

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**National Fuelwatch (Empowering  
Consumers) Bill 2008**

**No.     , 2008**

*(Treasury)*

**A Bill for an Act to empower consumers and  
encourage transparency in the fuel market, and for  
other purposes**



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1     **A Bill for an Act to empower consumers and**  
2     **encourage transparency in the fuel market, and for**  
3     **other purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act may be cited as the *National Fuelwatch (Empowering*  
9                     *Consumers) Act 2008*.

Section 2

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1     **2 Commencement**

2                     This Act commences on the day after it receives the Royal Assent.

3     **3 Application**

4                     Despite section 2:

5                     (a) section 7 does not apply to the offer of motor fuel for retail  
6                         sale at a service station in a declared locality before  
7                         30 November 2008; and

8                     (b) sections 8 to 10 do not apply to the offer of motor fuel for  
9                         retail sale at a service station in a declared locality before  
10                         15 December 2008.

11     **4 Extension to external Territories**

12                     This Act extends to every external Territory.

13     **5 Definitions**

14                     (1) In this Act:

15                     **ABN** (short for Australian Business Number) has the meaning  
16                         given by section 41 of the *A New Tax System (Australian Business*  
17                         *Number) Act 1999*.

18                     **ACCC** means the Australian Competition and Consumer  
19                         Commission.

20                     **civil penalty order** means an order under section 19.

21                     **civil penalty provision** means a provision declared by this Act to  
22                         be a civil penalty provision.

23                     **constitutional corporation** means a corporation to which  
24                         paragraph 51(xx) of the Constitution applies.

25                     **declared locality** has the meaning given by section 6.

26                     **Federal Court** means the Federal Court of Australia.

27                     **fixed price period** has the meaning given by subsection 8(2).

## Section 6

1            **local government body** means a body established for the purposes  
2            of local government by or under a law applying in a State or  
3            Territory.

4            **motor fuel** means fuel suitable for use in an internal combustion  
5            engine, excluding aviation gas.

6            **penalty unit** has the meaning given by section 4AA of the *Crimes*  
7            *Act 1914*.

8            **petrol retailer** means:

- 9            (a) a constitutional corporation that offers motor fuel for retail  
10            sale; or  
11            (b) a person who offers motor fuel for retail sale as the agent or  
12            franchisee of a constitutional corporation; or  
13            (c) a person who offers motor fuel that has been purchased from  
14            a constitutional corporation for retail sale; or  
15            (d) a person who offers motor fuel for retail sale in a Territory.

16            **retail sale** means sale to another person for that person's use.

17            **service station** means a place at which motor fuel is offered for  
18            retail sale.

19            **standard price**, in relation to the retail sale by a petrol retailer of a  
20            kind of motor fuel, means the price at which the petrol retailer  
21            offers that kind of motor fuel for retail sale, disregarding any  
22            shopper docket or other discounts.

- 23            (2) Paragraph (c) of the definition of **petrol retailer** in subsection (1)  
24            applies only where the offer of the motor fuel for sale, or the sale  
25            of the motor fuel, affects or is capable of affecting the activities,  
26            functions, relationships or business of a constitutional corporation.

## 27    **6 Declared localities**

- 28            (1) The regulations may prescribe localities that are to be **declared**  
29            **localities** for the purposes of this Act on and from 30 November  
30            2008.

- 31            (2) The Minister may, by legislative instrument:

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- 1 (a) declare any other locality to be a *declared locality* for the  
2 purposes of this Act; or  
3 (b) declare that a locality that is prescribed under subsection (1)  
4 is to cease to be a *declared locality* for the purposes of this  
5 Act.
- 6 (3) In making a declaration under subsection (2), the Minister must  
7 have regard to each of the following:  
8 (a) the size of the locality;  
9 (b) the population of the locality;  
10 (c) the number of vehicles registered under the law of the State  
11 or Territory in which the locality is situated, in relation to  
12 which an address in the locality is specified in the  
13 registration;  
14 (d) the number of service stations in the locality;  
15 (e) the ownership and operating arrangements for service  
16 stations in the locality;  
17 (f) any submissions made by a local government body for an  
18 area wholly or partly within the locality.  
19



