Low Aromatic Fuel Bill 2012

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Glossary

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<td>ULP or RULP</td>
<td>Regular unleaded petrol with a research octane number (RON) of at least 91.</td>
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<tr>
<td>PULP</td>
<td>Premium unleaded petrol with a RON of at least 95.</td>
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<td>LAF</td>
<td>Low aromatic fuel – regular ULP containing less than 5 per cent aromatic compounds.</td>
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<td>Aromatic compounds</td>
<td>A class of hydrocarbon chemical compounds with chemical similarities to benzene. Usually present in automotive petrol. Examples include benzene, toluene and xylene. Although toxic, inhalation has a narcotic effect.</td>
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The Bills Digest at a glance

What is the current situation?

The voluntary sale of low aromatic fuel (for example, Opal) in place of regular unleaded petrol (RULP) forms part of a comprehensive Petrol Sniffing Prevention Program, introduced in 2005 to eliminate the devastating impact of petrol sniffering. This strategy and its programs are administered by various organisations and the introduction of low aromatic fuel continues to be subsidised by the Government. Concerns raised regarding the use of low aromatic fuel on engines have been allayed.

What needs to be done?

Although the data to date demonstrates a high rate of success, the program is voluntary and therefore not comprehensive. Accordingly, there is an urgent need to close ‘the coverage gap’ to achieve the desired results. The issue of premium unleaded petrol (PULP) is another looming ‘gap’. Although it is not currently a significant problem, PULP, which does not have a low aromatic alternative, may also be sniffed. Taking into account stakeholder views, Senate Community Affairs Committee Reports of 2009 and 2012, recommend legislative action to close any ‘coverage gaps’.

What has been done?

Believing that the time to act on this measure is now –the Australian Greens introduced this Bill on 1 March 2012, to give the federal Health Minister the power to prevent service stations from selling RULP in designated areas of concern.

Following the release of the 2012 Senate Community Affairs Legislation Committee Report on the Bill, 25 government and two Australian Greens amendments have been made to address the major Committee concerns and recommendations. These include:

• expanding the constitutional basis of the Bill and directly recognising Aboriginal persons and Torres Strait Islanders throughout
• providing clearer definitions as well as allowing for the future regulation of other fuels
• requiring consultation with the states and territories in certain circumstances (such as when determining a designated fuel control area) to ensure a consistent and coordinated national approach and
• recognising the role of manufacturers as part of the prescribed consultation process.

What will this amended Bill do?

The Bill will prohibit the use of RULP in designated low aromatic fuel areas. It will also provide for the future regulation of other fuels in designated fuel control areas by way of legislative instrument if and when the need arises. The aim of the Bill is to reduce the potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in certain areas, from sniffing fuel.

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Low Aromatic Fuel Bill 2012

Date introduced: 1 March 2012

House: Senate

Portfolio: Private Senator’s Bill

Commencement: On the day this Act receives the Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Low Aromatic Fuel Bill 2012 (the Bill) is to prohibit the supply by a corporation of regular unleaded petrol in low aromatic fuel areas and to allow for the regulation of other fuels in low aromatic and fuel control areas.

Progress of the Bill

During the second reading debate of this Bill in the Senate, 25 government and two non-government amendments were made to the Bill. The major amendments are directed at making the Bill a special measure for the purpose of section 8 of the Racial Discrimination Act 1975 as well as ‘providing clarity on a number of issues to facilitate the clearer administration of the Bill.

Structure of the Bill

The Bill is divided into five parts:

Part 1—Preliminary— contains the commencement provisions, the dictionary, the object and application of the Act.

Part 2—Requirements relating to fuels for low aromatic fuel areas and fuel control areas— comprises three divisions outlining requirements relating to regular unleaded petrol (RULP) in low aromatic areas (Division 1 of Part 2 of the Bill) and (by way of legislative instrument) low aromatic

1. Senator Siewert on behalf of the Australian Greens moved seven amendments to the Bill during the second reading debate [sheet 7289]. Amendments 1-5 were withdrawn on 27 November 2012. The remaining two amendments were passed by the Senate as a whole. The amendments and can be viewed at: http://parlinfo.aph.gov.au/ParlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs870%22

2. These amendments addressed a number of the recommendations made by the Senate Community Affairs Committee in its Report on the Bill. The effect of these changes is included in the discussion of ‘Key issues and provisions’ as well as under the heading of ‘Provisions’. The amendments can be viewed at: http://parlinfo.aph.gov.au/ParlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs870%22

3. Supplementary Explanatory Memorandum to the Bill, pp. 1-2.
fuels and fuel generally in low aromatic fuel and fuel control areas (Divisions 2 and 3 of Part 2 of the Bill respectively).

**Part 3—Designating low aromatic fuel areas and fuel control areas**— allows the Minister to designate these areas if satisfied of certain things following appropriate consultation and if other specified conditions are satisfied.

**Part 4—Exemptions from requirements of this Act**—allows the Minister to ‘exempt specific conduct from one or more of the requirements that would otherwise apply under Part 2 in relation to a low aromatic fuel area or a fuel control area’.4

**Part 5—Miscellaneous matters**—includes the regulation making power and the provisions for reviewing the operation of the Act.5

**Background**

**The alarm raised**

In the mid-1980s a number of inquiries highlighted the problem of petrol sniffing and substance abuse in remote Aboriginal communities.6 The range of measures subsequently put in place included locking petrol bowsers, and funding specific programs for petrol sniffers.7 Other initiatives followed. Through the 1980s communities experimented with adding to petrol the unpleasant smelling and vomit-inducing sulphur based chemical Ethyl mercaptan. In the early 1990s, Avgas was used in many remote Indigenous communities as a substitute for petrol. Avgas was an aviation fuel made by BP which had significantly less aromatic hydrocarbons than regular petrol and was therefore not as attractive to sniffers. However, in 1998 the Australian Government increased the tax on Avgas when used for non-aviation purposes, making it considerably higher in price than regular unleaded petrol.8

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4. Clause 3 of the Bill.
5. Guide to this Act, Clause 3 of the Bill. It is noted that government amendments 1-4 have been applied to this Guide.
The Comgas scheme and Avgas

In the late 1990s the Australian Government established the Comgas scheme through which it subsidised the replacing of regular petrol with Avgas for registered remote communities in the Northern Territory and South Australia. A report commissioned by the Department of Health and Ageing found that the Comgas scheme was ‘a safe, effective and popular intervention’ and should be continued. Avgas did, however, have a high lead content and its suitability in motor vehicles was questioned. In the foreword to that report it was announced by the then Minister for the Health and Ageing, Tony Abbott, that his Department would work with the Department of the Environment and Heritage and the petroleum industry to explore opportunities to develop an unleaded alternative fuel to Avgas for use in the scheme.

The Petrol Sniffing Prevention Program and Opal fuel

In February 2005 the Government replaced the Comgas scheme with a new Petrol Sniffing Prevention Program (PSPP) which subsidised the distribution of a new low aromatic fuel developed by BP Australia Pty Ltd (BP Australia). The new fuel was called Opal and did not have the tetra-ethyl lead contained in Avgas.

In 2005 the Australian Government incorporated the PSPP as point four of its new eight point whole-of-government Petrol Sniffing Strategy (PSS).

By early 2006 there were 66 sites in Central Australia where Opal fuel replaced regular fuel. By 30 April 2010 there were 129 sites receiving or registered to receive Opal fuel across regional and remote Australia (80 communities and 37 service stations/roadhouses, seven supporting organisations and five pastoral properties). Further roll-out followed with, for example, the fuel

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becoming available in the Goldfields region of Western Australia from early May 2011. Between 2005 and 2011, it is estimated that more than 2.4 million fills were sold across Central Australia.

**Reports 2006–2010**

Between 2006 and 2010 many relevant studies were conducted into Opal fuel.

**Senate Community Affairs Reports**

In June 2006 the Senate Community Affairs Committee released its first report on the subject, *Beyond petrol sniffing: renewing hope for Indigenous communities* in which it was noted that:

Petrol sniffing causes devastation in Indigenous communities. The health impacts include chronic disability and the social impacts include violence, crime and the breakdown of community structures. Tragically, young Indigenous people are dying as a result of petrol sniffing.

For over twenty years petrol sniffing has been the subject of many reports, reviews, coronial inquiries and research projects. The reasons why young Indigenous people sniff petrol, the disruptive impact on Indigenous communities, and the severe health implications for individuals are well known and have been repeatedly addressed in all of the reports. In fact, the evidence received by the Committee echoed the research already undertaken and again pointed to the multiple causes of petrol sniffing including hunger and poverty, boredom and a lack of meaningful employment opportunities.

The lack of progress in implementing recommendations contained in these reports has created much frustration and despair in communities. Evidence from Indigenous community members indicates persistent unsafe conditions for adults and children. The Committee believes that petrol sniffing in Indigenous communities has become so destructive and the need to find effective solutions is so urgent that the Council of Australian Governments must take responsibility for initiatives that address petrol sniffing.

The Committee recommended that state and territory governments urgently work more closely together on a holistic response to the problem.

**Other Reports**

There followed in 2007 and 2008 several reports offering encouraging support for the Opal fuel strategy. These included:

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15. The Department of Health and Ageing web-page can be viewed at:


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• baseline data on petrol sniffing from 74 remote Aboriginal communities collected by James Cook University\(^{18}\)
• an independent analysis of the fuel specifications of unleaded Opal fuel conducted by specialised fuel analysis company, Intertek Testing Services (Australia)\(^{19}\)
• a review by SWB Consulting of technical reports produced for BP Australia about the effects of Opal fuel on vehicle performance, durability, drivability, efficiency and emissions\(^{20}\) and
• an evaluation conducted by James Cook University on the impact of Opal fuel since its introduction in 2005, which found that Opal fuel helped prevent petrol sniffing in communities.\(^{21}\)

In March 2009 the Senate Community Affairs Committee released its second report on the subject, *Grasping the opportunity of Opal: assessing the impact of the Petrol Sniffing Strategy*.\(^{22}\) Besides covering developments since the last Senate inquiry, highlighting the success of Opal, and investigating technical problems to do with low aromatic fuel production capacity, costs, subsidies, storage and distribution, the report canvassed legislative options for controlling the supply of fuel and other volatile substances:

> Given the continuing resistance to Opal fuel by some retailers across all jurisdictions in central Australia, the committee recommends that the Commonwealth government complete, as a matter of priority, the necessary work to determine whether legislation is both possible and practicable.

