COVERSHEET

Minister	Hon Dr Megan Woods	**Portfolio**	Energy and Resources
Title of Cabinet paper	Fuel Industry Act 2020 – Information Disclosure Regulations	**Date to be published**	11 October 2021

List of documents that have been proactively released		
Date	**Title**	**Author**
August 2021	Fuel Industry Act 2020 – Information Disclosure Regulations	Office of the Minister of Energy and Resources
25 August 2021	Fuel Industry Act 2020: Information Disclosure Regulations CBC-21-MIN-0073	Cabinet Office
August 2021	Regulatory Impact Statement: Fuel Industry Act 2020 – Information disclosure regulations	MBIE

Information redacted **YES / NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Confidentiality and Constitutional conventions.

Regulatory Impact Statement: Fuel Industry Act 2020 – Information disclosure regulations

Coversheet

Purpose of Document	
Decision sought:	Agree to draft information disclosure regulations for the fuel industry under the Fuel Industry Act 2020.
Advising agencies:	Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers:	Energy and Resources
Date finalised:	19 August 2021

Problem Definition
An active wholesale market for petrol and diesel does not exist in New Zealand. Competition largely occurs in retail fuel markets and is less intense than could be expected, particularly for premium petrol. The result is consumers paying higher pump prices. There is a high level of interest in the effectiveness of competition and regulation in the sector, in light of the Government's intervention through the Fuel Industry Act 2020 (the Act) to address these issues. If the government only has access to poor quality information on an ad hoc basis, this will make it difficult to assess the impact of the Act, and to test whether competition is developing in fuel markets.

Executive Summary
Government intervention is required because an active wholesale market for petrol and diesel does not exist in New Zealand. The Government has legislated to promote the development of an active wholesale market. There is a need to monitor the impact of these interventions. There is inadequate information on retail fuel markets available from public sources, or through existing statutory powers, to effectively assess the performance of the market. This has meant that it has been necessary for the Commerce Commission (the Commission) to undertake a resource-intensive, one-off market study to reach conclusions on the state of competition in retail fuel markets at a point in time (market study). This followed an initial investigation by MBIE which only reached tentative conclusions. The Fuel Industry Act was passed in 2020, and provided for the making of regulations which would set out the detail of information disclosure regulations. Information disclosure regulations are intended to enable MBIE and the Commission to monitor fuel markets and to ensure sufficient information is readily available to assess whether the

purpose of the Act is being met. In doing so, the regulations will enable the monitoring of other interventions under the Act and the impact they are having on fuel markets.

Due to the detail of the proposed regulations a range of options have been considered. These options are reflected in the table below (which highlights MBIE's preferred option). These preferred options will be reflected in the Cabinet paper.

Summary of options

Topic	Options
1. Status quo	1A: Do not prescribe regulations relating to record keeping, and the retention and disclosure of information about engine fuel markets, but rely instead on information already collected or available; or 1B (preferred): Prescribe regulations relating to record keeping, and the retention and disclosure of information about engine fuel markets.
2. Kinds of engine fuel	2A: Include 91 octane, 95 octane and diesel; 2B (preferred): Include 91 octane, 95 octane, 98 octane and diesel; or 2C: Include all fuels supplied at retail, including biofuels
3. Kinds of fuel industry participants subject to disclosure obligations	3A: Wholesale and retail market information (including profitability information) is required from all wholesale suppliers and distributors; 3B: Wholesale and retail market information (including profitability information) is required from wholesale suppliers and distributors over certain thresholds in those markets; or 3C (preferred): Wholesale and retail market information is required from the fuel importers (BP, Mobil, Z Energy, Gull and Tasmanfuel where applicable) but other wholesale suppliers and distributors are only required to provide profitability information, annual new site entry and exit, and annual volume sold.
4. Fixed wholesale contracts, switching and multi-sourcing – the information that must be recorded, retained and disclosed	4A: Requirement to record, retain and disclose all fixed wholesale contracts at the outset of the regime, and new contracts thereafter; or 4B (preferred): Requirement to record, retain and disclose: i. all fixed wholesale contracts at the outset of the regime, and new contracts thereafter; ii. any changes to key provisions regularly, after the initial disclosure of the fixed wholesale contract; iii. offers/bids made over the year to supply by way of fixed wholesale contract and associated volumes; and iv. instances of expired or terminated fixed wholesale contracts.
5. Profitability – the information that must be recorded, retained and disclosed	5A **(preferred)**: Requirement to record, retain and disclose financial statements (or group financial statements for multi-tied cooperate structures) that comply with existing statutory financial reporting obligations; or 5B: Prescribing methodologies in relation to how costs are to be calculated and requirements to record, retain and disclose

	financial statements that relate only to the participants' fuel operations.
6. Gross margins – transactions at and beyond the terminal	6A: Requirement to record, retain and disclose information on all wholesale transactions (whether at the terminal or elsewhere); or 6B (preferred): Requirement to record, retain and disclose information on wholesale transactions only at the terminal.
7. Gross margins – estimation of costs	7A (preferred): Use of MBIE model to estimate key costs of supply, with additional data supplied to validate; or 7B: Use of prescribed methodologies to estimate key costs of supply.
8. Gross margins and prices – the retail revenue and price information that must be recorded, retained and disclosed	8A (preferred): Requirement to record, retain and disclose i. the last standard retail price of the day, on a cpl basis, for each fuel at each retail site; ii. the discounts offered by the participant that day at each retail site; iii. daily volume of each fuel sold from each site; iv. quarterly revenue per fuel type; 8B: Requirement to record, retain and disclose: i. revenue, volume and volume weighted price per fuel and per site; and ii. revenue, volume and volume weighted price per fuel and per site for the four largest discounting practices.
9. Discounting and loyalty programmes - the information that must be recorded, retained and disclosed	9A (preferred): Requirement to record, retain and disclose a sample of the most significant discounting practices and loyalty programmes; or 9B: Requirement to record, retain and disclose details regarding the four largest discounting practices, and all discounting partnerships with third parties.
10. Fuel supply – the information that must be recorded, retained and disclosed	10A: Requirement to record, retain and disclose: i. rationing events (where low inventories at terminals means that supply of fuel has to be rationed); ii. forecast demand; and iii. retail site details supplied; or 10B (preferred): Requirement to retain and disclose: i. rationing events; ii. forecast demand; iii. retail site details supplied; iv. fuel supply and withdrawal from terminals; v. month end volumes; vi. total storage capacity; and vii. total annual volume of each fuel type supplied.
11. The circumstance in which information must be disclosed	11A: Retained and disclosed upon request; 11B: One off disclosure; 11C: Annual disclosure; or 11D: Quarterly disclosure.
12. Information disclosure quality assurance	12A: No requirement for quality assurance: 12B (Preferred): Requirement to provide annual director certification; or 12C: Requirement to provide annual director certification and conduct annual qualitative data audit.

Many of these options will impose costs on the market participants that would be required to comply, which may be passed on to consumers. However, we have chosen the options that we consider balance the purpose of information disclosure, the costs to market participants and costs that may be passed on to consumers.

The general public have not been highly engaged in consultation processes. Industry participants are generally unsupportive of disclosing information due to concerns regarding confidentiality and the cost to retain and disclose information.

Limitations and Constraints on Analysis

Range of options considered

The range of options is constrained by the regulation-making power set out under the Act. The Minister may only recommend information disclosure regulations if:

- The Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and
- The Minister is satisfied that the regulations are necessary or desirable after having regard the purpose of the Act and the information disclosure subpart.

Quality of data used for impact analysis

This RIS relies upon the Commission's analysis in it's market study, the submissions from interested parties to the Commission as part of that study, submissions made to Select Committee during the development of the Bill and MBIE's consultation with targeted stakeholders. These sources used did not include much quantitative assessments of the costs and benefits of the options. While we have made use of multiple evidence sources wherever possible, particular reliance has been placed on the Commission's findings and analysis given the Commission's rigorous testing process. Where possible we have updated the analysis with more recent market data.

Responsible Manager

Authorised by:

Osmond Borthwick
Special Advisor, Energy Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

19 August 2021

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry of Business, Innovation & Employment
Panel Assessment & Comment:	The Quality Assurance Panel considers that the Regulatory Impact Assessment meets the Quality Assurance Criteria.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The Fuel Industry Act was passed in 2020. The purpose of the Act is to promote competition in engine fuel markets for the long term benefit of end users. The Act allows the Minister of Energy and Resources to recommend information disclosure regulations.

Information available on retail fuel markets (counter factual)

2. The broad counterfactual would be to rely on existing information sources, despite the Minister's power to recommend information disclosure regulations.

3. Information currently available is set out in the table below:

Source	Information
Public information	Retail prices from Gaspy (a crowd sourcing app), some service and product offerings from participants' websites and some financial information from the Companies Office.
Market participants on request	Ad hoc information depending on request and participants willingness to provide the information.
Market participants by other statutory powers	Ad hoc information depending on request.
Information gathered by MBIE	International product prices and freight rates from Argus Media Limited, international price comparisons from the International Energy Agency, daily price build up from Hale & Twomey, quarterly weighted average retail prices for petrol and diesel from the CPI data from Statistics New Zealand and exchange rates from Reserve Bank of New Zealand.

4. MBIE has been monitoring importer margins since 2008. These are a broad indicator of gross profit made on retail sales of petrol and diesel, out of which the suppliers must meet a range of costs (e.g. trucking and service station overheads) as well as a portion of corporate overheads, depreciation, interest, and income tax. This information is regularly reported on the MBIE website. The scope of monitoring has expanded to included premium fuel margins in recent years, but further refinements are not anticipated at this stage.

5. Public sources such as Gaspy may develop further or be replaced by more effective sources.

6. If the counter factual of relying on existing sources is not adopted, the policy choices are fundamentally between different interventions, on a spectrum of cost and effectiveness.

7. The broader policy context is set out below.

Characteristics of the retail fuel market

8. About 2.9 billion litres of petrol and 3.6 billion litres of diesel are consumed annually in New Zealand. According to Bloomberg, New Zealanders spend more income on fuel each year than people in 53 other countries (out of a total of 61 countries) with the average New Zealand driver purchasing 675 litres of fuel a year, making up 2.26 percent of the typical salary.[1]

9. Currently fuel purchased at retail sites is split between petrol and diesel (about 43 percent and 57 percent respectively), although in most years these figures are more evenly split:

    a. households' light vehicles tend to consume petrol;

    b. premium petrol (95 or 98 octane) makes up about 23 percent of total petrol consumption; and

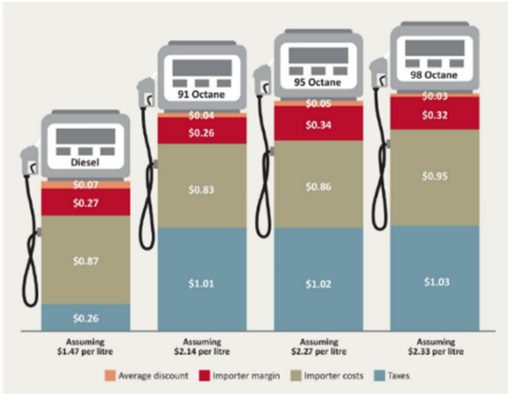
    c. diesel is more likely to be used in heavier vehicles and in over 97 percent of trucks and buses. The number of diesel vehicles has increased steadily since 2000.

10. Figure 1 illustrates the components that make up fuel board prices, across different types of fuel. This is representative of average prices over the 2018 calendar year.

---

[1] Bloomberg Gasoline Prices by Country (bloomberg.com). (Viewed on 29 June 2020).

Figure 1: Components of the average board price of fuel (2018 calendar year)



Source: Commerce Commission analysis of the Singapore benchmark cost index data and retail sales data.

11. The importer margin represents the gross margin available to fuel importers to cover domestic importation, distribution and retail costs in New Zealand, as well as profit margins.

12. Retail fuel prices can vary quite significantly over short periods of time. However, overall fuel expenditure tends to increase when prices go up because fuel consumption does not reduce significantly in response to price increases, both for short-term fluctuations and longer term trends. Fuel is an essential purchase for many consumers.

