

## **EXPLANATORY STATEMENT**

### *Fuel Quality Standards Act 2000*

### *Fuel Quality Standards Regulations 2019*

Issued by the authority of the Minister for the Environment

#### **Purpose and operation**

The *Fuel Quality Standards Act 2000* (the Act) provides the legislative framework for regulating 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 and ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

The Act provides for the making of fuel quality standards. Fuel quality standards set limits on specific characteristics of a particular kind of fuel so as to reduce direct impact on the environment and to enable efficient engine operation. Standards establish content levels for particular components and upper and/or lower bounds for attributes of the fuel. Standards also specify the test procedures that will be used by the Department in determining a particular characteristic. Where a fuel is the subject of a standard, it is an offence to supply that fuel if it does not comply with the standard.

Fuel quality information standards set out the labelling requirements for the supply of the fuel to which the standard applies. Fuel quality information standards ensure consumers have access to information about the composition of the fuel supplied. These standards are generally made where there may be vehicle compatibility issues associated with use of the fuel.

Existing fuel quality standards are in place for petrol, automotive diesel, biodiesel, autogas and ethanol (E85). Fuel quality information standards have also been made by the Minister under subsection 22A(1) of the Act for ethanol in petrol and ethanol (E85). Fuel quality information standards are made where it is considered important for consumers to have access to information about the fuel being supplied.

Section 73 of 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.

Nine legislative instruments under the Act are due to sunset on 1 October 2019, including the *Fuel Quality Standards Regulations 2001* (the old Regulations) made under the Act.

The purpose of the *Fuel Quality Standards Regulations 2019* (the Regulations) is to provide the administrative detail for the following matters:

- application processes for an approval to vary a fuel standard;
- appointment conditions of the Fuel Standards Consultative Committee;
- publication of notices of action in relation to adding or removing a fuel additive, or class of fuel additives, to the Register of Prohibited Fuel Additives;

- enforcement, record keeping and reporting obligations;
- disclosure of information obtained under the Act;
- delegation of powers and functions under the Regulations; and
- application, saving and transitional provisions.

The Regulations revoke and replace the old Regulations with minor differences to update the language, simplify administrative arrangements and remove redundant provisions.

Details of the Regulations are set out in Attachment A.

A Statement of Compatibility with Human Rights is set out in Attachment B.

### **Regulation Impact Analysis**

The Office of Best Practice Regulation (the OBPR) was consulted in relation to the remaking of all nine sunseting legislative instruments under the Act. A Regulation Impact Statement (RIS) was prepared to assess the impacts on industry, the community and the environment of various policy options to improve fuel standards. The OBPR advised that the RIS is compliant with the Government's requirements and is consistent with best practice (OBPR ID 20699). The RIS is available at <https://www.environment.gov.au/protection/publications/better-fuel-cleaner-air-ris>.

### **Consultation**

The Department of the Environment and Energy (the Department) conducted extensive public consultation in relation to policy options for remaking each sunseting legislative instrument. Two rounds of public consultation were conducted during the RIS process in February 2017 and January 2018. Targeted consultation with key industry stakeholders then occurred throughout 2018 to finalise options for each sunseting legislative instruments.

Stakeholders did not raise any issues regarding the Regulations. Targeted consultation with key testing laboratories occurred to ensure the Regulations reflected the most up-to-date global laboratory guidelines and standards. Consultation on minor administrative matters was not undertaken given their minimal impact on stakeholders.

The Department also consulted with the Attorney-General's Department in relation provisions regarding evidentiary certificates. No concerns were raised on this issue.

### **Incorporation**

The Regulations incorporate by reference ISO/IEC 17011:2017 *Conformity assessment—requirements for accreditation bodies accrediting conformity assessment bodies*, second edition, published by the International Organization for Standardization, Geneva. This document is incorporated as it is in force at the time the Regulations commence on 1 October 2019. This document is available for purchase through International Organization for Standardization ([www.iso.org](http://www.iso.org)). A fee is charged to purchase the document in its entirety. National laboratory accreditation bodies wishing to be internationally recognised must abide by the requirements set in this document. Thus, the incorporation of the document into the Regulations does not place undue burden on national laboratory accreditation bodies.

## **Other matters**

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 commence on 1 October 2019.

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

**Details of the *Fuel Quality Standards Regulations 2019***

**Part 1 – Preliminary**

Section 1 – Name

This section specifies that the title of the Regulations is the *Fuel Quality Standards Regulations 2019* (the Regulations).

Section 2 – Commencement

The table in this section provides for the commencement of the Regulations.

The whole instrument commences on 1 October 2019.

Section 3 – Authority

This section provides that the Regulations are made under the *Fuel Quality Standards Act 2000* (the Act).

Section 4 – Schedules

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 has effect according to its terms.

Section 5 – Definitions

This section defines key terms used in the Regulations. A number of terms used in the Regulations, such as ‘fuel standard’, ‘fuel quality information standard’ and ‘supply’, are defined in the Act and so are not redefined in the Regulations.

Section 6 – Meaning of fuel

Subsection 21(1) of the Act allows the Minister to determine, by legislative instrument, a fuel quality standard in respect of a specified kind of fuel. Under subsection 4(1) of the Act, the meaning of fuel is given by regulations made under the Act.

Section 6 supplies for the meaning of fuel for the purposes of subsection 4(1) of the Act. It specifies which types of fuel and fuel blends are covered by the Act.

