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Better Regulation Division
Department of Customer Service
McKell Building
2-24 Rawson Place
Sydney, NSW, 2000

Emailed via: biofuelsreview@customerservice.nsw.gov.au

To whom it may concern,

RE: Caltex Australia Petroleum Pty Ltd submission to the Biofuels Statutory Review Discussion Paper

Caltex Australia Petroleum Pty Ltd ('Caltex') welcomes the opportunity to provide the following submission to the Department of Customer Service ('the Department') in response to their discussion paper titled *Biofuels Statutory Review* ('the discussion paper').

As the largest supplier of liquid transport fuels in Australia, and a major operator of supply infrastructure and retail sites in New South Wales, Caltex has always held the view that biofuels have a role to play in a diverse, and competitively neutral, transport fuels market which is driven by consumer demand and technological innovation to support an efficient and effective transport sector.

This is reflected in our historical support for the sale of biofuels since the mid-1990s, putting ethanol blended fuels on forecourts long before government mandates were implemented, and helping to develop eFlex fuels in support of Holden's flex-fuel vehicle developments prior to the closure of their Australia operations.

However, Caltex's basic principle is that biofuels, as with traditional and other alternative transport fuels such as LPG, LNG, CNG, electricity and hydrogen, should be presented to consumers in a competitively neutral manner to support consumer choice without negatively impacting industry.

It is for that reason that Caltex does not support the imposition of market altering policies, such as mandates, which are designed to favour one product over another and often result in market inefficiencies which can negatively impact consumers.

Please find enclosed comments from Caltex regarding our role in the New South Wales market, steps taken to meet the requirements of the mandate, recommendations of the structure of the biofuels mandate, barriers to compliance and responses to the specific questions raised by the Department in the discussion paper.

Should you wish to discuss this matter further please do not hesitate to contact Philip Skinner, Advisor – Government and Industry Affairs on [REDACTED] or via email at [REDACTED].

Kind Regards

Todd Loydell
Head of Government Affairs

About Caltex

Caltex has been operating in Australia since 1900, to safely and reliably supply liquid transport fuels to Australian customers through our extensive supply chain. Our operations can be traced back through many iconic Australian brands, including Golden Fleece, Ampol and Caltex, which is currently a licenced brand for our operations in Australia.

Following the decision by Chevron in 2015 to sell their majority shareholding in Caltex's operations, Caltex has becoming a truly Australian company, with no majority shareholding.

As the largest Australian transport fuel and convenience company listed on the Australian Securities Exchange, Caltex has developed a reliable and adaptable supply chain extending from the regional hub of Singapore, where we operate our Ampol trading office, to the Australian end consumer, serving the needs of customers from the defence force, to key sectors of our economy such as mining, agriculture and construction, as well as everyday consumers.

Today, Caltex is responsible for supplying approximately one-third of all liquid transport fuels supplied in Australia, which equates to ~16.2 Billion litres supplied to customers in 2018. This includes our refinery in Lytton, Queensland, 19 terminals, 5 major pipelines, 89 depots, 798 controlled retail sites and a dedicated staff of over 6,600 people across Australia.

Caltex is also expanding through the region leveraging the expertise it has developed in Australia, establishing the Ampol trading and shipping offices in Singapore in 2015, acquiring Gull New Zealand in 2016, and taking a 20% equity stake in Seaoil in 2017, the fourth largest fuel company in the Philippines.

Caltex's role in the New South Wales Market and Biofuels

Caltex has been involved in the import, manufacturing and supply of petroleum products into NSW for over 100 years.

Through that time Caltex has established an expansive network of terminals, depots, pipelines and retail sites centred on the Greater Sydney Region, developed alongside the growth of the state so that these key transportation fuels are delivered in an efficient and safe manner.

