

29 October 2019

Review of the Biofuels Act consultation
Better Regulation Division
NSW Department of Customer Service
McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

By email: biofuelsreview@customerservice.nsw.gov.au

Dear Sir/Madam,

Response to Biofuels Statutory Review - Discussion Paper

Reference is made to the invitation issued by your organisation for comments on the Statutory Review of the NSW Biofuels Mandate, as outlined in the Discussion Paper presented on the NSW Office of Fair Trading's website (i.e. <https://www.fairtrading.nsw.gov.au/consultation-tool/biofuels-act-review>).

ACAPMA is pleased to provide the attached submission to the Discussion Paper. A brief discussion of the key points arising from our submission is presented below.

1. ACAPMA's historic position in respect of the NSW Biofuels Mandate has been one of opposition

ACAPMA, as the national peak body representing fuel wholesale and fuel retail businesses in Australia, has long been an opponent of the NSW Biofuels mandate. This opposition is not ideological but rather, is premised in the belief that choice of fuel products in an openly competitive fuels market – one that is heavily impacted by global supply factors - is solely a decision for consumers.

An analysis of the history of Australian (and international) government intervention in fuel markets has demonstrated that such actions inevitably fail, creating significant adverse consequences for consumers and industry participants alike.

Further, past assessments of government sponsored biofuels mandates – whether State Government mandates or Federal Government industry incentives – have demonstrated that the taxpayer costs of these programmes far exceed any material benefit.

2. The NSW mandate has been a manifest failure

ACAPMA notes that the Government's efforts to increase the market adoption of biofuels within the State's retail fuel market - as a result of the 2015 revision of the Biofuels Regulation - have not increased market adoption of biofuels. In fact, ethanol substitution in petrol has actually fallen from 3% (i.e. 30% E10 sales) in Q1 2015 to 2.5% in Q1 2019. IPART recently reported (Media Release of 22 October 2019) that the level of ethanol substitution fell from 2.7% in FY18 to 2.5% in FY19, despite E10 being on average 2.3cpl cheaper than regular unleaded petrol (refer to:

<https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-compliance-monitoring-transport-publications-ethanol-market-monitoring-201819/media-release-ethanol-market-monitoring-201819-october-2019.pdf>).

A review of the 12-year of operation of the NSW Biofuels Mandate reveals that the level of ethanol substitution peaked at just 4% in mid-2013 before falling steadily to its current level of 2.5% - providing clear demonstration of the unrealistic nature of the NSW Government's prescribed 6% mandate.

In respect of biodiesel, the level of substitution of biodiesel for mineral diesel has been insignificant – much of it due to historic limitations in biodiesel supply which have only recently been partially addressed.

3. The failure of the biofuels regulation is imposing an unnecessary red tape burden on NSW fuel businesses – costs which are ultimately borne by NSW motorists

Consumer aversion to biofuels in the NSW market has resulted in 100% non-compliance with the prescribed mandate for both ethanol and biodiesel substitution, despite the best endeavours of both industry and the Regulator (i.e. NSW Office of Fair Trading).

This failure is so manifest that all fuel businesses operating in NSW – both wholesale and retail alike – have been regularly required to submit periodic applications for exemption from achievement of the prescribed mandate levels. The situation has become so bizarre that the Regulator, (i.e. the NSW Office of Fair Trading), has been preparing exemption regulations on behalf of fuel businesses – in some reported cases, such action is being 'automatically' enacted by the Regulator without the knowledge of the fuel business.

The NSW Government's only argument for continuing these laws appears to be that they are delivering a greenhouse (GHG) benefit. Even if such a contestable argument was to be accepted, the net environmental benefit – relative to a 100% petrol baseline – of these laws is a net emissions reduction of just 0.8% per year.

This GHG benefit – derived after more than 12 years of mandate operation – pales in comparison with the estimated annual 10% GHG emissions benefit that has been 'naturally' derived by general improvements in the fuel efficiency of the light vehicle fleet over the same period.

This larger estimated benefit has been derived by the natural operation of the Australian new vehicle market (i.e. replacement of older vehicles with substantial numbers of new fuel efficient vehicles) and were realised without any significant adverse consumer and/or market impacts.

In comparison, the NSW Biofuels mandate has resulted in negative consumer and market impacts. These impacts that have been identified by authoritative assessments conducted by government bodies such as the Australian Productivity Commission (APC), the Australian Competition and Consumer Commission (ACCC), and the NSW Independent Pricing and Regulatory Tribunal (IPART)

The Australian Productivity Commission (APC), for instance, released a report in 2017 that included an assessment of the operation of the NSW Biofuels mandate. The report concluded that these laws had effectively:

- *“Reduced consumer choice and increased the price consumers paid for petrol because most elected to purchase premium fuels in lieu of reduced availability of regular unleaded*
- *Adversely impacted on the competitive dynamic in the highly competitive fuel retail market by reducing the availability of regular unleaded petrol at many retail sites”.*

In 2016, the ACCC observed in one of its’ regular petrol monitoring reports that the NSW biofuels mandate was costing NSW motorists up to \$85 million per year in fuel costs (see: <https://www.news.com.au/finance/money/costs/nsw-nanny-state-costing-motorists-85m/news-story/2eea09530953f7494d01fa6e23530e70>)

Both assessments followed a report prepared by NSW IPART - under the auspices of the 2015 Review - that the only beneficiary of the laws was the State’s monopoly biofuels producer (which coincidentally happened to be in a marginal NSW electorate and had a history of making sizable donations to the NSW Coalition Government).

