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PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006

EXPLANATORY MEMORANDUM

Circulated by authority of the Hon Ian Macfarlane, MP,
Minister for Industry, Tourism and Resources

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PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006

GENERAL OUTLINE

The Bill forms part of the Government's Downstream Petroleum Reform Package ('the Reform Package'), which will address the regulatory failure that has resulted from the inequitable application of, and inefficiencies created by, the current retail petroleum legislation.

The Bill will repeal both the *Petroleum Retail Marketing Sites Act 1980* ('the Sites Act'), which restricts the number of retail sites that prescribed oil companies, that is BP, Caltex, Mobil and Shell ('the oil majors') can directly own and operate in Australia, and the *Petroleum Retail Marketing Franchise Act 1980* ('the Franchise Act'), which sets out the minimum terms and conditions for franchise agreements between the oil majors and their franchisees. Repeal of this legislation is necessary as it has failed to keep pace with changes in market structure, for example, the market entry of large independent retail chains and supermarket retailers. The current legislation imposes additional costs on the oil majors and prevents them from achieving increased efficiencies or responding effectively to changing market forces. It also provides significant benefits to small businesses that are oil major franchisees but not to oil major or other commission agents.

Under the Reform Package, repeal of the Sites Act and the Franchise Act will occur concurrently with the introduction of an industry code, the *Trade Practices (Industry Codes - Oilcode) Regulations 2006* ('the Oilcode'), mandated under section 51AE of the *Trade Practices Act 1974* ('the TPA'). The Oilcode will:

- establish standard contractual terms and conditions for wholesale supplier-fuel retailer re-selling agreements for both franchise and commission agency arrangements. These standards build upon, and strengthen, relevant provisions in both the Franchise Act and the more general *Trade Practices (Industry Codes — Franchising) Regulations 1998* (Franchising Code of Conduct), to provide greater certainty and protection for all parties to fuel re-selling agreements;
- introduce a nationally consistent approach to terminal gate pricing ('TGP') arrangements to improve transparency in wholesale pricing and allow access for all customers, including small businesses, to petroleum products at TGP, whilst not negating the ability of entities to negotiate individual supply agreements nor preventing the offering of discounts; and
- establish a independent, downstream petroleum dispute resolution scheme to provide the industry with a cost-effective alternative to taking action in the courts.

The regulations will facilitate a more effective regulatory environment for the industry, while recognising the power imbalance inherent in the substantial interdependency between some small businesses operating under franchise and commission agency agreements and their wholesale fuel suppliers, whether those suppliers are the oil majors or the independent retail chains. In addition, it will improve the operating environment for all small business operators in the industry by providing access to an alternative dispute resolution mechanism and increasing the transparency in the wholesale market through a nationally consistent approach to TGP.

FINANCIAL IMPACT STATEMENT

The Repeal Bill does not contain appropriation provisions and will not have any financial impact on Commonwealth revenue or expenditure.

However, the introduction of the Oilcode will require funding of \$11.9 million over 4 years to enable the Australian Competition and Consumer Commission (ACCC) and the Department of Industry, Tourism and Resources (DITR) to undertake implementation, monitoring and enforcement activities. A requirement of the costings agreed with the Department of Finance and Administration is that any unused funding provided to the ACCC for litigation will be returned to the Budget.

REGULATION IMPACT STATEMENT

PETROLEUM RETAIL LEGISLATION REPEAL BILL 2005

1. Introduction

The retail petroleum industry underpins many facets of the Australian economy, making a direct contribution to the economic growth of fuel intensive industries such as agriculture, mining, construction and transport¹. Petroleum products comprise 52 per cent of Australia's total final energy consumption and liquid petroleum fuels provide in excess of 93 per cent of Australia's transport needs². The industry also indirectly contributes to the wellbeing of all Australians, with a considerable contribution to national revenue, via a range of state and federal taxes, levied on petroleum products. In 2003-04 the retail petroleum industry was expected to contribute almost \$13 billion or 7 per cent of total revenue to governments³.

In 2003-04 the industry generated revenue of \$19.3 billion, provided around 39,000 direct jobs and paid over \$697 million in wages. During this period, the retail petroleum industry experienced growth in turnover of 4 per cent. However, over the same period, the number of retail establishments fell 3 per cent to around 6,500, the number of enterprises reduced by 1 per cent and employment dropped by 2.5 per cent⁴. Business structures utilised by the industry are described in Box 1 and Figure 1.

The rationalisation experienced by the retail networks in 2003-04 is symptomatic of ongoing structural change in the industry over the past few decades. In 1970 there were over 20,000 retail petroleum sites around Australia, however, following the oil shocks of the 1970s and 1980s this number reduced to approximately 12,500 sites and has continued to decline to the current level.

Market rationalisation is being driven by a range of issues including:

- reductions in retailer margins, which have been driven by intense competition and exacerbated by the market entry of businesses whose structures are not constrained by the current downstream petroleum legislation;
- a lack of national consistency and transparency in the regulations governing the wholesale and retail sectors of the petroleum market. For example the disparity between states in terms of the mechanism to determine, and requirement to display, a terminal gate price (TGP)⁵ for the spot sale of petroleum products from a wholesale facility; and
- declining sectoral profitability caused by constrained global supply capacity. The adverse effect of capacity constraints has been particularly noticeable following the introduction of the *Fuel Quality Standards Act 2000*, which will bring Australian fuel standards in line with global environmental best practice for motor fuels⁶.

¹ Australian Institute of Petroleum (AIP) 2003 and Commonwealth of Australia 2004c

² Department of Industry, Tourism and Resources (DITR) 2005

³ Commonwealth of Australia 2004c

⁴ IBISWorld Pty Ltd 2005 & DITR 2005

⁵ TGP is the spot price at which any entity can purchase fuel (typically 35,000 litres) from a wholesale terminal. It does not include delivery or any other changes the customer may request from the supplier.

⁶ Australian Competition and Consumer Commission (ACCC) 2004 Post-2006 fuel standards align Australia with European standards (Euro 4 for petrol and Euro 5 for diesel).

1.1 Legislative Environment

The structure of the industry is regulated by two interrelated, industry specific Acts, which supplement the *Trade Practices Act 1974* (TPA): the *Petroleum Retail Marketing Sites Act 1980* (Sites Act) and the *Petroleum Retail Marketing Franchise Act 1980* (Franchise Act). Whilst the TPA regulates the general competitive conduct of the industry, the Sites Act and the Franchise Act were designed specifically to counteract the dominance of the petrol retail market by the refiner/marketers and to encourage small business entry into the industry under franchise arrangements⁷.

Box 1. Business Structures in the Retail Petroleum Industry

Nine different business models are utilised in the retail petroleum industry. They can loosely be divided into those associated with the refiner/marketers and those associated with the importer/marketers.

Refiner/Marketer Networks

Sites where the refiner/marketer have a direct impact on fuel pricing decisions (i.e. included in the Sites Act quota) are sites owned or leased directly by a refiner/marketer and operated either by:

company staff – these are usually the high turnover sites such as those in the inner-metropolitan areas; or

commission agency – these sites are managed by an individual on behalf of the refiner/marketer and compensation is generally in the form of a commission based on quantity of products sold.

Sites where the refiner/marketer does not have a direct impact on pricing decisions:

multi-site franchisees (e.g. Coles Myer) who rent a number of refiner/marketer owned sites and operate them under one or many franchise agreements which legally allows them to determine their own prices;

single-site franchisees who rent a site owned by a refiner/marketer and operate it under a franchise agreement which legally allows them to determine their own prices;

branded independent operators who use their own site and equipment but are in a branding agreement with a refiner/marketer that generally also supplies fuel on contract to the operator. These independent operators often form a vital part of the refiner/marketers' network. They allow the refiner/marketers to maintain a presence in rural and regional areas without necessitating major infrastructure investment in areas that may otherwise be considered to be economically marginal; and

distributor-owned sites that are run by a local fuel distributor, some of which are owned or part owned by the refiner/marketers and others which, like branded independent operators, use their own site and equipment and have a brand and supply agreement with a refiner/marketer. In rural and regional areas these sites also play a critical role in the refiner/marketers' network, allowing presence to be maintained within an economically viable framework.

Independent Networks

Independent networks range from single sites that are owned and operated by a family through to the large multi-site chains owned and operated by importer/marketers.

independent chains (e.g. 7 Eleven, Liberty and Gull) that either import fuel or purchase fuel in bulk from local refiners to sell through their company owned sites. Sites are generally operated on a commission agency basis;

supermarket chains (e.g. Woolworths) that either import fuel or purchase fuel in bulk from local refiners to sell through their company owned sites. Sites are often operated on a commission agency basis; and

independent operators who use their own site, equipment and brand name and purchase fuel on an ad hoc or contractual basis from local refiners or importers.

Source: DITR 2004

⁷ ACCC 2001

They were introduced in 1980 by the Australian Government ('the Government') following a number of failed attempts to get the industry to voluntarily address concerns regarding alleged unfair price discrimination, vertical integration and unfair leasing arrangements between the refiner/marketers and their lessee dealers (i.e. commission agents)⁸.

The Government consulted with the Trade Practices Commission during the development of the Acts and concluded that despite the TPA, the Acts were necessary to correct the aforementioned alleged marketing practices, maintain fair competition and maintain a vigorous and effective small business sector for the long term competitiveness of the industry⁹.

1.1.1 Petroleum Retail Marketing Sites Act 1980

The Sites Act limits the number of retail sites that the refiner/marketers (currently BP, Caltex, Mobil and Shell, who are collectively known as the 'oil majors' or the 'refiner/marketers') may own or lease and operate either directly or on a commission agency basis. It is not applicable to any other entity operating in the industry.

