



*Consultation on*  
***Competition Policy Review - 'Issues Paper'***

*Submission to*  
**Competition Policy Review Secretariat**  
**The Treasury**

***June 2014***

## SUBMISSION BACKGROUND

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### About AIP

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards. AIP provides a wide range of factual information and industry data to assist policy makers and the community in understanding the key market, industry and other factors influencing Australia's downstream petroleum sector.

AIP is pleased to present this Submission to the Competition Policy Review Secretariat on behalf of AIP's core member companies:

BP Australia Pty Ltd  
Caltex Australia Limited  
Mobil Oil Australia Pty Ltd  
The Shell Company of Australia Ltd.

### About AIP Member Companies

AIP member companies operate across all or some of the liquid fuels supply chain including crude and petroleum product imports, refinery operations, fuel storage, terminal and distribution networks, marketing and retail. Underpinning this supply chain is considerable industry investment in supply infrastructure, and a requirement for significant ongoing investment in maintaining existing capacity. Over the last decade, AIP member companies have invested over \$10 billion to maintain the reliability and efficiency of fuel supply meeting Australian quality standards.

AIP member companies play a very significant role in delivering the majority of bulk fuel supply to the Australian market.

- In relation to conventional petroleum fuels, AIP member companies operate all major petroleum refineries in Australia and supply around 90% of the transport fuel market with bulk petroleum fuels.
- In relation to gaseous fuels, AIP member companies are the major suppliers of bulk LPG to the domestic market, representing around two thirds of the market.
- In relation to biofuels, AIP member companies are the largest suppliers of ethanol and biodiesel blend fuels to the Australian market.

The Australian petroleum industry is a significant contributor to the domestic economy providing direct and indirect economic benefits from its own activities and underpins the competitiveness of key Australian export industries like the mining, agriculture, forestry, fishing and manufacturing industries. In addition, as a technologically advanced industry, the refining industry employs and trains many highly skilled, technical staff and international expertise flows readily into the Australian workforce.

**Given their significant role in the Australian fuels supply chain and broader economy, AIP member companies have a very strong interest in the Government's Competition Policy Review and in policy settings which can directly impact on the downstream petroleum industry, including the industry's ongoing operation, competitiveness and transparency, and also on the costs of doing business in Australia.**

### About AIP's Submission

AIP is happy for our submission to be made publicly available. Should the Panel or Secretariat have any questions in relation to this submission, or require additional information from AIP, please contact Nathan Dickens (General Manager – Policy, AIP) on (02) 6247 3044 or [ndickens@aip.com.au](mailto:ndickens@aip.com.au).

## OVERVIEW

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AIP welcomes the opportunity to provide a submission to this review and looks forward to ongoing consultation with the Panel and Secretariat on the Competition Policy Review.

### **KEY MESSAGES**

- **The Australian fuels market is fundamentally open, competitive, transparent and diverse.**
- **To remain competitive and efficient, structural change has been an ongoing feature of this highly dynamic industry.**
- **Fuels manufacturing (refining) is striving to remain competitive with imports, but faces ongoing challenges.**
- **Against this background, there is still an important role for government alongside industry in strengthening the competitive position of the domestic industry and the operation of the market.**
- **Removal of regulatory impediments (outside the CCA), regulation harmonisation, and a whole-of-government focus on business competitiveness can support a competitive/efficient fuels industry.**
- **The current Competition Law is sufficient to deal with any anti-competitive conduct in the industry.**
- **No case has been made for extension of price signalling law to the fuels sector and no gap in existing laws, clear market failure or consumer detriment has been identified; industry is concerned that extension of price signalling law could have significant unintended consequences and create unjustified red-tape, costs and uncertainty for business, impacting on industry competitiveness.**

**Overall, in the context of the highly competitive and dynamic fuels industry, we consider that the current competition law, plus formal price monitoring of the fuels industry by the ACCC, strikes an appropriate balance between promoting competition and protecting consumers, whilst not unnecessarily increasing regulation on the fuels industry.**

Each of these key messages and assessments are explained in detail in this submission, and are grouped according to three of the relevant focus areas identified in the Issues Paper, namely:

**(1) *Competition in the Australian fuels market and the role of government***

**(2) *Regulatory impediments to business competitiveness***

**(3) *The effectiveness of Australia's competition law***

In relation to the Australia's competition law, AIP member companies - either individually or through their membership of peak business associations - may present views on specific improvements to the *Competition and Consumer Act 2010* (CCA) which may enhance business efficiency and the ability to compete domestically and internationally. These submissions may also make assessments of whether *"the current competition laws are working efficiently to promote competitive markets given increasing globalisation, changing market and social structures and technological change"*.

Consequently, this AIP submission focuses largely on responding to the Panel's explicit question on *"Should the price signalling provisions of the CCA be retained, repealed, amended or extended to cover other sectors"*, with a particular focus on extension of the law to the Australian fuels sector.

This submission should also be read alongside the new edition of AIP's biennial publication – *Downstream Petroleum 2013* (see <http://www.aip.com.au/industry/facts.htm>). This latest report provides an overview of the financial performance of the industry and recent developments in fuels refining and marketing in Australia and the Asian region. It also highlights the competitive pressures and challenges facing the Australian industry and its importance to Australia's economic performance and energy security.

