

7 June 2022



Environment & Heritage
NSW Department of Environment and Planning
4 Parramatta Square, Parramatta NSW 2150

By email: air.policy@environment.nsw.gov.au



Dear 

Proposed Clean Air Regulation (2022) – Regulatory Impact Statement

Reference is made to your invitation to comment on the proposed changes to the NSW Clean Air Regulation (2022), as detailed in the Regulatory Impact Statement of March 2022. I appreciate your accommodation of our request for an extension of time for us to submit a response to allow incorporation of member feedback receive on this issue.

Below please find our letter submission to this consultation.

1. About ACAPMA

The Australasian Convenience and Petroleum Marketers Association (ACAPMA) is the national peak body representing the interests of the petroleum distribution and the petrol-convenience retail industry. The Association is first and foremost an employer organisation that is formally recognised under Australian law as the industrial advocate for fuel marketing and fuel distribution businesses in Australia.

First established in 1976, the Association started operations as the Australian Petroleum Agents and Distributors Association (APADA) and subsequently changed its name to ACAPMA in 2007. The name change was accompanied by a change in the Association's Constitution to incorporate national representation of fuel retailers.

Today, the Association directly represents 95% of fuel distributors in the country and directly and indirectly (via franchisees and distributor-owned retailers) around 5400 of the 7300 service stations (i.e. 74%) operating in Australia.

The scope of ACAPMA's membership includes businesses involved with the end stream of the fuel supply chain in Australia. That is, fuel wholesale businesses, fuel distribution businesses, petrol-convenience retailers (i.e. service stations), petroleum equipment suppliers, and petroleum service providers.

ACAPMA's member businesses range from Australian-owned subsidiaries of international companies to large Australian-owned businesses, to independently owned mid-cap Australian companies, and small single retail site family-owned businesses.

Given this diversity, ACAPMA has endeavoured to provide a response that represents a *whole of industry* perspective on the proposed regulatory changes – as opposed to championing the view of any individual fuel business.

It is therefore possible that one or more of ACAPMA's members may have elected to provide an individual submission to this Inquiry that differs – either in part or whole – from the perspective provided in this submission.

2. Comments on Proposed Regulatory Changes

There are two aspects of the draft regulation that are of most relevance to the fuel industry in NSW, namely the changes proposed to:

- *Part 4 (Motor Vehicles and Motor Vehicle Fuels)*, which propose extension of the requirement for supply of low volatility motor spirit during summer months by one month in the Greater Sydney Metropolitan Area (GSMA), and
- *Part 6 (control of Volatile Organic Liquids)*, which proposes maintenance of the current VOC measures for service station and tanker refuelling operations in the Sydney Metropolitan Area - and extension of these restrictions for fuel transport operations in Newcastle and Wollongong that are not currently impacted by these regulations.

Our comments in respect of each of these changes is presented below.

1. Proposed Changes to Part 4 (Motor Vehicles and Motor Vehicle Fuels)

ACAPMA notes that the new Regulation proposes to extend requirements for the supply of low volatility motor spirit to the GSMA by one month each year and that these changes are scheduled to take effect from November 2022. We further note that part of the justification for this change is to align the NSW restrictions with the period of similar restrictions that operate in the state of Victoria.

Within this context, it should be noted that fuel supplied into NSW is sourced from Victoria (Viva Refinery in Geelong), Queensland (Ampol refinery in Lytton) and international imports from various countries. Discussions with our members suggests that the proposed changes could create issues with respect to sourcing of supply from Queensland, creating possible adverse 'knock-on' effects for retailers sourcing fuel supplies from this state.

ACAPMA understands that this issue is being considered by the Australian Institute of Petroleum (AIP) and will be separately addressed in their submission to the NSW EPA.

Accordingly, ACAPMA will defer to the AIP submission but notes the need for to ensure that the new regulation does not distort fuel retail market competition in the GSMA as a result of some retailers bearing costs that will not be borne by other market participants (i.e. solely as a result of the consequent nature of changes to their contracted supply). Once identified, these costs would need to be accommodated in a revision of the RIS which currently assumes a negligible cost to industry and the wider community.

