



**Submission to the
House of Representatives
Standing Committee on the Environment**

on the

**Inquiry on streamlining environmental regulation,
'green tape' and one stop shops**

11 April 2014

ABOUT AIP

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards. AIP provides a wide range of factual information and industry data to assist policy makers, 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 the House of Representatives Standing Committee on the Environment on behalf of AIP's core member companies:

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

About AIP Member Companies

AIP member companies operate across 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 streamlining a broad range of environmental regulations and the efficient discharge of compliance obligations under these regulations. 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 Paul Barrett
Deputy Executive Director
Australian Institute of Petroleum Limited
GPO Box 279
CANBERRA ACT 2601

Key Messages

- The Australian downstream petroleum industry is subject to significant and overlapping Commonwealth and State environmental legislation
- The industry sees potential advantages in moving towards harmonisation of regulations in several key areas, notably air quality policy and regulation of contaminated sites
- The benefits of harmonised regulations are potentially greater regulatory certainty, improved community acceptance and lower costs to industry.
- There are several options available for achieving harmonisation which can be tailored to the existing policy landscape, and hybrid approaches to development of regulatory frameworks have been demonstrated to be effective, for example, intergovernmental agreements supplemented by guidelines
- A key factor in achieving harmonisation is the acceptance by all participants that there are benefits in harmonisation and that there is an open dialogue between participants in establishing the regulatory framework
- Effective consultation is critical to ensuring an open dialogue and in assessing the options for regulatory reform
- Where regulations are justified (i.e. based on sound science and analysis, with a clear demonstrated net benefit, and clearly not able to be achieved otherwise by the market or consumers) it is critical that these are applied equally to all industry participants and that
- compliance is rigorous to avoid free riders
- The Commonwealth can provide leadership in promoting action for greater harmonisation and reduction in regulation, through existing and potentially new consultation processes

Towards best practice regulation

1. Encouraging and facilitating strong competitive markets

Australia's liquid fuel market is different to other domestic energy markets because it is a part of globally and regionally integrated supply chains that are mature, flexible and well-functioning, and deliver internationally competitive fuel prices and reliable supply to consumers and business. Therefore, there is much less of a role for government in the development of an efficient, reliable and competitive liquid fuels market as these conditions already exist.

However, there is still an important role for governments alongside the Australian petroleum industry in meeting future challenges, strengthening the security and operation of the fuels market, and facilitating the significant infrastructure investment required to meet Australia's growing liquid fuel needs.

Specifically, AIP considers that there are four important roles for governments in the liquid fuels market:

- maintaining a clear and stable market based policy framework and investment environment, and a level playing field for market operators
- carefully reviewing and streamlining the existing complex and overlapping array of environmental and other regulatory measures to ensure that current measures are soundly based, cost effective and harmonised (including across jurisdictions)
- ensuring that future regulatory decisions and imposts do not undermine the competitiveness of liquid fuel refining and supply
- maintaining multilateral efforts to ensure that world markets remain open and that effective response mechanisms are in place to mitigate the impact of supply disruptions and global oil supply emergencies.

Policy stability is key to the delivery of ongoing energy security and attracting the ongoing, necessary and significant industry investments to meet Australia's future liquid fuel needs. An attractive investment environment and more efficient, timely and consistent national planning, approval and regulatory processes would support ongoing investment in the growth and the maintenance of key infrastructure supporting the liquid fuels supply chain.

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

2. Clear national benefits from any market interventions

AIP considers any proposals for changes to current market-based policy settings need to clearly demonstrate that:

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

Where government intervention is needed in the market, and a clear market failure has been demonstrated, AIP and its member companies advocate policies and regulation that apply equally to all industry participants and are based on comprehensive economic analysis and sound science. Moreover, if a decision is made to regulate a particular area then it is essential that an adequate compliance regime is maintained to avoid free riders and consequent costs being borne by one section of industry that are compliant with the regulations and not by other market participants. Free riders undermine the legitimacy of the policy and create competitive disadvantage.

