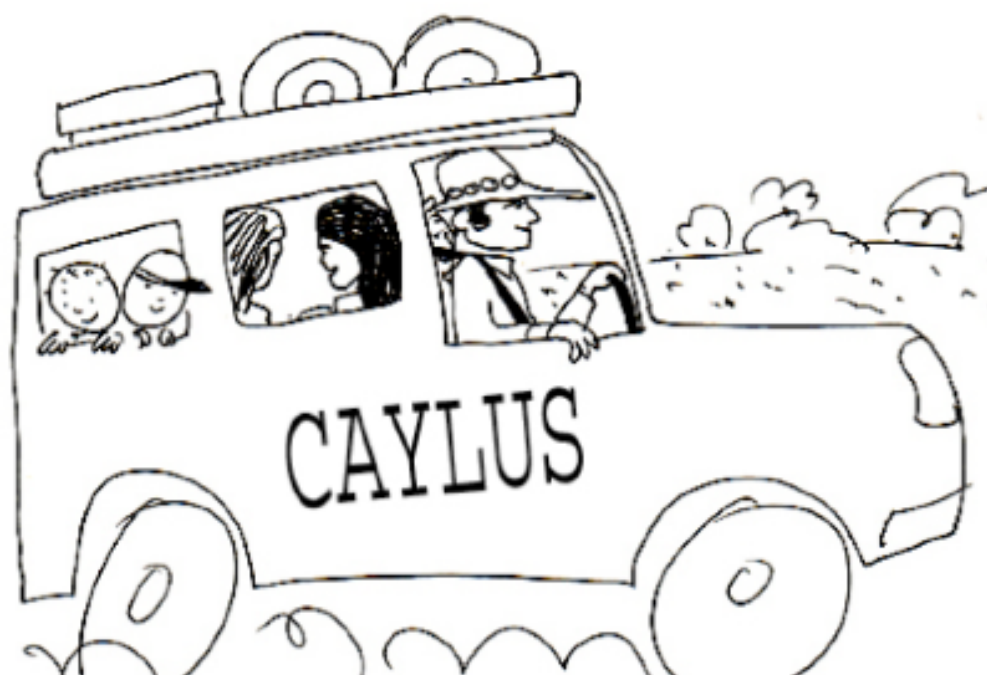
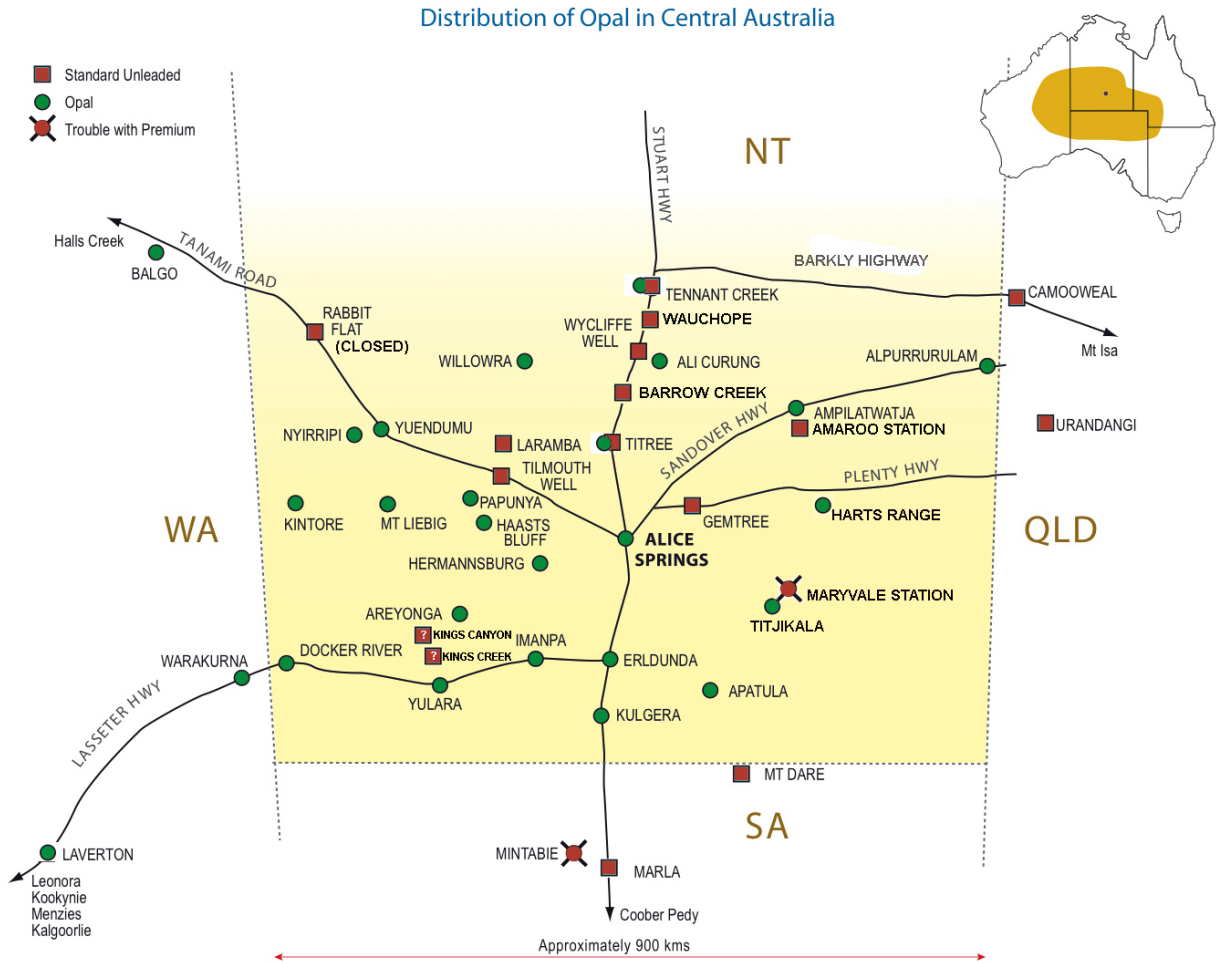