Caltex's major NSW fuel supply infrastructure network includes:

- A liquid fuels import facility and terminal at Kurnell, which is the largest liquid fuel import terminal in the Southern Hemisphere
- Connecting pipelines from our Kurnell facility to our Banksmeadow terminal at Port Botany
- The Banksmeadow terminal, which supplies road tankers and which is connected by a multi-product pipeline to the Silverwater terminal in Sydney's Central Region. This pipeline also enables transfers of fuel imported by others at Port Botany, through either the Vopak or Terminals Pty Ltd facilities
- Silverwater Terminal, which supplies road tankers as well as being connected by a pipeline that travels through metropolitan Sydney, north through Plumpton in Sydney's West, and on to the Caltex Newcastle (Wickham) Terminal
- Caltex Newcastle (Wickham) Terminal which is supplied by a pipeline and supplies fuels to the surrounding regions via road tanker.
- A further pipeline supplies jet (aviation) fuel to Sydney's Kingsford Smith Airport JUHI from our Kurnell import Terminal and provides access for other users importing via the Vopak terminal in Port Botany
- Ethanol blending facilities at Silverwater Terminal and both ethanol and biodiesel blending facilities at Banksmeadow and Newcastle Terminal.

As a long-term market participant, and an Australian company, Caltex is proud of the efficient and competitive supply chain which has been established throughout New South Wales, and Australia, which has allowed Caltex to grow to be the largest individual supplier of liquid transport fuels in Australia.

This expansive supply infrastructure network distributes fuels to 247 Caltex-controlled sites (i.e. company or franchisee operated), of which 195 offer E10 for sale.

While Caltex does not support mandates in principle, we recognise that this has remained Government policy, and have supported the reasonable intent of the policy to create better outcomes without creating disadvantage for existing industries or negatively impacting consumers, either through higher fuel prices or reduced consumer choice.

Since well before the commencement of the mandates in New South Wales, Caltex has been involved in the supply of biofuels to consumers where there was a market demand. This included through the placement of ethanol blended fuels on retail forecourts since the 1990s through to the development of eFlex fuels in support of Holden’s flex-fuel vehicle developments prior to the closure of their Australia operations.

Mindful of various governments’ policies since the commencement of the biofuels mandate Caltex has undertaken significant capital investment for the supply of biofuels, noting that both policy and market conditions have significantly changed over the last 12 years while consumers continue to avoid biofuels.

Since the mandate commenced in 2007, consumers have consciously made the choice not to purchase ethanol blended fuels and in many instances have switched to premium grade fuels as a means to avoid ethanol, while gaining the benefits associated with higher performance fuels and proprietary additive packages designed to clean and improve engine performance.

Despite consumer sentiment against ethanol blended fuel, Caltex has invested more than \$4.6 million in retail site introductions since 2011 in order to continue the introduction of E10 throughout our retail network. This is on top of more than \$16.7 million in capital investments at terminals to facilitate ethanol blending, and ongoing operational expenditure for Underground Petroleum Storage System maintenance.

Despite ongoing investment to improve product availability and work towards compliance with the mandate, Caltex has seen a steady decline in the sales of ethanol blended fuel sales across New South Wales.