4. The NSW Biofuels Regulation is wholly inconsistent with the principles articulated in the NSW Government’s own “Guide to Better Regulation” (October 2016).

A review of the 12-year operation of the NSW Biofuels Mandate relative to the seven (7) *Better Regulation Principles* specified in the *NSW Guide to Better Regulation (October 2016)* gives rise to the following assessment:

- *Principle 1: The need for government action should be established. Government action should only occur where it is in the public interest. That is, where the benefits outweigh the costs.* As discussed in the preceding section, several assessments conducted by government authorities that are independent of the NSW State Government (i.e. the Australian Productivity Commission and the Australian Competition and Consumer Commission), together with an assessment conducted by the NSW Government’s own Independent Pricing and Regulatory Tribunal, have concluded that the community costs of operation of the mandate exceed any tangible community benefits. Consequently, the operation of the mandate is not in the public interest of the NSW community

- *Principle 2: The objective of the government action should be clear.* It is strongly suggested that the objective of the government action is no longer clear in the face of the manifest failure of the biofuels mandate to achieve the stated targets – particularly given the adverse consequences of the operation of the mandate that have been documented by both the ACCC and the Australian Productivity Commission (refer to Principle 1 above).
- *Principle 3: The impact of government action should be properly understood by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.* The NSW Government failed to observe this principle in respect of the 2015 Review, particularly considering the 2015 IPART Review that suggested the costs of continuing the mandate beyond 2015 outweighed the value of any benefit. Since that time, reports by both the ACCC and the APC (refer above) have pointed to the fact that the consumer costs of this regulation have consistently exceeded any benefit – and that is before any consideration of the regulatory costs associated with fuel businesses seeking exemptions, has been taken into account.
- *Principle 4: Government action should be effective and proportional.* The 12-year performance of the current regulation clearly demonstrates that the biofuels regulation has been wholly ineffective with respect to achievement of the Government’s stated biofuel substitution targets. Further, the 2015 revision of the Biofuels Regulation -which was promoted by the NSW Government as a means of increasing market uptake of biofuels – has failed, given the level of ethanol substitution in petrol has declined from 3% to just 2.5% in the period since the revised 2015 regulations were given effect.
- *Principle 5: Consultation with business and the NSW Community should inform regulatory development.* The NSW Government failed to address the issues raised by industry as part of the 2015 Review process – many of which have come to pass in terms of market uptake of biofuels.
- *Principle 6: The simplification, repeal, reform, modernisation, or consolidation of existing regulations should be considered.* The manifest failure of the Biofuels regulation to achieve the NSW Government targets for biofuels substitution, coupled with the ever-declining market penetration of biofuels, points to the only reasonable decision being the repeal of the NSW Biofuels mandate.
- *Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.* The 12 years of operation of the biofuels regulation – including a review in 2015 – demonstrates that the regulation is neither ‘efficient’ nor ‘effective’ in achieving the government’s stated aims of promoting biofuels uptake in NSW.

5. The NSW Government Discussion Paper contains a series of observations about the national and global biofuels market that are factually incorrect.

The Discussion Paper (prepared in conjunction with the 2019 Biofuels Statutory Review) contains a series of statements that are factually incorrect and demonstrate an apparent bias to acceptance of false arguments advanced by the Australian Biofuels Industry.

The first example of these statements concerns commentary about the widespread use of E10 around the world, with the Discussion Paper stating that: *“Around the world, biofuels are becoming increasingly used as a mechanism to improve fuel security, lower greenhouse gas emissions, and therefore improve health outcomes in cities and regional areas. The United States and Brazil are the two biggest producers of biofuels, creating 70 per cent of the world’s biofuels. In the United States, federal and state government programs have promoted biofuels to address issues of energy security, sustainability and regional jobs creation”*.

The most favourable assessment of this commentary is that it is merely outdated and NSW policymakers have limited up to date knowledge of the global biofuels market. Any objective assessment of the global biofuels market reveals that the market demand for biofuels has been declining substantially in the USA over the last decade, with the Federal Government and larger US State Governments (e.g. California) redirecting their efforts to encourage electric and hybrid vehicles. This change in policy has seen falling demand for biofuels in the USA which has, in turn, prompted some North American biofuels producers to explore alternative markets for supply of biofuels, including Australia.

The authors of the NSW Government’s Discussion Paper also appear to have missed the fact that many of Brazil’s biofuels producers have actually closed their doors in recent years in the face of substantial decline due to higher production costs making them uncompetitive with traditional fuels. The ethanol producers that are left have decreased ethanol production in favour of increased sugar production in recent years (see <https://www.bbc.com/news/business-33114119>).