13. Fuel company research suggests that between a quarter and a half of consumers may be relatively price sensitive and motivated to switch between brands – either looking out for the cheapest prices or actively searching for discounts between loyalty programmes. Up to half of consumers are less price sensitive and value various non-price aspects of fuel offerings more highly than price.

Industry structure

14. There are currently five companies that import fuel into New Zealand: BP, Mobil, Z Energy, Tasmanfuels and Gull.

15. BP, Mobil, and Z Energy are regarded as ‘the majors’ in the New Zealand fuel industry. The majors import both crude oil to be refined at Marsden Point (New Zealand’s sole refinery) or already refined petrol and diesel, mostly from Singapore and Korea, which generally arrives at ports in Mount Maunganui, Wellington and Lyttelton.

16. The majors jointly own or control the following infrastructure:

    a. the Marsden Point refinery, which produces approximately 54 percent of the petrol and 57 percent of the diesel used in New Zealand;

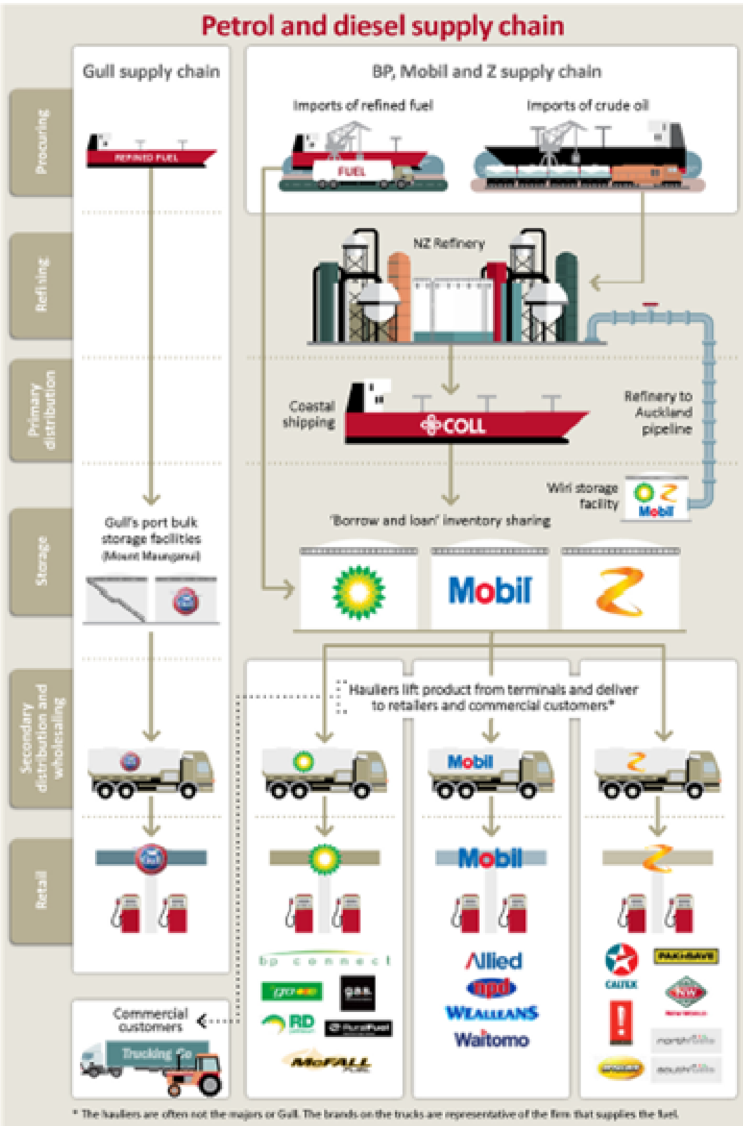
b. the pipeline infrastructure that carries the refinery’s products to Auckland for storage and further transmission; and

c. Coastal Oil Logistics Ltd, a shipping venture which transports refined fuel to other ports around New Zealand.

17. The majors also control the majority of New Zealand’s existing fuel storage infrastructure around the country, and the stored fuel is then shared with the others through a system known as a “borrow and loan” arrangement.

18. Gull and Tasmanfuels are not a party to any of the infrastructure sharing arrangements. Gull imports refined fuel to its Mount Maunganui terminal and from there trucks it to its retail outlets. Tasmanfuels imports refined fuels to its Timaru terminal. Figure 2 shows the petrol and diesel supply chain prior to the entry of Tasmanfuels.

Figure 2: The petrol and diesel supply chain



Source: the Commerce Commission final report on the retail fuel sector

19. New Zealand’s fuel industry is essentially a vertically integrated oligopoly. Collectively, Z Energy, BP, Mobil and Gull control the supply of fuel to more than 1,300 retail sites under 20 different retail brands, either directly or indirectly through a distributor. Tasmanfuels has only recently commenced operations and has yet to make a significant impact on the market.

20. Many of the wholesale supply relationships that the majors have with distributors and dealers have been in place for decades, and supply is typically on an exclusive basis. Each of the importers and distributors supply to retail sites that they own and operate and to franchisees (or in some cases, commissioned agents) that are dealer-owned and operated.

21. The Commission estimated that approximately 57 percent of retail fuel by volume is sold through importer-owned and -operated retail sites, and 27 percent of retail fuel by volume is sold through franchisees or commissioned agents that are importer-branded, dealer-owned retail sites.

22. Approximately 60 percent of retail sites carry brands outside of the majors. However, these sites account for approximately 20 percent of petrol volumes sold in 2018, and many are located outside of the major metropolitan areas.

23. Since 2016, there has been an increase in the number of retail sites with few of these being operated by majors. Along with Gull, brands distributing and retailing Mobil fuel (NPD, Waitomo, and Allied Petroleum) have expanded. The number of sites operated by the majors has only marginally changed.

24. In addition, a new importer – Timaru Oil Services Ltd (**TOSL**) – has recently completed building a terminal storage at the Port of Timaru and has commenced trading as Tasmanfuels. TOSL planned a further terminal in Mount Maunganui but resource consents have been declined.

25. In the three years leading up to 2020 petrol demand had been largely stable, while diesel demand grew by 4% per year. During 2020 petrol demand fell due to COVID-19 travel restrictions, but diesel demand remained constant.

26. Future demand is uncertain, due to changes in technology, such as increased vehicle efficiency and growth of demand for electric or hybrid vehicles. However, forecasts are that the demand for fuel is likely to remain reasonably flat over the next decade or more, but (for petrol in particular) is likely to decline over a longer timeframe.

27. The Climate Change Commission has recommended that the Government commit to accelerating emissions reductions from the light vehicle fleet, by:

    a. setting a time-limit on light vehicles with internal combustion engines entering, being manufactured, or assembled in Aotearoa, by no later than 2035 and if possible as early as 2030;

b. setting an emissions efficiency standard for light vehicle imports and steadily strengthening this to improve overall efficiency of the light vehicle fleet;

c. accelerating the uptake of electric vehicles by introducing a range of measures; and

d. determining how the tax system could be used to discourage the purchase of internal combustion engine vehicles and support the adoption of low-emissions vehicles.

28. The Government has announced new rebates for electric and plug-in hybrid vehicles from July 1 with up to $8,625 for new vehicles and $3,450 for used vehicles. In January 2021, the Government agreed to introduce the Clean Car Standard – a Co2 emissions standard for imported new and used light vehicles. These measures are expected to accelerate the uptake of electric vehicles.

29. The information about fuel markets is drawn from the Commission's market study, which was reported in December 2019, with updates where more recent data is available.

The Commission's market study

30. The Commission carried out an extensive analysis of the state of competition in retail fuel markets. The Commission noted that it encountered some constraints in obtaining the information it sought.

31. It considered that price competition in fuel markets is not working as well as it could be, finding that:

a. fuel companies have been making persistently higher profits over the past decade than would be expected in a competitive market;

b. regional differences in retail fuel prices reflect variations in local competition and not solely differences in cost of supply;

c. discounts and loyalty schemes avoid direct competition on price;

d. premium petrol margins have grown faster than regular petrol and do not reflect actual cost differences in supply; and

e. competition largely occurs in retail markets and this is less intense than could be expected.

32. Although the main feature of the counterfactual is the limited information available on retail fuel markets, the observations noted in a – e are also relevant. These are briefly explained below.

Regional differences in retail fuel prices not explained by cost differences

33. At the time the Commission undertook the market study, there were material differences in retail fuel prices between regions and locations in New Zealand.

34. Some of the regional price differences could be explained by differences in taxes (with the regional fuel tax introduced in Auckland) and costs of supply, based on such things as transport costs and lack of economies of scale (e.g. Westland). However, the Commission considered that differences in competitive pressures in the regions and locations may be a better explanation. The Commission found that the level of competitive pressure faced by the three majors differs considerably by region.

35. Analysis conducted for MBIE has shown that fuel prices in the South and the North Island were roughly similar up until about 2014. However, over the next five years, a significant gap emerged between the (higher) prices paid in the South Island and Wellington, on the one hand, and the rest of the North Island, on the other.

36. However, more recently, there has been a decrease in regional fuel price variation such that all regions have roughly the same prices except Auckland. The difference in Auckland is attributable to the fuel tax. It is not clear what is driving this decrease in fuel price variation, or for how long it will persist.

Discounting is not a substitute for price competition

37. Discount and loyalty programmes available in the retail fuel sector have become increasingly common. Many consumers are members of more than one loyalty programme. In 2018, more than 41 percent of petrol and diesel sales were made at a discount to the advertised pump price. This has almost doubled since 2011. The average size of the discounts offered has also increased from 2 cents to 11 cents per litre for petrol and from 2 cents to 16 cents per litre for diesel over this period.

38. The Commission suggested that discounting is a poor substitute for price competition, and noted that discounts may shift consumers' attention away from the actual price they pay and more on the size of the discount or reward.

39. Some discounts and loyalty schemes have conditions, such as minimum or maximum qualifying purchases or when rewards must be used before they expire. This can make it difficult for consumers to compare post-discount or reward prices between retailers to determine which one is offering the lowest actual price. In such circumstances, consumers are less likely to switch in response to competitive fuel prices and retailers have weaker incentives to offer them.

40. The Commission did not recommend regulation of the display of discounting information, noting that such practices were still evolving, and the Act does not provide for such regulation.

Increases in premium petrol margins are unrelated to costs

41. The premium petrol margin has increased faster than for regular petrol. Pre-tax premium petrol prices in New Zealand have moved from being in the bottom third of OECD countries in 2008 to the most expensive in 2017. While there are differences in how countries report fuel prices to the OECD, the methods used have not significantly altered since 2008, suggesting that New Zealand's dramatic move up the rankings is due to a real shift in our relative position.

42. There is no obvious reason why the underlying cost of supplying premium petrol to New Zealand, compared to other markets, would have changed so significantly over the last decade. The Commission did not find any corresponding increase in the costs of producing premium petrol that could explain the increasing gap in importer margins between regular and premium petrol.

Retail price competition is less intense than could be expected

43. Approximately 84 percent of retail fuel is sold through importer-owned and -operated retail sites or through importer-branded, dealer-owned retail sites. While there are over 20 brands of retail fuel, each brand is closely tied to one of the importers through typically exclusive and stable contracts.

44. The entry of an independent importer, Gull, had a significant impact on retail prices and margins. In 2015-2016, the price difference between areas where Gull was represented and non-Gull regions were between 10 and 30 cents per litre.

45. While there has been a growth in the number of retail sites, particularly by the non-majors, the impact on price competition is localised. The non-majors primarily operate in low-cost unmanned sites in secondary locations, away from central metropolitan areas. Often the best sites have already been secured by existing suppliers.

46. Retail competition is also marked by differentiation in service offerings, such as whether it is manned or unmanned, includes a convenience store, takeaway food, barista coffee, toilets and/or a car wash, and the ease of access and convenience of location. This product differentiation, coupled with the growth of discounts and loyalty programmes, weakens competition on price.

