



## **Competition and Consumer (Industry Codes— Oil) Regulations 2017**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 09 March 2017

Peter Cosgrove  
Governor-General

By His Excellency's Command

Josh Frydenberg  
Minister for the Environment and Energy

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## Part 1—Preliminary

### 1 Name

This instrument is the *Competition and Consumer (Industry Codes—Oil) Regulations 2017*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2017.	1 April 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Code of conduct

For the purposes of section 51AE of the *Competition and Consumer Act 2010*, the industry code set out in Schedule 1:

- (a) is prescribed for the purposes of Part IVB; and
- (b) is declared to be a mandatory industry code.

Section 6

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**Part 2—Transitional matters relating to the repeal of the Competition and Consumer (Industry Codes—Oilcode) Regulation 2006**

**6 Transitional—continued appointment of dispute resolution adviser etc.**

- (1) A person who was, immediately before 1 April 2017, the dispute resolution adviser under the Oilcode set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* is taken, on and after 1 April 2017, to be the dispute resolution adviser for the purposes of the *Oil Code of Conduct* set out in Schedule 1 to these regulations.
- (2) If:
  - (a) before 1 April 2017, a person was appointed under subparagraph 44(2)(b)(ii) of the Oilcode set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* in relation to a dispute; and
  - (b) that dispute has not been resolved before 1 April 2017;then, that person is taken, on and after 1 April 2017, to be the designated mediator for the dispute for the purposes of the *Oil Code of Conduct* set out in Schedule 1 to these regulations.

**7 Things done under the Competition and Consumer (Industry Codes—Oilcode) Regulation 2006**

- (1) If:
  - (a) a thing was done for a particular purpose under the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006* as in force immediately before those Regulations were repealed; and
  - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (2) Without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given or made.

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## Schedule 1—Oil Code of Conduct

Note: See section 5.

### Part 1—Preliminary

#### 1 Name

This code is the *Oil Code of Conduct*.

#### 2 Purpose of code

The purpose of this code is to regulate the conduct of suppliers, distributors and retailers in the petroleum marketing industry.

#### 3 Monitoring of code

The Australian Competition and Consumer Commission will monitor the effectiveness of this code.

#### 4 Definitions

Note: A number of expressions used in this code are defined in the Act, including supply.

In this code:

*ABN* has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

*ACN* has the meaning given by section 9 of the *Corporations Act 2001*.

*Act* means the *Competition and Consumer Act 2010*.

*additional service* means a service provided by a wholesale supplier that is:

- (a) associated with an individual purchase of fuel by a customer from the wholesale supplier; and
- (b) charged on a per litre basis or a per purchase basis.

Example: Delivery, credit, brand services and franchise services.

*ARBN* has the same meaning as in the *Corporations Act 2001*.

*associate*, of a supplier, means:

- (a) for a supplier that is a proprietary company—a person who:
  - (i) is a director, a related body corporate, or a director of a related body corporate, of the supplier; or
  - (ii) directly or indirectly owns, controls, or holds with power to vote, at least 15% of the issued voting shares in the supplier; or
  - (iii) is a partner of the supplier;and whose relationship with the supplier is relevant to a fuel re-selling agreement; and
- (b) for a supplier that is not a proprietary company—a person who:

Clause 4

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- (i) is a director, a related body corporate, or a director of a related body corporate, of the supplier; or
  - (ii) is a partner of the supplier;
- and whose relationship with the supplier is relevant to a fuel re-selling agreement.

**Chapter 5 body corporate** has the same meaning as in the *Corporations Act 2001*.

**commission agency** means a fuel re-selling agreement under which the retailer sells motor fuel at retail as an agent of the supplier.

**complainant**, in relation to a dispute to which Part 4 applies, means a person who initiates dispute resolution under that Part.

**customer** means:

- (a) a person engaged in the business of retailing or wholesaling declared petroleum products; or
- (b) a person engaged to act or work on behalf of a person mentioned in paragraph (a).

**dealer council** means an organisation made up of a supplier and a representative body of retailers with whom the supplier has fuel re-selling agreements.

**declared petroleum product** means any of the following temperature corrected motor fuels:

- (a) unleaded petrol;
- (b) a product consisting of a blend of unleaded petrol and ethanol (for example, E10);
- (c) a product consisting of a blend of unleaded petrol and one or more biofuels other than ethanol;
- (d) premium unleaded petrol (other than a premium unleaded petrol proprietary product);
- (e) diesel fuel (other than a diesel proprietary product).

**designated mediator** has the meaning given by subparagraph 44(2)(b)(ii).

**director** has the same meaning as in the *Corporations Act 2001*.

**disclosure document**:

- (a) in relation to entry into a fuel re-selling agreement—has the meaning given by subclause 13(1), and includes such a document as updated under this code; or
- (b) in relation to the transfer of a fuel re-selling business—has the meaning given by subclause 21(1), and includes such a document as updated under this code.

**dispute resolution adviser** has the meaning given by clause 41.

**fuel re-selling agreement** has the meaning given by clause 5.

**fuel re-selling business** has the meaning given by clause 5.

***fuel re-selling system*** includes a business system in which a supplier supplies motor fuel to a retailer for re-selling.

***interest in a fuel re-selling agreement*** includes a legal or beneficial interest in:

- (a) shares or voting rights in a corporation, not being a listed corporation, that is a retailer; or
- (b) units or voting rights in a unit or other trust, controlled by a trustee, that is a retailer; or
- (c) the capital or income of a partnership that is a retailer.

***misconduct*** has the same meaning as in the *Corporations Act 2001*.

***officer*** has the same meaning as in the *Corporations Act 2001*.

***posted TGP***, has the meaning given by subclause 9(3).

***proprietary company*** has the same meaning as in the *Corporations Act 2001*.

***prospective retailer*** means a person who deals with a supplier for the right to be a retailer.

***registered company auditor*** has the same meaning as in the *Corporations Act 2001*.

***registered office*** has the same meaning as in the *Corporations Act 2001*.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***respondent*** means a person who:

- (a) is a party to a dispute to which Part 4 applies; and
- (b) is not the complainant.

***retailer*** includes the following:

- (a) a person who carries on a business of selling or supplying petroleum products to end-users;
- (b) a person who is a retailer under a fuel re-selling agreement;
- (c) a person who, otherwise than as a retailer, participates in a fuel re-selling agreement as a retailer.

***retail site*** means premises at which motor fuel is sold by retail.

***road vehicle*** means a vehicle designed mainly to transport people, goods or animals by road.

***secretary*** has the same meaning as in the *Corporations Act 2001*.

***serious offence*** means an offence under any law of the Commonwealth or a State or a Territory for which a person would be liable, on first conviction, to imprisonment for a period of not less than 5 years.

***spot sale*** means a sale by wholesale of a declared petroleum product to an uncontracted customer by a wholesale supplier of the declared petroleum product.

Clause 5

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**supplier** includes the following:

- (a) a person who is a supplier under a fuel re-selling agreement;
- (b) a person who, otherwise than as a supplier, participates in a fuel re-selling agreement as a supplier.

**temperature corrected** means the assessment of the volume of a declared petroleum product by reference to the number of litres that the declared petroleum product occupies, or would occupy, at a temperature of 15°C.

**term contract** means a contract between a customer and a wholesale supplier that sets out the price at which, and the conditions under which, the customer will purchase a declared petroleum product for a fixed period.

**terminal gate price** or **TGP** means the price for a wholesale sale of a declared petroleum product that is identified under clause 8:

- (a) worked out on a temperature corrected basis; and
- (b) expressed in cents per litre.

**trade mark** has the same meaning as in the *Trade Marks Act 1995*.

**wholesale facility** means any of the following:

- (a) an oil refinery;
- (b) a shipping facility;
- (c) a facility connected by a product transfer pipeline to an oil refinery or a shipping facility;
- (d) a facility that is connected by a product transfer pipeline to another facility that is connected by another product transfer pipeline to an oil refinery or shipping facility (as mentioned in paragraph (c)).

**wholesale supplier** means a person who sells declared petroleum products by wholesale from a wholesale facility.

## 5 Meaning of *fuel re-selling agreement*

- (1) A **fuel re-selling agreement** is a written, oral or implied agreement under which:
  - (a) a supplier grants to a retailer the right to carry on a business (a **fuel re-selling business**) in which the retailer offers, supplies or distributes motor fuel in Australia under a system or marketing plan substantially determined, controlled or suggested by the supplier or an associate of the supplier; and
  - (b) the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
    - (i) owned, used or licensed by the supplier or an associate of the supplier; or
    - (ii) specified by the supplier or an associate of the supplier; and
  - (c) before starting the business, the retailer must pay or agree to pay to the supplier, or an associate of the supplier, an amount including, for example:
    - (i) an initial capital investment fee; or
    - (ii) a payment for goods or services; or

- (iii) a fee based on a percentage of gross or net income whether or not called a royalty or agreement service fee; or
  - (iv) a training fee or training school fee;
- but excluding:
- (v) payment for motor fuel at or below the usual wholesale price; or
  - (vi) payment for the usual wholesale price of motor fuel taken on consignment; or
  - (vii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start the business.

Note: To meet the requirements of paragraph (1)(a), a supplier must have a substantial ongoing role in the retailer's operations, in addition to being responsible for branding and supplying fuel. For example:

- (a) a traditional franchise or commission agency arrangement would meet the requirements of the paragraph because of the supplier's substantial ongoing role in the operations; but
- (b) a 'supply only' or 'supply and branding only' agreement with an owner-dealer would not meet the requirements of the paragraph.

- (2) A ***fuel re-selling agreement*** is a written, oral or implied agreement under which:
  - (a) a supplier consents to being a transferee in relation to a fuel re-selling business; and
  - (b) the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
    - (i) owned, used or licensed by the supplier or an associate of the supplier; or
    - (ii) specified by the supplier or an associate of the supplier.
- (3) Each of the following is also taken to be a ***fuel re-selling agreement***:
  - (a) the renewal or extension of a fuel re-selling agreement;
  - (b) a commission agency to which the requirements of:
    - (i) paragraphs (1)(a) and (b) apply; or
    - (ii) subclause (2) applies;
  - (c) an interest in a fuel re-selling agreement.
- (4) However, none of the following in itself constitutes a ***fuel re-selling agreement***:
  - (a) an employer and employee relationship;
  - (b) a partnership relationship;
  - (c) a landlord and tenant relationship;
  - (d) a mortgagor and mortgagee relationship;
  - (e) a lender and borrower relationship;
  - (f) a fuel agreement related to a retail site that is not owned or leased by the supplier;
  - (g) the relationship between the members of a cooperative that is registered, incorporated or formed under any of the following:
    - (i) the *Corporations Act 2001*;
    - (ii) the *Co-operatives (Adoption of National Law) Act 2012* (NSW);
    - (iii) the *Co-operatives National Law Application Act 2013* (Vic.);
    - (iv) the *Cooperatives Act 1997* (Qld);

Clause 5

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- (v) the *Co-operatives Act 2009* (WA);
- (vi) the *Co-operatives National Law (South Australia) Act 1997* (SA);
- (vii) the *Co-operatives National Law (Tasmania) Act 2015* (Tas.);
- (viii) the *Cooperative Act 2002* (ACT);
- (ix) the *Co-operatives (National Uniform Legislation) Act 2015* (NT).

(5) A fuel re-selling agreement may apply to one or more retail sites.

## **Part 2—Terminal gate price and related arrangements**

### **Division 1—Preliminary**

#### **6 Application of this Part**

This Part applies to:

- (a) a wholesale supplier; and
- (b) a sale of a declared petroleum product made by a wholesale supplier to a customer.

