

The Senate

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Community Affairs  
Legislation Committee

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Low Aromatic Fuel Bill 2012

September 2012

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## 43<sup>rd</sup> Parliament

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# **LIST OF RECOMMENDATIONS**

## **Recommendation 1**

**2.36** The committee recommends that the government release an interim report based on the first round of data collection being undertaken by the Menzies School of Health Research.

## **Recommendation 2**

**4.62** The committee recommends that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power.

## **Recommendation 3**

**4.77** The committee recommends that the government consider whether legislation should define more narrowly the fuels to which the bill would apply, but accepts that there should be capacity to regulate the management of premium fuel in some circumstances.

## **Recommendation 4**

**4.83** The committee recommends that there be further examination of the wording of the explanatory memorandum, consultation and exemption clauses, to ensure that fuel manufacturers are properly included, and the bill does not have unintended consequences in the event of supply bottlenecks or disruption.

## **Recommendation 5**

**4.86** The committee recommends that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of low aromatic fuel to ensure that there is agreed and coordinated action to address petrol supply.

## **Recommendation 6**

**4.87** In light of the preceding matters, the committee recommends that the current bill not be proceeded with.

## **Recommendation 7**

**5.14** The committee recommends that the Australian government conclude as soon as practical a subsidy review that covers production of up to 100 million litres per annum of low aromatic fuel

## **Recommendation 8**

**5.21 The committee recommends that the Australian government review distribution subsidies and their calculation for remote regions, particularly in Western Australia.**

# Chapter 1

## Low Aromatic Fuel Bill 2012

### The inquiry

1.1 On 10 May 2012 the Senate referred the Low Aromatic Fuel Bill 2012 (the bill) for inquiry and report by 21 September 2012.<sup>1</sup> On 21 September the committee tabled an interim report, indicating it would report on 26 September 2012.

1.2 The committee invited interested individuals and organisations to make submissions. Twenty submissions were received and are listed in Appendix 1. The committee held public hearings in Alice Springs and Canberra to take evidence in relation to the bill, details of which are shown at Appendix 2.

1.3 The committee would like to thank all those who made submissions, and all the witnesses and departmental representatives that took part in the hearings. The committee is particularly grateful to people who attended from the communities of Alpururulam (Lake Nash), Papunya, Titjikala, Tjukurla, and Yuendumu.

1.4 References to Hansard in this report are to the final Hansard for the hearings of 24 and 25 July 2012 in Alice Springs. References to Hansard for the hearing of 16 August 2012 in Canberra are to the Proof Hansard. There may be some difference in page numbers between the Proof and the Final Hansard for the hearing on 16 August 2012.

### Purpose of the bill

1.5 The bill, introduced as a private senator's bill by Senator Siewert, seeks to reduce petrol sniffing in defined areas that would be declared by the minister following a consultation process set out by the bill. In those areas, aromatic fuel could be regulated by:

- Prohibiting the supply of regular unleaded petrol (RULP);
- Promoting and monitoring the use of low aromatic fuel (LAF); and / or
- Regulating the supply and storage of other fuels – in particular premium unleaded petrol (PULP).<sup>2</sup>

### Previous inquiries

1.6 The Senate Standing Committee on Community Affairs has completed two previous inquiries into the harmful effects of petrol sniffing which included

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1 *Journals of the Senate*, 10 May 2012, p. 2424.

2 Low Aromatic Fuel Bill 2012, Explanatory Memorandum.

consideration of the impact of providing low aromatic or non-sniffable fuel in areas where there was petrol sniffing. These reports were presented to the Senate in 2006, *Beyond petrol sniffing: renewing hope for Indigenous communities* and in 2009, *Grasping the opportunity of Opal<sup>3</sup>: Assessing the impact of the Petrol Sniffing Strategy*.

1.7 In 2006 the committee found that sniffing of petrol has occurred in northern Australia since the early 1950s. Between 1981 and 1991, 60 Aboriginal men and three women died from petrol sniffing.<sup>4</sup>

1.8 From the mid-1980s a number of inquiries into petrol sniffing and substance abuse have been undertaken. The Senate Select Committee on Volatile Substance Fumes reported in December 1985. This committee found that at the time, about 2000 children were sniffing petrol in Central Australia and the Northern Territory, or about 10 per cent of all Aboriginal children living in those areas.<sup>5</sup>

1.9 At the time, measures aimed at stopping petrol sniffing ranged from preventing petrol being obtained and misused, such as locking petrol bowsers, to punishment of abusers and funding of specific programs for petrol sniffers. The Select Committee stated that nowhere did it find complete success in eradicating sniffing although many attempts had been made by communities and by individuals. It did, however, identify the elements that appeared to be necessary for success.<sup>6</sup>

1.10 The Select Committee concluded that the act of petrol sniffing should not be made a criminal offence and recommended that no legislative action be taken to create such an offence. However it did recommend that state and territory governments implement enabling legislation to control the supply of petrol to minors who intend to sniff it and to criminalise the action by non-minors of inciting minors to sniff petrol.<sup>7</sup>

### ***Previous policies on low aromatic fuel***

1.11 The first example of supply and use of low aromatic fuel occurred in the 1990s when Avgas, an aviation gasoline, was provided through the Australian government's Comgas Scheme. The scheme subsidised low aromatic Avgas to replace

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3 Opal is the brand name of the low aromatic fuel developed by BP in 2004. It was launched in 2005 and contains lower aromatic compounds than other fuels. For more information refer to <http://www.opalfuel.com.au/page.cfm/what-is-opal/low-aromatic-fuel> (accessed 16 July 2012).

4 Senate Standing Committee on Community Affairs, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006, p. 3.

5 Senate Select Committee on Volatile Substance Fumes, *Volatile Substance Abuse in Australia*, Canberra, 1985, p. 156.

6 Senate Standing Committee on Community Affairs, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006, p. 5.

7 Senate Standing Committee on Community Affairs, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006, p. 5.

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regular petrol for registered remote communities in the Northern Territory and South Australia. However due to its high lead content and issues with its suitability in motor vehicles, the program was not successful.<sup>8</sup>

1.12 In response to the demand for a low aromatic fuel that did not give the 'high' associated with other fuels, BP Australia developed an unleaded fuel called Opal, which has very low levels of aromatic hydrocarbons. These hydrocarbons are the chemical that gives the 'high' sought by petrol sniffers. Opal fuel was launched in February 2005.

1.13 In 2005 the Commonwealth scheme to provide Avgas in remote communities was renamed and developed as the Petrol Sniffing Prevention Program. However, the Comgas scheme continued to be used to subsidise the supply of Opal so that the cost to consumers was the same as regular unleaded petrol.<sup>9</sup>

1.14 In response to increasing demand for the supply of Opal fuel, the 2005-06 Commonwealth Budget provided an additional \$9.6 million over four years, and in September 2005, the Commonwealth extended the Petrol Sniffing Prevention Program with additional funding of \$9.5 million over two years. This included \$6 million for the roll out of Opal fuel to designated Central Desert Indigenous communities and roadhouses. This roll out brought the number of communities and sites provided with Opal fuel to more than 70.<sup>10</sup> In February 2006 one site in Alice Springs commenced supply, and by March 2007, all sites in Alice Springs were stocking Opal.<sup>11</sup>

1.15 In 2005, the Australian government announced a whole-of-government Petrol Sniffing Strategy (PSS). The PSS was to be implemented through an Eight Point Plan.<sup>12</sup>

1.16 The eight points of the PSS were (and remain):

- consistent legislation;
- appropriate levels of policing;
- further rollout of low aromatic fuel;

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8 Senate Standing Committee on Community Affairs, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006, p. 99.

9 Senate Standing Committee on Community Affairs, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006, p. 100.

10 Senate Standing Committee on Community Affairs, *Beyond petrol sniffing: renewing hope for Indigenous communities*, June 2006, p. 100.

11 Senate Standing Committee on Community Affairs, *Grasping the opportunity of Opal: Assessing the impact of the Petrol Sniffing Strategy*, March 2009, p. 16.

12 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, Petrol Sniffing Strategy, accessed 18 September 2012, <http://www.fahcsia.gov.au/our-responsibilities/indigenous-australians/programs-services/communities-regions/petrol-sniffing-strategy>

- alternative activities for young people;
- treatment and respite facilities;
- communication and education strategies;
- strengthening and supporting communities; and
- evaluation.<sup>13</sup>

1.17 At the time of the committee's 2009 report, the committee found that the PSS Eight Point Plan had been partially implemented. The PSS remains jointly administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Department of Health and Ageing (DoHA), the Department of Education, Employment and Workplace Relations (DEEWR) and the Attorney-General's Department (AGD). The Central Australian Petrol Sniffing Unit (CAPSSU) is the multi-agency unit responsible for the local implementation of the strategy based in Alice Springs.<sup>14</sup>

### **Structure of this report**

1.18 Chapter 2 of this report covers developments since the last inquiry including some of the gaps in the current approach. Chapter 3 highlights the success of Opal. Chapter 4 details the legislative options for controlling the supply of fuel and other volatile substances. Chapter 5 investigates technical issues including production capacity, costs, subsidies, storage and distribution of low aromatic fuel, as well as issues around premium fuels. Chapter 6 outlines complementary measures to address petrol sniffing.

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13 Australian Government, *Submission 19*, p. 1.

14 Senate Standing Committee on Community Affairs, *Grasping the opportunity of Opal: Assessing the impact of the Petrol Sniffing Strategy*, March 2009, p. 4.

## Chapter 2

### The government response to the 2009 inquiry

2.1 In March 2009 the Senate Community Affairs committee conducted its Inquiry into Petrol Sniffing and Substance Abuse in Central Australia. The fifth recommendation of that inquiry was that the government should give serious and immediate consideration to legislation:

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.

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.<sup>1</sup>

2.2 In June 2009, DoHA commissioned the South Australian Centre for Economic Studies (SACES) based at Adelaide and Flinders Universities to produce a cost benefit analysis of legislation to mandate the supply of low aromatic fuel in regions of Australia.<sup>2</sup> The report was compiled by Jim Hancock, Deputy Director of SACES, and various senior research economists, as well as John Williams, Professor of Law and Anne Hewitt, Lecturer in Law at the University of Adelaide. The Australian government used elements of the SACES report as the basis for its response to the inquiry recommendation regarding Commonwealth legislation.<sup>3</sup>

2.3 The SACES report evaluated a range of factors in determining the costs and benefits of a legislated approach to petrol sniffing. This included consideration of the increased production and distribution costs of greater low aromatic fuel consumption,

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1 Senate Standing Committee on Community Affairs, *Grasping the opportunity of Opal: Assessing the impact of the Petrol Sniffing Strategy*, March 2009, Recommendation 5, p. 51.

2 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, January 2010.

3 The committee notes that an earlier cost benefit study conducted in 2006 by Access Economics on behalf of the Opal Alliance also found that the benefits of a subsidised supply of Opal fuel through designated regions in the NT, SA and WA exceeded the costs of the measure. See Access Economics, *Opal Cost Benefit Analysis*, Report for the Opal Alliance, February 2006.

savings in terms of health and welfare from avoided harm due to a decrease in petrol sniffing, reduced crime, and improved labour market outcomes.<sup>4</sup>

2.4 Under the current voluntary scheme, the SACES report found that 'consumption of RULP in the Analysis Area<sup>5</sup> will decline from 93.5 ML [megalitres] in 2009/10 to 89.2 ML in 2012/13' and that 'Opal volumes are expected to rise from 22.4 ML to 31.8 ML over the same period'.