## **(1) COMPETITION AND STRUCTURAL CHANGE IN THE AUSTRALIAN FUELS MARKET AND THE ROLE FOR GOVERNMENT**

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This chapter outlines the competitive landscape of the Australian fuels industry and how this has changed over time, and deals with the Review's broader terms-of-reference issues related to the general level of market competition and the appropriate role of government. We consider this important context for the consideration of competition policy and law to apply to the Australian fuels market in future.

AIP supports the Issues Paper conclusions in relation to what constitutes 'effective market competition' and the principles underpinning the appropriate focus for competition policy; in particular:

- *"Competitive markets are characterised by various forms of price and non-price competition between businesses seeking to provide what consumers want. Price competition occurs when businesses selling the same or very similar goods seek to increase sales by offering low prices." (1.3)*
- *"Poorly designed regulatory impediments to competition (eg. restrictions on who can be in the market or how they can trade) can deliver less competitive outcomes and narrow consumer choice." (1.5)*
- *"Vigorous competition can be tough and firms that misjudge the market or have a higher cost structure may lose market share and end up exiting the market." (1.6)*
- *"Concentrated markets are not a concern if market participants are operating in a way that delivers durable and competitive outcomes; that is, trying to win business by offering consumers better products at more attractive prices than rivals." (1.10)*
- *"Competition policy has been important in ensuring that our markets—many of which have been relatively concentrated, reflecting our small and spread out population—operate as efficiently as possible to the benefit of consumers and businesses." (1.9)*
- *"Competition works best when there is a stable, certain and well understood legislative framework and effective design principles" (1.8)*
- *"An effective competition policy framework aims to address a wide range of behaviours by market participants in an ever-evolving economic environment." (1.16)*

AIP and its member companies believe that these preconditions of effective market competition already exist in the Australian fuels market and are the cornerstone of the longstanding features and operation of the fuels market which have consistently delivered competitive fuel prices to Australian business and consumers.

**The fuels market is fundamentally open, competitive, transparent and diverse**

The Australian fuels market is fundamentally open, competitive, transparent and diverse, as demonstrated by the following facts and key features of the market:

- The petroleum market is generally recognised as a highly competitive and dynamic global market.
- Petroleum products are freely traded commodities with a diversity of alternative fuel sources along the fuels supply chain both internationally and domestically, as well as a diversity of large and small market participants and fuel suppliers constantly driving market competition.

- **There are no significant barriers to imports for ‘conventional’ fuels or to market entry by new participants, as evidenced by the range of new operators entering the refining, import/wholesaling and retailing fuels sectors over the last decade.**
  - The only barrier to market entry currently is for biofuels – namely availability of imported ethanol and biodiesel on market/commercial terms (see below).
- **Australian fuels prices are closely linked to international market prices (via import parity pricing) and domestic market operators are effectively ‘price takers’.**
  - Around 90% of the fuel price in Australia is refined product cost and government taxes.
- **Australian fuels prices are competitive by international standards, including on a pre-tax basis.**
  - Competitive Australian fuel prices underpins the competitiveness of key Australian export industries like the mining, agriculture, forestry, fishing and manufacturing industries.
- **The fuels industry is characterised by a high degree of price transparency. There are highly transparent prices in all market segments (retail, wholesale, international), including as a result of inherent features of the industry and also government regulation like the Oil Code, and timely and widely available information services available to inform consumer and business choices.**
  - There is also significant technology innovation in the market which is enabling efficient consumer choice at the retail level, and relevant to the specific locality and convenience of individual consumers (eg. mobile ‘apps’ providing guidance to motorists on exactly where and when to buy their fuels in their locality).
- **There is no evidence of monopoly profits accruing in any segment of the Australian fuels market.**
  - According to the ACCC, Australian industry profits are a very small proportion of the retail price with profit over the last decade averaging 2 cents per litre of all fuels sold. AIP’s own financial survey of the domestic industry, published every two years, confirms this ACCC analysis.
- **The Australian fuels industry is highly dynamic with constantly changing market shares and profitability of participants, and has greater market diversity now compared to a decade ago through a range of new market entrants in the retail, wholesale and refining sectors.**
  - For example, based on ACCC analysis, petrol imports by independent importers/wholesalers have increased five-fold since 2007-08 and the major oil companies’ share of the retail petrol market has declined from 83% to 35% since 2002-03.
  - The ACCC also recently reported that *“throughout 2012-13, Australia’s downstream petroleum industry continued its process of transition and change that has been evident in recent years. In particular, there were significant developments in the structure of total supply (including refining and importing), wholesale and retail.”*
- **Consumer and business choice, including in relation to the vehicle fleet and technology, is driving demand for conventional fuels and the fuels mix required in Australia.**

Many of the above facts and market trends have been confirmed in the ACCC’s annual ‘Monitoring of the prices, costs and profits of the Australian Petroleum Industry’ reports (conducted under section 95ZE of the *Competition and Consumer Act 2010 (CCA)* under formal direction from the Government since 2008) and in a range of other reports commissioned by the Government. The ‘Issues Paper’ notes these annual ACCC Reports as an important reference source in the context of this review and its consideration of fuels market competition, and AIP supports this.

