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# **Australian Institute of Petroleum (AIP) on behalf of itself and members**

Submission in support of application for  
interim and final authorisation by the AIP  
and its members

2 April 2020

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## 1 Application for authorisation

The global COVID-19 pandemic:

- (a) has resulted in a significant and sharp decline in the demand profile for aviation fuel as international travel has been prohibited to and from Australia coupled with growing community concerns over travel;
- (b) will likely result in the near term in declines for all petroleum products (including diesel and unleaded petrol motor fuels and aviation fuel) (**Fuel Products**) and especially for aviation fuel as there is less travel and interactions within the community and industries are closed; and
- (c) will likely result in significant instability in the demand for Fuel Products at the time the COVID-19 pandemic and related measures are lifted, including the potential for unpredictable demand surges.

In light of the above, major oil refiners and petroleum marketers (**Applicant fuel suppliers**) in Australia will experience considerable manufacturing, supply and storage challenges which may constrain the timely availability of Fuel Products to Australian businesses and consumers during the COVID-19 pandemic and immediately following its containment.

Due to the above challenges, the Australian Institute of Petroleum (**AIP**) and its Applicant fuel supplier members seek authorisation to discuss and implement measures to address the risk to the availability of Fuel Products across Australia arising from the significant adverse impacts of the COVID-19 pandemic on the Fuel Products supply chain for a period of 12 months from the grant of final authorisation.

The discussion and implementation of such measures may give rise to a contravention of sections 45AD, 45AF, 45AG, 45AJ, 45AK and/or s45 of the *Competition and Consumer Act 2010* (Cth).

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## 2 Parties to the Proposed Conduct

### 2.1 AIP

The AIP was established in 1976 as a representative body of Australia's petroleum industry which promotes and assists in the development of a strong internationally competitive Australian petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards. The AIP provides a key link between industry, government and the community on the operations of the petroleum products industry and issues of public interest. The AIP benefits from the active participation of 4 of its member Applicant fuel suppliers.

### 2.2 Applicants

Authorisation is sought on behalf of:

- (a) AIP;
- (b) AIP current members (and their related bodies corporate) (**Current Members**), being:

- (i) BP Australia Pty Ltd;
  - (ii) Caltex Australia Limited;
  - (iii) Mobil Oil Australia Pty Ltd;
  - (iv) Viva Energy Australia Pty Ltd; and
- (c) any other party proposed by AIP to engage in the conduct the subject of the application (including importers of Fuel Products, suppliers of Fuel Product storage services and Fuel Product transport services),<sup>1</sup> provided that:
- (i) AIP has notified the ACCC of the identity of that party, including a description as to the proposed conduct of that party and the reasons why such participation is desirable to achieve the purposes set out in 3.1 below; and
  - (ii) the ACCC approves that party to engage in some or all of the conduct the subject of the application that has been notified in accordance with 2.2(c)(i),
- (together, the **Applicants**).

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### 3 Proposed conduct to be authorised

#### 3.1 Description of conduct to be authorised

In order to manage the significant impacts to the Fuel Products supply chain and significant reduction in demand profile, the Applicants seek authorisation to discuss, enter into, or give effect to, any contract, arrangement or understanding between them (including with respect to customers for wholesale fuel, suppliers of crude oil and finished Fuel Products, suppliers of import and storage facilities, and suppliers of trucking and delivery services) that has the purpose of:

- (a) ensuring the security of supply of Fuel Products to Australian businesses and consumers;
- (b) minimising the risk of Fuel Product shortages by coordinating scheduling and supply chain activities including import, storage, trucking and delivery of Fuel Products. For example, by coordinating the redirection of import vessels to where they are needed most across Australia as opposed to discharging products into pre-determined locations with more than adequate supply positions;
- (c) maintaining or increasing the supplies of Fuel Products available to Australian businesses and consumers including in remote and regional areas;
- (d) facilitating the efficient use of refining capacity and capability in Australia. For example, ensuring that any requisite shutdowns of refineries are efficiently coordinated to ensure an orderly transition to import-only supply while maintaining ongoing supply reliability to Australian businesses and consumers in relevant locations; and

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<sup>1</sup> For example, this might include non-AIP members that are owners and/or operators of a terminal, which may be the subject of coordination of deliveries into and out of the terminal pursuant to this Application.

- (e) facilitating the efficient use of fuel storage capacity in Australia. For example, by coordinating the movement and storage of bulk products based on the knowledge of the availability of under and over-utilised storage capacity across Australia,

(the **Proposed Conduct**).

Importantly:

- the Proposed Conduct is intended to ensure availability of supplies of Fuel Products to Australian businesses and consumers, and will **not** involve the joint determination of prices of Fuel Products supplied by the Applicant fuel suppliers in competition with each other;
- the Proposed Conduct is not compulsory, and any participant can opt out of the proposed collaboration under the authorisation;
- the Proposed Conduct is a temporary measure to deal with risks in the Fuel Products supply chain arising from the COVID-19 pandemic; and
- material arrangements entered into by the Applicants pursuant to the Proposed Conduct will be notified by AIP to the ACCC pursuant to paragraph 3.4(a).

