

EXPLANATORY STATEMENT

Select Legislative Instrument 2017 No.

Issued by Authority of the Minister for the Environment and Energy

Subject – *Fuel Quality Standards Act 2000*

Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017

The *Fuel Quality Standards Act 2000* (the Act) regulates the quality of fuel supplied in Australia. The objectives of the Act are to reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems, facilitate the adoption of better engine and emission control technology, and allow the more effective operation of engines.

Section 73 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, 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.

Section 13 of the Act provides that the Minister may grant to any person an approval to vary a fuel standard or a fuel quality information standard.

Subsection 14(1) of the Act provides that an application to vary a fuel standard or a fuel quality information standard must be made in accordance with the *Fuel Quality Standards Regulations 2001* (the Principal Regulations).

Sections 66 and 66A of the Act require suppliers of fuel to keep and maintain records in relation to fuel that they supply in accordance with record keeping requirements set out under the Principal Regulations.

The purpose of the *Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017* (the Regulations) is to enhance the efficiency and effectiveness of the Principal Regulations by:

- removing the requirement for an application to vary a fuel standard to include the applicant's facsimile number as this information is redundant;
- prescribing the *Low Aromatic Fuel Act 2013* to allow the Secretary to disclose or authorise the disclosure of information obtained under the Act to assist in the administration or enforcement of the Low Aromatic Fuel scheme;
- reducing the period during which certain records are required to be retained from two years to 12 months after the end of the calendar year to which the record relates;
- clarifying that suppliers of fuel have the obligation to maintain and keep records under the Act, and;
- enabling the Minister and the Secretary to delegate their functions and powers under the Principal Regulations as well as the Act.

Details of the Regulation are set out in the Attachment A. A Statement of Compatibility with Human Rights is set out in Attachment B.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the making of the Regulation. The OBPR advised that a Regulation Impact Statement was not required as the changes do not have more than a minor regulatory impact on business, community organisations or individuals.

Given the administrative nature of the amendments in the Regulation and the minimal impact on stakeholders, stakeholders were not consulted. The amendments enhance the efficiency and operation of the Fuel Quality Standards scheme by removing or amending outdated requirements, and allowing for the appropriate delegation of the Minister's and the Secretary's powers under the Principal Regulations.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations will commence on the day after it is registered on the Federal Register of Legislation.

Authority: Section 73 of the *Fuel Quality Standards Act 2000*

Details of the *Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017* is made under the *Fuel Quality Standards Act 2000* (the Act).

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect to its terms.

Schedule 1 – Amendments

Item 1 – Subregulation 3(1) (paragraph (b) of the definition of *contact details*)

Item 1 amends paragraph (b) of the definition of *contact details* in subregulation 3(1). This item qualifies that a person need only provide a postal address if that address differs from the person's business or residential address as required by paragraph (a) of that definition.

Item 2 – Subregulation 3(1) (paragraph (d) of the definition of *contact details*)

Item 2 amends the definition of *contact details* by repealing paragraph (d) of that definition in subregulation 3(1). Paragraph (d) previously provided that a person's contact details includes a telephone number to which a fax message for the person may be transmitted. This paragraph was repealed as it is redundant.

Item 3 – Subregulation 4(3)

Item 3 amends subregulation 4(3) which allows the Minister or an SES employee of the Department to, by written notice, require the applicant within a reasonable time, to provide specified further information that the Minister or SES employee reasonably considers is necessary for making a decision on an application for an approval under subsection 14(1) of the Act.

This item repeals the words "or an SES employee of the Department" as a consequence of the new delegation provision in Item 11. The repeal of these words at subregulation 4(3) removes

an inconsistency within the Principal Regulations where all other powers or functions lie with the Minister. Item 11 allows the Minister to delegate his or her power to require an applicant to provide specified further information along with all other Ministerial powers and functions in the Principal Regulations.

Item 4 – Subregulation 4(3)

Item 4 is required as a consequence of Item 3, and amends subregulation 4(3) by repealing the words “or SES employee”.

Item 5 – Paragraph 24(2)(c)

Item 5 amends paragraph 24(2)(c) which provides that a record identified under Part 6 of the Principal Regulations must be retained for two years. This item amends the requirement to retain a record from “two years” to “12 months after the end of the calendar year to which the record relates”.