As part of its formal monitoring role over the past 7 years, the ACCC has analysed millions of fuel transactions between the market participants in Australia to assess the competitiveness of the Australian fuels market and prices, and any anti-competitive conduct or outcomes.

**Notwithstanding the competitive fuels market features noted above, in recent years the Australian fuels industry has faced considerable international and domestic challenges, with major structural changes and intense competition in the global oil market and the domestic fuels market. Once again we consider this general market environment and competitive landscape very important context to the consideration of competition policy and law to apply to the Australian fuels market in future, and also to the Review's consideration of the scope for removing regulatory impediments to business competitiveness.**

**Structural change in order to remain competitive and efficient is an ongoing feature of this highly dynamic industry; domestic fuels manufacturing (refining) is striving to remain competitive with imports, but is facing ongoing challenges.**

Australian refineries, in particular, have been challenged by ongoing excess supply in the Asian region and the strong Australian dollar impacting on the outlook for domestic refining, and continued pressure from new Asian refineries which enjoy significant competitive advantages in terms of scale, technology, cost and government assistance.

The downstream petroleum industry has responded to these challenges through stringent cost control and enhanced efficiency, and also by further integration into the rapidly expanding Asian fuels market. Three Australian refineries are being converted to import terminals to strengthen links to regional refiners and marketers.

Apart from difficult market conditions, there are also other challenges impacting on the industry's ability to remain internationally competitive and grow and invest efficiently.

- The cost of doing business in Australia (labour and capital costs), and the cumulative cost and specific impacts of a wide range of complex and overlapping government regulation is impacting on the domestic refining industry's ability to compete in the region and remain viable longer term.
- The future industry investment task is significant to ensure ongoing supply reliability and this can be best supported by a favourable and stable investment environment, as well as soundly based, harmonised and streamlined regulation across all government levels.
  - For example, any further changes to fuel quality standards must be based on sound science and provide a net economic benefit to the community as well as a return to the refiner to justify the significant investment required to produce these fuels locally
- A major obstacle to liquid fuel supply reliability is the absence of a level playing field for competing transport fuels
  - For example, there is no access to imported ethanol on the same terms as domestically produced ethanol (including in light of the 2014-15 Budget announcements), which is hampering the development of a competitive, efficient and diverse biofuels market in Australia.

It is important to note that ‘structural change’ has been ongoing in the Australian fuels industry for decades, in an effort to ensure ongoing business efficiency and viability and improve the efficiency and competitiveness of the overall supply chain. Many of these changes are regularly highlighted in the ACCC’s annual formal monitoring reports on the fuels industry.

Some examples of the dynamic nature of the industry and the structural changes over the last decade include the following:

***Refining:***

- Total industry investment in refinery reliability and safety of over \$10 billion over the last decade, including refinery investment of over \$3 billion in the cleaner fuels program.
- Ongoing refinery debottlenecking programs and port/wharf/berth expansions to increase capacity.
- Significant improvements in energy efficiency, water usage and recycling.
- Decisions by some companies to close existing refineries or convert to import terminals.

***Importing/Wholesaling:***

- Significant ongoing investment in import terminal infrastructure, including major industry investments in new facilities close to major demand growth centres.
- Major changes to the structure of the industry and an increase in the number of industry operators importing/wholesaling fuels domestically and the entry of new market operators and traders (eg. Vitol, Puma/Trafigura, Glencore).

***Distribution/Retailing:***

- Streamlining of distribution networks and removal of intermediate steps. For example, on the eastern seaboard 80% of petroleum products are delivered directly from major refinery or import terminals to major fuel end-users and service stations.
- Significant rationalisation of retail sites and the rise of ‘higher volume sites’ with multi product offerings on major transport corridors.
- The rise of independent retail chains and supermarkets in terms of increasing shares of retail sales.

As a result of these structural changes, as well as industry investments to date and Australia's efficient access to regional markets for liquid fuels, the industry expects to continue to deliver secure, reliable and competitively priced fuels to the domestic market longer term.

To support this important objective, however, there is an important role for government to play.

**What is an appropriate role for government in a competitive and dynamic Australian fuels market?**

*The fuels market is different to other domestic energy markets – it is part of globally and regionally integrated supply chains which are mature, flexible and well-functioning and which deliver internationally competitive fuel prices and reliable supply to consumers and business. Thus, there is less of a role for government in the development of a competitive, efficient and reliable liquid fuels market, as these conditions largely exist. However, there is still an important role for Government alongside industry in strengthening the competitive position of the domestic industry and the operation of the fuels market.*

AIP considers there are three important roles for government outlined below.

## **(1) MAINTAINING A STRONG AND STABLE MARKET BASED APPROACH:**

For the industry to remain competitive internationally and make the significant ongoing infrastructure investments needed to maintain supply security and reliability, the industry needs a clear longer term policy framework and a stable investment environment, underpinned by a strong market-based approach by government. This requirement is underscored by the difficulties in attracting investment in a highly competitive global capital market.

**A strong market-based approach to policy settings by government will also provide a flexible and robust framework capable of responding to the changing global oil market and domestic fuels market and also to technology developments in the industry.**

At the highest level, this market based approach by government should focus on:

- ensuring a competitive and open market is maintained in Australia; and
- ensuring that local refining is not competitively disadvantaged in the Asian region.

