EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 203

Issued by Authority of the Minister for the Environment, Heritage and the Arts

Fuel Quality Standards Act 2000

Fuel Quality Standards Amendment Regulations 2008 (No. 1)

Section 73 of the *Fuel Quality Standards Act 2000* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

National fuel quality standards have been introduced for petrol, automotive diesel, biodiesel and autogas. A fuel quality information standard has also been introduced for petrol blended with up to 10% ethanol. The standards are set by the Minister for the Environment, Heritage and the Arts in Determinations under the Act.

The *Fuel Quality Standards Regulations 2001* (the Principal Regulations) provide the detail for the requirements prescribed under the Act in relation to compliance with fuel quality standards including record keeping, documentation requirements, handling of fuel samples by inspectors and application fees for approvals to vary fuel standards.

The purpose of the Regulations is to:

- remove "diesohol" from the definition of "fuel";
- amend the application fees for approvals to vary fuel standards to implement a new cost recovery framework;
- remove the application fee exemption for Commonwealth, state and territory agencies;
- amend procedures for handling samples to accommodate gas samples;
- specify that records required under the Act be kept at the premises where the fuel is supplied; and
- amends the details of where to submit Annual Statements to remove specific references to Departmental names and website addresses which can change.

Details of the Regulations are provided in the Attachment.

The amendments arose from the first statutory review of the Act. Industry and key stakeholders were consulted as part of the process for the review. The Fuel Standards Consultative Committee was also consulted on the proposed amendments. The Committee consists of representatives from all state and territory governments, fuel producers and importers, non-government bodies and consumers.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations will commence on 1 November 2008.

Attachment

Details of the *Fuel Quality Standards Amendment Regulations 2008 (No. 1)*

Regulation 1: Name of Regulations
Names the Regulations as the *Fuel Quality Standards Amendment Regulations 2008 (No. 1).*

Regulation 2: Commencement
Provides that the Regulations commence on 1 November 2008.

Regulation 3: Amendment of *Fuel Quality Standards Regulations 2001*
Provides that Schedule 1 to the Regulations amends the *Fuel Quality Standards Regulations 2001* (the Principal Regulations).

Schedule 1

Item [1]: Paragraph 3 (2) (f)
This item removes "diesohol" from the definition of ***fuel.***

The Act does not currently provide the power to set conditions of supply as part of a fuel standard, apart from labelling requirements. However, there is a need to control the supply of diesohol (a blend of diesel and an alcohol) to address safety issues and vehicle operability issues arising from the potential for consumers to mistake this diesel for conventional diesel. The conditions of supply need to go beyond labelling requirements, which can be specified under a fuel quality information standard, and cover such requirements as how the fuel must be stored and dispensed.

If a standard were to be set for diesohol, it could be supplied anywhere by anyone who meets the standard without any regard to how it is supplied. This could have serious implications for consumers if diesohol was confused with standard diesel due to the safety issues involved with its handling and the potential damage to engines.

If, however, diesohol is not recognised as a fuel in its own right under the definition of fuel, it's supply could be regulated under the *Fuel Standard (Automotive) Diesel Determination 2001*. Suppliers would have to apply for an approval to vary the diesel fuel standard and requirements relating to its supply could be specified as conditions of the approval.

Item [2]: Regulation 5
This item removes the fee formula for applications to vary fee standards in the Principal Regulations and replaces them with new fees which have been determined on a cost recovery basis.

Current fee structure in the Principal Regulations

Section 13 of the *Fuel Quality Standards Act 2000* allows for variations or exemptions from the standards to be issued on application. The application fees for variations were consequently set out in 2001, reflecting cost recovery principles at the time.

Charges are currently structured on a formula basis as per regulation 5, including a fixed fee component and variable components based on the number of regulated

persons and the length of the application. This structure is intended to reflect (to an extent) the effort required for assessment, but is not directly linked to actual expenditure.

Practical application of the existing formula for calculating fees has highlighted problems with this approach. A recent example involved two applications from a major fuel supplier where consideration of the application by the Fuel Standards Consultative Committee and the Minister took seven months and resulted in six departmental files of papers. The number of pages in each application, however, was less than the minimum specified in the fee formula ie less than ten pages. The resulting fee represented only a small fraction of the actual cost of processing the application. Recovered fees for 2004-05 totaled $31,600 compared to expenses totaling $329,160.

Not all applications have charges applied. However, for those that do involve charges, the average charge per application is approximately $3,500. This represents approximately 16% of the cost of assessing the application.

Invoicing for actual expenditure does not allow proponents to assess up-front the costs of their application (and thus the net benefit that may be derived) before submission. This lack of transparency does not facilitate informed decision-making on the part of applicants. Due to the nature of the assessment exercise, forward estimations of effort required can also be very imprecise.

Cost recovery framework

The process for allowing applications for variations to fuel standards is an appropriate mechanism to allow for necessary ad-hoc and general revisions to the regulated standards, reflecting technological and market requirements.

Cost recovery arrangements are intended to reflect the benefit derived by the applicant (as a private interest). Requiring a nominal charge will act to deter frivolous and unnecessary applications, however, this does not reflect the full cost to government of making the assessments. As demonstrated in Table 1 below, implementing full cost recovery would require a 700% increase in fees charged overall.

Application fees under full cost recovery would equate to approximately $22,000 per application.

Table 1: Full cost recovery scenario

	Current arrangement	Full cost recovery scenario	Difference	
Average Application	$3,511	$24,545	$21,034	700%
Total revenues	$31,600	$368,175	$336,575	

Requiring significantly higher charges for all applications, regardless of the commercial benefit derived from the variation, would increase the likelihood of non-compliance in the market and in doing so decrease the effectiveness of the standards, or alternatively act to stifle industry innovation and development.

