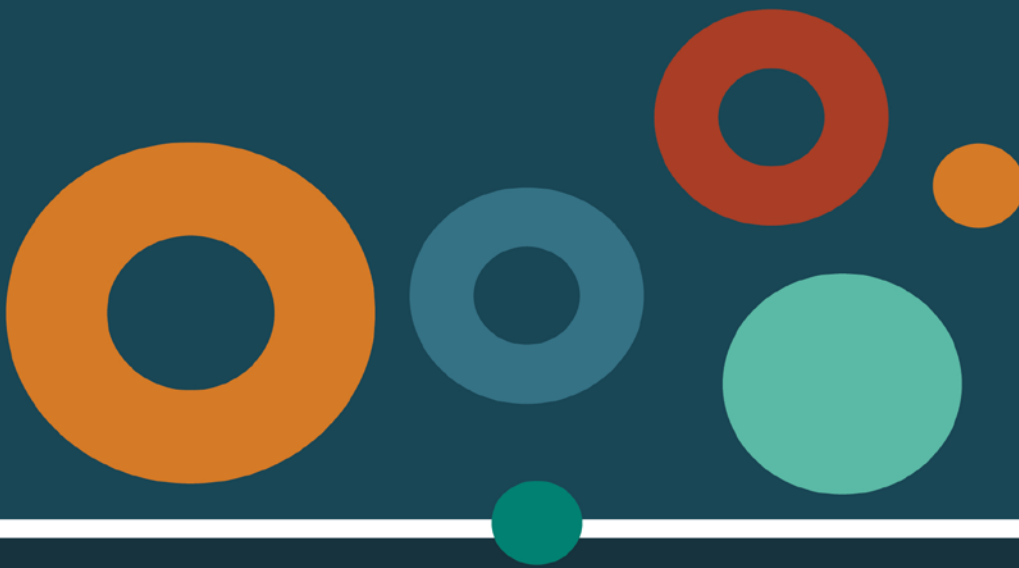


# Discussion paper

## Review of the Queensland Biofuels Mandates

May 2019



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# Introduction

## The biofuels mandates

The *Liquid Fuel Supply Act 1984* (the Act) requires certain fuel retailers and fuel wholesalers (collectively referred to as fuel sellers) to sell a minimum amount of sustainable biobased petrol and sustainable biobased diesel in Queensland (referred to collectively as the biofuels mandates).

The objectives of the biofuels mandates are to:

- a) provide assurance to existing ethanol and biodiesel producers and stimulate investment in a biofuels industry in Queensland
- b) contribute to regional growth and jobs creation
- c) reduce greenhouse gas emissions from motor vehicles
- d) take advantage of the emerging second generation technologies for biofuels from a range of feedstock.

The biofuels mandates commenced on 1 January 2017.

## **Overview of the biofuels mandates**

### **Biobased petrol mandate**

When the biofuels mandates commenced, the biobased petrol mandate (ethanol mandate) required that a minimum of 3 per cent of the total volume of regular unleaded petrol sales and ethanol blended petrol sales (such as E10) by liable fuel retailers be sustainable biobased petrol (ethanol).

From 1 July 2018, the biobased petrol mandate increased to 4 per cent. Liable fuel retailers are defined as retailers that, within a quarter period, own or operate 10 or more sites, or sell more than 500 000 litres of petrol fuel at any site the fuel retailer owns or operates.

Two years since the introduction of the mandates, considerable action has been undertaken by liable fuel retailers. Prior to the legislated increase of the ethanol mandate from 3 per cent to 4 per cent, the mandate was close to being achieved, with reported ethanol volume sales in the April to June quarter 2018 at 2.7 per cent.

Fuel sites offering E10 increased from 343 (before the biofuels mandates commenced) to 693 sites as at December 2018 – an increase of over 100 per cent. With the increase of E10 availability across Queensland and the reportable increase in E10 sales, the biobased petrol mandate is delivering assurance for ethanol producers.

Despite these improvements on average the 4 per cent ethanol mandate has not yet been achieved and addressing barriers to increasing consumer demand is necessary to meet the 4 per cent target mandate.

### **Biobased diesel mandate**

The biobased diesel mandate (biodiesel mandate) requires 0.5 per cent of all diesel fuel sold by fuel wholesalers to be sustainable biobased diesel (biodiesel). The biobased diesel mandate is designed to capture diesel sales by fuel wholesalers which are made to fuel retailers and bulk end users (such as transport depots, agricultural and mining uses).

Liable fuel wholesalers have made significant investments into new and upgraded biodiesel blending and storage infrastructure since the introduction of the biodiesel mandate. This investment will contribute to a positive environment for biodiesel investment in the future; however, the Queensland biodiesel market is still in its infancy and there is currently only one commercial biodiesel production facility in the state.

## **Review of the biofuels mandates**

The Queensland Government is reviewing the Queensland sustainable biobased petrol and biobased diesel mandates (the biofuels mandates) now that they have been in effect for more than two years.

Since the mandates commenced, they have been successful in increasing the uptake and availability of ethanol and improving the supply chain for biodiesel.

In 2018, the Department of Natural Resources, Mines and Energy (DNRME) engaged independent consultants with economic and regulatory expertise to examine the effectiveness of the mandates, and to assess how the intended objectives are being met and how delivery of these objectives can be improved in the future.

The analysis identified that the biofuels mandates have been successful in meeting key objectives through increasing biofuel sales, delivering investment certainty and indirectly contributing to regional job growth, with less impact on reducing greenhouse gas emissions and supporting second-generation technologies.

The analysis investigated opportunities and challenges to achieving the policy objectives, such as changing fuel market dynamics and shifting consumer preferences. A range of information sources were used including internal government data, biofuels industry insights and stakeholder feedback, including from fuel wholesalers, retailers and producers.