**Submission to the Senate Inquiry into the Low Aromatic  
Fuel Bill 2012**

**July 2012**



**Central Australian Youth Link Up Service**



Map developed by CAYLUS in July 2012

This is a submission from Central Australian Youth Link-Up Service. We are a regional Petrol Sniffing prevention project based in Alice Springs. We have operated since 2002 though a number of our staff have worked and lived long term in the region.

We support the Low Aromatic Fuel Bill 2012. We have long promoted the need for legislation like this and the draft bill seems to us to meet the need. We hope that the bill is scrutinised and strengthened through the committee's investigations, though we expect there will be minimal resistance to such laws. The case that Low Aromatic Fuel (LAF) works well is clear and the majority of retailers stock Opal voluntarily and so would be unaffected.

At CAYLUS we work with stakeholders in communities across the bottom half of Central Australia to implement a range of initiatives. In doing this our aims include prevention of volatile substance and other substance misuse, minimisation of the harms caused by these substances and diverting people away from substance misuse through the promotion and implementation of other more positive activities.

In the early days of CAYLUS our work included supporting communities to switch to using AV Gas (aviation fuel) in place of standard unleaded before the advent of LAF as a way of reducing prevalence of sniffing. Once LAF became available we worked closely with communities and government stakeholders to develop and promote the regional roll out of LAF in Central Australia.

We consider the LAF roll out to have been a great success to date. It has completely changed the focus of our work. As sniffing has vastly reduced in our service region we have been able to put greater effort into upstream measures to prevent substance misuse uptake in the first place and to improve quality of life for young people and families in our region.

We have regular contact with service agencies and concerned families in the Top End of the NT, WA and Queensland, so have an understanding of the issues in relation to sniffing in those regions. We also do what we can to provide information and assistance to these regions. We are however a Central Australian agency so tend to confine our advocacy to promoting needs and solutions in the Central Australian region. It also seems that while this legislation is needed and should be designed so it can benefit other regions, the case is quite clear-cut in Central Australia where there are no issues with supply of LAF and a handful of outlets have now been refusing to stock the fuel for more than five years.

### **Note re the good work achieved to date by various agencies through the PSS**

At the outset we would like to note the good work of all agencies that have been involved in the implementation of Low Aromatic Fuel and complimentary measures in Central Australia through the Petrol Sniffing Strategy. Some excellent results have been achieved on the ground through the hard work and strong working partnerships developed between DOHA, FAHCSIA, NT Health, AG's, Police, Retailers and Non-Government Organisations. While this submission notes some limitations in what has been achieved to date, this is done in the hope of improving tools and resources available to all agencies in order to achieve the best results possible for youth and families in our region.

### **Government response to the 2009 Senate Inquiry into Petrol Sniffing and Substance Misuse in Central Australia**

In considering the case for the proposed bill it is worth noting that the 2009 Senate Inquiry into Petrol Sniffing and Substance Abuse also examined this issue and recommended the following;

#### **Recommendation 5**

3.50 Given the continuing resistance to Opal fuel by some retailers across all jurisdictions in central Australia, the committee recommends that the Commonwealth government complete, as a matter of priority, the necessary work to determine whether legislation is both possible and practicable.

3.51 If these retailers do not voluntarily agree to supply Opal within 6 months, and if it is established that there are no legal impediments to the implementation of Commonwealth legislation, the Commonwealth government should immediately commence the drafting of legislation to mandate the supply of Opal fuel within the petrol sniffing strategy zone.

In summary the Government response to these recommendations in 2010 noted the following;

- that the Government Commissioned the South Australian Centre for Economic Studies (SACES) to examine the feasibility and impact of legislation and that the report found that the legislation would lead to a significant cost benefit.
- that the SACES study relied on limited prevalence data and reported that supply issues also need to be resolved in order to enable a full roll out of Opal.