Restrictive or dependent wholesale supply relationships

47. The Commission found that the wholesale market is characterised by stable and typically exclusive supply arrangements with distributors and dealers. Switching at the wholesale level is rare. Distributors and dealers rarely use the same competitive tendering processes used by larger commercial customers.

48. The Commission outlined that this reflects a combination of:

    a. non-contractual features, which result in the resellers being dependent on their existing suppliers; and

    b. restrictive contract terms that make switching difficult.

49. The consequences of this are:

    a. independent importers face barriers to entry or expansion as there are few wholesale customers actively looking for new supply opportunities

    b. competition between existing wholesale suppliers is reduced because many dealers and distributors face barriers to switching

c. it is difficult for distributors and dealers to obtain competitive wholesale supply as they may lack bargaining power and transparent pricing information; and

d. wholesale prices appear higher than would be expected and this flows through to retail pricing.

The Fuel Industry Act

50. The Fuel Industry Act was passed in 2020. The purpose of the Act is to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products.

51. The Act introduces the following interventions:

   a. terminal gate pricing regime, which creates a wholesale spot market, reducing barriers to enter the wholesale market;

   b. fixed wholesale contractual terms, which prohibit certain contractual terms, reducing restrictive or dependent wholesale supply relationships;

   c. consumer information requirements, which requires retail sites to display fuel prices (other than at the pump), improving information for consumers to compare prices; and

   d. a dispute resolution scheme, which applies to disputes between wholesale suppliers and resellers under the Act.

52. These interventions have the following objectives:

   a. a more active and competitive wholesale market, leading to more competition in retail markets;

   b. clear information being available to consumers to compare prices, leading to improved competition in retail markets; and

   c. preserving incentives to innovate and to invest in markets for engine fuels (which is less broadly applicable than a. or b.)

What is the policy problem or opportunity?

53. Given there is limited competition in fuel markets at the wholesale level, the problem is that inadequate information is available to monitor market developments and the impact of the measures implemented to address this issue through the Act.

54. The key opportunity is to design an information disclosure regime that provides good visibility of market performance without imposing unnecessary costs on market participants and consumers.

55. The Act introduced interventions aimed at promoting competition in retail fuel markets. The Act makes provision for information disclosure regulations, because it anticipates that existing sources of information, or existing powers to gather information, will not be adequate.

56. The challenge is that robust information on fuel markets is not available in a sufficiently timely or cost-effective way, absent regulatory intervention.

57. Information has only been obtainable in the past through relatively expensive and infrequent regulatory processes such as the market study by the Commission. Two resource-intensive market studies have been necessary over the past five years to reach conclusions on the state of competition in retail fuel markets.

58. These problems are unlikely to change in the counterfactual, as there are few commercial incentives for market participants to collect and disclose such information.

59. Two interrelated factors that limit wholesale competition cannot be effectively monitored in the counterfactual. These are:

    a. the cost advantages that the majors have over rivals through their infrastructure sharing arrangements; and

    b. restrictive or dependent wholesale supply relationships that limit competition.

60. Other issues highlighted by the Commission in the study would also be difficult to monitor effectively:

    a. Regional differences in retail fuel prices are an important indicator of differences in competition. Some information is available on regional differences, or can be obtained through statutory powers, but not with the level of regularity or granularity that would allow effective assessment of competition.

    b. Regular disclosure of information on discounting and loyalty programmes will be needed for effective monitoring of the impact of discounting on competition, in light of the decision not to regulate.

61. There are also significant shifts in consumer preferences which will begin to affect fuel markets in the future. In particular, the shift to electric vehicles is likely to

accelerate, but the time frame for the change is unclear. It will be important to monitor this change as this may ultimately result in disruptive competition to fuel markets from outside the current industry.

What objectives are sought in relation to the policy problem?

62. The objectives of information disclosure regulations are:

    a. fuel industry participants improve their information gathering and retention;

    b. MBIE and the Commission monitor the performance of engine fuel markets; and

    c. MBIE and the Commission can assess whether the purposes of the Act is being met.

63. We anticipate that information disclosure regulations should enable the monitoring of:

    Fixed wholesale contracts, switching and multi-sourcing

    a. whether bargaining imbalances persist;

    b. whether pricing formulas are promoting competition;

    c. the levels of switching and multi-sourcing;

    Profitability and gross margins

    d. whether profits are consistent with effective competition in fuel markets and how they track over time;

    Discounting and loyalty programmes

    e. the impact discounts and loyalty programmes are having on competition in fuel markets;

    Fuel supply

    f. how infrastructure is being used and the impact of any supply constraints on competition; and

    g. the impact (if any) of changes to the fuel industry, such as changes to the operating models of Refining New Zealand.

64. These relate to areas of concern that the Commission identified during its fuel market study.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

65. The key criteria that apply to all options are the purpose of the Act and the purpose of information disclosure. These are:

   a. to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products;

   b. to enable MBIE and the Commission to monitor the performance of engine fuel markets; and

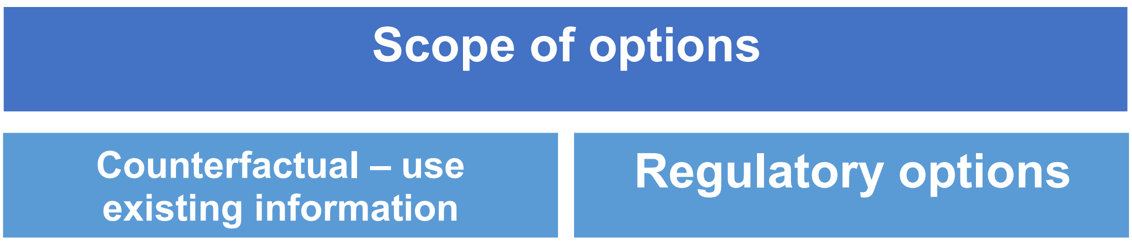
   c. to ensure that sufficient information is readily available to MBIE and the Commission to assess whether the purpose of the Act is being met.

66. We have identified some more generic criteria:

   a. regulatory options are proportionate to the harms identified; and

   b. regulatory options are certain and predictable, and do not impose any more costs than necessary to achieve the objectives.

What scope will options be considered within?



67. Under the Act, regulations can be made to implement an information disclosure regime for the fuel industry. The terminal gate pricing, fixed wholesale contract and consumer information regimes will come into force on 11 August 2021, and dispute resolution and information disclosure regimes on 11 February 2022.

68. If information disclosure regulations are not prescribed the counterfactual would be for MBIE and the Commission to use existing information and statutory powers to monitor. The Commission's statutory powers/market studies are intermittent, and expensive. There would be no obligation for fuel market participants to record, retain or disclose information about fuel engine markets. MBIE uses public information to publish weekly fuel price monitoring. Although valuable, this monitoring is limited by the accuracy of the inputs and its scope.

69. Alternatively, regulations may be made prescribing—

   a. the kinds of fuel industry participants, the engine fuels, and other matters that the regulations apply to;

b. the information that must be recorded and retained;

c. the methodologies that must be applied in recording the information, including—

   i. how common costs are to be allocated; and

   ii. how assets are to be valued; or

d. the circumstances in which information must be disclosed to the chief executive, the Commission, or both (for example, when requested by the chief executive or the Commission, at a specified time, or on the occurrence of a specified event); and

e. any other matters contemplated by the Act, necessary for its administration, or necessary for giving it full effect.

70. If it is established that the counterfactual is not satisfactory, there are a range of regulatory options to be considered.

71. The scope of the options have also been shaped by the issues raised by the Commission's market study, in particular:

a. the inadequate information on retail fuel markets;

b. regional differences in fuel prices are not explained by cost difference;

c. increases in premium petrol margins are unrelated to costs;

d. retail price competition is less intense than could be expected; and

e. the lack of an active wholesale market caused by shared infrastructure arrangements and restrictive or dependent wholesale supply relationships.

What options are being considered?

1. Status quo

72. Section 27(1) of the Act allows the Governor-General to, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements relating to record keeping, and the retention and disclosure of information, about engine fuel markets.

73. While MBIE currently reports on gross margins, the accuracy and comprehensiveness of this data could be improved. For example, the discounted price is calculated by deducting an estimated discount from the Main Port Price (MPP). The MPP is a weekly average of retail prices in Auckland, Hamilton, Wellington, and Christchurch.

74. The estimated discount is the difference between the quarterly average MPP and quarterly weighted average retail price series produced by Statistics New Zealand (SNZ). The use of these two separate sources of retail price to calculate the estimated discount has some disadvantages. The number of channels through which discounts are offered has made them difficult to track by SNZ. There are also issues with the different geographical coverage of MPP compared to SNZ's weighted average price.

75. MBIE must use a forecast each quarter because the Statistics New Zealand retail price series for each quarter is released a few weeks after that quarter has ended. This forecast is revised with the actual estimated discount when the data for the current quarter is released. Disclosure of prices and discounts offered would provide more accurate and timely data for analysis.

76. MBIE uses a cost 'build up' model to reflect importer costs using data provided by Hale and Twomey. MBIE and the Commission consider that this model provides a reasonable estimation of importer cost, however it does not incorporate domestic shipping or pipeline costs.

77. MBIE's reporting will remain valuable, but we consider that there may be advantages in more accurate and comprehensive reporting. The greater accuracy would be achieved through better retail revenue, price and discount data. More comprehensive reporting would be achieved through greater regional granularity, better capture of transport costs and reporting of wholesale margins.

78. We also note that despite the availability of the MBIE data, two separate market studies have been necessary over the past five years to draw conclusions on the level of competition in the market.

79. The Fuel Market Financial Performance Study undertaken by MBIE in 2017 (2017 study) was undertaken as a response to MBIE's concerns that consumers in the downstream market may not be getting the best outcomes. The 2017 study sought to determine the reasonableness of

fuel prices by benchmarking returns on average capital employed against an appropriate cost of capital. Due to a combination of data availability (not all fuel suppliers responded to requests for data) and data comparability (the data that was provided was not in a form that could be compared between fuel suppliers) the authors of the 2017 study were unable to fulfil the initial Terms of Reference. The authors of the 2017 study were only able to reach tentative conclusions due to the limitations on data.

80. This suggests that the MBIE monitoring data is adequate for prompting more detailed investigations, but is not in itself conclusive enough to achieve the objectives set out above.

81. To go beyond these tentative conclusions, the Commission undertook the fuel market study in 2019. Although the Commission used its statutory powers to require information, it noted some constraints in collecting information. The Commission stated that there could be long-term benefits derived from regulations that require certain information to be collected and retained in New Zealand for a period of time to assist meaningful market analysis. It was further noted by the Commission that if higher quality information is held by the industry or government, it would likely improve the timeliness, cost and accuracy of any future study or regulatory intervention.

82. Therefore the overall options are:

   a. Option 1A: Status quo – do not prescribe regulations relating to record keeping, and the retention and disclosure of information, about engine fuel markets, and rely instead on information already collected or available; or

   b. Option 1B **(preferred)**: Prescribe regulations relating to record keeping, and the retention and disclosure of information, about engine fuel markets.

Options	Benefits	Costs	How would this option deliver the objectives?
1A	This option would not impose additional costs on industry participants.	Currently available information and information requested (not required) from participants, was only sufficient to reach tentative and narrow conclusions for the 2017 study. For the Commission's market study, it had information gathering powers, but still noted that timeliness, cost and accuracy could be improved.	Using currently available information to monitor the market would limit MBIE and the Commission's ability to monitor the performance of engine fuel markets and assess whether the purpose of the Act is being met without relatively costly and irregular investigations such as market studies. Such studies may not be able to be conducted at optimal times, and would still be

			hampered by an inability to have timely access to granular information. MBIE's current margin information is not sufficiently accurate or granular to assess the impact of the other provisions in the legislation, or the level of competition in the market.
1B	Improved ongoing monitoring of fuel engine markets in regards to the specific issues that were identified during the Commission's market study would avoid (relatively) costly ad hoc market studies. This will enable agencies to determine the impact of interventions under the Act.	This option will impose an ongoing compliance burden and associated costs on industry participants. All, or part, of these costs could be passed on to consumers.	This would also enable MBIE and the Commission to assess whether the purpose of the Act is being met because information will be available on issues identified as a result of the Commission's market study. This would be more efficient than irregular market studies, as decision makers would have more timely notice of competition issues or market solutions.