Information gathered during desktop research and stakeholder consultation identified a number of key issues and challenges related to the implementation and administration of the biofuels mandate legislation. Employing a multi-criteria analysis, a list of potential options to support the objectives of the biofuels mandates was identified and a number were shortlisted for further analysis and consideration.

The options set out in this paper are supported by the independent consultant's analysis; however, DNRME considered a range of information sources to refine the options.

The Queensland Government remains committed to growing a sustainable biofuels and biomanufacturing industry. Inviting further discussion on the options presented will ensure the government continues to deliver on our commitment. This discussion paper does not foreshadow any specific policy reforms.

## **Purpose of this discussion paper**

DNRME has developed this paper to seek your thoughts and insights to optimise the biofuels framework to further deliver on its stated objectives. The paper explores a number of options to strengthen the biofuels and biomanufacturing industry in Queensland.

Questions have been included in the paper as discussion points. We welcome your response to these and invite you to contribute any other supporting evidence and comments to assist in optimising the biofuels framework.

## **Consultation**

In the coming weeks, DNRME will undertake targeted consultation with stakeholders to canvass options in relation to the sustainable biofuels legislation and to clarify stakeholder positions. To ensure the mandate policy objectives are achieved in the most cost-efficient and equitable manner, we need to hear from you.

This discussion paper outlines the options being considered by the Queensland Government to improve the mandates and to continue to advance Queensland's biofuels and biomanufacturing sector.

### **Submissions can be made by:**

**Email:** [biofuels@dnrme.qld.gov.au](mailto:biofuels@dnrme.qld.gov.au)

**Mail:** Policy Manager – Queensland biofuels mandates review, Department of Natural Resources, Mines and Energy, PO Box 15456, City East Qld 4002

**Submissions close:** Monday 1 July 2019 at 5pm



# Current state: Assessing the biofuels mandates

## Ethanol mandate

Since the ethanol mandate was introduced in January 2017, total sales of E10 (the most popular blend of ethanol based petrol) have increased substantially.

Reportable volumes of E10 in the October to December 2018 quarter increased by over 99 per cent compared with baseline data collected before the mandate commenced. This is due to liable fuel sellers increasing ethanol sales to 2.8 per cent of regular petrol sales on average.

The availability of biobased petrol has also increased. The fuel industry has upgraded a large number of sites to make E10 more widely available. Across Queensland, E10 is now available at 60 per cent of service stations operated by liable fuel retailers<sup>1</sup>, predominately in South East Queensland. While this is a significant achievement, more sites still need to be converted to make E10 more readily available, particularly in regional areas.

Individual liable fuel sellers are required to meet 4 per cent as a legislated minimum requirement. The considerable action taken by liable fuel retailers to date is noticeable as, prior to the legislated increase from 3 per cent to 4 per cent, many fuel retailers were meeting or were close to meeting the ethanol mandate, with liable fuel sellers reporting average ethanol sales of 2.7 per cent.

Despite this improvement, many fuel sellers are yet to meet the 4 per cent ethanol mandate, and addressing barriers is necessary to achieve the 4 per cent mandate. Analysis has found that low consumer demand will remain a challenging factor in meeting the mandate.

Currently, if ethanol sales of 4 per cent were achieved, four out of every 10 drivers would fill up their vehicle with E10 in favour of regular unleaded petrol. Based on current fuel sales, only 2.8 drivers out of 10 are currently filling up with E10.

Reasons for low consumer demand may include access/availability of E10, some consumer aversion to E10, vehicle compatibility, perceptions around the quality of E10 and the price differential between E10 and other fuels.

The transition to a low-carbon economy and emission reduction targets, to which the Queensland Government is committed, will have longer term implications for the transportation sector and petroleum-based fuel industry through improved fuel efficiency and quality standards, technology and innovation and fuel shift.

Future disruption to the fuel market is expected and, in the longer term, may impact on the biofuels mandates. Disruption is expected from the forecast increase of electric vehicles sales in the market and competing emergent fuel types, such as hydrogen. The hydrogen and electric vehicles industries are in their infancy, but reports indicate that alternative fuels vehicle sales are expected to reduce liquid fuel demand in Australia over time. A decline in petrol sales volumes presents a challenge to the objectives of the biobased petrol mandate to increase the sales volumes of ethanol.

## Biodiesel mandate

The biodiesel market is less mature than the biobased petrol market. There are only a small number of wholesalers with the necessary infrastructure and supply agreements in place to sell sufficient quantities of biodiesel to meet their biodiesel mandate of 0.5 per cent.

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<sup>1</sup> **fuel retailer** means a person who sells petrol or diesel to the public other than for resale by members of the public. A fuel retailer is a liable retailer if they either (i) own or operate 10 or more sites or (ii) sell more than 500,000 litres of all grades of petrol at any site in a calendar quarter.

Liabile fuel wholesalers have made significant investment to install biodiesel blending and storage infrastructure that was not previously available before the introduction of the biodiesel mandate. This will contribute to a positive environment for biodiesel investment in Queensland in the future; however, this market is still in its infancy. There is currently only one commercial biodiesel production facility in Queensland.

The existing infrastructure for biodiesel storage and blending remains concentrated in South East Queensland. Future expansion of the biodiesel sector may need to address issues related to supply and distribution outside South East Queensland to more readily connect to the needs of potential bulk end users in the north of the state.

Looking ahead, the government is committed to supporting liquid fuel users to switch to sustainable, low-carbon biofuels, particularly where electrification may be difficult, such as in the aviation, maritime, freight, mining and agricultural sectors.

### **Regulation and administration of the *Liquid Fuel Supply Act 1984***

While the government has sought to strike a reasonable balance between commercial and consumer requirements and increasing the uptake of biofuels in Queensland, the analysis has found some improvements can be made to the legislation and its administration.