2. Proposed changes to Part 6 (Volatile Organic Liquids)

ACAPMA notes that the new Clean Air Regulation (2022) proposes two actions, namely:

- a) Retention of the current Vapour Recovery (VR) Regulations for NSW service station sites, and
- b) Extension of the VR Regulations for fuel transport operations in Newcastle and Wollongong.

ACAPMA has long communicated to EPA concerns about the environmental mandate for the NSW VR Laws, particularly given the changes if fuel composition that were introduced to the Australian Fuel Quality Standards Act (2000) given that these changes largely negate the *environmental mandate* for the NSW VR laws.

The subsequent introduction and operation of the NSW VR laws has been both problematic and expensive for industry which, when considered in light of the dubious environmental benefit, leads to the conclusion that these laws are an unnecessary red tape burden on fuel transport and fuel retail businesses in Australia.

We also note the increasing practices of NSW Councils (i.e. located outside of the Sydney Metropolitan Area) wrongly requiring service station operators to install expensive VR systems to control 'odours' – and not VOL's – as part of new site works or major upgrades of existing facilities. Such a requirement is unnecessary, demonstrates an inappropriate application of the existing laws in planning applications, and adds unnecessary capital costs to fuel retailers – costs that must ultimately be passed onto motorists in the form of higher fuel costs.

Further, and following the transfer of the compliance activity for VR Laws from the EPA to local councils, ACAPMA has fielded numerous calls from individual fuel retail businesses about the apparent lack of knowledge of enforcement officers about the practical operation of the NSW VR laws. This has not only led to expensive and time-consuming compliance activities but also contributed to a level of inconsistent enforcement of the existing laws.

For these reasons, ACAPMA's 'opening position' is that the current VR Laws should be repealed – and not maintained as suggested in the Regulatory Impact Statement for the Clean Air Regulation (2022). This position is reinforced by the fact that the RIS wrongly cites

a zero cost to industry in terms of the maintenance of the existing laws – an assumption that is clearly flawed.

If a decision is ultimately made to retain the *existing* laws, it is suggested that the advancement of the new Regulation should be accompanied by work across two fronts, namely:

- (a) Correction of the RIS to include reasonable industry costs in the RIS relating to the retention of the existing VR laws. This is considered necessary with respect to future conversations about the impact of these laws on industry and the wider community.
- (b) Embarking on an education programme for compliance officers to ensure more effective and consistent regulation of VR regulations for liable businesses in NSW.

ACAPMA is currently working with the NSW EPA and the NSW Local Government Association to develop a training course for compliance officers working with fuel businesses in NSW - effectively providing a mechanism to address the second issue if a decision is made to retain the existing VR laws.

ACAPMA would also be in a position to assist with derivation of *average annual costs of VR compliance* (at a site level) but was unable to include this information in this submission due to the lengthy nature of this work.

3. Summary of position

ACAPMA's position in respect of the proposed changes to the Clean Air Regulation (2020), as detailed in the Regulatory Impact Statement of March 2022, can be summarised as follows:

1. ACAPMA is supportive of the proposed changes to Part 4 of the Regulation (i.e. proposing a 1 month per year extension of the requirement to supply low volatility motor spirit to the GSMA market). Such support, however, is conditional on advice from the AIP to the NSW EPA confirming that the new restrictions will not unduly disadvantage businesses sourcing product from Queensland.
2. ACAPMA is opposed to the retention of the Vapour Recovery Laws (Part 6 of the Regulation) *and* any proposal to expand these restrictions for fuel transport businesses operating in Newcastle and Wollongong. This opposition is premised in our belief that there is no environmental mandate for the continuation of the current laws given changes in the Australian Fuel Quality Standards Act (2000) immediately prior to the ratification of the original regulation - and the fact that these laws impose a significant ongoing cost burden that has not been identified in the Regulatory Impact Statement for the new Regulation.
3. Should the NSW Government decide to retain the *existing* VR laws in their current form, ACAPMA is able and willing to work with the NSW Government and NSW Local Councils

to provide a formal training program for compliance officers to address current sporadic and inconsistent enforcement of the existing VR regulations.

Thank you for the opportunity to provide a submission to this Inquiry.

Should you wish to discuss any aspect of this letter submission, please contact me on [REDACTED] or by email at [REDACTED]

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mark McKenzie', with a stylized flourish extending from the end.

Mark McKenzie
Chief Executive Officer