2.5 By contrast, under a scheme that banned RULP across the analysis area, based on consultation undertaken for the study, SACES estimated 'that about two-thirds of the volume would be transferred to Opal and about one-third to premium unleaded petrol (PULP)'. This would result in an estimated 'additional 64.7 ML of Opal' being consumed in 2012–13 and would mean that Opal consumption would almost reach the 100 ML capacity limit of Kwinana Refinery.<sup>6</sup>

2.6 In their analysis of the data for the voluntary scheme<sup>7</sup>, SACES noted that there had been a significant reduction in sniffing during the time of the Opal rollout and that although the dataset was small and did not disaggregate all the potential contributing elements, low aromatic fuel appeared to have been the major factor contributing to the reduction in sniffing. In modelling their cost benefit analysis, SACES therefore estimated that a ban on RULP and controls on the sale of PULP would lead to a further 80 per cent reduction in sniffing.<sup>8</sup>

2.7 The analysis produced by SACES found that the benefits of legislation that prohibited RULP in the Analysis Area exceeded the costs by \$780 million.<sup>9</sup> Even if the modelling assumptions about the reduction in sniffing prevalence were overly

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4 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Adelaide and Flinders Universities, January 2010, p. vii.

5 The table in Appendix 3 shows the SACES Analysis Area.

6 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Adelaide and Flinders Universities, January 2010, *Cost Benefit Analysis*, pp. vi–vii.

7 A description of the data analysis is included in the section 'Evaluation of the Opal strategy' in Chapter 3.

8 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Adelaide and Flinders Universities, January 2010, *Cost Benefit Analysis*, pp. vii–viii.

9 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Adelaide and Flinders Universities, January 2010, *Cost Benefit Analysis*, p. viii.

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optimistic, SACES found that a ban on RULP would still 'have a net benefit so long as it reduced sniffing by at least 19 per cent from current levels'.<sup>10</sup>

2.8 The Australian government acknowledged that the SACES report found the benefits of legislation exceeded the costs. However, the government only partially accepted Recommendation 5 from the 2009 Senate inquiry. There were reservations, firstly, about the quality of the data upon which the conclusions about petrol sniffing prevalence were drawn, and secondly, about the storage and distribution issues upon which a full rollout of low aromatic fuel in northern Australia would depend.<sup>11</sup>

2.9 In response to the issue of limited data, the Australian government determined to implement a surveillance system that would 'inform future decisions regarding the value of an additional legislative approach once the full voluntary rollout of Opal fuel has occurred in 2012–13'.<sup>12</sup>

2.10 In response to the issue of storage and distribution, the Australian government 2010–11 budget provided \$38.5 million over four years to expand supply to a further 39 retail sites. The program referred to as *Expanding the Supply and Uptake of Opal Fuel* covered 11 communities in the Gulf region of Queensland, the East Kimberley in Western Australia and the Top End of the Northern Territory.<sup>13</sup> The program also included the establishment of 'new storage facilities for Opal fuel in Darwin and northern Queensland', and a communication strategy that aimed to convince all retailers to supply low aromatic fuel.<sup>14</sup>

## Current situation

### *Designated Petrol Sniffing Strategy Zones*

2.11 The Petrol Sniffing Prevention Program (PSPP)<sup>15</sup> managed by DoHA is currently subsidising the rollout of low aromatic fuel.<sup>16</sup> Under the PSPP, the

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10 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Adelaide and Flinders Universities, January 2010, *Cost Benefit Analysis*, p. 112.

11 Australian government, *Combined Australian Government response to two Senate Community Affairs References Committee Reports on petrol sniffing in Indigenous communities*, 22 June 2010, pp. 32–33.

12 Australian government, *Combined Australian Government response to two Senate Community Affairs References Committee Reports on petrol sniffing in Indigenous communities*, 22 June 2010, p. 33.

13 Australian government, *Submission 19*, p. 3.

14 Australian government, *Combined Australian Government response to two Senate Community Affairs References Committee Reports on petrol sniffing in Indigenous communities*, 22 June 2010, p. 33.

15 The Petrol Sniffing Prevention Program is the third point of the PSS Eight Point Plan.

designated PSS zones are the regions targeted for the rollout of low aromatic fuel. Funding for the roll out of low aromatic fuel is \$115.86m over five years from 2011–12.<sup>17</sup> The designated PSS zones are:

- the Central Desert Region which covers the tri-state cross-border area that includes the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara (NPY) Lands;
- the Expanded Central Desert Region which extends the Central Desert Region to include up to Kintore, Alice Springs and Ti Tree in the Northern Territory (NT). There are eight major remote communities and Alice Springs in the expanded NT region: Papunya, Mt Liebig, Kintore, Yuendumu, Willowra, Hermannsburg, Areyonga, Haasts Bluff and associated outstations;
- the East Kimberley Region in Western Australia (WA) which extends from Kalumburu to Balgo and along the WA/NT Border; and
- the Queensland Region which covers a small area around Mornington Island and Doomadgee in the Gulf of Carpentaria.<sup>18</sup>

2.12 Since March 2011, the rollout of low aromatic fuel has been expanded beyond the designated PSS zones to communities that are in close proximity to the designated zones. These communities are referred to as 'footprints'.<sup>19</sup> The Commonwealth advised that the footprints were now being targeted 'to stem the flow' of sniffable fuel into the PSS zones.<sup>20</sup>

2.13 Low aromatic fuel may also be made available to individual sites and regions when petrol sniffing is identified as an issue and appropriate distribution arrangements can be established.<sup>21</sup>

2.14 The Commonwealth provided the following data to the committee on the availability of low aromatic fuel:

As at 1 July 2012, there are 123 sites receiving low aromatic fuel throughout regional and remote Australia. These sites include 74 communities; 40 service station/roadhouses; and 9 other

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16 Under the PSPP, DoHA is also responsible for petrol sniffing and low aromatic fuel communication and education strategies, data collection, advice about treatment, and rehabilitation for petrol sniffers (Australian government, *Submission 19*, p. 3).

17 Australian government, *Submission 19*, p. 2.

18 Australian government, *Submission 19*, p. 11.

19 Australian government, *Submission 19*, p. 11.

20 Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Proof Committee Hansard*, 16 August 2012, p. 14.

21 Australian government, *Submission 19*, p. 2; Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Proof Committee Hansard*, 16 August 2012, p. 14.

businesses/supporting organisations. Of the 123 sites, 67 are within the designated zones and 56 are outside the zones.<sup>22</sup>

This is reflected in table 2.1.

**Table 2.1 Number of receiving sites and targeted sites for low aromatic fuel**

State / Territory	No. of Sites Receiving	No of Sites targeted to receive low aromatic fuel (planned)#	Total
Northern Territory	77	47	124
South Australia	14	6	20
Western Australia	26	18	44
Queensland	6	30	36
New South Wales	0	0	0
<b>Total</b>	<b>123</b>	<b>101</b>	<b>224</b>

Notes: # No. of sites targeted to receive (planned and potential sites) include sites that are currently refusing to supply low aromatic fuel.

Source: Australian government, *Submission 19*, p. 2.

2.15 DoHA advised that it has two staff out in the field to consult with petrol retailers, one based in Alice Springs and one based in Brisbane, and that consultation with petrol retailers in the strategy zone has been extensive.<sup>23</sup> The Commonwealth has undertaken to provide the committee with information concerning the history and current status of negotiations with all outlets in the PSS zones.<sup>24</sup>

2.16 The committee notes that in the three and a half years since its last inquiry, the Commonwealth communication strategy does not appear to have convinced those outlets still selling RULP within the PSS zones to switch to selling low aromatic fuel.

2.17 The committee also notes that an outlet that does not stock low aromatic fuel may not necessarily be *refusing* to stock it. Arc Vanderzalm from Wycliffe Well

22 Australian government, *Submission 19*, p. 2.

23 Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, and Ms Julia Mansour, Director, Mental Health and Drug Treatment Division, DoHA, *Committee Hansard*, 16 August 2012, p. 16.

24 Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Proof Committee Hansard*, 16 August 2012, p. 18.

Holiday Park has advised the committee that, as at 18 July 2012, he has 'never been asked to stock opal fuel'.<sup>25</sup>

***New production, storage and supply arrangements for low aromatic fuel***

2.18 At the time of the last inquiry, low aromatic fuel was produced by BP Australia in Kwinana, Western Australia, and transported to storage facilities in Largs North, South Australia and Kalgoorlie, Western Australia. The fuel was then distributed to retail sites across Australia from these sites.<sup>26</sup>

2.19 Under new arrangements that commenced on 1 July 2012 designed to expand the supply of low aromatic fuel into new regions, DoHA conducted a procurement process to establish increased production and storage of low aromatic fuel from 2012-13 onwards. BP Australia will continue to supply low aromatic fuel to sites that currently receive low aromatic fuel.<sup>27</sup>

2.20 The new arrangements described above will provide for the supply of low aromatic fuel in the following regions:

- the Top End of the NT including Katherine, Mataranka and Pine Creek;
- Tennant Creek and Barkly region in the NT;
- East Kimberley in WA;
- the southern area of the Gulf of Carpentaria and Cape York in QLD; and
- Coober Pedy in SA.<sup>28</sup>

2.21 DoHA has also commenced separate negotiations to establish bulk low aromatic fuel storage in Darwin. The committee heard that the bulk low aromatic fuel storage facility in Darwin is expected to be completed before the end of the 2013 financial year.<sup>29</sup> However, as at 16 August 2012, the engineering study is incomplete, and the ordering of equipment, some of it with a six-month delivery timeframe from overseas, is dependent upon finalisation of the engineering study.<sup>30</sup>

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25 Mr Arc Vanderzalm, Wycliffe Well Holiday Park, Correspondence received 18 July 2012, Senate Standing Committee on Community Affairs, Low Aromatic Fuel Bill 2012.

26 Australian government, *Submission 19*, p. 3.

27 Australian government, *Submission 19*, p. 3.

28 Australian government, *Submission 19*, pp. 3–4.

29 Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Proof Committee Hansard*, 16 August 2012, pp. 14–15.

30 Ms Julia Mansour, Director, Mental Health and Drug Treatment Division, DoHA, and Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Proof Committee Hansard*, 16 August 2012, p. 27.

2.22 The committee notes with concern that there appear to have been delays in the negotiations over the new infrastructure, not necessarily of the Commonwealth's making. DoHA gave a detailed account of the process (emphases added):

The extended nature of these negotiations is explained by the staged approach to the contract adopted by the Department. Stage 1 negotiations between March and August 2011 related to scoping activities for potential storage options. Vopak Terminals subcontracted the engineering scoping works to Conneq Pty Ltd (now trading as Lend Lease Pty Ltd).

The scoping work identified two potential storage options and the Department commenced detailed contract negotiations with Vopak Terminals on the Front End Engineering Design (FEED) study for an interim storage solution in October 2011. These Stage 2 activities were protracted as several new storage options were proposed by Vopak. It was eventually agreed to progress the work in three discrete elements: a FEED study on the conversion of an existing three million litre tank (an interim storage solution); the identification of equipment required for the tank conversion; and a separate FEED study to construct a larger 5-7 million tank which would provide the long-term, permanent storage solution. A funding agreement with Vopak Terminals for the first FEED study was executed on 14 May 2012.

Since May 2012, the Department and Vopak Terminals have been involved in Stage 3 activities reviewing options for the permanent storage solution. These options have emerged as a result of separate commercial dealings between Vopak Terminals and third parties.

In progressing these negotiations the Department is seeking to ensure that the storage facilities are available for use in 2012-13.<sup>31</sup>

2.23 However, in regard to the lead times involved, it also notes DoHA's observation that the time it may take for equipment to be received need not cause a delay in progress on site:

On advice from Vopak it is the Department of Health and Ageing's understanding that some equipment can take up to six months to be fabricated and received. Vopak has advised that construction can commence prior to the receipt of all equipment.<sup>32</sup>

### ***Data collection***

2.24 An evaluation of the PSS has been arranged by FaHCSIA on behalf of the Commonwealth. The Australian government submission provided some information about this evaluation:

The objective is to evaluate the:

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31 Answer to question on notice #12 from Department of Health and Ageing, received 17 September 2012.

