FUEL QUALITY STANDARDS AMENDMENT BILL 2009

EXPLANATORY MEMORANDUM

(Circulated by Authority of the Minister for the Environment, Heritage and the Arts, the Honourable Peter Garrett AM MP)
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GENERAL OUTLINE

The purpose of this Bill is to amend the Fuel Quality Standards Act 2000 (the Act) in order to implement the recommendations of the first statutory review of the Act conducted in 2004/05.

In particular, the Bill will:

- improve the process for granting approvals to vary fuel standards by providing for a wider range of conditions that the Minister can apply to approvals (including the power to require that companies take certain action to reduce to minimise the effects of supplying sub-standard fuel) and will simplify the procedures when an approval is required urgently to avoid a fuel supply shortfall;

- provide for more effective and efficient monitoring and enforcement powers, including the introduction of a civil penalty regime and establishing an infringement notice system; and

- address a number of issues that have arisen from the practical application of the Act and its subordinate legislation.

The Bill is divided into separate Parts dealing with particular topics, as follows:

- Part 1 improves the approach to the section 13 approvals process. In particular, it provides more flexibility for the Minister in situations where a decision is required urgently to avoid a potential fuel supply shortfall. It also clarifies the process for amending and revoking approvals that have been granted.

- Part 2 provides for civil penalties, infringement notices and enforceable undertakings to provide a wider range of enforcement options available under the Act, allowing a more tailored approach to enforcement. Part 2 also expands the monitoring powers of inspectors under the Act.

- Part 3 will enable the Minister to consider the circumstances in which the fuel is to be supplied, including the end use, when determining a fuel standard.

- Part 4 deals with other matters including extended powers relating to sharing information obtained under the Act with other Commonwealth, State and Territory agencies.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.
NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short title

1. This clause provides that the short title by which the Act may be cited is the *Fuel Quality Standards Amendment Act 2009*.

Clause 2 – Commencement

2. This clause provides that the Act will commence on the day after it receives the Royal Assent.

Clause 3 – Schedule(s)

3. This clause provides that the items specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule, and other items in a Schedule have effect according to its terms.

SCHEDULE 1 - AMENDMENTS

Part 1 – Approvals

*Fuel Quality Standards Act 2000*

Item 1 – Subsection 4(1)

4. This item inserts a definition of *emergency approval*. This definition is required as a consequence of the inclusion in the Act of a process for the Minister to grant an emergency approval (see item 6 below).

Item 2 – Subsection 4(1)

5. This item inserts a definition of *Fuel Standards Consultative Committee*.

Item 3 – Section 11 (paragraph relating to Division 3)

6. This item amends the overview in section 11 relating to Division 3 which deals with the granting of approvals to include references to the new provisions on emergency approvals, and varying or revoking approvals.

Item 4 – Section 11 (paragraph relating to Division 6)

7. This item amends the overview in section 11 relating to Division 6 which deals with the making and varying of fuel standards and fuel quality information standards and the consultation required to indicate that, in some instances relating to approvals, the Minister need only notify, rather than consult, the Fuel Standards Consultative Committee (for example, in the case of emergency approvals).
Item 5 – Before section 13

8. This item inserts a heading for a new Subdivision A (Grant of approval) into the Fuel Quality Standards Act 2000 (the Act).

Item 6 – Subsection 13(2)

9. This item substitutes subsection 13(2) with a new subsection (2) and inserts new subsections 13(3), (4), (5) and (6) into the Act.

10. New subsection 13(2) establishes a process to enable the Minister to grant an emergency approval in certain circumstances. Those circumstances are set out in paragraphs (2)(a) – (e). Under the new subsection 13(2) the Minister will be able to grant an emergency approval for a short period (a maximum of 14 days) without consulting the Fuel Standards Consultative Committee in order to avoid a potential fuel supply shortfall. The Minister will only be required to notify the Committee of his decision (see Item 15). The requirement for the Minister to consult the full Committee before granting an approval can significantly delay his decision in these circumstances.

11. The power of the Minister to grant an emergency approval is subject to subsection 13(3). Subsection 13(3) limits the Minister’s power to grant an emergency approval in respect of a particular shortfall in the supply if the Minister has previously granted an emergency approval in respect of that particular shortfall. This is intended to avoid the situation whereby persons continually apply to the Minister for an emergency approval, particularly in light of the fact that the Minister is not required to consult with the Fuel Standards Consultative Committee in relation to the grant of such an approval.

12. New subsections 13(4) and (5) clarify when the Minister is taken to have refused to grant an approval (including an emergency approval).

13. New subsection 13(6) clarifies that an approval is not a legislative instrument for the purposes of the Legislative Instruments Act 2003. This subsection has been included to assist readers, as an approval granted by the Minister under subsection 13(1) is not a legislative instrument for the purposes of the definition of that term in section 5 of the Legislative Instruments Act 2003.

Item 7 – After section 13

14. This item inserts a new section 13A into the Act which specifies the period of effect for an approval, including an emergency approval. Approvals (other than emergency approvals) will remain in force for the period specified in the approval, unless earlier revoked. Emergency approvals, unless earlier revoked, will only remain in force for a maximum period of 14 days. This short period provides flexibility for the Minister to grant an approval to avoid a potential fuel supply threat but limits the time the approval can apply without the Minister consulting the Fuel Standards Consultative Committee.
15. However, if an emergency approval is varied under new section 17F (see item 11), the emergency approval, as varied, will remain in force for the further period specified in the approval or for a further period of 14 days, from the date of the variation, whichever is the shorter period.