> If these retailers do not voluntarily agree to supply Opal within 6 months, and if it is established that there are no legal impediments to the implementation of Commonwealth legislation, the Commonwealth government should immediately commence the drafting of legislation to mandate the supply of Opal fuel within the petrol sniffing strategy zone.\(^{23}\)

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SACES cost/benefit analysis

Further to the issue of legislation, in June 2009, the Department of Health and Ageing commissioned the South Australian Centre for Economic Studies (SACES) based at Adelaide and Flinders Universities to produce a cost benefit analysis of legislation to mandate the supply of low aromatic fuel in regions of Australia. The report evaluated a range of factors in determining the costs and benefits of a legislated approach to petrol sniffing and found that the benefits of mandating Opal fuel outweighed the cost. It found that there had already been a significant reduction in sniffing during the first years of the Opal rollout and that although the dataset was small and did not disaggregate all the potential contributing elements, low aromatic fuel appeared to have been the major factor contributing to the reduction in sniffing. It estimated that a ban on RULP and controls on the sale of Premium Unleaded Petrol (PULP) would lead to a further 80 per cent reduction in sniffing. The report found that the benefits of legislation that prohibited RULP in the analysis area exceeded the costs by $780 million. Indeed, SACES found that a ban on RULP would still ‘have a net benefit so long as it reduced sniffing by at least 19 per cent from current levels.’

Government response

In June 2010 the Commonwealth Government released its response to the two Senate Community Affairs reports. In this response the Government noted that the Opal roll-out had achieved:

... a demonstrated decrease in petrol sniffing in regional and remote communities. The Evaluation of the Impact of Opal Fuel, completed in 2008-09, measured a 70 per cent reduction in petrol sniffing across the sample communities between baseline and follow up data collections.

The Government, in responding to the 2009 Committee’s Recommendation 5, did not undertake to proceed with mandating the supply of Opal, but undertook to do more to strengthen the voluntary roll-out, improve communication with retailers, assess why some retailers refuse to be part of it, and collect information that:

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25. Senate Community Affairs Legislation Committee, *Low Aromatic Fuel Bill 2012*, report, op. cit., pp. 5-7. The report found that under the current voluntary scheme, the amount of Opal fuel substituting for regular unleaded petrol (RULP) would rise between 2009/10 and 2012/13 by only 9 megalitres from 22.4 to 31.8, while under a scheme that banned RULP the amount of Opal being sold would rise by 64.7 megalitres to almost reach the 100 megalitres capacity limit of Kwinana Refinery. For more details of the SACES report findings follow the link in the above footnote to the report and see the ‘financial implications’ section in this Bills Digest.


27. Ibid., pp. 3-4.

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will be used by the government to inform future decisions regarding the value of an additional legislative approach once the full voluntary roll out of Opal fuel has occurred in 2012-13. 28

For a comprehensive review of all the above developments since the 1970s, and for observations on the situation in South Australia in particular, see the article on ‘Opal fuel: mandating its supply in certain locations.’ 29

The Budget commitment to the program 2010–2012

In the May 2010 Budget the Commonwealth Government committed an additional $38.5 million over four years to expand the Opal rollout and reduce petrol sniffing in Indigenous communities, bringing the total commitment to support the rollout to $84.8 million over four years commencing in 2010–11. At least 39 additional fuel sites were to be able to supply low aromatic fuel, an anticipated benefit to a further 11 Indigenous communities. In June 2012 the Department of Families, Housing, Community Services and Indigenous Affairs web-site declared:

The Australian Government has provided $86.3 million for implementation of the Petrol Sniffing Strategy since 2005. This funding has supported a wide range of activities, including:

- the rollout of Opal fuel, as a highly effective supply reduction measure (an evaluation of the impact of Opal fuel completed in 2008-09 measured a 70 per cent reduction in petrol sniffing across the sample communities between baseline and follow up data collections)
- a crackdown on trafficking of petrol and other substances through improved intelligence gathering and policing activities
- the strengthening of vulnerable communities through the provision of targeted youth diversion activities, treatment and rehabilitation support, family and community development services and local infrastructure projects.

In addition to the further rollout of Opal fuel, the Australian Government will continue to identify opportunities to consolidate and expand development and implementation of programs that address the debilitating effects of petrol sniffing and other substance abuse amongst young Indigenous Australians living in communities of high need, particularly in remote locations. These opportunities will be developed in the context of important reforms the Government is currently putting in place to improve the way governments work with Indigenous people, through strengthening local service planning processes and fostering more effective working relations with state and territory governments.

The Government also spoke of the close co-operation between different federal departments, levels of government and other stakeholders that was underpinning the Petrol Sniffing Strategy and declared that:

28. Ibid., p. 33.

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Key achievements of the Petrol Sniffing Strategy to date include:

- the roll-out of Opal fuel to 106 sites across regional and remote Australia
- development of Guidelines for the Responsible Sale of Premium Unleaded petrol
- a significant expansion in youth services and activities across the PSS zones
- construction of 11 new houses and 3 temporary accommodation duplexes to support the employment of youth workers in high need PSS communities
- construction of a new recreation hall in Finke and the refurbishment of two halls in Docker River and Imanpa NT to support the delivery of youth services and recreational activities
- substantial reductions in the trafficking of petrol, illicit drugs and alcohol across the PSS Zones through the Alice Springs, Katherine and Marla Substance Abuse Intelligence Desks (SAIDs) and Dog Operation Units located in Alice Springs, Katherine and Darwin.
- improved support to local communities in dealing with anti-social behaviours resulting from petrol sniffing, through the development of restorative justice conferencing models, and
- establishment of diversionary education projects that provide off-school learning activities, mentoring and pathways back into school, training and/or employment for Indigenous youth affected by petrol sniffing and other substance abuse.  

Consistent with the above, the Commonwealth provided the Senate Community Affairs Legislation Committee’s *Inquiry into the Low Aromatic Fuel Bill 2012* with the information that:

As at 1 July 2012, there are 123 sites receiving low aromatic fuel throughout regional and remote Australia. These sites include 74 communities; 40 service station/roadhouses; and 9 other businesses/supporting organisations. Of the 123 sites, 67 are within the designated zones and 56 are outside the zones.

A chronology of major reports and developments on this subject is at Appendix 1 and information on why aromatic compounds are found in petrol is at Appendix 2.

**Committee consideration**

**Senate Standing Committee for the Scrutiny of Bills**

This Bill was considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) in its *Alert Digest No. 3 of 2012*, dated 14 March 2012. The Scrutiny of Bills Committee raised concerns about the possible:


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• trespass on personal rights and liberties, reversal of onus (subclauses 8(4), 10(2) and 12(2)) and
• inappropriate delegation of legislative power (clauses 11 and 12).

Reversal of onus

In relation to subclauses 8(4) and 12(2) of the Bill\(^3\), the Committee noted that:

> It is likely to be the case that circumstances relating to both of these exceptions are matters which can be said to be peculiarly within the knowledge of the defendant, though it is regrettable that the explanatory memorandum does not address the question.

The Committee further noted that:

> The same issue also arises in relation to subclause 10(2) in relation to an offence of failing to comply with requirements determined by legislative instruments and subclause 12(2) in relation to general fuels requirements.

As it appears that the provisions relate to matters which can be said to be peculiarly within the knowledge of the defendant, the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.

Delegation of legislative power

The Scrutiny of Bills Committee raised the concern that the offence provisions under clauses 11 and 12 of the Bill may inappropriately rely on non-compliance with delegated legislation, rather than primary legislation.\(^4\) The Committee noted that:

> There may be reasons that justify enabling these important requirements in regulations rather than including them in the primary legislation.

However, as the explanatory memorandum does not address the justification for setting out the content of an offence in a legislative instrument, the Committee seeks the Senator’s explanation as to why the proposed approach is justified.

Senator Siewert responded to the concern noting that the requirements relating to a fuel control area are likely to be tailored to an individual area and may need to change over time. ‘For this

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\(^3\) Under subclauses 8(4) and 12(2) of the Bill, if a corporation engages in conduct that is exempt under clause 17 of the Bill and satisfies any conditions of the exemption (paragraphs 8(4)(a) and 12(2)(a)) or engages in conduct to comply with a direction or order under an emergency law (paragraph 8(4)(b) and 12(2)(b)) the corporation does not commit an offence under clause 8 or 11 of the Bill respectively.

\(^4\) Clause 11 of the Bill empowers the Minister to determine requirements relating to the supply, transport, possession or storage of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area. Contravention of a requirement made under clause 11 constitutes an offence pursuant to clause 12 of the Bill.

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reason it is considered appropriate for the requirements ... to be included in the regulations (rather than the Act) to provide for the necessary flexibility.  

Joint Parliamentary Committee on Human Rights

As at the 4 February 2013 the Joint Parliamentary Committee on Human Rights (Human Rights Committee) had not yet reported on this Bill.

The Senate Community Affairs Legislation Committee

On 10 May 2012, the Senate referred the Bill to the Senate Community Affairs Legislation Committee (the Committee) for inquiry and report by 21 September 2012. The final report was tabled in the Senate on 26 September 2012.

Details of the inquiry and report are at:


The Community Affairs Legislation Committee majority recommendations are as follows:

Recommendation 1

2.36 The committee recommends that the government release an interim report based on the first round of data collection being undertaken by the Menzies School of Health Research.

