

EXPLANATORY STATEMENT

Fuel Quality Standards Act 2000

Fuel Standard (Ethanol E85) Determination 2012

(Issued by the authority of the Parliamentary Secretary for Sustainability and Urban Water)

The *Fuel Quality Standards Act 2000* (the Act) and the Fuel Quality Standards Regulations 2001 provide the framework for making and enforcing national fuel quality standards and fuel quality information (i.e. labelling) standards. Section 21 of the Act provides that the Minister may, in writing, determine that specified matters constitute a fuel standard in respect of a specified kind of fuel.

The purpose of this instrument, the Fuel Standard (Ethanol E85) Determination 2012 (the Determination), is to specify the matters that constitute the fuel quality standard for E85 to provide certainty for the quality of E85 supplied in Australia. The Determination sets limits for particular physical and chemical parameters of E85 fuel and sets testing methods that will be used to determine compliance with the E85 fuel standard. The specifications set out in the Determination must be met before E85 can be supplied for use in Australia.

The Minister has had regard to the objects of the Act before making the Determination, as required by section 21(5). The objects of the Act are to:

- a) regulate the quality of fuel supplied in Australia in order to:
 - i. reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems; and
 - ii. facilitate the adoption of better engine technology and emission control technology; and
 - iii. allow the more effective operation of engines; and
- b) ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

This Determination is consistent with meeting object (a) of the Act and is in line with Australian Government objectives to harmonise with international fuel standards.

This Determination has been developed following extensive consultation with the Fuel Standards Consultative Committee¹, Federal, State and Territory government agencies, and other stakeholders including representatives of motor vehicle manufacturing, fuel retailers/suppliers, ethanol producers, consumers and environment organisations.

This instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

¹ Required under section 24(A)(1)(b) of the Act. Section 24(A)(4) also requires the Minister to have regard to any recommendations of the Fuel Standards Consultative Committee arising out of the consultation.

This legislative instrument does not engage any of the applicable rights or freedoms. This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Details of the E85 Determination are set out in **Attachment A**. A Regulation Impact Statement describing the likely impacts of the Determination is at **Attachment B**.

The instrument commences on 1 November 2012 and must be complied with from that date. The commencement date has been selected to coincide with the commencement date of the Fuel Quality Information Standard (Ethanol E85) Determination 2012, which sets out the labelling requirements for the sale of E85 sold in Australia.

Fuel Standard (Ethanol E85) Determination 2012

Section 1: Name of Determination

This section provides that the name of the Determination is the Fuel Standard (Ethanol E85) Determination 2012.

Section 2: Commencement

This section provides that the Determination commences on 1 November 2012.

Section 3: Definitions

This section provides definitions of terms used in the Determination.

E85 is defined as a fuel blend consisting of 70–85% ethanol and petrol that meets the requirements of the Fuel Standard (Petrol) Determination 2001. This means that any percentage of ethanol between and including 70 and 85% ethanol may be present in E85.

The E85 standard will operate independently of the Fuel Standard (Petrol) Determination 2001, which allows for up to 10% ethanol in petrol (E10) and specifies the ethanol parameters for E10.

Section 4: Fuel standard for E85

This section details the chemical and physical parameters and their specifications that must be met before E85 can be supplied for use in Australia.

Section 5: Testing methods

Subsection 5(1) specifies testing methods that will be used by the Department of Sustainability, Environment, Water, Population and Communities to determine compliance with the specifications set out in section 4 of the Determination. Producers of E85 are not bound to these testing methods and may choose alternative testing methods.

Note 1 advises that testing method ASTM D4815 (version ASTM D4815-09) has been technically validated for use in the analysis of oxygenates (ethers (5 or more C atoms) and higher alcohols (C₃–C₈)) in blends of ethanol and unleaded petrol containing 70 to 85% ethanol. The current published ASTM D4815-09 testing method excludes E85 from its scope but does not specify why. However, this testing method is valid for assessing ethers and higher alcohols in E85 provided the standards are prepared in 80% ethanol blended with unleaded petrol. This information is supplied in the Determination for users of the testing method to be able to apply the testing method to E85.

Note 2 advises that test methods for Research Octane Number and Motor Octane Number in E85 are not yet available. The minimum targets for these parameters specified in section 4 serve as

interim targets until a testing method is available. Setting minimum targets allows for engine calibration and the possibility of mandating a minimum, until a testing method is available.

Subsection 5(2) provides that compliance with the standard will be determined by application of testing methods as existing on commencement of the Determination.