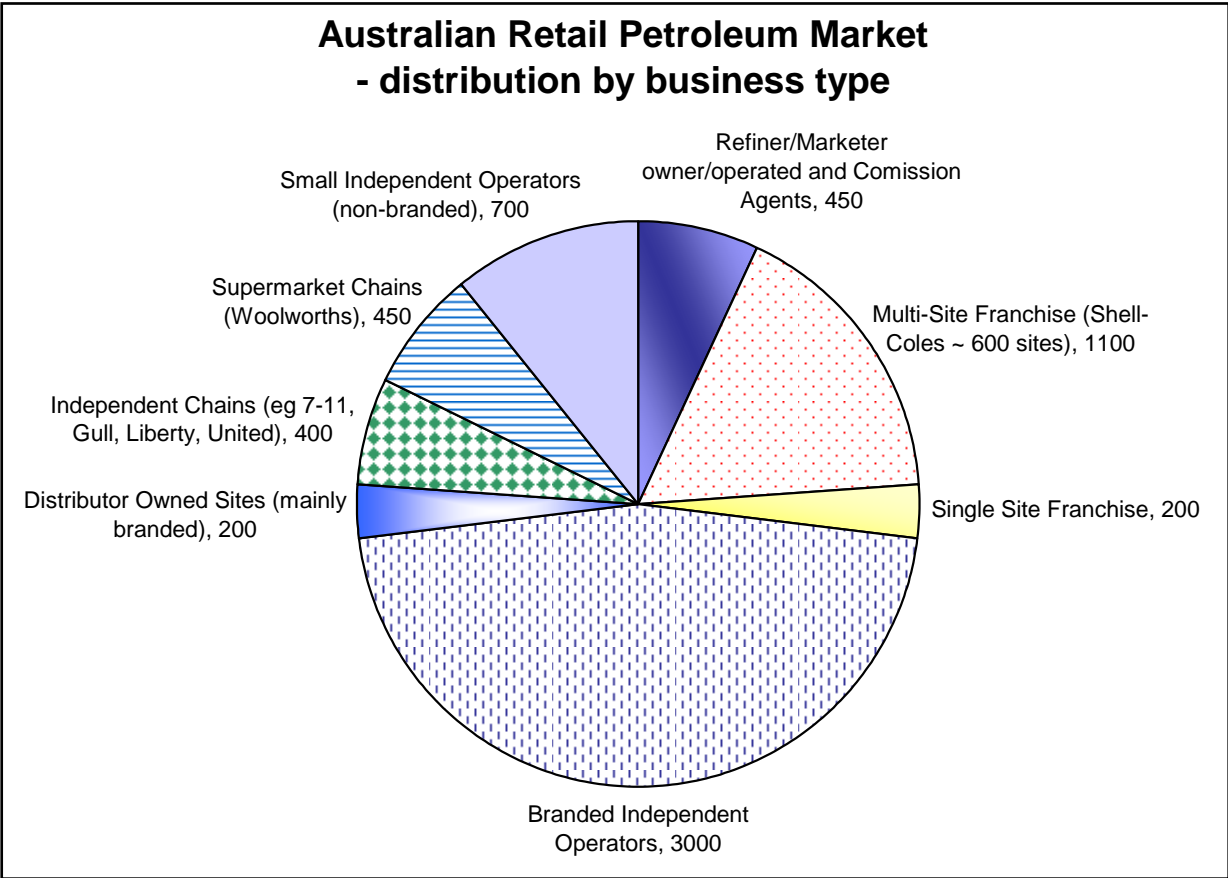


Figure 1. The distribution of business structures utilised in the petroleum retail market (Source: DITR 2005; AIP 2004)

The key objective of the Act was to limit the price setting activities of the vertically integrated oil majors by compelling these entities to use franchise arrangements at the majority of company-owned retail sites. This move was considered to have had a secondary benefit of encouraging the entry of small businesses into the sector, as franchise arrangements, developed in accordance with the Franchise Act, provided certainty of tenure and clarity of rights for small business participants, a right not enjoyed by those operating under commission agency agreements¹⁰.

⁸ Commonwealth of Australia 1980a

⁹ ibid 1980a

¹⁰ Commonwealth of Australia 1980b

The Sites Act aims to achieve its objective by setting a site quota for each prescribed oil company, which is based on the volume of fuel each company has the capacity to produce at their domestic refineries¹¹. The Sites Act quota encourages the use of franchise operations within the industry, as sites subject to a franchise agreement are not reportable under the quota as they are not directly operated by the prescribed companies.

Companies are required to report to the Government each month on any changes to the number of sites they are running in accordance with the Sites Act. The Department of Industry, Tourism and Resources (DITR) has responsibility for managing this reporting requirement and monitoring compliance¹².

1.1.2 Petroleum Retail Marketing Franchise Act 1980

The Franchise Act sets out minimum terms and conditions, including duration, renewals and associated disclosure requirements for franchise agreements in the retail petroleum industry. The Act operates concurrently with the *Trade Practices (Industry Codes — Franchising) Regulations 1998* (Franchising Code of Conduct), which regulates all other franchising activities in Australia.

The aim of the Franchise Act was to provide franchisees in the motor fuels industry with a level of certainty during negotiations with refiner/marketers and thus encourage the entry of small businesses into the retail petroleum market. The Act applies only to entities trading under a supplier's brand with a contractual relationship for the sale of petrol, which legally allows those entities to determine their own prices. To be covered by the Act these sites must have a minimum sales volume of 30,000 litres of petrol per month and must not be subject to the Sites Act quota.

1.1.3 Impact of the Sites Act and the Franchise Act

In 1980 the Government considered the Acts to be in the public interest as they compelled the refiner/marketers to either give up many of their established retail sites or convert them into franchise operations. This move was aimed at minimising the control the refiner/marketers could exert over petrol prices in the market and increasing the diversity of the market's structure through small businesses' participation¹³.

Although the Franchise Act does not prevent all forms of price discrimination it does prevent the franchisor from discriminating between its franchisees in terms of fuel supply and any associated discounts, allowances, rebates or credits. Exempted circumstances include those where the lower price can be justified in terms of a cost saving or if competition forces in either the supply or retail market dictate that price discrimination is necessary to meet competition¹⁴. Also, by providing certainty of tenure (nine years) and setting out the minimum acceptable disclosure requirements, the franchise arrangements were considered to encourage greater investment by the franchisee in the site than had previously existed.

¹¹ Quotas are set under the *Petroleum Retail Marketing Sites Regulations 1981* and were last revised in 1999.

¹² To date only one significant breach of the Sites Act has been recorded by the Mobil Oil Company, who was found guilty in 2004 and fined in accordance with the penalties specified under the Act.

¹³ Commonwealth of Australia 1980a; 1980b

¹⁴ Commonwealth of Australia 1980a

1.1.4 Trade Practices Act 1974

Like all Australian industries, the petroleum retail industry is also regulated by the TPA. The Australian Competition and Consumer Commission (ACCC)¹⁵, is responsible for monitoring and enforcing compliance with the TPA. The most common public concerns raised with the ACCC in relation to the retail petroleum industry relate to allegations of fuel price fixing and collusive behaviour, with nearly 1,200 inquiries and complaints received during 2003-04¹⁶.

Whilst most concerns are addressed by enhancing public knowledge on pricing and behavioural issues, several cases relating to anti-competitive behaviour, primarily price fixing, were brought against fuel retailers during that period¹⁷. As such, it is Section 46 (misuse of market power) and section 155 (ACCC information gathering powers) of the TPA that are most commonly considered when looking at the behavior of the industry.

Section 46 (misuse of market power)

Section 46 prohibits the misuse of market power by prohibiting a business that has a substantial degree of power in a market from taking advantage of that power for the purpose of:

- eliminating or substantially damaging a competitor;
- preventing the entry of a person into a market; and
- deterring or preventing a person from engaging in competitive conduct in any market.

Therefore a breach of Section 46 occurs when three things are shown:

- the corporation in question has a substantial degree of power in a market;
- the corporation has taken advantage of that power; and
- the corporation did so for a prohibited purpose.

Concerns about the industry often centre on the alleged use of ‘predatory pricing’ or ‘below-cost selling’ to undermine competitors in the market place. Predatory pricing occurs when a company sets an unrealistically low price for a product for the purpose of forcing a competitor to withdraw from the market. Whilst price cutting or underselling competitors is not necessarily predatory pricing, use of such techniques with clearly mercenary objectives by a business with substantial market power is considered by some to be a misuse of that market power. To date no cases of predatory pricing in the retail petroleum industry have been proven.

Section 46 has been examined in a number of Government reviews, most recently, *The Review of the Competition Provisions of the Trade Practices Act 1974* (the Dawson Review) and the 2004 Senate Economics Reference Committee (SERC) inquiry, *The Effectiveness of the Trade Practices Act in Protecting Small Business*.

The Dawson Review, released in April 2003, concluded that there was no need to amend section 46, as it already prohibited misuse of market power. The Government accepted this recommendation, however several important TPA cases were considered after the Dawson Review delivered its report¹⁸. These cases provided the backdrop for the SERC inquiry, for which the Government built on the position it established in response to the Dawson Review,

¹⁵ Previously known as the Trade Practices Commission

¹⁶ ACCC 2005

¹⁷ Several cases are ongoing. For details refer to the ACCC 2003-04 Annual Report.

¹⁸ *High Court*: Boral Besser Masonry Ltd v ACCC (2003) & Rural Press Ltd v ACCC (2003);
Federal Court: ACCC v Safeway Stores PL (2003) & Universal Music v ACCC (2003)

including the view that “*the competition provisions [of the TPA] should not be regarded as a means of implementing an industry policy or the preservation of particular corporations that are not able to withstand competitive forces*”, and concluded that section 46 should be amended¹⁹. These amendments will allow the courts to consider below-cost pricing and recoupment for consideration of misuse of market power²⁰. The Bill to implement the Government's response to the SERC report is expected to be introduced into Parliament in 2006.

Section 155 (information gathering power)

Section 155 allows the ACCC to obtain information, documents and evidence when that information may not be voluntarily provided (this may be due to commercial or legal constraints on the entity under investigation rather than a deliberate desire to hinder an ACCC investigation). To issue a notice under section 155, the ACCC must have reason to believe that a person is capable of furnishing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of the TPA²¹.

1.2 Industry Structure

At the time the Sites Act and the Franchise Act were enacted they were considered to be an appropriate response to limit the market dominance of the vertically integrated refiner/marketers and promote a viable small business sector²². However, structural change in the industry since the 1980s has decreased the ability of the Acts to achieve their original objectives.

The number of refiner/marketers in the industry since the Acts were introduced has decreased from nine to four due to industry rationalisation. This trend is also reflected in the retail sector where there has been significant rationalisation of retail sites in both the oil major and independent retail networks. The ACCC has noted that whilst structural change is impacting on all market participants, access to fuel that meets national standards is expected to have a greater impact on the independent operators (both chains and small businesses) in the sector²³.

Historically, the independents have increased their market share by sourcing fuel supplies through independent imports at competitive prices. A number of independent fuel importer/marketers entered the Australian market in response to an over supply of fuel in the Asia-Pacific region during the late 1980s to mid 1990s. The business structure of the independent importer/marketers is not constrained by the Sites Act and the Franchise Act and as such, these entities tend to use commission agency arrangements to operate their sites (Box 1 above refers). However, it is expected that difficulties in sourcing fuel that meets the new national fuel standards together with the expected shortfall of petrol in the Asia-Pacific region by 2006, are likely to make imports by independents into Australia less viable in the immediate future²⁴.