Section 7 – Meaning of fuel additive

Division 7 of Part 2 of the Act creates offences and civil penalty provisions relating to the supply or importation of a fuel additive that is covered by an entry in the Register of Prohibited Fuel Additives.

Under subsection 4(1) of the Act, the meaning for fuel additive is given by regulations made under the Act. Section 7 provides that this term is relevant to Divisions 7 and 8 of Part 2 of the Act. This section provides that a fuel additive is a substance that is generally sold or represented as suitable for adding to fuel to affect the properties of the fuel, including the effect of the additive on engine performance, engine emissions or fuel economy.

## **Part 2 – Regulation of fuel and fuel additives**

### **Section 8 – Application for approval**

Section 13 of the Act provides for the Minister to grant an approval to vary, in relation to fuel supplied by a person, a fuel standard or fuel quality information standard. Subsection 14(1) of the Act provides that an application for a variation is to be made in accordance with the regulations.

This section sets out the process for an application for approval to vary a fuel standard or a fuel quality information standard.

Subsection 8(1) requires the application be in writing and sets out further requirements for an application for approval to vary a fuel standard or a fuel quality information standard. Requirements include applicants providing their name, contact details, their ABN or ACN, and if applicable, contact details and ABN or ACN for any regulated persons whose supply of fuel is intended to be covered by the approval amongst other requirements. Applicants must provide a statement of reasons why they want a fuel standard or fuel quality information standard to be varied, an explanation of the variation sought, the period for which the variation is sought and the circumstances in which the specified fuel will be supplied, including where (if possible), why and how much. This information will make individuals and companies making applications easily identifiable and facilitate the assessment of the application and monitoring of compliance with the approval and any associated conditions.

Subsection 8(2) provides for an applicant to withdraw an application at any time before the Minister decides to grant an approval.

Subsection 8(3) provides that the Minister may, by written notice, require the applicant within a reasonable time, to provide specified further information that the Minister reasonably considers necessary for making a decision on an application for an approval under subsection 14(1) of the Act.

### **Section 9 – Application fee**

Subsection 14(2) of the Act provides that an application for an approval must be accompanied by the application fee (if any) as prescribed by the Regulations. This section prescribes that the fee for an application for approval is \$5,944 per application.

The Department has determined that the average administrative cost of processing an application for an approval approximately equates to the fee prescribed in this section. This fee is consistent with the Australian Government Charging Framework and the Australian Government Cost Recovery Guidelines, which state that revenue for an activity must be aligned with the expenses incurred in providing the activity.

## Section 10 – Exemption from paying application fee

This section provides a process for obtaining an exemption from paying the application fee prescribed by section 9 in certain circumstances. This section is made pursuant to the power in section 73 of the Act, which allows for the making of regulations to prescribe matters that are necessary or convenient to be prescribed for carrying out or giving effect to the Act. It provides for situations in which individual considerations, such as financial hardship, may be taken into account when levying a fee.

Subsections 10(1) allows an applicant to request, in writing, an exemption from paying the whole or part of the prescribed application fee for an application to vary a fuel standard or a fuel quality information standard in certain circumstances. Subsection 10(2) states that a request by the applicant must set out the reasons for requesting an exemption. Under subsection 10(3), the Minister must then decide within 14 business days whether to exempt the applicant from the payment of the whole or part of the application fee and give written notice of the decision and reasons for the decision.

Subsection 10(4) sets out matters that the Minister must have regard to in relation to exemptions applications made on the basis of financial hardship. Subsection 10(5) sets out the matters that the Minister must have regard to in relation to exemptions applications made on a basis other than financial hardship.

An example of an exemption made on the basis of circumstances other than financial hardship can be seen in the approvals granted for the supply of diesel-biodiesel blends where the biodiesel content exceeds the five per cent limit allowed in the Fuel Standard (Automotive Diesel) Determination 2001.

Subsection 10(7) provides that applications may be made to the Administrative Appeals Tribunal for review of an exemption decision. Subsection 10(6) provides that a notice of an exemption decision must advise applicants of this review right.

Subsection 10(8) clarifies that if a request to exempt payment of the application fee under subsection 10(1) is made at the same time as an application for approval under section 8 (to vary a standard), the section 8 application is taken not to have been made until the Minister has decided whether or not to exempt the applicant from payment of the whole or part of the application fee.

## Section 11 – Refund of application fee

This section provides for the refund of application fees prescribed by section 9 in certain circumstances. This section is made pursuant to the power in section 73 of the Act, which allows for the making of regulations to prescribe matters that are necessary or convenient to be prescribed for carrying out or giving effect to the Act. It provides for situations where an application fee already received should not be retained, such as when the application has been withdrawn without consideration.

Subsections 11(1) requires a paid application fee to be refunded if the application is withdrawn within 14 days after being made and the Minister has not yet considered the application.

Subsection 11(2) provides that if an application is withdrawn more than 14 days after being made, the applicant is able to request a refund of the paid application fee. Subsection 11(3) provides that within 14 business days after receiving a request under subsection 11(2), the Minister must decide whether or not to refund the application fee and give the applicant written notice and reasons for the decision. In making this decision, the Minister must have regard to the matters specified under subsection 11(4) which include whether the Minister has considered the application and whether the Commonwealth has incurred any financial obligations related to the application.

Subsection 11(6) provides that applications may be made to the Administrative Appeals Tribunal for review of a Minister's decision not to refund an application fee. Subsection 11(5) provides that a notice of this refusal decision must advise applicants of this review right.

