



**Submission to  
NSW Fair Trading**

**on the**

**Regulatory Impact Statement  
Biofuels Regulation – May 2016**

**27 June 2016**

## **ABOUT AIP**

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

AIP is represented on key statutory and advisory bodies including the National Oil Supplies Emergency Committee (NOSEC), the Fuel Standards Consultative Committee (FSCC), the Oil Stewardship Advisory Council (OSAC), the New South Wales Biofuels Expert Panel and the National Remediation Framework Steering Group (NFRSG). AIP sponsors or manages important industry health and environmental programs and the Australian Marine Oil Spill Centre (AMOSC) is a wholly owned subsidiary of AIP.

AIP is pleased to present this Submission to NSW Fair Trading on behalf of its core member companies:

BP Australia Pty Ltd  
Caltex Australia Limited  
Mobil Oil (Australia) Pty Ltd  
Viva Energy Australia Pty Ltd

## **ABOUT AIP MEMBER COMPANIES**

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

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

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

Given this background and their significant role in the Australian fuels supply chain and broader economy, AIP member companies have a very strong interest in the supply of biofuels and the maintenance of liquid fuel supply reliability and competitive market settings. Background information on the downstream petroleum industry is contained in the AIP publication Downstream Petroleum 2013 (<http://www.aip.com.au/topics/new.htm>) and the AIP submission to the Energy White Paper process (<http://www.aip.com.au/topics/submissions.htm>).

## **CONTACT DETAILS**

Should you have any questions in relation to this submission, or require additional information from AIP, the relevant contact details are outlined below.

Mr Peter Gniel  
General Manager Policy  
Australian Institute of Petroleum Limited  
GPO Box 279  
CANBERRA ACT 2601  
Phone: (02) 6247 3044

## KEY MESSAGES

- The Australian Institute of Petroleum (AIP) supports market based mechanisms for the supply of fuel in Australia, which have delivered supply reliability and a competitive fuels market.
- AIP does not support mandates for any fuel because mandates distort the fuels market, potentially reduce supply security and increases costs to consumers.
- AIP believes that biofuels can have a place in the Australian fuels market where they are acceptable to consumers, available at a competitive price, reliably supplied, produced sustainably, and provide net greenhouse gas reductions.
- Recognising that the Biofuels Mandate is NSW Government policy, AIP and member companies are committed to working constructively with the Government to ensure that the costs of the policy imposed on business are minimised and that the provisions of the legislation and regulation are designed to most efficiently meet the Government's objectives.
- AIP considers that the Regulatory Impact Statement (RIS) does not meet the requirements set out in the NSW Government's own *Guide to Better Regulation*, and in particular, does not quantitatively assess the true costs and benefits of the Regulations.
- Key components of the government's policy framework and the regulatory regime are not available for consideration at this time. This includes the findings of the once off data gathering exercise, an assessment of the volume sales threshold, the revised Exemptions Framework, IPART's preferred model for the wholesale price regulation of ethanol and the Government's Consumer Education Campaign.
- These elements are critical to understanding the overall impact and implications of the policy and the regulations and also makes it difficult to assess whether all elements of the regulatory regime are carefully and successfully integrated.
  - On this basis, AIP supports delaying the introduction of the regulations until such time as an appropriate assessment of the full regulatory regime is possible.
- AIP believes that the data gathering exercise is a key piece of information to rigorously assess and underpin the setting of the volume sales threshold, and ultimately the overall operation of regulations and the exemptions framework. AIP reserves its position on what the threshold should be pending receipt and analysis of this data.
  - AIP notes that in Queensland, our advice was that we opposed the proposed 250,000L per quarter threshold on the basis that the level would include many small retailers.
- AIP notes that the revised Exemptions Framework foreshadowed in the RIS should be provided for consultation at the same time as the consultation for the Draft Regulations.
- AIP supports the inclusion of some broad exemptions criteria in the regulations, consistent with the intent outlined in the Biofuels Act. The criteria should outline the anticipated scenarios where retailers are likely to seek exemptions and, where applicable, the period of exemption automatically granted. The scenarios and recommendations discussed in Section 3 on pages 8 and 9 of this submission.
- AIP contends that the consumer awareness campaign and wholesale ethanol price regulation outcomes will be key drivers in addressing consumer awareness and encouraging consumer acceptance of biofuels, and not an arbitrary measure of availability such as nozzle matching. The availability criteria should be amended to remove the reference to "any other type of fuel".
- AIP opposes the requirement for reporting by wholesalers on the basis that compliance is at the retail site level. Reporting by wholesalers constitutes an unnecessary red-tape burden for both industry and government and will likely compromise the ability to accurately collect and analyse market data.
- AIP opposes the reporting of nozzles and bowsers. Despite numerous requests, Government has not yet demonstrated that the number of nozzles of any type of fuel has any impact on consumer purchasing patterns and again only constitutes an increased red-tape burden.

