SENATE ECONOMICS LEGISLATION COMMITTEE

CONSIDERATION OF LEGISLATION REFERRED TO THE COMMITTEE

Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000

Commonwealth of Australia
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Angela Lancsar, Executive Assistant

SG.64, Parliament House

Canberra ACT 2600

Tel: 02 6277 3540 Fax: 02 6277 5719

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REPORT

Reference of the Bill to the Committee

- 1.1 The Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000 was introduced into the House of Representatives on 6 April 2000. Following a report by the Selection of Bills Committee, the Senate referred the Bill to this Committee on 21 June 2000 for examination and report by 17 August 2000.
- 1.2 In particular, the Committee was asked to consider the provisions of the proposed legislation relating to consumer protection and testing for fuel substitution.

The Committee's Inquiry

- 1.3 The Committee invited a number of interested parties to make submissions on the Bill, in addition to advertising the inquiry on the Parliament website. The Committee received 4 submissions to the inquiry. In addition, one party who attended the public hearing on the Bill distributed a paper at the public hearing (see Appendix 1).
- 1.4 The Committee held a public hearing on the Bill in Melbourne on 4 August 2000. The witnesses who appeared at the hearing are shown in Appendix 2.

The Bill

- 1.5 The bill introduces amendments to seven Acts namely:
 - Aviation Fuel Revenues (Special Appropriation) Act 1988,
 - Excise Act 1901,
 - Excise Tariff Act 1921,
 - Fuel Blending (Penalty Surcharge) Act 1997,
 - Fuel Misuse (Penalty Surcharge) Act 1997,
 - Fuel (Penalty Surcharges) Administration Act 1997, and
 - Fuel Sale (Penalty Surcharge) Act 1997.
- 1.6 The three main effects of the amendments contained in the Bill will be to:
 - replace references in the legislation to specific excise tariff products with generic descriptions so that the excise tariff may be amended quickly to discourage substitution of various products for higher-excise fuel;
 - remove technical difficulties with the definition of 'fuel', and allow the use of evidentiary certificates to facilitate prosecutions for fuel substitution offences; and

¹ Selection of Bills Committee Report No. 9 of 2000, Senate Hansard, 21 June 2000, p. 15,348.

• cover a broader range of imported products that may be considered to be possibly going to be used in fuel substitution activities, and require persons dealing in such products to keep appropriate records so as to limit opportunities for fuel substitution occurring.

Background

- 1.7 Excise on petroleum products has historically been levied at differential rates depending on the intended end use of the product,² and this is still the case. Products intended for use in an internal combustion engine (eg unleaded petrol) attract an excise rate currently around 44 cents a litre. Heating oil, by contrast, attracts an excise rate of around only 7 cents a litre, while toluene, if used in the paint industry, effectively attracts a zero rate of excise.³
- Toluene (chemical formula $C_6H_5CH_3$) is a petrochemical that is used as a solvent in paints, adhesives, ink and cleaning agents. Toluene is also used in the production of nylon, plastic bottles, pharmaceuticals, dyes and other products. Some 92% of toluene is, however, used as a mixture added to petrol to improve the petrol's octane rating.⁴
- 1.9 Toluene boosts the octane rating of petrol and in so doing it prevents knocking, which is essentially the detonation of petrol during the power stroke. Knocking is so-called because of the "pinging" sound heard in the engines of cars using petrol of too low an octane rating.⁵

Petrol substitution

- 1.10 Many products, some of which have no excise levied on them, are routinely added to petrol. Unscrupulous persons evade excise, and increase their profit margins, by blending additional amounts of products that have no excise on them into petrol.
- 1.11 Concerns about fuel substitution re-emerged in the first half of 2000 when imported toluene (toluene was at the time duty free if imported but not if domestically produced) was discovered blended in fuel sold for motor vehicle use. This adulterated fuel was then delivered to service stations and sold to unsuspecting consumers. Motorists paid full price, including the excise component, for the adulterated petrol. Motorists therefore paid an amount in relation to excise on the imported toluene which was not subject to excise. This amount went to those who ran, and was the incentive behind them running, the "petrol substitution racket" in the first half of 2000.⁶
- 1.12 Petrol substitution is a type of fraud that not only results in a loss of excise revenue but also may damage the vehicle engines for unsuspecting motorists and distort the petrol market

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Bills Digest No. 123 1999-2000, Excise Tariff Amendment Bill (No.1) 2000, p. 3.