**Item 8 – At the end of section 14**

16. This item inserts a new subsection 14(3) into the Act which specifies the information that the Secretary must provide to the Fuel Standards Consultative Committee when the Minister is required to consult the Committee pursuant to paragraph 24A(1)(a). This new subsection also specifies that the information must be provided to the Committee within 90 days of an application for an approval being made.

**Item 9 – Section 16**

17. This item is required as a consequence of item 10.

**Item 10 – At the end of section 16**

18. This item inserts a new subsection 16(2) into the Act. New subsection 16(2) expands the Minister’s power to set conditions applying to approvals to vary fuel standards. The Act currently only allows the Minister to set conditions relating to the supply of the fuel subject to the approval. New subsection 16(2) will provide the Minister with the power to set conditions necessary to offset the adverse impacts of an approval on the environment. For example, this amendment will enable the Minister to require a company supplying sub-standard fuel under an approval to fund an air quality monitoring program to monitor air pollutants which may result from vehicle emissions. While this is not directly linked to the supply of the fuel, the air quality impacts arise from the use of the fuel in vehicles.

**Item 11 – After section 17A**


20. New section 17B requires the Minister, if the Minister refuses to grant an approval, to notify the person who applied for the approval, in writing, of the refusal.

21. New Sections 17C, 17D, 17E and 17F all relate to the variation of approvals and are contained in new Subdivision B (Variation of Approvals).

22. Section 17C clarifies that, unless otherwise provided by Subdivision B, an approval (other than an emergency approval) may be varied in accordance with section 33(3) of the Acts Interpretation Act 1901. Section 33(3) of the Acts Interpretation Act 1901 provides where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power
exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

23. Section 17D sets out the process the Minister must follow to vary an approval on the Secretary’s initiative. This provision allows for the amendment of legal instruments to correct an error or for technical amendments, for example, to update a test method. Section 17D also clarifies that a variation on the Secretary’s initiative, other than a minor variation, must be made in accordance with subsection 33(3) of the Acts Interpretation Act 1901. The Minister is not required to have regard to the criteria set out in section 15 of the Act when making a minor variation to an approval on the Secretary’s initiative. This is because the Minister would have had regard to the section 15 criteria when granting the original approval. As minor variations would be considered for the correction of an error in the approval instrument, or technical amendments, for example, to update a test method, it is considered that the criteria referred to in section 15 would not be affected by a minor variation.

24. Section 17E sets out the process to be followed when a person applies for the variation of an approval to add one or more regulated persons to the approval (a regulated person is a person specified in an approval who can supply fuel in accordance with the variation to the fuel standard or fuel quality information standard).

25. Section 17F sets out the process to be followed to vary an emergency approval to extend the period of effect of the approval either on the written application of the person who holds the approval or on the initiative of the Secretary. However, unlike the initial grant of an emergency approval, the Minister must not vary an emergency approval without first consulting the Fuel Standards Consultative Committee. This is because the initial two weeks of the approval would give the Minister sufficient time to consult with the Committee on the terms of the approval and the possibility of the requirement to extend the timeframe. With the initial emergency approval, the Minister may only have a few days in which to grant the approval. When deciding whether to vary an emergency approval, the Minister is required to have regard to the criterion specified in subsection 15(1) as well as any other matters the Minister considers relevant to the variation request.

26. Section 17F also clarifies that if the Minister varies an emergency approval, the Minister may also impose new conditions on the approval or remove existing conditions to which the approval is subject.

27. Section 17G (which is contained in new Subdivision C (Revoking an approval)) clarifies that an approval may be revoked in accordance with subsection 33(3) of the Acts Interpretation Act 1901. It also clarifies than an application for a revocation is not required.

28. This item also inserts a heading for a new Subdivision D (Contravening conditions of approval).
Item 12 – Subsection 24A(1)

29. This item amends subsection 24A(1) of the Act to clarify that the Minister is required to consult the Fuel Standards Consultative Committee before deciding whether or not to grant an approval or to extend the period of effect for an emergency approval. However, the consultation requirements do not apply when the approval is an emergency approval which only requires the Minister to notify the Committee as specified in the new section 24B (see item 15 below).

Item 13 – Paragraph 24A(1)(a)

30. This item substitutes paragraph 24A(1)(a) with a new paragraph (a) which requires the Minister to consult with the Fuel Standards Consultative Committee before granting, varying or revoking an approval.

Item 14 – Subsection 24A(2)

31. This item inserts a requirement in subsection 24A(2) for the Minister to consult the Fuel Standards Consultative Committee in relation to any variation of the period for which an approval granted under section 13 is to be in force.

Item 15 – After section 24A

32. This item inserts a new section 24B into the Act which clarifies that the Minister is required to consult the Fuel Standards Consultative Committee before varying the period of effect of an emergency approval under new section 17F (see item 11). The Minister is required to have regard to any recommendations of the Committee before making a decision under section 17F.

33. This item also inserts a new section 24C into the Act relating to when the Minister must notify the Fuel Standards Consultative Committee as opposed to consulting the Committee before granting or varying an approval.

34. New subsection 24C(1) provides that the Minister must notify the Committee of his or her intention to grant an emergency approval as opposed to consulting the full Committee. It is intended that the effect of this amendment would be that the Minister would consult those Committee members who were available, but would only notify those Committee members who were not available at the time. This will avoid the delay that can result from the requirement to consult all 18 members of the Committee.