A second example of factually incorrect commentary relates to current European policy with the report stating that: *“In 2005, the European Union mandated that renewable fuels (including biofuels) must make up 10 per cent of total transportation fuels by 2020. Sweden is the European leader in renewable energy in the transport sector, with biofuels making up to 20 per cent of the total transportation fuel market”*.

This statement implies that biofuels are a major part of the 10% renewable energy target for transportation in Europe. Yet the reality is that most countries that comprise the European Union are directing their efforts at EV’s and hydrogen fuel cells – Sweden is the exception rather than the rule, when it comes to the EU’s Renewable Energy Directive (RED). The reality is that the EU has forecast that consumption of conventional biofuels –that is the ‘first generation’ biofuels in Australia – will fall from 2022 to 2030 and will be replaced by advanced biofuels (refer <https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Biofuels%20Annual%20The%20Hague%20EU-28%208-9-2019.pdf>).

Unfortunately for NSW, there are no current producers of ‘advanced biofuels’ in Australia - and the likelihood of this production at commercial scale in the near term is remote.

Further, approximately 80% of European consumption of biofuels is biodiesel – not ethanol, so the validity of any comparison of the NSW Biofuels market (100% ethanol) with the European Biofuels market (80% ethanol) is questionable.

In summary, the commentary provided in the Discussion Paper does not appear objective.

6. The 12-year failure of the NSW biofuels mandate provides a clear and compelling case for repeal of the NSW Biofuels Regulation in its entirety

As evidenced by the above, the 12 years of operation of the NSW Biofuels Regulation has failed to achieve the Government’s target substitution of biofuels in the NSW fuels market.

Further, the community costs of this mandate have been assessed by independent national government agencies as exceeding any community benefit. In addition, the zero-industry compliance with the mandate levels, despite all reasonable steps being taken by NSW fuel retail businesses, is imposing an unnecessary red tape burden on NSW fuel businesses – the majority of which are small family owned businesses.

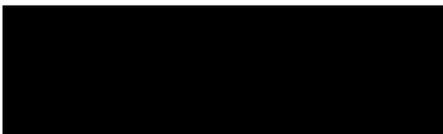
Accordingly, ACAPMA believes that the NSW Biofuels Regulation should be repealed.

7. Further information

ACAPMA welcomes the opportunity to provide feedback on the Discussion Paper for the Biofuels Statutory Review.

Should you require any clarification of the items discussed in this submission, please contact me directly.

Yours sincerely,



Mark McKenzie
Chief Executive Officer

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Submission to NSW Department of Customer Service

Feedback on Biofuels Statutory Review (Discussion Paper)

29 October 2019

1. Introduction

This paper constitutes a submission by the *Australasian Convenience and Petroleum Marketers Association (ACAPMA)* to a request from the NSW Office of Fair Trading for comment on the Discussion Paper (October 2019) prepared in association with the Statutory Review of the NSW Biofuels Regulation.

As a national body representing the interests of fuel retailers and fuel wholesalers in Australia, this submission has been specifically developed to address the elements of the Discussion Paper that are most relevant to businesses operating in the fuel retail and fuel wholesale sectors of the NSW fuels market.

2. About ACAPMA

The Australasian Convenience and Petroleum Marketers Association (ACAPMA) is the national peak body representing the interests of the petroleum distribution and the petrol-convenience retail industry.

The Association is first and foremost an employer organisation that is formally recognised under Australian law as the industrial advocate for fuel marketing and fuel distribution businesses.

First established in 1976, the Association started operations as the Australian Petroleum Agents and Distributors Association (APADA) and subsequently changed its name to ACAPMA in 2007. The name change was accompanied by a change in the Association's Constitution to incorporate national representation of fuel retailers.

Today, the Association directly represents 95% of fuel distributors in the country and directly and indirectly (via franchisees and distributor-owned retailers) around 74% of the estimated 7080 service stations operating in Australia.

The scope of ACAPMA's membership extends from 'refinery gate' through to the forecourt of Australia's national network of service stations and petrol convenience outlets – including fuel wholesale, fuel distributors, fuel retailers, petroleum equipment suppliers and petroleum service providers.

ACAPMA's member businesses range from Australian-owned subsidiaries of international companies, to Australian-owned businesses, to independently owned mid-cap Australian companies, and small single retail site family-owned businesses.

Given the diversity of its membership base, ACAPMA strives to assemble a position that reflects the views of most of its' members in accordance with Board-approved public policies.

There are, of course, times when one or more of ACAPMA's members will have a dissenting view – either in part or in whole. Consequently, it is possible that one or more of ACAPMA's members may have elected to provide an individual submission that differs – either in part or as a whole – from the views presented in this paper.

It should be noted that ACAPMA is a registered “employer association” and, as such, does not get involved in the commercial arrangements between fuel retailers (all types) and fuel suppliers.

Rather, ACAPMA works with all Australian Governments and the national fuel industry (i.e. suppliers and retailers) to ensure that necessary legislative safeguards are in place to ensure efficient and effective commercial relationships between market participants with a view to ensuring (a) that the industry remains viable for all market participants, and (b) encouraging ongoing investment in Australia's fuel retail industry.

