

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Indigenous Affairs

Low Aromatic Fuel Act 2013

Low Aromatic Fuel (Designated Area) (Great Palm Island) Instrument 2015

Section 14 of the *Low Aromatic Fuel Act 2013* (the Act) provides that the Commonwealth Minister for Indigenous Affairs (the Minister) may, by legislative instrument, designate an area as a ‘low aromatic fuel area.’

This instrument designates the area of Great Palm Island¹ in Queensland as a low aromatic fuel area.

If an area is designated as a low aromatic fuel area, then section 8 of the Act makes it an offence for a Corporation to engage in the following prohibited conduct:

- Supply regular unleaded petrol to a person in a low aromatic fuel area;
- Transport regular unleaded petrol to supply to a person in a low aromatic fuel area;
- Possess regular unleaded petrol to supply to a person in a low aromatic fuel area.

Corporations who commit an offence under the Act may face a penalty of up to 300 penalty units. At the time of publication, 300 penalty units equals \$54,000.

Before designating a low aromatic fuel area, the Minister must be satisfied that the designation 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 (subsection 14(2)). The Minister must also be satisfied that facilities for the supply of low aromatic fuel in the area are adequate (subsection 14(3)) and that the appropriate States and Territories have not or are unlikely to enact legislation consistent with the Act.

The Minister must have regard to matters listed in the Act (subsection 14(3)), including the wellbeing of people, including Aboriginal persons and Torres Strait Islanders living in the area, in designating a low aromatic fuel area under subsection 14(1).

Background

The Act provides for measures designed to mitigate the negative impacts of petrol sniffing through controlling the supply of other fuels and promoting the supply of low aromatic fuel in designated areas by:

- Prohibiting the supply, and transport and possession to supply of regular unleaded petrol;
- Promoting and monitoring the use of low aromatic fuel; and
- Regulating the supply and storage of other fuels – in particular premium unleaded petrol.

¹ Great Palm Island is also commonly known as Palm Island, and Greater Palm Island, however GeoScience Australia formally advise that Queensland Gazetteer (under the portfolio of the Department of Natural Resource and Mines) and the Australian Hydro Office officially call the largest of the islands ‘**Great Palm Island**’

Regulatory Impact Statement

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required for this instrument (OBPR reference: 19802).

Commencement

The instrument commences on the day after registration on the Federal Register of Legislative Instruments.

Consultation

The Minister is required to consult with certain persons and bodies as the Minister considers appropriate under subsection 16(1) of the Act.

The Minister must ensure information has been made available to the people living in the area (including businesses and organisations operating in the area) and they have been given a reasonable opportunity to make submissions about the proposal under subsection 16(2) of the Act.

A public consultation process on the proposal to designate Great Palm Island as a low aromatic fuel area was conducted between 17 August 2015 and 11 September 2015. The area proposed in the consultation process is the same as the area designated as a low aromatic fuel area by this instrument.

On behalf of the Minister, the Department of the Prime Minister and Cabinet (the Department) wrote to identified stakeholders outlining the proposal and invited them to make a submission or provide their views, including fuel retailers and distributors, health professionals, the local council and other relevant persons. Officials from the Department visited Great Palm Island from 25-27 August 2015 and 9-10 September 2015 for meetings with retailers, health providers, Indigenous organisations, residents and other relevant persons, as part of the consultation process. A website also invited submissions from anyone interested in the area.

The consultation process demonstrated overall strong support for the designation in order to address the serious social impact of petrol sniffing. Some concerns about the impact of low aromatic fuel upon small engines were raised, however the Department has undertaken to work closely with the community during the transition to address any residual concerns to using low aromatic unleaded fuel.

Explanation of provisions

Item 1 sets out the name of the instrument, being the *Low Aromatic Fuel (Designated Area) (Great Palm Island) Instrument 2015*.

Item 2 provides that the instrument commences on the day after registration on the Federal Register of Legislative Instruments.

Item 3 specifies that the instrument is made under the authority of subsection 14(1) of the *Low Aromatic Fuel Act 2013*.

Item 4 defines key terms contained in the instrument.

Item 5 designates the whole of the area of Great Palm Island, Queensland as a ‘low aromatic fuel area’ under subsection 14(1) of the Act. The purpose of describing the area in relation to the lowest astronomical tide is to ensure the entire area of Great Palm Island is included. The use of the term ‘associated infrastructure’ is intended capture any wharves or jetties (which often sell fuel), and the geodesic lines defines a specific line type.

A map of the boundaries, along with a written description of the Geocentric Datum of Australia (GDA) coordinates covered by this instrument is described at **Attachment A**.

Statement of Compatibility

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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*.

Overview of the Legislative Instrument

The object of the *Low Aromatic Fuel Act 2013* (the Act) is to enable special measures to be taken to reduce the potential harm to the health of people, including Aboriginal persons and Torres Strait Islanders, living in certain areas from sniffing fuel.

This legislative instrument designates Great Palm Island in Queensland as a low aromatic fuel area.

The effect of this designation is that it will be an offence for a Corporation to engage in the following prohibited conduct within the low aromatic fuel area:

- Supply of regular unleaded petrol to a person in a low aromatic fuel area;
- Transport of regular unleaded petrol to supply to a person in a low aromatic fuel area;
- Possession of regular unleaded petrol to supply to a person in a low aromatic fuel area.