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## Part 2—Retail prices for motor fuel

### 7 Obligation on petrol retailers to give details

- (1) A petrol retailer must not offer motor fuel for retail sale at a service station in a declared locality unless the petrol retailer, or the petrol retailer's agent, has given the ACCC notice of the following details:
- (a) the name and ABN of the petrol retailer;
  - (b) the location of the service station;
  - (c) the kinds of motor fuel to be offered for retail sale at that service station;
  - (d) any other prescribed details.
- (2) Subsection (1) is a civil penalty provision.
- (3) The notice must be given in the form and using the method approved in writing by the ACCC.

### 8 Obligation to notify of next day's retail price

- (1) If a petrol retailer intends to offer any kind of motor fuel for retail sale at a service station in a declared locality during a fixed price period beginning on a particular day, the petrol retailer, or the petrol retailer's agent, must give the ACCC notice of the standard price at which motor fuel of that kind will be offered by 2 pm (by legal time in the declared locality) on the immediately preceding day.
- (2) A **fixed price period** is a period beginning at 6 am (by legal time in the declared locality) on a particular day and ending 24 hours later.
- (3) Subsection (1) is a civil penalty provision.
- (4) The notice must be given in the form and using the method approved in writing by the ACCC.

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- 1 (5) Subsection (1) does not apply if it is not possible for the petrol  
2 retailer to comply with a requirement in that subsection because of:  
3 (a) a failure in computing or telecommunications systems used  
4 by the ACCC; or  
5 (b) a failure in computing or telecommunications systems used  
6 by the petrol retailer that is beyond the control of the petrol  
7 retailer.
- 8 (6) A petrol retailer is taken to have given notice under subsection (1)  
9 of the standard price at which motor fuel of a particular kind is to  
10 be offered for retail sale at a particular service station during the  
11 fixed price period beginning on a particular day if that standard  
12 price does not differ from the standard price at which motor fuel of  
13 that kind was offered for retail sale at that service station during the  
14 fixed price period beginning on the immediately preceding day.

15 **9 Publication of next day's retail price**

- 16 (1) If the ACCC is given notice under subsection 8(1), the ACCC must  
17 publish the standard price at which that kind of motor fuel is to be  
18 offered for sale at that service station during the fixed price period  
19 beginning on that day.
- 20 (2) The information must be published:  
21 (a) on a website maintained by or for the ACCC; and  
22 (b) using such other methods as are approved, in writing, by the  
23 ACCC.
- 24 (3) The information must be published by 4 pm (by legal time in the  
25 declared locality) on the day on which the notice is received.

26 **10 Selling motor fuel at other than notified retail price**

- 27 (1) This section applies if the petrol retailer, or the petrol retailer's  
28 agent, notifies the ACCC in compliance, or purported compliance,  
29 with subsection 8(1) of the standard price at which the petrol  
30 retailer intends to offer motor fuel of a particular kind for retail sale  
31 at a service station in a declared locality during a fixed price period  
32 beginning on a particular day.

Section 11

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1           (2) The petrol retailer must offer motor fuel of that kind for retail sale  
2           at that service station at that standard price at all times during that  
3           part of the fixed price period during which the service station is  
4           open for business.

5           (3) Subsection (2) is a civil penalty provision.

6       **11 Register of fuel price notifications**

7           The ACCC must keep a register containing:

- 8           (a) details given to the ACCC under subsection 7(1); and  
9           (b) copies of all notices given to the ACCC under subsection  
10          8(1); and  
11          (c) any other details prescribed.  
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2 **Part 3—Infringement notices**

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4 **12 When an infringement notice can be given**

5 (1) If the ACCC has reasonable grounds to believe that a person has  
6 contravened subsection 7(1), 8(1) or 10(2), the ACCC may give the  
7 person an infringement notice relating to the contravention.