3. General comments on the biofuels mandate

The discussion presented in the latter sections of this submission are presented against the backdrop of a series of guiding strategic insights about the 12-year operation of the NSW Biofuels Mandate. These insights are briefly outlined in the following sub-sections.

3.1 ACAPMA's historic position in respect of the NSW Biofuels Mandate has been one of wholesale opposition

ACAPMA, as the national peak body representing fuel wholesale and fuel retail businesses in Australia, has long been an opponent of the NSW Biofuels mandate. This opposition is not ideological but rather, is premised in the belief that choice of fuel products in an openly competitive fuels market – one that is heavily impacted by global supply factors - is solely a decision for consumers.

An analysis of the history of Australian (and international) government intervention in fuel markets has demonstrated that such actions inevitably fail, creating significant adverse consequences for consumers and industry participants alike.

Further, past assessments of government sponsored biofuels mandates – be they State Government mandates or Federal Government industry incentives – have demonstrated that the costs of these programmes far exceed any material benefit.

3.2 The NSW mandate has been a manifest failure

ACAPMA notes that the Government's efforts to increase the market adoption of biofuels within the State's retail fuel markets, as a result of the 2015 revision of the Biofuels Regulation, have not resulted in the increased market adoption of biofuels. In fact, sales of

Ethanol substitution has actually fallen from 3% substitution in Q1 2015 to 2.5% in Q1 2019 IPART reported in its' media release of 22 October 2019 that the level of the level of ethanol substitution fell from 2.7% in FY18 to 2.5% in FY19 despite E10 averaging 2.3cpl cheaper than regular unleaded petrol (refer to:

<https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-compliance-monitoring-transport-publications-ethanol-market-monitoring-201819/media-release-ethanol-market-monitoring-201819-october-2019.pdf>).

A review of the 12 years of operation of the NSW Biofuels Mandate reveals that the level of ethanol substitution peaked at just 4% in mid-2013 before falling steadily to its current level of 2.5% - all this demonstrating the unrealistic nature of the NSW Governments 6% target.

In respect of biodiesel, the level of substitution of biodiesel for mineral diesel has been insignificant – much of it due to historic limitations in biodiesel supply which have only recently been partially addressed.

3.3 The failure of the biofuels regulation is imposing an unnecessary red tape burden on NSW fuel businesses – costs which are ultimately borne by NSW motorists

Consumer aversion to biofuels in the NSW market has resulted in 100% non-compliance with the prescribed mandate for both ethanol and biodiesel substitution – and this situation has existed for the 12 years that the Biofuels Regulation has been operating.

This failure is so manifest that all fuel businesses operating in NSW – both wholesale and retail alike – have been regularly required to submit periodic applications for exemption from achievement of the mandate. The situation has become so bizarre that the Regulator, (i.e. the NSW Office of Fair Trading), has been preparing exemption regulations on behalf of fuel businesses – in some reported cases, such action is being 'automatically' enacted by the Regulator without the knowledge of the fuel business.

The NSW Government's only argument for continuing these laws appears to be that they are delivering a greenhouse gas (GHG) benefit. Even if you were to accept the highly contestable argument that the substitution of ethanol for petrol in the NSW context delivers a 30% reduction in GHG emissions, the net environmental benefit – relative to a 100% petrol baseline – of these laws is a net emissions reduction of just 0.8% per year.

This GHG benefit – derived after more than 12 years of mandate operation – pales in comparison with the 10% GHG emissions benefit that has been 'naturally' derived by general improvements in fleet fuel efficiency over the same period.

This larger estimated benefit has been derived by the natural operation of the Australian new vehicle market (i.e. replacement of older vehicles with substantial numbers of new fuel efficient vehicles) and did not come at the cost of the adverse consumer and market impacts – impacts that that have been identified by authoritative assessments conducted by government bodies such as the Australian Productivity Commission (APC), the Australian

Competition and Consumer Commission (ACCC) and the NSW Independent Pricing and Regulatory Tribunal (IPART).

The Australian Productivity Commission (APC), for instance, released a report in 2017 that included an assessment of the operation of the NSW Biofuels mandate. The report concluded that these laws had effectively:

- *“Reduced consumer choice and increased the price consumers paid for petrol because most elected to purchase premium fuels in lieu of reduced availability of regular unleaded*
- *Adversely impacting on the competitive dynamic in the highly competitive fuel retail market by reducing the availability of regular unleaded petrol at many retail sites”.*

In 2016, the ACCC observed in one of its’ regular petrol monitoring reports that the NSW biofuels mandate was costing NSW motorists up to \$85 million per year in fuel costs (see: <https://www.news.com.au/finance/money/costs/nsw-nanny-state-costing-motorists-85m/news-story/2eea09530953f7494d01fa6e23530e70>)

Both assessments followed a report prepared by NSW IPART under the auspices of the 2015 Review. IPART concluded that the only beneficiary of the laws was the State’s monopoly biofuels producer – which coincidentally happened to be in a marginal NSW electorate and had a history of making sizable donations to the NSW Coalition Government.