#### **7 Terminal gate price arrangements**

- (1) A wholesale supplier must not include in a posted TGP any amount imposed for or in relation to an additional service.
  - (2) However, a wholesale supplier may:
    - (a) charge the posted TGP less an amount subtracted as a discount; and
    - (b) provide an additional service; and
    - (c) charge the posted TGP plus an additional amount added for, or in relation to, that service.
- Note: The wholesale supplier is required to identify charges for additional services separately from the posted TGP in the documents the wholesale supplier provides in accordance with clause 10.
- (3) A wholesale supplier that offers a customer a term contract for the purchase of a declared petroleum product must give the customer the option of entering into a term contract to purchase the declared petroleum product at:
    - (a) the posted TGP; or
    - (b) a price calculated in accordance with subclause (2).
  - (4) If a customer seeks to purchase a declared petroleum product from a wholesale supplier otherwise than under a term contract, the wholesale supplier must make the customer an offer to purchase the declared petroleum product at:
    - (a) the posted TGP; or
    - (b) a price calculated in accordance with subclause (2).

## Division 2—Terminal gate price for declared petroleum products

### 8 Setting terminal gate price

- (1) A wholesale supplier must, on each day, identify the terminal gate price the wholesale supplier charges on that day for the wholesale sale of each declared petroleum product the wholesale supplier sells.

Note: The wholesale supplier is required to identify charges for additional services separately from the posted TGP in the documents the wholesale supplier provides in accordance with clause 10.

- (2) However, a wholesale supplier (the *first wholesale supplier*) is not required to identify the terminal gate price the wholesale supplier charges on a day for the wholesale sale of a declared petroleum product if:
  - (a) at the same wholesale facility there is another wholesale supplier that is a related body corporate of the first wholesale supplier; and
  - (b) the other wholesale supplier has identified the terminal gate price the other wholesale supplier charges on that day for the wholesale sale of the declared petroleum product.
- (3) A wholesale supplier may identify more than one terminal gate price on a day, but only in a way that makes it clear that:
  - (a) only one price is in effect at any time; and
  - (b) a price in effect at a time supersedes all other prices previously identified on that day.

### 9 Disclosing terminal gate price

- (1) A wholesale supplier must, on each day:
  - (a) make available the terminal gate prices the wholesale supplier charges on that day for the wholesale sale of each declared petroleum product the wholesale supplier sells; and
  - (b) do so on a publicly accessible website.
- (2) However, if the wholesale supplier cannot make the wholesale supplier's terminal gate prices available to the public each day on the website, the wholesale supplier must make the terminal gate prices publicly available by a telephone or fax service operated by or for the wholesale supplier.
- (3) A terminal gate price becomes a *posted TGP* when the terminal gate price is first made available in accordance with subclause (1) or (2).
- (4) A posted TGP remains in force in relation to a declared petroleum product until the posted TGP is replaced by another posted TGP.

### 10 Selling declared petroleum products—documentation

- (1) This clause applies to a wholesale sale of a declared petroleum product by a wholesale supplier to a customer if the price is based on:
  - (a) the posted TGP; or

- (b) a price calculated in accordance with subclause 7(2).
- (2) The wholesale supplier must provide to the customer, at the time of delivery, a document that acknowledges the sale of the declared petroleum product and includes the following information:
  - (a) the kind of declared petroleum product supplied;
  - (b) the volume of declared petroleum product supplied, worked out on a temperature corrected basis;
  - (c) the total price charged per litre for the sale of the declared petroleum product, worked out on a temperature corrected basis;
  - (d) the posted TGP applicable at the time of the transaction.
- (3) However, a wholesale supplier is not required to include the information mentioned in paragraphs (2)(c) and (d) if, at the time of the sale, the information is available by a telephone or fax service operated by or for the wholesale supplier, or on a publicly accessible website.
- (4) The wholesale supplier must also provide to the customer, within 30 days after delivery, a document that acknowledges the sale of the declared petroleum product and includes the following information:
  - (a) the wholesale supplier's name;
  - (b) the customer's name;
  - (c) the date of the transaction;
  - (d) the kind of declared petroleum product supplied;
  - (e) the volume of declared petroleum product supplied, worked out on a temperature corrected basis;
  - (f) the posted TGP applicable at the time of the transaction;
  - (g) the total price charged for the sale of the declared petroleum product, worked out on a temperature corrected basis;
  - (h) if the customer has requested additional services with the supply of the declared petroleum product:
    - (i) a description of each service; and
    - (ii) the price charged for each service;
  - (i) if the wholesale supplier gives a discount as part of the supply of the declared petroleum product:
    - (i) the amount of the discount; and
    - (ii) the way in which the discount was applied.

Note: A document mentioned in subclause (2) or (4) may include other information.

## Division 3—Supply of declared petroleum products

### 11 Supplying declared petroleum products

- (1) A wholesale supplier of a declared petroleum product must not unreasonably refuse to sell the product by wholesale to a customer.
- (2) However, the wholesale supplier is not required to supply the declared petroleum product to a customer if the wholesale supplier:
  - (a) does not have sufficient supplies of the declared petroleum product that the wholesale supplier can reasonably provide to meet the customer's requirements; or
  - (b) reasonably believes that the customer is unable to pay for the supply; or
  - (c) reasonably believes that the customer is unable to receive or transport the declared petroleum product in compliance with all occupational, health and safety requirements applicable to the customer and the declared petroleum product.

Note: Paragraph (2)(a) does not require a wholesale supplier to supply a declared petroleum product to a customer as a spot sale if the supplier only has sufficient supplies to meet the requirements of the wholesale supplier's contract customers. The wholesale supplier's refusal to supply the declared petroleum product would be a reasonable refusal to supply because it would breach the contracts with the contract customers.

- (3) If a wholesale supplier advertises a minimum amount of declared petroleum product that the supplier will supply as a spot sale, the wholesale supplier is not required to accept a request for the supply of an amount of the declared petroleum product if the requested amount is less than the advertised minimum amount.

### 12 Health and safety requirements

- (1) A wholesale supplier of a declared petroleum product must ensure that:
  - (a) each road vehicle that is used by the wholesale supplier, or an agent of or a contractor to the wholesale supplier, to transport the declared petroleum product is:
    - (i) suitable to load the declared petroleum product at the wholesale supplier's facilities; and
    - (ii) able to safely transport the declared petroleum product; and
    - (iii) clearly marked as suitable to load, and able to safely transport, the declared petroleum product; and
  - (b) each driver of a road vehicle that is used by the wholesale supplier, or an agent of or contractor to the wholesale supplier, to transport a declared petroleum product carries evidence that the driver is competent to operate the road vehicle.

Note: Arrangements for testing the vehicle, and assessing drivers, may be required under another law of the Commonwealth, a State or a Territory.

- (2) A customer must ensure that:
  - (a) each road vehicle under the customer's control that is used to transport a declared petroleum product is:

- (i) suitable to load the declared petroleum product at the supplier's facilities; and
- (ii) able to safely transport the declared petroleum product; and
- (iii) is clearly marked as suitable to load, and able to safely transport, the declared petroleum product; and
- (c) each driver of a road vehicle under the customer's control that is used to transport a declared petroleum product carries evidence that the driver is competent to operate the road vehicle.

Note: Arrangements for testing the vehicle, and assessing drivers, may be required under another law of the Commonwealth, a State or a Territory.

## **Part 3—Fuel re-selling business**

### **Division 1A—Application of this Part**

#### **12A Application of this Part**

- (1) Subject to subclause (2), this Part applies to:
  - (a) a fuel re-selling agreement, including a fuel re-selling agreement entered into before 1 April 2017; and
  - (b) any other retail activities that are:
    - (i) covered by a fuel re-selling agreement; or
    - (ii) undertaken by a retailer for a supplier on a retail site to which a fuel re-selling agreement between the supplier and the retailer applies.
- (2) This Part does not apply to a fuel re-selling agreement if:
  - (a) the supplier reasonably believes that the amount of motor fuel that will be sold by retail at all the retail sites to which the agreement relates will be a combined total of less than 30,000 litres for each month of the term of the agreement; and
  - (b) at least 3 days before entering the agreement, the supplier gave the retailer a written statement setting out the grounds for the belief.
- (3) In any proceedings in which a supplier claims to have had the belief mentioned in paragraph (2)(a), the supplier:
  - (a) must establish that:
    - (i) a written statement was given under paragraph (2)(b) setting out the grounds for the belief; and
    - (ii) the grounds for the belief were reasonable; and
  - (b) cannot rely on any other grounds for the belief.

## **Division 1—Fuel re-selling agreements**

### **Subdivision A—Disclosure document for fuel re-selling agreement**

#### **13 Preparing and updating disclosure documents**

##### *Preparing disclosure document*

- (1) Before entering into a fuel re-selling agreement, a supplier must prepare a document (a **disclosure document**) in accordance with this Subdivision in relation to the agreement.

##### *Updating disclosure document*

- (2) If the fuel re-selling agreement is entered into, and is in force at the end of a financial year the supplier must:
  - (a) prepare an updated disclosure document in relation to the agreement; and
  - (b) do so not later than 3 months after the end of the financial year.

##### *Signature of disclosure documents*

- (3) Each disclosure document must be signed by a director or officer of the supplier.

#### **14 Purpose of disclosure document**

- (1) A disclosure document in relation to a fuel re-selling agreement is used to allow a supplier to give:
  - (a) a retailer; or
  - (b) a prospective retailer; or
  - (c) a person to whom the supplier has consented to be the transferee in relation to the agreement;adequate information to help the retailer, prospective retailer or person make a reasonably informed decision about the agreement.
- (2) An updated disclosure document in relation to a fuel re-selling agreement is used to give a retailer current information that is relevant to the operation of the retailer's retail business.

#### **15 Content and layout of disclosure document**

##### *Agreements of 5 years or more*

- (1) If a disclosure document relates to a fuel re-selling agreement that specifies a duration of at least 5 years, the disclosure document:
  - (a) must be in accordance with Annexure 1; and
  - (b) must be in the form, in the order, and with the numbering, set out in Annexure 1; and
  - (c) must use the same titles as in Annexure 1.

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*Agreements of less than 5 years*

- (2) If a disclosure document relates to a fuel re-selling agreement that specifies a duration of less than 5 years, the disclosure document:
  - (a) must be in accordance with Annexure 2; and
  - (b) must be in the form, in the order, and with the numbering, set out in Annexure 2; and
  - (c) must use the same titles as in Annexure 2.

*General*

- (3) A disclosure document may contain other information in a section of the document marked 'Other relevant disclosure information'.
- (4) A disclosure document must have a table of contents, based on the items in the relevant Annexure, indicating the page number on which each item begins.

Note: In relation to the transfer of a fuel re-selling business—see also Division 2.

## 16 Giving disclosure document

- (1) A supplier must give a disclosure document in relation to a fuel re-selling agreement to each of the following:
  - (a) a retailer that proposes to the supplier to renew or extend the agreement;
  - (b) a prospective retailer;
  - (c) a person to whom the supplier has consented to be the transferee in relation to the agreement.
- (2) A supplier must not seek a non-refundable deposit for giving a retailer, prospective retailer or person a disclosure document in relation to a fuel re-selling agreement.

## 17 Giving additional disclosure document

- (1) This clause applies if:
  - (a) a supplier gives a disclosure document in relation to a fuel re-selling agreement that is in accordance with Annexure 2 to:
    - (i) a retailer; or
    - (ii) a prospective retailer; or
    - (iii) a person to whom the supplier has consented to be the transferee in relation to the agreement; and
  - (b) the retailer, prospective retailer or person asks the supplier to give a disclosure document in relation to the fuel re-selling agreement that is in accordance with Annexure 1 (a **long form disclosure document**).
- (2) The supplier must give to the retailer, prospective retailer or person the long form disclosure document as soon as practicable after the request is made.
- (3) However, the supplier is not required to give the long form disclosure document if:
  - (a) the supplier has already given the long form disclosure document to the retailer, prospective retailer or person; or

- (b) the supplier has already given all of the information that is required to be contained in the long form disclosure document to the retailer, prospective retailer or person; or
- (c) it is otherwise not reasonable for the supplier to give the long form disclosure document.