Recommendation 2

4.62 The committee recommends that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power.

Recommendation 3

4.77 The committee recommends that the government consider whether legislation should define more narrowly the fuels to which the bill would apply, but accepts that there should be capacity to regulate the management of premium fuel in some circumstances.

Recommendation 4

35. Senate Standing Committee for the Scrutiny of Bills, Eighth report of 2012, the Senate, Canberra, 15 August 2012, p. 315, viewed 4 February 2012,


36. Journals of the Senate, 10 May 2012, p. 2424, viewed 6 February 2013,


38. Senate Community Affairs Legislation Committee, inquiry webpage, viewed 5 February 2013,


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4.83 The committee recommends that there be further examination of the wording of the explanatory memorandums, consultation and exemption clauses, to ensure that fuel manufacturers are properly included, and the bill does not have unintended consequences in the event of supply bottlenecks or disruption.

Recommendation 5

4.86 The committee recommends that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of low aromatic fuel to ensure that there is agreed and coordinated action to address petrol supply.

Recommendation 6

4.87 In light of the preceding matters, the committee recommends that the current bill not be proceeded with.39

Recommendation 7

5.14 The committee recommends that the Australian government conclude as soon as practical a subsidy review that covers production of up to 100 million litres per annum of low aromatic fuel.40

Further references to Recommendations 2-5, as well as the Committee consideration of key issues occur under the relevant sections of this Bills Digest.

Policy position of non-government parties/independents

The Australian Greens

The Australian Greens introduced this Bill to progress the efforts to eradicate petrol sniffing in line with the 2009 Senate Committee recommendations.41

Senator Siewert has stated that:

“This voluntary roll-out of low aromatic fuel has been very successful in many areas.

However, it has been known for many years that the approach is failing in some areas. The Senate Community Affairs Committee in 2009 recognised the need for a legislative response to target areas where the voluntary roll-out had not succeeded in preventing access to sniffable petrol.”42

39. As noted under the heading ‘Progress of the Bill’, the Government and Australian Greens amendments to the Bill have addressed the major Committee concerns that led to recommendation 6— that the current Bill not be proceeded with.


42. See Footnote 23 which outlines recommendation 5 contained in the report of the 2009 Senate Community Affairs Committee. This recommendation recognised the need for legislative action as referred to in the text relating to this footnote.

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Six months passed and nothing was done. It is now over three years since that report, and petrol sniffing continues to plague some communities, while others have been freed of this scourge. The Australian Greens have introduced the current bill because the government failed to act on the committee’s 2009 unanimous recommendation.\(^{43}\)

Also in this minority report, the Australian Greens further stated their preparedness to consider amendments to either the Bill or explanatory memorandum in response to Committee Recommendations 3 and 4 but suggested the further consultations called for in Recommendation 5 could lead to further inaction. They also argued that potential storage and supply problems, the need to complement voluntary roll-out and the need to prioritise zones, expressed in the main report and alluded to in Recommendation 6, should not count against passing the Bill as:

- This bill does consider storage and supply issues: it requires the minister to consult on these matters, explicitly setting as one of the criteria: ‘the availability of low aromatic fuel in relation to the area’.

- This bill does complement voluntary roll-out. Where voluntary roll-out is succeeding, no action need be taken under the bill, and the voluntary scheme could remain in place.

- This bill can prioritise petrol sniffing strategy zones. The Minister, in consultation with the communities and other stakeholders affected by the legislation, determines what areas might be declared under the bill. These could well be the current strategy zones.\(^{44}\)

The Australian Greens also expressed their belief that the corporations power should be sufficient to underpin the legislation.\(^{45}\)

**Coalition**

The Coalition has publicly criticised the use of Commonwealth legislation in this area at this time. Bill. The Coalition is instead promoting the use of uniform state and territory legislation as its preferred alternative solution to this problem.\(^{46}\)

Senator Scullion, Shadow Minister for Indigenous Affairs\(^{47}\), is quoted, in his media release of 12 November 2012, as saying that ‘...the Low Aromatic Fuel Bill is not workable’ and that ‘every stakeholder acknowledges this issue would be better handled at a state and territory level’.

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44. Ibid., pp. 60-61. 
45. Ibid., p. 58. As noted above, the Majority report included the recommendation that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power. See recommendation 2 of the final report.
   http://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2b9ca8e4-8d70-4adc-bf67-4957c4324281%2F0178%22
47. N Scullion (Shadow Minister for Indigenous Affairs), *Labor backflip won’t stop petrol sniffing*, media release, 22 November 2012, viewed 6 February 2013,
He also states that he has been in discussions with the Northern Territory Chief Minister and Northern Territory Health Minister about minor changes to the Northern Territory *Volatile Substance Abuse Prevention Act*, which would then be used as an effective framework for other states like WA, QLD and SA to adopt.

From the second reading debate on this Bill it appears that the Northern Territory Act is currently being amended.48

### Position of major interest groups

Twenty submissions were received from a variety of sources, including Gilbert + Tobin Centre of Public Health, Shell Australia and BP Australia, the Central Australian Youth Link Up Service (CAYLES) and the Australian Government.49

Generally submitters expressed overall support for the policy initiative and applauded the success of the measure. Furthermore,

4.3 The majority of submissions were deeply concerned that the actions of a few retailers that still supply RULP and do not stock low aromatic fuel has frustrated the comprehensive rollout of low aromatic fuel in affected regions for several years and in some cases more than five years.50

Accordingly, and as the Committee report notes:

4.5 A majority of stakeholder submissions were in favour of Commonwealth legislation for low aromatic fuel....51

In particular, Associate Professor Sean Brennan, Director, Indigenous Legal Issues Program at Gilbert + Tobin Centre of Public Law, stated that:

‘In general, the approach in the Bill, as far as it goes, appears legally sound.’

He further expanded on this point as follows:

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51. Ibid., p. 24, paragraph 4.5.
There are a number of features which contribute to the general legal soundness of the Bill. The prohibitions are expressed in clear and plain language. The Bill creates exceptions for emergency situations and where the Minister makes a reasoned determination that specific conduct should be exempted and is unlikely to impair the harm-reduction object of the Bill. Before making a determination that will have an impact on corporations and the wider community the Minister must reach a state of satisfaction about matters which are appropriate, clear and directly referable to the object of the legislation. The Minister must also consult appropriately. The Bill sensibly provides for periodic review and preserves the operation of compatible State and Territory legislation. \(^{52}\)

Other individual stakeholder comments about particular elements of the Bill have been referred to in the relevant section of this Bills Digest.

**The Oil Companies**

In their separate submissions to the Committee, Shell Australia and BP Australia both stressed their support for the policy underpinning the Bill—to reduce the potential harm to the health of people living in areas where petrol sniffing has occurred. However, they also raised concerns about:

- the mechanism for achieving the Bill’s outcome which they considered created a mandate \(^{53}\) for Opal fuel in designated areas and the impact that this would then have on community and stakeholder acceptance \(^{54}\) of any change to Opal fuel
- the obligations that would be imposed on suppliers under the proposed legislation—the extent to which companies may be required to promote and provide information \(^{55}\) and
- the broad powers set out under clause 11 of the Bill, which allow the Minister to determine the future regulation of other fuels including PULP \(^{56}\).

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54. Ibid., pp. 36-37 and p. 39. BP Australia stated that ‘significant time and resources are required prior to a launch of OPAL fuel into a community. Objectives of this stage include gaining community support and developing technical understanding in key stakeholders. BP Australia maintain that positive engagement of fuel distributors and retailers has been fundamental to the success of OPAL implementation’.
55. Ibid., pp. 36-37 and p. 39. BP Australia stated that ‘Shell does not support the proposal for companies to take on sole responsibility for consumer education. Shell sees that and fuel manufacturers and suppliers are a support to the Department on technical and fuel quality matters but that Government should take a leading role in consumer/community/customer education and the implementation of complementary initiatives to support health outcomes.’
56. Ibid., p. 39. In its submission to the inquiry, Shell Australia stated that: ‘Shell would like clarity over the right for companies to maintain the overall product mix on sites, including premium fuels which have previously not been affected by the roll out of Low aromatic 91.’ Shell Australia also noted that: ‘...a future mandate for Opal fuel may simply result in increased PULP availability.’
In relation to the mandating of fuel:

4.71 The Committee notes that the bill contains provisions for prohibiting the sale of RULP in designated zones and controls the storage and supply of other fuels such as PULP. While such provisions might essentially amount to a mandate for low aromatic fuel in prescribed regions, the committee sees that the bill does not mandate [emphasis added] the sale of low aromatic fuel. The decision to sell a low aromatic fuel would still be a commercial decision to be taken by the retailer.

In relation to the regulatory regime that may be imposed on other fuels, the Committee view is that:

4.76 If a regulatory regime were put in place, it would not be prudent to exclude premium fuel from its scope, in certain circumstances. However, the committee does not believe a case has been made that the legislation should have the scope to apply to every fuel including, for example, diesel or gas.

Further discussion of the concerns that the oil companies raised in relation to the obligations that may be imposed to provide and promote information and the possible future regulation of other fuels under clause 11 of the Bill is included under the headings ‘Key issues and provisions’ and ‘Other provisions’.

It is interesting to note that on 2 December 2012, the Minister for Indigenous Health, Warren Snowdon announced that Shell Australia would become a new supplier of low aromatic fuel to help support the expanded roll out in northern Australia.

Financial implications

The 2011–12 Budget provided $115.86m over five years for the roll out of Opal under the Petrol Sniffing Prevention Program, but if the ministerial power granted by this legislation were to be fully acted on and RULP to be banned and PULP controlled in the target area, the cost of subsidising Opal as a RULP alternative would increase. The best estimates available of the financial implications of a such an outcome are those offered in the South Australian Centre for Economic Studies’ January 2010 Report, Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia. This report was commissioned by the Australian Government Department of Health and Ageing, and as has already been noted in the Background section of this Digest, the costs that were found to be associated with a legislative ban on RULP and control of PULP were much less than the costs that were found to be associated with sniffing:

Costs of a ban on RULP and controls on PULP

If a ban on RULP was introduced in the analysis Area excluding Darwin, we estimate the 25-year present value of costs to be $319 million.