As the market became more competitive, with the entry of importer/marketers, the refiner/marketers were forced to adopt innovative responses to the marketing inefficiencies that the Acts placed on their business structures. A key response was the implementation of multi-site franchising (MSF) arrangements. Under MSF arrangements a single operator or company

¹⁹ Commonwealth of Australia 2004 a & b

²⁰ Commonwealth of Australia 2004 a & b

²¹ The application of section 155 is considered in the ACCC document *Section 155 of the Trade Practices Act 1974*.

²² ACCC 2001; DITR 2002

²³ ACCC 2004

²⁴ *ibid* 2004

with a franchise arrangement with a refiner/marketer controls the operations of several sites²⁵. The most notable example of this in the Australian market was the 2003 divestment of the Shell Company's core retail site network to a subsidiary of the Coles Myer retail corporation under a franchise arrangement.

The other major business structure that has emerged over the past decade is the alliance between some fuel retailers and supermarkets (Box 2 below refers). These alliances are generally based on the premise that the supermarket is responsible for all aspects of the retail site, including setting fuel prices, whilst the wholesale supplier maintains fuel supplies to the site. Customer loyalty is created through the practice of linking the sale of supermarket groceries (usually of greater value than \$30) to a discount on the total cost of fuel (usually by four cents per litre) upon presentation of a receipt or "shopper docket"²⁶ (Box 3 below refers). In a similar manner to multi-site franchisees, these alliances have the ability to operate with diminished margins, potentially absorbing short term losses through other facets of the alliance structure, such as grocery stores.

As a result of these marketing strategies, around three-quarters of all retail sites in Australia are owned by or affiliated with the four refiner/marketers currently in the Australian market. Their share of retail fuel sales is believed to amount to over 85 per cent of total sales²⁷. These companies also dominate the domestic petroleum refining industry (Box 4 below refers) and wholesale market, although independent importer/wholesalers and smaller rural distributors maintain market share in most states²⁸. Most metropolitan sites are operated by franchisees (single and multi-site) or independents (major-branded, own brand and chain). The majority of service stations in rural areas are independents (major-branded, own brand and chain) supplied through distributors.

Box 2. Supermarket Entry to the Australian Retail Petroleum Market

Woolworths, one of Australia's major supermarket chains, entered the retail petroleum market in 1996, establishing nearly 300 independent sites and sourcing fuel from Australia's largest independent petroleum importer, Trafigura. Customer loyalty was developed through the institution of discount shopper dockets linked to the purchase of groceries in a Woolworths' supermarket.

In 2003, the other major Australian grocery retailer, Coles Myer Ltd, established an alliance with oil major, Shell, based on a similar fuel discount arrangement. This alliance consisted of Coles assuming responsibility for operating Shell's core retail property network of around 580 service stations in Australia's largest multi-site franchise arrangement.

Woolworths and Caltex subsequently finalised an alliance, which added 120 of Caltex's retail sites to Woolworths existing retail sites. Under this arrangement Caltex supplies fuel to all Woolworths retail sites, with fuel and grocery prices set by Woolworths subsidiary, Woolworths Plus Petrol.

*Sources: Australian Competition and Consumer Commission 2001, 2004;
Australian Institute of Petroleum 2003;
Dept Industry, Tourism and Resources 2004*

²⁵ The number of sites in a multi-site franchise arrangement may vary from two to many hundreds, with greater economies of scale realised with a greater number of retail sites.

²⁶ ACCC 2004

²⁷ DITR 2004

²⁸ *ibid* 2004

Box 3. Shopper Dockets

Claims that the use of 'shopper docket' are undermining the ability of independent chains and smaller operators to maintain market share have also been considered by the ACCC. However, the 2004 report, *Assessing shopper docket petrol discounts and acquisitions in the petrol and grocery sectors*, concluded that there were significant benefits to consumers from shopper docket discount offers, including lower petrol prices for consumers and increased non-price competition which outweighed any detriment the initiative may cause to individual entities. As a result, the ACCC reports that there are now over 100 shopper docket schemes operating throughout Australia, many of which are run by small independent retailers in collaboration with local grocery outlets.

Sources: ACCC 2004

Box 4. Australia's Refinery Capacity

Australia has eight major oil refineries, one of which has been mothballed due to poor refining margins and regional over-capacity. The refineries, mainly constructed in the 1950s and 1960s, have undergone significant upgrading since the mid 1990s. With the ongoing tightening of fuel operability standards in recent years, this upgrading is expected to continue to 2010 with the overall investment expected to be in the vicinity of \$2 billion.

International prices for diesel and petrol, as with other commodities traded freely on the world market, are set by supply and demand factors, rather than production costs. Australian producers export crude oil, LPG and petroleum products into international markets and the domestic wholesale prices for refined petroleum products in Australia are based on prices ex-refinery in Singapore, which is the regional refining centre and an exchange point for refined products.

Sources: Australian Institute of Petroleum 2003;
Dept Industry, Tourism and Resources 2004

2. The Problem

The downstream petroleum industry has changed significantly since the introduction of the Sites Act and the Franchise Act in 1980. Multi-site franchising, price support, the entry of large independent chains and changing costs structures have meant that the legislation is now an inappropriate tool for meeting the regulatory objectives of counteracting the market dominance of the refiner/marketers and to encouraging small business entry into the industry under franchise arrangements.

In addition to failing to provide the means to meet their regulatory objectives, the Sites Act and the Franchise Act limit the ability of the refiner/marketers to compete vigorously with newer market entrants, such as the supermarkets and independent chains who are not similarly constrained. By restraining freedom of choice in the selection of appropriate business models, the Acts are a barrier to competition in the petrol retail market and impose additional costs on the refiner/marketers, which are ultimately passed on to consumers.

For small business operators in the industry there is considerable inequity with small business franchisees enjoying significant benefits while commission agents have no specific protections outside those provided by general law. Unlike the Franchising Code of Conduct, the Franchise Act does not have an alternative to litigation to resolve disputes. Legal costs associated with resolving disputes are prohibitive for the majority of commission agents and franchisees, especially when faced with the financial strength of the refiner/marketers and the importer/marketers.

In summary, the problem facing the industry is that the existing downstream petroleum legislation has failed to keep pace with changes in market structure. It imposes additional costs on the refiner/marketers and acts as a barrier to competition, provides significant benefits to franchisees but not commission agents, and is preventing the industry from achieving increased efficiencies and responding to changing market forces.

2.1 Commission Agents

Commission agency arrangements (where the agent receives a commission on the number of litres of fuel sold but does not own the fuel) generally require a smaller up-front investment than franchise arrangements and there are no minimum requirements (such as tenure or disclosure) associated with such agreements. As such this type of business structure allows the owner a degree of control over fuel prices and flexibility to respond quickly to changes in the market, allowing overheads to be minimised. Although the Sites Act allows the refiner/marketers to use commission agency arrangements (provided they remain within their quota limit) the larger independent market participants, such as the chains and the supermarkets, face no such restrictions.

Given the flexibility inherent in these agreements they have the potential to be more efficient than franchise arrangements²⁹. As a result, the independent chains tend to have a significant influence on localised price cycles, particularly in major cities³⁰. Due also to the large volume of fuel purchased, these entities can often obtain discounts from suppliers and as such have the capacity to lead market prices down. Indeed the ACCC found that in general, it is the independent chains rather than the oil majors or their franchisees that lead market prices down. By contrast, small independent operators (not associated with an oil major) tend to have less impact on the price cycle as they operate on a smaller scale and generally do not buy sufficient volumes of fuel to access discounts or influence price cycles.

It must be noted however, that commission agency agreements may place small business operators at a disadvantage, as without considerable business acumen it is challenging for the average small business operator³¹ to effectively negotiate an equitable retail site occupancy agreement with a much larger independent chain³².

2.2 Price Support

The move to compel the refiner/marketers to operate many of their company-owned or leased retail sites under franchise arrangements was designed to minimise their control over fuel prices. However, as noted above, the Franchise Act does allow selective price support to occur under certain circumstances. The ACCC has noted that such support may be used by the oil majors as a long-term strategy to maximise profit by controlling the price of fuel at franchise sites. The ACCC also notes that such actions may also be used as mechanism to remove or limit competition³³.

²⁹ ACCC 2001

³⁰ ACCC 2001

³¹ Anecdotal evidence suggests that most commission agents are 1-2 person operations. They are often run by migrants for whom English is the second language and many operators fail to seek independent business or legal advice before entering into a retail contract.

³² Anecdotal evidence suggests in extreme cases commission agents have been evicted from their retail sites with only 24 hours notice from the operator and with no right of recourse.

³³ ACCC 2001

The 2001 ACCC discussion paper, *Reducing Fuel Price Variability*, found that the oil majors use price support schemes as a way to enable their franchisees to be competitive and/or to increase their influence over the pricing behaviour of retailers. In general, price support takes the form of the oil majors guaranteeing a certain margin to their franchisee upon purchase of fuel.

Price support is given to franchisees selectively and is not available in all localities. As some franchisees operate in very competitive areas, ongoing price support may be provided for long periods of time as these operations may not be viable without this assistance, especially during periods at the bottom of the price cycle³⁴.

2.3 Multi-Site Franchising

The other key objective of the Acts was to encourage the participation of small businesses in the retail market. This objective has been undermined by the increased use of MSF arrangements, which generally cover more than two retail sites with each franchise operation representing a significant business in its own right.

MSF arrangements are an effective mechanism for the oil majors to minimise overheads and allow retail sites to compete more efficiently with the independent chains. A number of the oil majors³⁵ have noted that multi-site franchising is the only way they can remain competitive in the market, with BP noting that following a poor profit result in 1997 it has little choice but to seek efficiencies or leave the Australian market³⁶.

The Australian Institute of Petroleum has noted that the advantages of multi-site franchising include:

- the ability to spread franchise skills and resources better over the franchise network;
- cost-saving to the franchisor, through a decreased requirement for liaison activities, compared to working with a large number of individual franchisees;
- the ability for the franchisee to staff up specialist skills to service the multi-site franchise, thus improving the quality and competitiveness of the sites;
- the ability for the franchisee to fine tune a network. Sites in the multi-site franchise can be spread to meet particular local requirements, so that customer demands can be better serviced; and
- advantages for the franchisee in efficiency in administration costs, improved purchasing power and starting flexibility³⁷.

Although acknowledging the efficiencies inherent in MSF arrangements, representatives of the smaller operators in the sector have noted that most MSFs are now of a size never contemplated and have called for them to be limited in size in order for small operators of service stations, whether franchisees or independent of the major oil companies, to hold a competitive position in retailing³⁸.

³⁴ A price cycles typically starts when one service station in an area decides to reduce its price, lowering per unit profit in an effort to increase sales (not only for petrol but also for other, higher profit, retail goods). Service stations closely monitor local prices and respond by following a competitor's price cuts to maintain market share. These variations can be in the same direction as, or counter to, the changes linked to world oil prices.