Regular unleaded petrol is able to be sniffed to cause the feeling of being ‘high’, while low aromatic fuel is not.

Human rights implications

Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination

The policy intention is that the legislative instrument is a ‘special measure’ within the meaning of article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and subsection 8(1) of the *Racial Discrimination Act 1975* (RDA).

The ICERD provides that special measures are deemed not to be incompatible with human rights. Special measures are designed to ‘secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.’²

The measure meets all the criteria to be characterised as a special measure. Therefore, the measure does not offend the prohibition of discrimination on the basis of race under section 10 of the RDA.

Aboriginal and Torres Strait Islander persons make up 94% of the population of Great Palm Island. Designating Great Palm Island as a low aromatic fuel area will therefore have a significant impact on Aboriginal and Torres Strait Islander persons in that community.

The designation of Great Palm Island as a low aromatic fuel area is aimed at reducing the harm of petrol sniffing in that area, benefiting not only sniffers, but also the community which is placed at risk of health and community safety harms by persons affected by petrol sniffing.

Petrol sniffing is a form of substance misuse. People who sniff petrol inhale its fumes intending to become ‘high’. This dangerous activity can cause brain damage or death. Petrol sniffing mainly occurs in regional and remote communities and can lead to poor health, increased violence and crime, and the breakdown of communities and families.

Low aromatic unleaded fuel has been specially designed by fuel industry chemists to contain lower levels of the toxic aromatic compounds such as benzene, toluene and xylene which give people who sniff petrol a ‘high’.

Research conducted by the Menzies School of Health Research has found that in most places where low aromatic unleaded fuel has been introduced the prevalence of petrol sniffing has dropped sharply. In some of these places, premium unleaded fuel continues to be available. Since it is clear that the reduction in petrol sniffing has taken place even where premium unleaded fuel is present, it can be concluded that no significant substitution of premium for regular unleaded fuel has occurred.

In early 2014, low aromatic fuel was introduced onto Great Palm Island, in response to community concerns about high levels of petrol sniffing among young people. Since the introduction of low aromatic fuel on Great Palm Island, there was a decrease in petrol sniffing on the Island. Many residents have since expressed their support for low aromatic fuel due to its positive impact on the health of their children, and on community safety and wellbeing in general.

Since regular unleaded petrol was again made available on Great Palm Island from approximately 10 August 2015, a number of incidents of petrol sniffing have been reported to the Department by health professionals and local police. Many involve young children.

The consultation process found strong evidence and community support to designate Great Palm Island as a ‘low aromatic fuel area’ to reduce the harm caused to people living on Great Palm Island from sniffing fuel. Fuel suppliers and distributors are supportive of the area being designated.

² Committee on the Elimination of Racial Discrimination, *General Recommendation: No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of Racial Discrimination* (August 2009), at paragraph [11].

The Minister cannot make a designation without first being satisfied of and having regard to a number of matters set out in the Act. In addition, the Minister must consult with certain persons and bodies that the Minister thinks appropriate.

Introducing controls on the supply of regular unleaded petrol on Great Palm Island will stop the availability of sniffable fuel. The measure is necessary to protect Aboriginal and Torres Strait Islander persons living in the area from the negative impacts of petrol sniffing.

The Act will be reviewed on the fifth anniversary of its commencement (in 2018) and every five years after that (section 18).

Article 12 of the International Convention on Economic Social and Cultural Rights

Article 12 recognises "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (the right to health). According to General Comment 14, the authoritative interpretation of that right, the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health.

Under the General Comment the obligation to fulfil the right to health requires the Australian Government to take positive measures that enable and assist individuals and communities to enjoy the right to health, including giving sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation.

The consequences of sniffing fuel include enduring physical harm to sniffers. Chronic sniffers can suffer cerebellar ataxia, grand mal epilepsy, encephalopathy, persistent psychosis and chronic disability including mental impairment. Neurological damage from petrol sniffing can be present at the very early stages of abuse. This can include effects on memory, attention, learning, executive function and behavioural inhibition.

The physical impacts of sniffing fuel have been connected to range of social problems including low school attendance and illegal activity.

Conclusion

The policy objectives of this legislative instrument are compatible with human rights because they are characterised as a special measure.

Attachment A



Australian Government
Geoscience Australia

Area of Great Palm Island
designated under the
'Low Aromatic Fuel Act 2013'

Point Coordinates

(shown in Degrees, Minutes, Seconds)

Latitude	Longitude
1: -18°40'20.0000"	146°34'20.0000"
2: -18°40'30.0000"	146°35'45.0000"
3: -18°44'0.0000"	146°41'35.0000"
4: -18°45'55.0000"	146°42'0.0000"
5: -18°47'10.0000"	146°39'5.0000"
6: -18°46'40.0000"	146°34'55.0000"
7: -18°45'55.0000"	146°33'45.0000"
8: -18°44'55.0000"	146°33'40.0000"
9: -18°40'40.0000"	146°34'5.0000"

All geographic coordinates are expressed in terms of the Geocentric Datum of Australia 1994 (GDA94) as described in the Commonwealth of Australia Gazette GN35 of 6 September 1995, which can be considered equivalent to World Geodetic System 1984 (WGS84) for this regulation.

