



Low Aromatic Fuel Act 2013

No. 1, 2013

**An Act to promote the supply of low aromatic fuel
and control the supply of other fuels in certain
areas, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to promote the supply of low aromatic fuel
and control the supply of other fuels in certain
areas, and for related purposes**

[Assented to 14 February 2013]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Low Aromatic Fuel Act 2013*.

Part 1 Preliminary

Section 2

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Guide to this Act

This Act is about promoting the supply of low aromatic fuel and controlling the supply of other fuels in certain areas in order to reduce potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in those areas from sniffing fuel (see the object of this Act in section 4).

Part 2—Requirements relating to fuels for low aromatic fuel areas and fuel control areas

Division 1 of Part 2 deals with requirements relating to regular unleaded petrol for low aromatic fuel areas, prohibiting the supply of regular unleaded petrol in a low aromatic fuel area.

Division 2 of Part 2 deals with requirements relating to low aromatic fuel for low aromatic fuel areas and fuel control areas. These requirements are determined by the Minister by legislative instrument.

Division 3 of Part 2 deals with requirements for fuels generally for low aromatic fuel areas and fuel control areas. These requirements are determined by the Minister by legislative instrument.

Before making a determination for the purposes of Division 2 or 3 of Part 2, the Minister must be satisfied that making the determination will further the object of this Act.

Part 3—Designating low aromatic fuel areas and fuel control areas

Low aromatic fuel areas and fuel control areas are designated by the Minister under Part 3.

The Minister may only designate an area as a low aromatic fuel area, following appropriate consultation, if satisfied that doing so is reasonably likely to help reduce potential harm from sniffing fuel in that area, and if certain other conditions are satisfied.

The Minister may only designate an area as a fuel control area, following appropriate consultation, if satisfied that doing so is reasonably likely to help reduce potential harm from sniffing fuel in that area or in a low aromatic fuel area, and if certain other conditions are satisfied.

Part 4—Exemptions from requirements of this Act

Under Part 4, the Minister may exempt specified 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.

Part 5—Miscellaneous matters

Part 5 deals with miscellaneous matters, including reviewing the operation of this Act and the power to make regulations.

Other introductory matters

Part 1 contains the Dictionary. The Dictionary is a list of every term that is defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

In addition, Part 1 deals with the application of this Act to the Crown and the relationship between this Act and State and Territory laws.

4 Object of this Act

The object of this Act is to enable special measures to be taken to reduce the potential harm to the health of people, including

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Aboriginal persons and Torres Strait Islanders, living in certain areas from sniffing fuel.

5 Dictionary

In this Act:

Aboriginal person means a person of the Aboriginal race of Australia.

conduct means an act, an omission to perform an act or a state of affairs.

corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

emergency law means:

- (a) the *Liquid Fuel Emergency Act 1984*; or
- (b) a law prescribed by the regulations for the purposes of this definition.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

fuel means:

- (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 purposes of this definition.

fuel control area means an area designated by the Minister under section 15.

low aromatic fuel means:

- (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.

low aromatic fuel area means an area designated by the Minister under section 14.

petrol means a petroleum based fuel (whether or not containing ethanol) for spark-ignition internal combustion engines.

regular unleaded petrol means unleaded petrol that has a research octane number of less than 95, but does not include low aromatic fuel.

supply includes give, distribute, barter and exchange, whether or not for consideration, and whether or not the supply is a wholesale or retail supply.

Torres Strait Islander means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

6 Act binds Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

7 Relationship to State and Territory laws

This Act is not intended to exclude the operation of any law of a State or Territory, to the extent that that law is capable of operating concurrently with this Act.

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Part 2—Requirements relating to fuels for low aromatic fuel areas and fuel control areas

Division 1—Requirements relating to regular unleaded petrol for low aromatic fuel areas

8 Prohibition on supplying etc. regular unleaded petrol in low aromatic fuel areas

Offence—supplying regular unleaded petrol in low aromatic fuel area

- (1) A corporation must not supply regular unleaded petrol to a person if the person is in a low aromatic fuel area.

Penalty: 300 penalty units.

Note: Low aromatic fuel areas are designated by the Minister under section 14.