Under this market based approach, governments have an important role alongside industry in strengthening the industry's competitive position and the security and operation of the fuels market by:

- ensuring existing regulation is soundly based, streamlined and harmonised across all levels of government and new regulatory decisions and imposts do not undermine the competitiveness of domestic petroleum refining and fuel supply;
- removing market (non-commercial) barriers to effective market operation and competition, like the absence of a level playing field for competing transport fuels;
  - For example, there is no access to imported ethanol on the same terms as domestically produced ethanol (including in light of the 2014-15 Budget announcements), which is hampering the development of a competitive, efficient and diverse biofuels market in Australia.
- adopting a 'whole of government' approach to business competitiveness and liquid fuels security in the Australian fuels market, particularly during policy development processes.

The above focus areas are outlined in more detail in Chapter 2 (page 11).

Also, governments need to demonstrate, for any proposals for changes to current market and policy settings that:

- a real market failure exists within the market or industry
- new policy measures will produce a net benefit to the community and will not impact adversely on industry competitiveness, consumer outcomes or liquid fuel supply security and reliability
- continued reliance on domestic and international markets is unable to deliver a similar outcome or that consumers cannot, or cannot efficiently, do these things.

Where government activity/intervention is proven to be needed in the market, AIP and its member companies advocate policies and regulation that apply equally to all industry participants and are based on comprehensive economic analysis and sound science.

**In summary, policy stability and the minimum level of efficient and well-targeted government regulation will support the industry's future investment as well as the development of efficient and competitive markets for all transport fuels. An attractive investment environment and more efficient, timely and consistent planning, approval and regulatory processes, would also support the ongoing investment in the growth, modification and maintenance of key infrastructure supporting the liquid fuels supply chain.**

## **(2) ROBUST MARKET MONITORING & REGULAR ASSESSMENT:**

**AIP supports the current monitoring of the fuels industry by independent authoritative bodies, and regular assessment and reporting as part of this, to provide confidence that the fuels market remains competitive and reliable, particularly in the context of its dynamic nature and the significant structural changes that have occurred and are ongoing in the industry.**

### **ACCC Formal Monitoring of the Petroleum Market:**

As noted above, the ACCC currently conducts annual 'Monitoring of the prices, costs and profits of the Australian Petroleum Industry' (under section 95ZE of the CCA and formal direction from the Government).

Notwithstanding the costs each year to AIP members to meet the ACCC's data and information requirements for this exercise, AIP and member companies believe there is a strong case for ongoing ACCC monitoring and annual reporting given:

- the ongoing media, political and community interest in the fuels industry;
- the market structure and business strategies at all levels of the fuels market are dynamic and constantly changing, with new operators/entrants in each segment of the fuels market;
- the significant benefits to date from ACCC market monitoring including:
  - better information for decision-makers and the public about the fuels market, dispelling myths in the community, and putting any public debate on a factual basis;
  - providing input to a range of government processes and reviews, which actually reduces red tape for industry (ie. one agency collects data and reports regularly on matters/data that many agencies need from industry);
- the ACCC is the only party that can perform this role (and gather under its CCA powers the data required for a comprehensive analysis and assessment) and after 7 years now has the in-house expertise and systems to do this in an efficient and cost effective way.

AIP considers that ACCC monitoring of the market, under formal direction from Government, provides the right balance in the role for government in the market, and provides government and the community with confidence that the structural changes occurring in the fuels market are pro-competitive and in the interests of business and consumers.

### **Petroleum Data:**

Any assessment of the Australian fuels market, either by the ACCC or other government agencies for energy security purposes, is dependent on robust petroleum data. High-quality and transparent liquid fuels data and analysis is crucial for government, business and consumers to be able to make efficient and well-informed decisions and perform robust analysis. However, as confirmed in government reviews, there are a number of areas where liquid fuels data collection and analysis can be improved to better support these objectives, including in a more efficient and cost effective way for both government and industry.

For many years AIP has strongly supported coordinated government efforts to develop higher-quality and broader coverage domestic liquid fuels data and consolidate liquid fuels data collection and analysis across government agencies.

AIP believes that a single definitive and robust dataset for liquid fuels through data consolidation and sharing across government agencies will lead to a significantly lower collection and reporting burden on both government and industry (noting there are currently 12 different liquid fuels reporting requirements across Commonwealth agencies alone). AIP believes this is readily achievable if the single liquid fuels dataset is based on the wide range and significant volume of high quality liquid fuels data collected for Excise/Customs purposes. This action will deliver significant red-tape reduction.

**In summary, access to analysis from ongoing market monitoring and high-quality petroleum data is crucial for government, industry and consumers to make efficient and well-informed decisions.**

### **(3) INTERNATIONAL ENGAGEMENT THAT SUPPORTS EFFICIENT, TRANSPARENT AND OPEN MARKETS:**

AIP and its members companies also support multilateral efforts to ensure that world markets remain open and competitive, Australia continues to be well integrated into regional and global commodity markets, and that effective and market –reflective response mechanisms are in place to mitigate the impact of short term supply disruptions and global oil supply emergencies.

AIP therefore supports broad engagement with the G20, APPEC and IEA, to support these market orientated goals. Working in close partnership with industry and other key stakeholders, the Government is encouraged to pursue common energy goals such as energy security, competitive, flexible and resilient markets, and energy and technology innovation.