32 Answer to question on notice #11 from Department of Health and Ageing, received 17 September 2012.

- effectiveness, impact and continuing relevance of the PSS as a method of coordinating government effort on petrol sniffing; and
- the extent to which the strategy and the whole-of-government partnership has added value and achieved a greater impact than would have been achieved without its existence.

The Australian government submission went on to say that:

Origin Consultants has been engaged to conduct the evaluation. The consultant will conduct interviews both in phone and in person with Commonwealth, State and Territory and local government representatives, communities, businesses and non-government organisations as well as visit sites in the PSS Zones. The evaluation will be completed towards the end of 2012 with an expectation that the final report will be completed in early to mid-2013.

Using the East Kimberley and the Ngaanyatjarra Lands as case studies, the evaluation will focus on how well components of the PSS interact at a specific location, whether it is effective and sustainable at the regional level and how effective the partnership approach is at the whole-of-government level.<sup>33</sup>

2.25 The evaluation appears to focus on the effectiveness of coordination and cooperation mechanisms, rather than on evaluating harm reduction. Origin Consulting was commissioned on 1 June 2012 and is due to report on 30 November 2012. The team is led by David Marcus, and includes Professor Peter d'Abbs, Gillian Shaw and Maggie Kavanagh.

2.26 Commonwealth representatives advised that the Menzies School of Health Research in Darwin<sup>34</sup> had been commissioned by DoHA in March 2011 to assess the impact of low aromatic fuel on the prevalence of petrol sniffing and that the study was due to report in June 2014. The study will collect data from 40 communities and compare data with the 2008 study conducted by Dr d'Abbs and Ms Shaw.<sup>35</sup> The committee notes that the research was not commissioned until nine months after the tabling of the government's official response to the Senate committee inquiries, and has a reporting date over five years after the March 2009 Senate inquiry. One of the reasons for the length of the study is that it is intended to include two cycles of data-gathering from communities:

Menzies [School of Health Research] is collecting data from communities specially selected to assess defined characteristics and will collect data from

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33 Australian government, *Submission 19*, p. 10.

34 Dr Peter d'Abbs who co-authored the original 2006 and 2008 petrol sniffing prevalence studies is now Professor of Substance Misuse Studies at Menzies School of Health Research.

35 Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Proof Committee Hansard*, 16 August 2012, pp. 28–29.

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40 participating communities twice over a 24 month period to measure the prevalence of petrol sniffing.<sup>36</sup>

2.27 Although data was gathered from 21 communities in September 2011, by the time of the Australian government submission to this inquiry on 14 August 2012, the first data gathering exercise remained incomplete, with the initial surveying of the remaining 19 communities 'due to commence in August/September 2012'.<sup>37</sup> (The committee understands this data gathering step has now commenced). If the second round of surveys were to be similarly split into two batches a year apart, the study would fail to meet its reporting deadline in 2014.

2.28 There are no plans for there to be an interim report from the evaluation. The committee sought clarification of for why two rounds of data gathering are required for this study. It was advised that:

One-off snapshots are inherently unreliable as an indicator of trends, particularly with respect to behaviours that fluctuate such as petrol sniffing and other forms of volatile substance [ab]use tend to do. There is therefore value in surveying communities at least twice to ensure the reliability and validity of the data.<sup>38</sup>

2.29 During discussion with Commonwealth agencies, it became apparent that the Northern Territory government also is gathering data relevant to petrol sniffing. This was revealed when the Commonwealth made a trial release of some of its data:

The feedback from the Northern Territory government was there were some large discrepancies between our data and the data that they collected. So it called the integrity of the data into question and for that reason the decision was made that at this stage, until we could be more confident, we should not be using it more broadly outside of the Australian government...<sup>39</sup>

2.30 The government indicated that the Northern Territory data was likely to be of relatively high quality:

I am fairly confident their data probably has a bit more rigour than the data we collect because it comes through their health services but it also identifies down to individuals, so they do not provide that data publicly.<sup>40</sup>

2.31 The committee queried why the Northern Territory data was not being used by Commonwealth agencies:

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36 Answer to question on notice #15 from Department of Health an Ageing, received 17 September 2012.

37 Australian government, *Submission 19*, p. 4.

38 Correspondence from DoHA to the committee, 17 September 2012.

39 Mr Robert Ryan, FAHCSIA, *Proof Committee Hansard*, 16 August 2012, p. 22.

40 Mr Robert Ryan, FAHCSIA, *Proof Committee Hansard*, 16 August 2012, p. 23.

CHAIR: Why is there a need for two lots of data? If there is a joint focus on this issue, which we have been led to believe people signed up to in 2009, and the Northern Territory government is collecting data specifically on this issue, why then are we collecting our data as well?

Mr Ryan: My understanding at this stage is it is because we do not have access to the Northern Territory government data. When they looked at our data they provided us with advice that there were discrepancies, but we do not have access to their data. Again, my understanding is that that is because they collect that in the delivery of their services and there is a higher degree of confidentiality as it does actually identify individuals. That does not mean we should not be able to access some summary of that data.

CHAIR: Has there been a formal request from the federal government to the Northern Territory government for access to their information?

Mr Ryan: I am not certain of that.

CHAIR: Could you take it on notice?

Mr Ryan: It is certainly something we could follow up.<sup>41</sup>

2.32 FaHCSIA clarified that there had been no formal request, but that one would shortly be made:

Data sharing was a topic for discussion at the Cross Jurisdictional Forum in June 2012 and it was agreed by all present that accessing data would provide a more accurate overall picture of the extent of petrol sniffing and volatile substance use. Western Australian & Queensland officials were present but South Australian officials did not attend. The Department will write to the relevant State and Territory officials to request access to this information before the scheduled 9 October meeting of the Cross Jurisdictional Forum.<sup>42</sup>

2.33 The committee notes that existing data appears to indicate that current problems with sniffing in Central Australia occur in the two communities of Lake Nash and Titjikala where nearby fuel outlets do not stock low aromatic fuel.<sup>43</sup> Evidence from community representatives confirmed the patterns already documented within the existing data on sniffing prevalence, firstly that huge reductions in petrol sniffing have occurred where low aromatic fuel has been comprehensively rolled out

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41 *Proof Committee Hansard*, 16 August 2012, p. 23.

42 Answer to question on notice #7 from FaHCSIA, received 18 September 2012.

43 CAYLUS, *Submission 8*, p. 5.

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in a region, and secondly, that regions that still have access to sniffable fuels have high levels of sniffing.<sup>44</sup>

## Conclusion

2.34 The committee notes the low aromatic fuel roll-out and the measures being put in place to support its future expansion. At the same time, it expresses its concern at the amount of time that is being taken to implement storage and distribution facilities in northern Australia. The committee believes that the government may need to place more pressure on parties involved in the process to ensure there are no further slippages in the time frame.

2.35 The committee is concerned at the time frame involved in the Menzies School of Health Research evaluation. It was not clear why the evaluation project would require in excess of a three-year time frame for completion, with final results not available until five years after the Senate committee's 2009 report, though the committee notes that the duplicated surveying of communities would be a factor.

## Recommendation 1

**2.36 The committee recommends that the government release an interim report based on the first round of data collection being undertaken by the Menzies School of Health Research.**

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44 Mr Willie Bookie, Lake Nash, *Committee Hansard*, 24 June 2012, p. 42; Ms Liza Balmer, Deputy Co-ordinator, NPY Women's Council, *Committee Hansard*, 25 July 2012, p. 1–4; Ms Donna Ah Chee, Acting CEO, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 23; Ms Lisa Sharman, Community Leader and Youth Worker, Titjikala, *Committee Hansard*, 24 July 2012, p. 34; Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 25; Mr David Hewitt OAM, *Committee Hansard*, 24 July 2012, p. 2; Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 39; Mr Tristan Ray, CAYLUS, *Committee Hansard*, 24 July 2012, pp. 48–49.



## Chapter 3

### The success of low aromatic fuel

3.1 The story of the manufacture and distribution of low aromatic fuel in central Australia, to substitute for sniffable fuel, is a story of spectacular policy success. It is a rare and precious achievement in the challenging field of Indigenous health policy. The initiative has involved a partnership between the private sector, including both large and small businesses, governments at all levels, non-government organisations, and Indigenous communities. This partnership has dramatically curbed the scourge of petrol sniffing, by over ninety percent in some places. As CAYLUS put it:

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.<sup>1</sup>

3.2 Before the committee engages in any debate about what the next step should be, it wishes to place on record its acknowledgement of this success, and its congratulations to everyone involved in achieving it.

#### Evaluation of the Opal strategy

3.3 In 2005 and 2006, Dr Peter d'Abbs and Ms Gillian Shaw conducted a baseline study 'across 74 communities from all over remote Australia that were currently using, or shortly to begin using Opal fuel ... to establish an accurate count of the prevalence and frequency of petrol sniffing'.

3.4 DoHA commissioned Dr d'Abbs and Ms Shaw to do a follow-up impact study in 2008 that re-visited 20 of the initial 74 sites to gather prevalence and frequency data.<sup>2</sup> They found a 70 per cent decrease in sniffing between baseline and follow-up, with 94 and 93 per cent decreases in Central Australia and the Anangu Pitjantjatjara Yankunytjatjara (APY) lands respectively. By contrast, in two communities that had easy access to RULP, there had been an increase in petrol sniffing. Dr d'Abbs and Ms Shaw also documented:

... a statistically significant relationship between the distance from each community to the nearest ULP outlet, and the size of the decrease in the prevalence of sniffing at each community, which indicates that the use of

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1 CAYLUS, *Submission 8*, p. 3.

2 Dr Peter D'Abbs and Ms Gillian Shaw, Executive Summary of the *Evaluation of the Impact of Opal Fuel*, October 2008, Australian Government Department of Health and Ageing, Canberra. [The full evaluation report has not been publicly released due to the sensitive nature of data relating to petrol sniffing and to maintain the privacy of individual communities].

Opal fuel has had a significant role in the decrease in the prevalence of sniffing.<sup>3</sup>

3.5 Based on these findings and the positive feedback obtained from community members during site visits in Central and Northern Australia, the committee concluded in its 2009 report that 'the supply of Opal fuel has been a resounding success in helping to reduce petrol sniffing'.<sup>4</sup>

### **Stakeholder perspectives on the success of low aromatic fuel**

3.6 Extensive media coverage of petrol sniffing around the time that the committee held hearings were held in Alice Springs sparked discussion about the factors behind recent petrol sniffing outbreaks including the ongoing issue of access to sniffable fuels in some communities and the contrast with regions that had a more comprehensive rollout of low aromatic fuel and much lower levels of petrol sniffing.

3.7 Ms Donna Ah Chee contrasted the success of the low aromatic fuel rollout in Central Australia to the ongoing difficulties experienced in other regions where sniffable fuel is accessible from retail outlets in proximity to remote communities:

Further evidence of the effectiveness of Opal unleaded fuel is provided in the recent article 'Cheap, easy, fatal: scourge of sniffing returns to remote northern landscape' by Nicolas Rothwell.<sup>5</sup> The article reveals that all of the current petrol-sniffing hotspots are remote Aboriginal communities in the north that either do not have the benefit of Opal fuel, such as Katherine, or have regular access to non-Opal fuel outside of the community, such as Lake Nash, the Urandangi pub, Yirrkala and Nhulunbuy. If this story had been written in days prior to the rollout of Opal fuel in Central Australia, when there were over 400 active sniffers at any one time, it is sniffing in Central Australia that would have been the feature. The number has dropped to about 20, and this is why the story chose to focus on the north but did not acknowledge the success in the Centre, which is very unfortunate. It is clearly not true, and it is poor journalism, to claim: "All that is clear is failure: after millions of dollars, reports, studies and programs, the combined efforts of the commonwealth and NT governments to stop the plague have come to nothing".

On the contrary, the rollout of Opal unleaded in Central Australia demonstrates what supply-side strategies can achieve. This should be celebrated.<sup>6</sup>

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3 Dr Peter D'Abbs and Ms Gillian Shaw, Executive Summary of the *Evaluation of the Impact of Opal Fuel*, October 2008, p. 2.