Offence—transporting regular unleaded petrol for supply in low aromatic fuel area

- (2) 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.

Penalty: 300 penalty units.

Offence—possessing regular unleaded petrol for supply in low aromatic fuel area

- (3) A corporation must not possess regular unleaded petrol intending to supply any of it to a person if the person is in a low aromatic fuel area.

Penalty: 300 penalty units.

Exceptions

- (4) A corporation does not commit an offence against subsection (1), (2) or (3) by engaging in particular conduct if:
- (a) both:
 - (i) the conduct is exempt under section 17; and
 - (ii) the corporation complies with any conditions of the exemption in engaging in the conduct; or
 - (b) the corporation engages in the conduct in order to comply with a direction or order under an emergency law.

Note: A defendant bears an evidential burden in relation to a matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Part 2 Requirements relating to fuels for low aromatic fuel areas and fuel control areas

Division 2 Requirements relating to low aromatic fuel for low aromatic fuel areas and fuel control areas

Section 9

Division 2—Requirements relating to low aromatic fuel for low aromatic fuel areas and fuel control areas

9 Requirements relating to low aromatic fuel for low aromatic fuel areas and fuel control areas

Minister may determine requirements

- (1) The Minister may, by legislative instrument, determine requirements relating to the following:
 - (a) communicating information in connection with the supply of low aromatic fuel in, or in relation to, a low aromatic fuel area or fuel control area, including information promoting low aromatic fuel;
 - (b) making and keeping records relating to the supply, transport, possession or storage of low aromatic fuel in, or in relation to, a low aromatic fuel area or a fuel control area;
 - (c) giving the Minister specified information relating to the supply, transport, possession or storage of low aromatic fuel in, or in relation to, a low aromatic fuel area or a fuel control area.

Note 1: Low aromatic fuel areas and fuel control areas are designated by the Minister under sections 14 and 15.

Note 2: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) Without limiting subsection (1), a determination under that subsection may determine requirements in relation to one or more specified areas or areas in a specified class.
- (3) Before making a determination under subsection (1), the Minister must be satisfied that making the determination will further the object of this Act.

10 Offence—contravening requirements relating to low aromatic fuel

- (1) A corporation must not contravene a requirement determined under section 9.

Penalty: 100 penalty units.

Exceptions

- (2) A corporation does not commit an offence against subsection (1) by engaging in particular conduct if both:
- (a) the conduct is exempt under section 17; and
 - (b) the corporation complies with any conditions of the exemption in engaging in the conduct.

Note: A defendant bears an evidential burden in relation to a matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Part 2 Requirements relating to fuels for low aromatic fuel areas and fuel control areas

Division 3 Requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

Section 11

Division 3—Requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

11 Requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

Minister may determine requirements

- (1) 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.

Note: Low aromatic fuel areas and fuel control areas are designated by the Minister under sections 14 and 15.

- (2) Without limiting subsection (1), a determination under that subsection may do any or all of the following:
- (a) prohibit (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;
 - (b) require a fuel in a low aromatic fuel area or a fuel control area to be stored or secured in accordance with the determination;
 - (c) require a fuel in a low aromatic fuel area or a fuel control area to be supplied in a specified kind of container;
 - (d) specify requirements in relation to communicating information, in accordance with the determination, in connection with a supply of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area;
 - (e) specify requirements in relation to the information or documentation that a person must provide before a fuel is supplied to the person in a low aromatic fuel area or a fuel control area;
 - (f) require a person to make and keep records 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 in accordance with the determination;

Section 12

- (g) require a person to give the Minister specified information 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, including information relating to a suspected offence against this Act.
- (3) The paragraphs of subsection (2) do not limit each other.
- (4) Without limiting subsection (1), a determination under that subsection may determine requirements in relation to one or more specified areas or areas in a specified class.
- (5) Before making a determination under subsection (1), the Minister must be satisfied that making the determination will further the object of this Act.
- (6) In making a determination under subsection (1), the Minister must have regard to:
 - (a) the wellbeing of people, including Aboriginal persons and Torres Strait Islanders, living in and near the area; and
 - (b) any submissions of the kind referred to in paragraph 13(2)(b); and
 - (c) any other matter that the Minister considers relevant.