83. Some industry participants were supportive of information disclosure. However, most participants have raised concerns about requirements to disclose commercially sensitive information and the additional cost on industry that retention and disclosure requirements would impose.

84. MBIE and the Commission routinely receive and store confidential information in accordance with robust and well-tested information security policies which take account of commercial sensitivity. While such information could be sought under the Official Information Act 1982, there are grounds for withholding the information where it would be likely to unreasonably prejudice the commercial position of the person who supplied the information.

85. Cost could be recovered through fuel prices. However, we anticipate that these additional costs would be modest compared to the cost of fuel.

2. Kinds of engine fuels

86. Section 27(2)(a) of the Act allows regulations to be made prescribing the kinds of engine fuels that the regulations apply to.

87. The main types of engine fuel that are sold to end-users in New Zealand are 91 octane, 95 octane, 98 octane and diesel.

88. We have identified 3 options for including engine fuels:

a. Option 2A: Include 91 octane, 95 octane and diesel;

b. Option 2B **(preferred)**: Include 91 octane, 95 octane, 98 octane and diesel; or

c. Option 2C: Include all fuels supplied at retail, including biofuels.

Options	Benefits	Costs	How would this option deliver the objectives?
2A	98 octane was excluded from the TGP regime to recognise that specialised supply chains and storage facilities are used to supply it. This is the lowest cost option and would align with the regime and industry practice.	Not requiring information on 98 octane would negatively impact the ability to monitor the market effectively, since 98 is said to be a growing proportion of the market, and it has been alleged that supply of 98 octane may be used to game the system.	This would enable effective monitoring, and assessment of competition, for 91 octane, 95 octane and diesel. It would not allow the Commission and MBIE to effectively monitor the impact of omitting 98 octane fuel from the TGP regime. This omission was criticised by Z Energy who said it would lead to gaming behaviour.
2B	MBIE and the Commission would have information to monitor the main types of engine fuels that are supplied at retail sites.	Requiring disclosure of 98 octane on top of 91 octane, 95 octane and diesel will modestly increase compliance costs for industry participants.	This would enable monitoring, and assessment of competition, for all the main types of engine fuel sold to end-users, and would allow the Commission and MBIE to monitor the impact of omitting 98 octane fuel from the TGP regime.
2C	MBIE and the Commission would have information to comprehensively monitor fuel markets as they could monitor all	Requiring disclosure of all fuels will impose increased compliance costs on industry participants, without necessarily providing more valuable information. Currently only	This would enable monitoring, and assessment of competition, for all fuels sold to end-users. However the advantages monitoring of these additional fuels

	engine fuels that are supplied at retail sites.	NPD sells 100 octane at retail sites in the South Island so volumes sold are unlikely to be significant and biofuels make up less than 0.1% of total liquid sales in New Zealand.	would be limited, given their limited use in engine fuel markets.

89. Z Energy submitted that 100 octane should be included in the information disclosure regime given the increasing use of 100 octane by end-users. We do not consider this is necessary due to the limited number of suppliers that currently offer 100 octane.

3. Kinds of fuel industry participants

90. Section 27(2)(a) of the Act allows regulations to be made prescribing the kinds of fuel industry participants that the regulations apply to.

91. We have identified 3 options for the kinds of fuel industry participants that the regulations apply to:

   a. Option 3A: Wholesale and retail market information (including profitability information) is required from all wholesale suppliers and distributors;

   b. Option 3B: Wholesale and retail market information (including profitability information) is required from wholesale suppliers and distributors over certain thresholds in those markets; or

   c. Option 3C **(preferred)**: Wholesale and most retail market information is required from the fuel importers (BP, Mobil, Z Energy, Gull and Tasmanfuels where applicable) but other wholesale suppliers and distributors are only required to provide profitability information, annual new site entry and exit and volume sold.

92. The information disclosure regime will apply to wholesale and retail information. However, industry participants do not operate exclusively at particular functional levels in the market, i.e. they do not operate exclusively as importers, wholesalers, distributors or retailers. There are varying degrees of vertical integration among them.

93. Importers import fuel and sell and supply it at wholesale and/or retail. The importers (Mobil, BP, Z Energy, Gull, Tasmanfuels) are major participants in New Zealand fuel markets.

94. Wholesale suppliers supply fuel to persons other than end users. This is a defined term under the Act. Importers perform this function from their storage terminals, and are the primary source of wholesale fuel supply in New Zealand.

95. The term “distributors” is used by industry participants to designate firms that originally performed a distribution function (i.e. trucking) but many of whom have diversified into wholesale or retail fuel supply, or both. Distributors can act as wholesale intermediaries who buy fuel from the importers and supply it to retail suppliers (or other wholesale suppliers). However, distributors can also supply directly to end users using their own branded outlets, and may not supply at wholesale at all.

96. “Distributor” is also a defined term in the Act. The primary functions of the definition (working together with associated definitions such as “reseller”) are:

   a. to identify industry participants that rely on wholesale supply in New Zealand (in contrast to importers) to source their fuel, and,

   b. where such participants supply to end users, to identify those who supply fuel through their own branded retail sites (in contrast to “dealers”, who use the brand of others)

97. It is important to understand that in these options, the functional descriptions (wholesale suppliers, distributors) are to some extent a proxy for scale. Obligations which apply to *wholesale suppliers* will apply to *importers*, as they all currently supply at wholesale, and will thereby capture the main wholesale suppliers (Mobil, BP, Z Energy, Gull, Tasmanfuels) in New Zealand. The regulations can be designed to capture retail information where the wholesale supplier has retail operations as well (as most of the importers do), which would therefore capture the main retailers (Mobil, BP, Z Energy, Gull) in New Zealand.

98. As a matter of course, obligations which apply to wholesale suppliers will also apply to distributors (and any other participants) who supply at wholesale. Extending the obligations to explicitly include *distributors* would be for the purpose of getting a better picture of the *retail* market, in which they are important participants. It would still exclude *dealers* who operate sites under the brand of other participants, and who are the participants least able to support additional compliance costs.

99. Options A and B include distributors explicitly, to achieve a broader coverage of retail markets than would be achieved by focusing on wholesale suppliers who also supply at retail, even though that would capture the main retail suppliers in New Zealand. Option B is addressed at the risk that Option A may capture some distributors who operate at a small scale, and who may also be poorly equipped to support additional compliance costs. Option C explicitly only applies to fuel importers, with the exception of profitability, new site entry and volumes sold

which would also apply to wholesale suppliers and distributors.Due to the overlapping definitions it is difficult to determine definitively which participants are wholesale suppliers and distributors as operations change over time. We consider that the following participants are likely to be considered wholesale suppliers or distributors:

a. Waitomo;

b. Challenge;

c. RD Petroleum;

d. NPD;

e. Southfuels;

f. McFall Fuel;

g. Allied Petroleum;

h. McKeown; and

i. GAS.

Options	Benefits	Costs	How would this option deliver the objectives?
3A	Clear and consistent treatment of all wholesale suppliers and distributors.	This would impose costs on distributors who supply a modest proportion of the market, and whose market impact would be reflected in the data supplied by the importers anyway. Although the Commission observed high profitability in the wholesale market generally the main competition concerns arose from the major importers' joint infrastructure network and	All wholesale suppliers and distributors would be required to retain and disclose prescribed information. MBIE and the Commission would have comprehensive information to monitor the performance of engine fuel markets and to

		wholesale supply relationships, therefore this option is less targeted towards this issue.	assess whether the purpose of the Act is being met.
3B	Compared to option 3C, more accurate information would be available for monitoring competition. This option would also avoid placing compliance costs on the smallest players in the industry that do not meet the thresholds. Relatively low-cost retailers (mainly distributors) have grown their retail presence resulting in lower prices, but this does not appear to have materially reduced profits observed across the fuel industry. Therefore, it would be beneficial to monitor retail information that includes distributors, while excluding retailers who may struggle to meet new compliance costs.	Any thresholds are likely to be quantitative. To ensure the threshold stays appropriate given market developments, it is likely that the threshold would need to be reviewed and updated more frequently than the rest of the regulations. This option may have unintended consequences, for example, participants may be dis-incentivised from expanding to avoid meeting the threshold or new entrants may be discouraged from entering the market. It will be difficult to define an appropriate threshold given that distributors may not be able to provide information on behalf of dealer owned sites and many distributor branded sites are dealer owned.	MBIE and the Commission would have information from the most significant wholesale suppliers with extensive coverage of the market, to monitor the performance of engine fuel markets and to assess whether the purpose of the Act is being met. The purpose of the Act is to promote completion in fuel markets, however there is some risk that this option could negatively impact entry and expansion.
3C	Competition concerns in the Commission's market study arose in large part from the majors' joint infrastructure network and restrictive wholesale supply relationships. This option is mainly targeted to those who own or share such infrastructure, and whose supply relationships were highlighted by the study.	This information is only likely to provide a limited picture of retail fuel market information, since around 57% of retail fuel is sold through importer-owned and -operated retail sites. Although the Commission's market study findings focussed on the market power of the majors, high profitability was observed in the wholesale market generally. Some wholesale suppliers would face different compliance burdens from others.	MBIE and the Commission would have information from importers and some information from distributors to monitor the performance of engine fuel markets and to assess whether the purpose of the Act is being met. However, some of the monitoring of the retail market would have significant limitations.

	This option also provides information at a lower compliance cost for smaller wholesale suppliers.		

100. The question of which industry participants would be required to disclose information received a lot of interest from submitters. The consultation paper proposed that most of the disclosure requirements (apart from those that relate to terminal ownership or importing activities) would apply to wholesale suppliers, including their retail operations where relevant. This would include some, but not all, distributors, if they supplied at wholesale.

101. The Australian Competition and Consumer Commission (ACCC) has the ability to request a range of data directly from fuel retailers, wholesalers, importers and refiners. It collects data on volumes, retail site numbers, revenues, costs and profits from the majority of large fuel companies in Australia, on an annual backward-looking basis. The intention was to initially target the large companies with the option of extending the coverage in the future. After following this approach since 2008, the ACCC does not consider that coverage needs to be extended beyond the large companies since the current approach provides data on sales volumes that represent about 84% of total retail petrol sales. The ACCC can also collect data from third party suppliers.

102. Although option 4C will only provide retail volume information on less than 57% of retail volumes, it will still provide insights into distributors' annual volumes, revenues, costs, profits and new site entry and exit. Initial monitoring should provide guidance as to whether it is necessary to further extend the participants that disclosure requirements apply to. Option 4A and 4B were outside the scope of the consultation paper. Progressing these options would require an additional consultation round.

103. Confidentiality

104. Gull submitted that it sells 10% of New Zealand's petrol with only 33 staff. It suggested that the disclosure requirements are moderated. It further noted that the detail required under the consultation paper may make Gull less likely to do business with minor retailers as it may result in more overhead and risk of non-compliance for minor additional business. However, Gull also submitted that the disclosure requirements proposed in the consultation paper would result in a significant data gap as many distributors & dealers would not be captured by the

requirements. Gull further stated that distributors operating at retail are substantial businesses, therefore they have the resourcing the provide information and represent a significant market presence.

105. Confidentiality

106. The Motor Trade Association expressed in its submission that many small businesses operate in the industry that are family owned and receive thin margins and profits in respect to their operations.

107. Confidentiality

4. Fixed wholesale contracts, switching and multi-sourcing - the information that must be recorded and retained

108. Section 27(2)(b) of the Act allows regulations to be made prescribing the information that must be recorded and retained.

109. Subpart 2 of Part 2 of the Act introduces obligations regarding fixed wholesale contract terms which are intended to address some of the issues that were identified during the retail market study. Monitoring of fixed wholesale contract terms, switching and multi-sourcing will provide insights on the impact that these interventions, and other interventions in the Act, are having on the market.