³⁵ Senate Economic References Committee (SERC) 1999

³⁶ SERC 1999

³⁷ SERC 1999

³⁸ Service Station Association of Australian in SERC 1999

2.4 Terminal Gate Prices

The TGP is the price at which wholesale suppliers are prepared to sell full tanker loads (usually a minimum of 35,000 litres) of fuel to wholesale customers at seaboard terminals or refineries on a spot basis. The TGP is quoted for fuel only and includes no added services such as business support, freight, branding or credit. Other than Western Australia (WA) and Victoria where TGP arrangements are mandated by law to a set formula, non regulated TGP arrangements are currently available on the websites of most refiner/marketers and some importer/marketers. Non regulated TGPs are usually based on Singapore product price benchmarks (the regional exchange point for petroleum products) and include allowances for quality to meet Australian standards, freight to Australia, insurance and loss, wharfage and port charges, terminalling costs and return on investment and a wholesaling margin related to costs incurred up to the terminal gate. This import parity price calculation is then adjusted by a competitive factor that takes account of any terminal gate prices posted by competitors. TGPs are reviewed regularly and may change according to competitive forces³⁹.

The lack of national consistency in TGP arrangements means that there is inequity between fuel retailers and other wholesale customers across Australia in relation to the availability of information. Customers outside of WA and Victoria are at a comparative disadvantage as they are unable to make direct comparisons between the various TGPs on offer. Further complicating this issue is that current delivery or invoice documentation for fuel purchasers does not typically include the TGP and additional fees for services such as brand, delivery or credit which makes comparisons by retailers between the various offers by wholesale suppliers, difficult or impossible. This lack of information often leads to confusion amongst petrol retailers on the actual cost of the fuel on a cents per litre basis and the resultant uncertainty may adversely affect their competitive behaviour.

2.5 Dispute Resolution

Unlike the Franchising Code of Conduct, which provides access to a low-cost dispute resolution scheme, for example, the Office of the Mediation Advisor (OMA), neither the Sites Act nor the Franchise Act provide a dispute resolution mechanism for petroleum retail industry participants. Franchisees in the industry do, very occasionally, take advantage of the services provided by the OMA⁴⁰. Access to this service places franchisees at an advantage over commission agents and independent operators who have litigation as the only viable option for addressing alleged abuses of market power by the larger market participants. As the cost of litigation is often beyond the means of many small businesses disputes may remain unresolved.

³⁹ Caltex 2005

⁴⁰ The OMA has handled about 12 service station related disputes in the last 6.5 years.

2.6 Summary Tables

Petroleum Retail Marketing Franchise Act 1980		
Benefits	Costs	Neutral
<p>Single-site franchisees & Multi-site franchisees</p> <ul style="list-style-type: none"> - sets out minimum requirements for franchise agreements - provides certainty of tenure - ensures appropriate level of disclosure occurs before agreement is entered into 	<p>Refiner/Marketers</p> <ul style="list-style-type: none"> - dictates minimum requirements for agreements, which may adversely impact on overheads - dictates tenure of franchise agreements, which limits ability of site to respond in a timely manner to changes in the market 	<p>Independent Chains (inc supermarkets) Small Independent Operators Commission Agents</p> <ul style="list-style-type: none"> - no impact as business structure and contractual contents are not restricted

Table 1. Summary of impact of Franchise Act on market participants.

Petroleum Retail Marketing Sites Act 1980		
Benefits	Costs	Neutral
<p>Single-site franchisees & Multi-site franchisees</p> <ul style="list-style-type: none"> - Encourages use of this type of business structure 	<p>Refiner/Marketers</p> <ul style="list-style-type: none"> - Limits number of sites that can be directly owned and operated - Forces use of franchising arrangements if refiner/marketers wish to extend retail network beyond Sites Act quota - May cause inefficient business structures to be used, increasing overheads 	<p>Small Independent Operators</p> <ul style="list-style-type: none"> - business structure not restricted
<p>Independent Chains (inc supermarkets)</p> <ul style="list-style-type: none"> - business structure not restricted like that of their major competitors 	<p>Commission Agents</p> <ul style="list-style-type: none"> - Restricts refiner/marketer use of this type of business structure 	

Table 2. Summary of impact of Sites Act on market participants.

3. Objective

The Government's objective is to address the regulatory failure that has resulted from the inequitable application of, and inefficiencies created by, the current legislation. Specifically, the Government seeks to facilitate an equitable market environment for petroleum wholesale suppliers and retailers, whilst recognising the power imbalance inherent in the substantial interdependency between some small business operators and wholesale fuel suppliers, for example, entities operating under franchisees and commission agency agreements.

In addition, the Government seeks to improve the operating environment for small business operators in the industry by providing access to an alternative dispute resolution mechanism and by increasing transparency in the wholesale market through a nationally consistent approach to TGP.

3.1 Related Government Policies

Reform of the legislative environment governing the downstream petroleum sector has been considered by the Government on a number of occasions since it was identified in the 1996 Coalition Party election commitments. An overview of the development of the Government's downstream retail petroleum reform policy is at **Appendix A**.

Most recently, in 2003 the Government considered the *Downstream Petroleum Reform Package* ('the Reform Package'), which consisted of an industry code (the Oilcode) mandated under section 51AE of the TPA and repeal of the Sites Act and the Franchise Act. This package focused on creating a uniform regulatory environment that offered:

- no restrictions on the type of business structure used by the refiner/marketers or any other market participant;
- minimum standards, including tenure and disclosure, for a wide range of contractual arrangements where a substantial degree of interdependency between a small business operator and wholesale fuel suppliers existed;
- a national approach to declaring a TGP that will increase clarity for purchases of fuel at the terminal gate and supplement the state based regimes without creating an undue administrative burden for wholesale fuel suppliers; and
- the establishment of a downstream petroleum dispute resolution scheme to allow market participants to address concerns in a low-cost environment.

Although the Government decided against proceeding with the reform package in 2003, in April 2004 as part of its consideration of the Energy White Paper, *Securing Australia's Energy Future*, the merit of reform in the retail petroleum industry was acknowledged and the Government noted that it would reconsider implementation of the Reform Package if and when industry consensus emerged.

Subsequently, the Government's 2004 election commitments included a commitment to continue to work with the downstream petroleum sector to achieve consensus on the introduction of an industry oil code⁴¹.

Ongoing stakeholder consultation throughout 2005 has resulted in amendments to the Reform Package. These amendments were designed to:

- ensure that the tenure of pre-Oilcode franchise agreements would continue to apply until those agreements expired;
- extend the tenure provisions for new franchise type agreements to nine years from the five years originally proposed (unless otherwise noted, commission agency arrangements would retain five years tenure under the Oilcode); and
- ensure that the Dispute Resolution Advisor will liaise regularly with industry and relevant government authorities on issues relating to the retail petrol market.

These changes are consistent with the policy objectives of the Reform Package that was considered by the Government in 2004. As such, the Reform Package has now been fully endorsed by the Government.

⁴¹ Liberal Party and National Party Coalition 2004

4. Options

Since 1996 the Government has given consideration to a number of options to address inequities in the current retail petroleum legislative environment, including the introduction of a voluntary Oilcode, and both the progressive phasing out and strengthening of the existing legislation.

The replacement of existing legislation with a voluntary Oilcode was abandoned early in the Government's deliberations on this issue as it had already been unsuccessfully trialled in the late 1980s. Introduced in 1989, the voluntary Oilcode provided the industry with an alternative, low cost dispute resolution process for addressing issues, other than pricing⁴², in relation to the Sites Act and the Franchise Act⁴³. It did not replace the Acts but was considered to be an adjunct to them.

A 1997 review by the House of Representatives Standing Committee on Industry, Science and Technology concluded that most industry stakeholders believed that the voluntary Oilcode would need to be strengthened significantly before any consideration could be given to repealing the Sites Act and the Franchise Act. However, moves to discuss amendments were stalled when the Motor Trades Association of Australia (MTAA), a key stakeholder representing many small business operators in the industry, withdrew its support⁴⁴. The MTAA argued that without the legislative framework provided by the Franchise Act there could be no voluntary Oilcode, as self-regulation without some legislative backing would not be successful⁴⁵.

This conclusion was supported by the findings of the Standing Committee on Industry, Science and Resources investigation, *Finding a balance: towards fair trading in Australia*, which considered both the voluntary Oilcode and the Franchising Code of Practice (also a voluntary code) and concluded that self-regulation had not worked in the franchising industry because self-regulation did not provide a viable regulatory strategy when there was such a disparity in the powers of the parties⁴⁶.

Another proposal, put forward by the Senate Rural and Regional Affairs and Transport Legislation Committee, was that the Sites Act and the Franchise Act run in parallel with the introduction of a mandatory Oilcode for a two year phasing in period⁴⁷. However, the Franchise Act cannot co-exist with the Oilcode as many of the provisions relating to the minimum standards for petrol re-selling agreements would be duplicated under such arrangements. Contrary to the intent of the reform objectives, this would place an additional administrative burden on the refiner/marketers and would continue to constrain their ability to apply different business structures to individual operations at their discretion.

Consideration was also given to broadening the application of the Sites Act to include other operators, such as the importer/marketers and the supermarkets, under the quota system. However, this would again be contrary to the intent of the reform objectives as it would increase the number of entities whose business operations were constrained by legislation.

This statement considers three options to meet the Government's objective for reform in the retail petroleum industry: a) maintaining the status quo; b) repealing the existing legislation and

⁴² Pricing issues were, and remain, the responsibility of the ACCC (previously the Trade Practices Commission).

⁴³ House of Representatives Standing Committee on Industry, Science and Technology 1997

⁴⁴ *ibid* 1997

⁴⁵ *ibid* 1997

⁴⁶ *ibid* 1997

⁴⁷ SERC 1999

allowing the industry to function without industry specific regulations; and c) repealing the existing legislation and instituting an industry wide regulatory regime.

4.1 Option A – no change to the current legislative environment

Maintenance of the current legislative environment will result in the refiner/marketers continuing to have their business structures restricted, whilst their competitors operate in a more flexible environment that allows them to immediately respond to changes in the structure of the market.

It would also see ongoing disparity in the conditions provided to franchisees and commission agents with the latter not being subject to any set minimum standards in relation to contract requirements and tenure.

4.2 Option B – repeal the Sites Act and the Franchise Act

Repeal of the existing legislation would, for the first time in over 25 years, result in the business structure of all operators in the retail petroleum industry being regulated solely by general competition and corporations laws.

Although the repeal of the Franchise Act would remove the industry specific minimum contractual requirements for this type of arrangement, these contracts would be regulated by the *Trade Practices (Industry Codes – Franchising) Regulations 1998* (Franchising Code of Conduct), which is a mandated code under the TPA. This legislation would not impact on any other sector of the industry.