4 Senate Standing Committee on Community Affairs, *Grasping the opportunity of Opal: Assessing the impact of the Petrol Sniffing Strategy*, March 2009, p. 16.

5 Mr Nicolas Rothwell, 'Cheap, easy, fatal: scourge of sniffing returns to remote northern landscape', *The Australian*, 23 June 2012, p. 1.

6 Ms Donna Ah Chee, Acting CEO, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 23.

3.8 The majority of submissions noted the success that had been achieved to date with the voluntary rollout of low aromatic fuel, crediting it with being the key, though not sole, factor in the reduction of petrol sniffing. Mr David Hewitt and Mrs Margaret Hewitt have lived and worked in Indigenous communities over several decades and Mrs Hewitt stated that:

... the introduction of the Opal low aromatic fuel has had the biggest single positive impact on the health and welfare of Indigenous people in the 48 years of our work in remote regions.<sup>7</sup>

3.9 Speaking about her experience with the Mt Theo program, Susie Low said that low aromatic fuel was a crucial element in dealing with petrol sniffing:

Our experience confirms that the use of Opal fuel strengthens communities against petrol sniffing. It removes the supply, which is an essential element. This breaks the cycle and allows communities to concentrate on diversionary and youth development activities.<sup>8</sup>

3.10 The NPY Women's Council indicated that petrol sniffing has decreased in many of their communities as a result of the Opal rollout:

There have been many retailers that have taken up the opportunity to sell Opal fuel across the region, however there are still some retailers who are resisting this change and whose actions are undermining the strategy. In the APY Lands the health service collects statistics on petrol sniffers. In the financial year ending June 2011 there are only a few isolated incidences of sniffing, less than 10...

Since the implementation of Opal fuel in Laverton and the phasing out of sniffable unleaded fuel, petrol sniffing has decreased significantly in the area of Warburton, which is where NPY Women's Council are currently focusing their advocacy efforts...

Since 2006 there has been much progress in the effort to reduce petrol sniffing across Central Australia. The voluntary roll [out of] Opal fuel, has played a substantial role in this reduction...<sup>9</sup>

3.11 Though the provision of low aromatic fuel is not on its own a solution, it is the most important element of a holistic approach. From their long experience in the field, CAYLUS reiterated the vital role that low aromatic fuel has played:

We know this from experience. We were doing this before Opal, and we would try all the other measures. Before Opal and the VSAP Act, we were there trying to stop sniffing. You could start a youth program in a community and you would get a lot of the sniffers to stop but not all of

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7 Mrs Margaret Hewitt OAM, *Committee Hansard*, 24 July 2012, p. 6.

8 Ms Susie Low, CEO, Warlpiri Youth Development Aboriginal Corporation, *Committee Hansard*, 24 July 2012, p. 17.

9 Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council (Aboriginal Corporation), *Submission 7*.

them. But once you have Opal in a community the sniffing stops and then the youth programs can really go because they are not competing against people who are off their faces all the time. Opal is a necessary precursor to dealing with sniffing. Dealing with those underlying issues of boredom and that sort of stuff is really so much easier once you have got the supply reductions sorted. Then you can have a window of opportunity to deal with people when they are conscious and able to think and not sneaking off for a sniff of petrol every five minutes.<sup>10</sup>

3.12 The committee also received evidence that even though a long-term best-practice community development program such as the Mt Theo program had succeeded in eradicating sniffing, it would be very difficult to replicate across other communities. Andrew Stojanovski was awarded the Order of Australia Medal for his work at Yuendumu setting up the Mt Theo Petrol Sniffing Prevention Program. He notes that:

One of the biggest causes of the petrol sniffing is the easy availability of something to sniff that makes you high. Other issues are peer group pressure, youth boredom and community disadvantage.<sup>11</sup>

3.13 In summing up the advantages of removing sniffable fuel compared to the community development approaches that he helped implement, Mr Stojanovski pointed out that the low aromatic fuel strategy was relatively straightforward to implement, replicable across communities, and produced results in a short timeframe:

Up until Opal was introduced in Central Australia I expected that I would spend my career working on petrol sniffing, community by community. There was incredible community and professional pressure on me to take the Mt Theo solution to petrol sniffing and set up similar programs in other communities using a grass roots, ground up approach. Using the Mt Theo model I expected that it would take a decade's work in each community to defeat sniffing. Over my career the best I could hope for using this approach would be to eradicate sniffing in four communities over a period of forty years.

I have to say Opal changed my life. The Mt Theo solution to sniffing was very hard to implement, and extremely hard to replicate. When we told our story at conferences to government and Indigenous leaders, who wanted to know the secret to our success, they would walk away shaking their heads, saying that what we did was too difficult to reproduce. They claimed the level of personal and community commitment was too much to expect from professional paid program staff, and was not something a government program could replicate.

In contrast Opal is a solution that governments and communities can readily implement. Its use in Central Australia has really taken the pressure off communities and provides a breathing space where community workers can

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10 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 50.

11 Mr Andrew Stojanovski OAM, *Submission 1*, p. 1.

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actually focus on programs that address the personal and social issues underlying petrol sniffing. When sniffing is rife in a community it is near impossible to do this, the power, violence and dysfunction caused by sniffing is too overwhelming.

Opal has the ability to effectively reduce the level of sniffing in a short period of time, providing a window of opportunity for real community development. In contrast it may take a decade to achieve a similar reduction in sniffing using a community development approach based on best practice models.<sup>12</sup>

3.14 Barkly Shire Council noted that it had ongoing issues with sniffing in some of its communities but that, where low aromatic fuel was used in the communities, sniffing was managed successfully.<sup>13</sup> Trevor Edmond lives in an area affected by sniffing and wrote:

I have lived in such areas and seen the devastating effects of the abuse of aromatic fuels. I have used Opal fuel in my vehicle without any problems and have not had fuel stolen from my car because it does not fill up with anything but Opal fuel.

Though the legislation may not stop petrol sniffing completely it will contribute to the reduction of the practice.<sup>14</sup>

3.15 The Australian government has noted both the effectiveness of non-sniffable fuel, and the need to embed it in a broader program.

Since its establishment the PSS has achieved a substantial and visual reduction of petrol sniffing and associated issues in targeted communities across remote Australia. The roll out of low aromatic fuel has been a fundamental part of this success. Supporting programs also play a key role in maintaining the reduction of the incidence and impact of petrol sniffing. In particular, these programs ensure that the issue of petrol sniffing is addressed holistically through a combination of approaches as evidence suggests that a holistic strategy is likely to be more effective than actions concentrating on a single aspect of the issue.<sup>15</sup>

## Conclusion

3.16 There is no doubt that the introduction of low aromatic fuel has helped reduce substance abuse in a significant number of communities across Australia. This report now turns to the issues involved in extending that roll-out, and maintaining the benefits it has delivered.

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12 Mr Andrew Stojanovski OAM, *Submission 1*, pp. 1–2.

13 Barkly Shire Council, *Submission 9*, p. 1.

14 Trevor Edmond, *Submission 12*.

15 Australian Government, *Submission 19*, p. 1.



## Chapter 4

# Legislation for Low Aromatic Fuel

### The need for legislation

#### *Gaps in the current approach*

4.1 Evidence from numerous Indigenous witnesses and organisations spoke about the fact that even though their own communities stocked low aromatic fuel, sniffable fuel was being obtained from retailers in proximity to those communities.<sup>1</sup> Mr Lance McDonald, an elder from Papunya, a community that has a low aromatic fuel bowser, expressed deep concern about the ongoing presence of sniffable fuel at Tilmouth Well:

Tilmouth Well is the only frightening one for us, because we are living on the same road that it is on. Tilmouth Well is in the middle of where three tribes are mixed up. There is Anmatjere tribe this side, Warlpiri and us mob—Luritja Pintubi tribe. We think that Tilmouth Well needs to change because we do not want to go backwards. We want to go forwards.<sup>2</sup>

4.2 This fear is underscored by recent experiences at Papunya and Kintore where sniffing outbreaks have spread rapidly:

[T]here was recently a boy from South Australia who came up for a funeral and got left behind when the other mob left. They left him there with extended family, but he was falling through the safety net a bit. He started sniffing and he started other people sniffing, and then there were 12 people sniffing in Papunya. That boy's father turned up and took him to Kintore and the sniffing died down there. The youth workers got really involved with them. At Papunya the other 11 stopped. But then he started up another 15 in Kintore. So you really cannot underestimate what one person can do.<sup>3</sup>

4.3 The majority of submissions were deeply concerned that the actions of a few retailers that still supply RULP and do not stock low aromatic fuel had frustrated the comprehensive rollout of low aromatic fuel in affected regions for several years and in some cases more than five years.

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1 Ms Lisa Sharman, Community Leader and Youth Worker, Titjikala, *Committee Hansard*, 24 July 2012, p. 34; Mr Lance McDonald, Papunya, *Committee Hansard*, 24 July 2012, p. 37; Ms Susie Low, CEO, Warlpiri Youth Development Aboriginal Corporation, *Committee Hansard*, 24 July 2012, p. 18; Mr Willie Bookie, Lake Nash, *Committee Hansard*, 24 July 2012, p. 42; Mr James Billy, Lake Nash Night Patrol, *Committee Hansard*, 24 July 2012, p. 42.

2 Mr Lance McDonald, Papunya, *Committee Hansard*, 24 July 2012, p. 37.

3 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 38; see also Ms Lisa Sharman, Community Leader and Youth Worker, Titjikala, *Committee Hansard*, 24 July 2012, p. 34.

4.4 The Warlpiri Youth Development Aboriginal Corporation (WYDAC) argued that the campaign to eradicate petrol sniffing was at a crossroads because the progress that had been achieved so far was under threat:

[W]e stand at an important juncture in Central Australia, where a new generation of children in much of the region have grown up free of sniffing culture, however due to the irresponsible decisions of a few of retailers, sniffing culture appears to be once again rearing its head in some sites. We know from hard experience that sniffing, once established in an affected community can rapidly spread. Sniffing once accepted by a few as something that's too hard to deal with quickly becomes viewed this way by all. We stand at this juncture now in Central Australia but it seems to us that governments still have the capacity to act and there are still straight-forward steps that can be taken. We encourage the federal government to take a lead on this issue and for the various political parties to work collaboratively with them. Voluntary roll out of Opal has been a good thing, but the time has come to finish the job.<sup>4</sup>

### **Stakeholder arguments in favour of Commonwealth legislation**

4.5 A majority of stakeholder submissions were in favour of Commonwealth legislation for low aromatic fuel and the main arguments put forward in support of a legislative approach are presented below.<sup>5</sup>

4.6 A legislative approach that prohibited retailers in designated regions from selling RULP was seen as a necessary step towards closing the gaps in the current program. The voluntary scheme was deemed insufficient for dealing with the petrol sniffing that has been to the historical resistance of a few retailers to stocking low aromatic fuel.<sup>6</sup>

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4 Warlpiri Youth Development Aboriginal Corporation, *Submission 11*, p. 3; see also NPY Women's Council, *Submission 7*, p. 3.

5 The submissions from BP Australia (*Submission 15*) and Shell Australia (*Submission 20*) were impartial on the bill and are discussed later in this chapter in the section on stakeholder concerns.