- that the government would invest in better communications in relation to Opal, partly to convince retailers to change their mind and choose to stock Opal
- that the government would improve surveillance and data collection systems and make an assessment of the need for legislation based on this data in the current financial year 2012/13.

Importantly the government response did not note any concerns about the legal feasibility of implementing Federal Low Aromatic Fuel mandating legislation

It is now several years since the government made these commitments and we note the following in relation to the progress against these commitments;

1. There has now been considerable investment in promoting and demystifying LAF use in our region. There has been a strong presence of promotional materials in remote communities and townships across our region. These efforts are important and we hope they continue. However it has now been five years that outlets such as Tilmouth Well, Ti Tree Roadhouse, Gem Tree, Marla, Mt Dare and Urandangi have been refusing to switch to using LAF and the public awareness campaigns appear to have had little impact on this.

2. Data collection has improved. Agencies in the region have implemented agreed protocols so that sniffing events are reported to the Petrol Sniffing Strategy Unit (FAHCSIA). This data is then collated and circulated back to contributing stakeholders. The last report provided to CAYLUS in Feb 2012 shows that the 2 sites with the most sniffing in Central Australia are Titjikala and Lake Nash- both sites where nearby roadhouses refuse to stock LAF.

We have been asked not to provide a copy of this data to the committee as the PSS Unit have concerns about its accuracy. It is complex to collect accurate data on prevalence of petrol sniffing and we would struggle to come up with a better system than the one they have developed. However if the government still doesn't consider this data collection process to be of a suitable standard then we would argue that the government has had its chance and hasn't come up with a suitable system and should stop using lack of prevalence data as a reason not to move to legislation.

Two years on, the government has implemented its proposed alternative strategies to LAF Mandating legislation. The public education efforts while valuable have not caused the outlets who have been refusing to stock LAF to change their mind, and the data collection we have been a part of has reaffirmed the trouble that this is causing around two key outlets. Given this it is clearly time to move on to legislating.

### **Which retailers are refusing to stock Opal?**

It can be confusing working out which retailers are refusing to stock LAF. DOHA has tended to avoid publicly naming communities that use LAF and this seems to extend to some degree to also not naming roadhouses or other outlets that are refusing.

Also in the absence of powers to actually force sites to use LAF, DOHA understandably go to every effort to keep negotiations open with retailers. While we understand and support this approach, we think this means that there are possibly many more sites who are effectively refusing to stock LAF by dragging out negotiations than are reflected in the official numbers.

It is also worth noting that in recent years we at CAYLUS have tended to hold back from directly approaching retailers unless it is a part of a coordinated approach with DOHA. We do this so that efforts to get retailers on board with LAF are made in a coordinated and strategic way, but it means that we don't have as much direct contact with retailers and suppliers as we once had.

In Central Australia we think the following sites are currently refusing to stock LAF: Maryvale Station and Amaroo Station and the Roadhouses at Gem Tree, Tilmouth Well, Ti Tree, Mt Dare; Marla and Urandangi. We have also recently heard that Kings Creek Station and Kings Canyon General Store are not selling Opal but have not been able to confirm this.

### **Problems associated with this refusal**

It is widely accepted that petrol sniffing has detrimental affects both on the individuals that are involved and on the wider community. Sniffing can lead to long term illness and brain injury, it can lead to sudden death and sniffers can behave in alarming and dangerous ways. It is mainly young people who sniff in Central Australia. Community leaders have repeatedly indicated to us that there are few things as demoralising as seeing the next generation of young people damaging themselves and their communities in this way<sup>1</sup>.

As a program that has operated long term in the region, both prior and post the use of LAF we have a good sense of the impact that LAF use can have on petrol sniffing prevalence.

We have been involved with some communities that previously had very high prevalence of petrol sniffing where the practice has now largely stopped altogether

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<sup>1</sup> Last year the WA Coroner cited availability of standard unleaded at Rabbit Flat Roadhouse until it closed as one of the causal factors in a situation where Balgo has a suicide rate 100 times that of the general Australian Population - 2011 WA Coroners office, Record into the investigation of the Death of Ashton Michael Sunfly, Mitchell Nanala, Lewis John Kilians, Jason Milner and Liam Tchooga

with only occasional low level sniffing events. These are sites that use LAF and are surrounded by suppliers that use LAF.

Knowing how well comprehensive LAF roll out can work we have been frustrated to see low level sniffing continue in other sites that use LAF locally but have not been surrounded by LAF suppliers.

Lake Nash is one such site. Here we have continued to respond to ongoing sniffing since the time LAF was introduced in the community five years ago. At times up to 12 people have been sniffing.

At Titjikala we have dealt with smaller but ongoing outbreaks of sniffing of premium unleaded that is sold at Maryvale station

In all of these sites the key sniffers tend to be people who are older and have been sniffing long-term. These are people who have attended mandatory rehab on multiple occasions and who have continued to sniff whenever they have the chance.