However, it is important that these multilateral fora, and the participants in these fora, are well informed about market realities, changes in market conditions, and market operations so as to encourage actions that:

- support efficient, transparent and open domestic, regional and global markets that create clear incentives for timely investment and efficient operation and end use
- promote and strengthen energy supply chains and market efficiencies, reduce barriers to trade, and improve market and regulatory transparency.

Any actions on these terms, and which reflect our regional and domestic market realities, will help ensure that energy security is achieved at least cost to Australia and in ways that do not create further market distortions.

## **(2) REGULATORY IMPEDIMENTS TO BUSINESS COMPETITIVENESS**

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In the context of the Australian fuels market, AIP supports the Issues Paper remarks that:

*“Competition may be affected by restrictions that are not designed for competition purposes but for some other public policy objective. These regulations are not contained in the competition law, but in a multitude of federal, state and territory and local government instruments. In many cases different regulations apply to the same activity in different jurisdictions. Even where national regulations are in place, individual jurisdictions may choose to vary the regulatory framework, which can also affect competition.”*

**The international competitiveness of the Australian fuels market is significantly affected by the complex policy environment regulated by federal, state and local governments, which impact on business efficiency and on the cost of doing business in Australia. This is important given that the costs of doing business in fuels market in Australia, including labour and construction costs and tighter regulatory requirements, remains substantially higher than for our Asian competitors.**

Amongst the range of focus areas identified in the Issues Paper, three regulatory restrictions of particular relevance to the Australian fuels market are the focus of this submission, namely:

- *“different regulations applying to the same activity in different jurisdictions”*
- *“import restrictions that, on balance, are adversely affecting Australians”*
- *“restrictions on land use and sale (planning, zoning and development laws)”*

**Removal of regulatory impediments (outside the CCA), harmonisation of existing regulation, and a whole-of-government focus on business competitiveness can support a competitive and efficient fuels market in Australia.**

Overall, AIP considers that the removal of regulatory impediments (outside the Act), regulatory streamlining and harmonisation, and a whole-of government focus on ‘business competitiveness’ can support a competitive and efficient fuels industry in Australia and, as identified in the Issues Paper, *“contribute to a surge in productivity, lowered prices in some important consumer product and service markets, and stimulated business innovation”*. AIP supports these objectives and has outlined below three focus areas for the fuels market.

While the market based government policy framework noted in [Chapter 1](#) will help respond to ongoing industry challenges, governments have an important role in ensuring that regulatory decisions and imposts do not undermine the competitiveness of liquid fuel refining and supply (eg. where the manufacturing of fuel imported from other nations may not be subject to similar imposts).

Governments also have an important role in addressing non-commercial barriers to competitive and effective market operation and in ensuring that this is a priority consideration across and within levels of government, including for fuel supply security and reliability reasons.

- In this regard, AIP supports future government reforms focusing on ensuring that planning, approval and regulatory processes are efficient, timely and nationally consistent, to support longer term investment in liquid fuel import, storage and distribution infrastructure.
- There is also an ongoing need for state and territory governments (and private port operators) to maintain investment in port facilities to remove supply bottlenecks and to meet expected growth in fuel imports and demand over time.

Where government intervention is proven to be needed in the market, and a clear market failure and net benefit has been demonstrated, AIP and its member companies advocate policies and regulation that apply equally to all industry participants and are based on comprehensive economic analysis and sound science.

## **(1) NEED FOR REGULATION STREAMLINING & HARMONISATION**

The downstream petroleum industry operates across Australia and is therefore subject to a range of policies in each jurisdiction that entail significant regulatory and compliance costs. Importantly, these jurisdictions include local government, as lack of consistency across local government can give rise to greater costs than at the Commonwealth-State level, for example in relation to the environmental regulation of service stations.

**AIP considers that there can be major benefits in pursuing a harmonisation of these regulations across jurisdictions, including at the local government level. The benefits of such action would include common and consistent approaches and frameworks that would lower costs for regulators and industry and lead to greater certainty in regulatory outcomes.**

Particular areas of policy concern include:

- ambient air quality
- assessment of site contamination
- remediation of contaminated sites
- underground petroleum storage systems
- retail site regulation including local council development approvals (for example, in relation to stormwater management)
- ad-hoc greenhouse gas abatement measures.

While the list above relates only to environmental regulation, there is other regulation that would benefit from a common approach across Australia at each level of government. In each of the areas of policy concern there are degrees of harmonisation and common practice across jurisdictions but further work is required to further reduce costs to industry and improve the effectiveness of the regulation. Of course, harmonisation of regulation is only desirable if assessment and implementation of the regulation is based on best practice.

Various models could be pursued to harmonise regulations in these areas or to improve the level of harmonisation, including:

- formal intergovernmental agreements with mirror legislation in each jurisdiction, along the lines of the National Environment Protection Measures (NEPM) process (but noting the need to streamline the unwieldy review process)
- jurisdictional implementation of independently developed national guidelines (which may be supported by a practitioner accreditation program or regulator education program)
- overriding Commonwealth legislation.

Regardless of the model chosen, harmonisation should be coordinated to some extent at the national level. Such an approach would ensure that policies originating in one jurisdiction do not inform others on an ad hoc basis, but are implemented consistently. For example some AIP members are concerned by the Queensland draft Management of Firefighting Foam policy, which lacks important technical and economic assessments.

