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**SUBMISSION TO THE
THE SENATE
SELECT COMMITTEE INQUIRY
ON
FUEL AND ENERGY**

**SUBMISSION PREPARED BY
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**SUBMISSION TO THE
SENATE
SELECT COMMITTEE ON FUEL AND ENERGY**

INTRODUCTION:

We thank the ACCC for the invitation to make this submission to the Senate Select Committee on Fuel and Energy.

By way of background, **HEH Australian Petroleum Consultancy Co (HEH)** is the trading name of Hughes Energy Consultants Pty Ltd of which **Kevin M Hughes** is the Managing Director.

HEH provides consultancy services, support, and guidance and mediation services to Petroleum Distributors (wholesalers), Service Station Operators, Associations, Biofuels Manufacturers, Motoring Associations, Oil Company Majors, Corporate entities, Governments and the media.

As part of our consultancy process we maintain daily monitoring of retail & wholesale pricing in Australia for both petrol & diesel and their relativity to import parity.

We are also publishers of the monthly petroleum industry email newsletter - **Australian Petroleum Marketers News (APMN)** which provides news and commentary on issues of importance for petroleum marketers.

Kevin Hughes has been continuously involved in the downstream sector of the oil industry in Australia for in excess of (45) years in various capacities including – Senior Executive (Regional Manager) with the Shell Co of Australia, the operation of his own large petroleum distributorship/wholesaler company, the management of a wholly owned Mobil wholesale subsidiary company, as CEO of the Service Stations Association and National President (3 terms) of the Australian Petroleum Agents and Distributors Association (APADA) now ACAPMA.

In addition, Kevin Hughes is a Director of the National Biodiesel Pty Ltd an Australian Company which is in the process of constructing a Soybiodiesel production facility in Port Kembla NSW and is currently selling Soybiodiesel within the Australian market.

Kevin Hughes has also had the privilege of serving on the Federal Government’s Trebeck Fuel Tax Inquiry and the Federal Government’s Ethanol Task Force.



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Preamble:

While HEH appreciates the opportunity to make this submission relative to the Terms of Reference, we will only address those areas in which we feel we are able, relative to our experience, expertise and available resources, to make a worthwhile contribution to the Committee's deliberations.

**1: Impact of higher fuel and energy prices:
(Cursory overview)**

The impact of high fuel prices has an impact on all areas of Australian life. It is often forgotten that there is not one industry that does not rely to some degree on petroleum products.

Australian families are always adversely affected by escalating petroleum prices, which immediately influences their discretionary spending activity and general living standard. This reduction of discretionary spending cascades through the food & retail industries, tourism, transport and leisure industries.

For those who have to commute long distances for their work on a daily basis, are particularly vulnerable.

Small business as a result, is similarly adversely influenced in all of its area of activities and is one of the first areas, together with families, to feel the impact of escalating petroleum prices.

Rural and regional Australia is generally always hit harder than city dwellers because of additional freight charges that inevitably follow escalating petroleum prices. Also too, country people generally do not have the same access to lower prices caused by a greater concentration of competitive elements, across not only the retail petroleum industry, but throughout the entire retail sectors.

Transport inevitably is immediately hit by higher petroleum pricing. Therefore influencing pricing throughout all industries.

Inflation because of its impact across the whole community is obviously seriously influenced by movements in petroleum pricing.

In spite of all of the foregoing adverse effects that escalating petroleum prices can have on the whole Australian community, governments have not yet put in place an effective monitoring and regulatory regime to ensure that the community interest is protected from unnecessary adverse petroleum industry commercial behaviour.



: The role and activities of the Petrol Commissioner:

In our view the Petrol Commissioner, because he has not been given appropriate authorities to implement “Cease and Desist” or “Show Cause” orders for predatory or exploitive conduct within the petroleum industry, has had little or no effect on petroleum pricing.

HEH long held and considered view is that to ensure the whole of the Australian community is protected from any commercial behaviour that will impact on petroleum pricing, the industry should be monitored by a **Petroleum Industry Ombudsman**, who would need to be empowered with the authority to order “Cease & Desist” and or “Show Cause” for any adverse behaviour. Such authority should cover not only predatory or exploitive retail pricing activity but encompass all “downstream” activity including energy security issues such as overseeing available seaboard and inland terminals access is not being unreasonably restricted in any way.

An imperative for success to this appointment should be that the incumbent is a person who has had extensive operational petroleum industry management experience and has a deep understanding of its workings and culture. Our assessment is that such a person would not normally be found in government bureaucracies.

3: The operation of domestic energy markets (petroleum products)

Australia is fortunate in that it has excellent and generally efficient structures within its petroleum distribution, wholesale and retail networks.

Consolidation and restructuring of those networks has progressively occurred over the years and in a general sense, with some exceptions, this re-structuring has not adversely affected the Australian community.

It is noteworthy that in the 1960’s – 70’s there were some 24,000 service stations, now there are around 5,500;
there were around 4,000 distributors (wholesalers) now there are around 110;
all being serviced in that era by (9) major oil companies.

The exceptions to good governance of the industry can be described as being in the areas of:-

- a) **Petroleum Marketers & Competitive Elements:** With the lessening of the number of major oil companies operating in Australia, the decreasing number of service stations and wholesalers, competitive elements have become more concentrated. As a result, the voracious pricing activities by major oil and their networks to protect market share, have forced many resellers to exit the business. Some of those forced exits were undoubtedly caused by predatory pricing activity,



which is very prevalent at this time with Coles & Woolworths and their respective alliances.

b) Predatory pricing: Whilst some attrition in retail site numbers is reasonable, for those forced out by predatory pricing activity, it is an outcome that decreases healthy competition. Independent service station operators in Australia, particularly within the marketing regime currently existing with the supermarket alliances, are the community's guarantee of competitive pricing. Remove that independent sector and prices will inevitably rise.

c) Retail Price Cycles: Increased market dominance will also have a further serious influence on the retail "cyclical pricing" phenomenon which is prevalent in Australia. We view cyclical pricing as a "major oil" manipulative device to maximise margins. Amplitudes at the high end are regularly within the "exploitive" area relative to import parity pricing, while at the low end, often enter the "predatory" area by being at or below what an independent service station operator may buy at.

