



Trade Practices (Industry Codes — Oilcode) Regulations 2005

Select Legislative Instrument 2005 No. ¹

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Trade Practices Act 1974*.

Dated 2005

Governor-General

By His Excellency's Command

[DRAFT ONLY – NOT FOR SIGNATURE]
Minister for Industry, Tourism and Resources

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1 Name of Regulations

These Regulations are the *Trade Practices (Industry Codes — Oilcode) Regulations 2005*.

2 Commencement

These Regulations commence on the commencement of Schedule 1 to the *Petroleum Retail Legislation Repeal Act 2006*.

3 Code of conduct

For section 51AE of the *Trade Practices Act 1974*, the code set out in Schedule 1:

- (a) is prescribed; and
- (b) is a mandatory code of conduct.

Schedule 1 Oilcode

(Regulation 3)

Part 1 Preliminary

1 Name of code

This code is the Oilcode.

Note This code commenced on the commencement of the *Trade Practices (Industry Codes — Oilcode) Regulations 2005*.

2 Purpose of Oilcode

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

Note A corporation must not, in certain circumstances, engage in conduct that is, in all the circumstances, unconscionable. In determining whether a person has done so, the Court may have regard to the requirements of any applicable industry code. See *Trade Practices Act 1974*, s 51AC.

3 Monitoring and review

- (1) The Australian Competition and Consumer Commission will monitor the effectiveness of this code.
- (2) The Department of Industry, Tourism and Resources will review this code after the code has been in operation for 12 months.

4 Definitions

- (1) In this code:

Act means the *Trade Practices Act 1974*.

additional services means services that are:

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

Examples

Delivery, credit, brand services and franchise services.

associate means:

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

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

complainant means a person who starts the dispute resolution set out in Part 4.

customer means:

- (a) a person engaged in the business of retailing or wholesaling declared petroleum products; or
- (b) an associate of a person of that kind.

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

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

- (a) ULP;

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- (b) a product consisting of a blend of ULP and ethanol (for example, E10);
 - (c) a product consisting of a blend of ULP and 1 or more biofuels other than ethanol;
 - (d) PULP (other than a PULP proprietary product);
 - (e) diesel fuel other than a diesel proprietary product.

disclosure document means:

- (a) for the grant, renewal or extension of a fuel re-selling agreement — a document that contains the information mentioned in Annexure 1 or 2; or
- (b) for the transfer of a fuel re-selling agreement or a fuel re-selling business — a document that contains the information mentioned in Annexure 3.

dispute resolution adviser means a person appointed in that capacity under Part 4.

distributor means a person who carries on any of the following businesses:

- (a) receiving petroleum products;
- (b) storing petroleum products;
- (c) selling petroleum products to a retailer or another end-user;
- (d) delivering petroleum products to a retailer or another end-user.

E10 means a blended fuel product consisting of 90% ULP and 10% ethanol.

fuel re-selling agreement has the meaning given in section 5.

fuel re-selling business means a business that is subject to, or intended to be subject to, a fuel re-selling agreement.

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

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

- (a) shares or voting rights in a corporation, not being a listed corporation, that is a retailer under a fuel re-selling agreement; or

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- (b) units or voting rights in a unit or other trust, controlled by a trustee, that is a retailer under a fuel re-selling agreement; or
 - (c) the capital or income of a partnership that is a retailer under a fuel re-selling agreement.

parties, in relation to a dispute arising under:

- (a) this code; or
- (b) a fuel re-selling agreement;

means the complainant and the respondent in the dispute.

posted TGP, and **TGP posted**, for a particular time, means the terminal gate price:

- (a) identified in accordance with section 8; and
- (b) in force at that time.

prospective retailer means a person who deals with a supplier for the right to be a party to a fuel re-selling agreement.

PULP means premium unleaded petrol.

respondent means a person who:

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

retailer includes the following:

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

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

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

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

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

supplier includes the following:

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

supply has the meaning given by subsection 4 (1) of the Act.

Note Under subsection 4(1) of the Act as in force when this code commenced, **supply**, when used as a verb, includes:

- (a) for goods — supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) for services — provide, grant or confer;

and, when used as a noun, has a corresponding meaning.

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

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

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

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

trade mark has the meaning given by the *Trade Marks Act 1995*.

Note A **trade mark** is a sign (including any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent (or any combination of these)) used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person. See *Trade Marks Act 1995*, s 17.

transfer, for a fuel re-selling agreement, includes an arrangement in which the agreement is made or transferred.

ULP means unleaded petrol.

wholesale facility means any of the following:

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

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

- (2) In this code, the following terms have the meanings given by the *Corporations Act 2001*:

accounting standard

ABN

ACN

ARBN

body corporate

director

executive officer

externally-administered

body corporate

insolvent under

administration

misconduct

proprietary company

registered company

auditor

registered office

related body corporate

secretary

small proprietary

company.

5 Meaning of *fuel re-selling agreement*

- (1) A *fuel re-selling agreement* is an agreement:
- (a) that takes the form, in whole or part, of any of the following:
 - (i) a written agreement;
 - (ii) an oral agreement;
 - (iii) an implied agreement; and
 - (b) in which a person (the *supplier*) grants to another person (the *retailer*):
 - (i) the right to carry on the business of offering, supplying or distributing motor fuel in Australia under a system or marketing plan substantially determined, controlled or suggested by the supplier or an associate of the supplier; or
 - (ii) consent to be a transferee in relation to a fuel re-selling agreement; and
 - (c) under which the operation of the business will be substantially or materially associated with a trade mark, advertising or a commercial symbol:
 - (i) owned, used or licensed by the supplier or an associate of the supplier; or
 - (ii) specified by the supplier or an associate or the supplier; and
 - (d) under which, before starting business or continuing the business, the retailer must pay or agree to pay to the supplier or an associate of the supplier an amount including, for example:
 - (i) an initial capital investment fee; or
 - (ii) a payment for goods or services; or
 - (iii) a fee based on a percentage of gross or net income whether or not called a royalty or agreement service fee; or
 - (iv) a training fee or training school fee;but excluding:
 - (v) payment for motor fuel at or below the usual wholesale price; or

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- (vi) payment for the usual wholesale price of motor fuel taken on consignment; or
 - (vii) payment of market value for purchase or lease of real property, fixtures, equipment or supplies needed to start business or to continue business under the fuel re-selling agreement.