57. Subclause 9(1) of the Bill.
59. Ibid., p. 39. See also the Senate Community Affairs Legislation Committee, recommendation 3.
60. W Snowdon (Minister for Indigenous Health), New Supplier adds reach to low aromatic fuel rollout, media release, 3 December 2012, viewed 6 February 2013, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2086945%22

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The major costs of a ban on RULP relate to the production and distribution of Opal. If RULP were banned in the Analysis Area excluding Darwin, then in 25-year present value terms the extra production costs for Opal would be $172 million and the extra distribution costs $106 million. Consumers would spend an extra $12 million on premium, although taking into account the potential benefits of PULP the net extra costs would be $6 million. Consumers would also spend an extra $28 million on additives for use in marine engines. Costs of bowser upgrades would be less than $1 million.

These figures do not include the costs of any controls on the sale of PULP. Estimates of these costs indicate that they are relatively small in the context of the other costs and benefits in this analysis. Among the set of controls costed, the most expensive is a ban on the filling of small containers, with a $12 million cost in 25-year present value terms.

**Costs that arise from sniffing**

The 25-year present value of sniffing costs in the Analysis Area is $1,708 million, coming in the form of health costs, crime costs and impacts on labour market outcomes.

$1,014 million of this is costs to sniffers, mainly in the form of morbidity and mortality costs but also in lost earnings. $471 million is costs to government and $223 million is costs to the communities around sniffers. Among the health costs, the costs of presentations at hospitals and clinics that are attributed primarily to sniffing are actually quite small. These are all cases of acute symptoms that are attributed to sniffing. Longer term chronic conditions will not be attributed to sniffing in Australian diagnostic coding. However, we attributed a fraction of leukaemias to sniffing and included them in our health cost estimates. 61

**Key issues**

As highlighted in the various reports on this subject, even though the introduction of low aromatic fuel to address petrol sniffing is hailed as a success, the realisation of its benefits is being hampered by the ‘coverage gap’. Accordingly, the key issue is whether this Bill represents the most appropriate response to close this gap now.

A related issue is the use of PULP and the potential for PULP’s availability to negate the benefits of using low aromatic fuel.

Secondary issues arising from the proposed introduction of Commonwealth legislation to close this ‘coverage gap’ are also addressed.

**The success of OPAL in addressing petrol sniffing**

In its report on the Low Aromatic Fuel Bill 2012 the Community Affairs Legislation Committee observed that:

The story of the manufacture and distribution of low aromatic fuel in central Australia, to substitute for sniffable fuel, is a story of spectacular policy success. It is a rare and precious achievement in the challenging field of Indigenous health policy. The initiative has involved a partnership between the private sector, including both large and small businesses, governments at all levels, non-government organisations, and Indigenous communities. This partnership has dramatically curbed the scourge of petrol sniffing, by over ninety percent in some places.

Despite the achievements to which the Government, the Senate Committee and stakeholders have rightly pointed, several issues remain of concern.

The ‘coverage gap’

One of the most pressing issues associated with efforts to curb petrol sniffing is the fact that the area covered by the Opal roll out falls short of covering the whole of the target area. The Senate Committee noted this problem, reporting:

Evidence from numerous Indigenous witnesses and organisations spoke about the fact that even though their own communities stocked low aromatic fuel, sniffable fuel was being obtained from retailers in proximity to those communities.62

Need for legislation to fill ‘the gap’

Stakeholders are of the view that:

4.6 A legislative approach that prohibited retailers in designated regions from selling RULP was seen as a necessary step towards closing the gaps in the current program. The voluntary scheme was deemed insufficient for dealing with the petrol sniffing that has been to the historical resistance of a few retailers to stocking low aromatic fuel.63

The Committee also noted that:

Evidence from community representatives confirmed the pattern already documented within the existing date on sniffing prevalence, firstly that huge reductions in petrol sniffing have occurred where low aromatic fuel has been comprehensively rolled out in a region, and secondly, that regions that still have access to sniffable fuels have high levels of sniffing.64

Even before the Senate Committee reported this problem was being raised by the press.65

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Current legislation

In 2006 the Northern Territory enacted legislation to attempt to reduce the harmful effects of the abuse of volatile substances such as petrol, paint and glue.66

The Committee examined whether the current regime—consisting of the Northern Territory legislation and the PSPP—provides a satisfactory mechanism for eliminating petrol sniffing or whether the introduction of Commonwealth legislation provides a better solution.67

Limitations

The Committee ‘sought evidence on whether [the NT] Act was sufficient to control petrol sniffing in the NT, and whether this model could be used in other jurisdictions to control petrol sniffing.’ The Committee Report notes that ‘the community examples given … demonstrate that the Act is insufficient to remove petrol sniffing.’68

It is noted above under the subheading ‘Coalition comments’ that it appears that the Northern Territory Government is in the process of making amendments to this Act to cover address the ‘coverage gap’ and other related issues associated with this measure to eradicate petrol sniffing.69

Impetus for introducing this Bill to address ‘the gap’

As noted above under ‘Policy position of non-government groups’, the Australian Greens introduced this Bill to progress this measure and address ‘this gap’ in line with the 2009 Senate Committee recommendations.70

Similarly, the Senate Community Affairs Committee in its report of September 2012 expressed the concern that the roll-out stalled. It noted that:

... in the three and a half years since its last inquiry, the Commonwealth communication strategy does not appear to have convinced those outlets still selling RULP within the PSS zones to switch to selling low aromatic fuel.

The committee also notes that an outlet that does not stock low aromatic fuel may not necessarily be refusing to stock it. Arc Vanderzalm from Wycliffe Well Holiday Park has advised the committee that, as at 18 July 2012, he has ‘never been asked to stock opal fuel’.71

66. Volatile Substance Abuse Prevention Act (NT)  


69. See footnote 47.

The Committee Report presented information provided to it by the Commonwealth which showed that nearly half of all service stations in targeted areas are still not supplying low aromatic fuel:

Table 2.1 Number of receiving sites and targeted sites for low aromatic fuel

<table>
<thead>
<tr>
<th>State / territory</th>
<th>No. of Sites Receiving</th>
<th>No of Sites targeted to receive low aromatic fuel (planned)#</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Territory</td>
<td>77</td>
<td>47</td>
<td>124</td>
</tr>
<tr>
<td>South Australia</td>
<td>14</td>
<td>6</td>
<td>20</td>
</tr>
<tr>
<td>Western Australia</td>
<td>26</td>
<td>18</td>
<td>44</td>
</tr>
<tr>
<td>Queensland</td>
<td>6</td>
<td>30</td>
<td>36</td>
</tr>
<tr>
<td>New South Wales</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
<td>101</td>
<td>224</td>
</tr>
</tbody>
</table>

Notes: # No. of sites targeted to receive (planned and potential sites) include sites that are currently refusing to supply low aromatic fuel. Source: Australian Government, submission 19, p. 2.

The Committee also noted that:

5.38 Proceeding with a legislative approach would, as the report to government by SACES pointed out, provide significant benefits including reduced harm to individuals, families and communities, lower health costs and increased productivity, over and above the costs of implementing the legislation. If the use of premium fuel increases significantly in affected communities, the cost and complexity of the policy could


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increase. For this reason, the committee believes that timing is critical and that an opportunity to finish the job should be grasped.\footnote{72}{Senate Community Affairs Legislation Committee, \textit{Low Aromatic Fuel Bill 2012}, final report, op. cit., p. 51.}

### Availability of premium unleaded petrol—another ‘gap’?

Like RULP, PULP is also sniffable. However, a low-aromatic substitute for PULP is not currently available. Although it is a relatively small number of vehicles, some cars (particularly European models and motorcycles) require the use of PULP. The use of a lower Research Octane Number (RON) regular unleaded in these engines (whether low or high aromatic fuel) can cause degraded performance and mechanical problems.\footnote{73}{International Energy Agency (IEA), \textit{Automotive fuels for the future – the search for alternatives}, OECD/IEA, Paris, 1999, p. 24.} A supply of higher-RON fuels is therefore necessary for those cars and motorcycles that require them, so the Bill does not explicitly prohibit the supply of PULP.

Although RULP continues to be the most popular fuel in Australia (see Figure 1 on page 26), the share of vehicles using PULP is increasing. However, this may not necessarily reflect the proportion of vehicles that require PULP exclusively. Many newer cars can properly use a variety of different fuel grades and some consumers may use PULP due to personal preference. Despite the increase in the use of PULP, only one of the ten top-selling cars in 2012 required the use of PULP (the Volkswagen Golf). All of the other cars could use regular 91 RON unleaded.\footnote{74}{Vehicle sales data taken from Drive website, viewed 6 February 2013, \url{http://canberratimes.drive.com.au/motor-news/record-car-sales-defy-gloom-20130104-2c83c.html}. Fuel requirements sourced from vehicle manufacturers’ websites.}

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Figure 1 - Type of fuel used in household’s main motor vehicle - 2006 to 2012 [Source: Australian Bureau of Statistics, Environmental Issues: Waste Management, Transport and Motor Vehicle Usage, Mar 2012, Cat no. 4602.0.55.002, Canberra, March 2012.

The Committee’s report on the Bill asserted that the availability of PULP in petrol-sniffing communities is not a serious problem, as most cars run on regular unleaded. However, it is possible that as the use of PULP in Australia increases, the availability of sniffable fuel in petrol sniffing communities may increase. The usual method for obtaining petrol for sniffing is reported to be by abstraction from the fuel tanks of motor vehicles, rather than purchase, so an increase in the number of petrol tanks containing PULP may act to counter reduced availability of sniffable RULP. As it stands, it is not clear that the Bill will effectively guard against this possibility.