110. We have identified 2 options for fixed wholesale contract, switching and multi-sourcing information that must be recorded and retained:

   a. Option 4A: Requirement to record, retain and disclose all fixed wholesale contracts at the outset of the regime, and new contracts thereafter; or

   b. Option 4B **(preferred)**: Requirement to record, retain and disclose:

      i. all fixed wholesale contracts at the outset of the regime, and new contracts thereafter;

      ii. any changes to key provisions regularly, after the initial disclosure of the fixed wholesale contract;

      iii. offers/bids made over the year to supply by way of fixed wholesale contract and associated volumes; and

iv. instances of expired or terminated fixed wholesale contracts.

Options	Benefits	Costs	How would this option deliver the objectives?
4A	Simple disclosure requirement as full fixed wholesale contracts could be disclosed at the outset of the regime, and then as new ones come into force, which would be easy for participants to administer.	May be too static to capture changes in market dynamics.	MBIE and the Commission would be able to monitor the performance of engine fuel markets, although in a relatively static manner, and to assess whether the purpose of the Act is being met. The Act is intended to reduce the ability for fixed wholesale contract terms to negatively impact competition. Monitoring fixed wholesale contracts will give insights into competitive conditions in wholesale fuel markets.
4B	The Commission and MBIE would have more granularity of information about the dynamics of wholesale markets and negotiations.	The recording of offers/bids made over the year to supply by way of fixed wholesale contract and instances of expired or terminated fixed wholesale contracts is likely to be a manual process and therefore administratively burdensome.	This will allow more dynamic monitoring which will capture changes in contractual relationships and provide more insight into competition in wholesale markets.

111. Gull submitted that option 4B would require the disclosure of unnecessary detail. Confidentiality [redacted] It is unclear whether these submitters appreciated that the requirements would only apply insofar that they relate to ‘fixed wholesale contracts’.

112. Confidentiality [redacted] and Z Energy considered that disclosures under option 4B were for the purpose of monitoring compliance, rather than for monitoring the market. However, the Commission has separate information gathering powers for the purpose of compliance.

113. Z Energy and Confidentiality [redacted] considered that these disclosures are not necessary to meet the purpose of information disclosure and the Act. However, contents of fixed wholesale contracts can provide indications of the level of competition in the market. During the Commission’s retail

fuel market study, as well as considering the nature of the relationships that exist, the Commission examined whether the terms of the wholesale supply agreements reinforced the level of vertical integration and reduced the scope for competition at the wholesale level.

5. Profitability - the information that must be recorded, retained and disclosed

114. The market study found that the retail fuel industry (which includes both wholesale and retail markets) has earned excess returns since early last decade and that margins and returns were expected to remain at elevated levels for some time. In a workably competitive market, firms will tend to earn normal rates of return over time and prices will reflect efficient costs. Long term profits that are persistently higher than a normal level of return, may indicate that competition is insufficient to return profits to normal levels.

115. Section 27(2)(b) of the Act allows regulations to be made prescribing the information that must be recorded and retained. Furthermore, section 27(2)(c) of the Act allows regulations to be made prescribing methodologies that must be applied in recording information, including how common costs are to be allocated and how assets are to be valued.

116. In addition to information disclosed in relation to gross margins, we have identified 2 options regarding information that would enable monitoring of whether profits are consistent with effective competition in fuel markets and how they track over time:

   a. Option 5A **(preferred)**: Requirement to record, retain and disclose financial statements (or group financial statements for multi-tied cooperate structures) that comply with existing statutory financial reporting obligations; or

   b. Option 5B: Prescribing methodologies in relation to how costs are to be calculated and requirements to record, retain and disclose financial statements that relate only to the participants' fuel operations.

Options	Benefits	Costs	How would this option deliver the objectives?
5A	It would be easier for industry participants to comply with requirements since participants would already be required to prepare the information in accordance with other obligations.	Information disclosed would reflect activities beyond just fuel supply (e.g. car wash, café etc.) and would not be as consistently calculated.	MBIE and the Commission will be able to monitor and assess competition, but data would not be as comparable as it could be and would reflect activities beyond just fuel supply (e.g. car wash, café etc.). However, any analysis of a participant's financial statements would be supplemented by gross margin

			analysis. This is consistent with the approach undertaken by the Commission in the retail market study.
5B	Financial information would better reflect industry participants fuel industry operations and would be consistently calculated.	Industry participants would require additional resource to interpret methodologies.	Financial information would only be related to fuel industry activities and would be consistently calculated. This would enable more accurate analysis for monitoring. However, this information is a high level starting point for profitability analysis, and would not be significantly more useful if it was focused on fuel.

117. Submitters were generally supportive of the proposal to only require the disclosure of financial statements. However many submitters raised concerns regarding the difficulty of making a clear assessment of profitability when activities other than fuel supply are reflected in the financial information (e.g car wash, café etc.) and where financial information is consolidated in multi-tiered corporate structures.

118. However, many participants will sell more than just fuel and may operate in multiple levels of the supply chain (e.g. some wholesale suppliers also operate in the retail market) and financial statements are likely to reflect this. We note that:

   a. financial statements will not be the only source of data relevant to profitability. Analysis of gross margins will supplement these statements; and

   b. a new entrant or an expansion of an existing firm could offer other services beyond just selling fuel to retail customers. Therefore looking at the profitability of the broader range of activities may more closely match the profile of a new entrant than a narrow focus on just the retailing of fuel.

119. During the market study, the Commission used a variety of methods to assess profitability, which did not rely on the availability of financial information organised according to prescribed methodologies. The Commission considered that these methods were robust, and could be used to reach useful conclusions about profitability.

6. Gross margins - transactions at and beyond the terminal

120. As discussed above, the market study found that the retail fuel industry has earned excess returns since early last decade and in a workably competitive market firms will tend to earn normal rates of return over time.

121. The wholesale gross margin represents the difference between the revenue a supplier receives from selling fuel at wholesale and the costs it incurs to do so. Retail gross margins are the difference between the revenue received by retail participants from the sale of fuel (including at retail sites owned by a wholesale supplier), less the costs to them of wholesale fuel.

122. Changes in wholesale and retail gross margins and prices over time will provide an indication of trends in competition in fuel markets, including monitoring:

    a. whether the TGP regime is contributing to a liquid wholesale spot market, lowering barriers to entry and expanding opportunities for importers and distributors, improving price transparency for distributors and creating a competitive benchmark for industry and Government; and

    b. whether discounting practices are negatively impacting consumers.

123. Section 27(2)(b) of the Act allows regulations to be made prescribing the information that must be recorded and retained.

124. Under the Act ‘wholesale supplier’ means a person that sells and supplies engine fuel, as a whole or part of its business, to persons other than end users. Wholesale transactions involving such a supplier may occur at the terminal or in other places, for example where resellers sell to other resellers.

125. Transactions at the terminal are likely to capture the bulk of wholesale transactions. However, information on wholesale transactions beyond the terminal gate would allow the Commission to focus on the role played by second tier wholesale suppliers, who buy at the terminal, and then supply to wholesale customers (rather than end users) in other places.

126. Therefore we have identified two options for gross margins and price information that must be recorded and retained:

    a. Option 6A: Requirement to record, retain and disclose information on all wholesale transactions (whether at the terminal or elsewhere); or

b. Option 6B **(preferred)**: Requirement to record, retain and disclose information on wholesale transactions only at the terminal.

Options	Benefits	Costs	How would this option deliver the objectives?
6A	Disclosure of transactions beyond the terminal would enable the Commission to monitor the role played by second tier wholesale suppliers.	The Commission's market study highlighted factors which led to major fuel suppliers having entrenched positions in the wholesale market. Focusing on supply beyond the terminal would not provide much insight about these factors, but would create compliance costs for some suppliers.	MBIE and the Commission will be able to monitor and assess competition comprehensively and assess the impact of second tier wholesale suppliers.
6B	Many wholesale suppliers do not operate terminals, such as Waitomo, Allied Petroleum and Challenge etc. Some classes of 'secondary wholesale' supply transactions account for negligible volumes.	Not requiring the disclosure of 'secondary wholesale' information would not enable tracking of second tier wholesale suppliers.	MBIE and the Commission will be able to monitor and assess the most significant and highest volume supply relationships without imposing additional compliance costs.

127. Z Energy submitted that 'secondary wholesale transactions' should be captured to provide the fullest possible picture of wholesale market dynamics. Since these transactions account for negligible volumes and do not provide much insight about factors that were highlighted in the market study, we do not consider they are necessary to monitor.

7. Gross margins– estimation of costs

128. Section 27(2)(c) of the Act allows regulations to be made prescribing methodologies that must be applied in recording information.

129. In order to calculate gross margins, it is necessary to calculate or estimate the costs a supplier incurs to supply fuel. MBIE currently uses a model based on estimates and public data to establish wholesale costs for the purposes of calculating gross margins. As noted above, the margin analysis has some disadvantages. However, these tend to be related to the retail price and revenue data whereas the cost data is relatively robust, and could be used as a low cost way of estimating costs to determine gross margins.

130. We have identified two options for the estimation of costs for gross margin analysis:

a. Option 7A **(preferred)**: Use of MBIE model to estimate key costs of supply, with additional data supplied to validate; or

b. Option 7B: Use of prescribed methodologies to estimate key costs of supply.

Options	Benefits	Costs	How would this option deliver the objectives?
7A	This option would be the lowest cost to participants, without significantly compromising the gross margin calculation.	There may be less confidence in the cost information used to calculate margins. However, a more complex methodology will not necessarily produce a significantly more accurate outcome.	MBIE and the Commission will be able to monitor and assess competition.
7B	Cost information may be more accurate.	Complex methodologies could drive costs into systems which record and report information, and which may require additional resource to interpret and updates to accounting systems.	MBIE and the Commission will be able to monitor and assess competition.

131. Z Energy submitted that it did not consider that the use of the MBIE model is appropriate because the model does not match how it sets and analyses its costs and pricing, which is by using replacement costs. However, the MBIE model also uses replacement costs.

8. Gross margins– the retail revenue and price information that must be recorded, retained and disclosed

132. Section 27(2)(c) of the Act allows regulations to be made prescribing methodologies that must be applied in recording information.

133. We have identified two options to enable monitoring of gross margins and prices:

a. Option 8A **(preferred)**: Requirement to record, retain and disclose;

i. the last standard retail price of the day, on a cpl basis, for each fuel at each retail site;

ii. the discounts offered by the participant that day at each retail site;

iii. daily volume of each fuel sold from each site; and

iv. quarterly revenue per fuel type; or

b. Option 8B: Requirement to record, retain and disclose:

i. revenue, volume and volume weighted price per fuel and per site; and

ii. revenue, volume and volume weighted price per fuel and per site for the four largest discounting practices.

Options	Benefits	Costs	How would this option deliver the objectives?
8A	This should enable monitoring of: • Whether discounts are associated with higher board prices / headline prices. • Trends regarding the size of discounts over time. • The relationship between discounts and margins. • The relationship with discounts and total volumes sold.	This option should not impose high costs on participants. Based on information provided to us during submissions, this information is already available from the participants that are likely to be subject to the disclosure.	MBIE and the Commission will be able to monitor and assess competition.
8B	This should enable more effective and accurate monitoring of:	This option is likely to require participants to substantially invest in its systems at a time of considerable uncertainty about future demand. One submitter estimated that to enable the	MBIE and the Commission will be able to monitor and assess competition.

	• Whether discounts are associated with higher board prices / headline prices. • Trends regarding the size of discounts over time. • The relationship between discounts and margins. • The relationship with discounts and total volumes sold. • Whether those who do not participate in discounting pay higher prices. • The relationship between headline price, discounts and volumes sold. • Gross margins.	disclosure of the information proposed would require a multi-million dollar spend.	

134. Gull submitted that the information outlined in option 8B is far too granular. Confidentiality

135. Submitters stated that the information proposed on discounts goes beyond what was expected and necessary to monitor fuel markets and that the Commission's market study was inconclusive as to whether discounting was impacting competition other than the sense that it may soften competition.

136. Submitters also noted that it will take time and investment to build up its reporting practices to be able to disclose information. One submitter estimated that to enable the disclosure of the information proposed on retail revenues, prices and volumes would require a multi-million dollar spend.