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

- (a) a traditional franchise or commission agency arrangement would meet the requirements of the subparagraph because of the supplier's substantial on-going role in the operations; but
 - (b) a "supply only" or "supply and branding only" agreement with an owner-dealer would not meet the requirements of the subparagraph.
- (2) For subsection (1), the following are taken to be fuel re-selling agreements:
- (a) the transfer, renewal or extension of a fuel re-selling agreement;
 - (b) an agency arrangement to which the requirements of paragraphs (1) (a), (b) and (c) apply;
 - (c) an interest in a fuel re-selling agreement.
- (3) However, any of the following does not in itself constitute a fuel re-selling agreement:
- (a) an employer and employee relationship;
 - (b) a partnership relationship;
 - (c) a landlord and tenant relationship;
 - (d) a mortgagor and mortgagee relationship;
 - (e) a lender and borrower relationship;
 - (f) a fuel agreement related to a retail site that is not owned or leased by the supplier;
 - (g) the relationship between the members of a cooperative that is registered, incorporated or formed under any of the following laws:
 - (i) *Co-operatives Act 1992* of New South Wales;
 - (ii) **Co-operatives Act 1996** of Victoria;
 - (iii) *Cooperatives Act 1997* of Queensland;

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- (iv) *Co-operative and Provident Societies Act 1903* of Western Australia;
 - (v) *Co-operatives Act 1997* of South Australia;
 - (vi) *Co-operative Industrial Societies Act 1928* of Tasmania;
 - (vii) *Co-operative Societies Act 1939* of the Australian Capital Territory;
 - (viii) *Co-operatives Act 1997* of the Northern Territory;
 - (ix) the *Corporations Act 2001*.

(4) A fuel reselling agreement may apply to 1 or more retail sites.

6 Application of Oilcode

Cases where this code applies

- (1) This code, other than Part 3 and Annexures 1, 2 and 3, applies to:
 - (a) a wholesale supplier; and
 - (b) a sale of a declared petroleum product made by a wholesale supplier to a customer.
- (2) This code, other than Part 2, applies to:
 - (a) a fuel re-selling agreement, including a fuel re-selling agreement entered into before the date of commencement of this code; and
 - (b) any other retail activities included in the fuel re-selling agreement, or undertaken on the same site by the retailer for the supplier;unless subsection (3) applies to the agreement.
- (3) This code does not apply to a fuel re-selling agreement for which:
 - (a) the supplier reasonably believes that the amount of motor fuel that will be sold by retail at the site will be less than an average of 30 000 litres for each month of the term of the agreement; and

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- (b) at least 3 days before entering the agreement, the supplier gives to the prospective retailer a written statement setting out the grounds for the belief.
 - (4) In any proceedings in which a supplier claims to have had the belief mentioned in paragraph (3) (a), the supplier:
 - (a) must establish that:
 - (i) the grounds for the belief were reasonable; and
 - (ii) a statement was given under paragraph (3) (b); and
 - (b) can rely only on the grounds for belief mentioned in the statement.

Part 2 Terminal gate price and related arrangements

Division 1 Preliminary

7 Terminal gate price arrangements

- (1) A wholesale supplier must not include in a posted TGP any amount imposed for or in relation to an additional service.
- (2) However, a wholesale supplier:
 - (a) may charge the posted TGP minus an amount subtracted as a discount; and
 - (b) may provide an additional service, and may charge the posted TGP plus an additional amount added for, or in relation to, that service.

Note The wholesale supplier is required to identify charges for additional services separately from the posted TGP in its sales documents: see section 10.

- (3) A wholesale supplier that offers a term contract for the purchase of a declared petroleum product must give the customer the option of entering into a term contract to purchase the declared petroleum product at:
 - (a) the posted TGP price; or
 - (b) a price calculated in accordance with subsection (2).

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- (4) If:
- (a) a customer purchases a declared petroleum product from a wholesale supplier under a term contract in force at the commencement of this code; and
 - (b) the customer asks the wholesale supplier to make the customer an offer to purchase the declared petroleum product at:
 - (i) the posted TGP price; or
 - (ii) a price calculated in accordance with subsection (2); and
 - (c) the making of the offer would not disadvantage the wholesale supplier;
- the wholesale supplier must make the offer.
- (5) For subsection (4):
- (a) a customer may make only one request under the subsection; and
 - (b) the request must be made within 60 days after the commencement of this code.
- (6) If a customer seeks to purchase a declared petroleum product from a wholesale supplier otherwise than under a term contract, the wholesale supplier must make the customer an offer to purchase the declared petroleum product at:
- (a) the posted TGP price; or
 - (b) a price calculated in accordance with subsection (2).

Division 2 Terminal gate price for declared petroleum products

8 Setting terminal gate price

- (1) Subject to subsection (2), a wholesale supplier must, on each day, identify the terminal gate price it charges on that day for the wholesale sale of each declared petroleum product.

Note The wholesale supplier is required to identify charges for additional services separately from the posted TGP in its sales documents: see section 10.

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- (2) A wholesale supplier is not required to identify the terminal gate price it charges on a day for the wholesale sale of a declared petroleum product if a related body corporate that is also a wholesale supplier at the same wholesale facility has identified the terminal gate price it charges on that day for the wholesale sale of the declared petroleum product.
 - (3) A terminal gate price must be expressed in cents per temperature corrected litre for each declared petroleum product.

9 Disclosing terminal gate price

- (1) A wholesale supplier must make its terminal gate prices available to the public each day on an Internet website maintained by or for the wholesale supplier.
- (2) However, if the wholesale supplier can not make its terminal gate prices available to the public each day on an Internet website, the wholesale supplier must make its terminal gate prices available by a telephone or facsimile service operated by or for the wholesale supplier.
- (3) A terminal gate price becomes a *posted TGP* when it is first made available in accordance with subsection (1) or (2).
- (4) A posted TGP remains in force in relation to a declared petroleum product until it is replaced by another posted TGP.

10 Selling declared petroleum products — documentation

- (1) This section applies to a sale only if the price is based on:
 - (a) the posted TGP; or
 - (b) a price calculated in accordance with subsection 7 (2).
- (2) A wholesale supplier of a declared petroleum product that sells the declared petroleum product to a customer must provide to the customer, at the time of delivery, a document that acknowledges the sale of the declared petroleum product and includes at least the following information:
 - (a) the kind of declared petroleum product supplied;

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

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

Division 3 Supply of declared petroleum products

11 Supplying declared petroleum products

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

Note Paragraph 11 (2) (a) does not require a wholesale supplier to supply a declared petroleum product to a customer as a spot sale if the supplier only has sufficient supplies to meet the requirements of its contract customers. The wholesale supplier's refusal to supply the declared petroleum product, because it would breach the contracts with the contract customers, would be a reasonable refusal to supply.

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

12 Health and safety requirements

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

Note Arrangements for testing the vehicle, and assessing drivers, may be required under law.

- (2) A customer to which this code relates must ensure that:
- (a) each vehicle under its control that is used to transport a declared petroleum product is:
 - (i) suitable to load the declared petroleum product at the supplier's facilities; and
 - (ii) able to transport safely the declared petroleum product; and
 - (b) each vehicle under its control that is used to transport a declared petroleum product is clearly marked as suitable to load, and able to carry, the declared petroleum product; and
 - (c) each driver of a vehicle under its control that is used to transport a declared petroleum product carries evidence that the driver is competent to operate the vehicle.

Note Arrangements for testing the vehicle, and assessing drivers, may be required under law.