### Section 12 – Informing people of obligations

Subsection 17(1) of the Act imposes a condition on an approval that its holder inform any regulated person to whom a particular condition of the approval applies of: the particular condition and any variation of it, and any revocation of the approval. Subsection 17(2) of the Act provides that the requirements in relation to the manner in which information is provided under subsection 17(1) of the Act may be prescribed by the Regulations.

Subsection 12(1) specifies a timeframe of five business days to inform a regulated person regardless of the number of regulated persons. Having the same timeframe regardless of the number of regulated persons simplifies obligations for industry.

This subsection also clarifies that the required timeframe begins after the day when the approval holder is told of a particular condition, a variation of a condition, or revocation of an approval.

Subsection 12(2) prescribes for the manner in which information mentioned in subsection 12(1) must be provided to the regulated person. If the regulated person is an individual, the information must be given in person personally; or left at, posted or electronically sent to the last known place of residence or business of the regulated person. If the regulated person is a body corporate, the information must be left at, or posted, or electronically sent, to the body corporate's head office, registered office or principal place of business.

### Section 13 – Supplying fuel without documentation

Sections 19 and 19A of the Act provide for offence provisions and civil penalties for supplying fuel without documentation. This section prescribes what further information relating to fuel must be provided by a supplier, and the timeframe in which it must be supplied.

Subsection 13(1) prescribes that the supplier must provide the documents required under sections 19 and 19A of the Act within 72 hours after the fuel is supplied.

Subsection 13(2) clarifies that fuel is taken to have been supplied when it is received by the other person (for fuel that is supplied as one batch), or when the first portion is received by the other person (for fuel that is supplied in portions).

For the purposes of subparagraphs 19(1)(e) and 19A(2)(b) of the Act, subsection 13(4) prescribes other documented and applicable information that a supplier who is listed in

subsection 13(3) must provide to a person to whom they supply fuel. This information includes details on the supplier, delivery, and fuel being supplied, including whether it complies with a fuel standard.

### **Part 3 – The Committee**

#### **Section 14 – Purposes of Part 3**

Section 24 of the Act establishes the Fuel Standards Consultative Committee. The Minister must consult with the Committee before granting, varying or revoking an approval under section 13 of the Act; before making fuel standards and fuel quality information standards; before entering or removing fuel additives from the Register of Prohibited Fuel Additives and in preparing fuel guidelines for more stringent fuel standards. The Committee is made up of representatives from the Commonwealth, the States and Territories, fuel producers, non-government bodies with an interest in environmental protection and consumer-interest groups.

This section clarifies that Part 3 of the Regulations prescribes matters relating to the members of the Committee for the purposes section 29 of the Act. These matters include terms of appointment, resignation, disclosure of interests, termination of appointment and leave of absence.

#### **Section 15 – Term of appointment**

Section 25 of the Act provides for the Minister to appoint Committee members by written instrument. Section 15 prescribes that the term of appointment of a Committee member must be no more than three years.

#### **Section 16 – Resignation**

This section provides that a Committee member may resign by giving written notice to the Minister.

#### **Section 17 – Disclosure of interests**

This section provides the circumstances when a Committee member must disclose any direct or indirect interests in a matter being considered or about to be considered by the Committee. This section minimises the risk that Committee members will have conflicts of interest that may compromise the integrity of advice given by the Committee.

Subsection 17(1) provides that a member who has a direct or indirect interest in a matter being considered or about to be considered by the Committee must disclose the nature of the interest at a meeting of the Committee as soon as possible after the relevant facts have come to the knowledge of the member. When this disclosure is made, subsection 17(2) bars the member from being present during any deliberation or taking part in any decision of the Committee about that matter unless the Committee or Minister determines otherwise. Subsection 17(3) provides that if a member has a direct or indirect pecuniary interest in the matter that a disclosure relates to, the member must not be present or take part in making a determination as to whether or not they can be involved in deliberation or decision about the matter.

Subsection 17(4) clarifies that members of the Committee do not need to disclose their interests if the member only has that interest through their role as a representative of a body that must



under the Act, be included on the Committee. For example, if a member were the representative for fuel producers, they do not have to disclose any direct or indirect interests which may arise solely due to that position.

#### Section 18 – Termination of appointment

This section sets out when the Minister may terminate the appointment of a Committee member. Prescribed circumstances include, but are not limited to, misbehaviour, physical or mental incapacity, bankruptcy, absence from three Committee meetings the member was expected to attend, and conviction of an offence punishable by imprisonment for one year or longer.

#### Section 19 – Leave of absence

This section provides that the Minister may grant leave of absence to the Chair of the Committee on the terms and conditions that the Minister determines.

This section also provides that the Chair of the Committee may grant leave of absence to another Committee member on the terms and conditions that the Chair determines.

### **Part 4 – The Register**

#### Section 20 – Publishing notices

Division 8 of Part 2 of the Act establishes the [Register of Prohibited Fuel Additives](#) and the process to be followed in keeping and maintaining the Register. This includes providing processes for entering or removing a fuel additive in the Register. Under subsection 34(2) of the Act, the Minister must publish a notice if they propose to enter or remove a fuel additive from the Register. Further, under subsection 35(3) of the Act, when the Minister receives a submission to enter or remove a fuel additive from the Register, they must publish notice of their decision to enter or remove a fuel additive from the Register. Under the Act, these notices must be published in accordance with the regulations.

