

Referral and conduct of the inquiry

1.1 On the recommendation of the Selection of Bills Committee, on 20 August 2003 the Senate resolved that the provisions of the Fuel Quality Standards Amendment Bill 2003 (the Bill) be referred to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 28 October 2003.¹

1.2 The Committee invited submissions on the Bill in advertisements in *The Australian* on Wednesday, 27 August 2003 and on Wednesday, 10 September 2003. The Committee received seven submissions and five supplementary submissions which are listed at Appendix 1. It also held a public hearing in Canberra on Friday, 10 October 2003, details of which are shown at Appendix 2. Two documents were tabled at the hearing and details of these are shown at Appendix 3.

1.3 The Committee thanks all those who contributed to its inquiry by preparing submissions and by appearing at the hearing.

The Bill

1.4 The Bill was introduced into the House of Representatives on 26 June 2003.

1.5 The Bill proposes amendments to the *Fuel Quality Standards Act 2000* and has two main purposes. The Second Reading Speech states that the amendments will complement and enhance the existing regulatory regime by providing a power to introduce and enforce uniform national fuel labelling where such labelling is needed in the public interest. It continues:

This framework will provide for determinations to be made that set Fuel Quality Information Standards for specified supplies of specified fuels. This is a flexible mechanism and, in the first instance, will be used to set parameters that will apply to the labelling, at the point of sale, of ethanol blends.²

1.6 The proposed amendments will permit State and Territory laws to be overridden where the Commonwealth has made fuel quality information standards. For example, should the Commonwealth introduce point-of-sale labelling for ethanol blends, the Commonwealth's label would override any State point-of-sale ethanol labelling requirements.³

1 Selection of Bills Committee Report No. 9 of 2003, 20 August 2003.

2 Fuel Quality Standards Amendment Bill 2003, Second Reading Speech, p 1.

3 Fuel Quality Standards Amendment Bill 2003, Explanatory Memorandum, p 3.

1.7 The second purpose of the Bill is to declare certain key offences under the Act to be offences of strict liability and provides for revised penalties consistent with that change of status.

1.8 The Committee notes that the Senate Scrutiny of Bills Committee dealt with this Bill in its *Alert Digest* No. 8 of 2003 and made no comment on it.

Background to the Bill⁴

1.9 The issue of blending ethanol with petrol has attracted a lot of press and public comment since late 2002. The negative publicity has concentrated on reports that ethanol levels higher than ten per cent may accelerate wear on engine components and fuel lines, and reduce fuel economy. A number of vehicle makers have advised that ethanol concentrations above ten per cent may limit or void warranties. Some petrol retailers have placed stickers on bowsers advising motorists that their petrol 'contains no ethanol'.

1.10 The Minister for the Environment and Heritage, Hon Dr David Kemp, MP, announced on 11 April 2003 that the Government would set a 10 per cent limit on the volume of ethanol blended with petrol and require the mandatory labelling of ethanol blended fuels.⁵ Some State and Territory Governments have used their own power to require labelling of ethanol blends sold to motorists.⁶ On 7 May 2003, the Fuel Standard (Petrol) Amendment Determination 2003 (No. 1), made by the Minister under section 21 of the Act, was gazetted.⁷ This Determination caps the volume of ethanol that can be blended with petrol at 10 per cent. It commenced on 1 July 2003.

1.11 This Bill addresses the second of the Government's policy commitments on ethanol in fuel. The Bill does not actually introduce ethanol labelling. Its purpose is to establish an enforceable national labelling system for fuels so that motorists are made aware of the nature of the fuel they are purchasing before they buy. The proposed amendments will allow the Minister to set a fuel quality information standard for a particular supply of a particular fuel. Specific labelling standards will be introduced through the gazettal of a (disallowable) determination after the Bill has been passed.

4 Extract from Department of the Parliamentary Library Information and Research Services, *Bills Digest No. 30* 2003-04, pp. 2-3.