9. Discounting and loyalty programmes - the information that must be recorded, retained and disclosed

137. Section 27(2)(b) of the Act allows regulations to be made prescribing the information that must be recorded and retained.

138. The market study found that the use of discount and loyalty programmes can soften board price competition. Retail discounting practices can draw consumer's attention away from board prices, which may lessen competition.

139. Discount means the amount deducted from the fuel price at the pump because the end-user is part of a membership group, holds a card or receipt that entitles them to a discount (excluding commercial fuel cards) or there is a promotion to sell fuel at a lower price than the headline price. Loyalty programmes are benefits or rewards unrelated to fuel (for example, the accumulation of Fly Buys points or Air New Zealand Points).

140. The Government made the decision not to regulate discounting, at this time, on the basis that the market study found these practices were still evolving, and that discounting practices will be monitored.

141. In addition to the discounting information under the 'Gross margins' section, we have identified two options to enable monitoring of discounting:

   a. Option 9A **(preferred)**: Requirement to record, retain and disclose details regarding a sample of the most significant practices (the two largest discounting practices, two most prominent loyalty programmes and all discounting partnerships with third parties); or

   b. Option 9B: Requirement to record, retain and disclose details regarding the four largest discounting practices, and all discounting partnerships with third parties.

Options	Benefits	Costs	How would this option deliver the objectives?
9A	Visibility of the most significant discounting practices and loyalty programmes.	MBIE and the Commission will not have visibility of all the discounting practices that are on offer to end-users.	MBIE and the Commission would be able to monitor the performance of engine fuel markets and to assess whether the purpose of the Act is being met, by monitoring the most significant discounting practices and loyalty programmes and partnerships.
9B	Greater visibility of discounting practices.	Minor discounting practices would be captured that have little impact on the market.	MBIE and the Commission would be able to monitor the performance of engine fuel markets and to assess whether the purpose of the Act is being met, through a deeper examination of discounting practices.

142. The draft recommendation that was consulted with industry, was option 9B. Gull and Z Energy submitted that “the four largest discounts” would capture some minor programmes. Z Energy submitted an alternative would be to reduce this to “the two largest discounts” since beyond this point the discounts are offered on an ad hoc basis. Z Energy also noted that some participants also offer benefits that are not discounts on prices.

10. Fuel supply- the information that must be recorded, retained and disclosed

143. Section 27(2)(b) of the Act allows regulations to be made prescribing the information that must be recorded and retained.

144. The Commission’s market study found that a lack of terminal investment and tight supply may have detrimental effects upon competition at the wholesale level. The Commission considered that this may result in less retail competition and higher than expected prices for consumers. However, the market study also noted that the case for future investment in terminals is uncertain, particularly given the entry of TOSL and forecast relatively flat fuel demand. Analysis of information disclosed on fuel supply will enable the monitoring of the impact of terminal investment and tight supply on competition.

145. We have identified two options to enable monitoring of fuel supply:

a. Option 10A: Requirement to record, retain and disclose:

   i. rationing events (where low inventories at terminals means that supply of fuel has to be rationed);

   ii. forecast demand; and

   iii. retail site details supplied; or

b. Option 10B **(preferred)**: Requirement to record, retain and disclose:

   i. rationing events;

   ii. forecast demand;

   iii. retail site details supplied;

iv. fuel supply and withdrawal from terminals;

v. month end volumes;

vi. total storage capacity; and

vii. total annual volume of each fuel type supplied.

146. As mentioned earlier, most of the terminal storage is shared between the majors and rationing (“coordination”) events are a feature of this shared storage system. During tight supply, fuel is rationed among the majors and the resellers to which they supply.

Options	Benefits	Costs	How would this option deliver the objectives?
10A	This information should be relatively simple to retain and disclose since the majors regularly report on rationing events and most participants already calculate forecast demand.	MBIE and the Commission would not have visibility of long term trends of how terminals are being used and actual storage capacity.	This option would limit MBIE and the Commission’s ability to monitor the performance of engine fuel markets and assess whether the purpose of the Act is being met because no information will be provided regarding how terminals are being used.
10B	MBIE and the Commission would have comprehensive information on fuel supply, including visibility of long term trends of how terminals are being used and actual storage capacity.	Additional requirements impose additional compliance costs on participants. Fuel supply, withdrawals and capacity information is reasonably detailed.	This option would allow MBIE and the Commission’s to monitor the performance of engine fuel markets and assess whether the purpose of the Act is being met, including monitoring how terminals are being used.

147. Confidentiality

Confidentiality

Submitters also provided a range of views which helped to refine the details of the recommendations.

11. The circumstances in which information must be disclosed to the Chief Executive of MBIE, the Commission, or both

148. Section 27(2)(b) of the Act allows regulations to be made prescribing the circumstances in which information must be disclosed to MBIE, the Commission or both.

149. We have identified a range of options for the circumstances in which information must be disclosed:

a. Option 11A: Retained and disclosed upon request;

b. Option 11B: One off disclosure;

c. Option 11C: Annual disclosure; or

d. Option 11D: Quarterly disclosure.

150. The option that best delivers the objectives depends on the information that is required to be disclosed. This means each of these options are the preferred option for certain information. Appendix A provides a table of preferred disclosures and preferred circumstances in which information should be disclosed.

Options	Benefits	Costs	How would this option deliver the objectives?
11A	In situations whereby the Commission and MBIE do not require the information on a regular basis, it provides the lowest cost option for industry participants and agencies as resources would not have to be permanently dedicated	This may increase uncertainty for industry participants that are required to disclose information as disclosure requests would be ad hoc. This may make it difficult for industry participants to plan disclosures into their workloads.	Industry participants would be required to improve their information retention, however this option since information would only need to be disclosed upon request, it may hamper timely collection.

	(by industry and agencies) to disclosing information and compliance checking.	Irregular disclosures would also limit agencies ability to publish regular summary and analysis.	
11B	In situations whereby the Commission and MBIE only require the information on a one off, it provides a low cost option for industry participants and agencies as resources would not have to be permanently dedicated to disclosing information and compliance checking.	Unless supplemented by other circumstances to disclose information, this option would not provide for long term trend analysis. Irregular disclosures would also limit agencies ability to publish regular summary and analysis.	Unless supplemented by other circumstances to disclose information, industry participants may have reduced incentive to improve retention of information as there is less visibility by agencies. Also, not having information for long term trend analysis would impact agencies ability to monitor and assess whether the purpose of the Act is being met over the long term.
11C	Provides a certain interval that information must be provided by which allows industry and agencies to plan disclosures and compliance checking. This also provides a regular provision of information to enable monitoring.	Irregular disclosures would limit agencies ability to publish more regular summary and analysis.	On an annual basis, MBIE and the Commission would be able to monitor the performance of engine fuel markets and assess whether the purpose of the Act is being.
11D	Provides a certain interval that information must be provided by which allows industry and agencies to plan disclosures and compliance checking. This also provides a regular provision of information to enable monitoring. More regular disclosure should not impose a	Quarterly disclosures would increase disclosure and compliance checking burdens.	On an ongoing quarterly basis, MBIE and the Commission would be able to monitor the performance of engine fuel markets and assess whether the purpose of the Act is being met.

	significant burden as the same information would still be required to be collected and retained.		

151. The consultation paper proposed that many of the more granular disclosures, for example volume weighted price per terminal, be disclosed on a quarterly basis. Confidentiality

152. The consultation paper also proposed that some of the disclosures relating to fixed wholesale contracts, should occur 30 working days after specific events occurred, for example when new fixed wholesale contracts are entered into. Z Energy submitted that disclosures should either be made quarterly or annually to allow for more streamlined reporting which would be less onerous for industry participants to comply with. Z Energy also submitted that disclosures that would involve significant repetition, if disclosed regularly, should be disclosed annually.

153. Confidentiality Whereas Z Energy accepted that daily revenues, volume and volume weighted price should be disclosed quarterly.

12. Information disclosure quality assurance

154. Section 47(1)(d) of the Act allows regulations to be made providing for any other matters contemplated by the Act, necessary for its administration, or necessary for giving it full effect.

155. We have identified 3 options regarding information disclosure quality assurance:

a. Option 12A: No requirement for quality assurance;

b. Option 12B **(Preferred)**: Requirement to provide annual director certification; or

c. Option 12C: Requirement to provide annual director certification and conduct annual qualitative data audit.

Options	Benefits	Costs	How would this option deliver the objectives?
12A	Not imposing a quality assurance requirement avoids imposing additional compliance costs on participants.	MBIE and the Commission would not have additional assurances that information disclosed complies with the regulations.	Not having additional assurances that information disclosed complies with the regulations may impact the strength of the conclusions that can be drawn from monitoring.
12B	Although additional requirements impose additional compliance costs on participants, director certification would not impose a high burden as no further analysis would be required to be undertaken.	Additional requirements impose additional compliance costs on participants. The Act has enforcement provisions that should provide some degree of quality assurance.	Having additional assurances that information disclosed complies with the regulations may impact the strength of the conclusions that can be drawn from monitoring.
12C	Assurance that qualitative disclosures have been externally verified.	Audit of qualitative data can be a substantial exercise. This is likely to impose significant compliance costs on participants. The Act has enforcement provisions that do provide some degree of quality assurance. Also the benefit of an audit is minimised by the fact that we are unlikely to propose that specific methodologies be applied.	Having additional assurances that information disclosed complies with the regulations may impact the strength of the conclusions that can be drawn from monitoring.

156. Some submitters were supportive of a requirement to have annual director certification, however some considered it would not provide a clear practical benefit. Most submitters were against a requirement to have qualitative disclosures audited because of the significant costs involved.

How do the options compare to the status quo/counterfactual?

	Option 1A	Option 1B	Option 2A	Option 2B	Option 2C
	Do not prescribe regulations relating to record keeping, and the retention and disclosure of information, about engine fuel markets.	Prescribe regulations relating to record keeping, and the retention and disclosure of information, about engine fuel markets.	Kind of engine fuels to only include 91 octane, 95 octane and diesel.	Kind of engine fuels to only include 91 octane, 95 octane, 98 octane and diesel.	Kind of engine fuels to include all fuels supplied at retail, including biofuels.
Promote competition	0	++	+	+	+
Enable monitoring	0	++	+	++	++
Ensure sufficient information is available	0	++	+	++	++
Proportionate regulation	0	++	++	++	-
Certain and predictable regulation	0	++	++	++	++
Overall assessment	0	10	7	9	6

	Option 3A	Option 3B	Option 3C	Option 4A	Option 4B
	Information is required from all wholesale suppliers and distributors.	Information is required from all wholesale suppliers and distributors that operate over certain thresholds.	Detailed information is only required from the major importers, but other wholesale suppliers and distributors are required to provide basic information.	Requirement to record, retain and disclose all fixed wholesale contracts.	Requirement to record, retain and disclose all fixed wholesale contracts, key provisions regularly, offers/bids and instances of expired or terminated contracts.
Promote competition	+	+	++	+	+
Enable monitoring	++	+	+	+	++
Ensure sufficient information is available	++	+	+	+	++
Proportionate regulation	-	+	++	++	+
Certain and predictable regulation	++	+	++	++	++
Overall assessment	6	5	8	7	8

	Option 5A	Option 5B	Option 6A	Option 6B	Option 7A	Option 7B
	Requirement to record, retain and disclose financial statements (or group financial statements) that comply with existing statutory obligations for financial reporting.	Requirement to record, retain and disclose financial statements that relate only to the participants' fuel operations.	Requirement to record, retain and disclose information on wholesale transactions at the terminal and beyond the terminal.	Requirement to record, retain and disclose information on wholesale transactions only at the terminal.	Use of MBIE model to estimate key costs of supply, with additional data supplied to validate.	Use of prescribed methodologies to estimate key costs of supply.
Promote competition	+	+	+	+	+	+
Enable monitoring	+	++	++	+	+	+
Ensure sufficient information is available	+	++	+	+	+	++
Proportionate regulation	++	+	+	++	++	+
Certain and predictable regulation	++	0 Participants must apply a degree of judgement to apply cost allocation methodologies.	+ Whether participants are subject to the requirements would depend on whether participants supply beyond the terminal.	++	++	0 Participants must apply a degree of judgement to apply cost allocation methodologies.
Overall assessment	7	6	6	7	7	5