Part 3 Fuel re-selling business

Division 1 Fuel re-selling agreements

Subdivision 1 Disclosure document for fuel re-selling agreement

13 Creating disclosure document

- (1) A supplier must create and maintain a document (a *disclosure document*) in accordance with this Subdivision for the purpose of entering into a fuel re-selling agreement.
- (2) The supplier must also create a disclosure document in relation to the agreement not later than 3 months after the end of:
 - (a) the financial year in which the supplier enters into the fuel re-selling agreement; and
 - (b) each subsequent financial year in which the fuel re-selling agreement is in force.
- (3) A disclosure document must be signed by a director or executive officer of the supplier.

14 Purpose of disclosure document

A disclosure document is used:

- (a) to allow a supplier to give a person adequate information to help the retailer make a reasonably informed decision about an agreement; or
- (b) to give a retailer current information that is relevant to the operation of the retailer's retail business.

15 Content and layout of disclosure document

- (1) If a disclosure document relates to a fuel re-selling agreement that specifies a duration of at least 5 years, the disclosure document:
 - (a) must be in accordance with Annexure 1; and
 - (b) must be in the form, in the order, and with the numbering, set out in Annexure 1; and
 - (c) must use the same titles as in Annexure 1.
- (2) If a disclosure document relates to a fuel re-selling agreement that specifies a duration of less than 5 years, the disclosure document:
 - (a) must be in accordance with Annexure 2; and
 - (b) must be in the form, in the order, and with the numbering, set out in Annexure 2; and
 - (c) must use the same titles as in Annexure 2.
- (3) A disclosure document may contain other information, in a section of the document marked “Other relevant disclosure information”.
- (4) A disclosure document must have a table of contents, based on the items in the relevant Annexure, indicating the page number on which each item begins.

Note A different disclosure document is used in relation to the transfer of a fuel re-selling business: see Division 2.

16 Giving disclosure document

- (1) A supplier must give its current disclosure document to:
 - (a) a person who proposes to the supplier to become a retailer in relation to the supplier; or
 - (b) a person to whom the supplier has consented to be the transferee in relation to a fuel re-selling agreement.
- (2) A supplier must give its current disclosure document to a retailer that proposes to the supplier to renew or extend a fuel re-selling agreement.

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- (3) A supplier must not seek a non-refundable deposit for giving a person or retailer its current disclosure document.

17 Giving additional information

- (1) This section applies if:
- (a) a supplier gives a disclosure document which is in accordance with Annexure 2 to a person or retailer; and
 - (b) the person or retailer asks the supplier to give the person any of the information mentioned in section 3, 5, 6, 9, 10, 11, 14, 21, 23, 24, 26 or 27 of Annexure 1.

Note The disclosure document set out in Annexure 2 is a shorter-form document that does not include versions of the provisions mentioned in paragraph (1) (b).

- (2) Subject to subsection (3), the supplier must give the person or retailer the information as soon as practicable.
- (3) The supplier is not required to comply with subsection (2) if it is reasonable, in all the circumstances, for the supplier not to give the information.

Subdivision 2 Disclosure before completing fuel re-selling agreement

18 Application of Subdivision 2

This Subdivision applies to a disclosure document that is to be given by a supplier to:

- (a) a person who proposes to the supplier to become a retailer in relation to the supplier; or
- (b) a retailer proposing to the supplier to renew or extend a fuel re-selling agreement.

19 Supplier's obligations

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

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

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

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

20 Requirements before entering into fuel re-selling agreement

- (1) A supplier:
 - (a) must not enter into, renew or extend a fuel re-selling agreement; and
 - (b) must not enter into an agreement to enter into, renew or extend a fuel re-selling agreement; and
 - (c) must not receive non-refundable money under a fuel re-selling agreement or an agreement to enter into a fuel re-selling agreement;

if the supplier has not received from the other party a written statement that the other party has received, read, and had a reasonable opportunity to understand, the disclosure document and this code.

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- (2) A supplier must not enter into a fuel re-selling agreement before the supplier has received a statement, signed by the prospective retailer, that the prospective retailer:
- (a) has been given advice about the proposed fuel re-selling agreement, or fuel re-selling business, by:
 - (i) an independent legal adviser; or
 - (ii) an independent business adviser; or
 - (iii) an independent accountant; or
 - (iv) a relevant trade association; or
 - (b) has been told that the prospective retailer should obtain advice of that kind, but has decided not to seek it.
- (3) Subsection (2):
- (a) does not apply to the renewal or extension of a fuel re-selling agreement; and
 - (b) does not prevent a supplier from requiring a prospective retailer to give the supplier a particular statement mentioned in paragraph (2) (a).

Division 2 Transfer of fuel re-selling business

21 Creating disclosure document

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

22 Content and layout of disclosure document

- (1) A disclosure document:
 - (a) must be in accordance with Annexure 3; and
 - (a) must be in the form, in the order, and with the numbering, set out in Annexure 3; and
 - (b) must use the same titles as in Annexure 3.

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

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

23 Giving disclosure document

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

Division 3 Conditions of fuel re-selling agreement

24 Cooling off period

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

25 Copy of lease

- (1) If a retailer leases premises from a supplier, or an associate of a supplier, for the purposes of a fuel re-selling business, the supplier or the associate from which the premises are leased must give to the retailer:
 - (a) a copy of the agreement to lease; or
 - (b) a copy of the lease;within 1 month after the lease or agreement to lease is signed by the parties.

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

26 Association of retailers

A supplier or an associate of a supplier:

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

27 Prohibition on general release from liability

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

28 Marketing and other cooperative funds

- (1) If a fuel re-selling agreement provides that a retailer must pay money to a marketing fund, or another cooperative fund, the supplier must:
 - (a) within 3 months after the end of each financial year for the fund, prepare an annual financial statement of the fund's receipts and expenses for that financial year, including the amount spent on production, advertising, administration, goods or services supplied by the supplier or an associate of the supplier, and other stated expenses; and
 - (b) have the statement audited by a registered company auditor within 3 months after the end of the financial year to which it relates; and
 - (c) if the retailer asks for a copy of the statement — give a copy of the statement to the retailer within 30 days after the request.
- (2) However, a supplier is not required to comply with paragraph (1) (b) for a financial year if 75% of the supplier's retailers in Australia, who contribute to the fund, agree that the supplier is not required to comply.
- (3) **In the first year of operation of this code,** a supplier is taken to have complied with paragraph 12.1 (h) of Annexure 1, or paragraph 6.1 (h) of Annexure 2, if, to the extent to which the supplier is aware of the details, the supplier gives the retailer the following information for the period before the commencement of this code:
 - (a) for each fund controlled or administered by or for the supplier to which the retailer may be required to contribute — the amounts of:
 - (i) expenditure on production, advertising and administration; and
 - (ii) any other kind of expenditure stated in the disclosure document;
 - (b) the percentage that each amount disclosed under paragraph (a) constitutes of the total expenditure disclosed under that paragraph.

