme than the PRRL Act, offering mediation of disputes, instead of seeking an order from the Supreme Court,⁶ making the dispute process less costly and complex. The Oilcode provides for an efficient and cost effective way of resolving disputes arising:

- when a wholesale supplier fails to supply a declared petroleum product to a customer;
- in relation to any of the provisions of the Oilcode about TGP arrangements; and
- between the parties to a fuel-selling agreement.

4. CONSULTATION

On 5 August 2020, Consumer Protection wrote to 164 fuel industry stakeholders, predominantly made up of fuel retailers, seeking their feedback on whether the PRRL Act remains applicable in the marketplace and of use to fuel retailers. The consultation period closed on 1 September 2020.

Participants were asked:

- Have you used or do you intend to use the PRRL Act? If not, why not?
- Do you consider that the TGP requirements under the PPP Act and the Oilcode provide sufficient transparency in the wholesale fuel market? If so, why? If not, why not?
- Do you support the PRRL Act being repealed? If so, why? If not, why not?

Four responses were received to the consultation, representing a response rate of just two per cent.

Responses were received from the following stakeholder categories: a major fuel company, a country fuel business (fuel retailer), a country co-operative (fuel retailer) and an industry association. Three of the four stakeholders supported repeal of the PRRL Act.

The three stakeholders who support repeal of the PRRL Act are BP Australia Pty Ltd, Derby Fuels and the Australasian Convenience and Petroleum Marketers Association (ACAPMA). ACAPMA is an organisation of employers connected with petroleum distribution, marketing and convenience retailing.

⁶ *Petroleum Retailers Rights and Liabilities Act 1982 - section 9.*

BP Australia Pty Ltd stated:

"Based on BP's experience throughout these reforms we believe that these enhanced measures are providing a policy framework that has superseded the Act. Should a government decision be made to repeal the Act, then BP would be supportive of this decision."

Consultation BP conducted with its members indicated low awareness of the Act.

Derby Fuels stated that the PRRL Act is irrelevant because of the cross contamination issue. They also stated:

"...the Terminal Gate Price system is an absolute joke, it does not provide transparency, every bulk purchaser of fuel has a different supply discount supplied usually depending on volume, thus making the TGP system irrelevant."

ACAPMA stated that they were unaware of any significant use of the PRRL Act since its amendment in 2001. They stated:

"...the Oil Code Regulation (2017) provides a level of transparency of Terminal Gate Prices for all participants in the wholesale fuel market in Australia. ACAPMA considers that the provisions of this Regulation are superior to that of the WA PRRL Act (1982) in terms of ensuring transparency of wholesale fuel prices in Australian State and Territory fuel markets."

They concluded:

"...ACAPMA supports repeal of the PRRL Act (1982) on the basis that the Act is no longer used by the fuel retail industry in Western Australia – largely as a result of the provisions of the Competition and Consumer (Industry Codes – Oil) Regulations 2017."

Mount Barker Co-operative Limited (MBCL) was the sole stakeholder which supported the continuation of the PRRL Act. This was on the grounds that:

"...it provides protection for retailers to source alternative sources of supply, in the event of an emergency or the current contractor fails to deliver. That being the case, it should be advantageous to allow retailers to maintain this right, as distinct from removing it."

The concern raised by MBCL regarding the threat of lack of supply is noted. However, the aim of the PRRL Act is to give retailers the ability to purchase fuel from a supplier other than their primary supplier and to access more competitive pricing.

Based on the objectives of the PRRL Act, the Act is not intended to cover unforeseen circumstances that would result in fuel supply disruption and thus, the need to source alternative emergency fuel. The PRRL Act addresses potential breach of contract issues with a primary supplier. It is intended to improve competitive pricing and not potential lack of supply.

Arguably, in a situation as laid out by MBCL, in the event of the primary supplier failing to deliver, it would be very unlikely that they would need to rely on PRRL Act to rectify the situation.

5. OTHER JURISDICTIONS

The Commonwealth Oilcode applies to wholesale suppliers and sales of declared petroleum products by a wholesale supplier to a customer. The Oilcode is used by all states and territories, providing a nationally consistent approach to TGP arrangements. The Oilcode operates concurrently with relevant state legislation. Some state and territory governments provide a subsidy at either wholesale or retail level which effectively lowers the price of petrol to consumers. The highest subsidy is provided in Queensland with NSW matching the amount of subsidy in the zone closest to Queensland. Victoria is the only State providing a subsidy at the wholesale level, while jurisdiction wide retail subsidies are provided in Queensland, Tasmania, and the Northern Territory. In NSW and South Australia, subsidies are restricted to particular zones in the state. WA and the ACT do not provide subsidies.⁷

Since price surveillance was ended by the Commonwealth in 1998, two states, being WA and Victoria, have since enacted legislation on the pricing of petrol and diesel. Similar to WA's PPP Act, Victoria's *Petroleum Products (Terminal Gate Pricing) Act 2001* (Vic) (Victorian Act) deals with the TGP of petroleum products. The aim of the Victorian Act was to increase the transparency of petrol and diesel pricing and provide access to product at terminals at competitive wholesale prices for all distributors and retailers.

All jurisdictions publish their TGP for unleaded petrol and diesel, with historical data made available. TGPs for each jurisdiction come from information provided by BP, Ampol, Viva Energy and ExxonMobil, and prices shown are the average TGP across each of these companies for the day. Brisbane prices prior to 1 July 2009 are exclusive of the Queensland Government fuel subsidy (which was removed on 1 July 2009), and prices are collated each weekday morning.⁸

6. RECOMMENDATION

Based on the review conducted of the PRRL Act, it is considered that the Act no longer has any meaningful significance in the petroleum retail market. It is therefore recommended that the PRRL Act be repealed.

⁷ [Chapter 6 - Petrol Prices in Country Areas – Parliament of Australia \(aph.gov.au\)](http://aph.gov.au)

⁸ [Terminal Gate Prices | Australian Institute of Petroleum \(aip.com.au\)](http://aip.com.au)