6 National Indigenous Drug and Alcohol Committee, *Submission 2*, p. 1; Public Health Association of Australia, *Submission 4*, p. 4; Aboriginal Peak Organisations Northern Territory, *Submission 5*, p. 2; NPY Women's Council, *Submission 7*, pp. 2–4; CAYLUS, *Submission 8*, p. 3; Barkly Shire Council, *Submission 9*, pp. 2–3; Central Land Council, *Submission 10*, p. 1; Warlpiri Youth Development Aboriginal Corporation, *Submission 11*, pp. 1–3; Jumbunna Indigenous House of Learning, UTS, *Submission 14*, p. 2; National Aboriginal Community Controlled Health Organisation, *Submission 16*, p. 3; Alcohol and other Drugs Council of Australia, *Submission 18*, pp. 2–4. The Office of the Children's Commissioner Northern Territory, *Submission 6*, pp. 2–3 expressed concern that children were being exposed to sniffable fuels in their communities and supported the legislation to prohibit RULP. The Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, pp. 2–3 noted the resistance of a few retailers towards stocking low aromatic fuel could undermine the viability of the Opal strategy.

4.7 Retailers in the Central Australian Region currently stock low aromatic fuel voluntarily and continued adherence to this agreement is crucial to the success of the scheme. Several organisations were very concerned that there is no guarantee that one retailer will not revert to RULP, potentially leading to a 'domino' effect where the voluntary agreement collapsed.<sup>7</sup> Legislation was seen as the best way to prevent the unravelling of a voluntary agreement:

Currently all retailers in Alice Springs use Opal voluntarily. Maintenance of this outcome is crucial to the success of Low Aromatic Fuel initiatives in the Central Australian Region. However, if any individual retailer decided to stop stocking Opal and make other types of fuel available for sale - thereby breaching the status quo - it is likely that other retailers would follow suit, in order to avoid any potential commercial disadvantage. The proposed legislation would provide a strong deterrent to prevent this happening and would also provide a path for action should such a situation occur in Alice Springs or in any other site crucial to the effectiveness of the Low Aromatic Fuel initiative.<sup>8</sup>

4.8 Dr John Boffa argued that a mandatory approach is essential because a large part of the success achieved with the voluntary rollout in Central Australia can be attributed to the unique level of grass-roots inter-agency collaboration and hard work in that particular region, and that this level of collaboration does not exist in other regions:

[W]e have achieved a comprehensive rollout here ... largely ... because of CAYLUS and the interagency collaboration and the partnerships and the constant talking to outlets and educating them, which has got people to do the right thing voluntarily, but there are still a few outlets that have not. But in other parts of the country they have got nowhere near that comprehensive commitment.<sup>9</sup>

4.9 The committee also heard that previous strategies to address petrol sniffing such as the renowned Mount Theo program that had originally succeeded in overcoming petrol sniffing could no longer be applied today. Although the comprehensive program of care provided at Yuendumu is an essential element of overcoming petrol sniffing, WYDAC expressed grave concern about the re-emergence of petrol sniffing and urged the government to mandate Opal fuel:

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7 CAYLUS, *Submission 8*, p. 11; Public Health Association of Australia, *Submission 4*, pp. 4–5; Warlpiri Youth Development Aboriginal Corporation, *Submission 11*, p. 3; National Aboriginal Community Controlled Health Organisation, *Submission 16*, p. 4; Alcohol and other Drugs Council of Australia, *Submission 18*, p. 4.

8 Public Health Association of Australia, *Submission 4*, pp. 4–5; see also CAYLUS, *Submission 8*, p. 12; Warlpiri Youth Development Aboriginal Corporation, *Submission 11*, p. 3.

9 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 25.

We know that Opal fuel has proven effective but, unless the sale of Opal is mandated, and across the broader region, there is a real danger of sniffing outbreaks and devastating consequences.

The gains achieved to date through the rollout of Opal fuel are crucial but they are also fragile. We currently have a generation of children in much of the region who have grown up free of a sniffing culture. However, due to what we believe are the irresponsible decisions of some retailers, the sniffing culture appears to be once again rearing its head in some sites. We know from hard experience that sniffing, once established in an affected community, can rapidly spread. It is an epidemic we do not wish to relive.

We stand at a junction in Central Australia now and we cannot afford to go back. Our program is known for its hard earned success over many, many years. We cannot emphasise too strongly to this inquiry that the way we tackled sniffing in the Warlpiri communities would not be permitted today ... Increased scrutiny on process and regulations means that the successful strategies that Mount Theo used in the early days would not be considered acceptable. We have welcomed a higher level of accountability and scrutiny. However, we despair at the possibility of a resurgence of petrol sniffing, especially given that our original successful strategies could not be applied today.<sup>10</sup>

4.10 CAYLUS pointed out that by consolidating the progress that has been achieved with the voluntary rollout of low aromatic fuel, legislation would provide communities with the security to focus on community development without having to contend with recurrent petrol sniffing episodes.<sup>11</sup>

4.11 CAYLUS summed up the views expressed by many community organisations by stating that:

We have often said that if this legislation was in place you may never have to use it. But if you ever did have to use it you would be really glad you had it, as opposed to 'here we are again and we are 12 months away from even getting it written'. We know that we can fix sniffing through the Opal strategy. This legislation consolidates that victory and makes it possible to replicate that victory anywhere. It does seem like a no-brainer to me.<sup>12</sup>

4.12 Adjunct Professor Michael Moore observed that the campaign to tackle petrol sniffing has much in common with previous successful public health campaigns:

It is important to remember that successful public health campaigns are never about one thing; they are about a whole series of things. They are about individual responsibility but they are also about tackling underlying causes and operating within particular settings. There is a snowball impact

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10 Ms Susie Low, CEO, Warlpiri Youth Development Aboriginal Corporation, *Committee Hansard*, 24 July 2012, p. 17.

11 CAYLUS, *Submission 8*, p.3.

12 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 49.

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for effective campaigns—that is, you begin to get everybody on side and it reaches a point where you cannot get the last few, and that is when it is time for legislation.

If I can draw just a very quick analogy: when our community tackled motor car related morbidity and mortality, we began a process of trying to explain about accidents and the power of cars and trying to get people to drive sensibly and lower their speeds. Then a whole series of things happened. There was legislation to improve motor cars, to change the speed limits and particularly to prevent driving under the influence of alcohol, and seat belts requirements and so on. And each one of those steps combined was done, first of all, with general understanding in the community, which was then followed at the last bit by legislation. I think what is happening here is applying the same sort of principles, and that is why the Public Health Association is supportive of the Low Aromatic Fuel Bill 2012.

4.13 The committee raised the issue that banning a product may lead to potentially unintended consequences. Mr Moore pointed out that the PHAA does not advocate banning substances, but rather advocates imposing restrictions 'to try to change attitudes'. Mr Moore noted that the most successful health campaigns have removed a dangerous substance and replaced it with a safer alternative. He believed that the bill fits within this broad approach by removing RULP and replacing it with a low aromatic alternative.<sup>13</sup>

## **Current Northern Territory legislation**

### ***Northern Territory Volatile Substance Abuse Prevention Act***

4.14 The benefits and limitations of existing Northern Territory legislation were examined in order to determine firstly, whether the operation of such legislation in conjunction with the voluntary rollout of Opal and the operation of the eight point plan is sufficient to achieving the objective of eliminating petrol sniffing, and secondly, whether the addition of Commonwealth legislation would have a greater impact than the legislation that currently exists.

4.15 The *Northern Territory Volatile Substance Abuse Prevention Act* (the Act) was introduced in February 2006, and amended in 2010, in an attempt to reduce the harmful effects of abuse of volatile substances such as petrol, paint and glue.<sup>14</sup>

4.16 Under the Act, police and authorised persons<sup>15</sup> are empowered to remove and dispose of volatile substances from somebody who is inhaling, intends to inhale, or

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13 Mr Michael Moore, CEO, Public Health Association of Australia, *Committee Hansard*, 24 July 2012, p. 10.

14 Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 2, accessed 7 September 2012, [http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/16/40.pdf&siteID=1&str\\_title=NT+Volatile+Substance+Abuse+Prev](http://www.health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/16/40.pdf&siteID=1&str_title=NT+Volatile+Substance+Abuse+Prev)

has recently inhaled a volatile substance, and take them to a 'place of safety' or into protective custody.<sup>16</sup>

4.17 The Act also provides for assessments of people at risk of volatile substance abuse to be carried out. Assessment findings can trigger a recommendation to the Chief Health Officer to apply to the local court for a treatment order. Court-ordered treatment programs can run for up to 16 weeks and be extended if necessary. If a person fails to participate in a court-ordered program, they may be subject to a warrant to compel them to attend treatment.<sup>17</sup>

#### *Community Management of Volatile Substances*

4.18 Community members and Shire Councils are also able to apply to the Minister for a certain area in their community or a whole community area to be declared a management area under the Act:

A management plan is then developed for the area to establish rules for possession, supply and use of volatile substances. Delegates of the Minister hold community meetings, explaining the workings of management plans and consequences for the communities with such plans. The delegates also assist and guide communities through the making of the plan.<sup>18</sup>

4.19 Community members must agree to the area and the plan. Signs must be erected at entry points to the community advising that the community is subject to a management plan. The police are empowered to enforce the management plan.

#### *Unlawful supply*

4.20 The Act provides that a person must not 'supply a volatile substance to another person if the supplier knows, or ought to know, that the other person intends to inhale the substance.'<sup>19</sup>

4.21 Likewise a supplier must not give a person a volatile substance if the supplier '... knows, or ought to know, that the recipient intends to give the substance to

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15 Authorised persons have to be individually approved by the Minister and can be, for example, health workers, youth workers, councillors, or elders (see Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 3).

16 Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 2.

17 Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 3.

18 Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 4.

19 Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 4.

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another person for inhaling.’<sup>20</sup> Unlawful supply is an offence under the Act and is punishable by a fine or imprisonment.

### ***Limitations of the Volatile Substance Abuse Prevention Act***

4.22 Given the existence of the Act, the committee sought evidence on whether the Act was sufficient to control sniffing in the NT, and whether this model could be used in other jurisdictions to control petrol sniffing.

4.23 The committee notes that two recent coronial inquests that reported in October 2011, one completed in WA and another in SA, recommended the implementation of a law similar to the NT Volatile Substance Abuse Prevention Act in their respective jurisdictions.<sup>21</sup>

4.24 CAYLUS noted the positive impacts of the Act in enabling some communities to exert a level of control over sniffing and empowering police to deal with sniffing. Mr McFarland said that the various mechanisms within the act including the management plans and the mandatory rehabilitation make it a ‘very powerful act’.<sup>22</sup>

4.25 However, CAYLUS drew attention to limitations in the Act regarding the extent to which a management plan can exercise control over fuel outlets in the surrounding area. The three community examples given below demonstrate that the Act is insufficient to remove petrol sniffing.

4.26 CAYLUS stated that they had worked with Anmatjerre Council in 2008 to apply for a management plan under the Act in the hope of being able to force the nearby Ti Tree roadhouse to switch to low aromatic fuel. The NT government advised that the powers under the Act were insufficient to compel a private business outside the management area to stop selling sniffable fuel.<sup>23</sup>

4.27 The Indigenous community at Lake Nash sells low aromatic fuel and has a management plan. However, unleaded fuel comes into the community from the nearest roadhouse at Urandangi across the Queensland border that does not stock low aromatic fuel, a jurisdiction over which the Lake Nash management plan has no control.<sup>24</sup> CAYLUS also pointed out that it would be unfair to arrest people in Lake

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20 Northern Territory Government Department of Health and Families, *Volatile Substance Abuse Prevention Act*, Fact Sheet, p. 4.

