

House of Assembly—No 72

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South Australia

Fuel Watch (No 2) Bill 2020

A BILL FOR

An Act to facilitate the provision of information to consumers regarding the price and availability of fuel for retail sale and wholesale, to regulate the retail sale and wholesale of fuel, and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Fuel Watch Act 2020*.

5 2—Objects

The objects of this Act are—

- (a) to ensure that consumers are provided with up to date accurate information regarding the price and availability of fuel; and
- (b) to promote fair, competitive and transparent fuel pricing practices; and
- 10 (c) to mitigate negative impacts on consumers and the economy of the State as a result of fluctuating fuel prices; and

- (d) to ensure that fuel prices for retail sale and wholesale are made available to the public for ease of comparison.

3—Interpretation

In this Act, unless the contrary intention appears—

5 ***biodiesel*** means a diesel fuel obtained by esterification of oil derived from plants or animals;

Commissioner means the Commissioner for Consumer Affairs;

10 ***discounted fuel price***, in relation to a type of fuel, means the price per litre at which fuel of that type is available to consumers after any discount (whether by a voucher, discount rate, reward scheme or any other means) is applied;

fuel means any of the following:

- 15 (a) a petroleum product within the meaning of the *Petroleum Products Regulation Act 1995*;
- (b) biodiesel;
- (c) compressed gas;
- (d) liquefied natural gas;

fuel pump display means the numerical display of the normal fuel price appearing on a metered fuel pump at a service station;

20 ***fuel retailer*** means a person or body who carries on the business of supplying fuel for retail sale;

fuel watch area means—

- (a) Metropolitan Adelaide; and
- (b) any area declared to be a fuel watch area by the Minister under section 6,

25 but does not include any area declared not to be a fuel watch area by the Minister under that section;

fuel watch website—see section 8;

fuel wholesaler means a person or body who carries on the business of supplying fuel for wholesale;

Metropolitan Adelaide means Metropolitan Adelaide as defined by GRO Plan 639/93;

30 ***normal fuel price***, in relation to a type of fuel, means the price in cents per litre at which fuel of that type is available to consumers without any discount (whether by a voucher, discount rate, reward scheme or any other means) applying;

price board means a board, sign or notice at a service station that displays the price in cents per litre of each type of fuel available for retail sale at that service station;

35 ***retail sale*** means a sale in retail quantity for the purposes of use or consumption;

service station means a building, place or premises where fuel is offered and supplied for retail sale, but does not include a building, place or premises where the primary business is the hiring, leasing or sale of motor vehicles;

wholesale means a sale other than a retail sale.

4—Administration of Act

- (1) The Commissioner for Consumer Affairs is responsible for the administration of this Act.
- (2) The Commissioner must, in the administration of this Act, have regard to the objects of this Act.

Part 2—Functions of Commissioner

5—Functions of Commissioner

The Commissioner has the following functions under this Act:

- (a) to monitor and publish information regarding fuel price and availability;
- (b) to monitor and keep under continuous review the prices of fuel in the State, and the services provided by fuel retailers and fuel wholesalers generally;
- (c) to give advice to fuel consumers;
- (d) to conduct research into matters concerning fuel prices, the interest of fuel consumers and related issues;
- (e) any other functions required for the administration of this Act.

Part 3—Fuel watch areas

6—Minister may declare fuel watch areas

- (1) The Minister may, by notice in the Gazette—
 - (a) declare an area of the State to be a fuel watch area for the purposes of this Act; or
 - (b) declare that the whole or a part of Metropolitan Adelaide is not a fuel watch area for the purposes of this Act.
- (2) The Minister must, before making a declaration under this section, seek the advice of the Commissioner.
- (3) In making a declaration under this section, the Minister must have regard to the objects of this Act.
- (4) The Minister may, by subsequent notice in the Gazette, vary or revoke a declaration under this section.
- (5) Sections 10, 10AA and 10A of the *Subordinate Legislation Act 1978* apply to a notice made under this section as if it were a regulation within the meaning of that Act.

Part 4—Information regarding pricing and availability of fuel

7—Provision of information to Commissioner on price and availability of fuel and restrictions on change of fuel price etc

- (1) A fuel retailer must, at the prescribed time, provide the following information to the Commissioner:
 - (a) the name, address and contact details of the fuel retailer;

- (b) the address of the service station at which fuel is available for sale by that fuel retailer;
- (c) the price in cents per litre of each type of fuel available for retail sale at that service station.

5 Maximum penalty:

- (a) for a fuel retailer offering fuel for retail sale within a fuel watch area—\$10 000;
- (b) in any other case—\$5 000.

10 (2) A fuel retailer offering fuel for retail sale within a fuel watch area must not increase or decrease the price at which fuel will be offered for retail sale—

- (a) if fuel is offered for sale before 6 am on any day—before midnight on the day following the day on which fuel is offered for retail sale at the price provided to the Commissioner under subsection (1)(c); or
- (b) in any other case—for 24 hours from the time at which fuel is offered for retail sale at the price provided to the Commissioner under subsection (1)(c).

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Maximum penalty: \$10 000.

(3) A fuel wholesaler must, at the prescribed time, provide the following information to the Commissioner:

- (a) the name, address and contact details of the fuel wholesaler;
- (b) the address at which fuel is available for sale by that fuel wholesaler;
- (c) the price in cents per litre of each type of fuel available for wholesale by the fuel wholesaler.

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Maximum penalty: \$5 000.

(4) A fuel retailer or a fuel wholesaler must, not less than 30 minutes after becoming aware of the fact that fuel will be unavailable for sale by the fuel retailer or fuel wholesaler (as the case may be), provide that information to the Commissioner.