Section 20 prescribes for the purposes of subsections 34(2) and 35(3) of the Act, how a notice must be published.

Subsection 20(1) prescribes that a notice must be published on the Department's website, in the Gazette, in the Government Gazettes of the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, in a daily newspaper circulating throughout Australia, in a daily newspaper circulating throughout each State or Territory, and if practical, in regional newspapers throughout Australia. This requirement ensures that a large proportion of Australians will have access to this notice of information.

Subsection 20(2) provides for the purposes of subsection 20(1)(f) that it will not be practical to publish a notice in regional newspapers throughout Australia if the relevant impacts of a decision under subsection 35(2) of the Act could affect the whole, or a large proportion, of Australia.

### **Part 5 – Enforcement**

## **Division 1 – Identity cards**

### **Section 21 – Form of identity cards**

Sections 38 and 39 of the Act provides that the Secretary of the Department (the Secretary) may appoint particular persons to be inspectors for the purposes of the Act and requires the Secretary to issue an identity card to an inspector in the form prescribed by regulations made under the Act.

This section prescribes the form for such an identity card. An identity card must include the name and title of the person, a statement that the person is an inspector under the Act, the name, title and signature of the person who issued it, a serial number and the date the identity card was issued.

## **Division 2 – Samples**

### **Section 22 – Procedures for dealing with samples**

Part 3 of the Act sets out an enforcement regime for the purposes of ensuring compliance with the Act and assessing the correctness of information provided under the Act. Under this enforcement regime, inspectors have the power to inspect, examine, conduct tests on, or take samples of any fuel or fuel additive on the premises. Inspectors also have a range of other monitoring powers to ensure compliance with the Act and to assess correctness of information provided under the Act.

Section 58A of the Act provides that the regulations may prescribe how samples collected under the Act should be dealt with.

Section 22 provides for the purposes of subsection 58A(1) this Division 2 of Part 5 of the Regulations prescribe procedures for dealing with samples of fuel, fuel additive or evidential material taken by an inspector as part of the enforcement regime set out in Part 3 of the Act.

### **Section 23 – Taking samples**

This section outlines the requirements for taking samples of fuel, fuel additives or evidential material by an inspector. The process is specific and standardised to ensure a consistent approach by all inspectors in taking samples and to maintain evidentiary value for any potential court proceedings.

Paragraph 23(1)(a) provides that an inspector must take two or more samples that are as uniform as possible, and put each in separate, securely sealed and labelled containers. The inspector must send one or more of the containers to an accredited laboratory or accredited person by means that will ensure the safe arrival of the container's contents. Paragraph 23(1)(b) provides that the inspector may be kept by the inspector as a control sample.

Subsection 23(2) sets out that if the occupier of the premises or another person who apparently represents the occupier is present when the samples are taken, the inspector must ask the occupier or other person to inspect the containers to satisfy themselves that the containers have been sealed and labelled properly. If the samples are of fuel that is in a liquid state at standard

temperature and pressure, then one of the containers must be given to the occupier or other person.

Subsection 23(3) sets out that if the occupier of the premises or other person mentioned in subsection 23(2) is not present when the samples are taken and the samples are of fuel in a liquid state at standard temperature and pressure, the inspector must keep one of the containers and if the occupier asks for the container within one week after the sample was taken, the inspector must give the container to the occupier.

The steps specified in this section mean that only samples of fuel in a liquid state at standard temperature and pressure, are required to be given to the occupier.

The sampling method for gaseous fuel is necessarily different to that for sampling liquid fuels. The equipment required for sampling gas is expensive and reusable. Accordingly it is not reasonable to leave it with an occupier of the premises or other person mentioned in subsection 23(2) as is the case with liquid fuel samples. Additionally, gas samples are more volatile and for safety reasons, sampling cylinders must be controlled by the Department at all times. For these reasons, the requirements in subsection 23(1) will still apply to gaseous samples but the requirements in subsection 23(2)(b) and 23(3) will not.

Subsection 23(4) provides that the procedure mentioned in paragraph 23(2)(a) need not be strictly complied with and substantial compliance is sufficient. The substantial compliance threshold is sufficient as section 25 of the Regulations provide additional safeguards for ensuring that the sample is clearly identifiable and secured.

Subsection 23(5) defines ‘standard temperature and pressure’ as a temperature of zero degrees Celsius and a pressure of 100 kilopascals.

#### Section 24 – Identification of samples

This section deals with the identification of samples. Subsection 24(1) provides that an inspector who takes a sample must record enough details to identify the sample, the address of the premises where the sample was taken, and ask the occupier, or another person who apparently represents the occupier, to sign the record as soon as possible after the sample is taken.

Subsection 24(2) provides that the procedure mentioned in paragraph 24(1)(b) need not be strictly complied with and substantial compliance is sufficient. The substantial compliance threshold is sufficient as section 25 provides for additional safeguards for ensuring that the sample is clearly identifiable and secured.

#### Section 25 – Method of securing samples

This section prescribes how samples are to be secured. Inspectors are required to ensure that the sample container is marked so that the sample is clearly identifiable but in a way that prevents a person testing the sample from identifying the source of the sample, and that the sample container cannot be opened, or the sample identification removed, without breaking the seal. An inspector who takes a sample must ensure that the sample is packed, stored and transported in a way that ensures the integrity of the sample is preserved and testing of the sample produces

the same results as would have been obtained if the sample had been tested immediately after it was taken.