4.3 Option C – repeal the Sites Act and the Franchise Act and introduce an industry code mandated under the Trade Practices Act 1974

The Reform Package involves the introduction of a bill to repeal the Sites Act and the Franchise Act and the mandating of an industry code, the *Trade Practices (Industry Codes - Oilcode) Regulations 2005* (the Oilcode), under section 51AE of the *Trade Practices Act 1974*.

Development of the Reform Package option follows extensive consultation with industry, industry associations, consumer groups, state and territory agencies and relevant Australian Government portfolios.

The final version of the Oilcode represents a compromise on behalf of industry stakeholders and will:

- establish minimum standards for petrol re-selling agreements between retailers and their suppliers to provide a baseline for negotiations, including strengthening of provisions (similar to those in the Franchise Act and the Franchising Code of Conduct) dealing with pre-disclosure, variation, agreed early surrender and expiry procedures to provide greater certainty and protection for parties;
- introduce a nationally consistent approach to terminal gate pricing (TGP) arrangements to improve transparency in wholesale pricing and allow access for all customers, including small businesses, to petroleum products at TGP, whilst not negating the ability of entities to negotiate individual supply agreements nor preventing the offering of discounts; and
- establish an independent downstream petroleum dispute resolution scheme and appoint a Dispute Resolution Adviser, to provide the industry with an ongoing cost-effective dispute resolution mechanism.

5. Impact Analysis

Any change in the retail petroleum legislative regime has the potential to directly impact on the business operations of both large and small businesses in the industry. It would also affect the responsibilities of Government agencies charged with administering legislation in relation to the industry, in particular the ACCC and the DITR. Change that has the potential to impact on the structure of the retail petroleum industry may also indirectly impact on consumers, in particular, various road transport users and related industries.

The following analysis considers the impact in terms of costs and benefits for the identified groups with respect to all options. Quantitative data is not available for this analysis as no independent collection of this type of data occurs in Australia but a qualitative assessment has been conducted.

5.1 Option A – No change to the current legislative environment

5.1.1 *Refiner/Marketers*

Maintenance of the current regime would see the refiner/marketers continuing to have their business structures bound by legislated requirements, placing them at a disadvantage compared to other industry participants. They would continue to be subject to ongoing reporting requirements under the Sites Act, which is monitored by the Australian Government. A number of refiner/marketers have estimated that ongoing compliance costs associated with the Sites Act are approximately \$200,000 per annum.

In an effort to remain competitive with unconstrained retail participants, the refiner/marketers would undoubtedly continue to seek mechanisms to minimise the impact of the current legislation on their business structures with a view to maximising profit margins. This may be achieved through the further utilisation of multi-site franchising arrangements or a continued emphasis on alliances with groups that are not constrained by the legislation, such as supermarket chains.

Ultimately some oil majors may seek to remove themselves from the retail market altogether, maintaining their domestic refining capacity and exerting a retail presence through the establishment of high volume off-take agreements with networks that are owned and operated by entities not captured or constrained by the current legislation (similar to the current supermarket-oil major alliances)⁴⁸.

5.1.2 *Importer/Marketers and Supermarkets*

The business structures and activities of the importer/marketers and supermarkets would continue to be unrestrained by legislation. As a result, these sections of the market would be able to respond in a much more efficient manner to changes in the market structure.

5.1.3 *Franchisees*

The present legislative arrangements offer minimum standards in relation to contract requirements and tenure for small businesses operating under franchise agreements, including nine years tenure for retail sites. Franchisees would continue to enjoy these rights.

⁴⁸ Commonwealth of Australia 2000

Franchisees may also access the services of the OMA that was established under the Franchising Code of Conduct, to formally address disputes with suppliers (both the oil majors and the independent wholesalers).

5.1.4 Commission Agents

Entities operating under commission agency arrangements have no set minimum standards in relation to contract requirements and tenure. Under current arrangements these entities remain vulnerable to the commercial decisions of the retail site owners (generally the refiner/marketers, importer/marketers or the supermarkets) and their contractual arrangements may be terminated with minimal notice and little justification.

Unlike franchisees, who may access the services of the OMA, commission agents may only seek to formally address disputes with fuel suppliers through the legal system. The high cost associated with this type of litigation usually prevents smaller market participants from challenging perceived injustices.

5.1.5 Small Independents

Small independent retailers in the industry tend to be located in rural and regional areas. As they generally source their fuel from local fuel suppliers, either refiner/marketer or importer/marketer, the key issue facing this sector of the industry under the current legislative arrangements is access to standardised information regarding the price at which each fuel supplier sells its petroleum based products (TGP)⁴⁹. Under the current regime there is no consistent mechanism for determining the TGP or for posting that information for the market to assess. The lack of clarity can mean smaller operators often do not have adequate information with which to determine the most economically viable price for spot purchases of fuel products, hindering their ability to make the most effective purchase decisions.

5.1.6 Government

The industry portfolio administers the Sites Act. This involves monitoring the application and adherence to the Acts at a cost of approximately \$100,000 per annum. Maintaining the current legislative arrangements will impose no additional cost on Government.

5.1.7 Consumers

With no change to the legislative environment, industry consolidation and structural change to facilitate more economically viable profit margins is inevitable. The impact this is likely to have on competition and in particular on petrol prices at the pump is the key issue for consumers.

In the short term, ongoing intense retail competition, aided by the oil majors' practice of selective price support schemes, which allows price flexibility for franchisees, will maintain competitive petrol prices. However, the ongoing use of inefficient business models by some in the industry may be to the detriment of consumers to whom the higher overhead costs are passed on through the price of petrol.

Also, for many retailers, extended periods at the bottom of the price cycle are not sustainable and may lead to a decline in the number of retailers in the market. However, rationalisation has been occurring in the Australian market since the 1980s and there has been little evidence that this has adversely impacted on price competition. International evidence also suggests that over the long term the combination of rationalisation and the entry of supermarkets to the market have only a

⁴⁹ for information on TGP refer to footnote 5.

minimal effect on petrol prices at the pump⁵⁰. Indeed, following the entry of supermarket retailers and significant market restructuring over the past decade, the United Kingdom (UK) still has the third lowest pre-tax petrol prices in the Organisation of Economic Cooperation and Development⁵¹. In addition, owner-retailers and small independents still operate a large proportion of UK retail sites albeit at lower levels than before the supermarkets entered the sector⁵².

5.1.8 Summary

The current legislative environment does not constrain the business structures of the importer/marketers and supermarkets. This provides them with a competitive advantage over their main competitors, the refiner/marketers. The disparity in operating regimes forces the refiner/marketers to seek alternative mechanisms to remain competitive, such as the use of multi-site franchising and implementation of price support schemes. The current regime also facilitates inequities between small businesses that operate retail sites on behalf of the fuel suppliers (refiner/marketers and importer/marketers) as franchisees and commission agents. The inequities created by the current regime increase costs for those sections of the market that are constrained and increased overheads are passed onto the consumer in the form of higher prices. Overall, Option A, maintenance of the current legislative regime, is considered to apply a net cost to the community.

⁵⁰ United Kingdom Office of Fair Trading 1998

⁵¹ OECD 2005

⁵² United Kingdom Office of Fair Trading 1998

Option A – no change to the current legislative environment	
Benefits to Refiner/Marketers	Costs to Refiner/Marketers
<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Lack of flexibility in operating structure of retail sites which has potential to hinder efficiencies and restrict response to changes in the market structure • Ongoing compliance reporting requirements at a cost of approximately \$200,000 per annum
Benefits to Importer/Marketers & Supermarkets	Costs to Importer/Marketers & Supermarkets
<ul style="list-style-type: none"> • Fully flexible operating structures allow immediate response to changes in the market structure 	<ul style="list-style-type: none"> • Nil
Benefits to Franchisees	Costs to Franchisees
<ul style="list-style-type: none"> • <i>Petroleum Retail Marketing Franchise Act 1980</i> sets out minimum requirements for franchise agreements; provides surety of tenure and ensures appropriate level of disclosure occurs before agreements are entered into. • Access to alternative dispute resolution service 	<ul style="list-style-type: none"> • Use of multi-site franchising has minimised the entry of small businesses into the industry through franchise agreements
Benefits to Commission Agents	Costs to Commission Agents
<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • No guaranteed certainty of tenure or set minimum standards in relation to contracts requirements
Benefits to Small Independent Operators	Costs to Small Independent Operators
<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • No transparency in TGP can hinder ability to determine most cost effective fuel purchase
Benefits to Government	Costs to Government
<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Ongoing compliance monitoring costs associated with the <i>Petroleum Retail Marketing Sites Act 1980</i> at a cost of approximately \$100,000 per annum
Benefits to Consumers	Costs to Consumers
<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Costs associated with structural inefficiencies in the refiner/marketer networks are passed onto consumers • Potential reduction in competition if a refiner/marketer chooses to exit the market

Table 3. Summary of the Costs and Benefits to Stakeholders under Option A

5.2 Option B – Repeal of the Sites Act and the Franchise Act

5.2.1 Refiner/Marketers

Repeal of the Sites Act and the Franchise Act would remove a market distortion that places restrictions on the business structures utilised by the refiner/marketers and adversely impacts on their ability to operate efficiently in the market. As current franchise agreements expire, refiner/marketers would have greater flexibility to select the most appropriate business model to allow them to maximise efficiencies at individual retail sites. The degree to which the refiner/marketers may choose to take advantage of this flexibility has not been measured as this would be a commercial decision for individual companies based on market realities.

Repeal of the Sites Act would also remove the cost of compliance reporting to Government that is incurred by the refiner/marketers. This is estimated to cost each company approximately \$200,000 per annum.

5.2.2 Importer/Marketers and Supermarkets

Repeal of these Acts would have no direct impact on the importer/marketers or the supermarkets, as these entities are not captured by the Sites Act and the Franchise Act and their structure is already regulated by general competition and corporations laws, such as the TPA. However, indirectly the repeal of the Acts may result in these entities facing greater competition in localised markets as their key competitors, the refiner/marketers, would have more flexibility with which to respond to market changes.

5.2.3 Franchisees

As noted above, upon repeal of the current regime the refiner/marketers may re-assess the use of franchise arrangements at some or all of their retail sites. As a result of these reviews, some franchise arrangements may be converted to alternative business structures, such as commission agency arrangements, at the conclusion of their existing tenure arrangements. The rights of those franchisees remaining in the industry would be limited to those specified under the Franchising Code of Conduct⁵³. Franchisees would still have access to the dispute resolution services of the OMA.