## **Subdivision B—Disclosure before completing fuel re-selling agreement**

### **18 Application of this Subdivision**

This Subdivision applies to a disclosure document in relation to a fuel re-selling agreement that is to be given by a supplier to:

- (a) a retailer proposing to the supplier to renew or extend the agreement; or
- (b) a prospective retailer; or
- (c) a person to whom the supplier has consented to be the transferee in relation to the agreement.

### **19 Supplier's obligations**

#### *Obligations to prospective retailers*

- (1) If a prospective retailer proposes to become a retailer under a fuel re-selling agreement (the ***proposed agreement***) in relation to a supplier, the supplier must:
  - (a) give the prospective retailer:
    - (i) a copy of this code; and
    - (ii) a disclosure document in relation to the proposed agreement; and
  - (b) do so at least 14 days before the prospective retailer:
    - (i) enters into the proposed agreement, or an agreement to enter into the proposed agreement, with the supplier; or
    - (ii) pays non-refundable money to the supplier or an associate of the supplier in connection with the proposed agreement.

#### *Obligations to retailers proposing to renew or extend agreements*

- (2) If a retailer proposes to a supplier to renew or extend a fuel re-selling agreement, the supplier must:
  - (a) give the retailer:
    - (i) a copy of this code; and
    - (ii) the disclosure document set out in the relevant Annexure; and
  - (b) do so at least 14 days before the fuel re-selling agreement is renewed or extended.

Note: The Annexure on which the disclosure document is based is determined under clause 15.

#### *Obligations to transferees*

- (3) If a supplier consents to a person being the transferee in relation to a fuel re-selling agreement (the ***proposed transfer***), the supplier must:
  - (a) give the person:

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- (i) a copy of this code; and
- (ii) a disclosure document in relation to the proposed transfer; and
- (b) do so at least 14 days before the person:
  - (i) enters into the proposed transfer, or an agreement to enter into the proposed transfer, with the supplier; or
  - (ii) pays non-refundable money to the supplier or an associate of the supplier in connection with the proposed transfer.

## **20 Requirements before entering into fuel re-selling agreement**

- (1) A supplier must not:
  - (a) enter into, renew or extend a fuel re-selling agreement with another party; or
  - (b) enter into an agreement with another party to enter into, renew or extend a fuel re-selling agreement; or
  - (c) accept non-refundable money from another party under a fuel re-selling agreement or an agreement to enter into a fuel re-selling agreement;unless the supplier has received from the other party a written statement that the other party has received, read, and had a reasonable opportunity to understand:
  - (d) this code; and
  - (e) the disclosure document in relation to the agreement.
- (2) A supplier must not enter into, renew or extend a fuel re-selling agreement if the agreement includes a condition that requires the other party to not disclose their name, business address, ABN, ACN or ARBN.
- (3) A supplier must not enter into a fuel re-selling agreement unless the supplier has received a statement, signed by the other party, that the other party:
  - (a) has been given advice about the proposed fuel re-selling agreement, or fuel re-selling business, by:
    - (i) an independent legal adviser; or
    - (ii) an independent business adviser; or
    - (iii) an independent accountant; or
    - (iv) a relevant trade association; or
  - (b) has been told that the other party should obtain advice of that kind, but has decided not to seek it.
- (4) Subclause (3) does not:
  - (a) apply to the renewal or extension of a fuel re-selling agreement; or
  - (b) prevent a supplier from requiring the other party to give the supplier a particular statement mentioned in paragraph (3)(a).

## **Division 2—Transfer of fuel re-selling business**

### **21 Creating disclosure document**

- (1) Before entering into an agreement to transfer a fuel re-selling business, a person who proposes to transfer the business must prepare a document (a *disclosure document*) in accordance with this Division for the purpose of entering into the agreement.
- (2) A disclosure document must be signed by a director or officer of the person.

### **22 Content and layout of disclosure document**

- (1) A disclosure document:
  - (a) must be in accordance with Annexure 3; and
  - (b) must be in the form, in the order, and with the numbering, set out in Annexure 3; and
  - (c) must use the same titles as in Annexure 3.
- (2) A disclosure document may contain other information in a section of the document marked ‘Other relevant disclosure information’.
- (3) A disclosure document must have a table of contents, based on the items in Annexure 3, indicating the page number on which each item begins.

Note: A different disclosure document is used in relation to making, renewing or extending a fuel re-selling agreement—see Division 1.

### **23 Giving disclosure document and other information**

- (1) Subject to subclause (3), a person who proposes to transfer a fuel re-selling business must:
  - (a) give a disclosure document in relation to the agreement to the proposed transferee; and
  - (b) give to the supplier in relation to the business:
    - (i) details of the consideration for the proposed transfer; and
    - (ii) a copy of the disclosure document; and
    - (iii) all details reasonably required by the supplier for the supplier to decide whether to consent to the transfer.
- (2) The supplier must give to the proposed transferee, or an adviser authorised by the proposed transferee, access to information that is:
  - (a) held by the supplier or the supplier’s associates; and
  - (b) necessary to test the reasonableness of financial details mentioned in the disclosure document.
- (3) If the proposed transferee is the supplier in relation to the business:
  - (a) the supplier may waive the requirement to be given the disclosure document under paragraph (1)(a); and
  - (b) subparagraph (1)(b)(ii) does not apply; and

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(c) subclause (2) does not apply.

## **Division 3—Conditions of fuel re-selling agreement**

### **24 Cooling off period**

- (1) A retailer may terminate a fuel re-selling agreement, or an agreement to enter into a fuel re-selling agreement, within 7 days after the earlier of:
  - (a) entering into the agreement; or
  - (b) paying any money under the agreement.
- (2) Subclause (1) does not apply to the renewal, extension or transfer of an existing fuel re-selling agreement.
- (3) If the retailer terminates an agreement under subclause (1), the supplier must, within 14 days, repay all money paid by the retailer to the supplier under the agreement.
- (4) However, the supplier may deduct from the amount to be repaid the supplier's reasonable expenses if the expenses, or the method of calculation of the expenses, have been set out in the agreement.

### **25 Copy of lease**

- (1) If a retailer leases premises from a supplier, or an associate of a supplier, for the purposes of a fuel re-selling business, the supplier or the associate from which the premises are leased must give to the retailer:
  - (a) a copy of the agreement to lease; or
  - (b) a copy of the lease;within one month after the lease or agreement to lease is signed by the parties.
- (2) If a retailer occupies, without a lease, premises leased by a supplier, or an associate of the supplier, the supplier or the associate who leases the premises:
  - (a) must:
    - (i) give to the retailer a copy of the supplier's or associate's lease, or agreement to lease, within one month after the occupation commences; or
    - (ii) give to the retailer a copy of the documents that give the retailer rights to occupy the premises within one month after those documents are signed by the parties; and
  - (b) must give to the retailer written details of the conditions of occupation within one month after the occupation commences.

### **26 Association of retailers**

A supplier or an associate of a supplier:

- (a) must not induce a retailer not to form an association for a lawful purpose; and
- (b) must not induce a retailer not to associate with other retailers for a lawful purpose.

## 27 Prohibition on general release from liability

- (1) A fuel re-selling agreement that is entered into on or after 1 April 2017 must not contain, or require a retailer to sign, a general release of the supplier from liability towards the retailer.
- (2) However, subclause (1) does not prevent a retailer from settling a claim against the supplier, after entering into the fuel re-selling agreement, on terms that include a general release of the supplier from liability towards the retailer in relation to the claim.

## 28 Marketing and other cooperative funds

- (1) If a fuel re-selling agreement provides that a retailer must pay money to a marketing fund, or another cooperative fund, the supplier must:
  - (a) within 3 months after the end of each financial year for the fund, prepare an annual financial statement of the fund's receipts and expenses for that financial year, including the amount spent on production, advertising, administration, goods or services supplied by the supplier or an associate of the supplier, and other stated expenses; and
  - (b) have the statement audited by a registered company auditor within 3 months after the end of the financial year to which the statement relates; and
  - (c) if the retailer asks for a copy of the statement—give a copy of the statement to the retailer within 30 days after the request.
- (2) However, a supplier is not required to comply with paragraph (1)(b) for a financial year if 75% or more of the supplier's retailers in Australia, who contribute to the fund, agree that the supplier is not required to comply.

## 29 Disclosure of materially relevant facts

- (1) If a disclosure document does not mention a matter mentioned in subclause (2), the supplier must notify a retailer or prospective retailer of that fact within a reasonable time (but not more than 14 days) after the supplier becomes aware of the matter.
- (2) For the purposes of subclause (1), the matters are as follows:
  - (a) a change in majority ownership or control of the supplier;
  - (b) court proceedings by a public agency, alleging:
    - (i) a breach of a fuel re-selling agreement; or
    - (ii) a contravention of the Act; or
    - (iii) a contravention of the *Corporations Act 2001*, or regulations made for that Act; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or
    - (vi) an offence of dishonesty;
  - (c) a judgment in criminal or civil proceedings, identifying any of the matters mentioned in paragraph (b);

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- (d) an award in an arbitration against the supplier in Australia, identifying any of the matters mentioned in paragraph (b);
  - (e) a court enforceable undertaking given by the supplier to a public agency, identifying any of the matters mentioned in paragraph (b);
  - (f) a judgment against the supplier under:
    - (i) Part 3 of the *Independent Contractors Act 2006*; or
    - (ii) section 106 of the *Industrial Relations Act 1996* (NSW); or
    - (iii) section 276 of the *Industrial Relations Act 1999* (Qld);other than a judgment in relation to the unfair dismissal of an employee;
  - (g) a civil proceeding in Australia against the supplier by the lesser of:
    - (i) 10% of the supplier's retailers in Australia; or
    - (ii) 10 of the supplier's retailers in Australia;
  - (h) any judgment that is entered against the supplier in Australia, and is not discharged within 28 days, for at least:
    - (i) for a small proprietary company (within the meaning of the *Corporations Act 2001*)—\$100,000; or
    - (ii) for any other company—\$1,000,000;
  - (i) a judgment that is entered against the supplier in a matter mentioned in:
    - (i) if the disclosure document is in accordance with Annexure 1—paragraph 4.2(a) of the disclosure document; or
    - (ii) if the disclosure document is in accordance with Annexure 2—paragraph 3.2(a) of the disclosure document;
  - (j) the supplier becoming a Chapter 5 body corporate.
- (3) For the purposes of paragraphs (2)(b) to (i), the supplier must also notify the retailer or prospective retailer of the following:
- (a) the names of the parties to the proceedings;
  - (b) the name of the court or tribunal;
  - (c) the case number;
  - (d) the general nature of the proceedings;
  - (e) the current status of the proceedings;
  - (f) if the proceedings have been completed—the outcome of the proceedings.
- (4) For the purposes of paragraph (2)(j), the supplier must also notify the retailer or prospective retailer of the name and address of the administrator, controller or liquidator.

### **30 Making updated disclosure document available**

- (1) If a retailer asks the supplier, in writing, to give the retailer an updated disclosure document in relation to the fuel re-selling agreement, the supplier must give the document to the retailer within 14 days after the request.
- (2) The retailer may make a request under subclause (1) only once in a period of 12 months.

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- (3) For the purposes of subclause (2), the retailer may make a request under subclause (1) in a period of 12 months even if, in the same period, the retailer has asked for a disclosure document in accordance with subclause 32(7).

Note: Subclause 32(7) requires a retailer to ask for a disclosure document as part of exercising an option to renew a fuel re-selling agreement. That subclause is not intended to limit the retailer's right to ask for a copy of the agreement under this clause.