### Section 26 – Payment for samples

This section provides that when a sample is taken from a place where it could be sold legally, the Commonwealth is liable to pay, to the owner of material from which the sample is taken, the market value, at the time the sample was taken, of any part of the sample removed by an inspector.

## **Division 3 - Accredited laboratories etc.**

### Section 27 – Accredited laboratories

Subsection 58B(8) of the Act provides for regulations to define the terms ‘accredited laboratory’, ‘accredited person’ and ‘authorised person’.

This section defines accredited laboratory for the purposes of the Act. Subsection 27(1) provides that for the purposes of subsection 58B(8) of the Act, the following are accredited laboratories:

- a laboratory in Australia that is accredited by the National Association of Testing Authorities, Australia (NATA);
- subject to subsection 27(2), a laboratory in another country that is accredited by the national laboratory accreditation body operating in the country where the laboratory is located; and
- an organisation that has more than one laboratory or similar undertaking that uses their joint resources and is accredited by NATA.

Subsection 27(2) provides that for the purposes of paragraph 27(1)(b), the national laboratory accreditation body must be a member of the International Laboratory Accreditation Corporation, and accept the accreditation standards of that Corporation, and comply with ISO/IEC 17011:2017 *Conformity assessment -- Requirements for accreditation bodies accrediting conformity assessment bodies*, published by the International Organization for Standardization, Geneva. This ensures that sample testing is standardised and consistent no matter which accredited laboratory is testing it.

### Section 28 – Accredited persons

This section provides that an accredited person is an individual who is accredited by NATA for the purposes of subsection 58B(8) of the Act. Under paragraph 58B(2)(a) of the Act, an accredited person may sign evidentiary certificates that are admissible in offence proceedings under Part 2 of the Act.

### Section 29 – Authorised persons

This section provides that an authorised person is an individual who is approved by NATA as an authorised representative of an accredited laboratory for the purposes of subsection 58B(8) of the Act. Under paragraph 58B(2)(b) of the Act, an authorised person may sign evidentiary certificates that are admissible in offence proceedings under Part 2 of the Act.

#### **Division 4 – Infringement notices**

##### **Subdivision A - Matters to be included in infringement notices**

###### **Section 30– Payments by instalments**

Subsection 65M(1) of the Act lists matters which must be included in an infringement notice. This includes any other matters as are specified in the regulations.

Section 36 specifies that, in addition to the matters specified in subsection 65M(1) of the Act, a statement must be included which informs the notice receiver of the option to apply to the Secretary, within 28 days of receiving the notice, to make an arrangement for payment of the infringement notice by instalments.

##### **Subdivision B – Further provisions in relation to infringement notices**

###### **Section 31 – Further provisions in relation to infringement notices**

Section 65S of the Act provides that the Regulations may make further provision in relation to infringement notices in addition to requirements outlined in the Act.

This section clarifies that Subdivision B of the Regulations is made for the purposes of section 65S of the Act. Subdivision B provides for additional requirements and processes in relation to the administration of infringement notices.

###### **Section 32 – Ways of giving infringement notices**

Section 32 provides that an infringement notice may be given to a person personally or by post, or leaving the notice at the last known place of residence or business of the person who is alleged to have engaged in the conduct to which the infringement notice relates and with a person, who appears to be over 16 years of age, and appears to live or work at the place.

###### **Section 33 – Payment by instalments**

This section sets out the process for a person to use the instalment payment option.

Subsection 33(1) provides that if a person wants to use the instalment payment option, they may apply in writing to the Secretary within 28 days after the infringement notice is given.

Subsection 33(2) provides that the Secretary must decide whether to make or refuse to make the arrangement, and give the person a written notice of the decision, including reasons if the arrangement has been refused.

Subsection 33(3) provides the payment of the infringement notice penalty will be determined in accordance with the arrangement that has been made or, if the arrangement is refused, before

the end of the latest of: 28 days after the notice was given; an extended period as decided by the Secretary; or seven days after receiving the notice of refusal. The period in which to pay the penalty may be extended under section 65N of the Act by application to the Secretary.

The option to pay in instalments enables persons who have committed an offence or contravened a civil penalty provision the flexibility of paying the infringement notice in instalments rather than in one lump sum.

#### Section 34 – Admissions in representations for withdrawal of infringement notice

This section provides that any evidence of an admission made in a representation seeking withdrawal of an infringement notice (under section 65P of the Act) is inadmissible in criminal or civil proceedings that may occur in relation to the conduct of the person to which the infringement notice relates.

This section is inconsistent with the Guide to Framing Commonwealth Offences in its application of both the privilege against self-incrimination and representations to withdraw a notice.

#### Section 35 – Evidence for proceedings

This section provides for certain certificates to be evidence of certain facts in relation to the conduct to which an infringement notice relates. This evidence may then be relied on in criminal or civil proceedings.

Subsection 35(1) specifies the types of certificates that will be considered *prima facie* evidence of the facts stated in the certificates in criminal or civil proceedings on the relevant matter.

Subsection 35(2) provides that a certificate that purports to have been signed by an inspector or the Secretary is taken to have been signed by that officer unless the contrary is proved.

As these certificates only seek to settle formal or technical matters of fact that are not likely to be in dispute, this section is consistent with the recommendations set out in the Guide to Framing Commonwealth Offences.