³ Evidence, p. 53.

⁴ National Safety Council, 'Toluene (C₆H₅CH₃) Chemical Backgrounder,' Environmental Health Centre, A Division of the National Safety Council, Washington D.C., 1997.

⁵ Standards Australia, 'Too much toluene may breach Australia Standards', Standards Australia press release, 1 March 2000.

⁶ Standards Australia, 'Too much toluene may breach Australia Standards', Standards Australia press release, 1 March 2000.

Recent legislation

- 1.13 Petrol substitution schemes are not new, likewise the current Bill is not the first to strike at them. Legislative changes in January 1998 required a chemical marker to be added by manufacturers, who are licensed for excise purposes, to fuels attracting a concessional rate. The use of the marker was to enhance detection in instances where fuels, which attracted little or no excise, were blended with or substituted for higher excise petrol. Unfortunately the method of enforcing the use of the marker did not prove to be very successful.⁷
- 1.14 Partly in response to the marker initiative's lack of success as a strategy for ending fuel substitution, the Excise Tariff Amendment Act (No.1) 2000 and Customs Tariff Amendment Act (No.1) 2000 were introduced into the House of Representatives on 17 February 2000. These Acts introduced a new tariff structure. In particular, the excise-free status of certain petrol and diesel products used to evade the full excise was removed. All petrol and diesel (other than recycled products) are now subject to the same rate of excise as that which applies to fuel used by motor vehicles.
- 1.15 The Excise Tariff Amendment Act (No.1) 2000 and the Customs Tariff Amendment Act (No.1) 2000 state that arrangements will be made to compensate those with a legitimate need to use products for non-fuel purposes, such as those who use toluene in the manufacture of paint.

Recent developments

1.16 On 3 March 2000, in response to the imported toluene petrol substitution racket, the Commissioner of Taxation, Mr Michael Carmody, suggested there was a link between the effectiveness of the measures introduced by recent legislation and the illicit blending of imported toluene into petrol.

1.17 Mr Carmody claimed that:

The practice of importing toluene for fuel substitution appears to have arisen in response to our action to close off previous evasion practices.⁸

- 1.18 Essentially the new tariff structure had closed off previous excise evasion practices involving domestically produced toluene, but this had merely caused unscrupulous operators to switch from blending domestically produced toluene into petrol to blending imported toluene into petrol, which was still then excise free.
- 1.19 Also on 3 March 2000 the Australian Automobile Association warned that extending the excise regime to cover imported toluene would not be an effective response:

If toluene is taxed, unscrupulous operators can simply shift to other untaxed or low-taxed products'. 9

^{7 &#}x27;Claims of inaction on excise evasion and fuel substitution simply untrue', Australian Taxation Office Media Release – Nat 2000/6, 3 March 2000.

⁶ Claims of inaction on excise evasion and fuel substitution simply untrue', Australian Taxation Office Media Release – Nat 2000/6, 3 March 2000.

⁹ Australian Automobile Association, 'Call for Stronger national Fuel Standardsations', Australian Automobile Association press release, 17 July 2000.

1.20 In July 2000 it became evident that the AAA's concerns had been well justified. Petrol stations in Victoria were found to be selling petrol adulterated with methanol.¹⁰

Measures in the Bill

- 1.21 The Bill would replace references in the legislation to specific excise tariff products with generic descriptions so that the excise tariff may be amended quickly, by gazetting or tabling in Parliament a new tariff proposal (which is subsequently ratified by an Act of Parliament), in order to discourage substitution of various products for higher-excise fuel.
- 1.22 The Bill also would remove technical difficulties with the definition of 'fuel' and allow the use of evidentiary certificates to facilitate the prosecution of those alleged to be engaged in substituting marked fuel into, for example, petrol. (Marking fuel involves adding a chemical, in this case Mortrace MP, to products which are subject to concessional rates of excise.) The Bill will allow testing of petrol to determine if the marker is present. If the marker is found to be present, then the petrol may be presumed to have been adulterated.
- 1.23 As well, the Bill will broaden the range of imported products that may be considered to be potentially destined for fuel substitution uses, and require persons dealing in such products to keep appropriate records so as to limit the possibility of fuel substitution occurring.