The analysis has identified that a barrier to improving compliance rates is the insufficient enforcement options available to DNRME (other than taking a matter to Court), and the relatively low penalties under the Act. Options to address this include additional enforcement tools to address non-compliance, such as the use of penalty infringement notices (PINs) for certain matters. In addition, the introduction of enforceable undertakings may be a beneficial provision to set out a range of required actions to be taken by a number of parties.

The biofuels exemptions (for liable fuel sellers) process has also been identified as an area with opportunities for improvement. Stakeholders have identified that the existing process is lengthy and complex and would benefit from greater clarity and efficiency.

Other regulatory barriers identified relate to the application of the sustainability criteria, with varying obligations for different production sources leading to a perceived inequity in regulatory burden on some producers and barriers for new entrants (such as sugar cane). There are also opportunities to improve transparency and assurance in the certification process, in particular to enable fuel sellers to identify if their product meets sustainability requirements.

Further administrative improvements can be made with regard to definitions and reporting under the Act.

## Future State:

### Options to optimise the biofuels mandates framework

To achieve the biofuels mandates objectives, analysis has identified a number of targeted outcomes and options that aim to increase demand for biobased fuels, improve compliance rates, and improve regulatory process and administration under the Act.

An overview of the targeted outcomes and the shortlisted options to support those outcomes is provided in the table below.

**Table 1. List of**

Targeted outcomes	Options to support the targeted outcomes
<b>Outcome 1</b> Increased uptake of biobased petrol	<ol style="list-style-type: none"><li>1. Allow the availability of E10 at a minimum proportion of retail sites to be an alternative pathway for compliance</li><li>2. Require fuel majors to also make E10 available at sites where they own the site infrastructure</li><li>3. Require fuel wholesalers to also meet the ethanol mandate</li><li>4. Increase consumer and motor trades awareness through education and engagement</li></ol>
<b>Outcome 2</b> Increased uptake of biobased diesel	<ol style="list-style-type: none"><li>5. Establish pathways for biodiesel producers to reach end users</li><li>6. Encourage the use of biodiesel by identifying opportunities across government</li></ol>
<b>Outcome 3</b> Improve compliance with the Act	<ol style="list-style-type: none"><li>7. Introduce PINs to enforce Part 5A of the Act</li><li>8. Increase penalty units to enforce Part 5A of the Act</li><li>9. Make enforceable undertakings available to enforce Part 5A of the Act</li><li>10. Seek additional authorised person powers to enforce Part 5A of the Act</li></ol>
<b>Outcome 4</b> Improve the efficiency of regulatory processes for fuel sellers	<ol style="list-style-type: none"><li>11. Expand the exemptions categories provided in section 35G(1) of the Act to include more specific, well-defined circumstances</li></ol>
<b>Outcome 5</b> Improve the efficiency of regulatory processes for biofuels producers	<ol style="list-style-type: none"><li>12. Revise the sustainability criteria to give biofuel producers more choice in which sustainability criteria they are certified under</li></ol>
<b>Outcome 6</b> Improve administration under the Act	<ol style="list-style-type: none"><li>13. Review legislative definitions within the Act</li><li>14. Revise the fuel seller reporting requirements to improve compliance and reduce fuel seller reporting difficulties.</li></ol>

## **Outcome 1: Increased uptake of biobased petrol**

To date consumer demand for E10 has not been sufficient to meet the mandate, with reported ethanol volume sales of 2.8 per cent averaged across the state being well below the mandate level of 4 per cent. Factors contributing to this include availability of E10, vehicle incompatibility and negative perceptions of biofuels among some consumers.

There is a proportion of the consumer base that will choose E10 if it is available; however, 40 per cent of sites in Queensland still have no option for consumers to purchase E10. The mandates apply to percentage sales at the fuel seller level, so a fuel seller can meet the mandate with not all sites supplying E10; however, there are many fuel sellers who have not met the mandate and who do not have E10 available at sites. Analysis indicates that a significant proportion of Queensland's E10 sales increases have come from the increase in availability of E10 at sites across the state.

Some consumers continue to demonstrate an aversion to E10 and this may be attributed to vehicle compatibility, perceptions around the quality of E10 and the price differential between E10 and other fuels.

Stimulating demand for E10 fuel can occur through a number of options considered below.

## **Options to achieve increased uptake of biobased petrol**

### **Option 1. Allow the availability of E10 at a minimum proportion of retail sites to be an alternative pathway for compliance**

Increased availability of biobased petrol remains a key driver of consumer use. At sites with E10 available, the average ethanol sales volume is 3.7 per cent for the October to December quarter 2018. The supply chain for ethanol has expanded. Prior to the commencement of the biobased petrol mandate, E10 was available at 343 sites. Since early 2016 the growth in availability of E10 by liable retailers has increased by over 100 per cent to a total of 693 sites in October to December 2018.

Overall, about 60 per cent of regular service stations in Queensland operated by liable fuel sellers have E10 available. The largest proportion of sites with E10 available can be found in South East Queensland where currently 68 per cent of liable sites have made E10 available. There remains an opportunity to continue to make biobased petrol readily available for consumers by increasing the number of sites across Queensland, particularly in regional areas.

This option could be applied by allowing liable fuel sellers who are not currently meeting the 4 per cent volume based mandate, to meet an alternative 'availability requirement', by making E10 available at a certain proportion of sites (to be determined following further analysis) of the liable fuel sellers' service stations, potentially based on geographic spread.

Liable fuel retailers could then be assessed as meeting the requirements if they:

1. comply with the 4 per cent ethanol sales volumes requirement, or
2. have at least a minimum proportion of sites (of their total number of sites) with E10 available or
3. a combination of a minimum per cent of ethanol sales and a minimum proportion of sites selling E10.

Implementing this option would increase availability and visibility of E10 fuel to consumers, potentially contributing to an increase in uptake.

Continuing to make E10 more widely available may address the actual and perceived barriers for consumers to increase the uptake of E10. In addition, this option offers liable fuel retailers with an alternative pathway to achieving compliance under the Act.