Consequently, AIP believes existing or new government regulatory regimes should:

- clearly define their objectives
- be underpinned by open and clearly defined stakeholder engagement
- be regularly reviewed to ensure the objectives are still relevant
- be harmonised across jurisdictions
- be enforced, and applied, consistently to all market participants
- be allowed to lapse when their objectives have been met.

3. Harmonisation of market interventions

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

AIP considers that there are major benefits in pursuing national harmonisation of these regulations. The benefits of such action would include common and consistent national frameworks that would lower costs for regulators and industry and lead to greater certainty in regulatory outcomes.

Particular areas of policy concern include:

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

While the list above relates only to environmental regulation, there is other regulation that would benefit from a common approach across Australia at each level of government.

In each of the areas of policy concern there are degrees of harmonisation and common practice across jurisdictions but further work is required to further reduce costs to industry and improve the effectiveness of the regulation.

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

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

Regardless of the model chosen, harmonisation should be coordinated to some extent at the national level. Such an approach would ensure that policies originating in one state do not inform others on an ad hoc basis, but are implemented consistently. For example some AIP members are concerned by the Queensland draft Management of Firefighting Foam policy, which aside from lacking important technical and economic assessments, ignores certain Commonwealth product safety standards. Given the national significance of such a policy, Commonwealth involvement during the policy process is critical. Experience to date has demonstrated the benefits that can be derived through harmonisation of regulations in some of the aforementioned policy areas, and highlights the potential for further

significant productivity gains that could be realised without any significant loss of environmental or community benefits.

The following examples illustrate the competing objectives and different jurisdictional approaches and demonstrate the potential for harmonised approaches through different mechanisms.

Air Quality – (intergovernmental agreements and Commonwealth legislation)

Air quality across Australia is regulated by the Ambient Air Quality (AAQ) NEPM which requires jurisdictions to undertake and report air quality monitoring against the NEPM standards. Air quality in Australian cities is forecast by CSIRO to improve despite population growth. The main anthropogenic sources of pollution will change from motor vehicle emissions to other sources such as gas-fired industrial development, and a range of general sources such as aerosols, small engines and solvents. Bushfires are also a major source of particulate matter pollution. The AAQ NEPM has provided a useful tool for assessing air quality performance and has helped regulators to demonstrate to the community improvements in urban air quality on a comparable basis across the country. This NEPM is considered to provide a sound, logical platform for measuring and monitoring air quality across the nation.

A key regulatory contribution by the Commonwealth Government to improved air quality was the implementation of the *Fuel Quality Standards Act 2000* (FQSA) which replaced existing State Government legislation (where it existed) for most fuel quality parameters. This regulatory framework provides a sound, harmonised basis for fuel supply in Australia, and is supported by a robust compliance mechanism to tackle non-compliance by fuel suppliers. This legislation provides a good example of soundly based and structured environmental legislation that facilitates fuel market operations in Australia, while also ensuring appropriate quality fuel (i.e. that meets vehicle operating requirements) is available for consumers. This legislation has also ensured that motor vehicle emissions that impact adversely on urban air quality have rapidly declined since 2000, and will continue to decline in the future (see AIP's Downstream Petroleum 2013 p.12 (<http://www.aip.com.au/topics/new.htm>)).

However, State regulation of fuel quality was retained for parameters that were specific to an airshed or specific State circumstances. These state regulations currently apply to fuel quality parameters such as volatility limits in petrol. As a result of unique standards for particular locations, these two tiers of regulation create regulatory complexity and additional costs for fuel suppliers and add to the complexity of supplying fuel to the Australian market. There would appear to be considerable scope to streamline this regulatory complexity, either through additions to the national fuel standards, or development of an intergovernmental agreement to cover the factors not in the national standard. These approaches could accommodate the need for parameters that require different values for different environmental circumstances such as petrol volatility.