Unfortunately these people also tend to encourage others to sniff, including people who haven't previously done so. A concerned resident of one community described these people as "walking billboards for sniffing". The presence of such individuals sniffing in a community can quickly lead to larger numbers sniffing. The sniffing can also spread between communities. In the last 12 months we have dealt with cases where the sniffing has spread from Titjikala to Aputula, from Lake Nash to Canteen Creek and Murray Downs and from Papunya to Kintore.

### **Issues with individual Outlets**

As a service we tend to become aware of a fuel supply when we hear of sniffing and then look into where the fuel is coming from. In recent months we have mainly been aware of petrol sniffing related to three retailers, but our experience is that it can take off at any point in the region if the is available. We and DOHA have contacted all of the following outlets asking them to move to LAF and they have refused. CAYLUS contact may have been several years ago.

#### **Maryvale Station**

This outlet sells premium fuel. The majority of their business is to Titjikala Community<sup>2</sup>. This is linked to ongoing low level sniffing in Titjikala over the last 5

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<sup>2</sup> Information Memorandum Maryvale Station sourced from <http://www.eldersrealestate.com.au/rural/buy/property-grazing-nt-alice-springs-359192>

years. Titjikala store uses LAF but Maryvale is only a short distance away. Community residents say the effect is particularly noticeable on Sundays when the community store is closed but Maryvale is open.

#### Tilmouth Well

This outlet sells standard unleaded fuel on the Tanami Road which is the main bush route from Alice Springs to WA. It is also on route to a number of communities in the Tanami Region. The main reports of sniffing of fuel from Tilmouth Well have come from Papunya over the last 12 months. There has been sporadic sniffing in other communities in this region though none firmly linked to Tilmouth.

#### Urandangi

Fuel from this outlet has been linked to ongoing sniffing in Lake Nash (app 80kms away) over the last five years. Fuel may also come into Lake Nash from Camooweal and Mt Isa though community residents continue to name Urandangi as the most likely source and say kids have learnt to target cars coming back from here. We understand that there would be no issue with supply of LAF should the retailer change their mind and choose to start using the fuel.

#### Amaroo

Is a Cattle Station located in the Barkly. We dealt with some sniffing related to this outlet at Ampilatwatja approximately 3 years ago and contacted them at that point. At that stage they undertook not to sell standard unleaded to people who might be sourcing it to sniff. We haven't been aware of any sniffing related to this source since that time.

#### Mt Dare

Is located in SA near the NT Border. There was an outbreak of sniffing in Aputula (NT) of fuel that was thought to be coming from this outlet in 2008. We and DOHA contacted the outlet at this point and requested that they use LAF. They have not switched to doing so. A young man was evacuated for sniffing related health issues from Aputula three weeks ago, Mt Dare would be a likely source of the fuel.



### Ti Tree Roadhouse, Gem Tree and Marla

These sites are all located in close proximity to communities where there has been episodes of petrol sniffing over the last few years. They all refuse to stock LAF. While there is no current persistent sniffing related to supply from these outlets we consider them high-risk sites and think there should be a mechanism that can force them to supply LAF if this decreases risk of harm from sniffing in their vicinity.

### Laramba

Laramba is a remote community that has largely kept petrol sniffing at bay through strong a community leadership that does not tolerate the behaviour. The community has chosen not to use LAF. The community is not on a major route to other communities with sniffing issues and we are not aware of any sniffing linked to availability of LAF from this site. While we would prefer to see comprehensive coverage in the region but we don't think Laramba should be forced to stock LAF unless fuel from Laramba was causing sniffing in other communities.

### **The need for federal legislation**

While there a number of sites within the NT where this is a problem, the issue spans the four states where LAF has been rolled out. In order to meaningfully address this problem we need to be able to force targeted sites across these state borders to switch to LAF. While sniffing related to sites not selling LAF appears to be largely happening in the NT at the moment, this is not necessarily going to continue to be the case.

In recent years there was sniffing in Balgo, Warukurna and Warburton in WA of fuel from outlets that were refusing to use LAF. This has only resolved because Rabbit Flat near Balgo shut down and stopped selling fuel altogether in 2010 and Laverton Roadhouse near Warburton and Warukurna changed hands and the new owners agreed to stock LAF. If legislation like that proposed existed, the petrol sniffing happening in those regions would have been prevented years before.

One approach to developing appropriate legislation that would work in all states would be to develop a cooperative legislative scheme where the affected states worked together to develop complimentary legislation. There has been a precedent where three of the affected states the NT, WA and SA have done this in the Central Australian Cross Border Justice scheme. We understand that it took approximately 10 years of discussions to implement this scheme that is still in its infancy. We don't think it is acceptable to wait for a similar length of time to resolve this issue.

Another way forward suggested by The South Australian Centre for Economic Studies report is for the states to refer powers and for the Commonwealth to Legislate. We think this could possibly have several advantages over a state based cooperative legislative scheme:

1. it could be quicker to implement as the Commonwealth could create the overarching act and the states would then sign on. If a state did not sign on, the laws would not apply to the state until they did.
2. it would be a more centralised approach and would place implementation of the laws at the same tier of government at which the Opal Scheme is managed thus ensuring greater accountability.