29 Disclosure of materially relevant facts

- (1) If a disclosure document does not mention a matter mentioned in subsection (2), the supplier must **notify** a retailer or prospective retailer **of that fact** within a reasonable time (but not more than 14 days) after the supplier becomes aware of it.
- (2) For subsection (1), the matters are as follows:
 - (a) a change in majority ownership or control of the supplier;
 - (b) court proceedings by a public agency, alleging:
 - (i) a breach of a fuel re-selling agreement; or
 - (ii) a contravention of trade practices law; or
 - (iii) a contravention of the *Corporations Act 2001*, or regulations made for that Act; or
 - (iv) unconscionable conduct; or
 - (v) misconduct; or
 - (vi) an offence of dishonesty;
 - (c) a judgment in criminal or civil proceedings, identifying any of the matters mentioned in paragraph (b);
 - (d) an award in an arbitration against the supplier in Australia, identifying any of the matters mentioned in paragraph (b);
 - (e) a court enforceable undertaking given by the supplier to a public agency, identifying any of the matters mentioned in paragraph (b);
 - (f) a judgment against the supplier under:
 - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
 - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
 - (iii) section 290 of the *Workplace Relations Act 1997* of Queensland;other than a judgment in relation to the unfair dismissal of an employee;
 - (g) a civil proceeding in Australia against the supplier by the lesser of:
 - (i) 10% of the supplier's retailers in Australia; or
 - (ii) 10 of the supplier's retailers in Australia;

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- (h) any judgment that is entered against the supplier in Australia, and is not discharged within 28 days, for at least:
- (i) for a small proprietary company — \$100 000; or
 - (ii) for any other company — \$1 000 000;
- (i) a judgment that is entered against the supplier in a matter mentioned in:
- (i) paragraph 4.2 (a) of the disclosure document that is in accordance with Annexure 1; or
 - (ii) paragraph 3.2 (a) of the disclosure document that is in accordance with Annexure 2;
- (j) the supplier becoming an externally-administered body corporate.
- (3) For paragraphs (2) (b), (c), (d), (e), (f), (g), (h) and (i), the supplier must also **notify** the retailer **of**:
- (a) the names of the parties to the proceedings; and
 - (b) the name of the court or tribunal; and
 - (c) the case number; and
 - (d) the general nature of the proceedings; and
 - (e) the current status of the proceedings; and
 - (f) if the proceedings have been completed — the outcome of the proceedings.
- (4) For paragraph (2) (j), the supplier must also **notify** the retailer **of** the name and address of the administrator, controller or liquidator.

30 Making current disclosure document available

- (1) If a retailer asks the retailer's supplier, in writing, to give to the retailer a copy of the supplier's most recent disclosure document prepared for section 13, the supplier must give the copy to the retailer within 14 days after the request.
- (2) **The** retailer may make a request under subsection (1) only once in a period of 12 months.

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- (3) The retailer may make a request under subsection (1) in a period of 12 months even if, in the same period, the retailer has asked for a copy of the supplier's most recent disclosure document in accordance with subsection 32 (7).

Note Subsection 32 (7) requires a retailer to ask for a copy of the supplier's most recent disclosure document as part of exercising an option to renew a fuel re-selling agreement. That subsection is not intended to limit the retailer's right to ask for a copy of the agreement under this section.

31 Supplier's proprietary fuel card

- (1) If:
- (a) a fuel re-selling agreement provides that:
 - (i) a retailer must accept the supplier's proprietary fuel card for purchases by a customer; and
 - (ii) reimbursement in relation to the purchase is to be payable directly into the retailer's nominated bank account; and
 - (b) a transaction involving a purchase is processed by electronic funds transfer;

the supplier must reimburse the retailer for the purchase within 3 business days after the supplier receives complete and accurate details of the transaction, unless the supplier is unable to reimburse the retailer because of circumstances beyond the supplier's reasonable control.

- (2) If:
- (a) a fuel re-selling agreement provides that a retailer must accept the supplier's proprietary fuel card for purchases by a customer; and
 - (b) either or both of subparagraph (1) (a) (ii) and paragraph (1) (b) do not apply;

the supplier must reimburse the retailer for a transaction involving a purchase within 5 business days after the supplier receives complete and accurate details of the transaction, unless the supplier is unable to reimburse the retailer because of circumstances beyond the supplier's reasonable control.

32 Duration of agreement

Fuel re-selling agreements entered into before the date of commencement of this code

- (1) A fuel re-selling agreement entered into before the date of commencement of this code must retain the duration specified in the agreement and the arrangements (if any) for the exercise of options to renew the agreement.
- (2) A fuel re-selling agreement entered into before the date of commencement of this code, which is a franchise agreement to which the *Petroleum Retail Marketing Franchising Act 1980* applied, must retain:
 - (a) the duration specified in the agreement; and
 - (b) the arrangements (if any) for the exercise of options to renew the agreement; that were specified in the renewal arrangements set out in that Act.
- (3) The duration of a fuel re-selling agreement to which subsection (1) or (2) applies:
 - (a) must not be altered otherwise than in accordance with this code; and
 - (b) must not be altered for a reason that is, in substance, related to:
 - (i) the commencement of this code; or
 - (ii) the repeal of the *Petroleum Retail Marketing Franchise Act 1980* or the *Petroleum Retail Marketing Sites Act 1980*.

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

Fuel re-selling agreements entered into on or after the date of commencement of this code

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

Renewal of fuel re-selling agreements

- (6) A supplier must not fail or refuse to renew a fuel re-selling agreement mentioned in subsection (2) or (5) unless the supplier has decided that it will:
- (a) lease the site on which the fuel re-selling business is to be carried on for a purpose other than the retail sale of motor fuel; or
 - (b) dispose of the site on which the fuel re-selling business is to be carried on; or
 - (c) operate the site on which the fuel re-selling business is to be carried on for a purpose other than the retail sale of motor fuel.
- (7) A retailer who proposes to exercise an option to renew a fuel re-selling agreement to which paragraph (5) (b) relates must request that the supplier provide a disclosure document, as set out in Annexure 1 or 2 (whichever applies), setting out the terms and conditions to apply to a renewed fuel re-selling agreement. The request must be made at least 60 days, and not more than 120 days, before the expiration of the current term of the agreement.

(8) The terms and conditions, excluding duration, of a renewed fuel re-selling agreement to which paragraph (5) (b) relates may differ from the original or current term of the agreement, but any change must be reasonable and be made in good faith.