	Option 8A	Option 8B	Option 9A	Option 9B	Option 10A	Option 10B
	Requirement to record, retain and disclose the last standard retail price of the day, the discounts offered by the participant that day, daily volume of fuel sold from each site and quarterly revenue.	Requirement to record, retain and disclose revenue, volume and volume weighted price per fuel and per site and revenue, volume and volume weighted price per fuel and per site for the four largest discounting practices.	Requirement to record, retain and disclose details regarding the two largest discounting practices, loyalty programmes and all discounting partnerships with third parties.	Requirement to record, retain and disclose details regarding the four largest discounting practices, and all discounting partnerships with third parties.	Requirement record, retain and disclose rationing events, days cover and retail site details supplied.	Requirement to record, retain and disclose rationing events, forecast demand, fuel supply and withdrawal from terminals, month end volumes, total storage capacity and retail site details supplied.
Promote competition	+	+	+	+	+	+
Enable monitoring	+	++	+	+	+	++
Ensure sufficient information is available	++	++	++	++	+	++
Proportionate regulation	++	0	++	+	+	+
Certain and predictable regulation	++	++	++	++	++	++
Overall assessment	8	7	8	7	6	8

	Option 11A	Option 11B	Option 11C	Option 11D	Option 12A	Option 12B	Option 12C
	Requirement for information to be retained and disclosed upon request.	Requirement for a one off disclosure of information.	Requirement for an annual disclosure of information.	Requirement for a quarterly disclosure of information.	No requirement for quality assurance.	Requirement to provide annual director certification.	Requirement to provide annual director certification and conduct annual qualitative data audit.
Promote competition	+	+	+	+	+	+	+
Enable monitoring	+	+	++	++	+	+	+
Ensure sufficient information is available	+	0	++	++	0	++	++
Proportionate regulation	++	++	+	+	++	++	0
Certain and predictable regulation	0	++	++	++	++	++	++
Overall assessment	5	6	8	8	6	8	6

Example key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

157. MBIE recommends that the following combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits. As with the discussion of options, the conclusion highlights the main strategic choices when considering the parameters of the regulations.

Status quo

Prescribe regulations relating to record keeping, and the retention and disclosure of information, about engine fuel markets

158. MBIE's current margin information is not sufficiently accurate or granular to assess the impact of the other provisions in the legislation, or the level of competition in the market. Use of the Commission's statutory powers will not necessarily generate timely information that can capture market dynamics without expensive and intermittent interventions.

159. Prescribing regulations will enable MBIE and the Commission to undertake more effective, accurate and comprehensive monitoring of fuel markets and ensure sufficient information is available to assess the impact of the other provisions in the legislation, or the level of competition in the market.

160. Prescribing regulations is MBIE's preferred option.

Kinds of engine fuels

Include 91 octane, 95 octane, 98 octane and diesel

161. Regulations that require information to be disclosed that relate to 91 octane, 95 octane, 98 octane and diesel would enable MBIE and the Commission to monitor the main types of fuel sold to end users. It would also allow the Commission and MBIE to effectively monitor the impact of omitting 98 octane fuel from the TGP regime.

162. The advantages in monitoring biofuels would be limited, given their limited use in engine fuel markets at this stage.

163. Requiring information that relates to 91 octane, 95 octane, 98 octane and diesel is MBIE's preferred option.

Kinds of fuel industry participants

Wholesale and most retail market information is required from importers, and wholesale suppliers and distributors are required to provide regular but more limited information

164. Distributors are a competitively important part of retail markets, and play an increasing important competitive role in wholesale markets. They have an outsized impact on competition since distributors are often price discounters that challenge the majors. Nonetheless, the focus of the Commission's market study was not these participants, but the major importers, whose infrastructure, joint arrangements and bargaining power contributed to limited competition at wholesale.

165. For that reason, MBIE prefers to focus the information disclosure regime on these participants, supplemented by the other suppliers/importers with significant infrastructure (Gull and Tasmanfuel), to provide greater richness in relation to the impact of competition. Around 57% of retail fuel is sold through importer owned and operated retail sites, which includes Gull. However we would require financial statements, retail site addresses and annual volume supplied from a wider range of participants, including distributors.

166. We considered an alternative suggestion which would lower compliance costs for smaller suppliers: including all wholesale suppliers and distributors that operate over certain thresholds in those markets.

167. If a threshold were introduced, it is likely to be quantitative based on sales volumes. To ensure the threshold stays appropriate given changes in the market, it is likely that it would need to be reviewed and updated more frequently than the rest of the regulations. It will also be difficult define an appropriate threshold given that distributors may not be able to provide information on behalf of dealer owned sites and many distributor branded sites are dealer owned.

168. Initial monitoring may provide insights as to whether it is necessary to further extend the participants that the disclosure requirements apply to.

Information that must be recorded, retained and disclosed

All fixed wholesale contracts, key provisions regularly, offers/bids made over the year and instances or expired and terminated fixed wholesale contracts

169. Requiring only the disclosure of fixed wholesale contracts would be a simple disclosure requirement as it would require no additional analysis by participants. However, requiring additional information as contracts change and wholesale offers were made would give the Commission and MBIE a more dynamic view of markets. This will capture changes in contractual relationships and provide more insight into competition in wholesale markets.

170. This option is MBIE’s preference as it will enable MBIE and the Commission to more thoroughly monitor the performance of engine fuel markets and to assess whether the purpose of the Act is being met, without imposing significantly greater compliance costs.

Financial statements that comply with existing statutory financial obligations

171. The market study found that the retail fuel industry has earned excess returns since early last decade and that margins and returns were expected to remain at elevated levels for some time. Long term profits that are persistently higher than a normal level of return, may indicate that competition is insufficient to return profits to normal levels.

172. After consulting with the Commission, MBIE considers that prescribing detailed parameters for financial accounting would impose unnecessary costs compared to the benefits, and that, in combination with gross margin analysis, standard financial statements that comply with existing reporting obligations would be sufficient.

173. MBIE considered imposing a limited set of detailed requirements to separate the fuel businesses of regulated participants from other parts of their business (e.g. car washes, cafes). However, a narrow focus on just the retailing of fuel may not match the consideration taken into account by a new entrant, who could be expected to look at the profitability of the broader range of activities.

174. This option is more certain and predictable as new cost allocation methodologies are often complicated and require a degree of judgement. Existing financial obligations are already well established and understood by industry.

Wholesale transactions at and beyond the terminal

175. Gross margin is the differences between revenue and the costs of goods sold. This provides an indication of competition.

176. Information on transactions beyond the terminal gate would capture transactions of distributors who onsold fuel purchased at a terminal to another wholesale customer. The Commission could provide indications on how much distributors are earning for fuel sold beyond the terminal, and whether there was “profit-sharing” between the importers and these intermediaries. The Commission found evidence in the market study that one or more of the majors may be engaging in a “profit-sharing” strategy with selected distributors.

177. However, although high profitability was observed in the wholesale market generally in the Commission’s study, transactions beyond the terminal are not as significant in volume as transactions at the terminal. In addition, as noted above, the focus of the analysis of the competitive issues was on the participants with infrastructure and longstanding contractual relationships. Focusing on terminal supply captures transactions most relevant to this analysis.

178. Therefore, only requiring information on transactions at the terminal would limit monitoring but be more proportionate considering the issues identified in the retail market study. This option would also lead to more certain and predictable regulation since it would be more clear who the obligations apply to since only a few industry participants supply at terminals.

Standard retail price of the day, the discounts offered by the participant that day, daily volume of fuel sold from each site and quarterly revenue

179. Regulations to enable more accurate and comprehensive monitoring of gross margins, compared to MBIE’s current monitoring, could be achieved by requiring disclosure of total daily revenue information, net of discounts, per retail site and for the most significant discounting practices.

180. This would enable the Commission to undertake granular monitoring of retail gross margins, including:

   a. whether discounts are associated with higher board prices;

   b. trends regarding the size of discounts over time;

c. the relationship between discounts, margins and volumes sold; and

d. whether those who do not participate in discounting pay higher prices.

181. Industry participants stated that it was not possible to collect this information or it would only be possible through multi-million dollar investment to systems. Confidentiality [redacted]

182. However, we believe that it is still possible to collect meaningful data at the retail site level without imposing significant compliance costs on industry (which could be passed onto consumers). We consider that requiring costly system upgrades is not appropriate when the fuel industry is facing significant uncertainty because of the increase in the uptake of electric vehicles, and the shift in the operating model for Refining New Zealand. Given international precedents, there is also some uncertainty in the longer term about how long ICE vehicles will remain in the market.

183. For these reasons, we instead recommend requiring industry participants to disclose:

a. a standard daily price for each fuel (we propose the last standard retail price of the day);

b. daily volume of each fuel sold from each site; and

c. discounts offered by the participant that day for each fuel.

184. This information will still provide more accurate and comprehensive information compared to MBIE's current monitoring. We also propose to collect quarterly revenue information, which could be used to check the information supplied in a.-c.

Use of MBIE model to estimate key costs of supply, with additional data supplied to validate

185. To calculate gross margins it is necessary to calculate or estimate the costs a supplier incurs to supply fuel. Requiring the disclosure of costs that must follow specific methodologies could enable more accurate monitoring as information would be calculated more consistently by participants.

186. MBIE currently uses a model based on estimates and public data to establish wholesale costs for the purposes of calculating gross margins. As noted above, MBIE's margin analysis has some disadvantages. However, these tend to be related to the retail price and revenue data. After consulting with the Commerce Commission, MBIE's view is that the cost data is relatively robust, and could be used as a low cost input to determining gross margins.

187. Using MBIE's model to estimate key costs of supply, with additional data supplied to validate these costs is MBIE's preferred option.

188. This option is proportionate since it would be the lowest cost to participants but would still give sufficiently robust outcomes. This option is also more certain and predictable

as incorporating new cost allocation methodologies can be complicated and require a degree of judgement.

189. Participants would also be required to explain the methodologies that were used to calculate these, which can help to verify the model's assumptions.

Details regarding the two largest discounting practices, loyalty programmes and all discounting partnerships with third parties

190. The market study found that the use of discount and loyalty programmes can soften board price competition. Retail discounting practices can draw consumer's attention away from board prices, which may lessen competition.

191. Limiting the disclosure requirement to the two largest discounting practices and loyalty programmes will still provide information on the most significant practices. This targeted monitoring is more proportionate.

Rationing events, forecast demand, fuel supply and withdrawal from terminals, month end volumes, total storage capacity and retail site details supplied.

192. The Commission's market study found that a lack of terminal investment and tight supply may have detrimental effects upon competition at the wholesale level. However, the market study also noted that the case for future investment in terminals is uncertain, particularly given the entry of TOSL and forecast relatively flat fuel demand.

193. Requiring information on rationing events, forecast demand, fuel supply and withdrawal from terminals, month end volumes, total storage capacity and retail site details supplied and annual volumes creates more compliance costs than the alternative of only requiring information on some of these matters.

194. However, this option would enable more comprehensive monitoring of fuel supply, in particularly in regards to how terminals are being used and by which participants. It is important to monitor this given the uncertain future of shared infrastructure arrangements and the significant impact on competition this feature of the market currently has.

The circumstances in which information must be disclosed to the chief executive, the Commission, or both

Retained and disclosed upon request

195. This option is proportionate since it enables monitoring and ensures information is available when the agency requires it. However, there is a risk that the agency may not become aware of potential competition issues until the information is disclosed.

196. Although regulations can limit the circumstances in which information can be requested, this option is also not certain and predictable since participants are unlikely to have visibility regarding when requests will be made. This may have consequences on participant's internal resource allocations.

197. MBIE's view is this disclosure requirement is appropriate in limited situations, for example, if the ongoing disclosure does not provide sufficient information to monitor and a follow up request of further information is necessary.