35. New subsection 24C(2) provides that in the case of a variation of an approval which is of a minor nature, the Minister would only be required to notify the Committee of the variation. The types of variations that would be considered to be of a minor nature include the correction of an error in the approval instrument, or technical amendments, for example, to update a test method.

36. New subsection 24C(3) requires the Minister to notify the Committee of a decision to vary an approval to add regulated persons (a regulated person is a...
person who is specified in an approval as being a person who can supply the fuel in accordance with the approval). The current process for adding regulated persons to an approval results in an inefficient use of the Committee’s resources. The Minister will only be required to notify the Committee of an amendment to the approval to add regulated persons.

Item 16 – Application

37. This item clarifies the application of the amendments to the Act made by Part 1 of Schedule 1 of this Bill. In particular, it clarifies that the amendments made by this Part (other than items 9 and 10 (which relate to the type of conditions that can be imposed on an approval)) apply in relation to an application for the grant or variation of an approval, or the revocation of an approval if the application or revocation is made after the day on which this item commences (therefore, those amendments do not apply in relation to applications for approval or the variation of an approval or the revocation of an approval made prior to the commencement of these amendments). This item also clarifies conditions of the type specified in item 10 can only be applied to approvals on or after the day this item commences.

Part 2 – Enforcement

Fuel Quality Standards Act 2000

Item 17 – Subsection 4(1)

38. This item inserts a definition of business premises in subsection 4(1). This definition is required as a consequence of the insertion of the new provision relating to inspectors exercising powers in public areas of business premises (see item 59).

Item 18 – Subsection 4(1)

39. This item inserts a definition of civil penalty provision. The addition of this definition is a consequence of the inclusion of civil penalty provisions in the Act.

Item 19 – Subsection 4(1)

40. This item inserts a definition of court into the Act.

Item 20 – Subsection 4(1)

41. This item defines Court as meaning the Federal Court of Australia or the Supreme Court of a State or Territory.

Item 21 – Subsection 4(1)

42. This item inserts a definition of enforcement warrant. These warrants were previously referred to as offence related warrants. However, as civil penalty
provisions are being included in the Act, it is no longer appropriate to refer to the warrants as *offence-related warrants*, as the warrants will relate to investigation of potential breaches of the criminal provisions and also potential contraventions of the civil penalty provisions.

**Item 22 – Subsection 4(1) (definition of evidential material)**

43. This item substitutes the definition of *evidential material* in subsection 4(1) with a new definition. The new definition is required as a consequence of the inclusion of civil penalty provisions and adds paragraphs referring to evidential material in relation to a contravention of a civil penalty provision.

**Item 23 – Subsection 4(1)**

44. This item inserts a definition of *infringement notice*. This definition is required as a consequence of the inclusion of infringement notices as an enforcement option in new Division 12 of Part 3 of the Act (see item 106).

**Item 24 – Subsection 4(1) (definition of offence-related warrant)**

45. This item repeals the definition of *offence-related warrant* and is required as a consequence of the inclusion of civil penalty provisions in the Act. These warrants are now referred to as *enforcement warrants* (which are defined by item 21 above).

**Item 25 – Subsection 4(1)**

46. This item inserts a definition of *penalty unit* in relation to civil penalty provisions in order to clarify that a penalty unit for a civil penalty provision has the meaning given by section 4AA of the *Crimes Act 1914*. Pursuant to section 4AA of the *Crimes Act 1914*, a penalty unit is equivalent to $110.

**Item 26 – Subsection 4(1)**

47. This item inserts a definition of *warrant* to clarify that a warrant includes a monitoring warrant or an enforcement warrant.

**Item 27 – Subsection 6(2)**

48. This item is required as a consequence of the inclusion of civil penalty provisions in the Act and clarifies that nothing in this Act makes the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

**Item 28 – Section 10**

49. This item repeals section 10 of the Act which specifies that the *Criminal Code* applies to all offences against the Act. This section is no longer necessary as the matters covered by this section are addressed in the *Criminal Code*. 
Item 29 – Section 11 (paragraph relating to Division 2)

50. This item inserts a reference, in the overview of Division 2, to civil penalty provisions relating to supplying fuel that does not comply with fuel standards and fuel quality information standards.

Item 30 – Section 11 (paragraph relating to Division 5)

51. This item inserts a reference, in the overview of Division 5, to a civil penalty provision relating to alteration of fuel.

Item 31 – Section 11 (paragraph relating to Division 7)

52. This item inserts a reference, in the overview of Division 7, to civil penalty provisions relating to the supply or importation of a fuel additive that is covered by an entry in the Register of Prohibited Fuel Additives.

Item 32 – Paragraph 12(1)(e)

53. This item substitutes paragraph 12(1)(e) with a new paragraph (e), which is one of the elements that must be established for a person to be found guilty of an offence of supplying fuel that does not comply with a fuel standard. In particular, new paragraph 12(1)(e) provides that if the person holds an approval that varies the standard in respect of the supply, the fuel does not comply with the standard as varied or if another person holds an approval that varies the standard in respect of the supply by the person, the fuel does not comply with the standard as varied. The offence then occurs if the person supplies fuel that does not comply with the standard as varied and all the other elements of subsection 12(1) are established. The person is not guilty if any person holds an approval, it must be an approval that relates to the supply of fuel by them.