Although the Bill does not prohibit the sale of PULP in designated low-aromatic or fuel control areas, Division 3 of the Bill provides that the Minister may:

... by legislative instrument, determine requirements relating to the supply, transport, possession or storage of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area. This provision allows for alternative controls to be implemented on any fuel, not just regular unleaded. Utilising this provision, the Minister could impose physical controls on the availability of sniffable PULP, such as requiring PULP bowsers to be locked, limiting fuel sale quantities, prohibiting PULP to be sold in portable containers, or requiring tanks containing sniffable fuel to be effectively sealed or locked.

Despite the possibility of these controls being implemented (noting that the Bill does not directly require any such controls to be implemented), sniffable PULP is likely to remain available in petrol-sniffing areas for the foreseeable future.

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76. Clause 11 of the Bill.

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A more effective solution to the problem of PULP would be the development of a low-aromatic high-RON fuel. The introduction of such a low-aromatic premium unleaded is not a technical impossibility. For example, the currently available fuel E85, which is a blend of petrol containing 70-85 per cent ethanol and 15-30 per cent regular unleaded, has a minimum RON of 100. If E85 was produced using low aromatic unleaded fuel, a non-sniffable high RON fuel would result. However, only a small number of vehicles are currently able to use E85 petrol. The challenge in producing a low-aromatic high RON fuel would be to formulate one that remained completely compatible with existing engines.

Although the issue of sniffable PULP remaining available in petrol-snothing communities is not currently considered a severe concern, “the rise of premium fuel could present an issue in future” The report of the Senate Community Affairs Committee on the Bill notes that a window of opportunity exists for dealing with the issue of petrol sniffing availability and that action taken now could avoid further problems.

We need to do this in a hurry and grab this window of opportunity, and we think mandating legislation is going to give us the best chance of grabbing the window.

The Bill contains no provisions directly requiring the Government to take any action to guard against the future increased availability of sniffable PULP. However, as outlined, the Bill provides a future mechanism for expanding the scope of the program. This would appear to address Committee Recommendation 3.

Other issues relating to the use of low aromatic fuel

Engine damage arising from low aromatic fuel

A persistent question associated with the use of low-aromatic fuel is whether it is safe for engines. The report of the inquiry of the Senate Community Affairs Community into the Bill makes reference to continuing anecdotal concerns that the use of low aromatic fuel will harm engines, particularly from tourists and others passing through remote areas.

These concerns may have arisen from earlier times (prior to the 2005 introduction of Opal), when aviation fuel (Avgas, also known as Comgas) was supplied to communities at risk of petrol sniffing under the Petrol Sniffing Strategy. Comgas contained high amounts of lead and there were reports

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79. Ibid., pp. 50-51.
80. CAYLUS representative statement to the Committee hearing.
81. See clause 11 of the Bill.
82. Senate Community Affairs Legislation Committee, Low Aromatic Fuel Bill 2012, final report, op. cit., p. 44.
that it had caused mechanical problems in some vehicles. The new low aromatic fuels do not contain lead.

Concerns that using low aromatic fuels will cause problems in the fuel system are not backed by substantial evidence. The Royal Automobile Association of South Australia (RAA), in collaboration with the Automobile Association of the Northern Territory (AANT), conducted an investigation in March 2007. The investigators tested several fuel pumps, which were thought to have been affected by Opal fuel, and compared them to a ‘control’ pump. They concluded that the pumps had failed due to normal wear and tear, rather than through being affected by Opal. (Each of the fuel pumps was more than ten years old, with one being 24 years old).

Although the RAA report found no substantial evidence that Opal fuel had damaged engines or fuel infrastructure in any way, the study was only able to investigate a small number of instances. The RAA report builds on an earlier, peer-reviewed report by Orbital Engineering, which also failed to find any problems associated with the use of low-aromatic fuel. Several allegations that low aromatic fuel damages engines, noted in the committee’s report, rely on anecdotal evidence that has not been independently verified.

Constitutional Issues

The constitutionality of the Bill has been an historical issue of concern. Generally speaking the regulation of the fuel industry envisaged by the Bill is a matter for the state and territory governments and Commonwealth legislation regulating the provision of LAF and RULF steps outside this traditional division. However, there are a number of constitutional powers given to the Commonwealth which would support the proposed legislation. The three powers which are directly relevant, and which have been relied on in the Government amendments to the Bill, are the corporations power (section 51(xx)); the territories power (section 122); and the race power (section 51(xxvi)).

In their response to the Community Affairs Legislation Committee’s report on the Bill, the Australian Greens voiced concerns over relying on the territories power and the races power. However, expert submissions had been made supporting a broader constitutional base and the amendments which have been made in the House of Representatives call on these different powers.

The Corporations Power

The corporations power was found to be a very broad power in the Workchoices case (NSW & Others v Commonwealth[2006] HCA 5286). That case has been regarded as a profound shift in the

83. Senate Standing Committee on Community Affairs, Beyond petrol sniffing: renewing hope for Indigenous communities, the Senate, Canberra, June 2006, p. 100.
85. Senate Community Affairs Legislation Committee, Low Aromatic Fuel Bill 2012, final report, op. cit., p. 44.
86. See also: http://www.austlii.edu.au/au/cases/cth/HCA/2006/52.html
state/Commonwealth power balance and as extending the Commonwealth’s powers significantly. The court found, in Gaudron J’s words:

the power conferred by s 51(20) ...extends to the regulation of the activities, functions, relationships and the business of a [constitutional corporation], the creation of rights, and privileges belonging to such a corporation, the imposition of obligations on it and, in respect of those matters, to the regulation of the conduct of those through whom it acts, its employees and shareholders and, also, the regulation of those whose conduct is or is capable of affecting its activities, functions, relationships or business.

As with other constitutional powers, it extends to regulating matters which are ‘reasonably incidental’ to the subject matter. Note that the corporations power only applies to ‘constitutional corporations’, which are distinct from the generic sense of a ‘corporation’. The constitutional definition specifically refers to ‘foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth’.

Determining which entities satisfy the constitutional definition of a ‘trading or financial corporation’ has been a challenge, however at this point the test applied by the courts is fairly settled and is described as the ‘activities test’. Essentially, a trading corporation is one that engages in trading activities. ‘Trade’ means the buying and selling of goods and services. Profit (or intended profit) does not appear to be an essential element. Similarly, a financial corporation is one that engages in financial activities, that is, commercial dealings in finance (such as borrowing or lending money). The activities test has applied in cases including those concerning entities such as local councils, not-for-profit corporations and corporations established under statute.

Clearly companies selling fuels would fit the definition of a constitutional corporation, however previous enquiries have expressed concerns that in order to escape the effect of regulating legislation there may be attempts to sell RULP through a non-incorporated structure. Sole traders, partnerships and unincorporated organisations are not encompassed within the definition of a constitutional corporation.

The territories power

In a submission to the Committee inquiring into the Bill the Gilbert + Tobin Centre of Public Law’s Associate Professor Sean Brennan pointed out that the Commonwealth’s power under section 122 is

87. We are indebted to Mary Anne Neilsen for this brief explanation of ‘constitutional corporation’.
88. Higgins v Beauchamp [1914] 3 KB 1192 at 1195 (Lush J); Commissioners of Taxation v Kirk [1900] AC 588 at 592.
93. Commonwealth v Tasmania (1983) 158 CLR 1; 46 ALR 625; [1983] HCA 21—a majority of the High Court held that the Hydro-Electric Commission, a Tasmanian statutory corporation was a trading corporation.
well established as a ‘plenary power.’ Consequently the Commonwealth would have power to regulate the supply of fuel within the territory, however he also goes on to say that

the Territories power in s 122 would support the Bill’s regulation of fuel supply and incidental measures, even if the suppliers are located at significant distances interstate [emphasis added].

He illustrates this principle by an explanation of the WA Airlines case, which established that the Commonwealth had power to authorise a flight between Perth and Port Hedland under the territories power because it was crucial to support the efficiency and profitability of flights from Perth to Darwin. By analogy the territories power would support the regulation of fuel supplies outside of the territory in order to support the effectiveness of a scheme designed to regulate fuel supplies in the territory. Associate Professor Brennan concludes this on the basis that:

regulating fuel supply in these cross-border locations is practically relevant to the effectiveness of supply restrictions within the Territory.

The Australian Greens have expressed concerns about the use of this power, saying ‘we have regularly opposed the use of the territories power to impose top-down solutions on unwilling communities.’ However it would seem the relevant communities have largely been in favour of the rollout of low aromatic fuels, and it may be concluded they would not, therefore, be perturbed by the use of this power.

The Race Power

As currently established the race power in section 51(xxvii) gives the Commonwealth the power to makes laws with respect to ‘the people of any race for whom it is deemed necessary to make special laws’. The power would undoubtedly support this Bill’s scheme as a special law necessary for the benefit of indigenous people. The Commonwealth’s power in this area is well established. However the Expert Panel examining constitutional recognition of Indigenous Australians recommended the removal of the current constitutional provision on this issue and its simultaneous replacement with a comparable provision which included anti-discrimination provisions and only applied to Aboriginal

94. His footnote is as follows ‘For example Lamshed v Lake (1958) 99 CLR 132, 153 (Kitto J); Attorney-General (Cth) v The Queen (1957) AC 288, 320 (Privy Council); Attorney-General (WA) v Australian National Airlines Commission (1976) 138 CLR 492, 514 (Stephen J) and 526 (Mason J). Chief Justice Barwick said that it is ‘as large and universal a power of legislation as can be granted’: Spratt v Hermes (1965) 114 CLR 226, 242. This descriptor was left undisturbed by the Chief Justice of the High Court’s finding in 2009 that s 122 is qualified by the guarantee of just terms for the acquisition of property in s 51(XXXI): Wurridjal v Commonwealth (2009) CLR 309, 347-348 (French CJ).’


