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2 February 2023

The Committee Secretary
Queensland Transport and Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: trc@parliament.qld.gov.au

Dear Committee Secretary,

Liquid Fuel Supply (Minimum Biobased Petrol Content) Amendment Bill 2022

I am writing in reference to the Queensland Transport and Resources Committee's Inquiry into the above Amendment Bill, as tabled by Mr Nick Dametto MP (Member for Hinchinbrook) in the Queensland Parliament on 13 October 2022.

1. About ACAPMA

The Australasian Convenience and Petroleum Marketers Association (ACAPMA) is the national peak body representing the interests of the petroleum distribution/wholesaling and the petrol-convenience retail industry. These two industry sectors generate annual revenues of around $77B and employ an estimated 58,500 Australians.

ACAPMA 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/wholesalers in the country and directly and indirectly (via franchisees and distributor-owned retailers) around 5400 of the 7100 service stations (i.e. 76%) operating in Australia.

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

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

Given the diversity of our membership base, ACAPMA strives to assemble an aggregate *whole-of-industry* perspective on key public policy and market regulation - with a view to providing policymakers and regulators with meaningful industry insights that are directly relevant to issues under consideration.

Given the wide variance in the market propositions (and market presence) of individual market participants, ACAPMA's aggregate *whole-of-industry* perspective should not be taken as necessarily being wholly representative of the position of any individual fuel retailer. <u>It is therefore possible that one or more of ACAPMA's members may have an individual enterprise position that varies markedly from the one presented in this paper</u>.

2. **Scope of this Submission**

ACAPMA has been working cooperatively with the Queensland Government on the Biofuels Mandate since the initiative was first discussed in early 2016. Since that time, ACAPMA has developed a deep appreciation of the legislative architecture and practical application of the mandate as well as a strong knowledge of the ongoing challenges associated with increased market adoption of biofuels in the face of growing competition from other 'clean' automotive technologies.

ACAPMA's past engagement in the Queensland Biofuel mandate includes, but is not limited to, the following:

- Stakeholder participation in the process for the development of the draft Biofuels Legislation throughout Calendar 2016, including participation in the Stakeholder Working Group up until to the formal commencement of the legislation on 1 January 2017.
- Feedback on the development of the Queensland Biofuels Exemption Guidelines (2016 and 2017)
- Submission to the review of the Biofuels Legislation (2019)
- Preparation and ongoing consultation with respect to industry compliance and business exemptions on behalf of ACAPMA member businesses (2017 to 2023)

This submission has been made in light of the above experience and more than 15 years of experience with the operation of the Biofuels mandate in NSW.

3. **Guiding rationale for response**

ACAPMA's advocacy on Biofuels mandates is premised on the accommodation of four guiding principles, namely:

a) Alternative fuels legislation, such as mandatory biofuels mandates, should not constrain consumer fuel choice.

b) The marketing cost for the consumer promotion of any fuel – be it conventional or otherwise – should be borne by the fuel producer, not the fuel retailer.

c) The real-world impact of any mandate should ensure competitive neutrality. Legislation should not result in an uneven financial impact on fuel retail businesses in terms of either industry adjustment costs or inconsistent enforcement practices.

d) Industry adjustment costs imposed on fuel retail businesses should be minimised to the fullest extent possible to minimise potential adverse cost-of-living and regional/rural fuel accessibility impacts for end-consumers.

3.1 Key observations of mandate operation to date

ACAPMA believes that, save for a few instances, the Queensland Biofuels mandate has been administered in an equitable manner that affords Queensland motorists good access to sustainable biobased petrol blends.

The first exception to this observation has been the absence of suitable controls on the price escalation of wholesale ethanol – the price of which has been escalating at the same rate as crude oil without apparent justification. This practice has meant that the opportunity to maintain a larger price differential for E10 relative to conventional petrol grades has been lost due to apparent higher margin capture by ethanol producers.

ACAPMA therefore believes that the Queensland Government should seek to ensure that all future rises are justifiable via the introduction of a regulatory mechanism that is similar to the architecture of the pricing oversight mechanism that operates in NSW.

The second issue relates to a tight, virtually monopolistic, ethanol supply in Queensland. The loss of the Dalby Ethanol facility since commencement of the mandate in 2017 has created significant challenges in the economic distribution of ethanol-blended petrol to many regional and rural areas of the State. This change has also resulted in a ceding of monopoly market power to the State's only remaining ethanol producer (notwithstanding the existence of an interstate producer), thereby removing the wholesale price tension in the market (as operates widely and openly in the conventional fuels market).

The third is the complete absence of any marketing investment by either the biofuels production industry or the Government to promote the uptake of ethanol blended petrol. While it is accepted that the government is somewhat conflicted owing to the simultaneous promotion of other green technologies (e.g. BEVs and Hydrogen FCVs), the absence of any sustained investment in this area over the last 5 years is considered to be one of the primary reasons for falling E10 sales.

Any suggestion that the consumer marketing of biofuels should be borne by fuel retailers, or conventional fuel suppliers, is opposed outright. Such a suggestion is manifestly inequitable as it proposes that one business be forced to spend marketing dollars for the benefit of an unrelated commercial entity.

