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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Low Aromatic Fuel Bill 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Siewert)

Low Aromatic Fuel Bill 2012

Background

Despite the clear success of low-aromatic fuel (LAF) in reducing the prevalence of petrol sniffing and the benefit this brings to affected communities, efforts to extend its coverage and restrict availability of regular unleaded petrol (RULP) have been frustrated by recalcitrant retailers that refuse to stop supplying RULP and stock LAF.

This Bill is designed to mitigate the negative impacts of petrol sniffing through promoting the supply of low-aromatic fuel (LAF) and controlling the supply of other fuels in certain areas. Using legislation to mandate LAF has been promoted for a number of years by stakeholders, researchers and the Senate Standing Committee on Community Affairs in their 2009 Report "Grasping the Opportunity of Opal."

The measures in this Bill aim to reduce petrol sniffing in certain designated LAF areas, by:

- Prohibiting the supply of regular unleaded petrol (RULP);
- Promoting and monitoring the use of LAF; and
- Regulating the supply and storage of other fuels – in particular premium unleaded petrol (PULP).

NOTES ON CLAUSES

Clause 1 – Short Title

This is a formal provision specifying the short title.

Clause 2 – Commencement

This provision provides that the Bill's provisions are to commence the day after it receives Royal Assent.

Clause 3 – Guide to this Act

This provision provides a guide to this Act.

Clause 4 – Objects

This provision outlines that the object of the Bill is to reduce potential harm to the health of people living in certain areas from sniffing fuel.

Clause 5- Dictionary

This provision defines certain terms used in the Act.

Clause 6- Act binds Crown

This provision states that this Act binds the Crown, but does not make the Crown liable for prosecution for an offence.

Clause 7- Relationship to State and Territory laws

This provision clarifies that the Act is not intended to exclude the operation of State or Territory laws, to the extent they are capable of operating concurrently with the Act.

Clause 8 -Prohibition on supply of regular unleaded petrol

This provision creates offences for corporations that supply RULP to a person in a LAF area; that transport RULP intending to supply it to another person who is either in a LAF area or who intends to supply it to a third person in a LAF area; or that possess RULP intending to supply it to a person in a LAF area. There are exceptions

if the relevant conduct is covered by an exemption under section 17, or if it is to comply with a direction or order under an emergency law.

These offences attract a penalty of 300 penalty units.

Clause 9 – Requirements relating to LAF in LAF and fuel control areas

This provision gives the Minister power to require suppliers in LAF areas and fuel control areas to undertake certain requirements in relation to LAF. This can include communicating information in relation to the supply of LAF or promoting LAF; making and keeping records relating to the supply, transport, possession and storage of LAF and giving the Minister specified information relating to the supply, transport, possession or storage of LAF.

Requirements under this provision are determined by the Minister by legislative instrument and the Minister must be satisfied the determination will further the object of the Act.

Clause 10 – Offences for contravening requirements relating to LAF

This provision creates an offence for a corporation that contravenes a requirement under section 9, unless the conduct is exempt under section 17. The penalty for contravening a requirement is 100 penalty units.

Clause 11 – Requirements relating to fuels in LAF and fuel control areas

This provision gives the Minister the power to determine requirements (a Scheme of Controls) via legislative instrument relating to the supply, transport, possession or storage of any fuel in, or in relation to, a LAF or fuel control area.

Requirements under this provision are determined by the Minister by legislative instrument and the Minister must be satisfied the determination will further the object of the Act. The Minister must also have regard to the wellbeing of people living in the area; submissions made as part of the consultation process and any other matters the Minister considers relevant.

Clause 12 – Offences relating to contravening requirements relating to fuels

This provision creates an offence for a corporation that contravenes a requirement under section 11, unless the conduct is exempt under section 17 or it is engaged in to comply with a direction or order under an emergency law. The penalty for contravening a requirement is 300 penalty units.

Clause 13 – Consultation before determining requirements relating to fuels generally

This provision outlines the consultation requirements which must be met before the Minister can determine requirements setting up a Scheme of Controls under section 11. This includes consulting certain persons and bodies; making information available in the area to which the determination relates and giving a reasonable opportunity for people, businesses and organisations to make submissions.

Clauses 14-15 -Ministerial power to designate LAF and fuel control areas

These provisions set out the power of the Minister to designate an area as a LAF or fuel control area, by legislative instrument. The Minister may only designate an area as a LAF area if he or she is satisfied that doing so is reasonably likely to help reduce potential harm to the health of people living in that area from sniffing fuel. The Minister may only designate an area as a fuel control area if he or she is satisfied that doing so is reasonably likely to help reduce potential harm to the health of people living in that area, or in a LAF area, from sniffing fuel. The Minister must also have regard to people's wellbeing; whether there is reason to believe people have been harmed by sniffing fuel; whether people have expressed that their wellbeing will be improved by designating the area; submissions made as part of the consultation process; the availability of fuels (including LAF) and any other matters the Minister considers relevant.