96. S. Brennan, op. cit., p. 5.


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The Bill to establish an on-going process to further the Expert Panel’s recommendations is currently before the Parliament.

The proposed reliance on a race power which may be removed would probably not be fatal to the Bill’s constitutional integrity. If the current race power is removed according to the Expert Panel’s recommendations then there would be a replacement power, and presumably this legislation would convert its reliance on section 51(xxvi) to a reliance on the proposed 51A. The existence of the current Bill on the recognition of Aboriginal and Torres Strait Islander Peoples, which is simply designed to progress consideration of this issue, indicates the prospect of change is not imminent.

The amended Bill

As noted above, the Bill as first tabled was not supported by the Committee. However, many of the amendments made to the Bill during the second reading debate aim to address the Committee’s concerns and recommendations. For example:

- the constitutional basis of the Bill—the Bill is no longer dependent only on the corporations power (see Committee Recommendation 2)
- state legislation/national legislation/coordinated action—paragraphs 14(c) and 15(c) of the Bill have been added to ensure that appropriate state and territory consultation occurs (see Committee Recommendation 5)
- scope of powers to regulate fuel—the added definition of fuel and the requirements under clause 11 address the future regulation of snuffable fuels other than regular unleaded petrol, such as PULP (see Committee Recommendation 3) and

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“...The Panel recommends that section 51(xxvi) be repealed, and that a new ‘section 51A’ be inserted after section 51 consisting of preambular or introductory language...and operative language along the following lines:

**Section 51A Recognition of Aboriginal and Torres Strait Islander peoples**

- **Recognising** that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples;
- **Acknowledging** the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters;
- **Respecting** the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples;
- **Acknowledging** the need to secure the advancement of Aboriginal and Torres Strait Islander peoples;

the Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples.

...The Panel further recommends that the repeal of section 51(xxvi) and the insertion of a new head of power, ‘section 51A’, be proposed together, that is, in a single referendum question.”

100. Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012.
• the availability of low aromatic fuel and the scope of consultation—supply and bottlenecks and recognition of manufacturers—clauses 14 and 15 and subparagraph 17(1)(b)(ii) of the Bill address these issues\textsuperscript{101}—the Minister must be satisfied and have regard to the availability of low aromatic fuel to the area and the Bill provides for availability to be considered as part of the exemption process (see Committee Recommendation 4).

The constitutional issues are discussed above. The other issues are covered under the relevant provisions below.

**Provisions**

**Object of this Act**

The object of the Act has been amended from

> to reduce potential harm to the health of people living in certain areas from fuel sniffing

To

> to enable special measures to be taken to reduce the potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in certain areas from sniffing fuel.

The Explanatory Memorandum to the Bill states that:

> This Government amendment strengthens the objective of the Bill……This provision contributes to making the Bill a special measure for the purpose of Section 8 of the *Racial Discrimination Act 1975*.\textsuperscript{102}

**Dictionary**

**Clause 5** of the Bill defines some of the terms used in the Act.\textsuperscript{103} As noted above, a number of these definitions have been added or expanded as a result of the amendments made to the Bill.\textsuperscript{104}

For example, ‘fuel’ has been included to mean:

(a) petrol, or any substance that is used as a substitute for petrol; or

(b) a substance of a kind prescribed by the regulations for the purpose of this definition.

‘low aromatic fuel’ has been added to mean:

\textsuperscript{101} Clauses 14(3)(f) and 15(3)(f) of the Bill prescribe that the Minister must [emphasis added] have regard to the availability of low aromatic fuel in relation to the area when making a decision to designate an area. This provision appears to ensure that an area will not be declared if supply is an issue.

\textsuperscript{102} Supplementary Explanatory Memorandum to the Bill, p. 2. Also see discussion of Constitutional Powers under ‘Key issues’, above.

\textsuperscript{103} Other terms such as recipient are defined elsewhere in the Bill.

\textsuperscript{104} The Supplementary Explanatory Memorandum to the Bill at page 3 states that the definitions of ‘fuel’ and ‘low aromatic fuel’ have been added to ‘support the clearer administration of the Bill’.
(a) unleaded petrol that has a research octane number of less than 95, and that has aromatic compounds of less than 5% to help discourage fuel sniffing; or

(b) unleaded petrol of a kind prescribed by the regulations for the purposes of this definition.

In both cases, the definition may be widened by prescribing further kinds of substances or kinds of unleaded petrol under the regulations. Whilst this approach allows for the future expansion of the scheme to include other types of fuel (such as a low aromatic form of PULP if developed) these important details are not subject to the same level of Parliamentary scrutiny as the primary act.  

Definitions of ‘Aboriginal person’ and ‘Torres Strait Islander’ have also been added to respectively mean:

- a person of the Aboriginal race of Australia and
- a descendent of an Indigenous inhabitant of the Torres Strait Islands.

‘Petrol’, ‘unleaded petrol’, ‘fuel control area’ and ‘low aromatic fuel area’ are also defined.

Main offence provisions—prohibition of the supply etc of RULP in low aromatic fuel areas

Clause 8 of the Bill prohibits a corporation from:

- supplying regular unleaded petrol to a person if the person is in a low aromatic fuel area (subclause 8(1) of the Bill)
- transporting regular unleaded petrol intending to supply any of it to a person in a low aromatic area or knowing or reckless as to whether another person will supply it to a third person in a low aromatic area (subclause 8(2)) and
- possessing regular unleaded petrol intending to supply any of it to a person if the person is in a low aromatic fuel area (subclause 8(3)).

The maximum penalty for committing any of the offences under this clause is 300 penalty units.

Under subclause 8(4) of the Bill, if a corporation engages in conduct that is exempt under clause 17 of the Bill and satisfies any conditions of the exemption (paragraph 8(4)(a)) or engages in conduct

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105. See Appendix 3.
106. These two definitions are consistent with other similar definitions found in Commonwealth legislation.
107. Under clause 5 of the Bill a corporation means to a corporation to which paragraph 51(xx) of the Constitution applies. Paragraph 51(xx) of the Constitution refers to ‘foreign corporations and trading or financial corporations formed within the limits of the Commonwealth’.
108. Section 4AA of the Crimes Act 1914 provides that a penalty unit is equivalent to $170. This means that the maximum penalty amounts to $51 000. The text of the Crimes Act 1914 can be viewed at: [http://www.comlaw.gov.au/Details/C2012C00890/Download](http://www.comlaw.gov.au/Details/C2012C00890/Download). Although the offences in this Bill are criminal offences they are subject to civil penalties.

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to comply with a direction or order under an emergency law (paragraph 8(4)(b)) the corporation does not commit an offence under this clause 8.\textsuperscript{110}

Comment

Fault elements

As a result of government amendment 10 subclause 8(2) has been amended to read:

A corporation must not transport regular unleaded petrol:

(a) intending to supply any of it to a person (the recipient); or

(b) knowing that, or reckless as to whether, another person intends to supply any of it to a third person (the recipient);

if the recipient is in a low aromatic fuel area.

The words ‘knowing that, or reckless as to whether’ replace the words ‘believing that’.

The amended words are consistent with the standard fault elements set out in the \textit{Criminal Code Act 1995}.\textsuperscript{111}

\textsuperscript{109} Under section 17 of the Bill the Minister may exempt conduct in relation to low aromatic fuel areas and fuel control areas if the Minister is satisfied of certain things. The Minister may also specify conditions in the exemption.

\textsuperscript{110} The note to this subclause states that: ‘The defendant bears an evidential burden in relation to a matter in this subsection’. Under subsection 13.3(3) of the Criminal Code Act ‘a defendant who wishes to rely on any exception…provided by the law creating an offence bears an evidential burden in relation to that matter.’ Also under section 13.3 of the Code, \textit{evidential burden}, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist’. See also Senate Scrutiny of Bills Committee comment on the reverse onus of proof. It is noted that the Bill provides for the prohibition of other fuels under \textbf{paragraph 11(2)(a)} of the Bill.

\textsuperscript{111} ‘Offences are made up of physical elements and fault elements. Fault elements relate to the defendant’s state of mind at the time the physical elements are engaged in, or arise. The four standard fault elements under the Criminal Code are: intention, knowledge, recklessness and negligence. If the law creating the offence does not specify a fault element or expressly state that no fault elements apply, section 5.6 of the Criminal Code will automatically apply a fault element depending on whether the physical element is conduct, a result, or a circumstance.’ Source: Attorney-General’s Department, \textit{A guide to framing Commonwealth offences, infringement notices and enforcement powers}, p. 17. Section 5.6(1) of the Criminal Code states: ‘if the law does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical offence’—the automatic fault element that would apply to the offences of supply and possession under subclauses 8(1) and (2) respectively would be intention as they are both conduct offences.

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Comment

Penalty amount

The Explanatory materials to the Bill\(^{112}\) are silent as to whether this is an appropriate penalty that may be imposed if a corporation is convicted of an offence and this, or any of the offence provisions of this Bill. Any penalty should provide a deterrent to committing the offence.\(^{113}\)

Comment

Corporations

It is noted that these main offence provisions relate only to RULP in low aromatic fuel areas and that only corporations are prohibited from carrying out the actions dealt with at clause 8 of the Bill.\(^{114}\)

In relation to the prohibition of RULP, as noted above, the purpose of the legislation is to prohibit its use to achieve the objects of the Act (as RULP is the major source of sniffing at the current time and the only fuel with a low aromatic alternative). As also noted above, the legislation provides for the prohibition of other fuels (by way of legislative instrument under clause 11 of the Bill), and in particular PULP (which is petrol under the definition of fuel), if the need arises and an appropriate alternative fuel is available. See further discussion of clause 11 of the Bill, below.