### 31 Supplier's proprietary fuel card

- (1) If:
- (a) a fuel re-selling agreement provides that:
    - (i) a retailer must accept the supplier's proprietary fuel card for a purchase made by an end-user customer; and
    - (ii) reimbursement in relation to the purchase is to be payable directly into the retailer's nominated bank account; and
  - (b) a transaction involving a purchase is processed by electronic funds transfer; the supplier must reimburse the retailer for the purchase within 3 business days after the supplier receives complete and accurate details of the transaction, unless the supplier is unable to reimburse the retailer because of circumstances beyond the supplier's reasonable control.
- (2) If:
- (a) a fuel re-selling agreement provides that a retailer must accept the supplier's proprietary fuel card for a purchase by an end-user customer; and
  - (b) either or both of subparagraph (1)(a)(ii) and paragraph (1)(b) do not apply; the supplier must reimburse the retailer for a transaction involving a purchase within 5 business days after the supplier receives complete and accurate details of the transaction, unless the supplier is unable to reimburse the retailer because of circumstances beyond the supplier's reasonable control.

### 32 Duration of agreement

*Fuel re-selling agreements entered into before 1 March 2007*

- (1) A fuel re-selling agreement entered into before 1 March 2007 must retain the duration specified in the agreement and the arrangements (if any) for the exercise of options to renew the agreement.

Note: These regulations are a remake of the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006*, which commenced on 1 March 2007.

- (2) A fuel re-selling agreement entered into before 1 March 2007, which is a franchise agreement to which the *Petroleum Retail Marketing Franchise Act 1980* applied, and that relates to a retail site, must retain:
- (a) the duration specified in the agreement; and
  - (b) the arrangements (if any) for the exercise of options to renew the agreement;
- that were specified in the renewal arrangements set out in that Act.
- (3) The duration of a fuel re-selling agreement to which subclause (1) or (2) applies:

- (a) must not be altered otherwise than in accordance with this code; and
- (b) must not be altered for a reason that is, in substance, related to:
  - (i) the commencement of the Oilcode set out in Schedule 1 to the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006*; or
  - (ii) the repeal of the *Petroleum Retail Marketing Franchise Act 1980* or the *Petroleum Retail Marketing Sites Act 1980*.

Note: If a fuel re-selling agreement entered into before 1 March 2007 contains a provision allowing the supplier to vary the duration of the agreement (for example subsequent to a change in any law), the duration of that agreement is not to be altered due to the commencement of the Oilcode or the repeal of the specified Acts.

*Fuel re-selling agreements entered into on or after 1 March 2007*

- (4) A fuel re-selling agreement entered into on or after 1 March 2007 must have a duration of at least 5 years, unless subclause (5) or (11) applies.
- (5) A fuel re-selling agreement entered into on or 1 March 2007 that requires the retailer to purchase fuel from the supplier or that gives the supplier an entitlement to sell fuel to the retailer, and that relates to a retail site owned or leased by the supplier, must have:
  - (a) a duration of at least 5 years; and
  - (b) a further duration, as extended by the exercise of one or more options to renew the agreement, of at least 4 years.

*Renewal of fuel re-selling agreements*

- (6) A supplier must not fail or refuse to renew a fuel re-selling agreement mentioned in subclause (2) or (5) unless the supplier has decided that the supplier will:
  - (a) lease the retail site to which the agreement relates for a purpose other than the retail sale of motor fuel; or
  - (b) dispose of the retail site; or
  - (c) operate the retail site for a purpose other than the retail sale of motor fuel.
- (7) If a retailer proposes to exercise an option to renew a fuel re-selling agreement to which paragraph (5)(b) relates, the retailer must:
  - (a) request that the supplier provide a disclosure document in relation to the agreement, as set out in Annexure 1 or 2 (whichever applies), setting out the terms and conditions to apply to a renewed fuel re-selling agreement; and
  - (b) do so at least 60 days, and not more than 120 days, before the expiration of the current term of the agreement.
- (8) The terms and conditions, excluding duration, of a renewed fuel re-selling agreement to which paragraph (5)(b) relates may differ from the original or current terms and conditions of the agreement, but any change must be reasonable and be made in good faith.
- (9) If a request is made by a retailer under subclause (7), the supplier must provide the disclosure document:
  - (a) within 14 days after the request is made; or

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(b) if the terms and conditions are unchanged from the current terms and conditions of the agreement—at least 14 days before the agreement is renewed.

(10) Part 4 applies to a dispute arising from:

- (a) a failure by a supplier to renew a fuel re-selling agreement; or
- (b) a failure by a supplier and retailer to agree on terms and conditions to apply to a renewed fuel re-selling agreement.

*Circumstances in which a fuel re-selling agreement may have a different duration*

(11) A supplier and a prospective retailer may agree on a different duration for a fuel re-selling agreement if:

- (a) the retail site on which the fuel re-selling business is carried on is leased under a lease that will expire:
  - (i) within 5 years after the agreement commences (for an agreement mentioned in subclause (4)); or
  - (ii) within 9 years after the agreement commences (for an agreement mentioned in subclause (5)); or
- (b) the supplier has decided that, within 5 years after the agreement commences (for an agreement mentioned in subclause (4)), or within 9 years after the agreement commences (for an agreement mentioned in subclause (5)) it will:
  - (i) lease the retail site on which the fuel re-selling business is to be carried on for a purpose other than the retail sale of motor fuel; or
  - (ii) dispose of the retail site on which the fuel re-selling business is to be carried on; or
  - (iii) operate the retail site on which the fuel re-selling business is to be carried on for a purpose other than the retail sale of motor fuel; or
- (c) the total initial non-refundable amount that the prospective retailer must pay, or agree to pay, to the supplier and any associates of the supplier, before commencing operations under a new or renewed fuel re-selling agreement, would be less than \$20,000, excluding any of the following amounts:
  - (i) payment for motor fuel at or below the usual wholesale price;
  - (ii) payment of the usual wholesale price of motor fuel taken on consignment;
  - (iii) payment at market value for the purchase or lease of real property, fixtures, equipment, services or supplies that are needed to operate under the fuel re-selling agreement;
  - (iv) security deposits for fuel stocks, real property, fixtures, equipment, services or supplies provided by the supplier.

Note: Paragraph (c) allows for a flexible duration of an agreement where less than \$20,000 is paid up-front to the supplier (for example, for goodwill or as “key money”) as a condition of entering into the agreement.

(12) If:

- (a) a supplier and a prospective retailer agree on a different duration for a fuel re-selling agreement that is entered into on or after 1 March 2007; but

(b) the reason for the different duration does not comply with subclause (11); the fuel re-selling agreement is taken to have a duration of 5 years (for an agreement mentioned in subclause (4)) or 9 years (for an agreement mentioned in subclause (5)).

*Termination by agreement*

- (13) If a supplier and a retailer agree to terminate a current fuel re-selling agreement before the time at which it would otherwise expire, this clause does not require the agreement to continue until that time.
- (14) If a supplier and a retailer agree as described in subclause (13):
- (a) the supplier and another retailer may enter a fuel re-selling agreement (a **temporary agreement**) that has a duration of not more than 6 months; and
  - (b) on the expiry of the temporary agreement, the supplier must:
    - (i) offer the retailer a fuel re-selling agreement that has a duration that complies with this clause; or
    - (ii) comply with clause 39.
- (15) A retail site cannot be the subject of consecutive temporary agreements.

### **33 Renegotiation or variation of agreement**

- (1) A party to a fuel re-selling agreement may require that the terms of the agreement be renegotiated if the operation of the agreement is substantially affected by a matter, within the control of the other party, that:
- (a) was not disclosed by the other party; and
  - (b) was not reasonably foreseen by either party.
- (2) A party may:
- (a) vary a term of the agreement; or
  - (b) exercise a discretion under the agreement;
- without the consent of the other party only if the matter that may be varied, or the discretion that may be exercised, is disclosed in the agreement when the agreement is made.
- (3) Part 4 applies to any dispute that arises between the parties under this clause.
- (4) If a dispute arising from a re-negotiation under subclause (1), a variation under or an exercise of a discretion under subclause (2), is:
- (a) dealt with using the dispute resolution procedure in Part 4; and
  - (b) not resolved after the use of those procedures;
- the retailer may require the supplier to offer to terminate the fuel re-selling agreement under Division 4.

### **34 Transfer of the fuel re-selling agreement**

- (1) A request for a supplier's consent to the transfer of a fuel re-selling agreement must be made in writing.
- (2) A supplier must not unreasonably withhold consent to the transfer.

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(3) For the purposes of subclause (2), circumstances in which it is reasonable for a supplier to withhold consent include the following:

- (a) the proposed transferee is unlikely to be able to meet the financial obligations that the proposed transferee would have under the fuel re-selling agreement;
- (b) the proposed transferee does not meet a reasonable requirement of the agreement for the transfer of the agreement;
- (c) the proposed transferee has not met the selection criteria set out in the disclosure document given to the retailer under clause 16;
- (d) the disclosure obligations under Division 2 have not been met;
- (e) the proposed transferee does not agree in writing to comply with the obligations of the retailer under the fuel re-selling agreement;
- (f) the retailer has not paid, or made reasonable provision to pay, an amount owing to the supplier;
- (g) the retailer has breached the fuel re-selling agreement, and has not remedied the breach.

Note: For paragraph (3)(c), see paragraph 21.4(j) of Annexure 1 (which sets out the requirement for selection criteria to be included in the disclosure documents).

(4) The supplier is taken to have given consent to the transfer if the supplier does not, within 42 days after the request was made, give to the retailer written notice:

- (a) that consent is withheld; and
- (b) setting out why consent is withheld.

## **Division 4—Termination of fuel re-selling agreement**

### **35 Termination by supplier—breach by retailer**

- (1) Subject to clause 36, this clause applies if:
  - (a) a retailer breaches a fuel re-selling agreement; and
  - (b) the supplier proposes to terminate the fuel re-selling agreement.
- (2) The supplier must:
  - (a) give the retailer reasonable notice that the supplier proposes to terminate the fuel re-selling agreement because of the breach; and
  - (b) notify the retailer of what the supplier requires to be done to remedy the breach; and
  - (c) allow the retailer a reasonable time to remedy the breach.
- (3) For the purposes of paragraph (2)(c), the supplier is not required to allow more than 30 days.
- (4) If the breach is remedied in accordance with paragraphs (2)(b) and (c), the supplier must not terminate the fuel re-selling agreement because of that breach.
- (5) Part 4 applies to a dispute arising from termination under this clause.

### **36 Termination by supplier—special circumstances**

- (1) A supplier is not required to comply with clause 35 if the retailer:
  - (a) no longer holds a licence that the retailer must hold to carry on the fuel re-selling business; or
  - (b) becomes bankrupt, insolvent under administration or a Chapter 5 body corporate; or
  - (c) voluntarily abandons the fuel re-selling business; or
  - (d) is convicted of a serious offence; or
  - (e) operates the fuel re-selling business at a retail site, or an associated business conducted on the retail site, in a way that is fraudulent or that endangers public health, safety or the environment; or
  - (f) agrees to the termination of the fuel re-selling agreement; or
  - (g) breaches the fuel re-selling agreement, otherwise than by behaviour described in paragraphs (a) to (f), at least 3 times; or
  - (h) is likely, by continued occupation of a retail site to which the fuel re-selling agreement relates, to cause substantial damage to the business, property or reputation of the supplier; or
  - (i) if the fuel re-selling agreement is a commission agency—fails to bank the supplier's money under the commission agency.
- (2) A supplier is not required to comply with clause 35 in relation to a fuel re-selling agreement relating to a particular retail site if:

- (a) the whole or a substantial part of the site is to be acquired by, or by a public authority of, the Commonwealth, a State or a Territory under a law relating to the compulsory acquisition of land; or
- (b) the sale of motor fuel at the site is prohibited by or under a law relating to the use of land.