E10 & E85 sales volume and availability by quarter

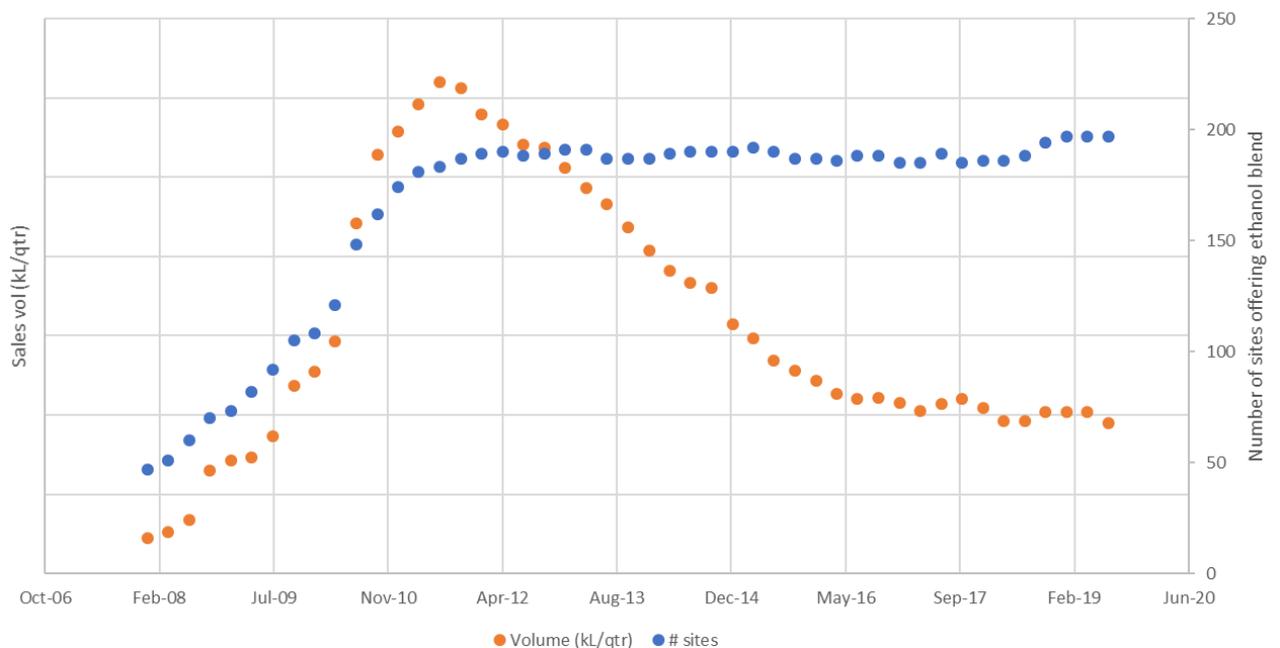


Table 1: E10 & E85 sales volume and site availability by Quarter, volume data masked due to commercial sensitivities

As shown in Table 1, the decline in ethanol sales across our network roughly coincides with the NSW Government’s decision to overturn the ban on Regular Unleaded Petrol (‘RULP’) proposed for 2012.

At the time, the decision was understandable in the context of ensuring that consumers continued to be able to access choice in petrol products and ensuring competitive neutrality between fuel retailers.

With regards to biodiesel, similar scale capital investments have been made in order to facilitate the blending of biodiesel into mineral diesel at Terminals in Botany and Newcastle. These have been able to facilitate the blending of biodiesel in a scalable way to meet demands of both commercial customers and the supply of low level biodiesel blends (less than 5%) through retail diesel supply.

Again Caltex would note that there has been a steady decline in the sale and supply of biodiesel blends (B20, B5 and less than 5% blends) due to the change in economic conditions which has resulted in elevated feedstock costs for biodiesel manufacturers and the closure of a number of facilities.

Recommendations

Caltex's primary recommendation, in the absence of a decision to repeal the mandate, is that the mandate for both ethanol and biodiesel be transitioned to aspirational sales targets, as opposed to legislated targets, and that mechanisms be explored to improve the competitive landscape within the biofuels industry to drive innovation and efficiencies in advanced biofuels manufacturing as a means to bring prices down.

Going forward, this approach would recognise the extensive investment which the petroleum industry has made in supply infrastructure and product development, particularly over the last 12 years, and acknowledge that consumer sentiment and lack of competition and development in the biofuels industry have resulted in the continued failure to achieve the mandate.

Additional recommendations which could go some way to improving the workability of the biofuels mandate include:

- Transition the ethanol component of the mandate to only covering RULP grades as opposed to all petrol products. A mandate interpreted this way would have the immediate effect of improving compliance levels and acknowledge the fact that ethanol blended fuel petrol, namely E10, is not a suitable product substitution for Premium Unleaded Petrol ('PULP') grades given the lower Research Octane Number ('RON'), lower Motor Octane Number ('MON') and the potential for higher sulfur levels given differing allowable limits for RULP and PULP under the Australian Fuel Quality Standards.
- Remove wholesale level reporting from the mandate. This would reduce regulatory burden for fuel wholesalers, and the costs associated with that compliance that ultimately reflect at the bowser. At this time their key liability under the mandate is to report quarterly volume sales.
- Remove 'as accessible' clauses within the supporting regulation. Caltex notes that since the last revision of the *Biofuels Act 2007* ('the Act') in 2016 there has been a great deal of conjecture between parties involved as to what constitutes 'as accessible' under the supporting regulation. Based on the information provided in Table 1, which demonstrates that there is no link between product availability and sales volume, Caltex is of the opinion that the 'as accessible' clauses should be removed from the regulations to prevent further confusion and unnecessary regulatory burden.
- Simplify exemption and quarterly reporting burden by removing the need to report on nozzle numbers, given there is no evidence to suggest a link between nozzle availability, volume sales and compliance.