In relation to corporations

The constitutional definition of corporation does not include individuals or even sole traders or partnerships.\(^{115}\) It is expected that the prohibitions under this clause are broad enough to ultimately prevent any access to RULP within a designated low aromatic fuel area.\(^{116}\) It is noted that although the Bill is no longer reliant on only the corporations power this direct reference to a ‘corporation’ remains.\(^{117}\) The supplementary explanatory memorandum does not explain why this provision has not been extended to directly refer to other unincorporated entities.

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112. Explanatory Memorandum and Supplementary Explanatory Memorandum to the Bill, op. cit.
113. A guide to framing Commonwealth offences, infringement notices and enforcement powers, op. cit.
114. It is noted that the proposed legislation is no longer reliant solely on the corporation’s power. See the subheading ‘constitutional powers’ above.
115. A definition of non-constitutional corporations can be found at: [http://www.afei.org.au/node/39602](http://www.afei.org.au/node/39602)
116. For example, as a corporation must not supply RULP to a person in a low aromatic fuel area it is assumed that a sole trader will not be supplied with RULP as to do so would result in the supplier committing an offence under subclause 8(1) of the Bill.
117. One of the main criticisms of relying only on the corporation’s power was that only constitutional corporations could be regulated by the Bill. As a result it was considered that there could be some risk that a number of unincorporated outlets may not be controlled by the scheme. See the views expressed by the South Australian Centre for Economic Studies (SACES) in its 2012 Cost benefit analysis of legislation to mandate the supply of Opal fuel in regions of Australia, as reported in the Senate Community Affairs Legislation Committee, Low Aromatic Fuel Bill 2012, final report.
Other offence provisions—contravention of requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

Requirements relating to fuels generally

Clause 11 of the Bill allows the Minister to determine requirements relating to the supply, transport, possession or storage of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area, by way of legislative instrument (subsection 11(1)).

Under subsection 11(2) a determination may:

- prohibit (emphasis added) (either absolutely or subject to conditions), limit, restrict or otherwise affect the supply, transport, possession or storage, of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area (paragraph 11(2)(a)).

A determination may also deal with other requirements relating to:

- storage (paragraph 11(2)(b)), supply (paragraph 11(2)(c)), communicating information (paragraph 11(2)(d)), the provision of information or documentation (paragraph 11(2)(e)), record keeping (paragraph 11(2)(f)) and the reporting of specified information to the Minister (paragraph 11(2)(g)).

Before making a determination the Minister must be satisfied that it will further the objects of the Act (subsection 11(5)) and the Minister must have regard to the well-being of persons living in the area, including Aboriginal persons and Torres Strait Islanders, any submissions (paragraph 11(6)(b)) and any other relevant matters (paragraph 11(6)(c)).

Clause 12 of the Bill prescribes that a corporation must not contravene a requirement determined under clause 11 of the Bill unless an exemption has been granted under clause 17.

A maximum penalty of 300 penalty units applies if a corporation commits an offence (subsection 12(1) of the Bill).

Comment

Penalty

While the requirements under this clause may be made by legislative instrument the penalty for committing an offence has been enshrined in the primary legislation.

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118. See Appendix 3 for further information on legislative instruments and disallowance. See also Senate Scrutiny of Bills Committee comment on the use of delegated legislation in relation the offence provisions under clauses 11 and 12 of the Bill.
119. Government amendment No. 11.
120. Under subsection 12(2) of the Bill, the same exceptions apply as are outlined under subsections 8(4) as discussed in the text and 10(2).
121. See footnote 104 about the amount of a penalty unit.
It is noted that the same penalty applies to a contravention of any of these requirements. Although the explanatory materials consider all of these requirements to be part of a Scheme of Controls no further explanation is provided to support the rationale for the penalty amount or what is envisaged under the Scheme.\textsuperscript{122} It is expected that, for example, a requirement relating to the secure storage of a fuel (paragraph 11(2)(b)) may require a bowser to be locked.

**Requirement to communicate**

As noted above under the heading ‘major interest groups,’ Shell Australia raised the concern that oil companies may be required to communicate information.\textsuperscript{123} However, it appears that there are a number of protections built into the legislation—for example, the Minister is required to consult with manufacturers\textsuperscript{124} and suppliers under paragraph 13(1)(b) as well as others specified under subclause 13(1) and in the manner specified under subclause 13(2). The Minister must also have regard to submissions before a making a determination (paragraph 11(6)(b)).

**Offence provisions concerning other requirements relating to low aromatic fuel for low aromatic fuel areas and fuel control areas**

Under clause 9 of the Bill, the Minister may determine requirements, by way of legislative instruments relating to:

- communicating information, including information promoting low aromatic fuel (paragraph 9(1)(a))
- making and keeping records relating to supply, transport, possession or storage (paragraph 9(1)(b)) and
- giving the Minister specified information relating to supply, transport, possession or storage (paragraph 9(1)(c)).

Clause 10 of the Bill prescribes that a corporation must not contravene a requirement determined under clause 9 of the Bill unless an exemption has been granted under clause 17.\textsuperscript{125}

A maximum penalty of 100 penalty units applies if a corporation commits an offence (subclause 10(1) of the Bill).\textsuperscript{126}

\textsuperscript{122} Explanatory Memorandum to the Bill. No page numbers provided.
\textsuperscript{123} ‘Communicating information’ is also captured under paragraph 9(1)(a) of the Bill.
\textsuperscript{124} The inclusion of ‘manufacturers’ under this paragraph is the result of a Greens’ Amendment and addressing Committee recommendation No. 4.
\textsuperscript{125} Under subclause 12(2) of the Bill, the same exceptions apply as are outlined under subclauses 8(4) as discussed in the text and 10(2).
\textsuperscript{126} This amounts to $17 000.
Comment

Penalty

It is noted that the maximum penalty for contravention of one of these requirements is 100 penalty units, whereas the maximum penalty for what could be regarded as a like offence under clause 12 of the Bill is 300 penalty units. The explanatory materials are silent on this matter.

Comment

Requirement to communicate

As noted above under the heading ‘major interest groups’ (and again in relation to clause 11 requirements) Shell Australia raised the concern that oil companies may be required to communicate information. Under paragraph 9(1)(a) this may requirement may also include information promoting low aromatic fuel. A determination can only be made if the Minister is satisfied that it would further the object of the Act (subclause 9(3)).

Ministerial Determinations—overview

The Minister may by way of legislative instrument\textsuperscript{127} determine requirements relating to:

- fuels generally for low aromatic fuel areas and fuel control areas (see discussion on clause 11 above) and
- designating these areas under clauses 14 and 15 of the Bill as prescribed.

Consultation

Clause 13 of the Bill prescribes the consultation process that must be undertaken before determining the requirements relating to fuels under clause 11 and clause 16 of the Bill prescribes the consultation process that must be undertaken before determining designated areas under clauses 14 and 15.

These consultation processes require the Minister to consult with the appropriate persons and bodies specified under subclause 16(1), including Aboriginal persons and Torres Strait Islanders and manufacturers and suppliers\textsuperscript{128} and ensure that certain conditions (relating to the provision of information about the proposal and the opportunity to make submissions) are satisfied (subclause 16(2)).

\textsuperscript{127} See Appendix 3.

\textsuperscript{128} This list now includes Aboriginal persons or Torres Strait Islanders (or their representatives) as a result of government amendment 23 and manufacturers as a result of Greens’ amendment 7.
Comment

Mandatory and discretionary consultation

The Minister must consult with any or all of the listed persons or bodies. However, he may choose which of these persons or bodies it is appropriate to consult with. For example, if there is no health professional with an interest in a particular area (which is targeted to be designated) this category of persons would not necessarily be consulted. 129

Suppliers of LAF

The Committee was also concerned that:

While the bill refers to ‘suppliers of fuel’ as being amongst those who might be consulted, the committee notes that this might not be taken to include the manufacturers or refiners of fuel. 130

An Australian Greens’ amendment to the Bill adds a reference to ‘manufacturers’ but not ‘refiners of fuel’ under paragraphs 13(1)(b) and 16(1)(b) of the Bill, which appears to somewhat address this point. 131 As a result, where the Minister considers it appropriate the Minister must consult with manufacturers [emphasis added] and suppliers of fuel before determining requirements relating to fuels generally for low aromatic areas and fuel control areas and before designating such areas.

Designating low aromatic fuel areas and fuel control areas

When making a determination under Part 3 of the Bill the Minister must132:

- be satisfied that designating the area is reasonably likely to help reduce potential harm to the people living in the area from sniffing fuel (including Aboriginal persons and Torres Strait Islanders)
- that there are adequate facilities or arrangements for the supply of low aromatic fuel to and within the designated area (subclauses 14(2) and 15(2))133 and

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129. It is noted that under section 17 of the Legislative Instruments Act 2003 a rule maker (such as the Minister in this case) is required to be satisfied that any consultation that is appropriate and can practically be undertaken, is undertaken before an instrument is made, especially where commercial interests are at stake.
131. The explanatory materials to the Bill do not explain whether ‘refiners of fuel’ are in fact captured under the definition of ‘manufacturers’.
132. Paragraphs 14(2)(b) and (c) and 15(2)(b) and (c) have been added as a result of government amendments No. 13 and 18. Other government amendments have been made to subclauses 14(3) and 15(3) to include Aboriginal persons and Torres Strait Islanders.
133. This inclusion would appear to be in response to the supply issue raised in recommendation 4 of the Senate Community Affairs Legislation Committee, Low Aromatic Fuel Bill 2012, final report, op. cit.
the Minister must have considered that appropriate states and territories have not enacted legislation consistent with the Bill to reduce the harm of petrol sniffing, and it is unlikely that they will enact such legislation within a reasonable period.  

Under subclauses 14(3) and 15(3) of the Bill the Minister must also have regard to the availability of fuel as well as various things relating to the wellbeing of people, including Aboriginal persons and Torres Strait Islanders (as a result of government amendments 14-17 and 19-22).