3.4 The NSW Biofuels Regulation is wholly inconsistent with the principles articulated in the NSW Government’s own “Guide to Better Regulation” (October 2016).

A review of the 12-year operation of the NSW Biofuels Mandate relative to the seven (7) *Better Regulation Principles* specified in the *NSW Guide to Better Regulation (October 2016)* gives rise to the following assessment:

- *Principle 1: The need for government action should be established. Government action should only occur where it is in the public interest. That is, where the benefits outweigh the costs.* As discussed in the preceding section, several assessments conducted by government authorities that are independent of the NSW State Government (i.e. the Australian Productivity Commission and the Australian Competition and Consumer Commission), together with an assessment conducted by the NSW Government’s own Independent Pricing and Regulatory Tribunal, have concluded that the community costs of operation of the mandate exceed any tangible community benefits. Consequently, the operation of the mandate is not in the public interest of the NSW community
- *Principle 2: The objective of the government action should be clear.* It is strongly suggested that the objective of the government action is no longer clear in the face of the manifest failure of the biofuels mandate to achieve the stated targets – particularly given the adverse consequences of the operation of the mandate that have been documented by both the ACCC and the Australian Productivity Commission (refer to Principle 1 above).
- *Principle 3: The impact of government action should be properly understood by considering the costs and benefits (using all available data) of a range of options,*

including non-regulatory options. The NSW Government failed to observe this principle in respect of the 2015 Review, particularly considering the 2015 IPART Review that suggested that the costs of continuing the mandate beyond 2015 outweighed the value of any benefit. Since that time, reports by both the ACCC and the APC (refer above) have pointed to the fact that the consumer costs of this regulation have consistently exceeded any benefit – and that is before any consideration of the regulatory costs imposed on the fuel industry in seeking exemptions has been taken into account.

- *Principle 4: Government action should be effective and proportional.* The current regulation, including 12 years of mandate operation, clearly demonstrate that the biofuels regulation has been wholly ineffective in terms of achieving the governments stated biofuel substitution targets. Further, the revision of the regulation in 2015 - which was promoted by the NSW Government as a means of increasing market uptake of biofuels – has failed given the decline in ethanol substitution from 3% to just 2.5% in the period since the new regulations were ratified by the NSW Parliament.
- *Principle 5: Consultation with business and the NSW Community should inform regulatory development.* The NSW Government failed to address the issues raised by industry as part of the 2015 Review process – many of which have come to pass in terms of market uptake of biofuels.
- *Principle 6: The simplification, repeal, reform, modernisation, or consolidation of existing regulations should be considered.* The manifest failure of the Biofuels regulation to achieve the NSW Government targets for biofuels substitution, coupled with the ever-declining market penetration of biofuels points to the only reasonable decision being the repeal of the NSW Biofuels mandate.
- *Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.* The 12 years of operation of the biofuels regulation – including a review in 2015 – demonstrate that the regulation is neither efficient nor effective in achieving the government’s stated aims of promoting biofuels uptake in NSW.

3.5 The NSW Government Discussion Paper contains a series of observations about the national and global biofuels market that are not factually correct.

The Discussion Paper prepared in conjunction with the Biofuels Statutory review contains a series of statements that are factually incorrect and demonstrate an apparent basis to false arguments advanced by the Australian biofuels industry.

The first example of these statements concerns commentary about the widespread use of E10 around the world with the Discussion Paper stating that: *“Around the world, biofuels are becoming increasingly used as a mechanism to improve fuel security, lower greenhouse gas emissions, and therefore improve health outcomes in cities and regional areas. The United States and Brazil are the two biggest producers of biofuels, creating 70 per cent of the world’s biofuels. In the United States, federal and state government programs have promoted biofuels to address issues of energy security, sustainability and regional jobs creation”.*

The most favourable assessment of this commentary is that it is merely outdated and NSW policymakers have limited up to date knowledge of the global biofuels market. Any objective assessment of the global biofuels market reveals that the market demand for biofuels has been declining substantially in the USA over the last decade, with the Federal Government and large US State Governments (e.g. California) redirecting their efforts to encourage electric and hybrid vehicles. This change in policy has seen falling demand for biofuels in the USA which has, in turn, prompted some North American biofuels producers to explore alternative markets for supply of biofuels, including Australia.

The authors of the NSW Government's Discussion Paper also appear to have missed the fact that many of Brazil's biofuels producers have actually closed their doors in recent years in the face of substantial decline due to higher production costs making them uncompetitive with traditional fuels (see <https://www.bbc.com/news/business-33114119>)

A second example of factually incorrect commentary relates to current European policy with the report stating that: *"In 2005, the European Union mandated that renewable fuels (including biofuels) must make up 10 per cent of total transportation fuels by 2020. Sweden is the European leader in renewable energy in the transport sector, with biofuels making up to 20 per cent of the total transportation fuel market"*.

This statement implies that biofuels are a major part of the 10% renewable energy target for transportation in Europe. Yet the reality is that most countries that comprise the European Union are directing their efforts at EV's and hydrogen fuel cells – Sweden is the exception rather than the rule, when it comes to the EU's Renewable Energy Directive (RED).