54. The purpose of these items is to replace the reference to “Maximum penalty” with a reference to “Penalty”. These amendments are of a technical nature which do not alter the effect of the Act. This is because under section 4D of the Crimes Act 1914, the stated penalty for a Commonwealth offence is to be read as being a maximum penalty unless the contrary intention appears.

Item 34 – After section 12

55. This item inserts a new section 12AA into the Act. New Subsection 12AA(1) provides for a civil penalty as an alternative to the offence in section 12 relating to the supply of fuel that does not comply with a fuel standard. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for a contravention of the corresponding criminal offence;
that is 500 penalty units for an individual and 2,500 penalty units for a body corporate ($55,000 and $275,000 respectively).

56. New subsection 12AA(2) provides a defence for a contravention of the civil penalty provision if the person believes on reasonable grounds that the fuel is supplied will be further processed for the purpose of bringing the fuel into compliance with the standard as varied. A similar defence exists for the criminal offence in section 12. The evidential burden will rest on the person seeking to rely on the defence. The reversal of the burden of proof in this manner is considered appropriate in this instance, as evidence of the matters that are the subject of the defence are issues wholly or primarily within the knowledge of the person seeking to rely on the defence.

Item 35 – Paragraph 12A(1)(e)

57. This item substitutes paragraph 12A(1)(e) with a new paragraph (e), which is one of the elements that must be established for a person to be found guilty of an offence of supplying fuel that does not comply with a fuel quality information standard. In particular, new paragraph 12A(1)(e) provides that if a person holds an approval that varies the fuel quality information standard in respect of the supply, the supply does not comply with the fuel quality information standard as varied or if another person holds an approval that varies the fuel quality information standard in respect of the supply by the person, the supply does not comply with the fuel quality information standard as varied. The offence then occurs if the person supplies fuel and does not comply with the variation of the fuel quality information standard as specified in the approval and all the other elements of subsection 12A(1) are established. The person is not guilty if any person holds an approval, it must be an approval that relates to the supply of fuel by them.

Item 37 – At the end of Division 2 of Part 2

58. This item inserts a new section 12B which provides for a civil penalty as an alternative to the offence in section 12A relating to the supply of fuel that does not comply with a fuel quality information standard. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for a contravention of the corresponding criminal offence; that is 60 penalty units for an individual and 300 penalty units for a body corporate ($6,600 and $33,000 respectively).

Item 38 – Subsection 18(1) (penalty), Item 41 – Subsection 19(1) (penalty), Item 46 – Subsection 30(1) (penalty), Item 48 – Subsection 31(1) (penalty), Item 60 – Subsection 42(2) (penalty) and Item 107 – Subsection 66(1) (penalty)

59. The purpose of these items is to replace references to “Maximum penalty” with a reference to “Penalty”. These amendments are of a technical nature which do not alter the effect of the Act. This is because under section 4D of the Crimes Act 1914, the stated penalty for a Commonwealth offence is to be read as being a maximum penalty unless the contrary intention appears. These items also
replace the heading to the amended sections to more adequately reflect the content of the section.

**Item 40 – At the end of Division 3 of Part 2**

60. This item inserts a new section 18A which provides for civil penalties as an alternative to the offences in section 18 for contravening conditions of an approval granted under section 13. The maximum penalties for contravening these civil penalty provisions is the same as the maximum penalty for contravention of the corresponding criminal offences; that is 100 penalty units for an individual and 500 penalty units for a body corporate ($11,000 and $55,000 respectively).

**Item 42 – At the end of Division 4 of Part 2**

61. This item inserts a new section 19A which provides for a civil penalty as an alternative to the offence in section 19 relating to the supply of fuel without the required documentation. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 60 penalty units for an individual and 300 penalty units for a body corporate ($6,600 and $33,000).

**Item 43 – Paragraph 20(1)(e)**

62. This item substitutes paragraph 20(1)(e) (with the exception of the note) with a new paragraph (e) to clarify that, for a person to be guilty of an offence under this paragraph, they must hold an approval that relates to the supply of fuel as varied or another person holds an approval that relates to the supply of fuel by the person. The offence then occurs if the person alters that fuel with the intention of using the fuel in Australia and the fuel, as altered, does not comply with the variation to the standard as specified in the approval and all the other elements of subsection 20(1) are established. The person is not guilty if any person holds an approval which does not relate to the fuel altered by the person.

**Item 45 – At the end of Division 5 of Part 2**

63. This item inserts a new section 20A which provides for a civil penalty as an alternative to the offence in section 20 relating to the alteration of fuel which is the subject of a fuel standard. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 500 penalty units for an individual and 2,500 penalty units for a body corporate ($55,000 and $275,000 respectively).

**Item 47 – After section 30**

64. This item inserts a new section 30A which provides for a civil penalty as an alternative to the offence in section 30 relating to the supply of a fuel additive that is covered by an entry in the Register of Prohibited Fuel Additives. The maximum penalty for a contravention of this civil penalty provision is the same
as the maximum penalty for contravention of the corresponding criminal offence; that is 250 penalty units for an individual and 1,250 penalty units for a body corporate ($27,500 and $137,500 respectively).

**Item 49 – At the end of Division 7 of Part 2**

65. This item inserts a new section 31A which provides for a civil penalty as an alternative to the offence in section 31 relating to the importation of a fuel additive that is covered by an entry in the Register of Prohibited Fuel Additives. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is 250 penalty units for an individual and 1,250 penalty units for a body corporate ($27,500 and $137,500 respectively).