12 Offence—contravening requirements relating to fuels generally

- (1) A corporation must not contravene a requirement determined under section 11.

Penalty: 300 penalty units.

Exceptions

- (2) A corporation does not commit an offence against subsection (1) by engaging in particular conduct if:
 - (a) both:
 - (i) the conduct is exempt under section 17; and
 - (ii) the corporation complies with any conditions of the exemption in engaging in the conduct; or
 - (b) the corporation engages in the conduct in order to comply with a direction or order under an emergency law.

Part 2 Requirements relating to fuels for low aromatic fuel areas and fuel control areas

Division 3 Requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

Section 13

Note: A defendant bears an evidential burden in relation to a matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

13 Consultation before determining requirements relating to fuels generally

- (1) Before making a determination under section 11, the Minister must consult with such persons and bodies from among the following as the Minister considers appropriate:
 - (a) community representatives and bodies;
 - (aa) Aboriginal persons or Torres Strait Islanders (or representatives of Aboriginal persons or Torres Strait Islanders);
 - (b) manufacturers and suppliers of fuel;
 - (c) persons with an interest in or knowledge of human health;
 - (d) any other person that the Minister considers appropriate.
- (2) Without limiting subsection (1), the Minister must ensure that:
 - (a) information setting out the following has been made available in the area or areas to which the determination relates:
 - (i) the proposed requirements;
 - (ii) an explanation, in summary form, of the proposed requirements; and
 - (b) people living in the area, and businesses and organisations operating in the area, have been given a reasonable opportunity to make submissions to the Minister about:
 - (i) the proposed requirements; and
 - (ii) the consequences of determining the proposed requirements; and
 - (iii) their circumstances, concerns and views, so far as they relate to the proposed requirements.

Part 3—Designating low aromatic fuel areas and fuel control areas

14 Minister may designate low aromatic fuel areas

- (1) The Minister may, by legislative instrument, designate an area specified in the instrument as a *low aromatic fuel area*.
- (2) The Minister may only designate an area under subsection (1) if:
 - (a) the Minister is satisfied that designating the area is reasonably likely to help reduce potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in the area from sniffing fuel; and
 - (b) the Minister is satisfied that there are adequate facilities or arrangements for the supply of low aromatic fuel to and within the area being designated; and
 - (c) the Minister considers that the appropriate States and Territories have not enacted legislation consistent with this Act to reduce the harm of petrol sniffing, and it is unlikely that they will enact such legislation within a reasonable period.
- (3) In designating an area under subsection (1), the Minister must have regard to:
 - (a) the wellbeing of people, including Aboriginal persons and Torres Strait Islanders, living in the area; and
 - (b) whether there is reason to believe that the health of people, including Aboriginal persons and Torres Strait Islanders, living in the area has been harmed by sniffing fuel; and
 - (c) whether people, including Aboriginal persons and Torres Strait Islanders, living in the area have expressed their concerns about sniffing fuel; and
 - (d) whether people, including Aboriginal persons and Torres Strait Islanders, living in the area have expressed the view that their wellbeing will be improved if the area is designated as a low aromatic fuel area; and
 - (e) any submissions of the kind referred to in paragraph 16(2)(b); and

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- (f) the availability of low aromatic fuel in relation to the area; and
- (g) any other matter that the Minister considers relevant.