The reality is that the EU has forecast that consumption of conventional biofuels –that is the 'first generation' biofuels in Australia – will fall from 2022 to 2030 and will be replaced by advanced biofuels (refer

<https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Biofuels%20Annual%20The%20Hague%20EU-28%208-9-2019.pdf>). Unfortunately for NSW, there are no current producers of 'advanced biofuels' in Australia - and the likelihood of this production at commercial scale in the near term is remote.

Further, approximately 80% of European consumption of biofuels is biodiesel – not ethanol, so any comparison of the NSW Biofuels market (100% ethanol) with the European Biofuels market (80% ethanol) is questionable.

In summary, the commentary provided in the Discussion Paper does not appear objective.

3.6 The 12-year failure of the NSW biofuels mandate provides a clear and compelling case for repeal of the NSW Biofuels Regulation in its entirety

As evidenced by the above, the 12 years of operation of the NSW Biofuels Regulation has failed to achieve the Government's target substitution of biofuels in the NSW fuels market.

Further, the community costs of this mandate have been assessed by independent national government agencies as exceeding any community benefit.

4. Response to specific consultation questions

The following specific comments are provided in response to the specific consultation questions presented in the discussion paper for the Biofuels Statutory Review.

4.1. Are the objects of the Biofuels Act and Regulation still valid? Why or why not?

ACAPMA believes that many of the objects of the Biofuels Act are not valid, apart from the object relating to reduction of greenhouse gas emissions. Even this object appears questionable given that a greater greenhouse benefit has been derived during the 12-year operation of the biofuels mandate from the natural replacement of the light vehicle fleet with more fuel-efficient vehicles.

Despite more than 12 years of operation, there is no evidence of any tangible benefits delivered to the NSW community in terms of:

- Air quality benefit
- Reduce consumer fuel costs (in fact, the ACCC has published evidence to the contrary)
- Reduced reliance on imported petroleum products
- Regional development benefits

4.2. Are there any other economic, social, environmental and consumer costs and benefits associated with biofuels that Government should further consider to ensure the regulatory regime is effective?

The manifest failure of the regulation to even deliver 50% of the target biofuels substitution, coupled with zero compliance with the mandate target and independent assessments that the mandate is delivering a net cost to the NSW Community (i.e. Australian Productivity Commission and Australian Competition and Consumer Commission Assessments) points to the need for Government to consider the wider net negative impacts on NSW consumers and the NSW fuel industry alike.

4.3. Are there any other developments, innovations or emerging trends in the broader transport or fuel industry that Government should consider in assessing the biofuels regulatory regime?

An assessment of changes in the average fuel consumption of the national light vehicle fleet, as contained in the Australian Bureau of Statistics survey of Motor Vehicle Use (<https://www.abs.gov.au/ausstats/abs@.nsf/mf/9208.0>) reveals that the average fuel efficiency of the Australian light duty vehicle fleet has decreased by 10% since 2006.

This trend appears to have contributed to a three-year trend observed by the Australian Department of Environment and Energy (<https://www.energy.gov.au/publications/australian-petroleum-statistics-2019>) showing

that demand for petroleum products in Australia has declined by 3% per year over the last three years despite an increase in the total number of passenger cars operating in Australia (<https://www.abs.gov.au/ausstats/abs@.nsf/mf/9309.0>).

Both trends point to the fact that many of the objects of the Biofuels Act are being 'naturally' delivered by legislated improvements in the fuel efficiency of new light duty vehicles sold in Australia. In fact, the achievement of the objects of the NSW Biofuels Act as a result of these two natural market factors is more than 3 times higher than delivered by the 12-year operation of the NSW Biofuels mandate.

4.4. Are there any entities that should be included or excluded from the Act? If so which entities and why?

Given that no fuel business (neither wholesale nor retail) is complying with the mandated biofuels target, there is a strong case for exclusion of all businesses from the operation of the Act (i.e. repeal of the legislation) unless a decision is taken to reduce the quantum of the prescribed mandate for ethanol and biodiesel substitution.

Given the relatively small quantity of diesel products sold by fuel retailers, relative to the volume of all diesel sold into the market, there is a strong argument for excluding retailers from liability for the diesel mandate (as it is already picked via the liability placed on fuel wholesalers). Such an approach is consistent with the architecture of the Queensland Biofuels mandate.

4.5. Are the definitions of volume fuel retailers and primary wholesalers adequate? If not, how could the definitions change?

The current definitions are adequate.

4.6. Does the Act appropriately balance the interests of small businesses with the broader objectives of the mandate? (Please provide comments)

The current interpretation and application of the Exemptions Framework is providing protection for smaller businesses but this protection is being achieved at the cost of market competition which largely occurs on a site by site basis (i.e. the size of the enterprises operating sites in a local marketing area is largely irrelevant but penalising one of these sites on the basis of the size of the operating enterprise has the potential to distort market competition in a fiercely competitive retail fuels market).

4.7. Should the prescribed mandate for ethanol and biodiesel sales remain at the current rate? If not, how should it change and why?