Comparison of key features of new law and current law

1.24 This table compares key features of the Bill with the existing position.¹¹

New Law	Current Law
The penalty provisions in the Fuel Penalty Surcharge legislation now calculate the level of penalty by the generic description, the 'maximum diesel rate'. A definition of the 'maximum diesel rate' is also inserted in the legislation.	The penalty provisions in the Fuel Penalty Surcharge legislation included references to tariff item $11(C)(2)(a)$ when calculating the level of penalty applicable. Item $11(C)(2)(a)$ currently covers diesel for use as a fuel in an internal combustion engine and attracts the maximum rate of excise for diesel.
Amends the definition of fuel so that it is not necessary to prove that the fuel had been entered into home consumption in order to proceed with a prosecution for misuse of marked fuel (e.g. using fuel on which little or no excise has been paid as fuel in an internal combustion engine, which attracts the highest rate of excise).	Required any prosecution for misuse of marked fuel (e.g. using fuel on which little or no excise has been paid as fuel in an internal combustion engine, which attracts the highest rate of excise) to prove that the fuel had been entered into home consumption.

Australian Automobile Association, 'AAA Calls for Random Fuel Quality Testing at Service Stations', Australian Automobile Association press release, 17 July 2000.

Petroleum Excise Amendment (Measures to Address Evasion) Bill (No.1) 2000, Explanatory Memorandum, p. 10.

Issues in Evidence

- 1.25 All the submissions received by the Committee suggested that more needed to be done to stamp out fuel substitution. All submitters regarded the present Bill as going part of the way towards inhibiting fuel substitution, but no submitter regarded the Bill as a panacea for the problem.
- 1.26 Officers of the Australian Taxation Office (ATO) pointed out that the Bill was "not a comprehensive solution to fuel substitution" problems and was never intended to be. Rather the Bill was "only one part of an overall strategy" to stamp out petrol substitution. Specifically the ATO stated the "sole preserve of the Bill" was the issue of the "use of marking in fuels that have received a concessional rate of excise". 12
- 1.27 The Bill will allow testing for the marker, Mortrace MP, there will be no "legislative backing" to test for anything else. Mortrace MP is not approved by the US Food and Drugs Administration and the ATO gives remission certificates to those seeking exemption from using the marker "because of the deleterious effects that the marker may have" when, for example, it is used in paint.
- 1.28 The submission to the Committee from the Australian Institute of Petroleum (AIP) did not favour the use of the marker as a means of eliminating fuel substitution. AIP objections did not relate to the marker's possible "deleterious effects", but rather the onerous need for "constant monitoring and policing" of the use of the marker. AIP favoured instead the introduction of a "uniform" excise rate for "all relevant petroleum products" and the simultaneous introduction of a rebate scheme for "genuine users of non-transport fuels", such as those who use toluene in the manufacture of paint.
- 1.29 AIP claimed that a uniform tariff will remove the incentive for fuel substitution and obviate the need for constant policing. AIP argued that unless the same tariff covers all products, rogue operators will continue to switch to other duty free or lower excise products as the Government closes off other avenues for evasion.

History shows that, under the case by case approach followed by the Government in addressing fuel substitution activities, unscrupulous operators find and exploit new loopholes to enable them to blend low excise products with transport fuels.¹⁵

1.30 AIP's view was in the minority. The submission from the Australian Automobile Association (AAA) made the point that efforts to eradicate fuel substitution had "failed due to little or no policing". The AAA regarded increased policing, specifically "random and

Evidence, p. 53.

Evidence, p. 53.

Evidence, p. 53.

Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000, Submission No. 4, Australian Institute of Petroleum, Attachment 3.

Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000, Submission No. 3, Australian Automobile Association, p. 1.

consistent testing of fuel" at petrol stations, as essential to enforcing fuel standards and stamping out fuel substitution practices.

