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Commonwealth of Australia

THE SENATE

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Low Aromatic Fuel Bill 2012

No. , 2012

(Senator Siewert)

**A Bill for an Act to promote the supply of low
aromatic fuel and control the supply of other fuels
in certain areas, and for related purposes**

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1 **A Bill for an Act to promote the supply of low**
2 **aromatic fuel and control the supply of other fuels**
3 **in certain areas, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Low Aromatic Fuel Act 2012*.

Section 2

1 **2 Commencement**

2 This Act commences on the day this Act receives the Royal
3 Assent.

4 **3 Guide to this Act**

5 This Act is about promoting the supply of low aromatic fuel and
6 controlling the supply of other fuels in certain areas in order to
7 reduce potential harm to the health of people living in those areas
8 from sniffing fuel (see the object of this Act in section 4).

9 *Part 2—Requirements relating to fuels for low aromatic fuel areas
10 and fuel control areas*

11 Division 1 of Part 2 deals with requirements relating to regular
12 unleaded petrol for low aromatic fuel areas. A corporation must not
13 supply regular unleaded petrol in a low aromatic fuel area.

14 Division 2 of Part 2 deals with requirements relating to low
15 aromatic fuel for low aromatic fuel areas and fuel control areas.
16 These requirements are determined by the Minister by legislative
17 instrument.

18 Division 3 of Part 2 deals with requirements for fuels generally for
19 low aromatic fuel areas and fuel control areas. These requirements
20 are determined by the Minister by legislative instrument.

21 Before making a determination for the purposes of Division 2 or 3
22 of Part 2, the Minister must be satisfied that making the
23 determination will further the object of this Act.

24 *Part 3—Designating low aromatic fuel areas and fuel control
25 areas*

26 Low aromatic fuel areas and fuel control areas are designated by
27 the Minister under Part 3.

28 The Minister may only designate an area as a low aromatic fuel
29 area, following appropriate consultation, if satisfied that doing so is

1 reasonably likely to help reduce potential harm from sniffing fuel
2 in that area.

3 The Minister may only designate an area as a fuel control area,
4 following appropriate consultation, if satisfied that doing so is
5 reasonably likely to help reduce potential harm from sniffing fuel
6 in that area or in a low aromatic fuel area.

7 *Part 4—Exemptions from requirements of this Act*

8 Under Part 4, the Minister may exempt specified conduct from one
9 or more of the requirements that would otherwise apply under
10 Part 2 in relation to a low aromatic fuel area or a fuel control area.

11 *Part 5—Miscellaneous matters*

12 Part 5 deals with miscellaneous matters, including reviewing the
13 operation of this Act and the power to make regulations.

14 *Other introductory matters*

15 Part 1 contains the Dictionary. The Dictionary is a list of every
16 term that is defined in this Act. A term will either be defined in the
17 Dictionary itself, or in another provision of this Act. If another
18 provision defines the term, the Dictionary will have a signpost to
19 that definition.

20 In addition, Part 1 deals with the application of this Act to the
21 Crown and the relationship between this Act and State and
22 Territory laws.

23 **4 Object of this Act**

24 The object of this Act is to reduce potential harm to the health of
25 people living in certain areas from sniffing fuel.

26 **5 Dictionary**

27 In this Act:

Section 6

1 **conduct** means an act, an omission to perform an act or a state of
2 affairs.

3 **corporation** means a corporation to which paragraph 51(xx) of the
4 Constitution applies.

5 **emergency law** means:

6 (a) the *Liquid Fuel Emergency Act 1984*; or

7 (b) a law prescribed by the regulations for the purposes of this
8 definition.

9 **engage in conduct** means:

10 (a) do an act; or

11 (b) omit to perform an act.

12 **fuel control area** means an area designated by the Minister under
13 section 15.

14 **low aromatic fuel area** means an area designated by the Minister
15 under section 14.

16 **petrol** means a petroleum based fuel (whether or not containing
17 ethanol) for spark-ignition internal combustion engines.

18 **regular unleaded petrol** means unleaded petrol that has a research
19 octane number of less than 95, but does not include low aromatic
20 fuel.

21 **supply** includes give, distribute, barter and exchange, whether or
22 not for consideration, and whether or not the supply is a wholesale
23 or retail supply.

24 **6 Act binds Crown**

25 (1) This Act binds the Crown in each of its capacities.

26 (2) This Act does not make the Crown liable to be prosecuted for an
27 offence.

28 (3) The protection in subsection (2) does not apply to an authority of
29 the Crown.

1 **7 Relationship to State and Territory laws**

2 This Act is not intended to exclude the operation of any law of a
3 State or Territory, to the extent that that law is capable of operating
4 concurrently with this Act.