Emerging fuels, such as electricity and hydrogen, have greater capacity to reduce carbon and tailpipe emissions and have the potential to become more mainstream and affordable in coming decades.

While Caltex believes that biofuels, particularly advanced 'drop-in' biofuels, have a role to play in the ongoing decarbonisation of the transport fleet, interventionist policies, such as mandates, do have the potential to divert capital resources away from projects which could support alternative fuels projects with more potential.

Caltex has provided further comments, in specific response to the questions raised within the discussion paper, later in this paper.

Barriers to Compliance

In assessing the barriers to compliance Caltex has looked at historic trends with regards to biofuels compliance, both ethanol and biodiesel, and sought to include some information below on the key trends which have impacted sales.

For ethanol the key barrier is:

- Consumer behaviour – Consumer sentiment towards biofuels, and ethanol more specifically, remains the most significant driver towards sales and is driven by a number of factors, including price and product knowledge about the suitability of ethanol blended fuels for their vehicle.

While sales of ethanol blended fuels have increased since the commencement of the mandate, consumers act on their own views and preferences on fuel suitability for their vehicle.

This is firmly supported by the fact that in New South Wales consumers have actively sought to avoid ethanol blended products through the purchase of PULP blends which over the past decade has led to PULP being the highest selling volume category of product, well above the national average.

For biodiesel the key barrier is:

- The availability of suitable quantities of biodiesel which are produced to appropriate product quality standards, and at an economical cost.

These barriers are largely outside of the control of Volume Fuel Retailers and continue to persist despite the mandate having been in operation for over a decade.

Detailed Responses to the Discussion Paper questions

The following are specific comments and details present in response to the questions raised by the Departments within the discussion paper.

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

Caltex does not have a view on the validity of the primary and secondary objectives of the Act however it is clear that the mandate has not achieved its objectives. It is perhaps appropriate to re-examine the objectives of the Act in order to facilitate a workable outcome.

Caltex would note that after 12 years of operation there remains only one ethanol manufacturer in NSW, and no evidence of real investment in either new first generation biofuels manufacturers or advanced biofuels manufacturers in the state which could provide much needed competition in the industry, as well as more substantial carbon reductions.

Given the objectives have not been met to date, Caltex recommends that the mandate be transitioned to aspirational sales targets, as opposed to legislated targets, and that the focus should move to improving the competitive landscape within the biofuels industry to drive innovation and efficiencies in advanced biofuels manufacturing as a means to bring prices down.

Such an approach would better support the stated primary objective of the mandate, *to support the development of a sustainable and competitive biofuels industry in NSW*, through encouraging innovation and development of new technologies.

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?

In reviewing the mandate, and taking into account the failure of the mandate to meet the objectives as established under the Act, Caltex does not believe that there are any further benefits which could be gained under the Act.

Several studies, including ones conducted by both IPART and the ACCC, have established that to date consumers have been burdened with additional costs related to the mandate.

In addition, there has been significant financial burden placed on the petroleum industry to facilitate the introduction of ethanol and biodiesel blended products, in the absence of market demand, which has limited companies' ability to generate suitable returns.

Caltex believes that biofuels would have continued to have a place in the transport fuels market, regardless of the introduction of the mandate, however it would have been driven by consumer demand, which if developed appropriately, may have led to a more diverse and developed market as opposed to one occupied by a single supplier.

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

As already mentioned, we believe that any revision of the mandate which seeks to increase the burden placed on the fuel industry would likely result in the diversion of valuable capital resources which could be allocated to alternative fuels initiatives with greater capacity for carbon and vehicle emission reduction in ground, marine and aviation transport.

Interventionist policies, such as mandates, have the effect of altering markets through picking winners, and often are not conducive to the innovation and development of markets and technologies.

Caltex acknowledges the growing trend to decarbonise the transport sector through increased development in the space of electric and hydrogen powered vehicles, as well as advanced 'drop-in' biofuels such as biojet. We believe that these developments have potential to contribute meaningfully to the future transport fuels mix, and that they can be best served through a free market approach with minimal government intervention.

It is Caltex's view that the Government should not consider any of these technologies within the assessment of the biofuels regulatory regime and rather consider them in the framework of research and development opportunities and/or grants which could accelerate their developments.