## INTRODUCTION

The Australian Institute of Petroleum (AIP) strongly supports market-based approaches for the supply of fuels in Australia. A market based approach has delivered Australia a highly competitive fuel market that provides consumers with fuels of an assured quality, delivered reliably at a competitive price.

Given the demonstrated benefits of a market-based framework for liquid fuel supply, AIP only supports market intervention when there is demonstrated market failure that the market, or consumers, cannot efficiently resolve, and the intervention would result in a net benefit overall. Governments mandating the supply of a particular fuel is not a market-based approach and is therefore opposed by AIP.

Recognising that the Biofuels Mandate is the policy of the NSW Government, AIP and its members are committed to working constructively with the Government to ensure that the costs of the policy imposed on business are minimised and that the provisions of the legislation and regulation are designed in such a way as to most efficiently meet the Government's objectives.

In this regard, the key recommendations in the submission relate to:

- The need to consider the full elements of the policy, regulatory and exemptions framework prior to introducing the regulations
- The inclusion of broad exemptions criteria within the regulations, consistent with the legislation
- Amendments to the availability criteria
- Removal of the reporting requirements for wholesalers given compliance is at the retail site level
- Removal of the requirement to report nozzle and bowser counts.

## AIP POSITION ON BIOFUELS

AIP strongly supports market based approaches for the supply of fuels, including biofuels, in Australia. AIP considers that biofuels will have a place in the Australian fuels market as long as they are:

- available at a competitive price
- reliably supplied
- acceptable to consumers
- produced sustainably

AIP believes that government policy in support of biofuels (e.g. for environmental benefits) needs to be:

- transparent, with clear, credible and tested objectives
- applied equitably to all industry participants
- stable with clear timeframes for withdrawal of support
- based on sound science
- cognisant of other broader policy settings and commercial practice.

In principle, AIP does not support mandates requiring the use of any particular fuel as a way of increasing the demand for that fuel.

- While AIP members will work to comply with the requirements of any government imposed biofuels mandate, AIP believes any mandates for biofuels that may help to increase short-term consumer demand must be designed so that they promote and enable a sustainable, competitive and commercial market to develop in the medium to longer term for those fuels.

AIP believes that fuel mandates may lead to higher costs for consumers, reduce market price transparency for fuel suppliers and consumers, limit price competition and associated marketing innovation, and fail to encourage the development of robust and reliable fuel supplies. Ultimately, fuel consumers will bear the cost of mandates through increased prices, reduced choice or more vulnerable liquid fuels supplies.

AIP believes that any government support of, or mandates for, biofuels must recognise that:

- Biofuels are generally supplied to the market at a higher price than conventional fuels if the excise exemption is taken into account.
- The inclusion of biofuels in the supply chain increases the complexity of operation through the need to handle a discreet new product with specific the hygiene requirements to handle a bio-component, such as the threat of fungal contamination.
- There is strong, ongoing, consumer resistance to using ethanol blend fuels and a proportion of the market, albeit declining, that cannot use ethanol.
- While biofuels add new sources of supply to the market and thereby increase the diversity of the fuel mix, it has not been demonstrated that this will result in more reliable fuel supplies. There are few suppliers of ethanol and bio-component in Australia and Federal excise and customs duty policies effectively prevent the importation of ethanol and biodiesel. In addition, the inherent fragility of the nascent biofuels supply chain and the lack of redundancy in the biofuels supply system mean there is a significant risk of supply disruption, particularly, given the demonstrated impact of droughts and flood on biofuels raw materials supply.
  - Any significant disruption to domestic biofuels supply imposes costs on the fuel supply chain to convert back from biofuels to regular unleaded fuel.
- The benefits cited for a biofuels mandate have not been rigorously tested and it is therefore imperative that these be comprehensively assessed in a Regulation Impact Statement (RIS).
  - Regional development benefits (such as jobs and economic development benefits) have not been adequately tested and may not be the optimal use of such a significant implicit subsidy of biofuels producers by wholesalers, retailers and NSW motorists.
  - The environmental benefits have previously been found to be minimal and should be retested under the current fuel and vehicle standards, ethanol production technologies and distance to market.
- If the carbon emissions abatement estimates for biofuels are robust then biofuels projects should be eligible for support under the Commonwealth Government's Emission Reduction Fund if they are competitive with other abatement options.
  - Despite 10 years of Commonwealth and State Government support, there has not be a single new plant constructed during that time.
- While biofuels mandates and targets may have helped to create an increase in consumer demand for the products:
  - The difference between the 39.5 cpl excise equivalent customs duty for ethanol imports and the comparatively low rate of excise for domestically produced ethanol has made ethanol imports uncompetitive and impeded the development of a properly functioning ethanol market and supply chain.
  - There is ongoing uncertainty surrounding biofuels supply reliability.
  - There is no evidence or guarantee of effective competition involving a diverse number of ethanol producers in the wholesale biofuels markets, as this depends on the balance of supply and demand which should include imports. As Government would be aware, local fuels are priced according to import parity which recognises that local fuels supplied cannot out of step with international prices, otherwise local refineries would choose to export and would not be able attract imports to this market. Conversely, there is no such price transparency or tension in the biofuels wholesale market to ensure competitively supplied components.

## THE REGULATORY IMPACT STATEMENT

AIP considers that the Regulatory Impact Statement (RIS) does not meet the requirements set out in the NSW Government's own *Guide to Better Regulation*<sup>1</sup>, in particular, the expectations that the "the impacts of the proposed regulation must be identified and justified through quantitative and qualitative analysis". The RIS is unfortunately deficient in this regard.

---

<sup>1</sup> NSW Government Better Regulation Office, *Guide to Better Regulation*, [http://www.dpc.nsw.gov.au/data/assets/pdf\\_file/0009/16848/01\\_Better\\_Regulation\\_eGuide\\_October\\_2009.pdf](http://www.dpc.nsw.gov.au/data/assets/pdf_file/0009/16848/01_Better_Regulation_eGuide_October_2009.pdf); pg4, accessed 22 June 2016

It has been AIP's understanding and expectation that the true costs and benefits would be rigorously assessed as part of the RIS. However, at no point in the RIS is there any genuine attempt at an assessment of the costs of meeting the mandate for business, other than a concluding "High/Medium/Low" summary. Similarly, the benefits are simply assessed as being either negative or positive. In both cases, no supporting data underpinning these conclusions is provided.

Such a quantitative assessment is critical to examining not only the achievability of the mandate, but also for underpinning the appropriate provisions and criteria for designing the revised exemptions framework.

AIP is also disappointed that key elements of the regulatory regime are not open for consideration at this time, including:

- The findings of the current "once off" data gathering exercise, involving the supply of data from AIP members, that would provide a comprehensive insight into the retail fuel market in NSW
- The Government's own assessment of the "volume sales threshold", informed by the data gathering exercise, that is critical in underpinning both compliance arrangements and the Exemptions Framework
- The revised Exemptions Framework:
  - The RIS notes that "The Exemptions Framework sets out the eligibility grounds and process for applying for an exemption. The requirements of Clause 2 of the Regulation will be supported by an updated and revised framework document that will be published in August 2016",
  - AIP is therefore unable to fully assess the impact and operation of the regulations given that this key document will not be provided until after completion of the RIS process.
- IPARTs preferred model for wholesale ethanol price regulation, which we understand will not commence until 2017.
- When the Government's consumer education campaign will commence, what form it will take and what its key messages will be.

Each of these elements constitute key components of the overall policy framework. The interaction between each will not only determine the achievability of the increased mandate, but also provides for a full understanding and appreciation of the actions that will be required by industry to meet its obligations. It also makes it difficult to assess whether all elements of the regulatory regime are carefully and successfully integrated.

## **DISCUSSION OF THE PROPOSED REGULATION – AIP RESPONSE TO RIS QUESTIONS**

### **1. Administrative arrangements**

#### **a) Is the proposed commencement date for the Regulation and remaining provisions of the Biofuels Amendment Act appropriate?**

As noted above, AIP is unable to provide a fulsome response to the implications of regulations due to the unavailability of key pieces of information, including the IPART wholesale ethanol price regulation approach and the Exemptions Framework. AIP therefore strongly encourages the Government to provide this information before making the regulation.