As at the 17th of June 2009, second quarter retail figures for Sydney indicate that pricing fell to the "predatory" area on (7) occasions.

Predatory pricing is the major cause of damage to the independent service station market and has already forced many out of business.

Predatory pricing does not occur universally but is intermittent, situational and is implemented over differing geographical situations/areas.

Cyclical pricing is dominated by the major players – Caltex/Woolworths and Shell/Coles. While it is not collusion, their sheer market power dominance forces other marketers to follow their pricing.

If the ACCC permits Caltex to purchase, as recently announced, the Mobil retail outlets will give Caltex extraordinary influence over the price cycles thus increasing Caltex ability to dominate, if not control, retail petrol pricing in capital cities in Australia.

Recommendation: Pricing cycles can be eliminated by introducing a regulation that prohibits petrol and diesel retail board pricing from increasing by no more than say – 3cpl within any 5 day period. (Import parity pricing changes excluded).

Predatory pricing may be protected by introducing a regulation which prohibits board pricing from falling at or below the refiner marketer supplier's published TGP.

d) Transparent pricing: A major protection of competitive pricing is the provision and public access to transparent 'real time' petroleum pricing. The availability of independent and reliable transparent pricing has considerably improved over recent years, thus significantly increasing the ability to effectively monitor prices. However, at this time it is limited in its scope to mainly the capital cities and



some regional areas, and is largely funded by the major oil companies who use it as a tool to monitor each other.

The government should assist in expanding the public availability of transparent pricing – to not only the capital cities but to all regional centres. It should be remembered that it is this price information that is the best and most reliable tool to monitor market activity. It would be a serious blow to competition if it should in any way be restricted or limited in its availability.

e) Terminal Storage: One of the major impediment's to the development of an independent more competitive market in Australia is the unavailability to independent operators of seaboard terminals. While there are around 55 seaboard terminals located around Australia nearly all of them are controlled by the major oil companies. Independents have been consistently refused access to them by the majors in the interests of protecting their own market shares. Many of these terminals, together with inland depot storages, have been closed for years, with major oil refusing access to them, or they are being progressively removed or destroyed.

Some of these inactive terminals could be re-activated by independent operators, thus increasing competition and energy security.

A classic example of major oil refusing availability of operational seaboard terminal storage to independents is the Mobil Port Stanvac refinery and storage. Associated with the closed refinery is substantial seaboard terminal storage linked by pipeline to Adelaide's Birkenhead terminals. Mobil have consistently refused to negotiate access to the storage, even though it has been 'mothballed' for years. Their unsaid reasons are obvious. ExxonMobil provide shipping supplies of refined product directly into the South Australian market through the Adelaide Birkenhead terminals. If they allowed others to acquire their Port Stanvac terminal storage, their supplies into South Australia would be placed at risk.

Our view is that the government, in the interests of creating a better competitive environment for petroleum marketing and increasing 'energy security' should legislate that petroleum refined product storage located at seaboard terminals and inland depots may not be removed or rendered unserviceable without ministerial approval.

f) Refineries: Australia has (7) refineries, all of which are modest in size compared to those of our neighbours in S.E.Asia. Most are old, limited technologically and are expensive to operate. Indeed, major oil companies in Australia import refined product cheaper than they can efficiently produce. Mobil closed its Port Stanvac refinery in 2003 and reduced the output of its Altona Victorian refinery; Shell has closed its Clyde NSW refinery in November of last year for maintenance works and has still not re-opened it. Rumours are circulating that they will not be



reopening. Some 35% of Australia's refined product is being imported and that number is growing.

As a consequence, that changes the balance of Australia's energy security needs.

At the current time we have approximately (90) days of refined product cover in Australia. Our view is that government planning should consider doubling that cover and establish a 'strategic reserve' quantum.

Our further view is that the government should consider providing appropriate incentives to independent petroleum marketers or independent terminal operators, to build or acquire new/additional strategically located refined product storage.

In the interests of Energy Security the government may well consider constructing their own strategic reserve storage.

All of the foregoing activities and issues, in the interests of the Australian community could be effectively and efficiently monitored by the suggested appointment of a Petroleum Industry Ombudsman.

4: Taxation arrangements:

Commonwealth Excise:

Our view is that this is both an effective and efficient means of providing general taxation revenue, not hypothecated for any specific purpose.

The Commonwealth Government Fuel Taxation Inquiry of 2002, of which this writer was a member, was an excellent in depth study into this area and we would commend it to the Committee for further consideration.

Goods and Service Tax (GST):

An understandable constant cause for complaint is that GST is charged on top of the excise component in petroleum, thus creating a 'tax on tax' position and providing 'windfall' income for the States.

Our view is such an iniquitous tax position should be removed.

Biofuels: (Ethanol and Biodiesel)

In our view the favourable status given to the biofuels industry is justified and should be continued.

The reduced excise status will assist the industry to grow, reduce dependence on petroleum supply, increase energy security and reward our community and its environment through the significant favourable environmental outcomes they provide.

We thank the Senate Select Committee for the opportunity to present this paper and advise we are prepared to answer any questions on any of the issues.

KEVIN HUGHES
HEH AUSTRALIAN PETROLEUM CONSULTANCY CO
15TH JULY 2009.