5 The Hon Dr David Kemp, 'Federal Government to set 10 per cent ethanol limit', *Media Release*, K0076, 11 April 2003.

6 See Submission No. 4, Ms Reba Meagher, MP, NSW Minister for Fair Trading, and Submission No. 5, Mr John Lenders, MP, Victorian Minister for Consumer Affairs.

7 Commonwealth of Australia Gazette, No. GN18, 17 May 2003. The Determination was tabled in both Houses of Parliament on 13 May 2003.

The issues

1.12 While submissions generally support the proposals in the Bill, some concerns have been raised about the proposed regime, particularly the content of the labelling; who should provide the information and labels and what fuels may be subject to a fuel quality information standard.

1.13 In its submission, the Victorian Government raised its concern about the level of penalties for strict liability offences which the proposed amendments will create. No submitter took issue with the proposal to declare certain key offences as strict liability offences, however.

Fuel quality information standards

1.14 The amendments in the Bill will enable the Minister to determine a fuel quality information standard for a specified supply of a specified kind of fuel. The contents of a standard must specify:

- (a) the information about the fuel that the Minister is satisfied should, in the public interest, be provided in connection with the supply; and
- (b) the way in which that information is to be provided.

1.15 Mr Peter Burnett, Assistant Secretary, Environment Standards Branch, the Department of the Environment and Heritage, told the Committee that:

A fuel quality information standard can also impose a requirement on suppliers other than retailers. Typically, this will be an obligation on wholesalers to tell the retailer that the fuel they are providing has particular characteristics so that the retailer can then comply with the labelling obligation applying to that particular type of fuel.⁸

1.16 Mr Burnett described for the Committee the four-step process in developing a fuel quality information standard:

First, the minister develops a proposed standard, having regard to the objects of the act and whether it is in the public interest ... that certain information be provided to persons who may be buying the fuel. The second step is that the minister consults the Fuel Standards Consultative Committee. This is a statutory committee that already exists under the principal act. Membership of the committee is taken from both government and non-government sectors. ... to give you an idea, there are representatives from the Commonwealth government and from each state and territory government. There are also members from various sectors in industry. Currently, members include the Australian Institute of Petroleum,

8 *Proof Committee Hansard*, 10 October 2003, p. ECITA 1.

the Australian Automobile Association as a consumer representative, the Federal Chamber of Automotive Industries, the Independent Petroleum Group and an independent consultant with a background in alternative and renewable fuels. The third step in the process after consulting the committee is that the minister makes the information standard and tables it in the parliament. The final step is that the parliament scrutinises the standard. The parliament may disallow it if it thinks it appropriate.⁹

1.17 Whilst the Australian Biofuels Association indicated that it ‘supports the general intent and purpose’ of the Bill, it submitted that it ‘falls short of providing the consumer with uniform advice and information on the contents and use of transport fuels in Australia’.¹⁰ Its view is that labelling of all transport fuels should be mandatory, just as:

Labelling standards have long been used in Australia as a means of informing the public of the contents and risks associated with the use of substances such as tobacco, alcohol, drugs and chemicals. ...

Mandatory labelling of the contents of all transport fuels will close a wide gap in the consumers right to be informed about the contents of the fuels they use in their vehicles. Failure to take this obvious step will not only deny the consumer vital information on the impacts of transport fuels on the health and welfare of their families, but will also perpetuate a system that has been shown to be capable of abuse by dominant market forces.¹¹

1.18 Mr Robert Gordon, Executive Director of the Australian Biofuels Association, told the Committee that his association:

... would be concerned if there were to be discriminatory labelling for ethanol and biofuels alone and the contents or some of the negative impacts of petroleum transport fuels were not brought to consumers’ attention as well.¹²

1.19 The Committee notes that whilst the Government has expressed its intention, in the first instance, to institute a point-of-sale labelling requirement for the supply of ethanol blends, the Bill is essentially enabling legislation to permit the Minister for the Environment and Heritage to set a fuel quality information standard for a particular supply of a particular fuel, so that, if it were determined to be in the public interest, the Minister could introduce labelling requirements for other types of fuels.