### ***Questions for your consideration***

- Is allowing liable fuel sellers to meet the ethanol mandate by making E10 available at a minimum percentage of retail sites an appropriate pathway to increasing the availability and visibility of sustainable biobased petrol?
- What are the barriers and opportunities for implementing this option? What is the best way to implement such an option (methods could include an alternative mandate prescribed in the Act or as a policy statement for a condition of giving an exemption or as an enforceable undertaking)?
- What would be considered a reasonable minimum proportion/percentage of sites?
- Could this alternative pathway allow existing compliant fuel sellers to reduce the availability of E10 at some sites, either at a site or bowser level, or introduce counter-productive pricing structures for E10?
- What other factors should be considered under this proposal?

## **Option 2: Require fuel majors to make E10 available at sites where they own the site infrastructure**

Some fuel market ownership structures are complex and have a number of entities with differing responsibilities. It has been identified that a reasonably large proportion of liable fuel retailers do not own or are not necessarily responsible for the infrastructure at their fuel stations.

Around 17 per cent of fuel stations have an ownership structure that typically involves an independent dealer (like a franchisee), operating the retail shop with a different company (such as a major oil company) typically owning and managing the forecourt including fuel pumps, and supplying fuel and branding to the site.

This results in an independent retailer classified as the liable fuel seller who on occasion may have little or no control over site infrastructure, which may need upgrading, to make E10 available. In some cases this may be a barrier to making E10 available at sites.

This option looks at how to address this gap by requiring fuel majors, who own sites to undertake infrastructure upgrades to make E10 available at sites, thereby increasing the opportunities for consumers to use E10.

### ***Questions for your consideration***

- What barriers currently exist within ownership structures to limit the availability of E10?
- In what way can these barriers be overcome?
- Is there evidence that fuel majors are not making E10 available?

### **Option 3: Require fuel wholesalers to also meet the ethanol mandate**

An additional challenge to fuel retailers is that the bulk of wholesale sites (fuel terminals and depots) offering sustainable biobased petrol are predominantly located in Brisbane, where all wholesale terminals have E10 available.

Regionally wholesale sites offering E10 are limited. Terminals with E10 available are located in Mackay (three sites), Cairns (one site) and Townsville (one site).

Ethanol blended fuel is not offered at 17 wholesale sites located in Gladstone, Cairns, Mackay, Weipa and Townsville. The lack of availability of E10 from wholesale sites may be adversely restricting the supply and availability of E10 to retail stations in these regions. This may also have the consequence of limiting the availability of E10 and present a barrier particularly in regional areas.

Requiring fuel wholesalers to also meet the mandate (in addition to fuel retailers) would potentially increase the regional availability of E10, tap into consumer demand in those locations, allow regional fuel retailers to better meet their mandate obligations and decrease the number of exemption applications based on the unavailability of E10 from a terminal.

The provision to extend the mandate to wholesalers is contained within the existing legislation as a future option. Existing legislation currently refers to a wholesale percentage yet to date this has not been applied.

#### ***Questions for your consideration***

- What would be the implications of a requirement for fuel wholesalers to also meet the ethanol mandate for the fuel industry and for ethanol producers?
- What barriers currently exist which prevent the availability of E10 from additional wholesale sites (fuel terminals) outside Brisbane?
- What evidence is there to demonstrate that this is an appropriate measure or otherwise?
- What are the barriers to making E10 available from these terminals?

### **Option 4: Increase consumer and motor trades awareness through education, and engagement**

The Queensland Government's E10 OK campaign, introduced in 2016, was designed to drive the uptake of biofuels during the introduction of the mandate. The campaign had a noticeable impact on awareness and consumer demand for E10. Ongoing education and awareness of biofuels are important for consumers, but are equally important for those who influence consumer attitudes.

Consumer fuel choice is significantly influenced by professionals in the automotive industry, particularly mechanics who service their vehicles and the dealers and manufacturers from which they purchase their vehicles. A number of stakeholders indicated that mechanics in particular, may continue to hold out-dated or incorrect perceptions of biobased petrol compatibility and anecdotally continue to advise consumers not to use E10 in their vehicles, despite manufacturers' specifications indicating that vehicles are E10 compatible.

There may be value in developing a more focussed education strategy which addresses the use of biofuels in Queensland with available resources, including:

- a) marketing to drive demand and awareness raising

- b) promotion of good news stories
- c) work with industry and TAFE motor trades courses to introduce biofuels education
- d) addressing the perceived inconsistency between vehicle compatibility with E10 and negative perceptions of automotive trades regarding biobased petrol.

There is opportunity to identify and leverage partnerships with key influencers in the automotive industry. Further opportunities to actively promote biofuels through engagement, education and beneficial partnerships will be explored in this option.

### ***Questions for your consideration***

- What additional consumer education and communication strategies will promote the use of biofuels in Queensland?
- What is the role of the motor industry in educating its members and consumers about E10?
- What are the key messages that should be included in any education campaign for biofuels?
- Who is the primary audience and what is the most appropriate mechanism to target them?

## **Outcome 2: Increased uptake of biobased diesel**

Liable fuel wholesalers have made significant investments to install biodiesel blending and storage infrastructure that was not previously available before the introduction of the biodiesel mandate. Given the biodiesel market is less mature than the biobased petrol market, current levels of biodiesel production represents a very small proportion of total diesel volume sold.

The biodiesel market represents a significant opportunity for increased production should demand be stimulated.

The largest users of diesel in Queensland are from the industrial and commercial sectors, with these end users representing 67 per cent of all diesel sales in 2017–18. Bulk diesel users include transportation and logistics companies, infrastructure and building firms and mining companies, with other users covering the areas of agricultural production, energy generation and public transport.

A lack of direct connection between these large end users and biodiesel producers may contribute to the low volumes of biodiesel sales. Some stakeholders have identified an opportunity to further understand and address the barriers of biodiesel use for potential customers.