**Item 50 – Section 37 (paragraph relating to Division 8), Item 58 – Paragraph 41(1)(g), Item 63 – Paragraph 43(2)(b), Item 64 – Subsection 43(3), Item 68 – Subsection 44(6) and Item 72 – Subsection 54(1)**

66. These items all omit references to “offence-related” and substitute those references with references to “enforcement”. These items are required as a consequence of the inclusion of civil penalty provisions in the Act and as a result of the amendment to the definition of *warrant* (item 26 defines *warrant* as monitoring warrant or an enforcement warrant).

**Item 51 – Section 37 (at the end of the paragraph relating to Division 10)**

67. This item is required as a consequence of the inclusion of civil penalty provisions in the Act to clarify that an injunction can be granted in relation to conduct that would contravene a civil penalty provision.

**Item 51 – At the end of section 37**

68. This item inserts overviews of three new Divisions in Part 3 (Enforcement). Division 11 relates to an order for payment of a pecuniary penalty for contravention of a civil penalty provision. Division 12 relates to infringement notices as an enforcement option to avoid prosecution or civil proceedings. Division 13 provides for enforceable undertakings in relation to an offence against the Act or a contravention of a civil penalty provision.

**Item 54 – Paragraphs 40(1)(a) and (b)**

69. This item substitutes paragraphs 40(1)(a) and (b) with new paragraphs (a) and (b) to make a distinction between the powers of inspectors entering any *premises* and exercising the monitoring powers set out in section 41 and entering *business premises* (as defined by item 17 above) and exercising the powers set out in section 41A (inserted by item 59 below).

70. When entering any *premises* the inspector is required to obtain the consent of the occupier to exercise the monitoring powers. When entering *business*
premises, which are open to the public, the inspector is not required to obtain the consent of the occupier.

71. This amendment will allow inspectors the authority to take samples of fuel sold in the public area of a vendor’s premises without requiring the consent of the vendor. This provision is consistent with other Commonwealth legislation and is based on the public area monitoring powers in section 48 of the Water Efficiency Labelling and Standards Act 2005.

Item 55 – Subsection 40(2)

72. This item is required as a consequence of item 54. It clarifies that an inspector cannot enter any premises to exercise the monitoring powers set out in section 41 unless the occupier of the premises has consented to the entry or the entry is made under a monitoring warrant.

Item 56 – At the end of section 40

73. This item is also required as a consequence of item 54. It clarifies that the power of an inspector to enter a public area of business premises when the premises are open to the public to exercise the powers set out in section 41A does not affect the right of the occupier of the premises to refuse to allow an inspector to enter, or remain on, the premises. The rights of the occupier in relation to inspectors in these circumstances are consistent with the rights of the occupier to refuse entry to any member of the public.

Item 57 – Subsection 41(1)

74. This item substitutes the reference to section 40 in subsection 41(1) with a reference to paragraph 40(1)(a) and is required as a consequence of item 54. This item also amends the heading to section 41 to more accurately reflect the content of the section.

Item 59 – After section 41

75. This item inserts new section 41A into the Act. This new section sets out the powers of inspectors in relation to a public area of business premises when those public areas have been entered by inspectors for the purpose of investigating compliance with the Act under paragraph 40(1)(b).

Item 61 – Division 4 of Part 3 (heading)

76. The purpose of this item is to repeal the heading to Division 4 of Part 3 and substitute it with a new heading. This is required as a consequence of the inclusion of civil penalty provisions into the Act and more accurately reflects the content of Division 4 of Part 3 of the Act.
Item 62 – Paragraph 43(1)(b)

77. This item omits the reference to “offence-related” in paragraph 43(1)(b) and is required as a result of the inclusion of civil penalty provisions in the Act and as a result of the amendment of the definition of warrant (item 26 defines warrant as a monitoring warrant or an enforcement warrant). This item also amends the heading to section 43 to more accurately reflect the content of the section.

Item 65 – Subsection 44(1), Item 66 – Subsection 44(2), Item 67 – Subsection 44(3) and Item 69 – Subsection 44(7)

78. The purpose of these items is to clarify that the powers of an inspector as outlined in section 44 of the Act. These amendments are required as a result of the inclusion of civil penalty provisions in the Act and the amendment to the definition of warrant (warrant is defined as a monitoring warrant or an enforcement warrant (see item 26)). Item 69 also enables an inspector to seize evidential material which the inspector reasonably believes is necessary in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against the Act or a contravention of a civil penalty provision.

Item 70 – Subsection 51(3)

79. This item amends subsection 51(3) of the Act to omit the reference to the Federal Court and replaces it with a reference to a court of competent jurisdiction for such reasonable account of compensation as the court determines. The effect of this amendment is that the owner or user of electrical equipment may apply to a Court (which includes the Federal Court of Australia or the Supreme Court of a State and Territory) for compensation if the electrical equipment has been damaged and the Commonwealth and the owner or user cannot agree on an amount of reasonable compensation. This amendment recognises that State and Territory courts already have a role in prosecutions for offences against the Act and allows those courts to deal with other matters which may arise under the Act.

Item 73 – Paragraphs 57(2)(a) and (b)

80. This item replaces paragraphs 57(2)(a) and (b) with new paragraphs to enable things to be retained for the purpose of an investigation as to whether an offence against the Act has been committed or a civil penalty provision has been contravened. This amendment is required as a consequence of the addition of civil penalty provisions in the Act.