#### Section 36 – Matters not to be taken into account in determining penalty

This section determines that the fact that a person has chosen not to pay the infringement notice penalty must not be taken into account by a court in determining the penalty for an offence under the Act.

#### Section 37 – Payment of penalty by cheque

Section 37 provides that payment of all or part of the amount of an infringement notice penalty may be by cheque and that payment will be considered to be taken when the cheque is honoured. Persons paying their infringement notice by cheque will have to factor in the time for it to be cleared within the specified period for payment.

### **Part 6 – Record keeping and reporting obligations**

#### **Division 1 – Records**

### Section 38 – Purposes of this Division

This section clarifies that for the purposes of subsections 66(1) and 66A(2) of the Act, this Division sets out the requirements in relation to the records that must be kept and maintained by a person covered by subsections 66(1) or 66A(1) of the Act. Such a person is a ‘relevant supplier’ under the Regulations.

This means that the obligations under this Division only apply to a person who supplies fuel in Australia that is the subject of a fuel standard; and in any circumstances in which the applicable standard applies; and if the person is a constitutional corporation or Commonwealth entity or person who supplies fuel in the course of constitutional trade or commerce.

Depending on the characteristics of the relevant supplier in question, one or more of the different sections of this Division will apply in relation to record keeping:

- If the person is covered by subsections 66(1) or 66A(1) of the Act, then person is a relevant supplier and has to comply with section 39 of the Regulations. If not, this Division does not apply to the person.
- If the relevant supplier is a producer or blender (section 40 applies), importer (section 41 applies), or distributor or retail outlet (section 43 applies) in relation to fuel, then different requirement apply.
- If the relevant supplier uses their vehicle or a contractor’s vehicle to distribute fuel, then additional requirements under section 42 applies. If not, there are no more requirements under this Division

### Section 39 – How records are to be kept

Section 39 specifies several requirements for records that must be kept and maintained under Part 6, Division 1 of the Regulations. Such records must be kept, for each calendar year, for fuel that was supplied in Australia during that year; be kept at the premises where fuel is supplied; and be retained for twelve months after the end of the calendar year to which the record relates.

For example, this section will require a record created on 1 July 2019 to be kept for the calendar year to which the record related (until 31 December 2019), plus twelve months after the end of that calendar year, i.e. 31 December 2020.

This section ensures that appropriate fuel documentation are kept at the site from which the fuel is supplied which facilitates the efficient administration of the monitoring program. It also allows for access and copying by an inspector at the location of the fuel supply.

### Section 40 – Records for relevant supplier who produce or blend fuels

Section 40 prescribes that a relevant supplier that produces or blends fuel must keep and maintain records of specified matters, including: the kind, grade and quantity of the fuel produced or blended, details of any testing done, details of supply, records by which the fuel supplied can be traced to delivery docket numbers, records by which fuel supplies can be linked

to tank holdings and takings, and stock reconciliation records. These records will facilitate the exercise of monitoring powers and compliance powers under the Act.

#### Section 41 – Records for relevant suppliers who import fuel

This section prescribes that an importer of fuel must keep and maintain records. Subsection 41(1) specifies that records must be kept and maintained on: supply details, records by which fuel supplied can be traced to delivery docket numbers, records by which fuel supplies can be linked to tank holdings and takings and stock reconciliation records. Subsection 41(2) specifies further matters related to importation for which suppliers will have to keep and maintain a record. These matters include, but are not limited to, tariff codes, date and port of arrival, and the importer number for the shipment. These records will facilitate the exercise of monitoring and compliance powers under the Act.

#### Section 42 – Records for relevant suppliers who distribute fuel using their own vehicles or contractors' vehicles

This section prescribes the record keeping requirements for relevant suppliers that distribute fuel using their own vehicles or contractors' vehicles.

Subsection 42(1) provides that this section applies to relevant suppliers that distribute fuel using the relevant supplier's vehicle or a person, who is engaged by the relevant supplier to distribute fuel for the supplier, using their vehicle.

Subsection 42(2) specifies that the relevant supplier must keep all documents received or provided under sections 19 or 19A of the Act (whichever is applicable) in relation to fuel described in subsection 42(1). Subsection 42(2) also specifies that for each instance when a vehicle is loaded with fuel by or for the supplier, the relevant supplier must keep a record of the place, date and time the fuel was loaded. These records will facilitate the exercise of monitoring and compliance powers under the Act.

#### Section 43 – Records for relevant suppliers who operate service stations or distribute fuel

Section 43 prescribes the record keeping requirements for relevant suppliers that operate retail outlets or distribute fuel.

Subsection 43(1) specifies that a relevant supplier that operates a retail outlet or that is a distributor of fuel must keep and maintain records of documents received or provided under sections 19 or 19A of the Act, stock reconciliation records, and details of any testing done on the fuel. These records will facilitate the exercise of monitoring and compliance powers under the Act.

Subsection 43(2) provides that a relevant supplier that operates a retail outlet or that is a distributor need not keep reconciliation records prescribed by paragraph 43(1)(b) if it is not possible for the relevant supplier to keep separate reconciliation records. This ensures that the record keeping requirements are practical and not unduly onerous on suppliers.

### **Division 2 - Annual statements**

#### Section 44 – Annual statements



As part of their record keeping and reporting obligations under the Act, fuel producers and importers must provide an annual statement to the Secretary under section 67 of the Act. The Act also specifies requirements for the annual statement, including its content and when it must be provided.