Looking ahead to the future in transitioning to a zero net emissions economy, the diesel market in Queensland potentially offers greater growth opportunity for the biofuels sector than petrol, particularly in sectors where electrification may be difficult. Major biodiesel markets include maritime, freight, mining and agricultural sectors and offer potential market opportunities.

## **Options to achieve increased uptake of biobased diesel**

### **Option 5: Establish pathways for biodiesel producers to reach end users**

This option explores the role of the government and peak industry associations in establishing pathways for biodiesel to reach bulk end users. Examples of this could include the creation and promotion of an industry directory of producers and wholesalers of biodiesel and biodiesel blends or

active promotion of producers to potential major customers through ministerial and departmental representations.

Likely customers could include major mining companies, transportation companies (road, rail or maritime), large agricultural diesel users and major port facilities where large numbers of diesel powered vehicles are in use.

### ***Questions for your consideration***

- What mechanisms should be put in place to better connect biodiesel producers with customers and bulk end users directly?
- How can industry take advantage of the low emissions opportunity which biodiesel offers?
- Should a biodiesel working group be formed comprising of representatives from industry, the government and potential end users to understand the issues and identify opportunities?

### **Option 6: Encourage the use of biodiesel by identifying opportunities across government**

A number of innovative opportunities have been identified which may potentially encourage the use of biodiesel by end users following further consideration. Within government, these opportunities may include:

- Identify and use government categories that highlight or promote innovation to profile biodiesel. For example, tenderers could gain additional points for being able to supply vehicles that can use this type of fuel. This encourages and incentivises the use of these types of fuels.
- Projects over \$100 million must use the Infrastructure Sustainability Council Australia (ISCA) sustainability rating tool. ISCA's rating tool provides an "innovative opportunity" that encourages proponents to use sustainable construction materials and methods – this may include the use of alternative fuels.

### ***Questions for your consideration***

- What are the barriers to end users considering promoting biodiesel in their government tender applications?
- What other initiatives and opportunities can be identified to encourage the uptake of biodiesel?

### **Outcome 3: Improve compliance with the Act**

While there are a range of compliance tools available to support fuel sellers in understanding and meeting their obligations under the Act the only enforcement tool available to address non-compliance following the issuance of education and warnings is the prosecution of the liable fuel seller. The lack of appropriate enforcement tools to deal with continued non-compliance by a small number of fuel sellers may result in an increasing number of minor matters before the courts.

The following measures offer opportunities to address the rare instances where a fuel seller breaches the legislation despite ongoing escalated compliance action from DNRME, and to ensure authorised officers have the powers of a contemporary regulator to assist in collecting a sufficient chain of evidence.



DNRME notes that options relating to Penalty Infringement Notices (PINS), Penalty Units and Authorised Person Powers below are for discussion purposes only and would require further assessment of their suitability following consultation.

## Options to achieve improved rates of compliance with the Act

### Option 7: Introduce PINs to enforce Part 5A of the Act

The ability to issue PINs for offences under Part 5A of the Act would enhance the state’s ability to enforce compliance and potentially divert future offences from the court system.

Currently DNRME’s available enforcement tools include educational letters and warnings, and then escalation direct to prosecution. Introducing PINs is a more flexible tool and may allow rapid resolution of a non-compliance incident without resorting to prosecution. This is particularly useful for offences where the offence constitutes ‘one off’ behaviour—for example providing false or misleading information.

Existing requirements within Part 5A of the Act that could be enforced through PINs may include:

Part 5A Section	Requirement
35B	Failure to sell at least the minimum amount of sustainable biobased petrol in a calendar quarter
35C	Failure to sell at least the minimum amount of sustainable biobased diesel a calendar quarter
35E	Submission of a quarterly return within one month of each calendar quarter
35F	Maintain records of each sale of petrol, a petrol-biobased petrol blend, diesel or a diesel-biobased diesel blend for at least two years after the calendar quarter
35H	Compliance with conditions of a granted exemption
35M	Provision of registration information within one month of becoming a fuel seller
35N	Provision of notification of changes to a fuel seller’s registration information within one month of ceasing to be a fuel seller
35O	Failure to comply with notice to supply information to the chief executive
35P	Submission of an annual return before 31 July each year
35Q	False or misleading information

#### **Questions for your consideration**

- Are PINs an appropriate tool to enforce compliance with the Act?
- Do PINs incentivise liable parties to meet their obligations under the Act?

## **Option 8: Increase penalty units to enforce Part 5A of the Act**

The maximum penalties for offences committed against the Act are clearly outlined. Considering these maximum penalties, it is important to assess the implications for fuel sellers which are larger companies versus small enterprises or sole traders.

Overall, the maximum penalty rates appear to be appropriate for serious and ongoing offences against the Act, where an exemption is not held; however, it is uncommon for the maximum penalty amount to be enforced by a magistrate.

One option is that the maximum penalty unit values for 35B and 35C are altered to remove the first-time offence of 200 penalty units in favour of retaining only the maximum penalty amount of 2000 penalty units. This would provide a magistrate with greater discretion to apply an appropriate penalty amount depending on the severity of the offence, the culpability and the organisational size. It would also recognise that prosecution is unlikely to be taken as a first step in addressing an incident of non-compliance, but more likely as a last resort, making the first-time offence mitigation inappropriate.

Increasing lower level offences to 200 penalty units would allow an appropriate penalty to be issued for intentional non-compliance through an infringement notice.

This is proposed for:

- s35E – Quarterly returns
- s35F – Record keeping
- s35M – Giving registration information
- s35N – Notifying changes
- s35O – Obtaining complete and clear information
- s35P – Reporting fuel sold
- s35Q – False or misleading information

All recommendations regarding alterations to maximum penalty amounts require further consideration. While these recommendations are designed to facilitate an appropriate response to intentional behaviours, it is noted that currently the vast majority of fuel sellers demonstrate a desire to comply with the Act.