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

Insofar that the mandate continues to operate Caltex supports a competitively neutral approach to the application of the Act and believes that compliance should be determined at the retail level to prevent a distortion of the competitive dynamic between retailers.

Any decision to amend inclusions within the mandate, it should be explored as to whether biofuels manufacturers should be captured under the mandate in order to verify that the biofuels produced at their facilities meet sustainability criteria and reduce regulatory burdens on volume fuel retailers.

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

Given the industry has operated under the existing definitions for a number of years and in time has developed an understanding of them, Caltex believes that there is no evidence to support changing them.

Caltex would however note that in determining a Volume Fuel Service Station consideration should be given to removing diesel fuels from consideration for both the number of products supplied, and the total volume of products sold, given it is not a substitutable product for ethanol blended petrol (i.e. E10).

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

Caltex is of the view that a competitively neutral approach to the application of the Act should be taken and that in that view the Act should be reviewed as to whether it appropriately balances the interests of businesses with the broader objectives of the mandate.

On that basis Caltex believes that at this time the Act does recognise investments and actions taken by volume fuel retailers through establishing an effective exemption framework.

To further support this balance, Caltex would recommend the removal of the 'as accessible' clauses within the supporting regulation.

Caltex notes that since the last revision of the Biofuels Act 2007 ('the Act') in 2016 there has been a great deal of conjecture between parties involved as to what constitutes 'as accessible' under the supporting regulation. Based on the information provided in Table 1, which demonstrates that there is no link between product availability and sales volume, Caltex is of the opinion that the 'as accessible' clauses should be removed from the regulations to prevent further confusion and unnecessary regulatory burden on all volume fuel retailers.

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

Given consumer sentiment for ethanol blended fuels in particular have resulted in a scenario where the mandate has never been met since being established at 6%, and is never likely to be met, Caltex would reiterate prior comments that the mandate should ultimately be transitioned to aspirational sales targets, as opposed to legislated targets.

As highlighted through information released by the Department, IPART and data contained in Table 1 there had been an initial spike in the sale of ethanol blended petrol followed by a consistent decline in volumes from 2011/2012 through to the present day.

This decline has resulted in Caltex having an effective compliance level of around 2% despite investments made throughout our controlled retail network to ensure the availability of E10 at 195 retail sites across New South Wales, of which 168 are Volume Fuel Service Stations.

With specific regard to biodiesel, in recent years there has been a steady decline in the number of biodiesel manufacturing facilities in Australia as a result of market conditions which have made it uneconomic for them to continue operations.

There is currently only one biodiesel manufacturing facility operating in New South Wales and while Caltex continues to receive some supply, Caltex regularly reviews its biodiesel operations in New South Wales and the relative cost to reasonably produce or obtain biodiesel blends for retail sale. Given fluctuations in the cost of feedstock and the impact which that would have on the economic supply of biodiesel this may result in Caltex reviewing ongoing supply.

Caltex would again recommend that any continuance of the mandate be under a transition to aspirational sales targets, as opposed to legislated targets.

8. Are the biofuel sustainability standards adequate? Please provide comments.

Caltex has no opinion on the adequacy of the sustainability standards in use under the mandate, however our previous comments are relevant, that consideration should be given as to how biofuels manufacturers should be held liable for demonstrating all biofuels produced at their facilities meet the sustainability criteria.

This could then reduce regulatory burden on volume fuel retailers who, in some cases, can be several levels removed from the biofuels procurement process.

9. Are there emerging industry standards or developments that should be taken in to account when assessing and defining sustainability?

Caltex has no opinion on emerging industry standards, and would refer the department to our response to Question 8 as to potential developments which should be taken in assessing sustainability.

10. Is the exemption process for not meeting the minimum biofuels requirements adequate? Should the factors that the Minister must take in to account before granting an exemption change?

Reforms to the exemption process in recent years have assisted in making the process more manageable and seems to better recognise extensive investments made by fuel companies in working towards compliance with the mandate.

Further efficiencies through reporting requirements could see overall reduction in regulatory burden, and time required to complete reporting and preparation of information for exemptions.

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 as user-friendly as possible?

Given some simplifications in the processes for seeking an exemption in recent quarters Caltex is of the opinion that the process is now in a format which is workable.