Section 44 provides for how annual statements should be provided to the Secretary for the purposes of subsection 67(4) of the Act. It provides that fuel producers and importers must submit their annual report in writing by delivering it by hand, by post or electronically to the Department's email for fuel quality matters. The Department's physical and postal addresses are publicly available on the Department's website. The Department's email address for fuel quality matters is also publicly available on the Department's website in the fuel quality section.

## **Part 7 – Other matters**

### **Section 45 – Disclosure of information obtained under the Act**

Subparagraph 67A(b)(iii) of the Act provides that the Secretary may disclose or authorise the disclosure of information obtained under this Act if the Secretary reasonably believes that it is necessary or appropriate to do so in the course of performing functions or exercising powers under this Act, or where disclosure is likely to assist in the administration or enforcement of any certain prescribed Acts. This section prescribes Acts for these purposes.

Section 45 prescribes disclosures for the *Australian Crime Commission Act 2002* and the *Low Aromatic Fuel Act 2013*.

### **Section 46 – Delegation of Minister's powers and functions**

Section 46 provides that the Minister may delegate any or all of the Minister's functions and powers under the Regulations to the Secretary or a Senior Executive Service (SES) employee, or acting SES employee, in the Department. This allows the Secretary or an SES employee to perform or exercise the Minister's functions or powers under the Regulations. The delegate must comply with any written directions of the Minister when performing a delegated function or exercising a delegated power.

The delegation of the Minister's functions and powers fall within the scope of the 'necessary and convenient' regulation-making power in section 73 of the Act. It provides for situations where it will be inefficient or impractical for the Minister to exercise personally functions and powers under the Regulations and facilitates the effective operation of the Regulations.

### **Section 47 – Delegation of Secretary's powers and functions**

Section 47 provides that the Secretary may delegate any or all of their functions and powers under the Regulations to an SES employee, or an acting SES employee, in the Department. This will allow an SES employee to perform or exercise the Secretary's functions or powers under the Regulations. The delegate must comply with any written directions of the Secretary when performing a delegated function or exercising a delegated power.

The delegation of the Secretary's functions and powers fall within the scope of the 'necessary and convenient' regulation-making power in section 73 of the Act. It provides for situations where it will be inefficient or impractical for the Secretary to exercise personally functions and powers under the Regulations and facilitates the effective operation of the Regulations.

## **Part 8 – Application, saving and transitional provisions**

### Section 48 – Definitions

This section defines key terms used in this Part of the Regulations. This section clarifies that 'commencement day' means the commencement date of the Regulations which is 1 October 2019; and that 'old regulations' refers to the *Fuel Quality Standards Regulations 2001*.

### Section 49 – Pre-commencement applications

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to applications made under section 14 of the Act. If an application was made and a decision on that application had not been made before commencement day, then regulations 4 and 5 of the old regulations apply despite its repeal. Otherwise, sections 8 and 9 of the Regulations apply. This ensures that applicants who had already lodged applications are not disadvantaged by the commencement of the Regulations.

### Section 50 – Pre-commencement requests for exemption or refund

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to requests for exemptions or refunds under regulations 6 and 6A of the old regulations, or sections 10 and 11 of the Regulations. If a request was made and a decision on that request had not been made before commencement day, then regulations 6 and 6A of the old regulations apply despite its repeal. Otherwise, sections 10 and 11 of the Regulations apply. This ensures that applicants who had already lodged a refund or exemption request are not disadvantaged by the commencement of the Regulations.

### Section 51 – Informing people of obligations

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to informing people of obligations under regulation 7 of the old regulations, or section 12 of the Regulations. If an approval was in force before the commencement day, then regulation 7 of the old regulations apply in relation to any condition of that approval that was already imposed before the commencement day. If a condition is imposed, varied or revoked on or after the commencement day, then section 12 of the Regulations apply. This ensures that the same regulations apply to a condition and avoid confusion for approval holders.

### Section 52 – Committee members

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to Committee members under Part 3 of the old regulations, or Part 3 of the Regulations. If a person is a Committee member before the commencement day, then Part 3 of the old regulations apply to that Committee member despite its repeal. Otherwise, Part 3 of the Regulations apply. This ensures that the same regulations apply to the full term of a Committee member.

### Section 53 – Identity cards

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to identity cards for inspectors. Section 21 of the Regulations apply to identify cards issued on or after the commencement day. Identity cards issued under regulation 15 of the old regulations will still be valid until the expiry date stated on each individual identity card. This ensures that existing identity cards do not need to be reissued.

### Section 54 – Samples

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to taking samples. If a sample is taken before the commencement day, then regulations 17 to 20 of the old regulations apply to those samples despite its repeal. This ensures that the same regulations apply to a batch of samples and avoid confusion for inspectors and those having samples taken from them.

### Section 55 – Infringement notices

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to infringement notices. If an infringement notice is given under section 65L of the Act before the commencement day, then Division 5.3 of Part 5 of the old regulations apply despite its repeal. This makes clear that an infringement notice issued under the old regulations remain valid.

### Section 56 – Record keeping

This section clarifies how the Regulations and the old regulations operate alongside each other in relation to record keeping requirements. The requirements in Part 6 of the Regulations apply in relation to records commencing on 1 January 2020. Records for the 2019 calendar year will have to comply with Part 6 of the old regulations. This ensures that an orderly transition to the new record keeping requirements under the Regulations.