In addition, each State Government maintains a mix of emission abatement measures aimed at improving urban air quality through capture of fuel vapours at fuel handling sites, notably stage one vapour recovery (VR1 – at major fuel handling depots) and stage two vapour recovery (VR2 – at service stations and on fuel bowsers). However, there is little consistency of standards or approach across the jurisdictions. In particular, application of measures does not always apply to all market participants, and even where the measures do, there is often an absence of an effective compliance regime (either non-effective forms of regulation and/or an absence of resources to monitor and prosecute non-compliance). As a consequence there is a complexity of regulatory requirements and a significant 'free-rider' issue which creates a competitive disadvantage for the compliant operators.

In the case of VR2, the relatively low emissions from vehicle refuelling could potentially be addressed more cost-effectively by inexpensive vehicle technology to capture the vapour, while providing a benefit to motorists through fuel savings. Such technology is standard in the United States so could potentially be required in all vehicles imported to Australia. However, lack of interest in a uniform national approach from state jurisdictions (including NSW) has resulted in less cost-effective air quality mitigation

through VR2 being adopted in NSW. VR2 will not be required in Victoria following regulatory review, nor in other states.

The various regulatory measures relating to clean air provide very good insights into how different approaches can be used effectively to provide soundly based environmental regulation. However, they also illustrate the significant shortcomings if there is not effective harmonisation across the country. There would appear to be considerable scope for the Commonwealth to take a leadership role in encouraging effective and harmonised regulation in this area, potentially as part of a leadership role in the development and implementation of the National Plan for Clean Air.

On 16 September 2011, the National Environment Protection Council (NEPC) agreed to release the review of the Ambient Air Quality National Environment Protection Measure (AAQ NEPM) that contained 23 recommendations for altering the AAQ NEPM. In response to the review, COAG identified air quality as priority issue of national significance and the Standing Committee on Environment and Water (SCEW) indicated on 31 May 2012 it will develop a National Plan for Clean Air by the end of 2014. The first stage of the plan will focus on particles but will also include:

- a health risk assessment of particulates, and of ozone, nitrogen and sulfur dioxide
- development of an exposure reduction framework for particles
- development of options for actions to reduce particulate pollution, including options for implementing national product standards to control emissions from a range of products and equipment
- a cost benefit analysis of a range of potential particulate standards, including for PM_{2.5}, of an exposure reduction framework, and of abatement measures for particles.

It is anticipated that by mid-2016, the National Plan for Clean Air, which includes the following, will be completed for COAG endorsement:

- new air quality standards and an exposure reduction framework
- proposals for laws, regulations, incentives, guidance, partnerships or other actions for implementing emission and exposure reduction actions
- improved monitoring and reporting
- an agreed jurisdiction list for ongoing implementation.

While the goals of the National Plan for Clean Air are laudable there has been a distinct lack of consultation with stakeholders, especially industry. The lack of consultation does not engender a cooperative approach (and lacks commercial insight into the impact of such goals) which is essential to assessing competing options in a harmonised approach.

National Remediation Framework (NRF) – (independent guidelines and intergovernmental agreements)

The Assessment of Site Contamination (ASC) NEPM was agreed by the Commonwealth and the States/Territories in 1999 and is designed to harmonise the approaches to the assessment of site contamination by specifying common approaches to site characterisation and key investigation levels of contaminants.

Since that time AIP has encouraged reconsideration of the key investigation factors of the NEPM with a view to adopting a risk based approach to investigation and monitoring. The Cooperative Research Centre for Contamination Assessment and Remediation of the Environment (CRC CARE) has undertaken considerable world-leading work to establish sound, risk-based investigation strategies and techniques.

CRC CARE was formed in 2005 as an international research centre of excellence for the prevention and remediation of contamination of soil air and water. It is a partnership between site owners (petroleum and mining industries, and Defence), the regulators (State EPAs), Universities and other researchers, and remediation practitioners. Its work is centred on four programs: best practice policy, better measurement, minimising uncertainty in risk assessment and cleaning up. CRC CARE has already

demonstrated that a risk-based approach can deliver better remediation outcomes at a lower cost to industry with a greater acceptance to the community.