4. Specific comments

The following specific comments are made in respect of the two changes embodied in the draft *Liquid Fuel Supply (Minimum Biobased Ethanol Content) Bill 2022*, from the perspective of fuel retail businesses operating in Queensland.

4.1 Increase in penalty units (for second and subsequent breach) from 400 to 4000 points.

ACAPMA notes that the intent of the proposed change is to increase the degree to which fines can be used to deter fuel retail businesses from breaching the provisions of the State's biofuels legislation. While the degree to which increased financial penalties may deter non-compliant behaviour is contestable, ACAPMA is not ideologically opposed to the use of increased fines <u>provided they are applied judiciously and consistently</u>.

ACAPMA also believes that the financial value of penalties for legislative breaches must be proportionate to the inherent harm associated with the offence. Based on the current penalty unit of $143.75, an initial breach of the requirements of the *Liquid Fuel Supply Act (1984)* by a fuel retail business to sell the mandated volume of sustainable biobased petrol amounts to a fine of $57,500 – which is around 55% of the average annual pre-tax profit (EBITDA) per service station site.

The proposed increase to 4000 penalty points for a second and subsequent offence would therefore impose a fine of $575,000 on a fuel retailer – that is, more than 5 times the average annual pre-tax profit (EBITDA) of the business. Such a penalty would ultimately put a small single site operator or multi-site family business operator out of business for good. Not only would this action destroy the livelihood of the operator and the jobs of their employees, it may well result in regional/rural communities losing a fuel retail business with consequent impact on fuel accessibility and average fuel prices.

ACAPMA maintains that the proposed increase to 4000 penalty points is unreasonable and grossly disproportionate to the nature of the offence given that the financial value of the penalty. The proposed penalty would ultimately result in the forced shutdown of small and family fuel retail businesses with consequent SME business destruction and loss of employment. Such a significant impact cannot be justified by the value of any consequent environmental harm associated with the failure of the business top meet the 4% ethanol substitution level.

4.2 Introduction of 9% minimum ethanol content

ACAPMA notes that there is a stark inconsistency between the Queensland Government's (and Australian Community's) assumption that E10 contains 10% ethanol in petrol (by

volume) and Australian Fuel Quality Labelling Legislation that allows an ethanol blend with an ethanol concentration of 1% to 10% ethanol, to be labelled as 'E10'.

Within this context, ACAPMA is supportive of the Queensland Government's push to ensure that E10 contains an ethanol in petrol concentration that is as close as practical to E10. The challenge in the proposed amendments, however, is that it seeks to change labelling requirements for one state (i.e. Queensland) contrary to Federal laws. Such a change means that:

a) Fuel retailers sourcing supplies will have to find a practical mechanism for validating the ethanol concentration of their E10 supply over and above current supply practices (i.e. for those that label their pumps according to Section 6(2)(a) of the current *Fuel Quality Standards (Ethanol) Information Standards 2019*; and

b) There is a potential risk of market confusion for motorists buying E10 in Border regions.

Given the inherent contradiction in State and Federal Laws that would arise from the adoption of the proposed amendment, there appears to be a need for the Queensland Government fuel suppliers to ensure that the proposed 9% floor is practical.

For example, and given a relatively tight supply situation in the State, is the intent of the legislation to *exclude* lower concentration petrol ethanol blends from the Queensland mandate in cases where a fuel supplier is unable to satisfy the 9% higher floor (but able to satisfy a 6% floor for a period of time due to variable availability of ethanol supply), despite compliance with the national *Fuel Quality Standards (Ethanol) Information Standard 2019* in terms of the definition of an ethanol blend (Section 5) and the labelling requirements for supply at a service station (Section 6)?

ACAPMA believes that placing the onus for ensuring minimum ethanol concentration on fuel retailers is wholly inappropriate given current Federal Fuel Quality Labelling laws and existing market supply protocols.

Rather, the liability should be placed on the State's fuel suppliers following further consultation with the State's fuel suppliers about the appropriateness of setting a 9% floor in ethanol concentration.

5. Summary

ACAPMA does not support the proposed increase in penalty units given that the penalty for a second offence is grossly disproportionate when compared with the nature of any environmental harm associated with a breach. That is, an increase to 4000 penalty units is equivalent to more than 4 times the average annual *pre-tax* profit of a service station and would ultimately result in the destruction of the business and loss of all associated employment.

ACAPMA is supportive of efforts to increase the floor in the ethanol concentration of E10 but notes that the proposed amendment runs contrary to current Australian fuel quality

labelling laws – that is, the *Australian Fuel Quality Standards (Ethanol) Information Standard 2019*. As a consequence, it is suggested that:

a) The onus for achievement of any minimum floor in the ethanol concentration of E10 cannot reasonably be placed on fuel retailers, as they receive and retail fuel in accordance with Federal fuel labelling legislation; and,

b) The Queensland government consult the State's fuel suppliers to determine the level of seasonal variation in ethanol concentration of ethanol blend that typically occurs in a given year, and the practicality of wholesale compliance with a relatively high 9% floor in same.

6. Further information

ACAPMA welcomes the opportunity to provide further feedback on this issue as appropriate.

Should you require clarification of any of the material provided in this report in the meantime, please contact me on [redacted] or by email via [redacted].

Yours sincerely,

[redacted]

Mark McKenzie
Chief Executive Officer