### **37 Termination by supplier of agreement mentioned in paragraph 32(11)(c)**

- (1) This clause applies if:
  - (a) paragraph 32(11)(c) applies to a fuel re-selling agreement; and
  - (b) the fuel re-selling agreement does not specify a minimum duration for the agreement; and
  - (c) the supplier intends to terminate the fuel re-selling agreement.
- (2) The supplier must:
  - (a) give the retailer at least 30 days' notice that the supplier intends to terminate the fuel re-selling agreement; and
  - (b) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of motor fuel supplied by the supplier to the retailer, at a price:
    - (i) that is agreed between the supplier and the retailer; or
    - (ii) if the supplier and the retailer are unable to agree on a price—that is determined by a valuer agreed to by the supplier and the retailer; and
  - (c) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of merchandise which the retailer has obtained under the supplier's franchise or operational specifications (if any), or obtained with the supplier's approval during the term of the fuel re-selling agreement, at a price:
    - (i) that is agreed between the supplier and the retailer; or
    - (ii) if the supplier and the retailer are unable to agree on a price—that is determined by a valuer agreed to by the supplier and the retailer; and
  - (d) offer to buy, or nominate a purchaser of, equipment which the retailer has obtained under the supplier's business or operational specifications (if any), or obtained with the supplier's approval during the term of the fuel re-selling agreement for use in the fuel re-selling business, at a price:
    - (i) that is agreed between the supplier and the retailer; or
    - (ii) if the supplier and the retailer are unable to agree on a price—that is determined by a valuer agreed to by the supplier and the retailer, in accordance with valuation principles disclosed to the retailer before the equipment was obtained.
- (3) Subject to any agreement with the supplier, the retailer must use reasonable efforts to sell the stock and equipment mentioned in paragraphs (2)(b), (c) and (d).
- (4) Part 4 applies to a dispute about compensation arising from the termination of a fuel re-selling agreement under this clause.

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### **38 Agreed early termination**

- (1) This clause applies if a retailer and supplier agree to terminate a fuel re-selling agreement before the agreement expires.
- (2) The supplier must:
  - (a) notify the retailer that:
    - (i) the retailer has rights under the fuel re-selling agreement; and
    - (ii) the supplier will negotiate arrangements to terminate those rights by consent; and
    - (iii) the retailer should seek financial and legal advice about any offer made by the supplier; and
  - (b) offer to pay costs relating to the termination of the fuel re-selling agreement, including (subject to the terms of the fuel re-selling agreement) a proportional refund, for the remaining period of the fuel re-selling agreement, of any fee paid to the supplier when the retailer entered into the fuel re-selling agreement; and
  - (c) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of motor fuel supplied by the supplier to the retailer, at a price:
    - (i) that is agreed between the supplier and the retailer; or
    - (ii) if the supplier and the retailer are unable to agree on a price—that is determined by a valuer agreed to by the supplier and the retailer; and
  - (d) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of merchandise which the retailer has obtained under the supplier's franchise or operational specifications (if any), or obtained with the supplier's approval during the term of the fuel re-selling agreement, at a price:
    - (i) that is agreed between the supplier and the retailer; or
    - (ii) if the supplier and the retailer are unable to agree on a price—that is determined by a valuer agreed to by the supplier and the retailer; and
  - (e) offer to buy, or nominate a purchaser of, equipment which the retailer has obtained under the supplier's business or operational specifications, (if any) or obtained with the supplier's approval during the term of the fuel re-selling agreement for use in the fuel re-selling business, at a price:
    - (i) that is agreed between the supplier and the retailer; or
    - (ii) if the supplier and the retailer are unable to agree on a price—that is determined by valuation carried out by a valuer agreed to by the supplier and the retailer, in accordance with valuation principles disclosed to the retailer before the equipment was obtained.
- (3) Subject to any agreement with the supplier, the retailer must use reasonable efforts to sell the stock and equipment mentioned in paragraphs (2)(c), (d) and (e).
- (4) Part 4 applies to a dispute about compensation arising from the termination of a fuel re-selling agreement under this clause.

**39 Expiry**

- (1) At least 60 days before the expiry of a fuel re-selling agreement, the supplier and retailer must discuss the procedures that will apply to settle the commercial arrangements between the supplier and the retailer upon expiry of the agreement.
- (2) On the expiry of the fuel re-selling agreement, the supplier must take the actions mentioned in paragraphs 38(2)(c), (d) and (e).

## **Part 4—Dispute resolution scheme**

### **40 Application of this Part**

This Part applies to the following disputes:

- (a) a dispute arising if a wholesale supplier fails to supply a declared petroleum product to a customer;
- (b) a dispute arising between the parties to a fuel re-selling agreement;
- (c) a dispute arising in relation to any other provision of Part 2 or 3.

### **41 Dispute resolution adviser**

The Minister must, in writing, appoint a person (the *dispute resolution adviser*) to advise the Minister on dispute resolution under this Part.

### **42 Disputes about supply of a declared petroleum product—advice about supply**

- (1) This clause applies if:
  - (a) a wholesale supplier's supply of a declared petroleum product has been interrupted; or
  - (b) a wholesale supplier has a shortfall of supply.
- (2) The wholesale supplier may inform the dispute resolution adviser of:
  - (a) the location of the wholesale facility at which the interruption or shortfall has occurred; and
  - (b) the declared petroleum product affected by the interruption or shortfall; and
  - (c) the expected duration of the interruption or shortfall; and
  - (d) the reason why the interruption or shortfall has occurred.

### **43 Disputes about supply of a declared petroleum product**

- (1) This clause applies to a dispute in relation to a wholesale supplier's failure to supply a declared petroleum product to a customer.
- (2) The complainant must tell the respondent in writing:
  - (a) the nature of the dispute; and
  - (b) what outcome the complainant wants; and
  - (c) what action the complainant considers will settle the dispute.
- (3) The complainant may:
  - (a) notify the dispute resolution adviser that the dispute exists; and
  - (b) ask the dispute resolution adviser to attempt to resolve the dispute.
- (4) If the complainant notifies the dispute resolution adviser under subclause (3), the complainant must, within a reasonable time:
  - (a) notify the dispute resolution adviser of:
    - (i) the nature of the complaint; and

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- (ii) the parties to the dispute; and
    - (iii) the expected effect on the complainant of the disputed conduct; and
  - (b) give the dispute resolution adviser evidence to support the complaint.
- (5) The dispute resolution adviser may ask the respondent to give to the dispute resolution adviser:
- (a) as soon as practicable; but
  - (b) within 6 hours after the request;
- a copy of the respondent's records relating to the failure to supply the declared petroleum product, or relating to any other matter mentioned in clause 11.
- (6) The respondent must comply with a request under subclause (5).
- (7) The dispute resolution adviser may make a non-binding determination about the dispute.

**44 Dispute resolution procedure—disputes other than under clause 43**

- (1) For a dispute to which clause 43 does not apply, the parties must attempt to agree about how to resolve the dispute, unless the dispute resolution adviser is satisfied that there is no reason to attempt negotiation.
- (2) If the parties attempt to agree about how to resolve the dispute:
- (a) the parties may agree to refer the matter to a person to provide mediation or other assistance; or
  - (b) if the parties cannot agree to refer the matter:
    - (i) the parties must notify the dispute resolution adviser that they cannot agree; and
    - (ii) the dispute resolution adviser must appoint a person (a **designated mediator**) to provide mediation or other assistance within 7 days after the dispute resolution adviser has been notified.
- (3) The designated mediator must decide:
- (a) the time for providing the mediation or assistance; and
  - (b) a place in Australia for providing the mediation or assistance.
- (4) The parties must try to resolve the dispute with the assistance of the designated mediator.
- (5) In trying to resolve the dispute, a party:
- (a) must be represented by a person who has authority to enter an agreement to settle the dispute on behalf of the party; and
  - (b) may, with the agreement of the designated mediator, be advised or otherwise assisted by another person.
- (7) The parties are the only persons authorised by this code to enter into any agreement that is necessary to settle the dispute.
- (8) If the designated mediator thinks that the matters in dispute may apply more generally, the designated mediator may attempt to reach a general resolution to those matters, including by:

- (a) asking the supplier to raise the matters with the supplier's dealer council;  
or
- (b) dealing with other disputes which have common features with the matter for which the person is appointed.

#### **45 Provision of mediation and assistance**

- (1) All mediation and assistance provided under this Part must be carried out in good faith.
- (2) A designated mediator in relation to a dispute must inform the dispute resolution adviser, within 28 days after being appointed, of the arrangements made for providing mediation or other assistance.
- (3) To resolve a dispute, the designated mediator may:
  - (a) review documents relating to the dispute; and
  - (b) seek the assistance of the parties to resolve the dispute; and
  - (c) consider any other materials relevant to the dispute.
- (4) The parties are not required to continue to use the services of the designated mediator if the dispute has not been resolved 30 days after the start of arrangements to resolve the dispute.
- (5) The dispute resolution adviser may comment on any advice given by the designated mediator.
- (6) The dispute resolution adviser may make a non-binding determination about the dispute.
- (7) Before making a non-binding determination under subclause (6), the dispute resolution adviser may allow each party to give, within the period specified by the dispute resolution adviser, information about the following matters:
  - (a) the contractual arrangements between the parties;
  - (b) how the party has complied with the code;
  - (c) what action the party has taken towards resolving the dispute;
  - (d) how the dispute could be resolved;
  - (e) if a non-binding determination was made, how much time the party would require to give effect to the determination;
  - (f) any other matters the party considers relevant.

#### **46 Evidence not admissible**

- (1) Evidence of information given, or of any act done, by a person for the purposes of a procedure under this Part is not admissible in:
  - (a) any court; or
  - (b) any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
  - (c) any proceedings before a person authorised by the consent of the parties to hear evidence.

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*Exceptions*

- (2) Subclause (1) does not apply so as to prevent the admission of particular evidence if the parties agree to the evidence being admissible.
- (3) Subclause (1) does not apply to proceedings in relation to the falsity of the information given by the person.

**47 Conditions**

- (1) This Part:
  - (a) does not affect the right of a party to a dispute under this code to take legal proceedings under the code; and
  - (b) does not apply to a dispute over whether an event mentioned in paragraph 36(1)(a), (b), (c), (d) or (f) or subclause 36(2) has occurred.
- (2) The parties are equally liable for the costs of any mediation or other assistance to resolve the dispute under this Part (other than their own costs), unless they agree otherwise.
- (3) The parties must pay for their own costs relating to any mediation or other assistance to resolve the dispute.

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## **Annexure 1—Supplier's disclosure document for fuel re-selling agreements—long form**

Note: See subclauses 15(1) and 17(1).

### **1 First page**

#### 1.1 On the first page:

- (a) in bold upper case:  
**DISCLOSURE DOCUMENT FOR RETAILER OR PROSPECTIVE RETAILER**; and
- (b) the supplier's name, ABN, ACN or ARBN, business address and phone number; and
- (c) the date of the disclosure document; and
- (d) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a fuel re-selling agreement.

Entering into a fuel re-selling agreement is a serious undertaking.

If you sign a fuel re-selling agreement, it is legally binding on you.

You are entitled to a waiting period of 14 days before you enter into the agreement.

If the agreement is a new fuel re-selling agreement (not a renewal, extension or transfer), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

Take your time, read all the documents carefully, talk to other fuel re-selling businesses and assess your own financial resources and capabilities to deal with the requirements of the fuel re-selling business.

You should make your own enquiries about the agreement and the business of the agreement.

You should get independent legal, accounting and business advice before signing the fuel re-selling agreement. You should also seek advice on the Federal, State or Territory and local laws that apply to it.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

You should contact the appropriate industry association.

The Australian Competition and Consumer Commission (the *ACCC*) has published a wide range of information about the *Oil Code of Conduct* to facilitate understandings and compliance with the *Oil Code of Conduct*.