(9) A supplier must provide a disclosure document as set out in Annexure 1 or 2 (whichever applies):

(a) within 14 days after a request for a proposal by a retailer;
or

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

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

(a) a failure by a supplier to renew a fuel re-selling agreement; or

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

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

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

(a) the site on which the fuel re-selling business is carried on is leased under a lease that will expire:

(i) within 5 years after the agreement commences (for an agreement mentioned in subsection (4)); or

(ii) within 9 years after the agreement commences (for an agreement mentioned in subsection (5)); or

(b) the supplier has decided that, within 5 years after the agreement commences (for an agreement mentioned in subsection (4)), or within 9 years after the agreement commences (for an agreement mentioned in subsection (5)) it will:

(i) lease the site on which the fuel re-selling business is to be carried on for a purpose other than the retail sale of motor fuel; or

(ii) dispose of the site on which the fuel re-selling business is to be carried on; or

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

Note Paragraph (11) (c) allows for a flexible duration of an agreement where less than \$20 000 is paid up-front to the supplier (for example, for goodwill or as “key money”) as a condition of entering into the agreement.

(12) **If:**

- (a) a supplier and a prospective retailer agree on a different duration for a fuel re-selling agreement that is entered into on or after the date of commencement of this code; but
- (b) the reason for the different duration does not comply with subsection (11);

the fuel re-selling agreement is taken to have a duration of 5 years (for an agreement mentioned in subsection (4)) or 9 years (for an agreement mentioned in subsection (5)).

- (13) If a supplier and a retailer agree to terminate a current fuel re-selling agreement before the time at which it would otherwise expire, this section does not require the agreement to continue until that time.

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- (14) If a supplier and a retailer agree as described in subsection (13):
- (a) the supplier and another retailer may enter a fuel re-selling agreement (a *temporary agreement*) that has a duration of not more than 6 months; and
 - (b) a site cannot be the subject of consecutive temporary agreements; and
 - (c) on the expiry of the temporary agreement, the supplier must:
 - (i) offer the retailer a fuel re-selling agreement that has a duration that complies with this section; or
 - (ii) comply with section 39.

33 Renegotiation or variation of agreement

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

the retailer may require the supplier to offer to terminate the fuel re-selling agreement under Division 4.

34 Transfer of the fuel re-selling agreement

- (1) A request for a supplier's consent to transfer of a fuel re-selling agreement must be made in writing.
- (2) A supplier must not unreasonably withhold consent to the transfer.
- (3) For subsection (2), circumstances in which it is reasonable for a supplier to withhold consent include:
 - (a) the proposed transferee is unlikely to be able to meet the financial obligations that the proposed transferee would have under the fuel re-selling agreement;
 - (b) the proposed transferee does not meet a reasonable requirement of the agreement for the transfer of the agreement;
 - (c) the proposed transferee has not met selection criteria set out in the disclosure document given to the retailer under section 16;
 - (d) the disclosure obligations under Division 2 have not been met;
 - (e) the proposed transferee does not agree in writing to comply with the obligations of the retailer under the fuel re-selling agreement;
 - (f) the retailer has not paid, or made reasonable provision to pay, an amount owing to the supplier;
 - (g) the retailer has breached the fuel re-selling agreement, and has not remedied the breach.
- (4) The supplier is taken to have given consent to the transfer if the supplier does not, within 42 days after the request was made, give to the retailer written notice:
 - (a) that consent is withheld; and
 - (b) setting out why consent is withheld.

Division 4 Termination of fuel re-selling agreement

35 Termination by supplier — breach by retailer

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

36 Termination by supplier — special circumstances

- (1)** A supplier is not required to comply with section 35 if the retailer:
 - (a) no longer holds a licence that the retailer must hold to carry on the fuel re-selling business; or
 - (b) becomes bankrupt, insolvent under administration or an externally-administered body corporate; or
 - (c) voluntarily abandons the fuel re-selling business; or
 - (d) is convicted of a serious offence; or

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- (e) operates the fuel re-selling business, or an associated business conducted on the premises, in a way that is fraudulent or that endangers public health, safety or the environment; or
 - (f) agrees to the termination of the fuel re-selling agreement; or
 - (g) the retailer breaches the fuel re-selling agreement, otherwise than by behaviour described in paragraphs (a) to (f), at least 3 times; or
 - (h) is likely, by continued occupation of the site to which the fuel re-selling agreement relates, to cause substantial damage to the business, property or reputation of the supplier; or
 - (i) for a commission agency — fails to bank the supplier's money under the commission agency agreement.

(2) A supplier may terminate a fuel re-selling agreement relating to particular retail premises if:

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

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

- (1) This section applies if:
 - (a) a fuel re-selling agreement includes a requirement mentioned in paragraph 32 (11) (c); and
 - (b) the fuel re-selling agreement does not specify a minimum duration; and
 - (c) the supplier intends to terminate the fuel re-selling agreement.

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- (2) The supplier must:
- (a) give the retailer at least 30 days notice that the supplier intends to terminate the fuel re-selling agreement; and
 - (b) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of motor fuel supplied by the supplier to the retailer, at a price:
 - (i) that is agreed between the supplier and the retailer; or
 - (ii) if the supplier and the retailer are unable to agree on a price — that is determined by a valuer agreed to by the supplier and the retailer; and
 - (c) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of merchandise which the retailer has obtained under the supplier's franchise or operational specifications, or obtained with the supplier's approval during the term of the fuel re-selling agreement, at a price:
 - (i) that is agreed between the supplier and the retailer; or
 - (ii) if the supplier and the retailer are unable to agree on a price — that is determined by a valuer agreed to by the supplier and the retailer; and
 - (d) offer to buy, or nominate a purchaser of, equipment which the retailer has obtained under the supplier's business or operational specifications, or obtained with the supplier's approval during the term of the fuel re-selling agreement for use in the fuel re-selling business, at a price:
 - (i) that is agreed between the supplier and the retailer; or
 - (ii) if the supplier and the retailer are unable to agree on a price — that is determined by a valuer agreed to by the supplier and the retailer; and
- (3) Subject to any agreement with the supplier, the retailer must use reasonable efforts to sell the stock and equipment mentioned in paragraphs (2) (b), (c) and (d).
- (4) Part 4 applies to a dispute about compensation arising from the termination of a fuel re-selling agreement under this section.

38 Agreed early termination

- (1) This section applies if a retailer and supplier agree to terminate a fuel re-selling agreement before it expires.
- (2) The supplier must:
 - (a) **notify** the retailer that:
 - (i) the retailer has rights under the fuel re-selling agreement; and
 - (ii) the supplier will negotiate arrangements to terminate those rights by consent; and
 - (iii) the retailer should seek financial and legal advice about any offer made by the supplier; and
 - (b) offer to pay costs relating to the termination of the fuel re-selling agreement, including (subject to the terms of the fuel re-selling agreement) a proportional refund, for the remaining period of the fuel re-selling agreement, of any fee paid to the supplier when the retailer entered into the fuel re-selling agreement; and
 - (c) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of motor fuel supplied by the supplier to the retailer, at a price:
 - (i) that is agreed between the supplier and the retailer; or
 - (ii) that is determined by a valuer agreed to by the supplier and the retailer; and
 - (d) offer to buy, or nominate a purchaser of, a reasonable quantity of saleable stocks of merchandise which the retailer has obtained under the supplier's franchise or operational specifications, or obtained with the supplier's approval during the term of the fuel re-selling agreement, at a price:
 - (i) that is agreed between the supplier and the retailer; or
 - (ii) that is determined by a valuer agreed to by the supplier and the retailer; and

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- (e) offer to buy, or nominate a purchaser of, equipment which the retailer has obtained under the supplier's business or operational specifications, or obtained with the supplier's approval during the term of the fuel re-selling agreement for use in the fuel re-selling business, at a price:
 - (i) that is agreed between the supplier and the retailer;
or
 - (ii) that is determined by valuation carried out by a valuer agreed to by the supplier and the retailer, in accordance with valuation principles disclosed to the retailer before the equipment was obtained.
 - (3) Subject to any agreement with the supplier, the retailer must use reasonable efforts to sell the stock and equipment mentioned in paragraphs (2) (c), (d) and (e).
 - (4) Part 4 applies to a dispute about compensation arising from the termination of a fuel re-selling agreement under this section.