Experience to date has demonstrated the benefits that can be derived through harmonisation of regulations in some of the aforementioned policy areas, and highlights the potential for further major productivity gains that could be realised without any significant loss of environmental or community benefits.

AIP's recent submission to the House of Representatives Standing Committee on the Environment *'Inquiry on streamlining environmental regulation, 'green tape' and one stop shops'* provides more detail and examples of competing objectives and different jurisdictional approaches, which demonstrate the potential for harmonised approaches through different mechanisms. This AIP Submission is available from <http://www.aip.com.au/pdf/submissions/AIP%20HORSCE%20Green%20Tape%20Submission.pdf>.

## **(2) IMPORT RESTRICTIONS**

AIP considers there are four critical dimensions of any strategy to deliver a competitive fuels market, as well as secure and reliable fuel supply to markets:

- open international markets for crude oil, petroleum products and bio-component feedstocks and efficient integration into these markets
- a diversity of supply options – namely a portfolio of domestic and international supply sources
- flexible, resilient and efficient supply chains and associated infrastructure
- efficient supply management strategies, including in the event of a supply disruptions.

Importantly, this framework and key market dimensions must apply equally to all fuels in the transport fuels mix (including conventional, gaseous and alternative fuels) if these objectives are to be achieved.

However, reliable ethanol supply to the Australian market was seriously compromised in 2011 during ethanol supply disruptions (related to floods, crop destruction and plant reliability) largely because the domestic ethanol market and government policy settings failed to develop a competitive market with robust supply chain and alternative ethanol supplies, including through ethanol imports.

In the 2014-15 Budget, the Australian Government announced new excise arrangements to apply to ethanol and biodiesel. Specifically, the Ethanol Production Grant will cease from 1 July 2015 and excise will be progressively applied (in five equal annual steps) starting 1 July 2016 up to an energy content rate of excise (less 50% discount) – namely 12.5cpl for ethanol and 19.1cpl for biodiesel from 1 July 2020. However, customs duty for imported ethanol and biodiesel will be retained at 38.143 cents per litre over this transition period.

AIP does not support this approach to imported ethanol as it is likely to undermine the competitive, reliable and economic supply of ethanol blend biofuels to the Australia retail fuel market, and also because the long term growth in the uptake of biofuels in the Australian transport sector will be limited to the growth potential of 'domestic' ethanol production.

The competitive and reliable supply of conventional liquid fuels (petrol, diesel and jet fuel) to the Australian market has been underpinned by a diversity of supply options for petroleum products from domestic refiners and imports, and ready access to the global market for petroleum products in the event that domestic production is either disrupted or insufficient to meet Australian demand.

However, in 2011 Australian fuel suppliers (including AIP member companies and independents) encountered significant problems in sourcing reliable and quality supplies of ethanol from domestic producers. This was due to natural disasters in Australia affecting ethanol feedstocks, plant reliability issues, and also due to the closure of ethanol plants for financial reasons (despite the current 'excise-free' regime). Access to commercially viable imported ethanol during these times would have filled the void left by domestic producers. Instead some suppliers of ethanol blended fuel to the retail market were forced to withdraw this fuel from their product offerings to consumers. The lack of reliable domestic supply of ethanol (and the inability to import economically viable supplies) causes production/manufacturing disruptions and places additional costs on biofuel blend suppliers to implement supply chain management changes. These additional costs and supply disruptions reduce the cost advantages for biofuels, and their acceptability to consumers, adversely affecting the achievement of a long term sustainable and competitive biofuels market.

**For these reasons, AIP strongly opposes the differential fiscal treatment of domestic and imported ethanol and considers that this fundamentally undermines supply reliability and competitive market pricing for ethanol. AIP proposes that government equalises the fiscal treatment of imported and domestically produced ethanol so that a competitive, efficient and stable ethanol market can be created with significantly improved options for supply.**

### **(3) LAND USE & PLANNING RESTRICTIONS**

**AIP members are also concerned about the future availability of, or encroachment on, appropriately located land for the significant liquid fuels supply infrastructure that will be essential for future supply reliability and security.**

Competing land uses are placing limits on options for liquid fuels infrastructure growth, for example:

- existing sites used for liquid fuel supply infrastructure are increasingly being constrained through residential and light industry encroachment into buffer zone areas, and areas traditionally regarded as industrial are now attracting residential developments to make use of inner city and coastal amenities
- expansion or modification of sites to enable increases or improved efficiencies in storage and handling facilities are increasingly being limited by planning authorities
- port handling facilities have limited capacity for further expansion or for improved handling facilities
- road transport access to terminals for handling increasing volumes of fuels is becoming more difficult and options to distribute fuel to consumers is constrained due to the increased use of tunnel infrastructure in larger city road networks.

These competing interests can bring long delays to current and near term development approvals for liquid fuel infrastructure investments.