AIP supports the view put forward in the RIS that the provision of transition periods for industry will be necessary given the short timeframes provided to comply, particularly given the current uncertainty surrounding the aforementioned lack of key components of the regulatory regime. It is AIP's understanding that it is likely that virtually all sites will be unable to comply with the mandate for a variety of reasons, not least the unwillingness of consumers to purchase E10 in sufficient volumes to meet the mandate.

The conversion of the liquid fuel supply chain requires significant investment to construct storage and blending facilities at terminals and depots, as well as conversion/up-grade of retail sites. There are lead time, contractor availability and logistics issues which must be addressed in this conversion process. There may also be cases where it is uneconomic to convert smaller terminals in regional areas to ethanol supply, or cases where regional locations will require infrastructure upgrades.

Despite the progressive investment in storage, distribution and retail infrastructure to support biofuels, there are significant numbers of service stations that are unsuitable to supply ethanol blends because of underground storage tank suitability. The significant capital costs involved in these upgrades and changes would affect the ongoing financial viability of these service stations. There is also a limited contractor workforce to undertake the necessary conversion processes, which may limit the ability of the industry to be compliant.

The management of industry cost impacts and a smooth implementation can be assisted by a suitable transition period to comply – typically one to two years with new regulations. We recommend the transition period should be determined in close consultation with the fuel retailers with extensive retail networks who are particularly affected by the proposal.

We expect the transitional period will be heavily influenced by the limited availability of infrastructure and other service providers, to fabricate and safely install the required changes at relevant retail sites.

It would also help to allow a sufficient compliance period to fit with company capital planning and approval processes (which are already locked-in for 2016) and allow coordination with other site works to avoid the potential for service stations to be impacted multiple times.

An alternative to site refurbishment is to provide broad ranging exemptions to these site owners, but this will again undermine the objectives of the mandate, and has been found to lead to unintended consequences through significant reductions in volumes of biofuels sold at nearby complying service stations. This creates a fundamental inequity for service station owners where sites that are not required to invest capital to convert to biofuels because of an exemption also see an increase in the sales volumes of conventional fuels.

Given the challenges associated with compliance, coupled with the lack of key pieces of information in which to fully analyse the regulations, AIP encourages delaying the introduction of the regulations coupled with a prospective exemption as the issues are worked through. Should the Government proceed as outlined in the RIS, a transition period should be prescribed.

#### **b) Are the proposed penalty arrangements appropriate?**

AIP is not in a position to provide informed judgement on either the structure or quantum of the penalty notices. However, we emphasize that there is a large degree of subjectivity in assessing whether a business has taken all reasonable steps to meet its obligations and in that context, a penalty notice is an inappropriate tool given there would be an inherent need for the regulator to make such a subjective judgement.

## **2. The volume sales threshold**

#### **a) What is the appropriate volume sales threshold (litres per quarter)? What issues should be considered in setting the regulatory threshold?**

AIP notes that the NSW Government is currently gathering whole of industry data with the aim in part to inform the setting of an appropriate threshold.

In determining an appropriate threshold, there is a need to balance out the often competing objectives of ensuring that the mandate has the best chance of being met while also ensuring that small to medium businesses are not unduly burdened with compliance obligations beyond their means (either financially or through reporting burden). This is a case in point for the need to develop stable policy through informed analysis which is underpinned by long lead times for implementation.

Setting the compliance burden at a low level will require significant numbers of small retailers to assess their suitability for the supply of ethanol blends and this could impose costs on them that may not be justified and may threaten the site's viability.

Thresholds for eligibility for any exemptions must also be transparent so that the associated compliance regime can be similarly transparent. Experience has shown that this can lead to ongoing competitive disadvantages for market participants without creating any incentives (or penalties) for ethanol producers to enhance the reliability or price-competitiveness of ethanol supplies.

While there is a domestic overcapacity of ethanol supply, there are only a limited number of supply sources. As a result, disruptions to supplies may occur as a result of floods and adverse growing conditions in different parts of the country. This uncertainty around ethanol supply is further exacerbated by the absence of competitively priced alternative supplies through imports from other countries due to the excise/grants/customs duty settings.