Clause 16 – Consultation before designating LAF and fuel control areas

This provision outlines the consultation requirements which must be met before the Minister can designate a LAF or fuel control area. This includes consulting certain persons and bodies, making information available in the area to which the determination relates and giving a reasonable opportunity for people, businesses and organisations to make submissions.

Clause 17 –Exempting conduct in relation to LAF and fuel control areas

This provision allows the Minister to exempt conduct of a corporation in LAF and fuel control areas. Exemptions can relate to any of the requirements under the Act. The Minister must be satisfied that there are special circumstances justifying the exemption and that the exemption will not to adversely affect the wellbeing of

people in an area to which it relates. It is envisaged that this provision would be utilised rarely and only in extreme circumstances.

Clause 18- Reviewing the operation of the Act

This provision provides that the Minister must review the operation of the Act within five years of commencement, and every five years after that. The reviewer must provide a written report within one year after the time for commencing the review, which will be tabled in both houses of Parliament.

It is anticipated that the review would consider, but not be limited to, the appropriateness of areas designated under the Act.

Clause 19 -Regulations

This provision provides for the making of regulations.

STATEMENT OF COMPATIBILITY FOR A BILL OR LEGISLATIVE INSTRUMENT THAT RAISES HUMAN RIGHTS ISSUES

Statement of Compatibility with Human Rights

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

Low Aromatic Fuel Bill 2012

This Bill 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 Bill

The *Low Aromatic Fuel Bill 2012* is designed to reduce petrol sniffing through promoting the supply of low-aromatic fuel (LAF) and controlling the supply of other fuels in certain areas. Using legislation to mandate LAF has been promoted for a number of years by stakeholders, researchers and the Senate Standing Committee on Community Affairs in their 2009 Report "Grasping the Opportunity of Opal."

The measures in this Bill aim to reduce petrol sniffing in certain designated LAF Areas, by:

- Prohibiting the supply of regular unleaded petrol (RULP);
- Promoting and monitoring the use of LAF; and
- Regulating the supply and storage of other fuel – in particular premium unleaded petrol (PULP).

Human rights implications

This Bill advances the humans rights of people in designated LAF areas who sniff petrol and affected communities. In particular, it promotes the right to health under article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

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

Article 12 recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental 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.

Petrol sniffing causes long-lasting 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 affects on memory, attention, learning, executive function and behavioural inhibition. These physical impacts have been connected to range of social problems including low school attendance and illegal activity.

Reducing petrol sniffing and the resultant harm, through legislative and other measures, is an obligation of the Australian Government under article 12 of ICESCR. As such, this Bill supports the rights within that article.

Right to be Free from Discrimination-Special Measures

To the extent that this Bill provides for designated areas that are likely to have significant numbers of Aboriginal and Torres Strait Islander residents, it may be necessary to show that the provisions meet the criteria of a special measure, under the International Convention on the Elimination of Racial Discrimination.

Under Article 1(4) of the *International Convention on the Elimination of Racial Discrimination*:

"Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved"

Article 2 (2) also obliges governments to take "special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."

The Australian Human Rights Commission has interpreted ICERD to imply that a special measure must meet the following test:

- provide a *benefit* to some or all members of a group based on race (including a requirement for consultation and consent)
- have *the sole purpose* of securing the advancement of the group so they can enjoy human rights and fundamental freedoms equally with others; and
- are *necessary* for the group to achieve that purpose, and
- *stop* once their purpose has been achieved and do not set up separate rights permanently for different racial groups (Article 1(4)).

This Bill meets the above criteria, and, as such could be deemed a special measure. The Bill's aim is to reduce the harm of petrol sniffing, thereby benefiting all sniffers and communities where petrol sniffing occurs. Under the Bill, consultation with affected persons is required when designating LAF and fuel control areas and when determining requirements setting up a Scheme of Controls for other fuels.

The sole purpose of this legislation is to benefit people who sniff petrol and their communities so they may realise all their fundamental human rights. Due to the intransigence of certain petrol suppliers the legislation is necessary to properly tackle petrol sniffing, and the Act will be reviewed every 5 years.

As such the Bill can be deemed to meet the requirements of a special measure under international human rights law.

Conclusion

This Bill is compatible with human rights because it advances the right to health of people engaging in petrol sniffing. Furthermore, to the extent that areas will be designated with a high number of Aboriginal and Torres Strait Islander residents, the Bill can be considered to be a special measure and meets the criteria as such.

[Senator Rachel Siewert]