Item 74 – Subsection 58B(1) and Item 75 – Subsection 58B(2)

81. These items amend subsections 58B(1) and 58B(2) to clarify that they apply in respect of any proceedings under Part 2 of the Act, whether the proceedings be for an offence against a provision of Part 2 or for a contravention of a civil penalty provision of Part 2 of the Act. Item 75 enables a certificate to be provided in relation to any proceedings in respect of Part 2 of the Act, including
proceedings for a contravention of a civil penalty provision. These amendments are required as a consequence of the inclusion of civil penalty provisions in the Act.

**Item 76 – Paragraph 58B(6)(b), Item 99 – Subsection 65(2), Item 101 – Subsection 65(2C), Item 102 – Subsection 65(3), Item 104 – Subsection 65(5) and Item 105 – Subsection 65(6)**

82. The purpose of these items is to replace references to “the Court” or “a Court” with references to “the court” and “a Court”. The effect of these amendments to extend the type of courts that have jurisdiction for various matters under the Act. These amendments recognise that State and Territory courts already have a role in prosecutions for offences against the Act and allows those courts to deal with other matters which may arise under the Act.

**Item 77 – Subsection 59(1), Item 78 – Subsection 59(2), Item 79 – Subsection 59(3) and Item 80 – Subsection 59(4)**

83. These items are of a technical nature and are required to clarify that a warrant issued for the purposes of section 59 is a monitoring warrant. These amendments are required as a result of the amendment of the definition of warrant (item 26 defines warrant as a monitoring warrant or an enforcement warrant).


84. The purpose of these items is to clarify the warrants to which they relate are enforcement warrants (which is a warrant issued under section 61 or a warrant signed by a magistrate under section 61). These items are required as a result of the inclusion of civil penalty provisions in the Act and the amendment to the definition of warrant (item 26 defines warrant as a monitoring warrant or an enforcement warrant).

**Item 98 – Subsection 65(1) and Item 100 – Paragraph 65(2)(b)**

85. These items replace subsection 65(1) with a new subsection and paragraph 65(2)(b) respectively to enable the a Court, on application of the Minister or any other aggrieved person, to grant an injunction restraining a person from engaging in conduct that is or would be not only an offence against the Act, but also a contravention of a civil penalty provision or to require the person to do a thing in circumstances where the refusal to do the thing is or would constitute an offence against the Act or a contravention of a civil penalty provision. These amendments are required as a consequence of the inclusion of civil penalty provisions in the Act.
Item 103 – Subsection 65(4)

86. This item repeals subsection 65(4) and replaces it with a new subsection. New subsection 65(4) clarifies that a Court may discharge or vary an injunction granted by the Court under this section. Previously, a person could only apply to the Federal Court of Australia for an injunction under section 65. The purpose of this amendment is to extend the types of courts that have jurisdiction to grant an injunction, including a Supreme Court of a State or Territory. This amendment recognises that State and Territory courts already have a role in prosecutions for offences against the Act and allows those courts to deal with other matters which may arise under the Act.

Item 106 – At the end of Part 3

87. This item inserts three new Divisions in Part 3 of the Act (Division 11 – Civil Penalties, Division 12 – Infringement notices and Division 13 – Enforceable undertakings).

Division 11 – Civil Penalties (new sections 65A – 65K)

88. Item 106 includes a Division establishing a civil penalty regime in the Act. The provisions allow the Minister to apply to a Court (including the Federal Court of Australia or the Supreme Court of a State or Territory) for an order that the person who has contravened a civil penalty provision to pay a pecuniary penalty. Amendments elsewhere in this Part of the Bill establish civil penalty provisions.

89. The provisions establishing the civil penalty regime include protections against multiple civil, or both civil and criminal action being taken against a person, consistent with the legal principle of double jeopardy.

90. The civil penalty provisions enable the Secretary, when the Secretary reasonably suspects that a person other than a wrongdoer can give information relevant to an application for a civil penalty order, to require the person to give all reasonable assistance in connection with such an application (new subsection 65D(2)). New subsection 65D(6) clarifies that a requirement made under subsection (2) by the Secretary is not a legislative instrument. This subsection has been included to assist readers, as an instrument made under subsection 65D(2) is not a legislative instrument for the purposes of the definition of that term in section 5 of the Legislative Instruments Act 2003.

Division 12 – Infringement notices (new sections 65L – 65S)

91. Item 106 establishes a Division allowing for the establishment of an infringement notice scheme.

92. The infringement notice scheme sets out the circumstances in which an infringement notice may be issued, the matters that must be included in an infringement notice, a process for a person to whom an infringement notice has been issued to apply for an extension of time to pay the infringement notice.
penalty and for the person to make written representations to the Secretary seeking the withdrawal of an infringement notice.

93. In circumstances where a person to whom an infringement notice has been issued chooses not to pay the infringement notice penalty, it would be possible for a decision to be made at that time whether to take criminal proceedings against the person or, if a civil penalty provision exists for the offence for which the infringement notice was issued, to bring civil proceedings against the person. This is because where there are corresponding offence provisions and civil penalty provisions, the same conduct constitutes both an offence and a civil penalty provision. This would also apply if an infringement notice is subsequently withdrawn and the infringement notice penalty refunded to the person.

94. As an infringement notice is an alternative to prosecution, the provisions clarify that if a person to whom an infringement notice has been issued pays the infringement notice penalty, the liability of the person for the alleged offence is discharged. However, the power to issue an infringement notice does not remove the liability of a person to be prosecuted for an offence or ordered to pay a pecuniary penalty if an infringement notice has not been issued in relation to the conduct.