Despite more than 12 years of biofuels mandate operation, the total level of ethanol substitution is just 2.5% relative to the prescribed mandate of 6%. Interestingly, the current

substation rate of 2.5% is very similar to the rate derived by three years of operation of the Queensland biofuels mandate. Accordingly, there is a strong case for a lowering of the mandate to 2.5% - maintaining the mandate at 6% is wholly unrealistic and places an unnecessary red-tape burden on all fuel businesses operating in NSW.

The current level of biodiesel substitution in the NSW market is negligible given a longstanding constraint on supply. ACAPMA believes that the prescribed biodiesel mandate should be abandoned altogether.

4.8. Are the biofuel sustainability standards adequate? (Please provide comment)

The NSW Office of Fair Trading would be aware of previous ACAPMA comment raising serious issues associated with the design, administration and operation of the biofuel sustainability standards prescribed in the Biofuels Act.

ACAPMA's strong preference is that the standards should be brought into line with EU requirements for market delivery of Advanced Biofuels given the highly contestable and marginal economic and social benefits of biofuels produced from first generation feedstocks.

4.9. Are there emerging industry standards or developments that should be taken into account when assessing and defining sustainability?

Refer to response to question 4.7 above in terms of the global move to specification of advance biofuels in global biofuel standards.

4.10. Is the exemption process for not meeting the minimum biofuels requirements adequate? Should the factors that the Minister take into account before granting an exemption change?

ACAPMA believes that the current exemption process is adequate, save for the fact that fuel retail businesses exempted from selling biofuels (for valid reasons of the capital cost of necessary infrastructure upgrades or the like) should be granted an exemption for multi-year periods to reduce the burden of preparing exemptions that are automatically granted by the Regulator.

ACAPMA believes that the increasing propensity of the Regulator to seek information on forecourt configuration (i.e. pumps and nozzles) from fuel retailers is unnecessary and any exemption prefaced on the assessment of same is a *restraint of trade* under competition law. Therefore, such requirements should be wholly removed from the exemption applications in the future.

ACAPMA also believes that liability for biodiesel sales should rest solely with the biodiesel wholesaler as currently occurs in Queensland as this removes the need for double reporting.

4.11. What is the process like to seek an exemption? Are there any changes that could be made to ensure the process is as seamless and user-friendly as possible?

ACAPMA understands that the Regulator is preparing applications on behalf of fuel retail businesses – particularly small businesses – which, while being relatively simple from a retailer perspective, demonstrates the farcical nature of seeking to maintain a regulation that is patently impractical.

4.12. Is the Biofuels Exemption Framework and Guidelines document easy to understand and comply with? Should any matters outlined in the Guidelines be included instead in the Biofuels Regulation to ensure abundant legal clarity?

ACAPMA believes that the current Exemption Guidelines document is easy to understand but is wholly opposed to inclusion of any additional provisions of this document in the Biofuels Regulation.

4.13. Are the current registration, return and record keeping requirements adequate? Please provide comments

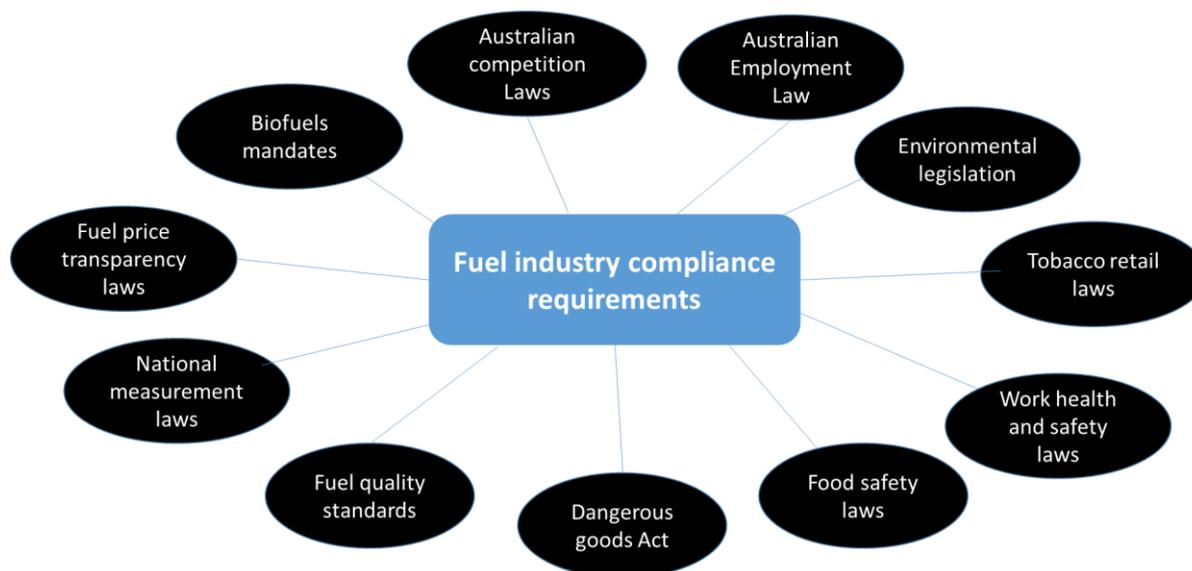
The current administrative burden is considered wholly unreasonable given the fact that fuel businesses are being required to maintain records and report against a regulation that is wholly unachievable, as demonstrated by 100% non-compliance with the prescribed mandates for both ethanol and biodiesel substitution.