## **Schedule 1 – Repeals**

### **Item 1 – The whole of the instrument**

This item repeals the *Fuel Quality Standards Regulations 2001*. The Regulations remake and replace the sunseting *Fuel Quality Standards Regulations 2001*. This ensures there is no confusion or duplication when the Regulations commence.

## **Statement of Compatibility with Human Rights**

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

### **Fuel Quality Standards Regulations 2019**

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 Disallowable Legislative Instrument**

The *Fuel Quality Standards Act 2000* (the Act) provides the legislative framework for regulating 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 and ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

The purpose of the *Fuel Quality Standards Regulations 2019* (the Regulations) is to revoke and replace the sunseting *Fuel Quality Standards Regulations 2001*. The Regulations provide the detail for administering matters set out under the Act. The matters include:

- applying for an approval to vary a fuel standard
- appointment conditions of the Fuel Standards Consultative Committee members
- publishing notices of action in relation to adding or removing a fuel additive, or class of fuel additives, to the Register of Prohibited Fuel Additives
- enforcement, record keeping and reporting obligations
- disclosure of information obtained under the Act
- delegation of powers and functions under the Regulations
- application, saving and transitional provisions

#### **Human rights implications**

This Disallowable Legislative Instrument engages the following rights:

- Right to a fair trial and fair hearing rights in Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR)
- Right to the presumption of innocence in Article 14(2) of the ICCPR
- Right to privacy and protection of reputation in Article 17 of the ICCPR.

#### **Right to a fair trial**

Article 14(1) of the ICCPR guarantees the right to a fair trial and fair hearing in relation to both criminal and civil proceedings.

Generally, evidence presented in criminal and civil proceedings are bound by rules of evidence in place to ensure a fair trial and fair hearing. Any deviation from the rules of evidence could affect the right to a fair trial and fair hearing.

Part 3, Division 12 of the Act deals with infringement notices which may be issued by inspectors if they have reasonable grounds to believe that a person has committed a criminal offence against the Act or contravened a civil penalty provision in the Act. Part 5, Division 4 of the Regulations sets out the administrative detail of issuing an infringement notice.

Section 34 provides that any evidence of an admission made when someone seeks to withdraw an infringement notice (under section 65P of the Act) is inadmissible in a relevant criminal or civil proceeding.

This provision ensures that the prosecution and plaintiff cannot rely on that admission to prove their case, and would require sufficient other evidence to prove their case to the necessary level of proof. Thus, the Regulations are consistent with Article 14(1) of the ICCPR.

#### Right to the presumption of innocence

Article 14(2) of the ICCPR protects the right to be presumed innocent until proven guilty according to law.

Generally, the presumption of innocence requires the prosecution to prove each element of an offence or a plaintiff to prove each element of a claim. A provision which assumes facts without proof from the prosecution or plaintiff engages the presumption of innocence.

Section 35 of the Regulations specifies that certain types of certificates will be considered sufficient evidence in criminal or civil proceedings, provided the certificate was signed by an inspector or the Secretary of the Department. The types of certificates specified in this section relate to the administration and payment of infringement notices. The prosecution or plaintiff no longer have to show there is other evidence in regards to facts outlined in a certificate during criminal or civil proceedings.

This process is reasonable, as the matters outlined in such certificates would be well known to inspectors or the Secretary. As these certificates relate to the administration or payment of infringement notices, it would not be unreasonably difficult for the defendant to provide additional evidence, such as dated correspondence with the Department or banking transaction receipts, to disprove matters outlined in the certificates if necessary.

Any limitation of the right to the presumption of innocence in this case is reasonable, necessary and proportionate and reflects the importance of ensuring compliance with Australia's fuel standards to protect community and environmental health. Thus, the Regulations are consistent with Article 14(2) of the ICCPR.

#### Right to privacy and protection of reputation

Article 17 of the ICCPR protects the right to privacy, family, home or correspondence and unlawful attacks on honour and reputation.

Several provisions in the Regulations involve the sharing, collection, use, publication or disclosure of personal and commercial information:

- the collection and storage of, and sharing with the committee of contact details and commercial information about fuel supply when someone applies for an approval to vary a fuel standard (section 8)

- the requirement for fuel importers, distributors and producers to provide business contact details and details of the fuel supplied, location, time and vehicle used, to any distributor who is buying fuel (section 13)
- the disclosure of contact or business information if the disclosure is likely to assist in the administration or enforcement of the *Australian Crime Commission Act 2002* and the *Low Aromatic Fuel Act 2013* (section 45)
- The disclosure of interests by a member of the Fuel Standards Consultative Committee of a matter being considered by the committee (section 17).

These limitations on privacy are necessary for meeting the objects of the Act by allowing the Department to correctly identify applicants and assess their applications, to accurately track the quality of fuel through the supply chain, to assist in the administration of other specific legislation, and to ensure that decision taken are not influenced by personal interests. The limitations apply only in these specific circumstances and not go beyond what is reasonable to achieve their objectives, and are subject to the protections in the *Privacy Act 1988* that apply to the collection and use of personal information by the Department.

Such limitations of the right to privacy and the protection of reputation are reasonable, necessary and proportionate and reflect the importance of ensuring compliance with Australia's fuel standards to protect community and environmental health. Thus, the Regulations are consistent with Article 17 of the ICCPR.

## **Conclusion**

The Regulations are compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Melissa Price MP, Minister for the Environment**