### ***Questions for your consideration***

- Would increasing the penalty units for offences within Part 5A of the Act be appropriate?
- What penalty unit structure is appropriate to deter non-compliance with the mandate while providing protection for smaller companies and sole traders?

## **Option 9: Make enforceable undertakings available to enforce Part 5A of the Act**

Currently the only significant enforcement tool available under the framework is to seek prosecution of a suspected liable fuel seller in breach of the Act. Prosecuting a matter in court can be a costly and time-consuming process for the government and the fuel seller, with uncertain outcomes.

Enforceable undertakings take the form of a legally binding commitment to take certain actions or implement initiatives to ensure compliance with a relevant Act. Enforceable undertakings operate as an alternative to a court-imposed sanction for an alleged contravention of the relevant Act.

The ability to develop legally binding agreements with fuel sellers by outlining commitments to relevant parties would promote cooperation from the liable party with the regulator. Enforceable undertakings tend to result in positive outcomes for the regulator, and are less costly and time-consuming than pursuing prosecution.

### ***Questions for your consideration***

- Are enforceable undertakings an appropriate tool to enforce compliance with the Act?
- In what way can enforceable undertakings incentivise liable parties to meet their obligations under the Act?

## **Option 10: Seek additional authorised person powers to enforce Part 5A of the Act**

While there are existing authorised person powers under the Act, additional powers are recommended to ensure that authorised officers have the powers of a contemporary regulator. These additional powers will provide the necessary tools for authorised persons to collect and retain evidence required to enforce the Act.

The power to seize and retain evidence is outlined at section 37(1) (g) of the Act. The following are potential additional authorised person powers which may assist in enforcing Part 5A of the Act.

- The power of authorised officers to take all steps considered necessary to investigate possible offences against the Act. This would include:
  - authority to take a sample of any liquid fuel and have it tested
  - the power to take any photographic and video images considered necessary
  - the power to seize and retain CCTV and other digital images.

### ***Questions for your consideration***

- Are there potential barriers for seeking and retaining evidence under the Act?
- In the context of the fuel industry, what should be considered in collecting samples of any liquid fuels?

## **Outcome 4: Improve the efficiency of regulatory processes for fuel sellers**

Liable fuel sellers required to sell the minimum amounts of sustainable biobased petrol or sustainable biodiesel are able to apply for an exemption from the requirements of the Act under certain circumstances.

The exemptions framework remains an important tool in influencing the movement of fuel sellers towards meeting their obligations under the policy. Exemptions provided by DNRME have a number of requirements and place certain obligations on fuel sellers to move towards meeting the mandate. As such exemptions are seen as a form of active case management, whereby specific steps are identified by DNRME for fuel sellers to undertake to meet the conditions of an exemption. Under legislation fuel sellers are required to meet the conditions of their exemptions as they work towards meeting the mandate.

The grounds for exemption are provided under section 35G of the Act and are outlined below:

35G(1)(a) - shortage of supply of sustainable biobased fuel

35G(1)(b) - complying with the requirement would threaten the viability of the fuel seller's business

35G(1)(c) - other extraordinary circumstances.

DNRME has found that very few exemption applications are submitted with the appropriate evidence to assess the fuel seller's claims against the first two categories. The supply 'shortage' category is generally set aside for a statewide supply 'shortage' and not individual fuel seller supply chain issues or barriers. The business viability category can only be assessed through the provision of detailed financial statements. Therefore almost all applications are assessed under the category of section 35G(1)(c) of the Act—other extraordinary circumstances. As this exemption category is very broad, fuel sellers must use DNRME's published guidelines to identify what information might be relevant to their own circumstances.

Within the 'other extraordinary circumstances' category, a significant number of fuel sellers are undertaking lengthy infrastructure programs following a site-by-site feasibility assessment and infrastructure upgrades plan (a 'compliance plan').

A business process review identified opportunities to better align the exemptions categories and improve opportunities to educate fuel sellers on the specific evidence they need to submit under each category. This is expected to reduce the need for multiple requests for information.

## **Options to achieve improved efficiency of regulatory processes for fuel sellers**

### **Option 11: Expand the exemptions categories provided in section 35G(1) of the Act to include more specific, well-defined circumstances**

Expanding section 35G of the Act to provide for additional specific exemption categories may help to reduce uncertainty and enhance the effective processing of applications. For example, these additional categories may include:

1. **Supply barriers** - this category would include a statewide shortage in biofuels, practical supply chain arrangements and other supply issues.
2. **Financial and commercial barriers** - this category would include business viability, high cost of infrastructure works, business uncertainty e.g. if a bypass is planned nearby, or unexpected sales volumes e.g. if a fuel seller usually is not liable, but becomes liable for a quarter due to a nearby service station closing for refurbishment.
3. **Progressing an infrastructure program / lead times** - this category would be for fuel sellers who have undertaken a site-by-site feasibility study and determined a program of site upgrades to increase the availability of E10 or biobased diesel.
4. **Other extraordinary circumstances** - this category would include lease terms, site constraints, demand or other.

#### ***Questions for your consideration***

- Will refining the exemptions categories provide greater certainty to applicants on the type of evidence required by DNRME?

## **Outcome 5: Improve the efficiency of regulatory processes for biofuels producers**

The Liquid Fuel Supply Regulation 2016 (the Regulation) sets sustainability criteria for biofuels sold under Queensland's biofuels mandate. Fuel sellers (retailers and wholesalers) who are liable to meet the mandate need to report volumes of sustainable biobased petrol and sustainable biobased diesel under section 35E of the Act. The sustainability criteria must be met for a biofuel to count towards a fuel seller's obligations under the mandate.