5.2.4 Commission Agents

Repeal of these Acts would have no impact on existing commission agents, as they are not affected by the Sites Act and the Franchise Act. As these agreements are less prescriptive than franchise arrangements, and contain no specified tenure requirements, there is a high probability that some franchise arrangements would, at the conclusion of existing arrangements, be converted to commission agency arrangements.

As noted in Section 5.1.4, commission agents do not have access to any dedicated alternative dispute resolution scheme. Anecdotal evidence suggests that resolution of issues through the legal system is costly and as such, concerns of many commission agents regarding these contracts often remain unresolved.

⁵³ Along with 9 year tenure on retail sites the Franchise Act also legislates a number of industry specific disclosure requirements between franchisor and franchisee.

5.2.5 Small Independents

Like commission agents, the repeal of these Acts would have no structural impact on small independent operators in the industry. However, as noted in Section 5.1.5, the ongoing lack of transparency in relation to fuel suppliers determining and posting a TGP would continue to adversely impact on the ability of small business operators to determine the most economically viable price for spot purchases of fuel products.

5.2.6 Government

Repeal of the Acts would remove compliance monitoring responsibility from the industry portfolio. This is estimated to cost \$100,000 per annum.

The ACCC has responsibility for general compliance with the TPA, and would continue to monitor competitive behaviour in the industry. The level of monitoring required is difficult to gauge at this time but would conceivably increase in the short-term as the industry adjusted to a more liberal legislative regime.

5.2.7 Consumers

The increased flexibility in the application of business models could result in improved operational efficiencies for the refiner/marketers, reducing overheads. Such arrangements may lead to greater competition in the retail market as companies would have an increased capacity to respond quickly to changes in local competition.

However, as noted above, prolonged periods at the bottom of the price cycle are not sustainable for many operators and such activities could lead to a decline in the number of operators in the market. Whilst the impact of such rationalisation on competition is difficult to predict, international evidence suggests that petrol prices at the pump tend to remain competitive in the wake of rationalisation and changing market structure⁵⁴.

5.2.8 Summary

By allowing the entire industry to operate under general competition and corporations law, this option would increase the flexibility in the structure of all retail networks and increase market equity. It would allow the refiner/marketers to implement market structures that could respond efficiently to changes in local markets, potentially increasing competition. Although the number of small businesses operating under franchise agreements may diminish, those that remained would continue to receive protection of their rights through the Franchising Code of Conduct. By comparison, small businesses operating under commission agency agreements would continue to be at a comparative disadvantage to franchisees in their dealings with fuel suppliers. In addition, unlike franchisees, commission agents and independent operators would have no avenue apart from the courts through which to address perceived inadequacies in their dealings with fuel suppliers.

Option B delivers some net economic benefits to the community by creating an equitable environment for fuel suppliers to operate within. However, noting the market imbalance between fuel suppliers and small business retailers in the industry, the inability of this regime to provide standards for the interaction between small business operators and fuel suppliers could cause inefficiencies for small business operators resulting in increased overheads, the cost of which may be passed onto consumers.

⁵⁴ United Kingdom Office of Fair Trading 1998

Option B – repeal the Sites Act and the Franchise Act	
Benefits to Refiner/Marketers	Costs to Refiner/Marketers
<ul style="list-style-type: none"> Fully flexible operating structures allow immediate response to changes in the market structure Save approximately \$200,000 per annum that was associated with compliance reporting under Sites Act 	<ul style="list-style-type: none"> Nil
Benefits to Importer/Marketers & Supermarkets	Costs to Importer/Marketers & Supermarkets
<ul style="list-style-type: none"> Fully flexible operating structures allow immediate response to changes in the market structure 	<ul style="list-style-type: none"> Potential for greater competition from refiner/marketers
Benefits to Franchisees	Costs to Franchisees
<ul style="list-style-type: none"> Franchise arrangements would be subject to the Franchising Code of Conduct, which sets out some general requirements for franchise agreements Would retain access to a low cost alternative dispute resolution service 	<ul style="list-style-type: none"> Use of multi-site franchising has minimised the entry of small businesses into the industry through franchise agreements
Benefits to Commission Agents	Costs to Commission Agents
<ul style="list-style-type: none"> Nil 	<ul style="list-style-type: none"> No guaranteed certainty of tenure or set minimum standards in relation to contracts requirements
Benefits to Small Independent Operators	Costs to Small Independent Operators
<ul style="list-style-type: none"> Nil 	<ul style="list-style-type: none"> No transparency in TGP can hinder ability to receive best price of fuel purchases
Benefits to Government	Costs to Government
<ul style="list-style-type: none"> Save approximately \$100,000 per annum in monitoring compliance with the Sites Act 	<ul style="list-style-type: none"> Possible short term increase in ACCC industry monitoring costs
Benefits to Consumers	Costs to Consumers
<ul style="list-style-type: none"> Increase flexibility in the structure of refiner/marketer networks should decrease inefficiencies and associated overheads that may have been passed onto consumers 	<ul style="list-style-type: none"> Nil

Table 4. Summary of the Costs and Benefits to Stakeholders under Option B

5.3 Option C – Repeal the Sites Act and the Franchise Act and regulate industry conduct through the introduction of an industry code mandated under Section 51AE of the *Trade Practices Act 1974*

As the impact of repealing the Sites Act and the Franchise Act is considered in Option B, this section will focus primarily on the impact of replacing the Acts with a mandatory industry code, the *Trade Practices (Industry Codes - Oilcode) Regulations 2005*, under section 51AE of the TPA. The Oilcode will:

- establish minimum standards for petrol re-selling agreements between retailers and their suppliers to provide a baseline for negotiations, including strengthening of provisions (similar to those in the Franchise Act and the Franchising Code of Conduct) dealing with pre-disclosure, variation, agreed early surrender and expiry procedures to provide greater certainty and protection for parties;
- introduce a nationally consistent approach to TGP arrangements to improve transparency in wholesale pricing and allow access for all customers, including small businesses, to petroleum products at TGP, whilst not negating the ability of entities to negotiate individual supply agreements nor preventing the offering of discounts; and
- establish an independent downstream petroleum dispute resolution scheme and appoint a Dispute Resolution Adviser, to provide the industry with an ongoing cost-effective dispute resolution mechanism.

5.3.1 Refiner/Marketers

As outlined previously, by removing the constraints on the refiner/marketers' ability to apply the most appropriate business model to individual retail sites, the repeal of the Sites Act and the Franchise Act will increase the flexibility and response time of these entities to changes in the market. This flexibility will not be adversely impacted by the introduction of the Oilcode, which will apply minimum standards, including tenure for all fuel re-selling agreements where there is a substantial interdependency between the retailer and fuel supplier, for example, most franchise and commission agency agreements.

There may be an initial increase in the administrative burden on refiner/marketers in relation to establishing new agreements under an Oilcode regime (tenure of on-foot contracts is honoured under Oilcode). However, once systems are in place to comply with the regulations, this cost is not expected to be any different from the existing administrative burden associated with administering existing fuel supply contracts. Noting the establishment of tenure for commission agents under Oilcode, the administrative burden on refiner/marketers may actually decrease as this type of contract would potentially be subject to fewer reviews and renewals than at present.

Refiner/marketers would also be required to comply with the TGP arrangements prescribed in the Oilcode. Once this system is established it is not expected to create an additional burden as the majority of refiner/marketers already maintain and publicly post a TGP for use by wholesale fuel buyers.

5.3.2 Importer/Marketers and Supermarkets

With the introduction of the Oilcode the importer/marketers and supermarkets will be subject to retail petroleum industry specific regulation for the first time. The burden of this regulation will be light, requiring the importer/marketers to adopt a minimum set of conditions and requirements into any fuel re-selling agreements they enter into.

Importer/marketers would also be required to provide greater transparency in relation to their TGP arrangements, which may result in an initial compliance cost. Once established these systems would be expected to have only minimal ongoing costs associated with them.

5.3.3 Franchisees

The Oilcode extends the minimum contractual requirements set by the Franchise Act and Franchising Code of Conduct and maintains nine year tenure arrangements for franchise-type arrangements. It also establishes a dedicated industry dispute resolution service. These initiatives will provide franchisees with more effective and transparent contractual arrangements and low cost mechanisms through which to resolve disputes.

5.3.4 Commission Agents

The Oilcode is particularly beneficial for businesses operating under commission agency-type arrangements, where there is a substantial up-front investment by the retailer in the site. These entities were not previously entitled to any certainty of tenure nor were their fuel suppliers required to uphold any minimum set of contractual requirements.

Whilst there are not expected to be significant transitional or ongoing costs for small businesses operating under commission agency arrangements, there is an optional requirement to seek legal and financial assistance during fuel reselling agreement negotiations.

The establishment of the dispute resolution service, which seeks to encourage market participants to resolve disputes through mediation without resorting to legal action, will provide all market participants with a low-cost alternative to taking action in the courts. It will provide small businesses with an economically viable avenue to address concerns with fuel-reselling agreements and other issues in relation to the Oilcode. In the event that mediation is unsuccessful, commission agents, like all industry participants, will still be able to pursue standard means of dispute resolution, such as litigation.

5.3.5 Small Independents

For business models that do not utilise fuel re-selling agreements (many small independent operators own their own site and operate under supply-only or supply plus brand agreements with refiner/marketers or importer/marketers), the greater transparency in TGP arrangements prescribed under Oilcode will provide increased certainty as to the spot sales price of declared petroleum products, whilst not restricting the rights of entities to negotiate other arrangements should they wish.

The Oilcode TGP arrangements do not require all wholesale sales to be made at a TGP price. If both parties to a sale wish to negotiate a price on another basis, they are free to do so. The Oilcode only requires that all purchasers be given the option to purchase declared petroleum products at a TGP-based price provided this option does not disadvantage the wholesale supplier⁵⁵.

⁵⁵ It would not be practical or competitive to fix national TGP as this could lead to collusion in the wholesale market. Similarly, any move to restrict below-cost selling by suppliers through negotiated contracts would have the potential to reduce competition in the retail petrol market and could lead to higher petrol prices for consumers. This would also be contrary to the recommendations of the 2003 *Review of the Competition Provisions of the Trade Practices Act* (Dawson Report), which concluded that competition policy is to preserve a competitive environment, not individual competitors.

5.3.6 Government

As the Oilcode will be a mandatory code under the TPA, the ACCC would assume primary responsibility for enforcement of the Oilcode and in educating market participants about rights and responsibilities. The dispute resolution scheme would be established and administered by DITR on an outsourced basis.

The funding required to implement the Oilcode is \$11.8 million over a four year period, with an ongoing funding requirement of \$3 million a year thereafter. This funding would be shared between the ACCC and DITR.