95. New section 65S will enable regulations to be made in relation to infringement notices. This regulation making power will allow procedural/administrative matters which relate to the infringement notice system to be specified in the regulations. Such regulations cannot be inconsistent with the Act.

Division 13 – Enforceable undertakings (new sections 65T – 65U)

96. Item 106 establishes a Division empowering the Minister to enter into an undertaking with a person the Minister believes has committed an offence against the Act or has contravened a civil penalty provision of the Act. The entering into of an enforceable undertaking is voluntary on the part of both parties and may be withdrawn or varied with the consent of the Secretary, or cancelled by the Secretary. Undertakings may be enforced by a Court.

97. The use of enforceable undertakings in any given circumstance is a matter of discretion. Criminal prosecution, civil action or another form of administrative enforcement will always remain an option.

Item 108 – After section 66

98. This item inserts a new section 66A which provides for a civil penalty as an alternative to the offence in section 66 relating to the failure to keep and maintain records in accordance with the regulations. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is, 60 penalty units for an individual or 300 penalty units for a body corporate ($6,600 or $33,000 respectively).
**Item 110 – At the end of section 67**

99. This item inserts a new subsection 67(7) which provides for a civil penalty as an alternative to the offence in subsection 67(5) for contravention of the requirements relating to annual statements. The maximum penalty for a contravention of this civil penalty provision is the same as the maximum penalty for contravention of the corresponding criminal offence; that is, 60 penalty units for an individual or 300 penalty units for a body corporate ($6,600 or $33,000 respectively).

**Item 111 – Application**

100. This item provides that the provisions in the new Divisions 11, 12 and 13 of Part 3 (inserted by item 106) apply in relation to conduct that occurs on or after the day on which this item commences.

**Part 3 – Fuel standards may apply in specified circumstances**

*Fuel Quality Standards Act 2000*

**Item 112 – After paragraph 12(1)(a), Item 113 – After paragraph 19(1)(a), Item 114 – After paragraph 20(1)(c), Item 116 – After paragraph 66(1)(a), Item 117 – After paragraph 67(1)(b) and Item 118 – After paragraph 67(2)(b)**

101. These items insert new paragraphs 12(1)(aa), 19(1)(aa), 20(1)(ca), 66(1)(aa) and 67(2)(c) into the Act which all relate to the end use or the use or supply of fuel in particular circumstances. These items are required as a consequence of item 115 below.

**Item 115 – Subsection 21(1)**

102. This item repeals subsection 21(1) and substitutes it with new subsections 21(1) and 21(1A).

103. New subsection 21(1) is a redraft of the current subsection, but clarifies the current application of the law that a determination of a fuel standard in respect of a specified kind of fuel by the Minister is a legislative instrument. Subsection 21(4) currently provides that the determination of a fuel standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* provides that an instrument is a legislative instrument if the instrument made in the exercise of a power delegated by the Parliament before the commencing day [1 January 2005] and, in accordance with a provision of the enabling legislation declared to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* as in force at any time before the commencing day. Therefore, this amendment is declaratory of the law and has been included to assist readers.

104. The new subsection (1A) provides that the Minister may determine a fuel standard in respect of a specified kind of fuel and that the fuel standard may
specify the circumstances in which the standard applies or doesn’t apply. Determinations specifying fuel standards include references to end use, for example the definition of petrol in the Fuel Standard (Petrol) Determination 2001 excludes avgas for use in aircraft. The Act, however, is not clear on the power to include the circumstances in which the standard applies such as end use.

105. This new subsection will therefore allow the Minister to exclude certain end uses, where appropriate, from the application of fuel standards and it will assist in addressing issues related to defining fuels and the management of blends.

Item 119 – Savings provision

106. This item clarifies that a fuel standard that is in force, or purportedly in force, immediately before the commencement of this item will continue in force as if it were made immediately after item 115 commences, under section 21 of the Act as amended by item 115. This item also clarifies that a fuel standard has the same meaning as in the Act.

Part 4 - Miscellaneous

Fuel Quality Standards Act 2000

Item 120 – Subsection 4(1) (paragraph (b) of the definition of emergency law)

107. This item amends the definition of emergency law in subsection 4(1) of the Act and is required as a consequence of Item 121 (below).

Item 121 – Subsection 4(2) and Item 122 – Subsection 4(3)

108. Item 121 amends subsection 4(2) of the Act to clarify the current application of the law that a determination specifying a law of the Commonwealth, a State or Territory for the purposes of the definition of emergency law is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

109. Subsection 4(3) (which is to be repealed by item 122) currently provides that a determination under subsection (2) is a disallowable instrument for the purposes of the Acts Interpretation Act 1901. Subparagraph 6(d)(i) of the Legislative Instruments Act 2003 provides that an instrument is a legislative instrument if the instrument made in the exercise of a power delegated by the Parliament before the commencing day [1 January 2005] and, in accordance with a provision of the enabling legislation declared to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901 as in force at any time before the commencing day. Therefore item 121 is declaratory of the law and has been included to assist readers.

110. Subsection 4(3) of the Act is to be repealed by item 122 as it is redundant following the commencement of the Legislative Instruments Act 2003. As a declaration pursuant to subsection 4(2) is a legislative instrument, the
disallowance provisions of the *Legislative Instruments Act 2003* apply to such instruments when they are tabled in both Houses of the Parliament.