39 Expiry

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

Part 4 Dispute resolution scheme

40 Application of Part 4

This Part applies to each of the following disputes:

- (a) a dispute arising if a wholesale supplier fails to supply a declared petroleum product to a customer;
- (b) a dispute arising in relation to any other provision of Part 2 or 3.

41 Dispute resolution adviser

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

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

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

43 Disputes about supply of a declared petroleum product

- (1) This section applies to a dispute in relation to a wholesale supplier's failure to supply a declared petroleum product to a customer.
- (2) The complainant may:
 - (a) notify the dispute resolution adviser that the dispute exists; and
 - (b) ask the dispute resolution adviser to attempt to resolve the dispute.
- (3) If the complainant notifies the dispute resolution adviser under subsection (2), the complainant must, within a reasonable time:
 - (a) **notify** the dispute resolution adviser **of**:
 - (i) the nature of the complaint; and
 - (ii) the parties to the dispute; and
 - (iii) the expected effect on the complainant of the disputed conduct; and
 - (b) give the dispute resolution adviser evidence to support the complaint.

Note The dispute resolution adviser's guidelines will suggest reasonable times for carrying out these actions. However, the dispute resolution adviser will be aware that a complainant may have reasonable grounds for taking more time to comply, particularly if notification by a particular time would have a significant adverse effect on the complainant.

- (4) The dispute resolution adviser may ask the wholesale supplier to give to the dispute resolution adviser:
 - (a) as soon as practicable; but
 - (b) within 6 hours after the request;a copy of the wholesale supplier's records relating to the failure to supply the declared petroleum product to the complainant, or relating to any other matter mentioned in section 12.
- (5) The wholesale supplier must comply with a request under subsection (4).
- (6) The dispute resolution adviser may make a non-binding determination about the dispute.

44 Dispute resolution procedure — disputes other than under section 43

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

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- (b) dealing with other disputes which have common features with the matter for which the person is appointed.

45 Provision of mediation and assistance

- (1) All mediation and assistance provided under this Part must be carried out in good faith.
- (2) A person appointed under subparagraph 44 (2) (b) (ii) must inform the dispute resolution adviser, within 28 days after being appointed, of the arrangements made for providing mediation or other assistance.
- (3) To resolve a dispute, a person appointed under subparagraph 44 (2) (b) (ii) may:
 - (a) review documents relating to the dispute; and
 - (b) seek the assistance of the parties to resolve the dispute; and
 - (c) consider any other materials relevant to the dispute.
- (4) The parties are not required to continue to use the services of the person if the dispute has not been resolved 30 days after the start of arrangements to resolve the dispute.
- (5) The dispute resolution adviser may comment on any advice given by a person appointed by the dispute resolution adviser.
- (6) The dispute resolution adviser may make a non-binding determination about the dispute.

46 Self-incrimination

A statement made for the course of a procedure under this Part is not admissible in evidence against the person in:

- (a) a criminal proceeding; or
 - (b) a proceeding for the imposition of a penalty;
- other than a proceeding in respect of the falsity of the statement.

47 Conditions

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

DRAFT ONLY

Annexure 1 Disclosure document for retailer or prospective retailer — long form

(Subsection 15 (1))

1 First page

1.1 On the first page:

- (a) in bold upper case:

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

- (b) the supplier's name, ABN, ACN or ARBN, business
address and phone number; and
- (c) the date of the disclosure document; and
- (d) the following statement:

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

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

A fuel re-selling agreement is legally binding on you if you sign
it.

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

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

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

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

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

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

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

You should contact the appropriate industry association.

2 Supplier details

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

3 Business experience

- 3.1 A summary of the relevant business experience in the last 10 years of each person, other than an executive officer, mentioned in item 2.5

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

4 Litigation

- 4.1 Details of:
- (a) current proceedings, and proceedings finalised in the previous 3 years, by a public agency, criminal or civil proceedings or arbitration, relevant to the fuel re-selling agreement, against the supplier in Australia alleging:
 - (i) breach of a fuel re-selling agreement; or
 - (ii) contravention of trade practices law; or
 - (iii) contravention of the *Corporations Act 2001*; or
 - (iv) unconscionable conduct; or
 - (v) misconduct; or
 - (vi) an offence of dishonesty; and
 - (b) proceedings against the supplier under:
 - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
 - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
 - (iii) section 290 of the *Workplace Relations Act 1997* of Queensland.
- 4.2 Whether the supplier or a director of the supplier has been:
- (a) in the last 10 years — convicted of a serious offence, or an equivalent offence outside Australia; or

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- (b) in the last 5 years — subject to final judgment in civil proceedings for a matter mentioned in paragraph 4.1 (a); or
 - (c) in the last 10 years — bankrupt, insolvent under administration or an externally-administered body corporate in Australia or elsewhere.
- 4.3 For items 4.1 and 4.2 — the following details (where relevant):
- (a) the names of the parties to the proceedings;
 - (b) the name of the court, tribunal or arbitrator;
 - (c) the case number;
 - (d) the general nature of the proceedings;
 - (e) the current status of the proceedings;
 - (f) the date of order or undertaking under section 87B of the Act;
 - (g) the penalty or damages assessed or imposed;
 - (h) the names of the persons who are bankrupt, insolvent under administration or externally administered;
 - (i) the period of the bankruptcy, insolvency under administration or external administration.

5 Payments to agents

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

6 Existing fuel re-selling agreements

- 6.1 For each of the last 3 years and for each of the following events — the number of fuel re-selling businesses of the supplier for which the event happened:
- (a) the fuel re-selling agreement was transferred;
 - (b) the fuel re-selling business ceased to operate;
 - (c) the fuel re-selling agreement was terminated by the supplier;

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

Note An event may be counted more than once if more than 1 paragraph applies to it.

- 6.2 The supplier is taken to comply with item 6.1 if the supplier supplies details as far as the supplier is aware that relate to events that happened before the Oilcode commenced.

7 Intellectual property

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

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- (ii) nature and extent of any limitation; and
 - (iii) duration of the agreement; and
 - (iv) conditions under which the agreement may be terminated.