Given all these factors, AIP reserves its position on what the threshold should be pending receipt and analysis of the data. AIP notes that it expressed a view in its discussions with the Queensland Government on its Biofuels mandate that we do not support an exemption threshold at 250,000 litres per quarter on the basis that the level would include many small retailers. AIP suggests that the level is increased to at least 500,000 litres per quarter but notes that analysis of retail data is required so as to balance out the competing objectives outlined above.

### 3. Exemptions

**a) Is the reasonable steps test in the proposed Regulation sufficient or should additional items be included? Should an alternative exemption process be developed? What factors should be considered?**

On balance, AIP believes the five criteria identified in the regulations for a reasonable steps test are appropriate, but only if the regulations are modified to include specific references to the exemptions criteria in a manner consistent with the approach outlined below. AIP has consistently maintained the importance of considering the Exemptions Framework in tandem with the reasonable steps test, but as noted previously the revised Framework has not yet been provided. Indeed, the Biofuels Act recognises this key interaction in Section 15 (1)(b):

*Section 15 Exemptions from Minimum biofuel requirements*

*(1) The Minister may by order in writing exempt a specified person from compliance with a minimum biofuel requirement if the Minister is satisfied that one or more of the following circumstances exist and that those circumstances, separately or in combination, justify the grant of the exemption:*

- (a) it is uneconomic for the person to comply with the requirement because of the price at which the person is reasonably able to obtain ethanol or biodiesel,*
- (b) the person has taken, is taking or will take all reasonable steps to comply with the requirement,*
- (c) other circumstances as are prescribed by the regulations for the purposes of this section.<sup>2</sup>*

---

<sup>2</sup> NSW Biofuels Act 2007 No 23, <http://www.legislation.nsw.gov.au/#/view/act/2007/23/full>



Furthermore, AIP notes that the legislation refers specifically at (1)(c) to grounds for exemption in other circumstances as prescribed by the regulations, yet the Draft Regulations remain silent on this issue. AIP therefore supports specific inclusion in the regulation of a broad set of exemptions criteria consistent with, and in the spirit of, this provision in the legislation.

In structuring this provision, the NSW Government should reference a number of different categories of those who are likely to be seeking an exemption, and where applicable, the period of exemption automatically granted. Such a framework would help simplify the process for the Government and the Biofuels Expert Panel and provide clear guidance to retailers.

AIP identifies the following scenarios where retailers are likely to seek exemption and the proposed exemptions that should be available within the regulations:

1. Those service station sites that are below the specified threshold
  - Automatic exemption granted
2. Those currently meeting all reasonable steps criteria, but cannot meet the specified sales volumes due to factors outside their control such as through consumer aversion
  - Automatic exemption granted, supported through documentation demonstrating all reasonable actions have been undertaken
3. Those currently undertaking actions, such as site modification, to bring the site into compliance
  - Automatic exemption consistent with supporting documentation provided by the service station operator outlining the period required to complete the actions
4. Those currently engaged in a detailed assessment of the pathway to compliance, such as through site modification, and demonstrated through the sourcing of appropriate professional advice, quotes and other relevant supporting material
  - Automatic exemption granted, for period of between 3-6 months, supported by documentation demonstrating what investigative actions are being undertaken
5. Those that have taken reasonable steps but are unable to meet compliance obligations due to economic or other extraordinary grounds demonstrated by the retailer
  - Exemption to be granted following Expert Panel assessment of supporting documentation such as quotes for site modifications.

AIP does not support exemption assessment based on business size or structure, but rather the grounds on which the exemption is sought, as outlined above. In particular, those exemptions based on economic grounds should be assessed at site level and not the broader corporate level.

#### **b) Is two years the appropriate maximum period for an exemption?**

In noting the categories outlined above and the differing approaches taken for granting exemptions, AIP agrees that the proposed 2-year period is likely to be appropriate so long as a retailer can continue to reapply for another exemption if and as necessary.

### **4. The availability of petrol-ethanol blends**

#### **a) Is the availability requirement appropriate?**

Service stations understand their markets intimately, including the purchasing patterns and preferences of their customers and their local competitive settings. While AIP understands why the Government may be pushing for clear biofuel availability criteria for a retailer, AIP has consistently maintained that sites will always provide the preferred product of their customers, including biofuels. As purchasing patterns change, so too will the service station in its need to meet that changing

demand. For example, we have seen in the past 10 years a large increase in the demand for diesel for consumer vehicles. This has led service station operators to being to offer more diesel on regular pumps that just having a dedicated diesel pump which was generally only used by trucking customers.