While we think state referral of powers may be an acceptable way forward we still have concerns about the time it would take to implement this approach. When we deal with the families affected by this issue they indicate to us that state and federal political complexities and rivalries do not seem like a good reason to further delay the action which would stop their young people sniffing.

### **The NT Volatile Substance Abuse Prevention (NT VSAP) ACT**

It has been suggested that in the NT, the NT VSAP Act could be used to force retailers to stock Opal. We have tested this and it does not appear to be the case.

In 2008 we worked with Anmatjerre Council at Ti Tree where the councillors applied for a management area under the NT VSAP Act in the hope that this law could be used to force to Ti Tree Roadhouse to sell LAF<sup>3</sup>. At the time the NT authorities advised that this law could not be used in this way. The NT Government don't seem to have changed their position in relation to this but indicated in their submission to the 2009 Senate Inquiry into Petrol Sniffing and Substance Misuse in Central Australia that they support the idea of federal cross border legislation to this effect.

While we would support any means that would bring us forward on this issue there are several NT sites where the problematic fuel source is located interstate. In recent years there have been significant issues in communities in other states such as Balgo and Warburton that would not be assisted by this. In order to be effective this legislation needs to operate in a harmonised way across state borders. This can not happen under the NT VSAP Act.

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<sup>3</sup> some media coverage of these efforts is available at <http://www.abc.net.au/lateline/content/2007/s2221503.htm>

### **The draft bill**

We have reviewed the proposed bill and it seems to support the approach that we think is needed. That is it could target the individual retailers declaring dedicated zones to affect just these sites rather than large geographic areas. It also provides for a transparent public process where the need for such a zone can be verified. The bill allows for a zone to be declared if it is established that “doing so is reasonably likely to help reduce potential harm from sniffing fuel in that area”. We think this is the right approach and wouldn’t support forcing use of LAF in zones or townships where this isn’t the case such as Laramba.

Importantly the bill also provides powers in relation to other fuels once a zone has been declared. This would mean that actions could be taken prohibit or control the sale of premium fuel (which is the main fuel sold at Maryvale station near Titjikala). It could also place requirements on the storage and supply of Aviation fuel which would be useful in cases where this fuel is being sniffed <sup>4</sup>.

We understand that in its current form the bill would only apply to incorporated entities and may not apply to other sorts of traders such as partnerships. We think that the majority of sites that we would like to force to stock LAF in our region are incorporated but that a few may not be. We hope that the committee can review and strengthen this aspect of the bill so that such traders could be forced to incorporate, or could be made to conform to declared zones in some other way.

We think the existence of federal mandating powers would be valuable because:

1. they can be used to cut off supply of standard unleaded and premium in sites where this would reduce risk and prevalence of sniffing.
2. the existence of these powers would provide an incentive to retailers in strategically important sites to stock LAF voluntarily at the beginning of negotiations, rather than being forced and potentially subjected to a compliance regime down the track.
3. they would provide a path to take action should existing LAF retailers in strategically important locations choose to stop stocking LAF at any point in future.

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<sup>4</sup> The formula for Av Gas changed in 2007/08 and so that it is now intoxicating if sniffed. In that time we have been aware of limited sniffing of Avgas in two sites.

### **Petrol Sniffing Strategy Zones**

In our discussions and research on this issue we have recently reviewed the petrol sniffing strategy zones and whether the zones still provide a valuable way to approach sniffing in Central Australia. Youth services are a vital component of the overall strategy. In our region these services are largely driven by the Youth in Communities section of FAHCSIA. However in Central Australia there doesn't seem to be a clear correlation between the PSS zones and availability of youth services and other measures to support the roll out of LAF. Given this we wonder what the value of the having a zone is and what being in or out of the zone means for a community?

If we accept the zones on face value as a region where there is an attempt to achieve a comprehensive roll out of LAF then in Central Australia some key supply points such as Marla and Mount Dare appear to be missing from the zone as do all communities in the Barkly region.

Ti Tree and Tilmouth Well are two sites in the Central Australian Zones zone that are refusing to stock LAF. We also have mixed messages in relation to Kings Canyon General Store and Kings Creek Station, which are also in the zone.

As stated we are not really clear about the purpose of the zones now that there doesn't appear to be (and perhaps shouldn't be) any greater level of effort to ensure the availability of complimentary measures to communities that are in the zone. However at times not being in the zone is being held up a reason to accept a retail outlets decision not to stock LAF, and sometimes appears to mean that a refusal to stock LAF by a site outside the zone is not recorded in the official data. We would like to draw this to the committee's attention. We also wonder whether there should be a process where the boundaries of the zone can be modified so as to include logical sites.