5.3.7 Consumers

As noted under Option A and Option B, rationalisation in this industry will occur regardless of changes to the current legislative regime. However, the introduction of the Oilcode, with its minimum contractual requirements and greater transparency in TGP, will ensure that small business operators retain a competitive role in the industry.

Although the introduction of more prescriptive requirements for fuel re-selling agreements is expected to create a slight initial administrative burden for fuel suppliers, the long-term impact this may have on overheads is expected to be mitigated by an increase in competition (that will flow from the refiner/marketers being able to apply more flexible business structures to their networks).

The establishment of a national mechanism to determine TGP will also provide consumers with greater transparency regarding the cost at which fuel is purchased from wholesale fuel suppliers. This will allow more effective identification of price anomalies at the petrol pump.

5.3.8 Summary

The Reform Package will achieve the Government's objectives as it would allow all retail petroleum suppliers and retailers to choose the most appropriate business structure for individual operations. The introduction of a nationally consistent approach to TGP arrangements will provide small businesses with greater clarity in their dealings with fuel suppliers. Similarly, the dispute resolution service will provide the industry with a low-cost alternative to taking action in the courts, an option which is often beyond the financial capacity of many small businesses in the industry. The Dispute Resolution Adviser will also liaise regularly with industry and relevant government authorities on issues relating to the retail petrol market.

When considered in the context of the enhancement of the minimal contractual requirements for franchise agreements, combined with the broader application of these minimal requirements to both franchise agreements and commission agency agreements (where there is a substantial investment in the site by the retailer), these initiatives will increase competition in the market whilst ensuring that smaller operators retain protection from the market power of wholesale fuel suppliers. On balance, Option C will deliver net economic benefits to the community and these benefits are considered to be greater than those available under Option B.

Option C – repeal the Sites Act and the Franchise Act and implement Oilcode	
Benefits to Refiner/Marketers	Costs to Refiner/Marketers
<ul style="list-style-type: none"> Fully flexible operating structures allow immediate response to changes in the market structure Save approximately \$200,000 per annum that was associated with compliance reporting under Sites Act 	<ul style="list-style-type: none"> Mechanisms in place to provide greater transparency in TGP Commission agents are required to have 5 years tenure and set minimum contractual requirements
Benefits to Importer/Marketers & Supermarkets	Costs to Importer/Marketers & Supermarkets
<ul style="list-style-type: none"> Fully flexible operating structures allow immediate response to changes in the market structure 	<ul style="list-style-type: none"> Requirement to comply with TGP arrangements for fuel wholesale suppliers Requirement to apply set minimum standards to fuel re-selling agreements Potential for greater competition from refiner/marketers
Benefits to Franchisees	Costs to Franchisees
<ul style="list-style-type: none"> Fuel re-selling arrangements extend the minimum contractual requirements set by the Franchise Act and Franchising Code of Conduct and maintain nine years tenure. Would retain access to a low cost alternative dispute resolution service 	<ul style="list-style-type: none"> Requirement to seek legal and financial advice prior to entering into a fuel re-selling agreement (may be waived) Use of multi-site franchising has minimised the entry of small businesses into the industry through franchise agreements
Benefits to Commission Agents	Costs to Commission Agents
<ul style="list-style-type: none"> Fuel re-selling arrangements would apply to operations where there is an up-front investment greater than \$20,000 by the agent. Fuel re-selling arrangements would extend the minimum contractual requirements set by the Franchise Act and Franchising Code of Conduct and provide 5 year tenure. Would receive access to a low cost alternative dispute resolution service 	<ul style="list-style-type: none"> Requirement to seek legal and financial advice prior to entering into a fuel re-selling agreement (may be waived)
Benefits to Small Independent Operators	Costs to Small Independent Operators
<ul style="list-style-type: none"> Would receive access to a low cost alternative dispute resolution service Would have certainty of TGP during fuel purchases increasing ability to receive best price 	<ul style="list-style-type: none"> Nil
Benefits to Government	Costs to Government
<ul style="list-style-type: none"> Save approximately \$100,000 per annum in monitoring compliance with the Sites Act 	<ul style="list-style-type: none"> Establishment and ongoing administration of the Dispute Resolution Service (DITR) Undertake education and awareness campaign in relation to Oilcode (DITR and ACCC) Monitor and enforce compliance with the Oilcode (ACCC)

Option C – repeal the Sites Act and the Franchise Act and implement Oilcode	
Benefits to Consumers	Costs to Consumers
<ul style="list-style-type: none"> Increased flexibility in the structure of refiner/marketer networks should decrease inefficiencies and associated overheads that may have been passed onto consumers 	<ul style="list-style-type: none"> Ongoing rationalisation may reduce the number of retail sites

Table 5. Summary of the Costs and Benefits to Stakeholders under Option C

6. Consultation

Consultation with the industry on reform in the retail petroleum sector has been an iterative process over the past decade.

Straight repeal of the Sites Act and the Franchise Act has been debated on many occasions. However, it is not considered to be a tenable option to some industry stakeholders as it would leave small independent operators, especially franchisees, in a more vulnerable position than allowed for under the existing legislation. As such, the Reform Package has been proposed as a compromise position. The *Petroleum Retail Legislation Repeal Bill* is a key component of the Reform Package and is the result of an extended period of industry-government consultation and negotiation (refer **Appendix A**). The development process for the 2005 iteration of the Reform Package commenced with the release of the *Downstream Petroleum Industry Framework* in 2002⁵⁶.

The *Framework* evolved from over 12 months of public consultation and government review, including a number of Petroleum Industry Forums. These forums gave key industry associations an opportunity to articulate member priorities, clarify key issues and assist in developing informed policy for the downstream petroleum industry.

The resultant *Framework* proposed a range of options to address the impact of refinery over-capacity, the trend towards multi-site franchising, the entry of new market players and the inability of existing legislation to evolve with the changing market structure. It provided the basis for subsequent negotiations to develop the draft Oilcode that was presented to industry in late 2003.

The 2003 draft of the Oilcode was considered by the Government in late 2003. The Government decided against proceeding with the Reform Package at that time because it was unable to reach industry consensus due to the rapidly changing market structure. However the merit of sectoral reform was acknowledged and the Government noted that it would reconsider implementation of the Reform Package along the lines of the 2003 Oilcode if and when industry consensus emerged.

Since late 2004, the Government has undertaken an extensive consultation process, working with a number of stakeholders to clarify the application of several provisions in the Oilcode. This consultation has included bi-lateral meetings with all parties, along with an industry roundtable, which provided a forum to address many outstanding concerns expressed by industry. The outcome of these meetings has been several amendments to the Oilcode to increase clarity. Following extensive industry discussions, changes were also made to ensure the preservation of tenure of contracts on-foot at the time the Oilcode is introduced. Tenure provisions for fuel re-selling agreements under the Oilcode regime were also amended to allow nine years tenure for “franchisee-type” arrangements, which is consistent with tenure granted to this type of arrangement under the current legislation.

⁵⁶ DITR 2002

Stakeholders agreed that ‘commission agent’ type agreements, which include a reasonable investment by the retailer and that have no explicit tenure rights under current legislation, would continue to receive five years tenure under the Oilcode regime.

Despite these amendments the policy intent of the reform package has not changed from that considered by the Government in 2003 nor have the key principles underlying the Oilcode, as outlined in Section 3, altered.

Despite several years of negotiation, and significant concessions by some industry participants, it has not proven possible to develop an Oilcode that both satisfies all industry stakeholder demands and is consistent with the Government’s competition policy principles. A number of parties representing independent operators and small businesses in the industry remain concerned that the Oilcode does not prevent either below-cost selling or the provision of discounts to large volume customers in the wholesale market (refer Table 6). However, amendments to accommodate such a position would be inconsistent with the Government’s competition policy objectives as outlined in its responses to the 2003 *Review of the Competition Provisions of the Trade Practices Act 1974* (The Dawson Review) and the 2004 Senate Economics References Committee *Inquiry on The Effectiveness of the Trade Practices Act in Protecting Small Business*.

<i>Benefits</i>	<i>Costs</i>
<i>Motor Trades Association of Australia (MTAA)</i> The national peak body for the whole of the retail, service and repair sectors of the Australian automotive industry.	
<ul style="list-style-type: none"> - Nationally consistent TGP arrangements for those purchasing from primary suppliers - Transparent supply documentation - Greater transparency and certainty in fuel re-selling agreements - Extended coverage of fuel re-seller agreements - Dispute resolution scheme 	<ul style="list-style-type: none"> - Loss of Sites Act, which requires refiner/marketers to use franchise arrangements - No industry specific restrictions on pricing behaviour
<i>Australian Institute of Petroleum (AIP)</i> The key representative body of Australia's petroleum refining industry.	
<ul style="list-style-type: none"> - Repeal of Sites Act - Disputes about fuel re-seller agreements may be easier to resolve under Oilcode than Franchise Act 	<ul style="list-style-type: none"> - Commission agency arrangements covered by Oilcode
<i>Independent Petroleum Group (IPG)</i> The representative body of the major independent importer/marketers.	
<ul style="list-style-type: none"> - Nationally consistent TGP arrangements for those purchasing from primary suppliers - Transparent supply documentation - Dispute resolution scheme 	<ul style="list-style-type: none"> - Commission agency arrangements covered by Oilcode - No industry specific restrictions on pricing behaviour
<i>Petroleum Marketers Association of Australia (PMAA)</i> Represents the interests of those small businesses that are not covered by the MTAA or the IPG.	
<ul style="list-style-type: none"> - Nationally consistent TGP arrangements for those purchasing from primary suppliers - Dispute resolution scheme 	<ul style="list-style-type: none"> - Commission agency arrangements covered by Oilcode - No industry specific restrictions on pricing behaviour
<i>Australian Petroleum Agents and Distributors Association (APADA)</i> A representative body of wholesale and retail distributors.	
<ul style="list-style-type: none"> - Nationally consistent TGP arrangements for those purchasing from primary suppliers - Dispute resolution scheme 	<ul style="list-style-type: none"> - Commission agency arrangements covered by Oilcode

Table 6. Summary of stakeholder views and issues

7. Conclusions and Recommended Option

In addressing the inconsistencies and shortfalls in the current regulatory arrangements, industry policy responses should not target specific business structures within the sector which may lead to further distortions of business models. In other words, the overly prescriptive approach reflected in the Sites Act and the Franchise Act should be avoided in favour of creating an environment that allows businesses to determine the most appropriate operational structure to meet individual needs and that balances the interests of all market participants.

Continuation of the current legislative regime is not proposed. This is because it restricts the business options of the prescribed oil companies (causing inefficient business structures to be utilised) and provides minimum standards for the fuel re-selling agreements of some industry participants but not others. Its discriminatory nature may inhibit the long-term competitiveness within the industry as higher overhead costs associated with inefficient business structures are passed along the value chain.