- 7.2 The supplier is taken to comply with item 7.1 for any information that is confidential if the supplier gives:
- (a) a general description of the subject matter; and
 - (b) a summary of conditions for use by the retailer.

8 Territory

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

9 Supply of goods or services to a retailer

- 9.1 For the supplier's requirements for supply of goods or services to a retailer — details of:
- (a) any requirement for the retailer to maintain a level of inventory or acquire an amount of goods or services; and
 - (b) restrictions on acquisition of goods or services by the retailer from other sources; and
 - (c) ownership by the supplier or an associate of the supplier of an interest in any supplier from which the retailer may be required to acquire goods or services; and

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

Note Before a requirement is made under paragraph (b) or (c), the supplier may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Act, Part VII).

10 Supply of goods or services by a retailer

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

- (a) restrictions on the goods or services that the retailer may supply; and
- (b) restrictions on the persons to whom the retailer may supply goods or services; and
- (c) whether the retailer must supply the whole range of the goods or services of the fuel re-selling system.

Note Before a requirement is made under paragraph (a) or (b), the supplier may notify, or seek authorisation from, the Australian Competition and Consumer Commission (see Act, Part VII).

11 Sites

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

12 Marketing or other cooperative funds

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

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

Note Subsection 28 (3) of the Oilcode deals with compliance by the supplier with paragraph 12.1 (h).

13 Payments

Prepayments

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

Establishment costs

- 13.3 Details of the range of costs to start operating the fuel re-selling business, based on current practice, for the following matters:
 - (a) real property, including property type, location and building size;

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- (b) equipment, fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs;
 - (c) inventory required to begin operation;
 - (d) security deposits, utility deposits, business licences, insurance and other prepaid expenses;
 - (e) additional funds, including working capital, required by the retailer before operations begin;
 - (f) other payments by a retailer to begin operations.
- 13.4 For item 13.3, the details for each payment must include:
- (a) description of the payment; and
 - (b) amount of the payment or the formula used to work out the payment; and
 - (c) to whom the payment is made; and
 - (d) when the payment is due; and
 - (e) whether the payment is refundable and, if so, under what conditions.
- 13.5 For item 13.4, if the amount of the payment cannot easily be worked out — the upper and lower limits of the amount.

Other payments

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

14 Financing

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

15 Supplier's obligations

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

16 Retailer's obligations

- 16.1 Summary of the conditions of the fuel re-selling agreement that deal with obligations of a retailer (or references to the relevant conditions of the fuel re-selling agreement) for the following matters:
- (a) site selection and acquisition;
 - (b) requirements for starting the fuel re-selling business;
 - (c) site or unit development;
 - (d) training before and during operating fuel re-selling business;
 - (e) opening the fuel re-selling business;
 - (f) complying with standards or operating manuals;
 - (g) using intellectual property;

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- (h) warranties and customer service;
 - (i) territorial development and sales quotas;
 - (j) maintenance and appearance of premises;
 - (k) insurance;
 - (l) marketing;
 - (m) indemnities;
 - (n) participation requirements for retailer, directors, management or employees;
 - (o) records and reports;
 - (p) inspections and audit.

17 Pricing policy, motor fuel delivery and payment

17.1 Details of:

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

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

17.3 If the retailer is a commission agent, a statement about how the agency commission is worked out and how it can be changed.

18 Business plan

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

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

19 Supplier proprietary fuel card

19.1 Summary of conditions for use of supplier proprietary fuel cards (if any), including:

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

20 Variation

20.1 Details of the right (if any) of the supplier to vary a term of the agreement, or to vary any document adopted by reference, without the consent of the retailer, including:

- (a) how the right may, or may not, be exercised; and
- (b) details of the rights of the retailer as a consequence of any variation.

21 Summary of other conditions of the agreement

- 21.1 Whether the agreement is for a commission agency or other arrangement.
- 21.2 How long the current business format of the agreement has been used and how it has developed.
- 21.3 If the retailer is required to use the supplier's computer system — summary of the rights and responsibilities of the supplier and the retailer including the extent to which the retailer may be excluded from use of the computer system.
- 21.4 Summary of the conditions of the fuel re-selling agreement (or references to the relevant conditions of the fuel re-selling agreement) that deal with the following matters:
- (a) term of the fuel re-selling agreement;
 - (b) variation;
 - (c) renewal or extension;
 - (d) conditions the retailer must meet to renew or extend the fuel re-selling agreement;
 - (e) termination by the supplier;
 - (f) termination by the retailer;
 - (g) arrangements (including the retailer's goodwill, if any) on termination or expiry;
 - (h) the retailer's obligations when a fuel re-selling agreement is terminated, expires or is not renewed;
 - (i) the supplier's rights to sell its business;
 - (j) transfer of a fuel re-selling agreement, including selection criteria for retailers;
 - (k) mediation and conciliation;
 - (l) option or right of first refusal, if any, for the retailer or the supplier to buy the fuel re-selling business;
 - (m) the supplier's rights, if any, to inspect financial and other records of the fuel re-selling business;
 - (n) confidentiality of the retailer's records;
 - (o) death or disability of the retailer or a director or shareholder of the retailer;

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- (p) details of the role, operation or establishment of any dealer council, including rules of operation;
 - (q) restrictions on the retailer's operation of other businesses during or after the term of the fuel re-selling agreement;
 - (r) operations manual;
 - (s) choice of governing law.

22 Statements

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

23 Obligation to sign related agreements

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

24 Earnings information

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

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- 24.2 Earnings information may be given in a separate document attached to the disclosure document.
- 24.3 Earnings information includes information from which historical or future financial details of a fuel re-selling business can be assessed.
- 24.4 If earnings information is not given — the following statement:

The supplier does not give earnings information about the fuel re-selling business.

Earnings may vary between businesses.

The supplier cannot estimate earnings for a particular fuel re-selling business.

- 24.5 Earnings information that is a projection or forecast must include the following details:
- (a) the facts and assumptions on which the projection or forecast is based;
 - (b) the extent of enquiries and research undertaken by the supplier and any other compiler of the projection or forecast;
 - (c) the period to which the projection or forecast relates;
 - (d) an explanation of the choice of the period covered by the projection or forecast;
 - (e) whether the projection or forecast includes depreciation, salary for the retailer and the cost of servicing loans;
 - (f) assumptions about interest and tax.

25 Financial details

- 25.1 A statement as at the end of the last financial year, signed by at least 1 director of the supplier, whether in its directors' opinion there are reasonable grounds to believe that the supplier will be able to pay its debts as and when they fall due.
- 25.2 Financial reports for each of the last 2 completed financial years that have been prepared by the supplier in accordance with sections 295 to 297 of the *Corporations Act 2001*.

25.3 Item 25.2 does not apply if:

- (a) the statement under item 25.1 is supported by an independent audit provided by a registered company auditor within 12 months after the end of the financial year to which the statement relates; and
- (b) a copy of the independent audit report or statement is provided with the statement under item 25.1.