**Given the importance of liquid fuels for Australia's economy, AIP strongly believes there is a need for a cross jurisdiction initiative to consider long term planning for Australia's liquid fuel infrastructure, to ensure that appropriate land is identified for terminals and distribution corridors, and that appropriate planning arrangements are put in place to ensure that future investments in liquid fuel infrastructure can proceed in a timely and cost effective way that meets the variety of community expectations associated with liquid fuels and industrial activity.**

### (3) THE AUSTRALIAN COMPETITION LAW

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AIP member companies, either individually or through their membership of peak business associations may present views on specific improvements to the *Competition and Consumer Act 2010* (CCA) which may enhance market competition and business efficiency domestically and internationally. These submissions may also address overarching considerations of whether *“the current competition laws are working efficiently to promote competitive markets given increasing globalisation, changing market and social structures and technological change?”*

Consequently, this chapter of the AIP submission focuses on responding to the Review Panel’s explicit question on *“Should the price signalling provisions of the CCA be retained, repealed, amended or extended to cover other sectors”*, but focusing our comments on the absence of a clear case being established for, and the potential impact of, extension of this law to the Australia’s fuels sector.

**The current Competition Law, together with formal price monitoring, is sufficient to deal with any anti-competitive conduct in the fuels market**

AIP and its member companies consider that the current competition law is sufficient to address any anti-competitive conduct in the fuels industry, consistent with the fundamental element of Australia’s competition policy identified in the Issues Paper - *“limiting the anti-competitive conduct of firms”*.

As discussed above, it is widely recognised that the Australian fuels industry is highly competitive and AIP and its member companies consider that the current competition law has played an important role in fostering that competition (evidenced by new market participants, increasing market diversity, a wide range of competing business strategies by market participants, and significantly greater market transparency and consumer information to support timely and efficient consumer choice). It is difficult to argue that these developments, which have occurred in a rapidly evolving market and technology environment, are a detriment to competition or consumers.

**Overall, and in the context of the highly competitive and dynamic fuels market outlined in Chapter 1, we consider the current competition law, plus formal price monitoring by the ACCC, strikes an appropriate balance between promoting competition and protecting consumers, whilst not unnecessarily increasing regulation on the fuels industry.**

Under the CCA, the ACCC currently monitors and reports annually on ‘the prices, costs and profits’ of the fuels sector, and industry expects that any anti-competitive conduct should be identified through this process (including given the significant compliance cost to fuels companies to supply information and data for formal monitoring purposes) and the ACCC’s ordinary enforcement activities, and addressed through the general competition provisions of the CCA.

In regard to the existing price signalling laws in Division 1A of Part IV of the CCA, AIP and its member companies remain of the view that those laws are unnecessary. No compelling evidence has been provided of anti-competitive price signalling occurring or of any gap in the law that would prevent the ACCC from prosecuting any such conduct that was identified. The weight of the submissions responding to the brief Government consultation process regarding those laws were sceptical of the need for reform and concerned about the increased regulatory burden and inconsistency with international competition laws that would result.

We note that the law, as it currently stands, allows the ACCC to investigate any concerns it has in relation to any anti-competitive conduct in the fuels market. For example, the ACCC is currently investigating the sharing of historical retail price information in the fuels industry (the so called Informed Sources Investigation) under the provisions of the existing law, but the findings, actions and outcome of this ACCC investigation are not yet known.

Given that that investigation is ongoing, and is closely related to the policy issues raised by price signalling laws, it is difficult for AIP and its members to comment in detail. Nonetheless, the following discussion provides some high level commentary regarding the possibility of extending the price signalling laws to the fuels sector.

**NO CASE has been made for extension of price signalling law to the fuels sector (and no clear anti-competitive conduct, market failure or consumer detriment has been identified)**

**AIP considers that no case has yet been established by the ACCC or the Government for extension of the law to the fuels sector, and no clear anti-competitive conduct, market failure or consumer detriment has been identified.**

Overall, there is no evidence that subscribing to a service that aggregates historical retail price information in the Australian fuels sector facilitates anti-competitive behaviour or results in price outcomes that are different from those that would prevail without such a service or that it results in any consumer detriment.

Retail fuels markets are inherently price transparent, with all sites being required to display prevailing prices on road-side price boards. Petrol retailers have always, through various means, gathered that information to inform their pricing decisions. The Informed Sources service simply provides a low-cost means of gathering and collating already public information. There is no evidence that the Informed Sources service facilitates anti-competitive behaviour.

Moreover, there is no evidence that retail fuel prices are higher as a result of the Informed Sources service. To the contrary, there is clear evidence of the Australian retail fuels sector being highly competitive and delivering competitive and efficient market outcomes that are in consumer interests.

- Australia already has amongst the most competitive retail fuel prices internationally, even in pre-tax terms.
- There is also no evidence that countries with such legislation enjoy more competitive fuel prices compared to Australia.
- Monopoly profits are not accruing in any segment of the Australian fuels market and there is expanding market diversity and constantly changing market shares and profitability of participants.
- There are well established competition drivers in the Australian retail fuels market influencing the price cycles in metropolitan areas, which are reflective of a highly competitive market and are supported by academic literature and analysis of retail price cycles in other markets (e.g. USA, Canada, Norway, Germany and Belgium).
- Fundamentally, retail petrol price cycles benefit price conscious consumers (particularly those in outer metro areas), and ACCC research and analysis clearly supports this conclusion.