- 1.31 The Australian Paint Manufacturers' Federation Inc (APMF), in its submission, expressed concern about products that are used legitimately by its members having fuel excise applied to them. Specifically APMF was concerned that its members would be subject to excessive administration costs "to ensure that they [did] not have to pay the proposed excise duty". 18
- 1.32 The AAA pointed out that the extension of fuel excise to toluene was in part responsible for unscrupulous operators adding methanol to fuel in July 2000¹⁹ and also naphtha solvent. The higher octane rating of methanol would lift the octane rating of fuel and so naphtha solvent was added to bring the octane rating of adulterated fuel down²⁰ so that testing the fuel for octane rating alone would reveal nothing unusual.
- 1.33 Executives of Liberty Oil testified that "fuel substitution rackets [were] well resourced". Those who ran them could afford "sophisticated chemistry advice". The adulteration of fuel with both methanol and naphtha, so as to avoid altering the octane number, supports the view of Liberty Oil.
- 1.34 Liberty Oil stated that some fuel wholesalers, who otherwise had legitimate businesses, engaged in adulterating fuel.²² Considering the resources necessary to carry on a fuel substitution scheme Liberty Oil's view is probably well founded. Liberty Oil executives also stated that some petrol station proprietors were not necessarily dupes of unscrupulous distributors, rather they were offered cheap fuel by a distributor and at the very least must suspect that the fuel is cheap because it is adulterated.²³
- 1.35 Fuel substitution rackets therefore involve both distributors and retailers of petrol. This suggests that the problem is so widespread that the AIP's suggestion that excise measures alone can contain the problem is not viable. The policing of fuel standards, as would be assisted under this Bill, is needed to stamp out fuel substitution.
- 1.36 This raises the question of a fuel standard. Consumer and Business Affairs Victoria (CBAV) testified that

20 Evidence, p. 44.

Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000, Submission No. 3, Australian Automobile Association, p. 2.

Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000, Submission No. 1, Australian Paint Manufacturers' Federation Inc, p. 1.

¹⁹ Evidence, p. 43.

Evidence, p. 48.

²² Evidence, p. 49.

Evidence, p. 50.

The problem for us in achieving a successful prosecution of a retailer of contaminated fuel is that there is no mandatory standard for what actually constitutes petrol.²⁴

Petrol consists of many different components, mixed in different proportions for different types of petrol. It is therefore debatable, for example, how much toluene should be in petrol. It is therefore difficult to state that any particular batch of fuel has too high a proportion of toluene or any other of the many hydrocarbons that usually are found in petrol. (An example, provided by CBAV, of the large number of hydrocarbons often found in petrol is at Appendix 3.)

- 1.37 The problem of a lack of a fuel standard seemed insoluble. Representatives from the AAA stressed the need for a national fuel standard but also stressed the need for the fuel standard to "allow at least enough flexibility for the fuel companies to carry on doing business". Liberty Oil testified that making a restrictive fuel standard would inhibit the industry. A restrictive fuel standard might even force companies like Liberty Oil to always purchase fuel from Australian refineries, rather than having the option to import fuel, thus restricting their ability to compete in the Australian market and pass on to consumers the benefits of competition. ²⁶
- 1.38 The ATO suggested that very restrictive fuel standards might hinder rather than assist the prosecution of those involved in fuel substitution. The ATO suggested that, based on its past experience, fuel adulterators might successfully claim that their product was not petrol, as defined by the standard, and therefore they were not subject to excise.²⁷
- 1.39 In relation to fuel standards, the current Bill clearly gives the Commonwealth the legislative backing to test for the presence of the marker in fuel. The ATO's evidence indicates that this testing represents the limit of the Commonwealth's authority in respect of fuel testing.²⁸
- 1.40 With regard to testing fuel to see if it meets a wider general standard, the evidence received by the Committee indicates that there is some uncertainty in respect of where the legislative authority may lie, as indicated in the following exchange:

Senator Murray: I want to clarify that it is the states that do have the legislative backing to test the fuel. Is that correct?