The Government expects that:

- retailers and wholesalers to rely on supply contracts and other commercial arrangements to ensure that they are provided with biofuels which meets the sustainability criteria if they are reporting that fuel against their mandate liabilities; and
- retailers and wholesalers will be able to demonstrate the above arrangements if required. For example, they may be able to provide the regulator with relevant contracting provisions and steps taken to verify those contractual arrangements.

The biofuels mandate sustainability criteria was created to help mitigate potential unintended environmental impacts from the biofuels mandate. In particular, potential impacts on the Great Barrier Reef from increased scale or intensification of agricultural feedstock production.

The sustainability criteria include:

- a greenhouse gas benefit criterion requiring unblended biofuels, regardless of the feedstock, to deliver greenhouse gas savings of at least 20 per cent when compared to regular petrol or diesel
- certification under a relevant environmental sustainability standard, which varies depending on the feedstock used to produce the biofuel.

The sustainability criteria establish an acceptable base level of environmental performance for producers. They also provide transitional provisions for existing producers to meet these requirements over time.

The Government has identified a number of opportunities to strengthen the sustainability criteria framework by:

- improving consistency by providing biofuels producers with the ability to choose the sustainability standard under which they are certified from those prescribed in the Regulation
- increase the transparency and assurance arrangements for verifying that biofuels meet the sustainability criteria.

## Options to achieve improved efficiency of regulatory processes for biofuels producers

### Option 12: Revise the sustainability criteria to give biofuel producers more choice in which sustainability criteria they are certified under

Three major ethanol producers and one bio-based diesel producer currently supply the Queensland retail fuel market.

The government proposes to amend the Regulation to replace the prescriptive arrangements defining which sustainability standards producers may use for a particular feedstock. Instead, the Regulation will list a set of sustainability standards under which a biofuel producer can choose to be certified. The existing standards are proposed to be retained on this list, and shown in Table 2.

This approach provides industry with greater flexibility to show their sustainability credentials, and provides more equal treatment across biofuel producers.

**Table 2: Proposed Sustainability Standards**

- |   |
|---|
| <ul style="list-style-type: none"><li>• The Roundtable on Sustainable Biomaterials principles and criteria for Sustainable Biofuel Production version 2.1 (RSB-STD-01-001)</li><li>• International Sustainability and Carbon Certification system</li><li>• Roundtable of Sustainable Palm oil (RSPO) principles and criteria for the production of sustainable palm oil</li><li>• Smartcane Best Management Practice (BMP) Program (only relevant as an option for molasses or sugarcane feedstocks)</li><li>• An approved equivalent standard</li></ul> |
|---|

Some specific requirements are proposed to be retained, including:

- biofuels produced from, or that contain, palm oil must be certified under the RSPO standard
- the RSPO standard can only be used when biofuels are made from palm oil, and Smartcane BMP can only be used when biofuels are made from sugarcane derived feedstocks
- biofuels made from waste-based feedstocks will still only need to meet the greenhouse gas benefit criterion, and will not need to be certified under a sustainability standard
- the existing certification requirements that apply to imports.

The greenhouse gas benefit criteria will continue to apply to all biofuels regardless of the type or feedstock.

The government is also proposing to retain the equivalence framework to continue providing industry with flexibility where a producer is seeking to operate under a sustainability standard not listed in the Regulation.

It is also proposed that greater transparency and assurance is provided for biofuels made from feedstock accredited under Smartcane BMP. This is proposed to be achieved by requiring biofuel producers to provide evidence that their sugarcane feedstocks have been sourced from farms accredited under Smartcane BMP. This could be achieved, for example, by using a third party to verify that the farms from which the biofuel producer is sourcing their feedstock are accredited under

Smartcane BMP. This aligns with the approach taken for certification under other sustainability standards where the biofuel producer remains responsible for demonstrating their certification.

### **Consultation Questions**

- Will shifting to a framework that allows producers to choose the sustainability standard under which they are certified help in facilitating the supply of sustainable biofuels to market?
- Does your organisation foresee any future developments that may affect the biofuels sector's ability to meet the sustainability criteria?
- How important is it for Queensland biofuel producers to be certified under standards that are recognised in other Australian and international jurisdictions?

## **Outcome 6: Improve administration under the Act**

A number of complexities have emerged since 1 January 2017 in determining a fuel seller's liability and reporting requirements, which continue to be of concern during each reporting period and when a fuel seller organisation changes hands.

Clarifying some definitions and introducing a consistent fuel reporting framework for all fuel sellers will improve clarity for fuel sellers and enable them to better meet their legislative obligations. These actions will also improve internal processes and boost the operational effectiveness of the mandates.

### **Options to achieve improved administration under the Act**

#### **Option 13: Review of legislative definitions within the Act**

Analysis highlighted that a review of the legislative definitions within the Act would better reflect the complex ownership structures of the industry and clarify any gaps in terminology.

A review would seek to understand how the definitions of fuel wholesaler and fuel retailer apply to intermediaries in the liquid fuel market, such as fuel transporters who contractually take ownership of fuel while they are transporting it.

Under the Act, the existing definitions for a fuel retailer and wholesaler are:

***fuel retailer*** means a person who sells petrol or diesel to the public other than for resale by members of the public

***fuel wholesaler*** means a person who sells petrol or diesel to fuel retailers for resale by the fuel retailers, whether or not the person also sells petrol or diesel to another person for the person's own use

Other definitions such as bulk end user could also be more clearly defined within the Act, and the definition of fuel wholesaler could be clarified to address the intent of the Act to include fuel that is sold by wholesalers to bulk end users. These market-based definitions may not capture all entities intended to be subject to the mandates or may capture intermediaries, such as fuel transporters with no influence over the types of fuels they sell.

A review of the definitions in the Act and how they apply to participants throughout the liquid fuel supply chain (and in different owner/operator models) would:

- provide the government with clarity on the applicability and enforceability of the Act

- give the government an opportunity to amend definitions with unintended consequences. For example, the legislation might be amended to specifically exclude fuel transporters from the definition of fuel wholesalers to ensure they are not unintentionally subject to the mandate.
- provide DNRME with the opportunity to review the appropriate fuel seller liability threshold.