8 (2) The infringement notice must be given within 12 months after the  
9 day on which the contravention is alleged to have taken place.

10 **13 Matters to be included in an infringement notice**

11 An infringement notice must:

12 (a) set out the name of the person to whom the notice is given;  
13 and

14 (b) set out brief details relating to the alleged contravention of  
15 the relevant provision, including the date of the alleged  
16 contravention; and

17 (c) contain a statement to the effect that civil penalty  
18 proceedings will not be brought in relation to the matter if the  
19 penalty specified in the notice is paid to the ACCC, on behalf  
20 of the Commonwealth, within:

21 (i) 28 days after the notice is given; or

22 (ii) if the ACCC allows a longer period—that longer period;  
23 and

24 (d) give an explanation of how payment of the penalty is to be  
25 made; and

26 (e) set out such other matters (if any) as are specified in the  
27 regulations.

28 **14 Amount of penalty**

29 The penalty to be specified in an infringement notice relating to an  
30 alleged contravention of subsection 7(1), 8(1) or 10(2) must be a  
31 pecuniary penalty equal to:

- 1 (a) for a body corporate—25 penalty units; or  
2 (b) for a person other than a body corporate—5 penalty units.

### 3 **15 Withdrawal of an infringement notice**

- 4 (1) The ACCC may, by written notice (the *withdrawal notice*) given to  
5 a person, withdraw an infringement notice given to the person  
6 under section 12.
- 7 (2) To be effective, the withdrawal notice must be given to the person  
8 within 28 days after the infringement notice was given.

#### 9 *Refund of penalty if infringement notice withdrawn*

- 10 (3) If:  
11 (a) the penalty specified in the infringement notice is paid; and  
12 (b) the infringement notice is withdrawn after the penalty is paid;  
13 the ACCC, on behalf of the Commonwealth, is liable to refund the  
14 penalty.

### 15 **16 What happens if the penalty is paid**

- 16 (1) This section applies if:  
17 (a) an infringement notice is given to a person under section 12;  
18 and  
19 (b) the penalty is paid in accordance with the infringement  
20 notice; and  
21 (c) the infringement notice is not withdrawn.
- 22 (2) Any liability of the person for the alleged contravention is  
23 discharged.
- 24 (3) Civil penalty proceedings may not be brought against the person  
25 for the alleged contravention.

### 26 **17 Effect of this Part on civil penalty proceedings**

27 This Part does not:

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- 1 (a) require an infringement notice to be given in relation to an  
2 alleged contravention of a provision mentioned in section 12;  
3 or  
4 (b) affect the liability of a person to have civil penalty  
5 proceedings brought against the person for an alleged  
6 contravention of a provision mentioned in section 12; or  
7 (c) limit a court's discretion to determine the amount of a  
8 penalty to be imposed on a person who is found in civil  
9 penalty proceedings to have contravened a provision  
10 mentioned in section 12.  
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**Part 4—Civil penalty provisions**

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**18 Ancillary contravention of civil penalty provision**

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(1) A person must not:

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(a) attempt to contravene a civil penalty provision (other than this subsection); or

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8

(b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or

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(c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or

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(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or

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16

(e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

17

18

*Civil penalty*

19

(2) Subsection (1) is a civil penalty provision.

20

**19 Civil penalty orders**

21

(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

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(2) An order under subsection (1) is to be known as a ***civil penalty order***.

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*Determining amount of pecuniary penalty*

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(3) In determining the pecuniary penalty, the Federal Court must have regard to all relevant matters, including:

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(a) the nature and extent of the contravention; and

Section 20

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- 1 (b) the nature and extent of any loss or damage suffered as a  
2 result of the contravention; and  
3 (c) the circumstances in which the contravention took place; and  
4 (d) whether the person has previously been found by the Federal  
5 Court in proceedings under this Act to have engaged in any  
6 similar conduct; and  
7 (e) if the Federal Court considers that it is appropriate to do so—  
8 whether the person has previously been found by a court in  
9 proceedings under a law of a State or Territory to have  
10 engaged in any similar conduct.