That conclusion is supported by the ACCC's own analysis of millions of fuel industry transactions over seven successive years under the Government's formal price monitoring of the petroleum industry. This analysis has confirmed the competitive nature of the domestic fuels industry and not produced any evidence that historical price information disclosures by fuel companies have led to a lessening of competition within the industry or, more importantly, to an adverse impact on fuel consumers.

In this context, the industry would wish to understand what would be the Government's rationale and objectives for any extension of the law to the fuels market, because it appears unjustified regulation on the basis of the available evidence.

To date, the case for extension of the price signalling law to the fuels sector has been based on a 'theory' as to how historical price information sharing might affect the competitive behaviour of fuel retailers over the course of the retail petrol price cycle that prevails in metropolitan centres. However, no evidence has been made publicly available to support or test this 'theory'.

This 'theory' does not appear to be well developed or accepted in government, academic, legal or business communities. To the contrary, the weight of economic evidence tends to support the proposition that the presence of retail price cycles in markets with features such as those found in retail petrol markets is entirely consistent with highly competitive markets and prices that are tightly anchored to wholesale costs. In the circumstances, there would be a strong case for the government providing clear guidance, preferably through a formal RIS process, on exactly how a service for the aggregation of historical price information in the fuels sector reduces competition and consumer welfare.

To leave the community completely uninformed about what practices might be acceptable and what practices might not, would impose great uncertainty on the business and legal communities until such time as the ACCC makes decisions about authorisations of various practices and the Courts make decisions about the meaning of these provisions of the law. This would also burden business with unjustified cost imposts to remove any legal risk – see below.

AIP member companies believe that retail price competition is maximised when businesses are fully aware of the going market prices in local areas. Market pricing information in local areas is core market information that enhances and assists the fuels industry to underpin competitive strategy – simply, a retailer's consumer offering must be competitive or they lose sales and (potentially) go out of business in such a price competitive and sensitive market.

**AIP member companies also emphasise, as noted in the Issues Paper, the importance of markets being able to fully utilise technology to improve business competitiveness and costs reductions - both of which are in consumer interests.**

**Industry is concerned that extension of the law could have significant unintended consequences, create unjustified red-tape, costs and uncertainty for business, and thereby impact on industry competitiveness**

**Industry has significant concerns about how the price signalling law would impact on the practical operation of the fuels market and on business costs and competitiveness.**

Overall, in addition to being unnecessary, AIP and its member companies are concerned that this legislation may not be practical or workable in the fuels market, impose unjustified red tape on business, and that there could be unintended consequences impacting on the efficient and cost-effective activities of market operators.

This concern results from the considerable industry uncertainty surrounding the provision of information, particularly relating to 'fuel supply', which is essential to basic day-to-day operations in the market, underpins supply reliability and security, and has no anti-competitive implications. Such activities, required by governments and regulators, include the current high level coordination of jet fuel supplies to major airports and coordination on imports and coastal movements of products to shared terminal facilities.

In the absence of clear and comprehensive ACCC guidance on the intended business practices covered by the law, the courts will have to make this judgement on a case-by-case basis. Until a sound body of case law and precedents is established, there is uncertainty for an extensive range of business activities potentially captured by the legislation. For many businesses, significant legal advice would need to be sought, perhaps on a day-to-day and case-by-case basis at significant cost for business.

While this may not be the intention of the law or government, it would certainly be the inevitable outcome in the fuels industry. Because of the wide scope of activities potentially covered by the law, AIP member companies typically take a highly conservative approach to their conduct, including because they already display a very strict approach to any matter that may have CCA implications. This is also evidenced internationally where 'coordinated conduct' law applied in some countries leads to the publication of prices with an extensive time lag (eg. 3 months), which does not appear to support market transparency or timely information to government and the community.

**AIP member companies consider that the availability of the expensive and time-consuming ACCC notification and authorisation processes for information disclosures is not a sufficient or timely remedy for business concerns. This remedy is unsuited for all but major commercial issues, and would add unnecessary red tape and delays to industry activities, including where quick business decisions may be needed to maintain supply reliability to the market.**

There is a multitude of general, day-to-day commercial information disclosures, particularly related to 'fuel supply', which have no anti-competitive implications but are critical for reliable and competitive supply of fuels to the Australian market, particularly in instances of supply shortages/disruptions. As a result, there would need to be clear and comprehensive new guidelines if authorisation of these more general information disclosures was required.

**As a result of these uncertainties and risks, fuel companies may need to adopt new and less efficient business practices to remove legal risk (ie. don't do at all or significantly modify/curtail current business activities, processes and systems). Almost inevitably, these practices are likely to produce delays to normal business operation and be costly for the fuels industry, and could impact on consumers either in terms of supply reliability or price.**

A relevant example is the potential outcome of the ACCC Informed Sources review. Whatever the views on Informed Sources, it is a reasonably comprehensive, efficient and low cost service, which is why it is used extensively by industry, the ACCC, government and indeed consumers through Motormouth and motoring bodies to find the cheapest fuel location. It is also a service available to any retail market operator who wishes to subscribe. If such services are rendered unviable, then the industry will have to develop alternative approaches and IT systems to gather and compile this essential competitive information. Under almost all scenarios, alternative approaches are likely to be considerably more expensive and less efficient than the incumbent or a similar service - for whoever is paying. An immediate example is the previous practice of direct market surveillance by teams of drivers physically observing price boards – an extremely high cost and inefficient exercise.