

MEDIA RELEASE

The Commissioner of Consumer Affairs

23 September 2014

Consumer Affairs Commissioner Gary Clements has sought and is awaiting legal advice on the appropriateness of using the Price Exploitation Prevention Act 2002 to tackle petrol prices.

“A wide range of views have been expressed on the potential for using this legislation in circumstances other than disasters,” Mr Clements said.

“As such, I’ve asked the Solicitor General for a legal opinion on whether there is merit in considering this legislation for petrol prices.

“An earlier version of this legislation has only been used once during the Katherine Floods and in those emergency circumstances it was applied to staple items such as milk and bread.

“To my knowledge, neither version of the Act has ever been applied to petrol.

“My own understanding of this Act suggests that it would not be a quick or simple process if I did decide there was merit in going down this path.

“The Act sets out clear circumstances where price intervention might be considered. Section 20 (1A) states....

“The controller may only make an order under subsection (1) or (5) if he or she is satisfied that the order is necessary to prevent price exploitation that may occur because of:

- (a) A natural or man-made disaster (whether or not in the Territory) that has occurred and that may prevent consumers benefiting from the operation of a competitive market; or
- (b) The apparent failure of other laws to protect consumers from monopolies or to effectively ensure that consumers benefit from the operation of a competitive market within all or a part of the Territory.

“Clearly, we are not in a disaster situation, so the test which I must apply is whether there has been a failure of other laws to protect consumers.

“The laws which are most relevant in this situation are both Northern Territory and federal competition and consumer laws and we would need to establish that they are failing. This is a fairly high bar.

“It is important to note that high prices in themselves are not enough to establish a failure of laws.

“There may be justifiable reasons why a particular good is more expensive in one location.

“To establish whether Territory prices are higher as a result of some market failure, I would be required to undertake my own extensive investigation into the operation of consumer laws as they apply to fuel.

“The Australian Competition and Consumer Commission has looked into this previously and has been unable to identify any breach of these laws.

“The other important factor to consider is that this legislation is intended as a short term price control measure, for a period of 12 months. It is not a long term fix.

“I understand the importance of this issue to Territory motorists and look forward to receiving the advice of the Solicitor General concerning the application of this legislation to petrol prices.”