### **Conclusion**

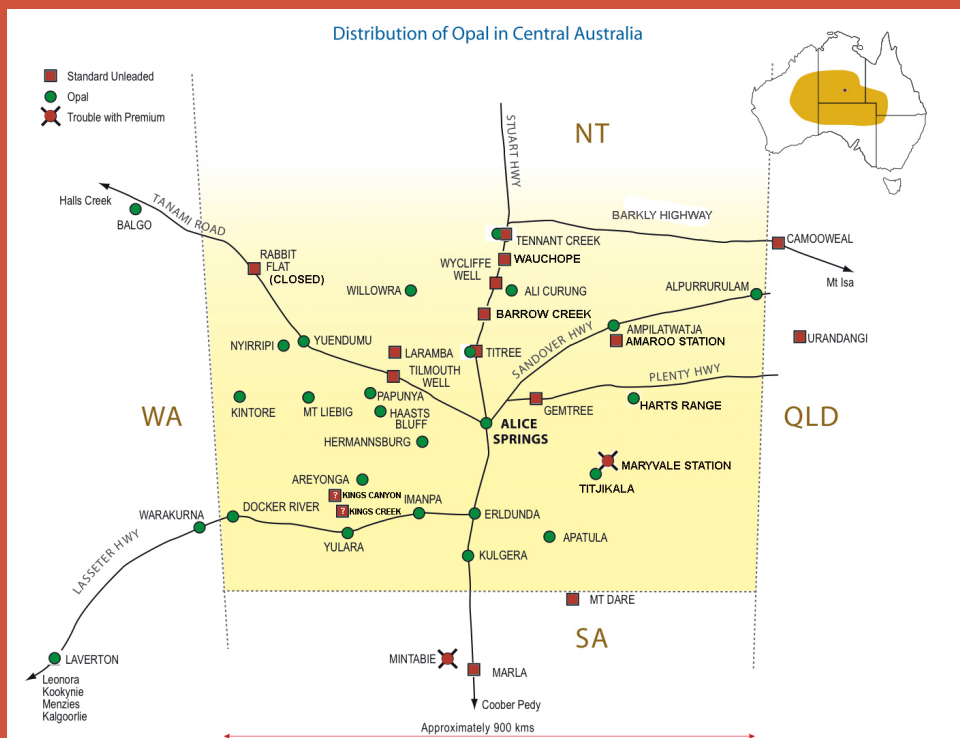
In conclusion we would like to reaffirm our support for the Low Aromatic Fuel Bill 2012. A law like this is needed with urgency in Central Australia, would prevent future problems with retailers dropping off the LAF scheme in the NT and other states and will have an incentive effect causing retailers to think twice before refusing to stock LAF for the public good.

It has now been five years that sniffing has continued in some sites because nearby retailers refuse to stock LAF. We have come a long way with the roll out of LAF - it has been a remarkable achievement. It is however a situation that is fragile and needs every support. We hope the committee can build on and consolidate the success of LAF by improving and implementing the bill.

# CENTRAL AUSTRALIAN YOUTH LINK-UP SERVICE

July 2012

# Mandating the Use of Opal Fuel



This paper was developed in partnership with the Mt Theo Program and the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council

## CAYLUS Discussion Paper: Mandating the Use of Opal Fuel

*To tackle petrol sniffing, there are already 108 sites across regional and remote Australia supplying low aromatic Opal fuel.*

*Eleven new Indigenous communities in the Gulf region of Queensland, East Kimberley in Western Australia and the Top End of the Northern Territory, home to nearly 9000 people, will be getting access to Opal fuel through 39 new retail sites. This begins in 2011 and will be complete by 2013.*

*Opal fuel has delivered a 70 per cent reduction in petrol sniffing across communities, with improved health outcomes, family function and community safety.*

### **Prime Minister Julia Gillard – Closing the Gap Address Feb 2011**

The rollout of low-aromatic Opal Fuel has been an unprecedented Indigenous health success. Across all sites the use of the fuel has been associated with an average 70% reduction in prevalence of sniffing and in Central Australia where the roll out has been more comprehensive this reduction is thought to be 94%<sup>1</sup>.

Despite the clear success of Opal and the many benefits it has brought to communities and regions that use it, efforts to extend its coverage and to cut off availability of standard unleaded fuel for sniffing are being compromised by retailers that refuse to stock the fuel. The reasons that these retailers cite include, the belief that they may lose business by stocking the fuel, frustration at being told what to do by government, the belief that sniffing isn't an issue in their region and a belief that supply reduction through Opal will not be effective as a means of deterring petrol sniffing, rather that families and communities must act alone to address the issue<sup>2</sup>.