21 Australian government, *Submission 19*, p. 5.

22 Mr Blair McFarland, CAYLUS, *Committee Hansard*, Wednesday 25 July 2012, p. 51.

23 CAYLUS, *Submission 8*, p. 10.

24 Mr Blair McFarland and Mr Tristan Ray, CAYLUS, *Committee Hansard*, Tuesday 24 July 2012, p. 51.

Nash for having RULP in their fuel tank when cars coming into the community via Urandangi have no choice but to refill with sniffable fuel.<sup>25</sup>

4.28 The community at Titjikala elected not to have a management plan because even though the nearby fuel outlet at Maryvale station does not sell RULP, it does sell premium unleaded. Although Titjikala sells low aromatic fuel, cars that need to refuel at Maryvale on a Sunday when the Titjikala outlet is closed bring sniffable fuel back into the community. Titjikala decided that a management plan would be unenforceable, firstly, because there would be occasions when vehicles would be coming into the community with sniffable fuel in their tanks purchased from Maryvale, and secondly, because there are no police in Titjikala to enforce a management plan.<sup>26</sup>

4.29 Dr John Boffa suggested that ongoing sniffing in certain areas was a clear indication that the Act alone was not enough to solve the problem and that further legislation was required. Responding to the suggestion that further legislation was unnecessary, Dr Boffa said:

It is a furphy. If that were the case, you would not have petrol-sniffing in Lake Nash, Yirrkala and Katherine at the moment. If that act were enough, without Opal being mandated, then we would not have that problem. It is a good act, it is an important contribution, but by itself is not enough. It is no reason not to do this as well. Western Australia, South Australia—they should all have a similar act; but, even if they did, it is absolutely not a reason to not go ahead with this legislation as well.<sup>27</sup>

4.30 Dr Howard Bath acknowledged the beneficial provisions within the Act, in particular the ability to generate community-based approaches to volatile substance abuse:

In the Northern Territory we have the Volatile Substance Abuse Prevention Act, under which there is a comprehensive process where areas can approach the government and asked to be declared a management area for volatile substances. There is a consultation and they can develop a management plan for the area which is an enforceable plan. It does cover issues broader than just fuel and fuel supply. That is more possible in a jurisdiction like the Northern Territory. Trying to get coordination across several different jurisdictions we recognise would be extremely hard. We think the ideal would be that, in addition to imposing restrictions on fuel and the supply of Opal fuel—low aromatic fuel—it is important also that

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25 Mr Blair McFarland and Mr Tristan Ray, CAYLUS, *Committee Hansard*, Tuesday 24 July 2012, p. 51.

26 Mr Blair McFarland and Mr Tristan Ray, CAYLUS, *Committee Hansard*, Tuesday 24 July 2012, p. 51.

27 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 31.

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there are local management approaches to the difficulties around sniffing or solvents.<sup>28</sup>

4.31 However, recognising the difficulties of coordinating approaches across jurisdictions, the position of Dr Howard Bath was that Commonwealth legislation that enforced the prohibition of RULP and controlled PULP would complement the Act.<sup>29</sup>

### **The constitutional capacity for Commonwealth legislation**

4.32 This section considers whether the Commonwealth government possesses the constitutional capacity to legislate across several jurisdictions with regard to RULP and low aromatic fuel.

#### ***The Corporations power***

4.33 Section 51(xx) of the Constitution (Corporations power) gives the Commonwealth Parliament the power to make laws with respect to trading, financial and foreign corporations.

4.34 The SACES report found that the Commonwealth could use the Corporations power to enact legislation and that the legislation would be effective, would very likely be upheld by the courts, and would have relatively low compliance costs. There would, however, be some risk that a small number of unincorporated outlets may not be controlled by the scheme.<sup>30</sup>

4.35 Noting that the bill is based on the Commonwealth Corporations power, Mr Sean Brennan stated that the Bill appeared 'legally sound' and 'is likely to be effective in regulating the conduct of at least a very high proportion of fuel suppliers in a given area in Australia'.<sup>31</sup> Professor Larissa Behrendt endorsed the conclusions of the SACES report and the Gilbert and Tobin Law Centre submission to the 2009 inquiry regarding the sound constitutional basis for Commonwealth legislation.<sup>32</sup>

4.36 However, the SACES report, the Gilbert and Tobin Law Centre, and the Jumbunna Indigenous House of Learning all noted that other Constitutional powers could be used to supplement Commonwealth legislation based on the Corporations power. Mr Brennan and Professor Behrendt suggested that consideration be given to

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28 Dr Howard Bath, *Committee Hansard*, Wednesday 25 July 2012, p. 35.

29 Office of the Children's Commissioner Northern Territory, *Submission 6*, pp. 3–4.

30 South Australian Centre for Economic Studies 2010, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, pp. 14–15.

31 Mr Sean Brennan, Director Indigenous Legal Issues Project, Gilbert and Tobin Centre of Public Law, UNSW, *Committee Hansard*, 25 July 2012, p. 10; see also Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*.

32 Jumbunna Indigenous House of Learning, UTS, *Submission 14*, p. 3.

extending the bill to rely on other Commonwealth powers in the Constitution in order to capture commercial suppliers of fuel which are not trading corporations for the purposes of the Constitution, and also to support the rollout of low aromatic fuel in areas beyond the Northern Territory.<sup>33</sup> Two of these powers, the Territories power and the Races power, are considered below.

### ***The Territories power***

4.37 Under section 122 of the Constitution, the Commonwealth has the power to make laws for the government of a Territory.

4.38 Given that petrol sniffing is a regional problem that traverses state boundaries, the key question regarding the Territories power is whether that power can operate in state jurisdictions beyond the Northern Territory.

4.39 The SACES report found that the Territories power could not target sniffing activity outside the Territory, but that 'a prescribed region could extend beyond the Territory into areas which have an impact on efforts to reduce sniffing in the Territory'.<sup>34</sup>

4.40 In his submissions to both the 2009 and 2012 inquiries, Mr Brennan cited legal precedent<sup>35</sup> in noting that 'the High Court has repeatedly confirmed that a Commonwealth law relying on the Territories power can operate effectively inside the boundaries of a State'.<sup>36</sup> The High Court has also indicated that in the event of conflict between Commonwealth law and state law, the Commonwealth law would prevail.<sup>37</sup>

4.41 Mr Brennan cited two cases<sup>38</sup> to argue that:

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33 Mr Sean Brennan, Director Indigenous Legal Issues Project, Gilbert and Tobin Centre of Public Law, UNSW, *Committee Hansard*, 25 July 2012, p. 10; see also Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 4; Jumbunna Indigenous House of Learning, UTS, *Submission 14*, p. 3.

34 South Australian Centre for Economic Studies 2010, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, p. 13.

35 *Lamshed v Lake* (1958) 99 CLR 132, 141–142 (Dixon CJ, Webb J agreeing), 154 (Kitto J); *Newcrest v Commonwealth* (1997) 190 CLR 513, 599 (Gummow J); *New South Wales v Commonwealth (the WorkChoices case)* (2006) 229 CLR 1, 158 (Glesson CJ, Gummow, Hayne, Heydon and Crennan JJ).

36 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 5.

37 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 5.

38 *Lamshed v Lake* (1958) 99 CLR 132. *Attorney-General (WA) v Australian National Airlines Commission* (1976) 138 CLR 492.

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The key to constitutional validity is a sufficient connection between government of the Northern Territory and the operation of a law inside a State such as Western Australia, South Australia or Queensland.<sup>39</sup>

4.42 Based on the cases cited above, Mr Brennan said that the use of a law based on the Territories power within a state such as Western Australia, South Australia or Queensland would be constitutionally valid based on the following proposition:

*... regulating fuel supply in these cross-border locations is practically relevant to the effectiveness of supply restrictions within the Territory.*<sup>40</sup>

4.43 Mr Brennan believed that this proposition is supported by 'the evidence presented to the Committee and elsewhere, that the necessary practical, geographical connection exists – indeed, it underpins the regional strategy adopted by governments'.<sup>41</sup> Summing up, Mr Brennan indicated the legislation 'would effectively apply to all those who supply fuel in the relevant sense in a wide region of Central (and, if necessary, northern) Australia'.<sup>42</sup>

4.44 The conclusions drawn by Mr Brennan about the constitutional validity of extending the bill to draw on the Territories power were endorsed by Professor Behrendt.<sup>43</sup>

### ***The Races power***

4.45 Section 51(xxvi) of the Constitution gives the Commonwealth Parliament the power to make laws with respect to the people of any race for whom it is deemed necessary to make special laws.

4.46 Opinions differ on the desirability of using the Races power to augment the Corporations power on which the bill is based. The SACES report noted that the 'use of Race power to impose restrictions on groups is clearly discriminatory and largely undesirable from a public policy perspective'.<sup>44</sup>

4.47 Mr Brennan was cautious about the use of the Races power but concluded that:

... on balance it was appropriate in this instance to resort to the power. In this respect I have been assisted by the debate which has unfolded over the

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39 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 5.

40 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 5, emphasis original.

41 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 5.

42 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 5.

43 Jumbunna Indigenous House of Learning, UTS, *Submission 14*, p. 3.

44 South Australian Centre for Economic Studies 2010, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, p. 16.

last 18 months or so regarding constitutional reform in respect of Australia's first peoples. It is clear that the Expert Panel which reported to the Australian Government in January 2012 on constitutional recognition of Indigenous Australians strongly supported the maintenance of a power to make national laws with respect to Aboriginal and Torres Strait Islander people, conditioned by the presence of a non-discrimination clause. This is a position which I support. The retention of a national power to make Indigenous-specific laws seems to enjoy widespread endorsement.<sup>45</sup>

4.48 Professor Behrendt states that 'the legislative scheme would clearly be a law "benefitting the people of any race", noting that the communities targeted by the regulatory scheme are predominantly Aboriginal'. Conceding that the scheme would be discriminatory, Professor Behrendt argues that it would be permissible because the limitations are 'legitimate, necessary and proportionate'. Regarding the findings made in the SACES report about the undesirability of discriminatory provisions within legislation, Professor Behrendt recommends that those concerns 'can be addressed by strengthening the requirements for consultation under the Act'. Professor Behrendt concludes that the benefit of drawing on the Races power 'is that the law would be capable of consistent application throughout the country and in relation to all people'.<sup>46</sup>

### ***Referral of powers***

4.49 Under section 51(xxxvii) of the Constitution, a state or states may refer powers to legislate on particular matters to the Commonwealth.

4.50 SACES found that a referral of powers by the States to the Commonwealth would provide 'a strong legal foundation' for the scheme, be 'highly effective in controlling legitimate supply activity', and be relatively straightforward for suppliers to comply with. The disadvantage is that a referral requires not only agreement by the States, but also ongoing support because the SACES report found that States can terminate a referral.<sup>47</sup>

4.51 Mr Brennan noted that a further disadvantage of the referral approach is that it 'slows to the pace of the slowest moving state or territory in order to achieve the overall legislative outcome that you want'.<sup>48</sup> Professor Behrendt observed that referral might be a preferred response both legally and symbolically, but notes the danger that

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45 Gilbert and Tobin Centre of Public Law, UNSW, *Submission 17*, p. 6.

46 Jumbunna Indigenous House of Learning, UTS, *Submission 14*, p. 4.

47 South Australian Centre for Economic Studies 2010, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, pp. iii, 16–17.

48 Mr Sean Brennan, Director Indigenous Legal Issues Project, Gilbert and Tobin Centre of Public Law, UNSW, *Committee Hansard*, 25 July 2012, p. 14.

governments can change during the negotiation process and that a referral could be rescinded.

## State legislation

4.52 Besides considering the Commonwealth capacity to legislate on low aromatic fuel, the SACES report also examined the potential for state legislation. Subject to the Australian Constitution, the SACES report noted that the states have the capacity to regulate the sale of petroleum products and regulate controlled substances.

4.53 However, the SACES study found that State legislation 'has more uncertain prospects of success, greater potential for delay, and greater risks of differences in the specifics of the law from jurisdiction to jurisdiction'.<sup>49</sup> In contrast, the Commonwealth has a clear capacity to legislate in this area. The SACES study concluded that leaving the regulation of this issue to the states was the least preferred option, an opinion with which Mr Brennan agreed.<sup>50</sup>

4.54 Evidence from other organisations also suggested that a comprehensive state-based approach would be much more difficult to achieve.<sup>51</sup>

### *Position of WA, SA and NT on state legislation*

4.55 The committee is aware that three jurisdictions have made statements regarding the possibility of State and Commonwealth legislation.