This Government amendment strengthens the objective of the Bill in improving the health of people, including Aboriginal persons and Torres Strait Islanders, engaging in petrol sniffing. This provision contributes to making the Bill a special measure for the purpose of Section 8 of the Racial Discrimination Act 1975.

Exemptions

Clause 17 of the Bill allows the Minister by written instrument to exempt specific conduct in relation to the offence provisions under subclauses 8(4), 10(2) and 12(2). When granting an exemption the Minister must be satisfied that there are special circumstances justifying the exemption (paragraph 17(1)(a)) and in addition (as the result of a government amendment) that either:

- it is unlikely that there will be an adverse effect on people’s wellbeing or
- in relation to subclause 8(4), the exemption is necessary because of the availability, or likely unavailability, of low aromatic fuel.

Acquisition of property

As a result of government amendment 25 clause 18A of the Bill has been added. This clause provides that any acquisition of property resulting from the operation of the Act, or any instrument made under the Act, be on just terms (within the meaning of 51(xxxi) of the Constitution. Otherwise the provision of the Act or instrument will not apply to the extent of the inconsistency.

The intention of this amendment is to protect existing agreements for the supply and distribution of fuel that were entered into prior to the enactment of the legislation.

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134. The Supplementary Explanatory Memorandum to the Bill at page 5 states that this government amendment is in response to recommendation 5 of the Committee. It would appear to be included to ensure that any legislative action is part of a consistent and coordinated national approach.
135. Supplementary Explanatory Memorandum, op. cit.
136. Such exemption is not a legislative instrument (subclause 17(4)).
137. There is, entrenched in section 51(xxxi) of the Constitution, a guarantee which stipulates that property acquired by the Commonwealth Government must be acquired ‘on just terms’.
138. Supplementary Explanatory Memorandum, op. cit. This is a standard clause that appears in other legislation.
Concluding comments

There appears to be general agreement that this initiative to address petrol sniffing must continue and that the time to strengthen this measure is now. While this Bill achieves the desired policy outcome it represents a rather piecemeal approach for such an important piece of legislation. It is disappointing that a more watertight approach was not adopted when the call for legislative action was first made. That said, every effort must now be made to ensure that the way forward represents a uniform, consistent and coordinated approach.
### Appendix 1: Chronology of major reports and developments

<table>
<thead>
<tr>
<th>Date</th>
<th>Report</th>
<th>Comment/link</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>Report: Senate Select Committee on Volatile Substance Fumes, Volatile Substance Abuse in Australia.</td>
<td></td>
</tr>
<tr>
<td>1990</td>
<td>Avgas (aviation gas) provided through the Australian Government’s Comgas Scheme</td>
<td>Unsuccessful</td>
</tr>
<tr>
<td>1995</td>
<td>Report: Senate Select Committee on Volatile Substance Fumes</td>
<td></td>
</tr>
<tr>
<td>February 2005</td>
<td>Opal launched by BP</td>
<td>Low aromatic unleaded fuel to replace regular unleaded petrol.</td>
</tr>
<tr>
<td>March 2009</td>
<td>Report: Senate Standing Committee on Community Affairs, Grasping the opportunity of Opal: assessing the impact of the Petrol Sniffing Strategy.</td>
<td>See Recommendation 5 regarding legislative action.</td>
</tr>
<tr>
<td>Date</td>
<td>Report</td>
<td>Comment/link</td>
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<td>-------------------------------------------------------------------------------------------------</td>
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<tr>
<td>June 2010</td>
<td>Response: Combined Australian Government response to two Senate Community Affairs References Committee reports on petrol sniffing in Indigenous communities</td>
<td></td>
</tr>
<tr>
<td>March 2011</td>
<td>Due to report 2014: Menzies School of Health Research, Darwin, commissioned by DOHA in March 2011.</td>
<td>Recommendation 1 calling for an interim report based on the first round of data collection.</td>
</tr>
<tr>
<td>10 May 2012</td>
<td>Senate referred the Bill for inquiry and report by 21 September 2012.</td>
<td></td>
</tr>
<tr>
<td>1 June 2012</td>
<td>Evaluation of PSS: Origin Consulting commissioned 1 June 2012 are due to report early to mid-2013.</td>
<td>See 2012 Senate Community Affairs Legislation Report at paragraph 2.25 for information on the purpose of the evaluation.</td>
</tr>
<tr>
<td>21 September 2012</td>
<td>Senate Community Affairs Committee Interim report</td>
<td></td>
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</tbody>
</table>


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Appendix 2: Why are aromatic compounds present in petrol anyway?

Petrol is the name given to a mixture of liquid hydrocarbons used as a fuel in internal combustion engines. In an internal combustion engine, petrol is mixed with air, compressed and ignited inside a cylinder in the engine. The energy released from the resulting combustion is harnessed by the engine to produce mechanical energy. Petrol is produced from crude oil and contains many different chemical compounds; the exact composition of petrol varies depending on the grade of petrol and intended use. Petrol produced by different manufacturers will also vary in its exact chemical composition, but must conform to quality and operability standards specified in the Australian Fuel Quality Standards.\textsuperscript{139}

Petrol comes in two general grades – regular unleaded (sometimes abbreviated as ULP or RULP) and premium unleaded (PULP). In Australia, regular unleaded petrol is the standard grade of petrol suitable for most cars manufactured since 1986, although some modern cars are designed to run on PULP. The difference between these grades is that ULP must possess a minimum research octane number\textsuperscript{140} (RON) of 91, whereas PULP is more extensively refined and must contain a RON of at least 95. Petrol companies sometimes sell petrol with an even higher RON of 98. These high-RON petrols often contain additives which petrol companies market as providing additional benefits such as cleaning and lubricating engine parts.

The composition of petrol is designed to achieve certain combustion characteristics. Crude oil is made up of hundreds different chemical compounds, including aromatic compounds, and a variety of these compounds are used in petrol products. The final petrol mixture contains various amounts of slow and fast burning hydrocarbons and low and high RON components; mixed together, these components make a fuel with the correct combustion pattern for a particular engine.

Aromatic hydrocarbons, which are an important component of most unleaded petrols, are a class of chemical compound that are chemically similar to benzene. Examples include benzene, toluene and xylene. Regular ULP may contain up to 40 per cent aromatic compounds under the Australian Fuel Quality Standards. Aromatic compounds are frequently used to increase the RON of unleaded petrol.

Light aromatic compounds like these are very volatile (they evaporate easily) and inhalation of vapour of aromatic compounds can produce a narcotic effect. However, these compounds are very toxic and prolonged exposure to them can cause cognitive and neurological defects.

In low aromatic fuel, originally manufactured by BP and now also Shell, most of the aromatic compounds in regular unleaded petrol are replaced with non-aromatic compounds. This reduces the


\textsuperscript{140} The RON essentially measures how far the petrol (mixed with air) can be compressed in the cylinder. Higher compression of the petrol-air mixture in the cylinder leads to higher engine efficiency. However, fuel-air mixtures spontaneously ignite when compressed too much which can lead to combustion at the wrong point in the engine cycle, potentially causing engine damage. Higher-RON fuels can withstand higher levels of compression and hence can help improve fuel efficiency, although their use will be most beneficial only in engines capable of adapting their compression levels to suit high-RON fuel.

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narcotic effect induced from sniffing petrol. Low aromatic fuel is interchangeable with regular unleaded petrol and is identical to regular unleaded petrol except for the reduced aromatic content. Low aromatic fuel costs more to produce than standard ULP and the Australian Government subsidised production at the rate of between 20.5-22 cents per litre in 2011–12 so that it would cost the same as standard ULP at the wholesale or terminal gate level (also see the section on financial implications).\textsuperscript{141}

**Other vehicle fuels**

Diesel and liquid petroleum gas (also known as LPG or Autogas) are also commonly used as vehicle fuels in Australia. Diesel is made up of heavier, less volatile hydrocarbon compounds and does not induce the same narcotic effect as regular ULP when sniffed. LPG is made up of much lighter hydrocarbons, principally propane and butane. Although it is possible to receive a narcotic effect from the chemicals in LPG, this has not been reported as a problem to date. LPG is far more difficult to handle than petrol and evaporates away much more quickly. Additionally, LPG is treated with a malodorous additive so that leaks can be detected, which makes its smell very unpleasant. As the bill is currently written, sales of LPG and diesel will not be affected by it (unless the Minister determines otherwise).


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Appendix 3: Delegated Legislation and Disallowance

Legislative Instruments

The Legislative Instruments Act 2003 (the Legislative Instruments Act) defines a ‘legislative instrument’ as an instrument of a legislative character that is, or was, made under a delegation of power from Parliament. An instrument has a legislative character if it determines or alters the content of the law rather than applying the law in a particular case; and if it affects a privilege or interest, imposes an obligation, or creates, varies or removes a right.

Delegated legislation is required to be laid before each House, thereby becoming subject to parliamentary scrutiny and the Parliament’s ultimate power of veto. Under section 38 of the Legislative Instruments Act, legislative instruments must be tabled in each House within six sitting days following registration on the Federal Register of Legislative Instruments, even in cases where the instrument is not disallowable. Unless laid before each House within this time limit, a legislative instrument ceases to have effect (see IC Harris, House of Representatives practice, fifth edn, chapter 10, p. 400, http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice)

Disallowance

Section 42 of the Legislative Instruments Act allows for the disallowance of legislative instruments by Parliament.

A legislative instrument can be subject to disallowance if either a Senator or Member of the House of Representatives moves a motion of disallowance within 15 sitting days of the day that the legislative instrument is tabled. The motion to disallow must be resolved or withdrawn within a further 15 sitting days of the day that the notice of motion is given. However, it should be noted that if there is no notice of motion to disallow a legislative instrument, then there is no debate about its contents.

143. Subsection 5(2) of the Legislative Instruments Act 2003.