1.20 In its submission, the Australian Automobile Association (AAA) said that it ‘welcomes the Commonwealth’s moves to adopt a legislative approach to the

9 *Proof Committee Hansard*, 10 October 2003, p. ECITA 2.

10 Australian Biofuels Association, Submission No. 1, p. 1.

11 Australian Biofuels Association, Submission No. 1, pp. 2-3.

12 *Proof Committee Hansard*, 10 October 2003, p. ECITA 8.

labelling of fuels at the point of sale through setting a fuel quality information standard', but went on to express its concern that the proposed legislation is enabling legislation which 'gives no indication of what labelling might result or even when it may be applied'.¹³

1.21 The AAA considers adequate labelling is essential given that ethanol-blended fuels may not be suitable for all petrol engines in the Australian vehicle fleet. It noted that 'it appears vehicle manufacturers and importers recommend against the use of ethanol in at least 40 percent of the vehicle fleet'.¹⁴

1.22 Mr Lauchlan McIntosh, Executive Director of the AAA, told the Committee that:

... it is important there should be detailed labelling at the point of sale so that consumers have information that relates to the suitability of the use of ethanol blends in their particular vehicle. The labels should also indicate the impact on fuel economy, as it is well established that ethanol blends are less efficient than normal petrol.¹⁵

He added:

What we really need is very specific labelling. The manufacturer should say 'This fuel is suitable for this car.' They do so with leaded and unleaded petrol; they make it very clear now and they make suggestions about premium and non-premium fuel.¹⁶

1.23 As an example of suitable information to be made available to consumers, Mr Greg Hunting of the AAA provided the Committee with a copy of a brochure *Fuel guide for older cars*, providing information about leaded, unleaded and substitutes for lead, and what should and should not be used. He noted that at that time lists of vehicles were published. He suggested that this level of information should occur in the case of ethanol blends. This brochure is attached at Appendix 4.

1.24 Members of the Committee sought copies of the draft regulatory framework and possible labels but departmental officers advised that, while preparatory work had commenced on the determination, 'there is no draft label determination as yet' and the Department has 'not yet prepared a draft label'.¹⁷

1.25 When questioned further about a timetable for completion of the supporting determinations and label, Mr Burnett advised that:

13 Australian Automobile Association, Submission No. 2, p.1.

14 Australian Automobile Association, Submission No. 2, p. 1.

15 *Proof Committee Hansard*, 10 October 2003, p. ECITA 14.

16 *Proof Committee Hansard*, 10 October 2003, p. ECITA 15.

17 *Proof Committee Hansard*, 10 October 2003, p. ECITA 3.

It is impossible to put a precise timetable on it because we do not know the final form of the legislation, we do not know when it will be passed and we do not know how extensive the consultation proves with Fuel Standards Consultative Committee will be. It could be anything from a brief meeting to requiring several meetings if people raise significant issues that require further research et cetera.¹⁸

1.26 However, the Committee has written to the Minister for the Environment and Heritage seeking his advice about when the relevant Regulations will become available.

Strict liability offences and penalties

1.27 The Bill amends the Act to create strict liability offences for the key offence provisions. Where strict liability applies to an offence, the prosecution does not need to prove any fault on the part of the defendant, for example, recklessness, negligence, or in the case of this Bill, that the defendant had the required knowledge of the applicable fuel standard as determined by the Minister. Strict liability offences are those which do not require guilty intent for their commission, but for which there is a defence if the wrongful action was based on a reasonable mistake of fact.¹⁹

1.28 The Explanatory Memorandum for the Bill states that:

Without strict liability ... the prosecution would have to prove beyond reasonable doubt that the defendant had the required knowledge of the relevant fuel quality standards under the Act. If a person is ignorant of, or mistaken about, those requirements then that person could not have the requisite intent to commit an offence. Experience in administering the Act suggests that it is likely to be very difficult to provide such an awareness on the part of the defendant and that, as with many other regulatory offences, it is appropriate to create offences of strict liability.²⁰

1.29 This Bill proposes amendments to the Act to create a number of strict liability offences under the Act; as follows:

- item 10 amends section 12 (supply of fuel)
- item 19 amends section 19 (supplies of fuel to be accompanied by documentation)
- item 22 amends section 20 (alteration of fuel that is covered by a fuel standard)
- item 29 amends section 30 (supply of a fuel additive), and
- item 32 amends section 31 (importation of a fuel additive).