Mr Colmer: I think that is a contested issue. As you heard earlier today, the Victorian Department of Fair Trading believe that they do not have sufficient legislative power. I think that there is some disagreement about that. I think the problem with consumer affairs is that that is one of those split responsibilities.²⁹

Evidence, p. 35.

²⁵ Evidence, p. 45.

Evidence, p. 51.

Evidence, p. 56.

Evidence, p. 53.

Evidence, p. 53.

- 1.41 Regardless of legislative obstacles, as noted in previous paragraphs, the technical obstacles to testing against a possible national fuel standard are very considerable. This issue is also outside the scope of this Bill, which is confined to the Commonwealth's testing for the presence of the marker in fuel.
- 1.42 With the exception of AIP, all those who provided submissions and/or testified before the Committee regarded the current Bill as assisting in stamping out fuel substitution. It was evident that fuel substitution was a widespread problem and attempting to solve it raised complex issues of fuel standards and the division of Commonwealth/State responsibilities. No-one expected the current Bill to solve all those problems but most regarded it as certainly a step in the right direction.
- 1.43 The Committee considers that the measures contained in the bills are important for countering fuel substitution activities. While other options remain under consideration, the passage of the bills through the Senate should not be delayed.

Other Issues – Hot Fuel

- 1.44 The Committee was charged with examining the Bill in relation to its provisions for protecting consumers against petrol substitution and its provisions for facilitating testing for petrol substitution. Despite this the issue of fraudulent practices not involving petrol substitution were raised with the Committee, notably by CBAV.
- 1.45 CBAV made particular mention of the practice of distributors delivering petrol to service stations at relatively high temperatures. Petrol expands at high temperatures. 10,000 litres of petrol at 36 degree Celsius is only 9,748 litres at 15 degrees Celsius. Service station proprietors pay the excise for the amount of fuel delivered to their distributor. Distributors, by contrast, pay the excise for the amount of fuel at 15 degrees Celsius. Effectively distributors are collecting more excise from service station proprietors than they remit to the Government. Service station proprietors, of course, recoup their loss from motorists by charging a higher price for petrol.
- 1.46 The issue of fuel temperature being used as a means whereby distributors collect supposed excise payments from service station proprietors and simply appropriate the payments to themselves, currently is regulated only in the Australian Capital Territory. CBAV made the point that addressing this issue of fuel temperature would aid in reducing market distortions "particularly in rural and regional areas where prices are already high". 31
- 1.47 The Committee draws this matter to the attention of the Senate.

Consumer and Business Affairs Victoria, Submission No. 5, p. 4.

Consumer and Business Affairs Victoria, Submission No. 5, p. 5.

Recommendation

1.48 The Committee recommends that the Senate pass the Bills.

Senator the Hon Brian Gibson

Chairman

LABOR SENATORS' MINORITY REPORT

Labor in general supports the Bill. We regard the problem of fuel substitution as an issue of the utmost importance and are concerned at the Government's handling of the matter. Specifically we wish the following to be noted.

With regard to testing fuel to see if it meets a wider general standard, the evidence received by the Committee indicates that there is some uncertainty in respect of where the legislative authority may lie, as indicated in the following exchange:

Senator Murray: I want to clarify that it is the states that do have the legislative backing to test the fuel. Is that correct?

Mr Colmer: I think that is a contested issue. As you heard earlier today, the Victorian Department of Fair Trading believe that they do not have sufficient legislative power. I think that there is some disagreement about that. I think the problem with consumer affairs is that that is one of those split responsibilities. ¹

Regardless of legislative obstacles, as noted in previous paragraphs, the technical obstacles to testing against a possible national fuel standard are very considerable. This issue is also outside the scope of this Bill, which is confined to the Commonwealth's testing for the presence of the marker in fuel.

Despite these difficulties, the idea of a national standard for fuel received wide support by witnesses (AAA, RACV and Liberty Oil) and it would therefore be worth developing such a standard.

With the exception of AIP, all those who provided submissions and/or testified before the Committee regarded the current Bill as assisting in stamping out fuel substitution. It was evident that fuel substitution was a widespread problem and attempting to solve it raised complex issues of fuel standards and the division of Commonwealth/State responsibilities. No-one expected the current Bill to solve all those problems but most regarded it as certainly a step in the right direction.