15 Minister may designate fuel control areas

- (1) The Minister may, by legislative instrument, designate an area specified in the instrument as a *fuel control area*.
- (2) The Minister may only designate an area under subsection (1) if he or she is satisfied that:
 - (a) designating the area is reasonably likely to help reduce potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in that area or in a low aromatic fuel area from sniffing fuel; and
 - (b) the Minister is satisfied that there are adequate facilities or arrangements for the supply of low aromatic fuel to and within the area being designated; and
 - (c) the Minister considers that the appropriate States and Territories have not enacted legislation consistent with this Act to reduce the harm of petrol sniffing, and it is unlikely that they will enact such legislation within a reasonable period.
- (3) In designating an area under subsection (1), the Minister must have regard to:
 - (a) the wellbeing of people, including Aboriginal persons and Torres Strait Islanders, living in the area and any relevant low aromatic fuel area; and
 - (b) whether there is reason to believe that the health of people, including Aboriginal persons and Torres Strait Islanders, living in the area or any relevant low aromatic fuel area has been harmed by sniffing fuel; and
 - (c) whether people, including Aboriginal persons and Torres Strait Islanders, living in the area or any relevant low aromatic fuel area have expressed their concerns about sniffing fuel; and
 - (d) whether people, including Aboriginal persons and Torres Strait Islanders, living in the area or any relevant low

aromatic fuel area have expressed the view that their wellbeing will be improved if the area is designated as a fuel control area; and

- (e) any submissions of the kind referred to in paragraph 16(2)(b); and
- (f) the availability of fuel (including low aromatic fuel) in relation to the area; and
- (g) any other matter that the Minister considers relevant.

16 Consultation before designating low aromatic fuel areas and fuel control areas

- (1) Before designating an area under section 14 or 15, the Minister must consult with such persons and bodies from among the following as the Minister considers appropriate:
 - (a) community representatives;
 - (aa) Aboriginal persons or Torres Strait Islanders (or representatives of Aboriginal persons or Torres Strait Islanders);
 - (b) manufacturers and suppliers of fuel;
 - (c) persons with an interest in or knowledge of human health;
 - (d) any other person that the Minister considers appropriate.
- (2) Without limiting subsection (1), the Minister must ensure that:
 - (a) information setting out the following has been made available in the area:
 - (i) the proposal to designate the area;
 - (ii) an explanation, in summary form, of the consequences of designating the area; and
 - (b) people living in the area, and businesses and organisations operating in the area, have been given a reasonable opportunity to make submissions to the Minister about:
 - (i) the proposal to designate the area; and
 - (ii) the consequences of designating the area; and
 - (iii) their circumstances, concerns and views, so far as they relate to the proposal.

Part 4—Exemptions from requirements of this Act

17 Minister may exempt conduct in relation to low aromatic fuel areas and fuel control areas

- (1) The Minister may, by written instrument, exempt specified conduct in, or in relation to, a low aromatic fuel area or a fuel control area for the purposes of subsection 8(4), 10(2) or 12(2), but only if the Minister is satisfied that:
- (a) there are special circumstances justifying the exemption; and
 - (b) either:
 - (i) if the exemption is for the purposes of subsection 8(4), 10(2) or 12(2)—it is unlikely that the wellbeing of people, including Aboriginal persons and Torres Strait Islanders, will be adversely affected by the exemption; or
 - (ii) if the exemption is for the purposes of subsection 8(4)—the exemption is necessary because of the unavailability, or likely unavailability, of low aromatic fuel.
- (2) Without limiting subsection (1), the Minister may exempt conduct:
- (a) by one or more specified corporations or corporations in a specified class; and
 - (b) in, or in relation to, one or more specified areas or areas in a specified class.
- (3) An exemption under subsection (1) is subject to the conditions specified in the exemption.
- Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: A corporation may commit an offence under Part 2 if the corporation does not comply with a condition of an exemption.
- (4) An exemption made under subsection (1) exempting conduct in relation to one or more specified corporations is not a legislative instrument.

- (5) An exemption made under subsection (1) exempting the following conduct is a legislative instrument:
- (a) conduct by corporations in a specified class;
 - (b) conduct in, or in relation to, one or more specified areas or areas in a specified class.

Part 5—Miscellaneous

18 Reviewing the operation of this Act

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after:
 - (a) the fifth anniversary of the commencement of this section;
and
 - (b) each fifth anniversary after the day mentioned in paragraph (a).
- (2) The persons who undertake the review must give the Minister a written report of the review within one year after the relevant anniversary mentioned in subsection (1).
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

18A Acquisition of property

This Act, or any instrument made under this Act, does not apply to the extent that the operation of this Act or the instrument would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

19 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

*[Second reading speech made in—
Senate on 1 March 2012
House of Representatives on 6 February 2013]*

(29/12)