As an example, the amendment to paragraph 24(2)(c) requires a record created on 1 July 2017 to be kept for the calendar year to which the record relates (until 31 December 2017), plus 12 months after the end of that calendar year i.e. 1 January 2019.

Items 6, 7, 8 and 9 – Regulations 25, 26, 27, 28 (headings)

Items 6, 7, 8 and 9 repeals and replaces the headings at regulations 25, 26, 27 and 28. These amendments clarify that the reporting and record keeping obligations, as specified in Part 6 of the Principal Regulations, lie with the suppliers of fuel.

Item 10 – Regulation 30

Item 10 amends regulation 30 by including the *Low Aromatic Fuel Act 2013* as a prescribed Act for the purposes of subparagraph 67A(b)(iii) of the Act.

Under this amendment, the Secretary of the Department is able to disclose, or authorise the disclosure of information under the Act, if the Secretary reasonably believes the disclosure is likely to assist in the administration or enforcement of the *Low Aromatic Fuel Act 2013*.

Item 11 – At the end of Part 7

Item 11 inserts regulation 30A so that the Minister may delegate any or all of the Minister’s functions and powers under the Principal Regulations to the Secretary of the Department or an SES employee, or acting SES employee, in the Department.

This amendment enables the Secretary or an SES employee to perform or exercise the Minister’s functions or powers under the Principal Regulations. The delegate will need to comply with any written directions of the Minister when performing a delegated function or exercising a delegated power.

Item 11 also inserts regulation 30B so that the Secretary may delegate any or all of the Secretary’s functions and power under the Principal Regulations to an SES employee, or acting SES employee, in the Department.

This amendment enables an SES employee to perform or exercise the Secretary's functions and powers under the Principal Regulations. The delegate will need to comply with any written directions of the Secretary when performing a delegated function or exercising a delegated power.

Item 12 – In the appropriate position in Part 8

Item 12 inserts a new regulation 32 in Part 8 which would clarify the application of the Regulations.

Subregulation 32(2) clarifies that the amendments relating to the definition of *contact details* in subregulation 3(1) would apply in relation to:

- (a) applications for approvals made on or after the commencement of the Regulations; and
- (b) supplies of fuel made on or after that commencement.

The revised definition of contact details applies for applications for approvals received on or after the commencement of the Regulations. Supplies of fuel under those applications will be subject to the revised definition of contact details.

Subregulation 32(3) clarifies that the amendments to subregulation 4(3) apply in relation to written notices (requiring an applicant to provide further information on their application for approval under section 14(1) of the Act) issued by the Minister on or after the commencement of the Regulations.

In order to avoid confusion where the Minister or an SES employee of the Department has, by written notice, required the applicant to provide further information before the commencement of the Regulations, that request is taken to remain valid on or after the commencement of the Regulations.

Subregulation 32(4) clarifies that the amendments to paragraph 24(2)(c) regarding the period records are required to be retained for, apply to all records produced on or after the commencement of the Regulations.

For records produced on or after the commencement of the Regulations, the records will need to be retained, according to the amendment at paragraph 24(2)(c), for 12 months after the end of that calendar year. Records produced prior to the commencement of the Regulations will be subject to the previous retention requirement of 2 years.

Statement of Compatibility with Human Rights

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

Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017

This Disallowable 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

This Disallowable Legislative Instrument makes amendments to the *Fuel Quality Standards Amendment (Miscellaneous Measures) Regulations 2017* (the Principal Regulations) to enhance the efficiency and effectiveness of the Principal Regulations by:

- removing the requirement for an application to vary a fuel standard to include the applicant's facsimile number as this information is redundant;
- prescribing the *Low Aromatic Fuel Act 2013* to allow the Secretary to disclose or authorise the disclosure of information obtained under the Act to assist in the administration or enforcement of the Low Aromatic Fuel scheme;
- reducing the period during which certain records are required to be retained from two years to 12 months after the end of the calendar year to which the record relates;
- clarifying that suppliers of fuel have the obligation to maintain and keep records under the Act, and;
- enabling the Minister and the Secretary to delegate their functions and powers under the Principal Regulations as well as the Act.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with Australia's human rights obligations.

The Hon Josh Frydenberg MP, Minister for the Environment and Energy