These reasons given by retailers for not stocking the fuel do not stand up to scrutiny, particularly given the cost to nearby communities of their decision. In Central Australia in recent months there have been outbreaks of sniffing in Papunya where fuel from Tilmouth well Roadhouse has been linked to sniffing, in Lake Nash where fuel has been coming across the border from Urandangi Roadhouse and in Titjikala where Maryvale Stations decision not to stock Opal is linked to ongoing sniffing. In 2011 Titjikala had the highest number of Volatile Substance Misuse incidences reported under the NT VSA Act of any community in Central Australia with 33 incidences and Lake Nash the second highest with 27. In WA a recent coronial inquiry looked into a spate of deaths in Balgo Community. Coroner Hope found that that rate of suicide in the community at that time was 100 times that of the general population<sup>3</sup>. In relation to the death of one of the young men who ultimately had died from sniffing he stated;

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1 Peter d'Abbs and Gillian Shaw 2008, Executive summary of the Evaluation of the Impact of Opal Fuel, Commonwealth Department of Health and Ageing, Canberra

2 South Australian Centre for Economic Studies 2010- Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel In regions of Australia.

3 2011 WA Coroners office, Record into the investigation of the Death of Ashton Michael Sunfly, Mitchell Nanala, Lewis John Kalions, Jason Milnera and Liam Tchooga.

## CAYLUS Discussion Paper: Mandating the Use of Opal Fuel

*“While Opal fuel was the only fuel available for purchase in Balgo from 2008, a significant development after that time was the fact that the Rabbit Flat Roadhouse, situated across the border in the Northern Territory and one of the main sources of unleaded fuel in Balgo, closed down.*

*CAYLUS, Balgo Police, Wirrimanu Aboriginal Corporation and the Federal Government had all made representations to the owner of the Rabbit Flat Roadhouse, asking that he not make unleaded fuel available, without success. It was during that time that the deceased developed a petrol sniffing habit and his behaviour escalated.*

The rollout of low-aromatic fuel in Central Australia has been entirely voluntary; the rollout has been near comprehensive since Alice Springs retailers took up use of the fuel in 2006. Over that time it is estimated that 1.7 million tanks of the fuel have been used by motorists<sup>4</sup>. The vast majority of retailers stock low-aromatic fuel as a way of doing their bit for an important community cause, the actions of these responsible retailers are undermined by a small number who refuse to do their share.

The legislation we propose, would only be used in situations where

- a) retailers have refused to voluntarily stock the fuel
- b) there is sniffing in nearby towns or communities as a result of the fuel being available through an outlet
- c) or there is a high risk of sniffing in nearby towns or communities as a result of the fuel being available through an outlet

It would also be good if the legislation had capacity to regulate the way in which premium unleaded fuel is sold eg: requiring that bowsers are locked or a sales register.

In Central Australia everyone gains from the massive reduction in sniffing. Police and medical systems are less tied up and communities and towns across the region are safer, happier places. The Gillard Government is right to be proud of what has been achieved with the Opal roll out under their watch, however without mandating legislation these gains remain in jeopardy for some, and unattainable for others.

### Reports and Evidence Timeline

In 2006 Access Economics<sup>5</sup> looked at the cost benefit of rolling out Opal to a comprehensive region in Central Australia. The report found that petrol sniffing cost the region \$70 million in health, justice system costs, as well as other costs to the community. The report forecast that the comprehensive rollout of low aromatic fuel to the region would lead to a \$50-70 million saving in these costs each year.

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<sup>4</sup> BP Australia press release Oct 11 2011 see-  
<http://www.bp.com/genericarticle.do?categoryId=9008681&contentId=7071693>

<sup>5</sup> Access Economics 2006 Opal Cost Benefit Analysis

## CAYLUS Discussion Paper: Mandating the Use of Opal Fuel

The 2008 Evaluation of the Impact of Opal fuel<sup>6</sup> identified the substantial drop in prevalence of petrol sniffing in communities that use the fuel and also that this drop in sniffing was greater the further away supplies of standard unleaded were being sold. The Gilbert +Tobin Centre for public law in a submission to the 2008/09 Senate inquiry into Petrol Sniffing and Substance Abuse in Central Australia<sup>7</sup> reviewed the Australian Governments powers under the constitution and argued that there was no barrier to the Commonwealth creating laws to mandate the supply of Opal fuel and that this would be best done using a combination of the Territories Power and the Corporations Power. It suggested this could be done in four steps

1. a preamble to the Act and an objects clause that explain the context for its introduction, including the need for an effective regime of control over standard unleaded fuel supplies in the Northern Territory and the regional impact of standard unleaded fuel supplies on Central Australian Aboriginal communities
2. the imposition of a legal obligation regarding standard unleaded fuel on a supplier of petrol
3. a reduced definition of a petrol supplier in a serial fashion so as to pick up nominated constitutional heads of power in an overlapping fashion, to which the law could default should the broadly expressed obligation be found in excess of power for example:
  - suppliers of fuel located within a Territory
  - suppliers of fuel that are constitutional corporations.
4. The capacity for the Minister to impose the legal obligation on fuel suppliers in a selected geographical region.