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Maximum penalty: \$5 000.

(5) It is a defence to a charge of an offence against subsection (1), (2), (3) or (4) for the defendant to prove that—

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- (a) the defendant did not comply with the requirement due to an emergency; or
- (b) it was unreasonable in the circumstances for the defendant to comply with the requirement.

(6) Information required to be provided to the Commissioner under this section must be provided to the Commissioner in a manner and form determined by the Commissioner.

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(7) In determining the manner and form for the purposes of subsection (6), the Commissioner must have regard to—

- (a) the need to minimise the costs of the fuel watch scheme for fuel retailers and wholesalers; and
- (b) any other existing price monitoring or aggregation systems.

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(8) The Commissioner must ensure that information provided to the Commissioner under this section is easily accessible to the public on the fuel watch website and in any other manner the Commissioner thinks fit.

(9) In this section—

5 *prescribed time* means—

(a) in relation to a fuel retailer offering fuel for retail sale outside a fuel watch area—within 30 minutes of increasing or decreasing the price at which fuel will be offered for retail sale; and

10 (b) in relation to a fuel retailer offering fuel for retail sale within a fuel watch area—before 2 pm on the day before offering fuel for retail sale at the increased or decreased price (as the case may be); and

(c) in relation to a fuel wholesaler offering fuel for wholesale within or outside a fuel watch area—within 30 minutes of increasing or decreasing the price at which fuel will be offered for wholesale.

15 (10) For the avoidance of doubt, information need only be provided under this section in relation to days on which a fuel retailer or a fuel wholesaler is open for business.

8—Fuel watch website

The Commissioner must maintain a website (the *fuel watch website*) for the purposes of informing consumers of the price and availability of fuel in the State containing—

20 (a) information provided to the Commissioner under section 7; and

(b) any other information that the Commissioner thinks relevant.

Part 5—Offences

9—Offences relating to display of fuel price

25 (1) If a fuel retailer increases the normal fuel price for a type of fuel, the retailer must change the price displayed on any price board to reflect the increase in price before, or at the same time as, changing the price displayed on any fuel pump display for that type of fuel.

Maximum penalty: \$5 000.

30 (2) A fuel retailer must not display a discounted fuel price on any price board or fuel pump display.

Maximum penalty: \$5 000.

(3) A fuel retailer or a fuel wholesaler must specify the normal fuel price for a type of fuel separately from the price of any other type of fuel or any other goods or services offered for sale by the fuel retailer or fuel wholesaler (as the case may be).

35 Maximum penalty: \$5 000.

(4) The regulations may provide for the manner and form in which a fuel retailer must display the normal fuel prices for types of fuel, or a type of fuel of a particular class or kind, on any price board or fuel pump display.

10—Offences relating to sale of fuel

- (1) A fuel retailer must not, without reasonable excuse, refuse or fail to sell fuel on demand for the price provided to the Commissioner in accordance with this Act.
Maximum penalty: \$10 000.
- 5 (2) A fuel wholesaler must not, without reasonable excuse, refuse or fail to sell fuel on demand for the price provided to the Commissioner in accordance with this Act.
Maximum penalty: \$10 000.
- (3) It is a defence to a charge against subsection (1) or (2) if the defendant proves that—
- 10 (a) they sold a reasonable quantity of the fuel demanded; or
- (b) they did not have a sufficient quantity of fuel to supply the quantity demanded in addition to the quantity required to satisfy—
- (i) all other existing arrangements under which they were obliged to supply quantities of fuel for consumption or use; and
- (ii) the ordinary requirements of their business.
- 15 (4) A fuel retailer or fuel wholesaler must not make the sale of fuel to a person conditional on the sale of any other goods or services.
Maximum penalty: \$10 000.
- (5) A fuel wholesaler must, on request from a person, provide to the person in writing, an itemised list of the cost of any of the following components of the normal fuel price:
- 20 (a) delivery of the fuel;
- (b) use of a brand in relation to the type of fuel;
- (c) use of a credit or payment facility.
Maximum penalty: \$10 000.

Part 6—Miscellaneous

25 11—Power to report to Essential Services Commission

If the Commissioner considers that there is price gouging or market inefficiency in retail fuel pricing for any area of the State, the Commissioner may refer the matter to the Essential Services Commission and, in such a case—

- 30 (a) the *Essential Services Commission Act 2002* applies as if the provision of fuel were an essential service within the meaning of that Act; and
- (b) the activities of fuel retailing and fuel wholesaling are declared to constitute a regulated industry for the purposes of that Act.

12—Court may order compensation for contravention of Act

35 If the District Court is satisfied, on the application of the Commissioner or any other person, that a fuel retailer or a fuel wholesaler has contravened a provision of this Act, the Court may order the fuel retailer or fuel wholesaler to pay compensation to a person who has suffered loss or damage as a result of the contravention.

13—Delegation

- (1) The Commissioner may, by instrument in writing, delegate powers or functions under this Act to any person.
- (2) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Commissioner to act personally in any matter; and
 - (c) is revocable at will; and
 - (d) may, if the instrument of delegation so provides, be further delegate.

14—Annual report

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act by the Commissioner during the year ended on the preceding 30 June.
- (2) A report of the Commissioner required under this section may be combined with a report of the Commissioner required under any other Act (provided that such reports relate to the same period).
- (3) The Minister must, within 14 sitting days after receiving the Commissioner's report, have copies of the report laid before both Houses of Parliament.

15—Regulations and fee notices

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) A regulation may be of general or limited application and may vary in operation according to factors stated in the regulation.
- (3) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.