This information can be obtained from the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au) or by contacting the ACCC Infocentre on 1300 302 502.

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## 2 Supplier's details

- 2.1 The supplier's name, ABN, ACN or ARBN, address of registered office and principal place of business in Australia.
- 2.2 The name under which the supplier carries on business in Australia relevant to the fuel re-selling agreement.
- 2.3 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the supplier that is a body corporate (if any).
- 2.4 The name and address of each associate of the supplier that is not a body corporate (if any).
- 2.5 For each director, secretary, officer, or partner of the supplier who is likely to have management responsibilities for the supplier's business operations in relation to the fuel re-selling agreement—name, position held and qualifications (if any).

## 3 Supplier's business experience

- 3.1 A summary of the relevant business experience in the last 10 years of each person, other than an officer, mentioned in subitem 2.5.
- 3.2 A summary of relevant business experience of the supplier in the last 10 years, including:
  - (a) length of experience in:
    - (i) operating a petroleum retailing business; and
    - (ii) offering other fuel re-selling agreements that are substantially the same as the fuel re-selling agreement; and
  - (b) whether the supplier has offered re-selling agreements for other businesses and, if so:
    - (i) a description of each such business; and
    - (ii) the length of time the supplier offered agreements for each such business.

## 4 Litigation

- 4.1 Details of:
  - (a) current proceedings, and proceedings finalised in the previous 3 years, by a public agency, criminal or civil proceedings or arbitration, relevant to the fuel re-selling agreement, against the supplier in Australia alleging:
    - (i) breach of a fuel re-selling agreement; or
    - (ii) a contravention of the Act; or
    - (iii) a contravention of the *Corporations Act 2001*; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or
    - (vi) an offence of dishonesty; and
  - (b) proceedings against the supplier under:
    - (i) Part 3 of the *Independent Contractors Act 2006*; or

- (ii) section 106 of the *Industrial Relations Act 1996* (NSW); or
- (iii) section 276 of the *Industrial Relations Act 1999* (Qld).

4.2 Whether the supplier or a director of the supplier has been:

- (a) in the last 10 years—convicted of a serious offence, or an equivalent offence outside Australia; or
- (b) in the last 5 years—subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1(a); or
- (c) in the last 10 years—bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere.

4.3 For the purposes of subitems 4.1 and 4.2, the following details (where relevant):

- (a) the names of the parties to the proceedings;
- (b) the name of the court, tribunal or arbitrator;
- (c) the case number;
- (d) the general nature of the proceedings;
- (e) the current status of the proceedings;
- (f) the date of order or undertaking under section 87B of the Act;
- (g) the penalty or damages assessed or imposed;
- (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
- (i) the period of the bankruptcy, insolvency under administration or external administration.

## **5 Payments to agents**

5.1 For any agreement under which the supplier must pay an amount to a person who is not an officer, director or employee of the supplier in connection with the introduction or recruitment of a retailer—the name of the person.

## **6 Existing fuel re-selling agreements**

6.1 For each existing fuel re-selling agreement:

- (a) if the supplier has fuel re-selling agreements with fewer than 50 retailers—the name, address and contact details of each retailer; or
- (b) if the supplier has fuel re-selling agreements with 50 or more retailers—the name, address and contact details of each retailer in the State, region or metropolitan area in which the fuel re-selling agreement is to operate.

6.2 A supplier does not need to provide the information mentioned in subitem 6.1 about a particular retailer if that retailer has requested, in writing, that the information not be disclosed.

6.3 For each of the last 3 years and for each of the following events—the number of fuel re-selling businesses of the supplier for which the event happened:

- (a) the fuel re-selling agreement was transferred;
- (b) the fuel re-selling business ceased to operate;
- (c) the fuel re-selling agreement was terminated by the supplier;
- (d) the fuel re-selling agreement was terminated by the retailer;

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- (e) the fuel re-selling agreement was not renewed when it expired;
- (f) the fuel re-selling business was bought back by the supplier;
- (g) the fuel re-selling agreement was terminated and the fuel re-selling business was acquired by the supplier.

Note: An event may be counted more than once if more than one paragraph applies to it.

- 6.4 The supplier must supply for each event mentioned in subitem 6.3:
- (a) if there are fewer than 50 retailers involved in an event—the name, address and contact details of each retailer; or
  - (b) if there are 50 or more retailers involved in an event—the name, address and contact details of each retailer in the State, region or metropolitan area in which the fuel re-selling agreement is to operate.
- 6.5 A supplier does not need to provide information mentioned in subitem 6.4 about a particular retailer if that retailer has requested, in writing, that the information not be disclosed.

## 7 Intellectual property

- 7.1 For any trade mark used to identify, and for any patent, design or copyright that is significant and material to, the fuel re-selling agreement (*intellectual property*):
- (a) a description of the intellectual property; and
  - (b) details of the retailer's rights and obligations in connection with the use of the intellectual property; and
  - (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
  - (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
    - (i) the name of the court or tribunal; and
    - (ii) the matter number; and
    - (iii) a summary of the claim or judgment; and
  - (e) if the intellectual property is not owned by the supplier—who owns it; and
  - (f) details of any agreement that significantly affects the supplier's rights to use, or to give others the right to use, the intellectual property, including:
    - (i) the parties to the agreement; and
    - (ii) the nature and extent of any limitation; and
    - (iii) the duration of the agreement; and
    - (iv) the conditions under which the agreement may be terminated.
- 7.2 The supplier is taken to comply with subitem 7.1 for any information that is confidential if the supplier gives:
- (a) a general description of the subject matter; and
  - (b) a summary of conditions for use by the retailer.

## 8 Territory

- 8.1 Whether the fuel re-selling agreement is:
- (a) for an exclusive or non-exclusive territory; or

(b) limited to a particular retail site.

8.2 For the territory:

- (a) whether other retailers may operate a fuel retail business; and
- (b) whether the supplier or an associate of the supplier may operate a fuel retail business; and
- (c) whether the supplier or an associate of the supplier may establish other fuel re-selling systems; and
- (d) whether the retailer may operate a fuel retail business outside the territory; and
- (e) whether the supplier may change the territory.

## **9 Supplier's requirements for the supply of goods or services to a retailer**

9.1 For the supplier's requirements for supply of goods or services to a retailer—details of:

- (a) any requirement for the retailer to maintain a level of inventory or acquire an amount of goods or services; and
- (b) any restrictions on acquisition of goods or services by the retailer from other sources; and
- (c) ownership by the supplier or an associate of the supplier of an interest in any supplier from which the retailer may be required to acquire goods or services; and
- (d) the obligation of the retailer to accept goods or services from the supplier; and
- (e) the supplier's obligation to supply goods or services to the retailer; and
- (f) whether the retailer will be offered the right to be supplied with the whole range of the goods or services of the fuel re-selling system; and
- (g) the conditions under which the retailer can return goods, and to whom; and
- (h) the conditions under which the retailer can obtain a refund for services provided by the supplier, and from whom; and
- (i) whether the supplier may change the range of goods or services, and if so, to what extent; and
- (j) whether the supplier or an associate of the supplier will receive a rebate or other financial benefit from the supply of goods or services to suppliers, and whether any rebate or financial benefit is shared, directly or indirectly, with retailers; and
- (k) the conditions that apply if the supplier cannot supply the goods or services; and
- (l) how the supplier deals with motor fuel losses.

Note: Before a requirement is made under paragraph (b) or (c), the supplier may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act, which deals with authorisations, notifications and clearances in respect of restrictive trade practices).

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## 10 Supplier's requirements for the supply of goods or services by a retailer

- 10.1 For the supplier's requirements for supply of goods or services by a retailer—details of:
- (a) any restrictions on the goods or services that the retailer may supply; and
  - (b) any restrictions on the persons to whom the retailer may supply goods or services; and
  - (c) whether the retailer must supply the whole range of the goods or services of the fuel re-selling system.

Note: Before a requirement is made under paragraph (a) or (b), the supplier may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Part VII of the Act, which deals with authorisations, notifications and clearances in respect of restrictive trade practices).

## 11 Retail sites

- 11.1 The policy of the supplier or an associate of the supplier for selection of a retail site to be occupied by the retailer under the fuel re-selling agreement.
- 11.2 Details of whether a retail site to which the fuel re-selling agreement relates has been subject to a fuel re-selling business operated during the past 3 years under a fuel re-selling agreement between the supplier and another retailer and, if so, details of:
- (a) the fuel re-selling business; and
  - (b) the circumstances in which the previous retailer ceased to operate; and
  - (c) the profitability of the fuel re-selling business; and
  - (d) any limitations on the basis and reliability of the calculation for the purposes of paragraph (c).
- 11.3 Details of whether a retail site to which the fuel re-selling agreement relates has been operated in the last year for the retail sale of motor fuel supplied by the supplier, including:
- (a) the name of the business and the vendor; and
  - (b) whether the vendor was a retailer, agent or employee of the supplier or an associate of the supplier.
- 11.4 The details mentioned in subitems 11.2 and 11.3 may be in a separate document and may be made available for inspection at a time and place mentioned in the disclosure document.

## 12 Marketing or other cooperative funds

- 12.1 For each marketing or other cooperative fund, controlled or administered by or for the supplier, to which the retailer may be required to contribute, the following details:
- (a) the kinds of persons who contribute to the fund (for example, retailer, supplier or outside supplier);
  - (b) whether the supplier must contribute to the fund in relation to businesses owned or operated by the supplier that are substantially the same as the business to be operated by the retailer and, if so, whether the contribution is worked out in the same way as for a retailer;

- (c) how much the retailer must contribute to the fund and whether other retailers must contribute at a different rate;
- (d) who controls or administers the fund;
- (e) whether the fund is audited and, if so, by whom and when;
- (f) whether the fund's financial statements can be inspected by, or will be given to, retailers;
- (g) the kinds of expenses for which the fund may be used;
- (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
- (i) whether the supplier or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
- (j) whether the supplier must spend part of the fund on marketing, advertising or promoting the retailer's business.

### **13 Payments**

#### *Prepayments*

- 13.1 If the supplier requires a payment before the fuel re-selling agreement is entered into:
- (a) why the money is required; and
  - (b) how the money is to be applied; and
  - (c) who will hold the money.
- 13.2 The conditions under which a payment mentioned in subitem 13.1 will be refunded.

#### *Establishment costs*

- 13.3 Details of the range of costs to start operating the fuel re-selling business, based on current practice, for the following matters:
- (a) real property, including property type, location and building size;
  - (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;
  - (c) inventory required to begin operation;
  - (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
  - (e) additional funds, including working capital, required by the retailer before operations begin;
  - (f) other payments by a retailer to begin operations.
- 13.4 For the purposes of subitem 13.3, the details for each payment must include:
- (a) a description of the payment; and
  - (b) the amount of the payment or the formula used to work out the payment; and
  - (c) to whom the payment is made; and
  - (d) when the payment is due; and
  - (e) whether the payment is refundable and, if so, under what conditions.

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- 13.5 For the purposes of subitem 13.4, if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.

*Other payments*

- 13.6 For each recurring or isolated payment payable by the retailer to the supplier or an associate of the supplier or to be collected by the supplier or an associate of the supplier for another person:
- (a) a description of the payment; and
  - (b) the amount of the payment or the formula used to work out the payment; and
  - (c) to whom the payment is made; and
  - (d) when the payment is due; and
  - (e) whether the payment is refundable and, if so, under what conditions.
- 13.7 For the purposes of subitem 13.6, if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.

## 14 Financing

- 14.1 The material conditions of each financing arrangement that the supplier, its agent or an associate of the supplier offers to the retailer, or requires the retailer to enter, for establishment or operation of the fuel re-selling business.
- 14.2 For the purposes of subitem 14.1, the material conditions of a financing arrangement include (but are not limited to):
- (a) a requirement that the retailer must provide a minimum amount of unborrowed working capital for the fuel re-selling business; and
  - (b) a requirement that the retailer must meet a stated debt to equity ratio in relation to carrying out the business.