### **3.2 Duration of authorisation**

Authorisation is sought for a period of 12 months from the date of the ACCC's final determination and the Applicants will withdraw the application in the event that the effects of the pandemic subside at an earlier date.

### **3.3 Urgency requires interim authorisation**

The AIP also applies for interim authorisation for the period up until the ACCC has granted final authorisation in light of the rapidly deteriorating global and economic context caused by the COVID-19 crisis, declared by the World Health Organisation to be a global pandemic and which has resulted in a risk to supply security of Fuel Products in Australia. Relief is urgently required to enable Current Members to manage the supply chain of Fuel Products in Australia.

### **3.4 ACCC oversight**

The ACCC will have oversight over the Proposed Conduct:

- (a) as noted above, material arrangements entered into by the Applicants pursuant to the Proposed Conduct will be notified by AIP to the ACCC not less than 24 hours before the material arrangement is implemented. Material arrangements are arrangements entered into by the Applicants pursuant to the Proposed Conduct at the AIP Board level that are:
  - (i) likely to be of commercial or economic significance; or
  - (ii) may have a material impact on the Fuel Products supply chain,such notification to include:
  - (iii) the protocols and guidelines for the steps to be taken pursuant to the material arrangement;

- (iv) a description of the nature of the steps to be taken pursuant to the material arrangement;
  - (v) the Applicants who have agreed to the material arrangement; and
  - (vi) when the steps pursuant to the material arrangement are intended to be taken; and
- (b) the ACCC will have the ability to request information or clarification from the AIP in relation to the Proposed Conduct, and the AIP will provide such information in a manner that is timely and efficient for AIP and the ACCC (including by making available appropriate AIP representatives to discuss questions).

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## 4 Significant public benefits

As noted above, the global COVID-19 pandemic has resulted and is expected to increasingly result in significant and escalating demand destruction for Fuel Products in Australia.

Since the outbreak of the COVID-19 pandemic in Australia and isolation measures taken by the Australian Government, aviation fuel demand has declined by 90%. This decline is expected to persist for the duration of the pandemic as international travel has been prohibited to and from Australia coupled with growing community concerns over travel. Petroleum and diesel demand is also likely in the near-to-medium term experience significant and sudden declines in demand as transportation within the community becomes limited and industries are closed to curb the spread of the COVID-19 pandemic.

At the time that the COVID-19 pandemic and related measures are lifted, there is expected to be a surge in demand for Fuel Products as the community and industry move to meet pent-up demand for goods and services as well as return to normal modes of operation.

Australia's economy is reliant on Fuel Products:<sup>2</sup>

- Liquid fuel makes up 52% of Australia's final energy consumption and includes petrol, diesel, jet fuel and biofuels.
- The transport sector makes up 75% of our total liquid fuel demand, including road (passenger and freight), rail, shipping and air transport.
- Mining, agriculture and manufacturing make up the most significant industry demand for liquid fuel. Both mining and agriculture are over 90% reliant on diesel, and this partly drives the growth in demand for diesel.
- The Australian Government has also expressed the national interest in energy security based upon the continued operation of domestic refining and domestic sources of Fuel Products supplemented by imported Fuel Products.<sup>3</sup>

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<sup>2</sup> [Australian Government, Department of the Environment and Energy, Liquid Fuel Security Review Interim Report](#), April 2019, at pp, 3 and 15.

<sup>3</sup> See for example, Dr Laidlaw, '*Liquid fuel security: a quick guide*', Parliament of Australia, 24 July 2018 at <[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1819/Quick\\_Guides/LiquidFuelSecurity](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/Quick_Guides/LiquidFuelSecurity)>.

The sudden destruction in demand and consequent expected surge in demand present significant challenges for the Fuel Products supply chain:

- Australian refineries process imported and domestic crude oil and provide around 40% of refined products in Australia.<sup>4</sup> Together, imported Fuel Products and local refined Fuel Products make up the sources of Fuel Products that meet the demands of Australian consumers and businesses.
- Oil refineries have a fixed configuration which gives limited flexibility for varying the amounts of fuel types that are made – typically they will be configured to refine 50% of total production capacity as petroleum, 30% as diesel and 20% as jet fuel. Accordingly, oil refineries are not able to sufficiently reconfigure production to meet sudden and significant changes in the demand profile for Fuel Products (e.g., capacity dedicated to jet fuel cannot be repurposed for the refining of petroleum easily). Once refined, Fuel Products are stored in terminals until sold to Australian businesses and consumers. The industry is configured to meet ‘as-needed’ demand (ie, to not produce or store more Fuel Products than is reasonably necessary to meet forecasted demand).
- The economic feasibility of continued operation of oil refineries is dependent in part on achieving a minimum throughput of volume. This is around 60% of overall refining capacity. Below such refining volumes, there are incentives to redistribute the sources of Fuel Products supply to imported volumes as opposed to locally refined volumes. Continued refining where there has been a significant destruction in demand as a result of the effects of the COVID-19 pandemic and a more economic redistribution to import sources may not be a commercially viable option.
- The potential redistribution of supply sources between locally refined sources to import sources, and consequent accumulated storage of Fuel Products in certain storage facilities without an equivalent offtake, will put pressure on storage terminals and over time the industry will need to coordinate to efficiently manage the utilisation of storage capacity.
- Oil refineries take a significant period of time to both close and to recommence production, and there is around a two to three week lag period for sourcing Fuel Product volumes from import sources. Accordingly, in the event oil refineries shut down due to an inability to meet minimum throughput volumes, or in the event of a surge in demand following the easing of the COVID-19 pandemic, there will need to be an efficient and prompt coordination of the supply chain to flex up or down Fuel Products supply in order to appropriately meet demand.
- The above challenges of efficiently and adequately ensuring there is an appropriate distribution of Fuel Products throughout Australia will also impact other aspects of the Fuel Products supply chain.
  - As sources of Fuel Products supply are redistributed between locally refined and imported volumes, storage infrastructure for Fuel Products will be put under pressure to meet this shift in supply source (including increased import capacity and reduced refinery volumes).
  - There will be consequent impacts on the capacity to truck and deliver Fuel Products to new sources of storage and Fuel Product demand supply needs to be coordinated and repurposed to meet the shift in the demand profile.
  - Rural and country towns may also experience risks to supply as retail sites shut down due to lack of viable and sufficient demand. As retail sites in rural

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<sup>4</sup> [Australian Government, Department of the Environment and Energy, Liquid Fuel Security Review Interim Report](#), April 2019, at p 27.

towns close, the commercial viability of transporting Fuel Products to such areas becomes challenged.

- There will also be significant impacts to Australian employment throughout the supply chain as operations are ceased or repurposed to meet changes in demand.

The Proposed Conduct will enable participants to work together during the period of COVID-19 impacts where relevant to discuss and take steps to manage Fuel Products supply chain risks and challenges including by:

- (a) sharing information regarding intention around refining capacity and supply chain utilisation;
- (b) sharing information regarding estimates of demand for each Fuel Product across the country in order to determine adequacy of supply and requirements for any industry co-ordination;
- (c) scheduling and coordinating the supply chain including import, storage, trucking and delivery of product; and
- (d) potential cooperation measures to keep oil refinery facilities operating in cases where, for example, there is a shortage of equipment (eg, maintenance equipment) or a facilities' workforce is materially impacted by a COVID-19 outbreak.

The Proposed Conduct will result in significant public benefits by:

- (a) ensuring the security of supply of Fuel Products to Australian businesses and consumers;
- (b) maintaining or increasing the supplies of Fuel Products available to Australian businesses and consumers including in remote and regional areas;
- (c) facilitating the efficient use of refining capacity and capability in Australia; and
- (d) facilitating the efficient use of fuel storage capacity in Australia.

In doing so, the Proposed Conduct will also consequently assist to maintain continued employment throughout the Fuel Products supply chain.

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## 5 Limited potential for competitive detriments

The potential competitive detriments from the Proposed Conduct relate to increased information sharing between the Applicants and increased co-ordination in relation to the logistics and operation of the distribution of their products in the Fuel Products supply chain. However, as the Proposed Conduct is to occur for a short period and is limited to coordination for the purposes of adequate supply of Fuel Products to Australian businesses and consumers it is submitted that any such potential detriments are significantly outweighed by the public benefits that would arise from the Proposed Conduct.

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## 6 The public benefits outweigh any competitive detriments

The Applicant submits that it is unlikely that interim authorisation will alter the competitive dynamics in any market, and markets will be able to return to substantially their current state once the emergency circumstances subside. In particular:

- The Proposed Conduct is a temporary measure and is only sought for 12 months from the date of the ACCC's final determination and the Proposed Conduct can be discontinued in the event the effects of the pandemic subside at an earlier date.
- The Proposed Conduct and interim authorisation will only apply for the purposes set out in section 3.1 above.
- The ACCC will have oversight of all material arrangements entered into pursuant to the Proposed Conduct.
- The Proposed Conduct does **not** enable the Applicants to agree the prices of Fuel Products supplied by the Applicant fuel suppliers in competition with each other.
- It is not compulsory for Applicants to participate in the Proposed Conduct.

For the reasons set out above the AIP and Current Members submit that any competitive detriments that may arise from the Proposed Conduct are significantly outweighed by the public benefits that arise.

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## 7 Conclusion

For the reasons set out above, the AIP applies for:

- authorisation to enable Current Members to discuss, enter into, or give effect to, any arrangement between them for the purposes specified in section 3.1;
- interim authorisation until the final authorisation comes into effect to enable the AIP and Current Members to enter the above.

## Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



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Signature of authorised person

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Paul Barrett

Chief Executive Officer, Australian Institute of Petroleum

This 2nd day of April 2020