However, requirements to report items, such as nozzle counts, are a significant compliance burden given that the systems which are currently utilised for collating this data were not designed for this process and require a significant level of manual verification to confirm network numbers.

Given there is no evidence to suggest a link between nozzle availability and compliance level Caltex would recommend that requirements to report nozzle numbers, and their consideration as part of the exemption process be removed.

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

Caltex is of the view that the Guidelines are suitably clear at this time and that no changes are required

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

As Caltex is currently registered, maintains records and undertakes regular reporting to the Department we believe that the requirements are manageable.

Our comments on Question 11 regarding nozzle counts are relevant here in the context of quarterly returns and record keeping.

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

Given system limitations, and the requirement to manually verify certain data, it takes a full-time resource approximately one full business day to complete quarterly reporting requirements to NSW Fair Trading.

Our comments on Question 11 regarding nozzle counts are relevant here in the context of the regulatory burden imposed in submitting quarterly returns.

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.

As a publicly listed company which operates in every state and territory jurisdiction in Australia, as well as New Zealand, the Philippines and Singapore, Caltex undertakes extensive reporting at varying jurisdictional levels.

Within Australian jurisdictions this includes:

- State mandatory fuel price reporting (New South Wales, Western Australia, Queensland and Northern Territory)
- Reporting under Federal Fuel Quality Standards
- ACCC and competition law reporting requirements

- ASIC and ASX reporting requirements
- Extensive environmental, work health and safety regulations at refineries, terminals, retail sites and airports across all levels of government
- Employment law

16. Are IPART's functions and role adequate to help achieve the objectives of the Biofuels Act? Please provide comments.

Caltex supports the function which IPART plays and would note that we have been supportive of a number of reports released in the past providing commentary on policy options relating to the biofuels mandate, noting that recommendations have not always been adopted.

Caltex is not in a position to comment on IPART's model for determining a reasonable wholesale price for ethanol on the basis that it does not seem to take into account the lack of competitive tension on the states sole ethanol producer we do not believe that there is a need to change their function.

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

Consideration should be given to commissioning IPART to undertake an analysis of the manufacturing costs of biofuels in New South Wales to determine if the biofuels industry is operating in an effective manner.

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

Noting that to date IPART has done an effective job in reporting on the impacts of the biofuels mandate, Caltex believes that consideration should be given to undertaking an analysis of the manufacturing costs of biofuels in New South Wales to determine if the biofuels industry is operating in an effective manner.

As previously noted, there has been no development in new biofuels manufacturing capacity in the last decade in New South Wales, nor any meaningful development in advanced biofuels technologies, so this analysis could also look at the impact which the mandate has had on the biofuels industry development.

19. Is the current compliance and enforcement approach working well? Please provide comments.

Caltex is of the view that the current compliance and enforcement approach is largely working in an effective manner in balancing industries actions to comply with the mandate.

Insofar as the mandate continues to operate, no changes are recommended to the compliance and enforcement approach.

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?

The current compliance and enforcement approach is largely working in an effective manner and that, insofar as the mandate continues to operate, no changes should be made.

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

The Expert Panel has provided a suitable conduit for communicating the views of various market and industry stakeholders, while also providing a panel of industry and Government experts to provide guidance on matters relating to the mandate.

The Biofuels Expert Panel is still valid and should continue in its' current capacity with the present composition of representatives.

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

See Recommendations above.

Conclusions

Caltex continues to believe that biofuels have a role to play in a diverse transport fuels market moving forward, this includes both existing first generation technologies and advanced 'drop-in' biofuels.

We do not however support interventionist policies, such as mandates, which have the impact of requiring investment in infrastructure without market demand which ultimately leads to unnecessary higher fuel prices and a less competitive marketplace.

Noting that the mandates have never been achieved, for either ethanol or biodiesel, Caltex believes that focus on reform should be centred on suitable efforts to reduce regulatory burdens placed on fuel companies, including through improving reporting and exemption processes.

Due consideration should be given to transitioning the mandate to aspirational sales targets, as opposed to legislated targets, and that mechanisms be explored to improve the competitive landscape within the biofuels industry to drive innovation and efficiencies in advanced biofuels manufacturing as a means to bring prices down.

Caltex would be happy to discuss these matters further with the Department and make suitable experts available.