## 15 Supplier's obligations

- 15.1 A summary of the conditions of the fuel re-selling agreement that deal with obligations of a supplier (or references to the relevant conditions of the fuel re-selling agreement), including:
- (a) providing training:
    - (i) before the fuel re-selling business starts; and
    - (ii) during operation of the fuel re-selling business; and
  - (b) operating a dealer council.

## 16 Retailer's obligations

- 16.1 A summary of the conditions of the fuel re-selling agreement that deal with obligations of a retailer (or references to the relevant conditions of the fuel re-selling agreement) for the following matters:
- (a) site selection and acquisition for retail sites;
  - (b) requirements for starting the fuel re-selling business;
  - (c) site or unit development for retail sites;
  - (d) training before and during operating the fuel re-selling business;

- (e) opening the fuel re-selling business;
- (f) complying with standards or operating manuals;
- (g) using intellectual property;
- (h) warranties and customer service;
- (i) territorial development and sales quotas;
- (j) maintenance and appearance of premises;
- (k) insurance;
- (l) marketing;
- (m) indemnities;
- (n) participation requirements for retailer, directors, management or employees;
- (o) records and reports;
- (p) inspections and audit.

## **17 Pricing policy, motor fuel delivery and payment**

### 17.1 Details of:

- (a) the class of buyer in which the supplier places the retailer; and
- (b) other classes of buyer, also supplied by the supplier, in an area in which those buyers are likely to compete significantly for the retailer's trade in motor fuel; and
- (c) the conditions of payment for motor fuel, including terms of credit, if applicable; and
- (d) the conditions that apply to delivery of motor fuel, including:
  - (i) what notice the supplier must be given of a delivery requirement; and
  - (ii) when motor fuel is normally delivered; and
- (e) financial support paid by the supplier or an associate of the supplier to the retailer, including:
  - (i) how it is paid; and
  - (ii) the conditions for its payment; and
  - (iii) when it may be changed or withdrawn; and
- (f) the conditions of the fuel re-selling agreement (if any) that allow the supplier to review or change the system of pricing its goods or services; and
- (g) when and where the retailer can obtain information about motor fuel pricing.

17.2 A statement that other classes of buyer in the retailer's area also supplied by the supplier may have different conditions of supply.

17.3 If the agreement is a commission agency, a statement about how the agency's commission is worked out and how it can be changed.

## **18 Business plan**

18.1 A summary of the requirements for the retailer to prepare a business plan, including:

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- (a) a statement of the rights and obligations of the supplier and retailer under the plan; and
- (b) when it must be prepared; and
- (c) how it must be prepared; and
- (d) what information must be included; and
- (e) if the plan is to include projections or forecasts by the supplier—details of the facts and assumptions on which the projections or forecasts are based.

## 19 Supplier proprietary fuel card

- 19.1 A summary of the conditions for use of supplier proprietary fuel cards (if any), including:
- (a) the level of repayment, including card capping arrangements, merchant service fees and other merchant fees; and
  - (b) the procedure for repayment; and
  - (c) equipment requirements; and
  - (d) the supplier's rights (if any) to vary the fuel card system.

## 20 Variation

- 20.1 Details of the right (if any) of the supplier to vary a term of the agreement, or to vary any document adopted by reference, without the consent of the retailer, including:
- (a) how the right may, or may not, be exercised; and
  - (b) details of the rights of the retailer as a consequence of any variation.

## 21 Summary of other conditions of the agreement

- 21.1 Whether the agreement is a commission agency or other arrangement.
- 21.2 How long the current business format of the agreement has been used and how it has developed.
- 21.3 If the retailer is required to use the supplier's computer system—a summary of the rights and responsibilities of the supplier and the retailer including the extent to which the retailer may be excluded from use of the computer system.
- 21.4 A summary of the conditions of the fuel re-selling agreement (or references to the relevant conditions of the fuel re-selling agreement) that deal with the following matters:
- (a) the term of the fuel re-selling agreement;
  - (b) variation of the fuel re-selling agreement;
  - (c) renewal or extension of the fuel re-selling agreement;
  - (d) the conditions the retailer must meet to renew or extend the fuel re-selling agreement;
  - (e) termination by the supplier;
  - (f) termination by the retailer;
  - (g) arrangements (including the retailer's goodwill, if any) on termination or expiry;

- (h) the retailer's obligations when a fuel re-selling agreement is terminated, expires or is not renewed;
- (i) the supplier's rights to sell its business;
- (j) transfer of the fuel re-selling agreement, including selection criteria for retailers;
- (k) mediation and conciliation;
- (l) the option or right of first refusal, if any, for the retailer or the supplier to buy the fuel re-selling business;
- (m) the supplier's rights, if any, to inspect financial and other records of the fuel re-selling business;
- (n) the confidentiality of the retailer's records;
- (o) death or disability of the retailer or a director or shareholder of the retailer;
- (p) details of the role, operation or establishment of any dealer council, including rules of operation;
- (q) restrictions on the retailer's operation of other businesses during or after the term of the fuel re-selling agreement;
- (r) operations manual;
- (s) choice of governing law.

## **22 Statements**

- 22.1 A statement that re-selling motor fuel is subject to Commonwealth and State or Territory laws, including laws about environmental management, that can impose substantial obligations on the supplier and the retailer.
- 22.2 A statement that the retailer will be exposed to market risks and rewards.

## **23 Obligation to sign related agreements**

- 23.1 A summary of any requirements under the fuel re-selling agreement for the retailer to enter into any of the following agreements:
  - (a) a lease, sublease, licence or other agreement under which the retailer can occupy a retail site to which the fuel re-selling business relates;
  - (b) a chattel lease or hire purchase agreement;
  - (c) an agreement under which the retailer gains ownership of, or is authorised to use, any intellectual property;
  - (d) a security agreement, including a guarantee, mortgage, security deposit, indemnity, loan agreement or obligation to provide a bank guarantee to a third party;
  - (e) a confidentiality agreement;
  - (f) an agreement not to carry on business within an area or for a time after the fuel re-selling agreement is terminated.

## **24 Earnings information**

- 24.1 Earnings information for the fuel re-selling business, if it is given, must be based on reasonable grounds.

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- 24.2 Earnings information may be given in a separate document attached to the disclosure document.
- 24.3 Earnings information includes information from which historical or future financial details of a fuel re-selling business can be assessed.
- 24.4 If earnings information is not given—the following statement:
- The supplier does not give earnings information about the fuel re-selling business.
  - Earnings may vary between businesses.
  - The supplier cannot estimate earnings for a particular fuel re-selling business.
- 24.5 Earnings information that is a projection or forecast must include the following details:
- (a) the facts and assumptions on which the projection or forecast is based;
  - (b) the extent of enquiries and research undertaken by the supplier and any other compiler of the projection or forecast;
  - (c) the period to which the projection or forecast relates;
  - (d) an explanation of the choice of the period covered by the projection or forecast;
  - (e) whether the projection or forecast includes depreciation, salary for the retailer and the cost of servicing loans;
  - (f) assumptions about interest and tax.

## 25 Financial details

- 25.1 A statement as at the end of the last financial year, signed by at least one director of the supplier, of whether, in its directors' opinion, there are reasonable grounds to believe that the supplier will be able to pay its debts as and when they fall due.
- 25.2 Financial reports for each of the last 2 completed financial years that have been prepared by the supplier in accordance with sections 295 to 297 of the *Corporations Act 2001*.
- 25.3 Subitem 25.2 does not apply if:
- (a) the statement under subitem 25.1 is supported by an independent audit provided by a registered company auditor within 12 months after the end of the financial year to which the statement relates; and
  - (b) a copy of the independent audit report or statement is provided with the statement under subitem 25.1.

## 26 Materially relevant facts

- 26.1 The matters mentioned in subclause 29(2) of the *Oil Code of Conduct*.

## 27 Other relevant disclosure information

- 27.1 A copy of the proposed fuel re-selling agreement, and any other proposed agreement for activities mentioned in paragraph 6(b) of the *Oil Code of Conduct*, must be attached.

27.2 A copy of the *Oil Code of Conduct* must be attached.

27.3 Any other information that:

- (a) the supplier wants to give; and
- (b) does not contradict information required to be given.

## **28 Receipt**

28.1 On the last page of the disclosure document:

- (a) a statement to the effect that the retailer or prospective retailer may keep the disclosure document; and
- (b) a form in which the retailer or prospective retailer can acknowledge receipt of the disclosure document.

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## Annexure 2—Supplier's disclosure document for fuel re-selling agreements—short form

Note: See subclause 15(2).

### 1 First page

1.1 On the first page:

(a) in bold upper case:

**DISCLOSURE DOCUMENT FOR RETAILER OR PROSPECTIVE RETAILER;** and

(b) the supplier's name, ABN, ACN or ARBN, business address and phone number; and

(c) the date of the disclosure document; and

(d) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a fuel re-selling agreement.

Entering into a fuel re-selling agreement is a serious undertaking.

If you sign a fuel re-selling agreement, it is legally binding on you.

You are entitled to a waiting period of 14 days before you enter into the agreement.

If the agreement is a new fuel re-selling agreement (not a renewal, extension or transfer), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

Take your time, read all the documents carefully, talk to other fuel re-selling businesses and assess your own financial resources and capabilities to deal with the requirements of the fuel re-selling business.

You should make your own enquiries about the agreement and the business of the agreement.

You should get independent legal, accounting and business advice before signing the fuel re-selling agreement. You should also seek advice on the Federal, State or Territory and local laws that apply to it.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

You should contact the appropriate industry association.

The Australian Competition and Consumer Commission (the *ACCC*) has published a wide range of information about the *Oil Code of Conduct* to facilitate understandings and compliance with the *Oil Code of Conduct*.

This information can be obtained from the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au) or by contacting the ACCC Infocentre on 1300 302 502.

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## 2 Supplier's details

- 2.1 The supplier's name, ABN, ACN or ARBN, address of registered office and principal place of business in Australia.
- 2.2 The name under which the supplier carries on business in Australia relevant to the fuel re-selling agreement.
- 2.3 The name, ABN, ACN or ARBN, address of registered office and principal place of business of each associate of the supplier that is a body corporate (if any).
- 2.4 The name and address of each associate of the supplier that is not a body corporate (if any).
- 2.5 For each director, secretary, officer, or partner of the supplier who is likely to have management responsibilities for the supplier's business operations in relation to the fuel re-selling agreement—name, position held and qualifications (if any).

## 3 Litigation

- 3.1 Details of:
  - (a) current proceedings, and proceedings finalised in the previous 3 years, by a public agency, criminal or civil proceedings or arbitration, relevant to the fuel re-selling agreement, against the supplier in Australia alleging:
    - (i) breach of a fuel re-selling agreement; or
    - (ii) a contravention of the Act; or
    - (iii) a contravention of the *Corporations Act 2001*; or
    - (iv) unconscionable conduct; or
    - (v) misconduct; or
    - (vi) an offence of dishonesty; and
  - (b) proceedings against the supplier under:
    - (i) Part 3 of the *Independent Contractors Act 2006*; or
    - (ii) section 106 of the *Industrial Relations Act 1996* (NSW); or
    - (iii) section 276 of the *Industrial Relations Act 1999* (Qld).
- 3.2 Whether the supplier or a director of the supplier has been:
  - (a) in the last 10 years—convicted of a serious offence, or an equivalent offence outside Australia; or
  - (b) in the last 5 years—subject to final judgment in civil proceedings for a matter mentioned in paragraph 3.1(a); or
  - (c) in the last 10 years—bankrupt, insolvent under administration or a Chapter 5 body corporate in Australia or elsewhere.
- 3.3 For the purposes of subitems 3.1 and 3.2, the following details (where relevant):
  - (a) the names of the parties to the proceedings;
  - (b) the name of the court, tribunal or arbitrator;
  - (c) the case number;
  - (d) the general nature of the proceedings;

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- (e) the current status of the proceedings;
- (f) the date of order or undertaking under section 87B of the Act;
- (g) the penalty or damages assessed or imposed;
- (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
- (i) the period of the bankruptcy, insolvency under administration or external administration.