26 Updates

26.1 Any information given under section 29 of the Oilcode that has changed between the date of the disclosure document and the date the disclosure document is given under the Oilcode.

27 Other relevant disclosure information

27.1 A copy of the proposed fuel re-selling agreement, and any other proposed agreement for activities mentioned in paragraph 6 (1) (b) of the Oilcode, must be attached.

27.2 A copy of the Oilcode must be attached.

27.3 Any other information that:

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

28 Receipt

28.1 On the last page of the disclosure document:

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

Annexure 2 Disclosure document for retailer or prospective retailer — short form

(Subsection 15 (2))

1 First page

1.1 On the first page:

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

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

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

A fuel re-selling agreement is legally binding on you if you sign it.

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

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

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

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

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

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

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

You should contact the appropriate industry association.

2 Supplier details

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

3 Litigation

3.1 Details of:

- (a) current proceedings, and proceedings finalised in the previous 3 years, by a public agency, criminal or civil proceedings or arbitration, relevant to the fuel re-selling agreement, against the supplier in Australia alleging:
 - (i) breach of a fuel re-selling agreement; or
 - (ii) contravention of trade practices law; or
 - (iii) contravention of the *Corporations Act 2001*; or
 - (iv) unconscionable conduct; or
 - (v) misconduct; or
 - (vi) an offence of dishonesty; and
- (b) proceedings against the supplier under:
 - (i) section 127A or 127B of the *Workplace Relations Act 1996*; or
 - (ii) section 106 of the *Industrial Relations Act 1996* of New South Wales; or
 - (iii) section 290 of the *Workplace Relations Act 1997* of Queensland.

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

- (a) in the last 10 years — convicted of a serious offence, or an equivalent offence outside Australia; or
- (b) in the last 5 years — subject to final judgment in civil proceedings for a matter mentioned in paragraph 3.1 (a); or
- (c) in the last 10 years — bankrupt, insolvent under administration or an externally-administered body corporate in Australia or elsewhere.

3.3 For items 3.1 and 3.2 — the following details (where relevant):

- (a) the names of the parties to the proceedings;
- (b) the name of the court, tribunal or arbitrator;
- (c) the case number;
- (d) the general nature of the proceedings;
- (e) the current status of the proceedings;

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

4 Intellectual property

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

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- 4.2 The supplier is taken to comply with item 4.1 for any information that is confidential if the supplier gives:
- (a) a general description of the subject matter; and
 - (b) a summary of conditions for use by the retailer.

5 Territory

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

6 Marketing or other cooperative funds

- 6.1 For each marketing or other cooperative fund, controlled or administered by or for the supplier, to which the retailer may be required to contribute, the following details:
- (a) the kinds of persons who contribute to the fund (for example, retailer, supplier, outside supplier);
 - (b) whether the supplier must contribute to the fund in relation to businesses owned or operated by the supplier that are substantially the same as the business to be operated by the retailer and, if so, whether the contribution is worked out in the same way as for a retailer;
 - (c) how much the retailer must contribute to the fund and whether other retailers must contribute at a different rate;
 - (d) who controls or administers the fund;
 - (e) whether the fund is audited and, if so, by whom and when;

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- (f) whether the fund's financial statements can be inspected by, or will be given to, retailers;
 - (g) the kinds of expense for which the fund may be used;
 - (h) the fund's expenses for the last financial year, including the percentage spent on production, advertising, administration and other stated expenses;
 - (i) whether the supplier or its associates supply goods or services for which the fund pays and, if so, details of the goods or services;
 - (j) whether the supplier must spend part of the fund on marketing, advertising or promoting the retailer's business.

Note Subsection 28(3) of the Oilcode deals with compliance by the supplier with paragraph 6.1 (h).

7 Payments

Prepayments

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

Establishment costs

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

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

7.4 For item 7.3, the details for each payment must include:

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

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

Other payments

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

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

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

8 Supplier's obligations

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

9 Retailer's obligations

- 9.1 Summary of the conditions of the fuel re-selling agreement that deal with obligations of a retailer (or references to the relevant conditions of the fuel re-selling agreement) for the following matters:
- (a) site selection and acquisition;
 - (b) requirements for starting the fuel re-selling business;
 - (c) site or unit development;
 - (d) training before and during operating fuel re-selling business;
 - (e) opening the fuel re-selling business;
 - (f) complying with standards or operating manuals;
 - (g) using intellectual property;
 - (h) warranties and customer service;
 - (i) territorial development and sales quotas;
 - (j) maintenance and appearance of premises;
 - (k) insurance;
 - (l) marketing;
 - (m) indemnities;
 - (n) participation requirements for retailer, directors, management or employees;
 - (o) records and reports;
 - (p) inspections and audit.

10 Pricing policy, motor fuel delivery and payment

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

11 Business plan

- 11.1 Summary of the requirements for the retailer to prepare a business plan, including:
- (a) a statement of the rights and obligations of the supplier and retailer under the plan;
 - (b) when it must be prepared;

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

12 Supplier proprietary fuel card

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

13 Variation

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

14 Statements

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

15 Financial details

- 15.1 A statement as at the end of the last financial year, signed by at least 1 director of the supplier, whether in its directors' opinion

there are reasonable grounds to believe that the supplier will be able to pay its debts as and when they fall due.

15.2 Financial reports for each of the last 2 completed financial years that have been prepared by the supplier in accordance with sections 295 to 297 of the *Corporations Act 2001*.

15.3 Item 15.2 does not apply if:

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

16 Receipt

16.1 On the last page of the disclosure document:

- (a) a statement to the effect that the prospective retailer may:
 - (i) keep the disclosure document; and
 - (ii) ask the supplier for the information referred to in the following sections of Annexure 1 to the Oilcode:
 - section 3 Business experience
 - section 5 Payments to agents
 - section 6 Existing fuel re-selling agreements
 - section 9 Supply of goods or services to a retailer
 - section 10 Supply of goods or services by a retailer
 - section 11 Sites
 - section 14 Financing
 - section 21 Summary of other conditions of agreement
 - section 23 Obligation to sign related agreements
 - section 24 Earnings information
 - section 26 Updates

DRAFT ONLY

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- section 27 Other relevant disclosure information; and
- (b) a form on which the prospective franchisee can acknowledge receipt of the disclosure document.

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Annexure 3 Disclosure document for proposed transferee

(Subsection 22 (1))

1 Details

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

1.10 Summary (or references to the relevant conditions of the fuel re-selling agreement, if attached) of any conditions under the existing fuel re-selling agreement for transfer of the agreement.

1.11 Details of each of the retailer's employees in the fuel re-selling business, including:

- (a) name; and
- (b) position; and
- (c) length of service; and
- (d) rate of pay; and
- (e) outstanding obligations of the retailer.

2 Other relevant disclosure material

2.1 Any other information the retailer wants to give.

3 Disclaimer

3.1 A statement that:

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

4 Receipt

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

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.