**Item 123 – Subsection 21(4)**

111. This item repeals subsection 21(4) of the Act. Subsection 21(4) currently provides that the determination of a fuel standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. This subsection is now redundant following the commencement of the *Legislative Instruments Act 2003*. As a fuel standard is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (see item 115 above), the disallowance provisions of the *Legislative Instruments Act 2003* apply to such instruments when they are tabled in both Houses of the Parliament.

**Item 124 – Subsection 22(1) and Item 125 – Subsection 22(2)**

112. Item 124 amends subsection 22(1) of the Act to clarify the current application of the law that guidelines developed by the Minister are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

113. Subsection 22(2) (which is to be repealed by item 125) currently provides that the guidelines are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* provides that an instrument is a legislative instrument if the instrument made in the exercise of a power delegated by the Parliament before the commencing day [1 January 2005] and, in accordance with a provision of the enabling legislation declared to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* as in force at any time before the commencing day. Therefore item 124 is declaratory of the law and has been included to assist readers.

114. Subsection 22(2) of the Act is to be repealed by item 125 as it is redundant following the commencement of the *Legislative Instruments Act 2003*. As guidelines developed pursuant to subsection 22(1) are a legislative instrument, the disallowance provisions of the *Legislative Instruments Act 2003* apply to such instruments when they are tabled in both Houses of the Parliament.

**Item 126 – Subsection 22A(1) and Item 127 – Subsection 22A(4)**

115. Item 126 amends subsection 22A(1) of the Act to clarify the current application of the law that a determination of a fuel quality information standard is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

116. Subsection 22A(4) (which is to be repealed by item 127) currently provides that a determination under section 22A is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* provides that an instrument is a legislative instrument if the instrument made in the exercise of a power delegated by the Parliament before the commencing day [1 January 2005] and, in accordance with a provision of the enabling legislation declared to be a disallowable
instrument for the purposes of section 46A of the Acts Interpretation Act 1901 as in force at any time before the commencing day. Therefore item 126 is declaratory of the law and has been included to assist readers.

117. Subsection 22A(4) of the Act is to be repealed by item 127 as it is redundant following the commencement of the Legislative Instruments Act 2003. As a determination made pursuant to section 22A is a legislative instrument, the disallowance provisions of the Legislative Instruments Act 2003 apply to such instruments when they are tabled in both Houses of the Parliament.

**Item 128 – Section 27**

118. This item removes the power of the Minister to appoint expert advisers. Advisors appointed under this section have no decision making role. Expert advice has, to date, been provided by the Fuel Standards Consultative Committee and the power to appoint expert advisers has never been used. If the Minister or the Committee requires further expertise in relation to technical or other issues relating to fuel standards, expert advice can be (and has been) commissioned without the need for this provision.

**Item 129 – Subsection 28(1), Item 130 – Subsection 28(2), Item 131 – Subsection 28(3) and Item 132 – Section 29**

119. These items are required as a consequence of item 128 to remove references to expert adviser(s).

**Item 133 – Subsection 36(1) and Item 134 – Subsection 36(3)**

120. Item 133 amends subsection 36(1) of the Act to clarify the current application of the law that the guidelines developed by the Minister under section 36 are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

121. Subsection 36(3) (which is to be repealed and substituted by item 134) currently provides that the guidelines are a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. Subparagraph 6(d)(i) of the Legislative Instruments Act 2003 provides that an instrument is a legislative instrument if the instrument made in the exercise of a power delegated by the Parliament before the commencing day [1 January 2005] and, in accordance with a provision of the enabling legislation declared to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901 as in force at any time before the commencing day. Therefore item 133 is declaratory of the law and has been included to assist readers.

122. Subsection 36(3) of the Act is to be repealed by item 134 as it is redundant following the commencement of the Legislative Instruments Act 2003. As guidelines developed pursuant to section 36 are a legislative instrument, the disallowance provisions of the Legislative Instruments Act 2003 apply to such instruments when they are tabled in both Houses of the Parliament.
Item 135 – Section 67A

123. This item substitutes section 67A with a new section that expands the Secretary’s powers to share information obtained under the Act with other Commonwealth, State and Territory agencies. The objective of this provision is to strengthen the enforcement of fuel standards by facilitating communication with other regulators to increase the intelligence available on potential offenders. This provision will also assist in filling gaps in the Act’s coverage of the industry.

124. The disclosure of information under this provision would be strictly in accordance with the requirements of the Privacy Act 1988.

125. Paragraph 67A(b)(iii) is intended to allow the prescription of other Acts including State and Territory Acts as the need arises. For example, the Queensland Environment Protection Act 1994 has recently been amended to specify that the Determinations under the Fuel Quality Standards Act 2000 apply to all persons or entities who import or manufacture fuel in Queensland.

Item 136 – Subsection 68(1)

126. This item substitutes subsection 68(1) with a new subsection (1) and inserts a new subsection (1A). Both subsections extend the functions and powers of the Minister which can be delegated under the Act to all functions and powers except the power to make determinations under sections 21 and 21A. The item also clarifies the levels to which these functions and powers can be delegated.

Item 137 – Savings provision

127. This item provides that any delegation by the Minister to the Secretary, an SES employee or an acting SES employee that was in force before the commencement of item 136 (the day after the Bill receives Royal Assent), will not be affected by the amendment to subsection 68(1) and the new subsection 68(1A) and will continue to in effect as if the delegation were made under the new subsections 68(1) or (1A).