#### 4 Intellectual property

- 4.1 For any trade mark used to identify, and for any patent, design or copyright that is significant and material to, the fuel re-selling agreement (*intellectual property*):
- (a) a description of the intellectual property; and
  - (b) details of the retailer's rights and obligations in connection with the use of the intellectual property; and
  - (c) whether the intellectual property is registered in Australia, and if so, the registration date, registration number and place of registration; and
  - (d) any judgment or pending proceedings that could significantly affect ownership or use of the intellectual property, including:
    - (i) the name of the court or tribunal; and
    - (ii) the matter number; and
    - (iii) a summary of the claim or judgment; and
  - (e) if the intellectual property is not owned by the supplier—who owns it; and
  - (f) details of any agreement that significantly affects the supplier's rights to use, or to give others the right to use, the intellectual property, including:
    - (i) the parties to the agreement; and
    - (ii) the nature and extent of any limitation; and
    - (iii) the duration of the agreement; and
    - (iv) the conditions under which the agreement may be terminated.
- 4.2 The supplier is taken to comply with subitem 4.1 for any information that is confidential if the supplier gives:
- (a) a general description of the subject matter; and
  - (b) a summary of conditions for use by the retailer.

#### 5 Territory

- 5.1 Whether the fuel re-selling agreement is:
- (a) for an exclusive or non-exclusive territory; or
  - (b) limited to a particular site.
- 5.2 For the territory:
- (a) whether other retailers may operate a fuel retail business; and
  - (b) whether the supplier or an associate of the supplier may operate a fuel retail business; and
  - (c) whether the supplier or an associate of the supplier may establish other fuel re-selling systems; and

- (d) whether the retailer may operate a fuel retail business outside the territory;  
and
- (e) whether the supplier may change the territory.

## **6 Marketing or other cooperative funds**

- 6.1 For each marketing or other cooperative fund, controlled or administered by or for the supplier, to which the retailer may be required to contribute, the following details:
- (a) the kinds of persons who contribute to the fund (for example, retailer, supplier, outside supplier);
  - (b) whether the supplier must contribute to the fund in relation to businesses owned or operated by the supplier that are substantially the same as the business to be operated by the retailer and, if so, whether the contribution is worked out in the same way as for a retailer;
  - (c) how much the retailer must contribute to the fund and whether other retailers must contribute at a different rate;
  - (d) who controls or administers the fund;
  - (e) whether the fund is audited and, if so, by whom and when;
  - (f) whether the fund's financial statements can be inspected by, or will be given to, retailers;
  - (g) the kinds of expenses for which the fund may be used;
  - (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
  - (i) whether the supplier or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
  - (j) whether the supplier must spend part of the fund on marketing, advertising or promoting the retailer's business.

## **7 Payments**

### *Prepayments*

- 7.1 If the supplier requires a payment before the fuel re-selling agreement is entered into:
- (a) why the money is required; and
  - (b) how the money is to be applied; and
  - (c) who will hold the money.
- 7.2 The conditions under which a payment mentioned in subitem 7.1 will be refunded.

### *Establishment costs*

- 7.3 Details of the range of costs to start operating the fuel re-selling business, based on current practice, for the following matters:
- (a) real property, including property type, location and building size;
  - (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;

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- (c) inventory required to begin operation;
- (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
- (e) additional funds, including working capital, required by the retailer before operations begin;
- (f) other payments by a retailer to begin operations.

7.4 For the purposes of subitem 7.3, the details for each payment must include:

- (a) a description of the payment; and
- (b) the amount of the payment or the formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

7.5 For the purposes of subitem 7.4, if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.

*Other payments*

7.6 For each recurring or isolated payment payable by the retailer to the supplier or an associate of the supplier or to be collected by the supplier or an associate of the supplier for another person:

- (a) a description of the payment; and
- (b) the amount of the payment or the formula used to work out the payment; and
- (c) to whom the payment is made; and
- (d) when the payment is due; and
- (e) whether the payment is refundable and, if so, under what conditions.

7.7 For the purposes of subitem 7.6, if the amount of the payment cannot easily be worked out—the upper and lower limits of the amount.

## **8 Supplier's obligations**

8.1 Summary of the conditions of the fuel re-selling agreement that deal with obligations of a supplier (or references to the relevant conditions of the fuel re-selling agreement), including:

- (a) providing training:
  - (i) before the fuel re-selling business starts; and
  - (ii) during operation of the fuel re-selling business; and
- (b) operating a dealer council.

## **9 Retailer's obligations**

9.1 Summary of the conditions of the fuel re-selling agreement that deal with obligations of a retailer (or references to the relevant conditions of the fuel re-selling agreement) for the following matters:

- (a) site selection and acquisition for retail sites;
- (b) requirements for starting the fuel re-selling business;

- (c) site or unit development for retail sites;
- (d) training before and during operating fuel re-selling business;
- (e) opening the fuel re-selling business;
- (f) complying with standards or operating manuals;
- (g) using intellectual property;
- (h) warranties and customer service;
- (i) territorial development and sales quotas;
- (j) maintenance and appearance of premises;
- (k) insurance;
- (l) marketing;
- (m) indemnities;
- (n) participation requirements for retailer, directors, management or employees;
- (o) records and reports;
- (p) inspections and audit.

## **10 Pricing policy, motor fuel delivery and payment**

### 10.1 Details of:

- (a) the class of buyer in which the supplier places the retailer; and
- (b) other classes of buyer, also supplied by the supplier, in an area in which those buyers are likely to compete significantly for the retailer's trade in motor fuel; and
- (c) conditions of payment for motor fuel, including terms of credit, if applicable; and
- (d) conditions that apply to delivery of motor fuel, including:
  - (i) what notice the supplier must be given of a delivery requirement; and
  - (ii) when motor fuel is normally delivered; and
- (e) financial support paid by the supplier or an associate of the supplier to the retailer, including:
  - (i) how it is paid; and
  - (ii) conditions for its payment; and
  - (iii) when it may be changed or withdrawn; and
- (f) conditions of the fuel re-selling agreement (if any) that allow the supplier to review or change the system of pricing its goods or services; and
- (g) when and where the retailer can obtain information about motor fuel pricing.

10.2 A statement that other classes of buyer in the retailer's area also supplied by the supplier may have different conditions of supply.

10.3 If the agreement is a commission agency, a statement about how the agency's commission is worked out and how it can be changed.

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## 11 Business plan

- 11.1 Summary of the requirements for the retailer to prepare a business plan, including:
- (a) a statement of the rights and obligations of the supplier and retailer under the plan; and
  - (b) when it must be prepared; and
  - (c) how it must be prepared; and
  - (d) what information must be included; and
  - (e) if the plan is to include projections or forecasts by the supplier—details of the facts and assumptions on which the projections or forecasts are based.

## 12 Supplier proprietary fuel card

- 12.1 Summary of conditions for use of supplier proprietary fuel credit cards (if any), including:
- (a) level of repayment, including card capping arrangements, merchant service fees and other merchant fees; and
  - (b) procedure for repayment; and
  - (c) equipment requirements; and
  - (d) the supplier's rights (if any) to vary the fuel card system.

## 13 Variation

- 13.1 Details of the right (if any) of the supplier to vary a term of the agreement, or to vary any document adopted by reference, without the consent of the retailer, including:
- (a) how the right may, or may not, be exercised; and
  - (b) details of the rights of the retailer as a consequence of any variation.

## 14 Statements

- 14.1 A statement that re-selling motor fuel is subject to Commonwealth and State or Territory laws, including laws about environmental management, that can impose substantial obligations on the supplier and the retailer.
- 14.2 A statement that the retailer will be exposed to market risks and rewards.

## 15 Financial details

- 15.1 A statement as at the end of the last financial year, signed by at least one director of the supplier, whether in its directors' opinion there are reasonable grounds to believe that the supplier will be able to pay its debts as and when they fall due.
- 15.2 Financial reports for each of the last 2 completed financial years that have been prepared by the supplier in accordance with sections 295 to 297 of the *Corporations Act 2001*.
- 15.3 Subitem 15.2 does not apply if:

- (a) the statement under subitem 15.1 is supported by an independent audit provided by a registered company auditor within 12 months after the end of the financial year to which the statement relates; and
- (b) a copy of the independent audit is provided with the statement under subitem 15.1.

## **16 Receipt**

16.1 On the last page of the disclosure document:

- (a) a statement to the effect that the retailer or prospective retailer may:
  - (i) keep the disclosure document; and
  - (ii) ask the supplier for the information referred to in the items of Annexure 1 set out in subitem 16.2; and
- (b) a form on which the retailer or prospective retailer can acknowledge receipt of the disclosure document.

16.2 For the purposes of subparagraph 16.1(a)(ii), the items of Annexure 1 are the following:

- (a) item 3 (business experience);
- (b) item 5 (payments to agents);
- (c) item 6 (existing fuel re-selling agreements);
- (d) item 9 (supply of goods or services to a retailer);
- (e) item 10 (supply of goods or services by a retailer);
- (f) item 11 (sites);
- (g) item 14 (financing);
- (h) item 21 (summary of other conditions of the agreement);
- (i) item 23 (obligation to sign related agreements);
- (j) item 24 (earnings information);
- (k) item 26 (updates);
- (l) item 27 (other relevant disclosure information).

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## **Annexure 3—Retailer's disclosure document for transfer of fuel re-selling business**

Note: See subclause 22(1).

### **1 Details**

- 1.1 The supplier's name, ABN, ACN or ARBN, business address and telephone number.
- 1.2 The retailer's name, ABN, ACN or ARBN and business address.
- 1.3 Name and business or residential address of each director of the retailer.
- 1.4 A summary of the business experience in the last 10 years of the retailer and each person mentioned in subitem 1.3, including length of experience in operating the fuel re-selling business.
- 1.5 Description of the fuel re-selling business and its business address.
- 1.6 A copy of:
  - (a) the existing fuel re-selling agreement of the retailer; and
  - (b) if the retailer leases property for the fuel re-selling business and proposes to transfer the lease to the proposed transferee—each lease or agreement to lease, or a summary of the conditions of each lease or agreement to lease.
- 1.7 Details of assets of the fuel re-selling business to be transferred to the proposed transferee.
- 1.8 Profit and loss statements and balance sheets of the retailer or the fuel re-selling business for the last 2 years.
- 1.9 Summary (or references to the relevant conditions of the fuel re-selling agreement, if attached) of obligations, that the retailer has in relation to the fuel re-selling business, that are to be assumed by the proposed transferee.
- 1.10 Summary (or references to the relevant conditions of the fuel re-selling agreement, if attached) of any conditions under the existing fuel re-selling agreement for transfer of the agreement.
- 1.11 Details of each of the retailer's employees in the fuel re-selling business, including:
  - (a) name; and
  - (b) position; and
  - (c) length of service; and
  - (d) rate of pay; and
  - (e) outstanding obligations of the retailer.

### **2 Other relevant disclosure material**

- 2.1 Any other information the retailer wants to give.
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### **3 Disclaimer**

3.1 A statement that:

- (a) the information is given by the retailer; and
- (b) the supplier does not guarantee the accuracy of the information.

### **4 Receipt**

4.1 On the last page of the disclosure document, a form in which the proposed transferee can acknowledge receipt of the disclosure document.

## **Schedule 2—Repeals**

### ***Competition and Consumer (Industry Codes—Oilcode) Regulation 2006***

#### **1 The whole of the regulation**

Repeal the regulation.