The CBAV has along with New South Wales and Queensland advocated a 10 point plan to deal with fuel issues. In particular point 3 of that plan dealt with fuel substitution. It called on the Commonwealth to:

- a) report to the [Ministerial Council on Consumer Affairs] MCCA on whether the proposed Commonwealth fuel standards will be adequate to take action under Trade Practices Legislation, in order to protect consumers from contaminated fuels;
- b) ensure an adequate level of testing by the ATO (formerly Customs) is conducted to minimise excise abuse.²

It was unclear why the Ministerial Council did not accept such a proposal.

Evidence, p. 40.

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¹ Evidence, p. 53.

Liberty Oil³ and the RACV⁴ believed that the above recommendation would be useful in the campaign against fuel substitution.

The CBAV also testified that cross border issues meant that no one State could be solely responsible for fuel quality within its own borders. In other words there needed to be a Federally based solution to this problem:

Added to that problem is the issue that the retailer may well be supplied with petrol form interstate and, therefore, it is not open to us to go and test the fuel at the source from which he is receiving.⁵

SENATOR CAMPBELL

SENATOR CONROY

SENATOR MURPHY

³ Evidence, p. 50.

⁴ Evidence, p. 47.

⁵ Evidence, p. 35.

SENATE ECONOMICS LEGISLATION COMMITTEE

SENATOR ANDREW MURRAY

Australian Democrats

Petroleum Excise Amendment (Measures to Address Evasion)
Bill 2000

Senator Andrew Murray Australian Democrats

Consideration of Legislation Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000

The AIP in their representation made it very clear that there is a need for a legislated fuel standard. The Australian Democrats believe that it is possible to legislate a fuel standard and we recommend further consultation by interested parties on this issue.

The Australian Tax office has failed to supply the committee with sufficient evidence relating to the number of vehicles that are currently available from those that were given to the ATO in the handover of responsibility from Customs, to police the petroleum industry.

It is understood that the ATO are presently not fulfilling the role of having a physical presence in the Industry and are taking a more hands off approach, which is therefore doing insufficient to inhibit these rackets. Considering the level of revenue that the ATO gains from fuel excise, the act of ensuring compliance needs to be taken more seriously. In our view this obviously means ensuring that the ATO can conduct an adequate level of testing.

To improve compliance, fuel standards that are legislated are needed. Currently it is difficult or virtually impossible for the State Fair Trading bodies to make a case on fuel substitution because the current fuel standard is too broad and has no legislative legs. The Australian Democrats have the belief that substitution rackets will not stop unless those involved are left with less space to move.

Simply placing markers in the fuel and lifting excise on all products does insufficient to stop the current substitution rackets.

Senator Andrew Murray

APPENDIX 1

LIST OF SUBMISSIONS

- No. 1 Australian Paint Manufacturers' Federation Inc.
- No. 2 Liberty Oil
- No. 3 Australian Automobile Association
- No. 4 Australian Institute of Petroleum

In addition to the above submissions, the Office of Consumer and Business Affairs (Victoria) presented a paper to the Committee at the public hearing.

APPENDIX 2

LIST OF WITNESSES APPEARING BEFORE THE COMMITTEE

Friday, 4 August 2000, Melbourne

Australian Automobile Association

Mr David Lang, Technical Director

Australian Taxation Office

Mr Patrick Colmer, Assistant Commissioner Excise Mr John Charleston, National Director Petroleum Excise Mr Trevor Walker, Assistant National Director Investigation, Excise

Liberty Oil

Mr Mark Kevin, Chief Executive Mr Adam Jacobs, Wholesale Manager

Office of Consumer and Business Affairs (part of the Department of Justice, Victoria)

Ms Bernadette Steele, Director, Consumer and Business Affairs Ms Lois Goodes, Manager Policy Branch

Royal Automobile Club of Victoria

Mr David Cumming, Manager Government and Corporate Relations

Trade Measurement Victoria

Mr Paul Russell, Quality Assurance Manager

APPENDIX 3

Sample No : 1 Sample Name : Gasoline sample A2 17/5/00