It cannot be realistically expected that sites can force consumers to purchase a product they do not wish to buy, or provide over-capitalised and unnecessary infrastructure to support low demand product. NSW consumers have in recent years demonstrated an aversion to purchasing E10, thereby highlighting the importance of the Government's proposed consumer awareness campaign and price regulation in addressing the aversion and changing those purchasing decisions. If, as the Government expects, consumers become more willing to purchase biofuels as a result of these two measures, sites will of course respond as outlined in the example of diesel above.

AIP has consistently maintained that strict availability criteria including, for example, nozzle matching with other fuels, will not force consumers to purchase a particular fuel type. AIP believes that appropriate discretion in terms of regulatory compliance enforcement for availability is strongly advisable until such time as the consumer education campaign and the wholesale ethanol pricing arrangements take effect. Sites should of course make biofuels both available and accessible, but it would be a perverse outcome if retailers were forced to seek exemptions on the basis they needed to explicitly match E10 with any other fuel, regardless of how available E10 was, whether their local competition were also selling E10 (or potentially had an exemption), or how unwilling consumers were to purchase it.

AIP therefore agrees that E10 should be both available for sale and accessible by customers but proposes that the availability criteria in Section 7 be amended to remove the reference to "as any other type of petrol available to a customer for that purpose". AIP anticipates that the education campaign, wholesale ethanol price regulation and the requirement under the reasonable steps provisions for retailers to market E10 will be the key step change required to address consumer aversion and commensurately increase sales towards the mandated levels.

## **5. Reporting and Record Keeping**

### **a) Does the Regulation need to include additional record keeping requirements?**

#### **Reporting by wholesalers**

AIP does not support any requirement on wholesalers to report on the basis that the compliance obligation rests at the retail site level. Placing such a requirement on wholesalers simply serves as a red-tape burden for no compliance purpose, nor any other additional benefit. Indeed, the gathering of such data is likely to contaminate the overall data set across the state as it will be onerous and complicated to reconcile the wholesale fuel volumes against retail volumes. For example, wholesalers supply fuel across state boundaries in either direction between their bonded/licenced facilities in their supply chains which cannot be accounted for as part of the reporting. Similarly, wholesalers comele at bulk fuel terminal facilities that could lead to issues with double counting.

As AIP noted in its submission on the Biofuels legislation, our member data for NSW shows that less than 1% of total petrol sales and approximately 0.1% of E10 sales are consumed by less than 10 end user customers who would not be separately captured by the retail site compliance approach. This data further underpins our view that wholesalers should not be required to report.

AIP therefore recommends amending Section 10 (1)(a) and 10(1)(c) of the Draft Regulations to remove the references to "primary wholesalers".

#### **Reporting of nozzles**

AIP has consistently opposed the use of nozzle count or matching as a proxy for meeting what is a volume threshold. Indeed, despite numerous requests by industry to Government for a clear

understanding of the basis and intent for this approach, it has yet to be demonstrated that the number of nozzles or bowsers has any impact on the purchasing patterns of consumers and the resultant volumes sold. The collection of such data on a quarterly basis therefore simply represents a red-tape burden on industry. This will be particularly onerous for those companies with multiple sites. At the Industry Roundtable meeting of 2 May 2016, Minister Dominello committed to removing any references to nozzles, including in the availability criteria. AIP acknowledges that the Minister did require nozzle count for the once-off data gathering exercise provided for under the legislation, which is currently being provided by industry.

AIP therefore recommends removing the references in Section 10(2)(a) and (b) requiring quarterly reporting of the number of nozzles and bowsers.

### **Sustainability Criteria**

Section 11(1)(f) provides the requirement for a retailer to show “whether the petrol-ethanol blend or biodiesel blend sold complies with a biofuel sustainability standard, including details of any such certification. Service station owners have little understanding of these standards and have little control over the fuel supplied. They do not have the capacity to certify the fuel which results in the onus of proof falling on the incorrect party. Furthermore, the Act and Regulations do not specify any requirement for independent certification from biofuels producers or any government auditing capacity.

AIP recommends removal of this clause or the onus of proof to be shifted to the relevant party being the ethanol or bio-component manufacturer.