4.56 The previous Northern Territory Labor government made a submission to the 2009 inquiry supporting the introduction of Commonwealth legislation that would allow the prohibition of sniffable fuel 'in identified areas of geographical concern'.<sup>52</sup>

4.57 The Western Australian Minister for Mental Health, the Hon Graham Jacobs was quoted in *The Australian* on 13 August 2010 stating that Commonwealth legislation to mandate the sale of Opal was necessary to address the problem of petrol sniffing:

It's my belief that we need to have some overarching legislation. We cannot deal with this problem . . . by ad hoc state by state (laws).<sup>53</sup>

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49 South Australian Centre for Economic Studies 2010, *Cost Benefit Analysis*, p. iv.

50 Mr Sean Brennan, Director Indigenous Legal Issues Project, Gilbert and Tobin Centre of Public Law, UNSW, *Committee Hansard*, 25 July 2012, p. 14.

51 See for example Mr Michael Moore, CEO, Public Health Association of Australia, *Committee Hansard*, 24 July 2012, pp. 7–8; CAYLUS, *Submission 8*, p. 9; Warlpiri Youth Development Aboriginal Corporation, *Submission 11*, pp. 2–3.

52 Northern Territory government, *Submission 20*, Inquiry into petrol sniffing and substance abuse in central Australia, Senate Standing Committee on Community Affairs, March 2009.

4.58 The South Australian Minister for Mental Health and Substance Abuse, the Hon John Hill, praised the effectiveness of the current voluntary scheme in the APY lands, but did note that 'some retailers in the far north of South Australia, outside of the APY lands, continue to stock regular unleaded fuel'.<sup>54</sup> Minister Hill also states that the South Australian government will contribute to the FaHCSIA evaluation of the PSS and will determine its position on a potential legislative approach in light of that evaluation and the current Senate inquiry into the bill.

### *Committee view*

4.59 The committee notes the strong support for legislative action from organisations in central Australia, organisations involved in drug and health issues, and individuals from affected communities. It also notes that previous studies have identified legislative intervention as cost effective.

4.60 The committee has concerns about an act relying solely on the corporations power to implement a scheme. It is possible that this could even encourage smaller outlets to avoid incorporation in order to avoid being captured by the scheme, though it received no evidence one way or the other on this matter. The committee notes that witnesses seemed unsure of whether all existing fuel outlets were incorporated.

4.61 The use of the territories power appears prudent and would be likely to cover the main cases of non-cooperation with the scheme that have been raised to date with the committee. The use of the race power presents important policy questions. The committee accepts the valid arguments put by the Gilbert and Tobin Centre of Public Law and Jumbunna Indigenous House of Learning, but believes further consultation with Indigenous communities, particularly those outside the Northern Territory, would be necessary before also seeking to ground legislation in that power.

### **Recommendation 2**

**4.62 The committee recommends that a legislative scheme for low aromatic fuel not be confined to reliance upon the corporations power.**

### **Other aspects of the bill**

4.63 The submissions from BP Australia and Shell Australia both support the objective of the bill to reduce the potential harm to the health of people living in areas where petrol sniffing has occurred.<sup>55</sup> However, they raised some concerns.

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53 Ms Debbie Guest, 'State looks to federal solution to cut petrol-sniffing', *The Australian*, 13 August 2010, accessed 12 September 2012, <http://www.theaustralian.com.au/news/nation/state-looks-to-federal-solution-to-cut-petrol-sniffing/story-e6frg6nf-1225904664772>

54 The Hon John Hill MP, SA Minister for Mental Health and Substance Abuse, letter to the Hon Warren Snowden MP, Federal Minister for Indigenous Health, 23 August 2012, Senate Standing Committee on Community Affairs, Low Aromatic Fuel Bill 2012, Correspondence.

55 BP Australia, *Submission 15*; Shell Australia, *Submission 20*.

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### ***Mandate and consumer education***

4.64 BP Australia and Shell Australia note that the bill would essentially amount to a mandate for Opal fuel in particular areas. BP Australia and Shell Australia both 'generally oppose mandates due to the market distortions and unintended consequences' they can create, but both companies appreciate the need for governments to create appropriate policy responses to public health matters. As such, both companies are 'impartial' on the bill's policy mechanism.<sup>56</sup>

4.65 Both BP Australia and Shell Australia raise concerns about the ongoing importance of stakeholder acceptance in any future Opal rollout. BP Australia states that:

Significant time and resources are required prior to a launch of Opal fuel into a community. Objectives of this stage include gaining community support and developing technical understanding in key stakeholders.

The success of these pre-launch steps may be diminished where introduction of Opal fuel is driven by mandate rather than a whole-of-community demand and complete stakeholder acceptance.

Any decision to mandate Opal fuel will need to accommodate existing Opal rollout plans and not assume an 'immediate fix' will be in place once the Minister makes a declaration.<sup>57</sup>

4.66 Similarly, Shell Australia states that:

Mandates however do not equal consumer acceptance and regardless of the outcome of the Bill, we would certainly encourage the work by the Department of Health and Ageing to continue in rolling out plans to gain community and stakeholder acceptance of low aromatic fuels.<sup>58</sup>

4.67 In addition, both BP Australia and Shell Australia concur with other stakeholders (and with the committee) that the other aspects of the eight point plan are essential complementary aspects of a holistic approach to tackling petrol sniffing.

4.68 The bill also contains provisions whereby suppliers may be subject to certain requirements in low aromatic fuel areas and fuel control areas such as promotion and the provision of information. Shell raised concerns about the extent to which companies may be required to promote and provide information:

Shell supports the current programme conducted by the Department to work with local communities on education and acceptance of low aromatic fuel prior to roll-out. Shell does not support the proposal for companies to take on sole responsibility for consumer education. Shell sees that fuel manufacturers and suppliers are a support to the Department on technical

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56 BP Australia, *Submission 15*, p. 1; Shell Australia, *Submission 20*, pp. 1, 3.

57 BP Australia, *Submission 15*, p. 3.

58 Shell Australia, *Submission 20*, p. 1, emphasis original.

and fuel quality matters but that Government should take a leading role in consumer/community/customer education and the implementation of complementary initiatives to support health outcomes.<sup>59</sup>

4.69 The committee asked DoHA to respond to Shell's queries, including in relation to information and consumer education. The Department noted that these decisions would be a matter for consideration by government and could not comment further.<sup>60</sup>

4.70 The SACES report addressed the specific issue of prohibiting RULP as opposed to mandating low aromatic fuel. The legislative options evaluated in the SACES report did not mandate, nor contained any provision to mandate, the sale of any low aromatic product, but instead focussed on the control of aromatic fuels:

[T]he sale of Opal is not mandated, nor is there a power to mandate it or indeed to mandate the sale of any other non-aromatic product. This is because it would be an unusual intrusion on individual rights for a government to require an individual to sell petrol of any sort. Instead the decision to sell non-aromatic petrol is a commercial decision to be taken by the prospective supplier. Obviously the uptake of a non-aromatic product is likely to be boosted by controls on the sale of aromatic petrol (especially if the control is prohibition). Governments may also choose to subsidise the supply of a non-aromatic alternative.<sup>61</sup>

4.71 The committee notes that the bill contains provisions for prohibiting the sale of RULP in designated zones and controls on the storage and supply of other fuels such as PULP.<sup>62</sup> While such provisions might essentially amount to a mandate for low aromatic fuel in prescribed regions, the committee sees that the bill does not mandate the sale of low aromatic fuel. The decision to sell a low aromatic fuel would still be a commercial decision to be taken by the retailer.

4.72 The committee further notes that the bill does not use a 'blanket' approach to designating regions, but rather places the power in the hands of the Minister to determine particular regions as low aromatic or fuel control areas.<sup>63</sup>

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59 Shell Australia, submission 20, p. 2.

60 Answer to question on notice #9 from Department of Health and Ageing, received 17 September 2012.

61 South Australian Centre for Economic Studies 2010, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, p. 9.

62 Low Aromatic Fuel Bill 2012, Clause 9(1).

63 Low Aromatic Fuel Bill 2012, Clauses 14 and 15.

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### *Scope of powers to regulate fuel*

4.73 Clause 11 of the bill would allow regulation of the supply, transport, possession or storage of any fuel. Shell expressed concern about this provision:

Shell does not support the broad powers set out in Section 11 which could allow the Minister to limit supply of premium fuels. Shell would like clarity over the right for companies to maintain the overall product mix on sites, including premium fuels which have previously not been affected by the roll out of Low aromatic 91.<sup>64</sup>

4.74 The committee notes this concern, but also notes that in some locations, the supply of premium fuel is already regulated voluntarily (for example through locks on pumps), while in other locations, the availability of premium fuel has been identified as a source of problems with sniffing.<sup>65</sup>

4.75 BP Australia themselves indicated that premium fuel cannot be ignored as part of the equation, for a number of reasons:

Positive engagement of fuel distributors and retailers has been fundamental to the success of Opal implementation.

Whilst this view has developed from an environment without a mandate mechanism, a future mandate for Opal fuel may simply result in increased PULP availability.

The production of Opal fuel at BP's Kwinana Refinery in Western Australia is part of a complex supply chain that impacts the production of other liquid fuels such as premium fuels (PULP) and diesel.<sup>66</sup>

### *Committee view*

4.76 If a regulatory regime were put in place, it would not be prudent to exclude premium fuel from its scope, in certain circumstances. However, the committee does not believe a case has been made that the legislation should have the scope to apply to every fuel including, for example, diesel or gas.

### **Recommendation 3**

**4.77 The committee recommends that the government consider whether legislation should define more narrowly the fuels to which the bill would apply, but accepts that there should be capacity to regulate the management of premium fuel in some circumstances.**

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64 Shell Australia, *Submission 20*, p. [2].

65 Ms Lisa Sharman, Community Leader and Youth Worker, Titjikala, *Committee Hansard*, 24 July 2012, p. 34; Mr Tristan Ray, CAYLUS, *Committee Hansard*, 24 July 2012, p. 34.

66 BP Australia, *Submission 15*, p. [3].

### *Availability of fuel and consultation*

4.78 It remains clear that supply, storage, and distribution remain challenging aspects of the roll-out of low aromatic fuel. Some aspects, particularly the construction of new storage facilities, are discussed elsewhere in this report, in chapters 2 and 5. The committee notes that the bill would require the Minister to conduct consultations prior to designating a low aromatic fuel area or fuel control area.<sup>67</sup> It also notes that the bill states that the Minister 'must' have regard to the availability of low aromatic fuel in relation to the area<sup>68</sup> when making a decision to designate an area.

4.79 While the bill refers to 'suppliers of fuel' as being amongst those who might be consulted, the committee notes that this might not be taken to include the manufacturers or refiners of fuel. As evidence to the committee has shown, the refining and initial distribution of the fuel is a major element of the supply chain, and one which faces significant potential capacity and cost constraints.

### *Committee view*

4.80 The committee understands the purpose of the consultation provisions, and does not doubt their good intent. It recognises that section 17(1) of the Legislative Instruments Act would be likely to contribute to ensuring that manufacturers or refiners of fuel would be consulted. That section states:

(1) Before a rule-maker makes a legislative instrument, and particularly where the proposed instrument is likely to:

- (a) have a direct, or a substantial indirect, effect on business; or
- (b) restrict competition;

the rule-maker must be satisfied that any consultation that is considered by the rule-maker to be appropriate and that is reasonably practicable to undertake, has been undertaken.

4.81 It may help clarify the intention behind the bill if the Explanatory Memorandum indicated that it would be intended that all elements of the supply chain would be considered relevant to consultation when considering declaration of low aromatic fuel areas.

4.82 The committee is also unsure about how the bill would apply in the event that there was a LAF supply problem once a declaration had been made. What would be the consequences if LAF became unavailable to supply to a low aromatic fuel area? On the face of it, it is possible that such a situation would be one to which a Ministerial exemption under clause 17(1) might apply. However clause 17(1)(b) states that a Minister can only exempt corporations from the bill's provisions in a low

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67 Clause 16(1).