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2 **Part 2—Requirements relating to fuels for low**
3 **aromatic fuel areas and fuel control areas**

4 **Division 1—Requirements relating to regular unleaded**
5 **petrol for low aromatic fuel areas**

6 **8 Prohibition on supplying etc. regular unleaded petrol in low**
7 **aromatic fuel areas**

8 *Offence—supplying regular unleaded petrol in low aromatic fuel*
9 *area*

- 10 (1) A corporation must not supply regular unleaded petrol to a person
11 if the person is in a low aromatic fuel area.

12 Penalty: 300 penalty units.

13 Note: Low aromatic fuel areas are designated by the Minister under
14 section 14.

15 *Offence—transporting regular unleaded petrol for supply in low*
16 *aromatic fuel area*

- 17 (2) A corporation must not transport regular unleaded petrol:
18 (a) intending to supply any of it to a person (the *recipient*); or
19 (b) believing that another person intends to supply any of it to a
20 third person (the *recipient*);
21 if the recipient is in a low aromatic fuel area.

22 Penalty 300 penalty units.

23 *Offence—possessing regular unleaded petrol for supply in low*
24 *aromatic fuel area*

- 25 (3) A corporation must not possess regular unleaded petrol intending
26 to supply any of it to a person if the person is in a low aromatic
27 fuel area.

1 Penalty 300 penalty units.

2 *Exceptions*

3 (4) A corporation does not commit an offence against subsection (1),
4 (2) or (3) by engaging in particular conduct if:

5 (a) both:

6 (i) the conduct is exempt under section 17; and

7 (ii) the corporation complies with any conditions of the
8 exemption in engaging in the conduct; or

9 (b) the corporation engages in the conduct in order to comply
10 with a direction or order under an emergency law.

11 Note: A defendant bears an evidential burden in relation to a matter in this
12 subsection (see subsection 13.3(3) of the *Criminal Code*).

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2 **Division 2—Requirements relating to low aromatic fuel for**
3 **low aromatic fuel areas and fuel control areas**

4 **9 Requirements relating to low aromatic fuel for low aromatic fuel**
5 **areas and fuel control areas**

6 *Minister may determine requirements*

- 7 (1) The Minister may, by legislative instrument, determine
8 requirements relating to the following:
- 9 (a) communicating information in connection with the supply of
10 low aromatic fuel in, or in relation to, a low aromatic fuel
11 area or fuel control area, including information promoting
12 low aromatic fuel;
 - 13 (b) making and keeping records relating to the supply, transport,
14 possession or storage of low aromatic fuel in, or in relation
15 to, a low aromatic fuel area or a fuel control area;
 - 16 (c) giving the Minister specified information relating to the
17 supply, transport, possession or storage of low aromatic fuel
18 in, or in relation to, a low aromatic fuel area or a fuel control
19 area.

20 Note 1: Low aromatic fuel areas and fuel control areas are designated by the
21 Minister under sections 14 and 15.

22 Note 2: For specification by class, see subsection 13(3) of the *Legislative*
23 *Instruments Act 2003*.

- 24 (2) Without limiting subsection (1), a determination under that
25 subsection may determine requirements in relation to one or more
26 specified areas or areas in a specified class.
- 27 (3) Before making a determination under subsection (1), the Minister
28 must be satisfied that making the determination will further the
29 object of this Act.

1 **10 Offence—contravening requirements relating to low aromatic**
2 **fuel**

- 3 (1) A corporation must not contravene a requirement determined under
4 section 9.

5 Penalty: 100 penalty units.

6 *Exceptions*

- 7 (2) A corporation does not commit an offence against subsection (1)
8 by engaging in particular conduct if both:
9 (a) the conduct is exempt under section 17; and
10 (b) the corporation complies with any conditions of the
11 exemption in engaging in the conduct.

12 Note: A defendant bears an evidential burden in relation to a matter in this
13 subsection (see subsection 13.3(3) of the *Criminal Code*).
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Section 11

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Division 3—Requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

11 Requirements relating to fuels generally for low aromatic fuel areas and fuel control areas

Minister may determine requirements

- (1) The Minister may, by legislative instrument, determine requirements relating to the supply, transport, possession or storage of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area.

Note: Low aromatic fuel areas and fuel control areas are designated by the Minister under sections 14 and 15.