11 *Maximum pecuniary penalty*

- 12 (4) The pecuniary penalty payable by a body corporate must not  
13 exceed 1,000 penalty units.  
14 (5) The pecuniary penalty payable by a person other than a body  
15 corporate must not exceed 200 penalty units.

16 *Conduct contravening more than one civil penalty provision*

- 17 (6) If conduct constitutes a contravention of 2 or more civil penalty  
18 provisions, proceedings may be instituted under this section against  
19 a person in relation to the contravention of any one or more of  
20 those provisions. However, the person is not liable to more than  
21 one pecuniary penalty under this section in respect of the same  
22 conduct.

23 *Civil enforcement of penalty*

- 24 (7) The pecuniary penalty is a civil debt payable to the  
25 Commonwealth. The Commonwealth may enforce the civil penalty  
26 order as if it were an order made in civil proceedings against the  
27 person to recover a debt due by the person. The debt arising from  
28 the order is taken to be a judgment debt.

29 **20 Who may apply for a civil penalty order**

- 30 Only the ACCC may apply for a civil penalty order.



1 **21 2 or more proceedings may be heard together**

2 The Federal Court may direct that 2 or more proceedings for civil  
3 penalty orders are to be heard together.

4 **22 Time limit for application for an order**

5 Proceedings for a civil penalty order may be started no later than 6  
6 years after the contravention.

7 **23 Civil evidence and procedure rules for civil penalty orders**

8 The Federal Court must apply the rules of evidence and procedure  
9 for civil matters when hearing proceedings for a civil penalty  
10 order.

11 **24 Civil proceedings after criminal proceedings**

12 The Federal Court must not make a civil penalty order against a  
13 person for a contravention if the person has been convicted of an  
14 offence constituted by conduct that is substantially the same as the  
15 conduct constituting the contravention.

16 **25 Criminal proceedings during civil proceedings**

- 17 (1) Proceedings for a civil penalty order against a person are stayed if:  
18 (a) criminal proceedings are started or have already been started  
19 against the person for an offence; and  
20 (b) the offence is constituted by conduct that is substantially the  
21 same as the conduct alleged to constitute the contravention.
- 22 (2) The proceedings for the order may be resumed if the person is not  
23 convicted of the offence. Otherwise, the proceedings for the order  
24 are dismissed.

25 **26 Criminal proceedings after civil proceedings**

26 Criminal proceedings may be started against a person for conduct  
27 that is substantially the same as conduct constituting a

Section 27

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1                   contravention of a civil penalty provision regardless of whether a  
2                   civil penalty order has been made against the person.

3                   **27 Evidence given in proceedings for penalty not admissible in**  
4                   **criminal proceedings**

5                   Evidence of information given, or evidence of production of  
6                   documents, by an individual is not admissible in criminal  
7                   proceedings against the individual if:

- 8                   (a) the individual previously gave the evidence or produced the  
9                   documents in proceedings for a civil penalty order against the  
10                  individual for a contravention of a civil penalty provision  
11                  (whether or not the order was made); and  
12                  (b) the conduct alleged to constitute the offence is substantially  
13                  the same as the conduct that was claimed to constitute the  
14                  contravention.

15                  However, this does not apply to a criminal proceeding in respect of  
16                  the falsity of the evidence given by the individual in the  
17                  proceedings for the civil penalty order.  
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## **Part 5—Miscellaneous**

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### **28 Regulations**

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The Governor-General may make regulations prescribing matters:

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(a) required or permitted by this Act to be prescribed; or

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(b) necessary or convenient to be prescribed for carrying out or

8

giving effect to this Act.