The potential equity implications of full cost recovery are also significant, with a number of applicants being small businesses or racing/automotive organisations. The Principal Regulations recognize the potential equity impacts of the existing charges,

providing opportunity for the Minister to waive or reduce the application fee if it is felt that the fee would cause financial hardship to the applicant. As such, a number of applicants each year face no financial cost. Of the 15 applications processed in 2004-05, 6 of these were granted exemption from the fees.

It is highly likely that under an averaged flat fee application of full cost recovery, there would be a significantly increased incidence of exemptions being awarded on equity grounds. Conversely, larger firms or those requesting more substantial variations would derive substantial benefit under a flat fee arrangement as there would be a high degree of cross-subsidization. Given the high degree of variability between variations, a tiered approach (as per below) is considered more appropriate.

Table 2: Tiered fee structure

Tier	Application Threshold
Tier 1	<1 ML
Tier 2	1 ML – 25 ML
Tier 3	25 ML – 100 ML
Tier 4	>100 ML

A tiered fee structure would more appropriately reflect the significance of the application, both in terms of potential environmental impact and the Government resources required for the assessment. It is also preferable to other available options as it maintains transparency.

It is anticipated that most applications for recreational activities (such as for racing fuels) will fall under tier 1, while more variations on a more substantial scale (under tiers 2 and 3) will be undertaken on a business case basis, where the application cost is anticipated to be a minor consideration in comparison to the overall production cost. The tier 4 applications would be used for the major refinery approvals.

The tiered fee structure to be adopted in table 2, based on the significance of the variation (in terms of production), has been subject to a cost recovery impact assessment.

Removal of fee exemption for Commonwealth, state and territory agencies

The amendment also removes the fee exemption for Commonwealth, state and territory entities. Paragraph 5(2)(a) of the Principal Regulations exempts Commonwealth, State or Territory agencies from having to pay fees for applications to vary fuel standards. Under Recommendation 15 of the report from the 2004-05 statutory review of the *Fuel Quality Standards Act 2000*, the review panel recommended that regulations 5 and 6 be redrafted to allow the waiver of application fees for an approval to be solely on the basis of financial hardship and that the fee exemption for Commonwealth, state and territory entities be removed. The review report recommended that this regulation should be repealed to remove the competitive advantage provided to government agencies in this regard.

Items [3], [4] and [5]: Paragraph 17 (2) (b) and subregulation 17 (3)

These items amend the requirements for taking samples. Regulation 17 of the Principal Regulations is quite specific on the process to be followed by an inspector in taking fuel samples. The process for drawing fuel samples has been standardised to ensure a consistent approach by all inspectors in taking samples to ensure the legislative requirements are met and to maintain evidentiary value for any potential prosecution. The procedures are set down in a detailed and comprehensive manual, a copy of which is provided to all inspectors appointed under the Act.

The steps specified under regulation 17 are practical with respect to taking samples of both liquid and gaseous fuels except for under paragraph 17(2)(b) which requires that one of the samples be left with the occupier of a fuel supply site.

The autogas sampling method is necessarily different to the method specified in the regulation for sampling liquid fuels. The equipment required for sampling gas is expensive and reusable, consequently a representative autogas sample cannot reasonably be left with the fuel supplier as with liquid fuel samples. In addition OH&S risks must be managed more proactively with gas samples as the fuel is more volatile and sampling cylinders must at all times be controlled by the Department. For these reasons, the Department proposes to sample autogas with just two representative samples taken, one for laboratory testing and one control sample.

The amendment to paragraph 17(2)(b) would result in a more practical application of the legislation and remove any legal requirement for inspectors to leave expensive gas cylinders with fuel suppliers such as service station operators.

The amendment also includes a definition of ***standard temperature and pressure*** to be included in paragraph 17 (2) (b) to distinguish autogas in its liquid form from liquid petroleum fuels.

Item [6]: Paragraph 24 (2) (b)

This item amends the requirements for record keeping to specify that records required to be kept under subsection 66(1) of the Act must be kept at the premises where the fuel is supplied.

Under recommendation 16 of the statutory review of the Act, the review panel recommended that subregulation 24(2) of the Principal Regulations be amended to include an additional requirement that a record must be available for access and copying by an inspector at the location of the supply of fuel.

The Act requires that specific records be kept by fuel suppliers. Regulation 28 specifies the record keeping requirements for service station operators and distributors but does not specify where the documentation is to be kept. The Department's experience of service stations shows that the documentation is often not kept at the place of fuel supply.

This removal of the required documentation away from the fuel supply site has resulted in significant delays in accessing documentation for monitoring purposes. In

most instances the documentation is stored at the owner's home or at the premises of a third party, such as the accountant. Where access to the documents is crucial to evidence gathering under a warrant, a further warrant will be required for the private premises.

The amendment to subregulation 24(2) would include a provision mandating that appropriate fuel documentation must be kept at the site from which the fuel is supplied. This would facilitate the efficient administration of the monitoring programme and avoid the unpleasant practicality of executing a warrant at a private residence where children or other members of the suppliers' family may be present.

Item [7]: Regulation 29

This item amends the requirements for submission of annual statements under subsection 67(4) of the Act. Regulation 29 of the Principal Regulations provides details of where producers and importers must send annual statements. The details provided include the location address and email address for the Department. With recent departmental name changes the email address currently appearing in the regulation is incorrect.

As departmental names and addresses can change at any time, it would be more practical if the wording of this regulation did not include actual addresses for the Department. The amendment achieves this objective and will result in the regulation not needing to be amended every time there is a change to the Department's contact details.