### ***Questions for your consideration***

- Would a review of the legislative definitions for fuel retailer and fuel wholesaler within the Act be appropriate?
- Would a review of the liability threshold be appropriate?

## **Option 14. Revise the fuel seller reporting requirements to improve compliance and reduce fuel seller reporting difficulties.**

Currently there is significant complexity in the quarterly returns and annual reporting requirements of the Act. Current requirements include:

- wholesaler to retailer and bulk end users – quarterly reporting on diesel sales; annual reporting on each quarter's petrol sales.
- wholesaler to wholesaler – annual reporting of each quarter's diesel and petrol sales.
- retailer (liable) – quarterly reporting on petrol sales, annual reporting of each quarter's diesel sales.
- retailer (non-liable) – annual reporting on each quarter's diesel and petrol sales (however if the fuel seller finds they are liable for one quarter, they must report for that quarter).

Many fuel sellers who only report annually have difficulty understanding their obligations and completing their returns correctly and need to re-learn the system. It requires excessive fuel seller time for a new operator to understand their obligations and reporting processes.

DNRME has found that a significant proportion of fuel sellers (including those retailers who only need to report annually) are submitting their returns on a quarterly basis as this aligns with other government reporting (such as business activity statements).

Standardising the reporting requirements may create a minor reporting impost on non-liable fuel sellers each quarter, but a standardised quarterly reporting requirement for all fuel sellers across all reportable fuel types would significantly reduce fuel seller confusion, risk of being non-compliant and time spent educating on the requirements.

Separately, existing reporting requires fuel sellers to identify if their biobased petrol is sustainable; however, their ability to verify this through the supply chain is limited. Therefore, opportunities exist to identify improved ways to provide this information in reporting.

### ***Questions for your consideration***

- What evidence is there to demonstrate that there could be a significant increase in regulatory burden if reporting for all fuel sellers were changed to quarterly reporting for all reportable fuel types?
- Are there other anomalies in the legislated reporting requirements that need to be addressed?



# Summary of consultation questions

## Option 1

1. Is allowing liable fuel sellers to meet the ethanol mandate by making E10 available at a minimum percentage of retail sites an appropriate pathway to increasing the availability and visibility of sustainable biobased petrol?
2. What are the barriers and opportunities for implementing this option? What is the best way to implement such an option (methods could include an alternative mandate prescribed in the Act or as a policy statement for a condition of giving an exemption or as an enforceable undertaking)?
3. What would be considered a reasonable minimum proportion/percentage of sites?
4. Could this alternative pathway allow existing compliant fuel sellers to reduce the availability of E10 at some sites, either at a site or bowser level, or introduce counter-productive pricing structures for E10?
5. What other factors should be considered under this proposal?

## Option 2

6. What barriers currently exist within ownership structures to limit the availability of E10?
7. In what way can these barriers be overcome?
8. Is there evidence that fuel majors are not making E10 available?

## Option 3

9. What would be the implications of a requirement for fuel wholesalers to also meet the ethanol mandate for the fuel industry and for ethanol producers?
10. What barriers currently exist which prevent the availability of E10 from additional wholesale sites (fuel terminals) outside Brisbane?
11. What evidence is there to demonstrate that this is an appropriate measure or otherwise?
12. What are the barriers to making E10 available from these terminals?

## Option 4

13. What additional consumer education and communication strategies will promote the use of biofuels in Queensland?
14. What is the role of the motor industry in educating its members and consumers about E10?
15. What are the key messages that should be included in any education campaign for biofuels?
16. Who is the primary audience and what is the most appropriate mechanism to target them?

## Option 5

17. What mechanisms should be put in place to better connect biodiesel producers with customers and bulk end users directly?
18. How can industry take advantage of the low emissions opportunity that biodiesel offers?
19. Should a biodiesel working group be formed comprising of representatives from industry, the government and potential end users to understand the issues and identify opportunities?

## Option 6

20. What are the barriers to end users considering promoting biodiesel in their government tender applications?

21. What other initiatives and opportunities can be identified to encourage the uptake of biodiesel?

**Option 7**

22. Are PINs an appropriate tool to enforce compliance with the Act?

23. Do PINs incentivise liable parties to meet their obligations under the Act?

**Option 8**

24. Would increasing the penalty units for offences within Part 5A of the Act be appropriate?

25. What penalty unit structure is appropriate to deter non-compliance with the mandate, while providing protection for smaller companies and sole traders?

**Option 9**

26. Are enforceable undertakings an appropriate tool to enforce compliance with the Act?

27. In what way can enforceable undertakings incentivise liable parties to meet their obligations under the Act?

**Option 10**

28. Are there potential barriers for seeking and retaining evidence under the Act?

29. In the context of the fuel industry, what should be considered in collecting samples of any liquid fuels?

**Option 11**

30. Will refining the exemptions categories provide greater certainty to applicants on the type of evidence required by DNRME?

**Option 12**

31. Will shifting to a framework that allows producers to choose the sustainability standard under which they are certified help in facilitating the supply of sustainable biofuels to market?

32. Does your organisation foresee any future developments that may affect the biofuels sector's ability to meet the sustainability criteria?

33. How important is it for Queensland biofuel producers to be certified under standards that are recognised in other Australian and international jurisdictions?

**Option 13**

34. Would a review of the legislative definitions for fuel retailer and fuel wholesaler within the Act be appropriate?

35. Would a review of the liability threshold be appropriate?

**Option 14**

36. What evidence is there to demonstrate that there could be a significant increase in regulatory burden if reporting for all fuel sellers were changed to quarterly reporting for all reportable fuel types?

37. Are there other anomalies in the legislated reporting requirements that need to be addressed?