One off disclosure

198. This option is certain, predicable and proportionate as participants have a set date when information is due and the burden is minimal. However, if this option is not coupled with another disclosure required, it would not enable ongoing monitoring of information or ensure sufficient information is available on an ongoing basis to assess competition.

199. MBIE's view is that disclosure requirement is appropriate to enable agencies to undertake a baseline review of information, but this disclosure event should be coupled with other circumstances to enable long term analysis of information.

Annual disclosure

200. This option is certain, predicable and proportionate as participants have a set date when information is due and the reporting burden is minimised.

201. MBIE's view is that this disclosure requirement is appropriate for information that does not change regularly and/or relates to an annual period.

Quarterly disclosure

202. This option is certain and predicable and as participants have a set date when information is due. However, many submitters considered a quarterly provision of information to be relatively frequent.

203. This is MBIE's preferred option for some disclosures since some information required for monitoring is granular. Since it is likely that this information will be have to be collected, frequent disclosure would not impose a significant burden beyond this but would provide more substantial and regular insights to competition.

Requirement to provide annual director certification

204. The options to require annual director certification and/or qualitative data audit provide assurances that the information is of sufficient quality to assess competition in fuel markets.

205. Audit of qualitative data is unlikely to be proportionate since it is likely to be a substantial exercise which imposes significant compliance costs on participants. The benefit of an audit is minimised by the fact that we are unlikely to propose that specific methodologies be applied. The Act also has enforcement provisions that should provide a degree of quality assurance.

206. MBIE's preferred option is to require an annual director certification. This is a proportionate option as participants can develop internal quality assurance processes so that directors are comfortable providing annual certification to agencies.

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups	We expect the fuel companies to incur medium one-off costs in setting up systems to retain and disclose information.	Medium.	Low.
Regulators	The regulator will incur medium costs from monitoring and enforcing the regime.	Medium.	Low.
Others (e.g. wider govt, consumers, etc.)	Some of the increased costs to regulated parties may be passed on to consumers in higher fuel prices. This is likely to be a small amount spread over a large number of customers.	Low.	Low.
Total monetised costs	*Without accurate quantifiable evidence, it is not possible to provide an estimate.*	*Unknown.*	*Unknown.*
Non-monetised costs	*We anticipate a medium increase in overall costs, mainly from compliance and enforcement.*	*Medium.*	*Low.*
Additional benefits of the preferred option compared to taking no action			
Regulated groups	Regulated parties improve their information gathering and retention processes.	Medium.	Low.
Regulators	The regulator will have better information to monitor the sector which will enable more effective intervention	Medium.	Low.

	in the future, if necessary.		
Others (e.g. wider govt, consumers, etc.)	Consumers benefit from stronger competition through lower prices, better services and more convenience which arise because the regulator is better equipped to respond quickly to market information.	Low.	Low.
Total monetised benefits	*Without accurate quantifiable evidence, it is not possible to provide an estimate.*	*Unknown.*	*Unknown.*
Non-monetised benefits	*We anticipate a medium level of benefits from increased competition and more transparency in the fuel sector over the longer term.*	*Medium.*	*Medium.*

207. Reduced profitability of the major fuel companies may lead to reduced incentives to invest and rationalisation of fuel supply in high cost regions. Moderate to low impact. This is minimised by the preferred options focusing on avoiding imposing unnecessary costs on suppliers while promoting the purpose of information disclosure.

208. In the absence of reliable quantitative information, non-monetised costs and benefits impacts have been identified by taking into account submissions and consideration of other information disclosure regimes.

Section 3: Delivering an option

How will the new arrangements be implemented?

209. The Commission is responsible for enforcement of the Act and regulations. The Act also allows for information to be shared between the Commission and MBIE.

210. In addition to requirements to retain and disclosure information, section 26(3) allows MBIE or the Commission to specify the form and manner that the information must be disclosed. Industry are supportive of this approach. The Commission has indicated that it is likely to consult with industry on form and manner prior to the end of the year.

211. The regulations come into force on 11 February 2021. The Commission has published an open letter to the industry to remind parties of the requirements under the Act, when they come into force, explanation of the Commissions role and

approach. The Commission also anticipates providing guidance to industry at some stage in the future.

212. Budget 2021 has approved additional funding for the Commission to fund its activities under the Act, including monitoring under the information disclosure regime.

How will the new arrangements be monitored, evaluated, and reviewed?

213. It is envisaged that information disclosure regulations and the other regulations under the Act would be reviewed on a periodic basis, the first being after it has been in effect for a suitable period (e.g. two to three years). This information disclosure monitoring regime will help to identify issues and enable earlier amendment of the regime if required. Stakeholders will be able to raise concerns directly with MBIE or Ministers.

Appendix A: Preferred disclosures and preferred circumstances in which information should be disclosed

#	Information that must be recorded and retained	Kinds of fuel industry participants	Circumstances in which information must be disclosed
	Fixed wholesale contracts, switching and multi-sourcing		
1	All fixed wholesale contracts in force on 1 September 2022.	Fuel importers (which currently includes, BP, Mobil, Z Energy, Gull and Tasmanfuels) where they are the suppliers in the arrangement.	1 September 2022.
2	Any new fixed wholesale contracts entered into during the financial year.	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
3	The following key provisions in each in force fixed wholesale contract: • parties, commencement date, term; • pricing methodology; • prescribed minimum volumes; and • termination periods, right of renewal, rights of first refusal, restraints on trade, liquidated damages clauses, exclusive territories.	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
4	All fixed wholesale contracts in force at the time the fixed wholesale contract provisions in the Act come into force and onwards.	Fuel importers where they are the suppliers in the arrangement.	To retain the wholesale contracts and disclose when requested by the Commission.
5	The offers and bids made over the year by the wholesale supplier, even if unsuccessful, to supply fuel by way of fixed wholesale contract with associated fuel volume, price, name of resellers.	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
6	Instances of expired or terminated fixed wholesale contracts (including when the right to terminate in section 17 of the Act has been exercised).	Fuel importers where they are the suppliers in the arrangement.	Annually - 1 September following the financial year ending 31 March.
	Profitability		
7	Where a fuel importer, wholesale supplier, or distributor supplies engine fuel under a wholesale contract and/or engages as a retailer of engine fuel, and has any subsidiaries or is a subsidiary, group financial statements may be disclosed. However, where the participants has no subsidiaries or is not a subsidiary, financial statements should be disclosed.	All fuel importers and wholesale suppliers, including those: - that have an overseas parent company; and/or - are a parent company or subsidiary that engages in wholesale and/or retail supply. All distributors, including those: - that have an overseas parent company; and/or - are a parent company or subsidiary that that engages in retail supply.	Annually - 5 months after the participant's balance date.

	These financial statements should be prepared in accordance with other applicable statutory obligations.		
	Gross margins		
8	Daily revenue, volume and volume weighted daily price on a cpl basis for each fuel type sold by each terminal and purchaser, that identifies: • the fuel type; • each purchaser and identification of whether the purchaser is ETS registered; • whether the fuel was sold under TGP at the terminal; • whether the fuel was sold under fixed wholesale contracts at the terminal; and • whether the fuel was sold at the terminal that does not fall under the preceding two categories.	Fuel importers that sell fuel at bulk storage facilities, and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
9	TGP offered for the fuel types subject to the TGP regime and the date and time that the offer became valid (regardless of whether any fuel was sold).	Fuel importers that have a right to draw at bulk storage facilities for the fuel types sold under TGP, and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
10	Requests refused for supply under the TGP regime and • identity of the reseller who made the request • the date and time of the request • the date of refusal to supply • the relevant specified fuel and bulk storage facility • the amount of specified fuel that was requested; and • the grounds for refusal to supply.	Fuel importers that have a right to draw at bulk storage facilities for the fuel types sold under TGP, and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
11	Throughput fees in place per terminal on a cpl basis for each fuel, and where relevant to whom the fee(s) were charged and the associated fuel volumes.	Fuel importers that sell fuel at bulk storage facilities and are the sellers in the transaction.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
12	Total annual importer costs incurred, including individual costs for the following: • crude costs; • refinery costs (where relevant); • imported refined product; • costs to ship to New Zealand; • wharfage and handling; • additives used in the blending process; and	Fuel importers.	Annually - 1 September following the financial year ending 31 March.

	• insurance and losses. Explanation of the methodology that was used to estimate each cost.		
13	Import parity formula (if relevant).	Fuel importers.	Annually - 1 September following the financial year ending 31 March.
14	Refinery Auckland Pipeline costs per month. Explanation of the methodology that was used to estimate this cost.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
15	Annual domestic shipping costs on national basis. Explanation of the methodology that was used to estimate this cost.	Fuel importers.	Annually - 1 September following the financial year ending 31 March.
16	Volumes of fuel self-supplied to the fuel industry participant's retail fuel sites, by each fuel type.	Fuel importers that operate or own retail fuel sites.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
17	The last standard retail price of the day, on a cpl basis, for each fuel at each retail fuel site.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
18	The discounts offered by the participant each day on cpl basis for each fuel and at each retail fuel site.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
19	Daily volume of each fuel sold from each retail fuel site.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
20	Quarterly revenue per fuel sold.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
21	Distance (km) between each bulk storage facility and retail fuel sites they predominately supply.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
	Discounting and loyalty programmes		
22	Explanation of the two largest discounting practices, including the name of the discount, (if relevant) the conditions on claiming the discount, date the practice	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer	Annually - 1 September following the financial year ending 31 March.

	became available and the date that any previously reported practices ceased and the amount of the discount offered to end-users on a cpl basis.	owned retail fuel sites which they supply and set the price for.	
23	Explanation of the two loyalty programmes that has the highest uptake, including the name of the loyalty programme, (if relevant) the conditions on claiming any benefit, the type of the benefit offered to end-users, date the practice became available and the date that any previously reported practices ceased.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually – 1 September following the financial year ending 31 March.
24	Explanation of discounting partnerships with third parties, including the dates that the partnerships became available and any partnerships that any previously reported partnerships ceased.	Fuel importers that operate or own retail fuel sites. Fuel importers to also provide this information about dealer owned retail fuel sites which they supply and set the price for.	Annually – 1 September following the financial year ending 31 March.
	Fuel supply		
25	Monthly fuel supply to each bulk storage facility for each fuel, that identifies whether the fuel was: • supplied by a fuel industry participant part of infrastructure sharing arrangements; • supplied by a fuel industry participant, that has been imported as refined fuel; and • supplied by a fuel industry participant, that has been refined in New Zealand.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
26	Monthly fuel withdrawn from each bulk storage facility for each fuel.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
27	Actual month-end volumes at each bulk storage facility (litres) for each fuel.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
28	Total storage capacity for each fuel, that takes into account tank outages and maintenance, at each bulk storage facility and nationally and reasons for changes in capacity.	Fuel importers.	Annually - 1 September following the financial year ending 31 March.
29	Forecast monthly demand for each month in the following quarter.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
30	In the event of a rationing event, identification of whether it was at a terminal or port level, the dates it began and ended, why the event occurred, how fuel was rationed and which fuel it applies to.	Fuel importers.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.
31	All retail fuel site addresses supplied by the participant, and new retail fuel sites supplied or retail fuel sites where supply has been discontinued.	Fuel importers, wholesale suppliers and distributors that have retail fuel sites. Fuel importers, wholesale suppliers and distributors to provide this information about dealer owned retail fuel sites they supply and set the price for.	Quarterly - 30 working days after the end of each quarter during the financial year ending 31 March.

32	Total annual volume of each fuel type supplied.	Fuel importers, wholesale suppliers and distributors that have retail fuel sites. Fuel importers, wholesale suppliers and distributors to provide this information about dealer owned retail fuel sites they supply and set the price for.	Annually - 1 September following the financial year ending 31 March.
	Quality assurance		
33	Director certification having made all reasonable enquiry that the disclosures made over the course of the year comply in all material respects with the information disclosure regulations.	Fuel industry participants that are subject to information disclosure requirements.	Annually - 1 September following the financial year ending 31 March.