The 2009 Senate inquiry into Petrol Sniffing and Substance Abuse in Central Australia<sup>8</sup> recognising the slow progress in negotiations to get Opal into some sites and the burden this was putting on nearby communities made the following recommendations;

1. Given the continuing resistance to Opal fuel by some retailers across all jurisdictions in Central Australia, the committee recommends that the Commonwealth government complete, as a matter of priority, the necessary work to determine whether legislation is both possible and practicable.
2. If these retailers do not voluntarily agree to supply Opal within 6 months, and if it is established that there are no legal impediments to the implementation of Commonwealth legislation, the Commonwealth government should immediately commence the drafting of legislation to mandate the supply of Opal fuel within the petrol sniffing strategy zone.

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<sup>6</sup> Peter d'Abbs and Gillian Shaw 2008, Executive summary of the Evaluation of the Impact of Opal Fuel, Commonwealth Department of Health and Ageing , Canberra

<sup>7</sup> Gilbert+ Tobin Centre for Public Law 2008 see

[http://www.aph.gov.au/SENATE/COMMITTEE/clac\\_ctte/petrol\\_sniffing\\_substance\\_abuse08/submissions/su  
blist.htm](http://www.aph.gov.au/SENATE/COMMITTEE/clac_ctte/petrol_sniffing_substance_abuse08/submissions/su<br/>blist.htm)

<sup>8</sup> Senate inquiry into Petrol Sniffing and Substance Abuse in Central Australia 2009 see

[http://www.aph.gov.au/SENATE/COMMITTEE/clac\\_ctte/petrol\\_sniffing\\_substance\\_abuse08/report/index.ht  
m](http://www.aph.gov.au/SENATE/COMMITTEE/clac_ctte/petrol_sniffing_substance_abuse08/report/index.ht<br/>m)



## CAYLUS Discussion Paper: Mandating the Use of Opal Fuel

In response to these recommendations the Commonwealth Department of Health and Ageing engaged the South Australian Centre for Economic Studies (SACES) to prepare a report examining potential for such laws and the likely cost/benefit. SACES concluded that the Commonwealth has the power to create such laws outright and suggested that these would be strongest if the affected states referred the power to do so to the Commonwealth. SACES also found that if these laws were created they would have a lead to savings in health system and other costs of \$1.3 billion over 25 years.

SACES suggested a possible list of controls that could be applied to retailers, with capacity to ramp up the controls from minor to severe depending on the problems associated with a particular site.

1. a requirement to lock containers holding the controlled volatile substance when not in use;
2. a requirement to monitor sales of the controlled volatile substance;
3. a prohibition on supplying the controlled volatile substance into a small container;
4. a requirement to sight a drivers license (or other acceptable alternative documentation) before supplying the controlled volatile substance;
5. a requirement to provide recipients with a copy of advice regarding the safekeeping of the controlled volatile substance;
6. a requirement to have recipients sign a register acknowledging that they have read the advice regarding the safekeeping of the controlled volatile substance;
7. a requirement to record the details (name, drivers license number, vehicle registration) of the recipient of a controlled volatile substance;
8. a requirement to report any suspect purchase of a controlled volatile substance;
9. a prohibition on the supply of a controlled volatile substance.

### **The role of the states**

Low-aromatic fuel is currently used in the Northern Territory, Queensland, Western Australia and South Australia. It is highly improbable that four states could act in a coordinated way to introduce harmonised legislation to mandate the sale of Opal fuel in high-risk sites. As such we argue the Commonwealth is best positioned to act to address this urgent need.

The states however could hasten this process by joining the Northern Territory<sup>9</sup> and Western Australian<sup>10</sup> governments in calling on the Commonwealth Government to create such legislation.

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<sup>9</sup> See NT Government Submission to the Senate inquiry into Petrol Sniffing and Substance Abuse in Central Australia 2009, [http://www.aph.gov.au/SENATE/COMMITTEE/clac\\_ctte/petrol\\_sniffing\\_substance\\_abuse08/submissions/su\\_blist.htm](http://www.aph.gov.au/SENATE/COMMITTEE/clac_ctte/petrol_sniffing_substance_abuse08/submissions/su_blist.htm)

## CAYLUS Discussion Paper: Mandating the Use of Opal Fuel

While CAYLUS and other agencies argue that Commonwealth Legislation is really what is needed to address this issue, in the absence of this we encourage states to take what action they can to force retailers to make Opal available where it counts. In the NT the NT VSAP act with some modifications could do this.

### **What if Opal supply to a particular location cannot be guaranteed?**

Opal supply to much of Central Australia has proven to be very reliable with minimal issues in relation to lack of supply in the 5 years that it has now been used, however supply and storage to other zones has been more problematic. There are two ways that legislation can accommodate this situation.

1. If it is simply not possible to supply sufficient reliable quantities of Opal to a particular zone, then a don't declare a zone until supply issues can be resolved, in such cases it is unlikely that nearby communities are using Opal anyway.
2. Allow capacity to grant exemptions in cases where Opal supply has been temporarily interrupted for reasons beyond the control of the retailer. Given the administrative and record keeping requirements under the existing Opal scheme it will be possible to verify such cases.