Repeal of the existing legislation will allow the industry to be regulated solely by general competition and corporations laws. This will provide a more effective regulatory environment that will allow all industry participants the flexibility to choose the most appropriate business structure for individual retail sites in their networks. However, given the imbalance between the market share held by the wholesale fuel suppliers and that held by many retailers in the industry, if there are no minimum standards for the wide range of contractual arrangements, small businesses operating under franchise-type and commission agency-type arrangements will be vulnerable to the market power of fuel suppliers during negotiations, particularly in relation to tenure.

In light of the above, and the extensive stakeholder consultation undertaken since 2002, Option C (i.e. replacing the existing legislation with a mandatory industry code of conduct under the TPA), is proposed. This option will provide a more effective regulatory environment for all industry participants. It will allow all businesses greater flexibility when selecting the business structure for individual petroleum retail sites. It will provide a minimum standard for agreements for businesses operating under fuel re-selling agreements, including certainty of tenure for agreements where there is a substantial degree of interdependency between the retailer and the wholesale fuel supplier. For those not utilising such agreements, it will provide greater transparency in the cost of sales of declared petroleum products at the terminal gate. It will also provide access to a low-cost alternative to resolving disputes in the legal system, which will provide many smaller businesses in the sector with an economically viable mechanism through which they can address compliance issues.

8. Implementation and Review

It is proposed that, concurrent with the repeal of existing retail petroleum legislation, the Oilcode will be mandated under the TPA. The Oilcode will be administered by the ACCC, with DITR assuming responsibility for establishing the dispute resolution scheme.

The ACCC will have ongoing responsibility for monitoring the effectiveness of the Oilcode and, with DITR, will conduct a review of the Oilcode 12 months after it commences operation. As the Oilcode consists of regulations under the TPA, any required amendments identified in such a review could be efficiently implemented through the standard regulation making processes. This will allow the Oilcode to respond to future changes in market conditions or regulatory needs in a much more timely fashion than the current legislative framework.

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History of Downstream Petroleum Reform Policy

Date	Item	Key Issues	Outcome
1996	<i>Coalition election policy</i>	Deregulatory policy for petroleum retailing: <ul style="list-style-type: none"> - Principal aim of the policy was to enhance transparency, accountability and lower country petrol prices. Also proposed repeal of existing petroleum industry regulation, <i>Petroleum Retail Marketing Sites Act 1980</i> (Sites Act) and <i>Petroleum Retail Marketing Franchise Act 1980</i> (Franchise Act) following an independent review. This position had strong support from consumer motoring organisations.	Issue were included in an ACCC review of the petroleum products declaration directed by Assistant Treasurer, Hon George Gear MP.
	<i>ACCC Petroleum Products Declaration</i>	Review of petroleum industry declarations under Prices Surveillance Act 1983. The scope of the review was broadened by Treasurer Costello to include the Coalition policy on terminal gate pricing and country petrol pricing. Findings included: <ul style="list-style-type: none"> - government regulations, especially price surveillance had been ineffective in achieving stated objectives and possibly contributed to industry inefficiencies; - recommended repeal of Sites and Franchise Acts; and - recommended continued development of industry code of conduct (Oilcode). The MTAA, in response to recommendations regarding repeal of legislation, formally withdrew from voluntary Oilcode and submit 10 demands for continued involvement in negotiations for any future Oilcode.	ACCC reported findings to the Government on 15 August 1996. The Government responded in December 1996, with conditional support for repeal of legislation in exchange for implementation of pro-competitive measures, including: <ul style="list-style-type: none"> - "access" to terminals regime; - improved transparency; and - restoration of the voluntary Oilcode.
1997	<i>Independent Review of Oilcode and Petroleum retailing</i>	The Department of Industry, Science and Resources commissioned an independent review of the Oilcode. The review, conducted by Mr Ray Braithwaite, considered the following: <ul style="list-style-type: none"> - the effective operation of the Oilcode in the event of repeal of the legislation; - possible measures to strengthen Oilcode; - would a strengthened Oilcode provide protection for resellers under contract law; and - options to facilitate repeal of the legislation. 	Findings included: <ul style="list-style-type: none"> - protections under the Sites and Franchise Acts were not covered by the Oilcode, other legislation or business agreements; - there was a lack of incentives for participants to adhere to tenets of a voluntary Oilcode; - the existing legislation provided limited protection for resellers; and - that repeal of the existing legislation should be conditional on the development of a strengthened Oilcode and finalisation of other legislative underpinnings.
	<i>Fair Trading Statement</i>	The Fair Trading Statement was announced by then Minister for Employment, Small Business and Workplace Relations, the Hon Peter Reith MP in response to the HoR Standing Committee on Industry, Science and Technology Report, <i>Finding a balance: towards fair trading in Australia</i> .	Statement included proposed amendments to the TPA which allowed for prescription of mandatory industry codes in regulation. The Government announced that industry codes would be developed for franchising and petroleum retail sectors.

Date	Item	Key Issues	Outcome
1998	<i>Petroleum Marketing: The New Era (20 July)</i>	Policy statement announced by the Treasurer, the Hon Peter Costello MP and the then Minister for Industry, Science and Tourism, the Hon John Moore MP. The statement followed an extensive review of the petroleum retail market by the ACCC.	The first downstream industry reform package was developed and included the following initiatives to improve competition in the retail market: - removal of prices surveillance; - an "open access" regime for terminals to improve transparency at the wholesale level of the market; and - the repeal of the Sites and Franchise Acts and introduction of a mandatory Oilcode under the TPA, governing interaction between major oil companies and their fuel resellers. The package also provided for a continued monitoring of prices by the ACCC and independent price monitoring by the Australian Automobile Association and the major oil companies.
	<i>Coalition election policy</i>	Commitment to refer <i>Petroleum Retail Legislation Repeal Bill 1998</i> to Senate Rural and Regional Affairs and Transport Legislation Committee.	Government decides that repeal of legislation would not occur until consensus by all parties reached on final arrangements for implementation of the Oilcode.
1999	<i>Senate Rural and Regional Affairs and Transport Legislation Committee</i>	Consideration of the repeal bill (<i>Petroleum Retail Legislation Repeal Bill 1998</i>)	Committee recommended Sites Act not be repealed for 2 years pending review of effectiveness of the proposed Oilcode. MTAA support findings of committee, major oil companies did not.
	<i>Withdrawal of reform package (23 September)</i>	The Government announced it would not proceed with reform package unless agreement reached on repeal of the Sites Act. Major Oil companies are against retention of Sites Act coupled with introduction of Oilcode, whilst the MTAA is in favour of introduction of Oilcode but not in favour of repealing legislation.	Australian Democrats Industry spokesman, Senator Aden Ridgeway motions for inquiry to examine issues in petroleum retailing.
	<i>Senate Economics References Committee</i>	Inquiry to examine provisions of the <i>Fair Prices and Better Access for All (Petroleum) Bill 1999</i> and practice of multi-site franchising by oil companies. During public hearings Professor Alan Fels, ACCC, indicated support for the Government's reform package including repeal of the legislation and introduction of a mandatory Oilcode.	Government decides not to continue with implementation of the reform package.
2002	<i>Petroleum Industry Forum (April)</i>	Chaired by the Minister for Industry, Tourism and Resources, the Hon Ian Macfarlane MP. Industry represented by: - Australian Institute of Petroleum (AIP) - Motor Trades Association of Australia (MTAA) - Australian Petroleum Agents and Distributors Association (APADA) - Petroleum Marketers Association of Australia (PMAA) - Independent Petroleum Group (IPG)	Issues raised at forum included terminal gate pricing, fuel standards, and the relevance of existing legislation. Minister undertakes to further progress issues of concern through bilateral consultations.

Date	Item	Key Issues	Outcome
2002	<i>Petroleum Industry Forum (November)</i>	<p>The Minister for Industry, Tourism and Resources launches the Downstream Petroleum Industry Framework document and announces six priority issues for guiding future retail market reform:</p> <ul style="list-style-type: none"> - terminal gate pricing; - APEC fuel study; - Dawson review of the <i>Trade Practices Act 1974</i>; - national fuel standards; - possible repeal of the Sites and Franchise Acts; and - the impact of refinery rationalisation. 	Minister announces intention to introduce a mandatory Oilcode that includes terminal gate pricing arrangements and applies to all industry participants. The Oilcode is to be developed through bilateral and multilateral discussions.
2003	<i>Petroleum Industry Forum (March)</i>	The Minister for Industry, Tourism and Resources releases draft Oilcode.	Industry feedback is received and a final Oilcode is developed based on industry consensus and compromise.
	<i>Downstream Petroleum Reform Package (December)</i>	Government consideration of the Downstream Petroleum Reform Package, which represents a compromise by all stakeholders, occurs.	The Government decides not to proceed with the reform package.
2004	<i>Energy White Paper: Securing Australia's Energy Future (April)</i>	The Government notes that it continues to see merit in reform of the downstream petroleum sector.	Government agrees that it would reconsider implementation of the Downstream Petroleum Reform Package, along the lines of Oilcode proposed in 2003, if and when industry consensus in support of the reforms emerges.
	<i>Coalition Resources and Energy Statement (7 October)</i>	Release of Coalition Resources and Energy Statement, <i>Meeting Australia's Energy Challenge: the Coalition's Plan for Australia's Resources and Energy Sector</i> .	Statement includes the following election commitment: 'Continue to work with the downstream petroleum sector to achieve consensus on the introduction of an industry oil code'.
	<i>Ministerial media release (7 December)</i>	The Minister for Industry, Tourism and Resources announces the Government's intention to proceed with further industry consultation with a view to achieving consensus support for the introduction of the Reform Package.	
2005	<i>Industry Consultation</i>	The Minister for Industry, Tourism and Resources undertakes bilateral and multilateral industry consultation on the Downstream Petroleum Reform Package.	Industry forum on <i>Trade Practices Act 1974</i> held.

PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause is a standard provision setting out the title by which the proposed Act is to be cited if it becomes law.

Clause 2 – Commencement

2. The Bill will commence on the day it receives Royal Assent. The Schedules will commence by Proclamation and in any case within six months and one day of Royal Assent.

Clause 3 - Schedules

3. The schedules define the Acts that are to be repealed or amended on commencement of this Bill.

Schedule 1 – Repeal of Acts

4. Upon commencement of this Schedule the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Retail Marketing Franchise Act 1980* will be repealed in full.

Schedule 2 – Consequential amendment

5. Upon commencement of this Schedule reference to the *Petroleum Retail Marketing Franchise Act 1980* will be deleted from the schedule to the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

However, this deletion will not impact on any matters already before the court in relation to the *Petroleum Retail Marketing Franchise Act 1980*.