18 *Proof Committee Hansard*, 10 October 2003. p. ECITA 32.

19 *Bills Digest* No. 30 2003-04, p.3.

20 Explanatory Memorandum, p. 4.

1.30 The Second Reading Speech states that:

This will ensure that offenders can be properly prosecuted and cannot avoid conviction by simply denying that they had the requisite knowledge of the standards. These amendments are crucial to ensure that the objectives of the Act can be achieved.²¹

1.31 The Bill also proposes to reduce the maximum penalty for offences which will become strict liability offences. This proposed change is because 'It is Government policy that strict liability offences would have lower penalties than would apply under a corresponding offence that was not one of strict liability'.²²

1.32 This reduction of fines is a concern for the Victorian Government. It submitted that:

The fines proposed in the Bill are significantly less than those that may be imposed for the breach of an information standard under the Victorian *Fair Trading Act 1999*. While a lower level of fine is proposed to reflect the nature of an offence under the Bill as a strict liability offence, these fines are not considered to be appropriate in terms of the potentially detrimental public impact nor are they sufficient to deter suppliers from selling fuel with appropriate disclosures.²³

1.33 When questioned on this issue at the Committee's public hearing, Mr Burnett, from the Department of the Environment and Heritage, advised that:

The setting of fines is a very complex process and is also a very specialised task. We take the advice of a specialised area within the Attorney-General's Department on what the fines should be. In this case, as we usually do, we have simply accepted their advice. It is not within my expertise to comment on the specific fine. I can say that as a matter of general principle they look to ensure that the fine is appropriate, having regard to a number of policy considerations. One of those is consistency both within the legislation and with other Commonwealth legislation. I understand that they take into account the levels of fines set in state legislation. Perhaps that is a secondary consideration to consistency within the Commonwealth, but I am not able to respond directly to that suggestion.²⁴

1.34 The Committee agreed that the question be referred to the Attorney-General's Department and, accordingly, it has written to the Attorney-General seeking his advice about the process through which the appropriate penalties for particular offences are determined and the reasons for the level of penalties set out in the Bill.

21 Second Reading Speech, p. 2.

22 Explanatory Memorandum, p. 3.

23 Victorian Government, Submission No. 5, p. 2.

24 *Proof Committee Hansard*, 10 October 2003, pp.28-29.

1.35 At the time of writing this report, the Committee is awaiting responses to its letters to the Attorney-General and the Minister for the Environment and Heritage.

Summary and recommendation

1.36 Much of the Committee's hearing was directed at issues that may arise downstream of the Bill's enactment, rather than with the role of the Bill itself as enabling legislation. The purpose of this inquiry was to examine the provisions of the Bill to establish an enforceable national labelling system for fuels, not to inquire into the broader issue of the appropriateness of the use of ethanol fuel blends in vehicles, which was the focus of debate between the Australian Biofuels Association and the Australian Automobile Association.

1.37 The Committee was told by the Department's Mr Burnett that on 1 August 2003 State and Territory consumer affairs ministers had called on the Commonwealth to lead the implementation of a uniform national scheme of labelling.²⁵ That is, of course, what this Bill seeks to do.

1.38 The Committee believes that the Bill is a worthwhile and valuable initiative and accordingly it recommends:

That the Fuel Quality Standards Amendment Bill 2003 be agreed to without amendment.

Senator Alan Eggleston
Chair

25 *Proof Committee Hansard*, 10 October 2003, p. ECITA 28. Extract attached at Appendix 5.