The NRF will be fully compatible with the ASC NEPM given that site remediation and management follow on from the assessment phase for most contaminated sites. Harmonisation across the country is to be achieved by the production of best practice guidance documents that will essentially be common industry standards to be adopted by industry practitioners. These guidance documents will cover topics such as site specific remediation objectives, remediation technologies, treatability studies, cost benefit and sustainability studies, documentation, stakeholder engagement and post remediation considerations. To further support the pathway to adoption, the NRF will be supported by a national accreditation and training scheme for industry practitioners.

It is expected that the NRF will assist in facilitating:

- ready transfer of best practice between jurisdictions
- use of national expertise across jurisdictions, thereby improving overall standards over time
- a common remediation language across jurisdictions
- cost efficiencies for remediation
- training and professional development efficiencies
 - ability to bring all practitioners up to a minimum acceptable standard
 - enhance workforce mobility and mutual recognition of skills
 - enhanced recognition of the contaminated sites profession
- improved confidence and certainty in remediation outcomes which improves regulator confidence.

As a result of the framework, the Australian community will develop a greater confidence in the outcomes of the remediation process

This informal but structured approach to developing a sound, risk-based approach to key aspects of site remediation provides a clear demonstration of how a co-operative approach to development of environment policy and regulation can achieve a harmonised outcome (ie consistent across jurisdictions) at least cost while also serving as a platform for skills development. A complementary spin-off has been the development of IP and techniques that can be exported to other countries. As an industry operating nationally, the downstream petroleum industry sees the acceptance by the community and the potential for lower costs as key outcomes of this type of collaborative process.

This innovative approach to development and implementation of cost effective, soundly-based environmental regulation provides a good example of co-operative development of environmental policy and regulation that could be effectively promoted and encouraged by the Commonwealth.

However, implementation of this risk-based approach to remediation remains a challenge. The logical approach would be to incorporate the approach into the ASC NEPM, by extending the NEPM to cover the harmonisation of remediation and management practice - a step widely supported by stakeholders in the 2013 review of the NEPM and endorsed by the National Environmental Protection Council (NEPC). Unfortunately such an approach is precluded by the National Environmental Protection Council Act 1994.

While the Commonwealth has a limited role in the regulation of contaminated sites, we believe the Commonwealth can provide a strong focus on the need for a reduction in regulations and can play a leadership and coordination role in brokering solutions across jurisdictions. In the case of the NRF this would mean engagement in the NEPM review and implementation process, particularly the facilitation of commonly agreed approaches to specific environmental regulation, and initiating decisive action to remove regulatory barriers to the greater use of NEPMs.

4. International harmonisation

Harmonisation of environmental regulation across Australian jurisdictions can be beneficial as it cuts red tape costs and promotes interstate trade. However, harmonisation of regulation within Australia does not necessarily mean the same standards apply everywhere, as with regulation of petrol volatility. The details of harmonisation therefore must recognise benefits and costs: there is no point imposing environmental regulation where there is no real problem, the regulatory parameters (as opposed to the administrative framework) may need to vary to address individual circumstances, and benefits should exceed costs.

These considerations are even more relevant when considering environmental standards and policy approaches that apply overseas. For example, air quality in many overseas cities is very poor and drastic measures are required, which may include vehicle design and fuel quality. For example, two stroke engines may be banned and fuel quality may reflect carbon regulation as well as air quality, as in the EU.

It follows that what is appropriate for Australia may vary greatly from what is appropriate overseas. For example, the petrol additive MTBE is legal in Europe and Asia but banned in Australia and the US because of the risk to ground water if petrol leaks or is spilled. Other petrol and diesel parameters vary from overseas jurisdictions for various reasons but this has no impact on trade. Another topical example is regulation to address greenhouse gas emissions: Australia follows neither the EU nor the US but takes its own approach.

Australian environmental regulation should therefore look to the national interest and not simply follow overseas regulation. This involves a careful weighing of the costs and benefits of harmonisation for environmental protection, trade, investment, employment, industry costs and competitiveness and consumers prices, among other factors.