4.14. How much time approximately does it take primary wholesalers, volume fuel retailers and other operators of service stations to provide the return to NSW Fair Trading?

ACAPMA members have reported a wide variance in reporting times, with smaller businesses reporting an average administrative burden of 0.75 business days for lodgement of a return and 3.5 business days for preparation of an exemption application.

4.15. What other reporting and financial regulatory requirements are primary wholesalers, volume fuel retailers and other operators of service stations required to comply with? For example, at the Commonwealth Level?

NSW fuel retailers are typically required to ensure compliance with a total of 11 pieces of primary legislation (and more than 18 associated regulations) as shown in the schematic below.



Over and above these reporting obligations, NSW Fuel retail businesses are required to report against the following additional regulations:

- UPSS Regulations (Administered by NSW Local Councils)
- Vapour Recovery Regulations (Administered by NSW Local Councils)
- NSW Fuel Watch Regulation (Equivalent scheme in QLD and the Northern Territory)
- NSW Biofuels mandate reporting

4.16. Are IPARTS functions and role adequate to help achieve the objectives of the Biofuels Act? Please provide comment

The net affect of the NSW Biofuels Regulation, given the existence of a single ethanol producer, is to mandate a monopoly supplier market for the supply of ethanol. ACAPMA does not believe that IPART has the appropriate powers to ensure that the adverse market impacts of such a situation can be managed effectively – but nor is it possible to impose such requirements on a regulator given the sole supplier architecture of the ethanol market in NSW.

4.17. Are there any other functions, research or role IPART could take in the biofuels regulatory regime?

ACAPMA notes that a significant proportion of the commentary presented in the early part of the discussion paper in respect of international trends in the global biofuels market are either out of date or factually incorrect. It is suggested that IPART might be charged with providing an objective and authoritative assessment of the global biofuels landscape on a periodic basis to avoid such issues in the future.

4.18. What information and data would be useful in ensuring regulation foster a competitive biofuels industry?

Refer to response given in section 4.17 above.

4.19. Is the current compliance and enforcement regime working well? Please provide comments

Given 100% non-compliance with the unrealistic mandate prescribed for ethanol and biodiesel substitution, many fuel businesses are engaged in futile reporting and submission of quarterly and annual exemption applications. Such action is considered unnecessary and is adding unnecessary costs to fuel retail businesses in NSW – costs that must ultimately be shouldered by NSW motorists.

4.20. Is the current approach appropriate and should any changes be made (such as to penalty amounts) to make the compliance and enforcement approach more effective?

This question is considered highly inappropriate given 100% non-compliance with the prescribed biofuels mandate. Such a level of non-compliance demonstrates that the regulation is wholly inappropriate and enforceable – increasing penalty units will do nothing to address this issue.

4.21. Is the role and composition of the Biofuels Expert Panel still valid? Please provide comments.

Given the abject failure of the NSW Biofuels Regulation, the Expert Panel appears to have defaulted to an Exemption Panel. Given this development, the presence of both the Australian Biofuels Association and the NRMA – neither of which have any skills or knowledge in respect of the architecture or operation of fuel wholesale and fuel retail businesses – is considered both inappropriate and unnecessary.

4.22. Do you have any other general comments on the biofuels regulatory regime? Please provide further detail.

Please refer to section 3 of this paper (sub-sections 3.1 through 3.6 inclusive) of this submission for additional comments.

5. Summary

The discussion presented in this paper demonstrates that, despite more than 12 years of continuous operation, the NSW Biofuels Regulation has failed to achieve the Government's target substitution of biofuels in the NSW fuels market. Further, it has failed to result in any new investment in biofuels production in the State and, in fact, has failed to prevent the closure of significant biodiesel production facilities.

ACAPMA notes that the community costs of this mandate, as assessed by independent national government agencies such as the Australian Productivity Commission and the Australian Competition and Consumer Commission, have far exceeded any benefit to the NSW community.

The zero-industry compliance with the mandate levels is imposing an unnecessary red tape burden on NSW fuel businesses – the majority of which are small family owned businesses - which is unnecessary given the unrealistic nature of the prescribed mandate for ethanol and biodiesel in the NSW Biofuels Act.

Accordingly, ACAPMA believes that the NSW Biofuels Regulation should be repealed in its entirety. A possible fall-back position could include all the following changes:

- A lowering of the ethanol mandate to 2.5% substitution in petrol
- A reduction of the biofuels mandate to 0%
- Issuance of minimum 5-year exemptions to business that are currently exempt from a requirement to sell biofuels
- Reconstitution of the Biofuels Expert Panel as a Biofuels Exemption Advisory Panel (i.e. no delegated powers of decision but operating in advisory capacity only) comprising government and fuel industry representatives only

6. Further information

Further information about this submission can be obtained by contacting ACAPMA's Chief Executive Officer, Mark McKenzie, using any of the below details:

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