- (2) Without limiting subsection (1), a determination under that subsection may do any or all of the following:
- (a) prohibit (either absolutely or subject to conditions), limit, restrict or otherwise affect the supply, transport, possession or storage, of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area;
 - (b) require a fuel in a low aromatic fuel area or a fuel control area to be stored or secured in accordance with the determination;
 - (c) require a fuel in a low aromatic fuel area or a fuel control area to be supplied in a specified kind of container;
 - (d) specify requirements in relation to communicating information, in accordance with the determination, in connection with a supply of a fuel in, or in relation to, a low aromatic fuel area or a fuel control area;
 - (e) specify requirements in relation to the information or documentation that a person must provide before a fuel is supplied to the person in a low aromatic fuel area or a fuel control area;
 - (f) require a person to make and keep records relating to the supply, transport, possession or storage of a fuel in, or in

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- 1 relation to, a low aromatic fuel area or a fuel control area in
2 accordance with the determination;
- 3 (g) require a person to give the Minister specified information
4 relating to the supply, transport, possession or storage of a
5 fuel in, or in relation to, a low aromatic fuel area or a fuel
6 control area, including information relating to a suspected
7 offence against this Act.
- 8 (3) The paragraphs of subsection (2) do not limit each other.
- 9 (4) Without limiting subsection (1), a determination under that
10 subsection may determine requirements in relation to one or more
11 specified areas or areas in a specified class.
- 12 (5) Before making a determination under subsection (1), the Minister
13 must be satisfied that making the determination will further the
14 object of this Act.
- 15 (6) In making a determination under subsection (1), the Minister must
16 have regard to:
17 (a) the wellbeing of people living in and near the area; and
18 (b) any submissions of the kind referred to in paragraph 13(2)(b);
19 and
20 (c) any other matter that the Minister considers relevant.

21 **12 Offence—contravening requirements relating to fuels generally**

- 22 (1) A corporation must not contravene a requirement determined under
23 section 11.
- 24 Penalty: 300 penalty units.
- 25 *Exceptions*
- 26 (2) A corporation does not commit an offence against subsection (1)
27 by engaging in particular conduct if:
28 (a) both:
29 (i) the conduct is exempt under section 17; and
30 (ii) the corporation complies with any conditions of the
31 exemption in engaging in the conduct; or

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- 1 (b) the corporation engages in the conduct in order to comply
2 with a direction or order under an emergency law.

3 Note: A defendant bears an evidential burden in relation to a matter in this
4 subsection (see subsection 13.3(3) of the *Criminal Code*).

5 **13 Consultation before determining requirements relating to fuels** 6 **generally**

- 7 (1) Before making a determination under section 11, the Minister must
8 consult with such persons and bodies from among the following as
9 the Minister considers appropriate:
10 (a) community representatives and bodies;
11 (b) suppliers of fuel;
12 (c) persons with an interest in or knowledge of human health;
13 (d) any other person that the Minister considers appropriate.
- 14 (2) Without limiting subsection (1), the Minister must ensure that:
15 (a) information setting out the following has been made
16 available in the area or areas to which the determination
17 relates:
18 (i) the proposed requirements;
19 (ii) an explanation, in summary form, of the proposed
20 requirements; and
21 (b) people living in the area, and businesses and organisations
22 operating in the area, have been given a reasonable
23 opportunity to make submissions to the Minister about:
24 (i) the proposed requirements; and
25 (ii) the consequences of determining the proposed
26 requirements; and
27 (iii) their circumstances, concerns and views, so far as they
28 relate to the proposed requirements.
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2 **Part 3—Designating low aromatic fuel areas and**

3 **fuel control areas**

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5 **14 Minister may designate low aromatic fuel areas**

- 6 (1) The Minister may, by legislative instrument, designate an area
- 7 specified in the instrument as a *low aromatic fuel area*.
- 8 (2) The Minister may only designate an area under subsection (1) if he
- 9 or she is satisfied that doing so is reasonably likely to help reduce
- 10 potential harm to the health of people living in that area from
- 11 sniffing fuel.
- 12 (3) In designating an area under subsection (1), the Minister must have
- 13 regard to:
- 14 (a) the wellbeing of people living in the area; and
- 15 (b) whether there is reason to believe that the health of people
- 16 living in the area has been harmed by sniffing fuel; and
- 17 (c) whether people living in the area have expressed their
- 18 concerns about sniffing fuel; and
- 19 (d) whether people living in the area have expressed the view
- 20 that their wellbeing will be improved if the area is designated
- 21 as a low aromatic fuel area; and
- 22 (e) any submissions of the kind referred to in paragraph 16(2)(b);
- 23 and
- 24 (f) the availability of low aromatic fuel in relation to the area;
- 25 and
- 26 (g) any other matter that the Minister considers relevant.

27 **15 Minister may designate fuel control areas**

- 28 (1) The Minister may, by legislative instrument, designate an area
- 29 specified in the instrument as a *fuel control area*.
- 30 (2) The Minister may only designate an area under subsection (1) if he
- 31 or she is satisfied that doing so is reasonably likely to help reduce
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- 1 potential harm to the health of people living in that area or in a low
2 aromatic fuel area from sniffing fuel.
- 3 (3) In designating an area under subsection (1), the Minister must have
4 regard to:
- 5 (a) the wellbeing of people living in the area and any relevant
6 low aromatic fuel area; and
- 7 (b) whether there is reason to believe that the health of people
8 living in the area or any relevant low aromatic fuel area has
9 been harmed by sniffing fuel; and
- 10 (c) whether people living in the area or any relevant low
11 aromatic fuel area have expressed their concerns about
12 sniffing fuel; and
- 13 (d) whether people living in the area or any relevant low
14 aromatic fuel area have expressed the view that their
15 wellbeing will be improved if the area is designated as a fuel
16 control area; and
- 17 (e) any submissions of the kind referred to in paragraph 16(2)(b);
18 and
- 19 (f) the availability of fuel (including low aromatic fuel) in
20 relation to the area; and
- 21 (g) any other matter that the Minister considers relevant.

22 **16 Consultation before designating low aromatic fuel areas and fuel**
23 **control areas**

- 24 (1) Before designating an area under section 14 or 15, the Minister
25 must consult with such persons and bodies from among the
26 following as the Minister considers appropriate:
- 27 (a) community representatives;
- 28 (b) suppliers of fuel;
- 29 (c) persons with an interest in or knowledge of human health;
- 30 (d) any other person that the Minister considers appropriate.
- 31 (2) Without limiting subsection (1), the Minister must ensure that:
- 32 (a) information setting out the following has been made
33 available in the area:
- 34 (i) the proposal to designate the area;

- 1 (ii) an explanation, in summary form, of the consequences
2 of designating the area; and
3 (b) people living in the area, and businesses and organisations
4 operating in the area, have been given a reasonable
5 opportunity to make submissions to the Minister about:
6 (i) the proposal to designate the area; and
7 (ii) the consequences of designating the area; and
8 (iii) their circumstances, concerns and views, so far as they
9 relate to the proposal.
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Section 17

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2 **Part 4—Exemptions from requirements of this Act**

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4 **17 Minister may exempt conduct in relation to low aromatic fuel**
5 **areas and fuel control areas**

6 (1) The Minister may, by written instrument, exempt specified conduct
7 in, or in relation to, a low aromatic fuel area or a fuel control area
8 for the purposes of subsection 8(4), 10(2) or 12(2), but only if the
9 Minister is satisfied that:

- 10 (a) there are special circumstances justifying the exemption; and
11 (b) it is unlikely that the wellbeing of people will be adversely
12 affected by the exemption.

13 (2) Without limiting subsection (1), the Minister may exempt conduct:

- 14 (a) by one or more specified corporations or corporations in a
15 specified class; and
16 (b) in, or in relation to, one or more specified areas or areas in a
17 specified class.

18 (3) An exemption under subsection (1) is subject to the conditions
19 specified in the exemption.

20 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
21 *Interpretation Act 1901*.

22 Note 2: A corporation may commit an offence under Part 2 if the corporation
23 does not comply with a condition of an exemption.

24 (4) An exemption made under subsection (1) exempting conduct in
25 relation to one or more specified corporations is not a legislative
26 instrument.

27 (5) An exemption made under subsection (1) exempting the following
28 conduct is a legislative instrument:

- 29 (a) conduct by corporations in a specified class;
30 (b) conduct in, or in relation to, one or more specified areas or
31 areas in a specified class.
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Part 5—Miscellaneous2
3**18 Reviewing the operation of this Act**

- 5 (1) The Minister must cause a review of the operation of this Act to be
6 undertaken as soon as possible after:
- 7 (a) the fifth anniversary of the commencement of this section;
8 and
9 (b) each fifth anniversary after the day mentioned in
10 paragraph (a).
- 11 (2) The persons who undertake the review must give the Minister a
12 written report of the review within one year after the relevant
13 anniversary mentioned in subsection (1).
- 14 (3) The Minister must cause a copy of the report of the review to be
15 tabled in each House of the Parliament within 15 sitting days of the
16 day on which the report is given to the Minister.

19 Regulations

- 18 The Governor-General may make regulations prescribing matters:
19 (a) required or permitted by this Act to be prescribed; or
20 (b) necessary or convenient to be prescribed for carrying out or
21 giving effect to this Act.