68 Clauses 14(3)(f) and 15(3)(f).

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aromatic fuel area or fuel control area provided that 'it is unlikely that the wellbeing of people will be adversely affected by the exemption'. Even if there was a shortage of LAF, the re-introduction of regular unleaded petrol would still be likely to 'adversely affect' the population within the meaning of the bill, so an exemption may not be able to be granted. A more likely outcome would seem to be that the minister would make a further designation effectively removing the low aromatic fuel area altogether. The committee is unsure if that is the intention behind the bill, or whether this is the best way to deal with such a scenario.

#### **Recommendation 4**

**4.83 The committee recommends that there be further examination of the wording of the explanatory memorandum, consultation and exemption clauses, to ensure that fuel manufacturers are properly included, and the bill does not have unintended consequences in the event of supply bottlenecks or disruption.**

#### **Conclusion**

4.84 On 20 July 2012 the Minister for Indigenous Health, the Hon Warren Snowdon MP, wrote to the Northern Territory Chief Minister and the premiers of Queensland, South Australia and Western Australia. He noted the current issues that the government is addressing around storage and distribution issues. He sought their views on the possibility of Commonwealth legislation to control the supply and transport of low aromatic fuel in their jurisdictions. The Minister indicated that, if appropriate, he would 'host a cross-jurisdictional forum to discuss a consistent legislative approach to petrol sniffing including low aromatic fuel'.<sup>69</sup>

4.85 The committee recognises that any legislative action to mandate the supply of low aromatic fuel needs to consider storage and supply issues, complement voluntary roll-out, and prioritise designated petrol sniffing strategy zones. Some of these issues are considered further in chapters five and six.

#### **Recommendation 5**

**4.86 The committee recommends that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of low aromatic fuel to ensure that there is agreed and coordinated action to address petrol supply.**

#### **Recommendation 6**

**4.87 In light of the preceding matters, the committee recommends that the current bill not be proceeded with.**

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<sup>69</sup> Additional information received: copies of letters from the Hon Warren Snowdon MP, Minister for Indigenous Health, to state and territory ministers dated 20 July 2012.



# Chapter 5

## Technical Issues

5.1 The manufacture, distribution and use of low aromatic fuel raises issues that, though not relevant to the construction of the bill's clauses, are relevant to how legislation could be implemented, and whether legislation is a good idea.

### Safety of Opal fuel

5.2 The issue of the safety of low aromatic fuel arose again at the hearings. The committee expressed its frustration with the fact that the same reasons for not switching to low aromatic fuel that were refuted several years ago are still being given today as a reason not to use low aromatic fuel.<sup>1</sup>

5.3 Mr Craig Catchlove provided evidence on the safety of low aromatic fuel for engines from the perspective of both his current employment at the Alice Springs Town Council and his former employment in the Central Australian Tourism Industry Association.<sup>2</sup> Mr Catchlove made the point that having an independent organisation conducting an investigation is crucial in establishing credibility for the results. The Royal Automobile Association of South Australia (RAA SA) conducted an in-depth investigation of the impact of low aromatic fuel on engines. The RAA SA attended a range of public forums to discuss their findings. It found absolutely no evidence of harm arising from the use of low aromatic fuel and that these findings were seen as credible because the organisation was perceived as authoritative and independent.<sup>3</sup>

5.4 Mr Catchlove also stated that fear about the potential impact of low aromatic fuel on engines disappeared in Alice Springs within 6 to 12 months after the introduction of Opal (which occurred in 2006) because there was no evidence for harm. It is now a non-issue in Alice Springs.<sup>4</sup>

5.5 Mr Coffey stated that in January 2006, he switched his vehicle to low aromatic fuel and it is now available on every bowser in every Ngaanyatjarra

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1 Senator Claire Moore, *Committee Hansard*, 24 June 2012, p. 15.

2 Mr Craig Catchlove, Director, Corporate and Community Services, Alice Springs Town Council, *Committee Hansard*, 24 July 2012, p. 11.

3 Mr Craig Catchlove, Director, Corporate and Community Services, Alice Springs Town Council, *Committee Hansard*, 24 July 2012, pp. 11–13.

4 Mr Craig Catchlove, Director, Corporate and Community Services, Alice Springs Town Council, *Committee Hansard*, 24 July 2012, p. 16.

community, and that in the six years since then, Mr Coffey has not received a single complaint about the quality of the fuel.<sup>5</sup>

5.6 A different perspective was presented by the Northern Territory Chamber of Commerce. Ms Kay Eade stated that with low aromatic fuel, 'most mechanics ... say, "Don't use it in your car"'. As a consequence, she believed that most businesses ended up using premium and therefore paying more for fuel.<sup>6</sup>

5.7 Evidence from one fuel retailer in remote central Australia typifies the nature of second-hand claims that the fuel may not be safe:

While your studies say that "Opal fuel" will not damage your engine, I'm not convinced, long term use may in fact have a detrimental effect on an engine, we have heard of many people in Alice Springs requiring fuel system repairs after using Opal fuel.<sup>7</sup>

5.8 The committee also received evidence suggesting that some motorists persist with the mistaken view that the fuel may present a problem for engines. Wiluna Traders, a retail outlet in South Australia, commented:

Yes the other store in Town does have Opal fuel, but because most travelling people and some locals think that Opal is inferior, we secure a lot of Unleaded sales and none of that is for Sniffers.<sup>8</sup>

5.9 Representatives of CAYLUS made two points about the view that low aromatic fuel could damage car engines. The first point was that the evidence from the Northern Territory Chamber of Commerce demonstrated that there are limits to an education campaign because there still appeared to be a widespread belief in engine damage within important sectors of the community despite evidence from motoring organisations, Alice Springs Town Council, Caltex Indervon, and Indigenous communities saying that they are unaware of a single substantiated example of engine damage from using low aromatic fuel. The second point was that the fear about the effects of low aromatic fuel upon engines is an indication of how fragile the current voluntary agreement could be.<sup>9</sup> If Wiluna Traders' competitor, for example, accepted their rival's evidence that they were gaining fuel sales because the competitor was stocking low aromatic fuel, it would be a simple business decision to decide to reject low aromatic fuel in order to regain that market share.

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5 Mr Gerard Coffey, CEO, Ngaanyatjarra Council, *Committee Hansard*, 25 June 2012, pp. 17–18.

6 Ms Kay Eade, Executive Officer, Northern Territory Chamber of Commerce, *Committee Hansard*, 25 June 2012, p. 31.

7 Mr David Cox and Mrs Melissa Cox, Mt Dare Hotel, Correspondence received 13 July 2012, Senate Standing Committee on Community Affairs, Low Aromatic Fuel Bill 2012.

8 Mr Bryce Boxall, Wiluna Traders, Correspondence received 10 September 2012, Senate Standing Committee on Community Affairs, Low Aromatic Fuel Bill 2012.

9 Mr Blair McFarland and Mr Tristan Ray, CAYLUS, *Committee Hansard*, Wednesday 25 July 2012, pp. 40–41.

5.10 In this regard, the committee was concerned to hear that there are cases in which a retailer has ceased stocking low aromatic fuel, and the government has had only limited success in addressing these incidents.<sup>10</sup> There are three sites where this remains an outstanding issue. DoHA explained what, to their knowledge, had happened in each case:

Name	Reason for moving from stocking low aromatic fuel
Marla Roadhouse, South Australia	This site received their last delivery of low aromatic fuel in December 2009. The General Manager has concerns regarding the suitability of low aromatic fuel in small engines stating that he has had to dispose of small engines in the past and believes this is a result of low aromatic fuel. The General Manager has recently agreed to a teleconference with BP Australia (BP) technical support to discuss his concerns. The Department of Health and Ageing is also working with BP to develop a small engines fact sheet in an effort to address some of the perceived issues associated with low aromatic fuel in small engines.
Kings Canyon Resort, Northern Territory	This site received their last delivery of low aromatic fuel in August 2011. The Resort Manager has concerns regarding the technical qualities of low aromatic fuel and its reliability and effectiveness. The Department arranged a teleconference between the site and BP technical support to discuss concerns. Despite this conversation the site decided to stop stocking low aromatic fuel. The Department attempted to meet with the Resort Manager in July 2012 to discuss his concerns further, however he was unavailable. The Department instead met with the Shell Australia (Shell) Regional Manager for the Northern Territory in Kings Canyon. As the Resort is a Shell branded site, the Shell representative is going to discuss the supply of low aromatic fuel further with the Resort Manager.
Jervois Roadhouse, Northern Territory	This site received their last delivery of low aromatic fuel in August 2009. This Roadhouse has decided to stock PULP.

Source: Answer to question on notice from Department of Health and Ageing, received 14 September 2012.

5.11 The committee notes that in both cases where there is a claimed reason for discontinuing the sale of fuel, it relates to its fitness for use in engines.

### **Production capacity constraints for regular low aromatic fuel**

5.12 BP Australia pointed out that the production of low aromatic fuel impacts on the production of other fuels such as PULP and diesel. In light of these considerations, BP Australia considered that:

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<sup>10</sup> Answer to question on notice #17 from Department of Health and Ageing, received 14 September 2012.

Any mandated decision to rollout Opal fuel will need to be mindful of production and supply chain constraints (which may be considerable). Increases will need to be incremental, forecast well in advance and leverage existing supply envelopes.

The Kwinana Refinery currently produces some 20 million litres per annum of Opal fuel, and could produce up to 40 million litres per annum at the current production subsidy. Production up to 100 million litres per annum is possible but would require review of the production subsidy.

5.13 The committee notes that the SACES report to government found that a legislative scheme that prohibited the retail of RULP throughout relevant areas would require the production of almost 100 million litres of low aromatic fuel per annum.<sup>11</sup> This figure represents a limit in existing infrastructure capacity. The committee accepts that there will need to be clear communication by Government regarding future production targets and subsidy levels.

### **Recommendation 7**

**5.14 The committee recommends that the Australian government conclude as soon as practical a subsidy review that covers production of up to 100 million litres per annum of low aromatic fuel**

### **Distribution, storage and current subsidy schemes**

5.15 The committee received evidence about the nature and extent of current subsidies for low aromatic fuel. Subsidies 'are paid to fuel producers to address the higher costs of production of fuel given that it is more highly refined and produced in smaller quantities'. The government also pays subsidies 'to distributors to reflect the additional costs of transporting the fuel, because the only storage places currently are in southern Australia.'<sup>12</sup>

5.16 Indervon Pty Ltd is a Caltex franchise owned by Ngaanyatjarra Council that distributes low aromatic fuel through the Northern Territory and Western Australia. Indervon's view was that a storage facility at Port Hedland would be useful for supplying communities in Western Australia.<sup>13</sup>

5.17 Indervon's business manager, Ben Clifton, noted that converting existing RULP bowsers to low aromatic fuel involved minimal cost, but that start-up costs for a new outlet were substantial. Mr Clifton estimated that a new 20,000 litre commercial

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11 South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Adelaide and Flinders Universities, January 2010, *Cost Benefit Analysis*, p. vii.

12 Ms Sue Campion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division, DoHA, *Committee Hansard*, 16 August 2012, pp. 10–11.

13 Mr Ben Clifton, Business Manager, Indervon Pty Ltd, *Committee Hansard*, 25 June 2012, p. 17.

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tank for the Tanami would cost \$150,000, with the purchase of the fuel being an additional cost.<sup>14</sup>

5.18 Tilmouth Well Roadhouse alluded to the costs of storage at retail sites:

However, with monthly fuel deliveries only, the roadhouse has limited storage capacity and fuel tanks and therefore cannot facilitate another fuel type.

We have always maintained that we would be willing to sell Opal fuel if the Government was prepared to supply and install a bowser and tank to accommodate it.<sup>15</sup>

5.19 The committee notes that the intention behind low aromatic fuel roll-out is to replace current aromatic fuel, not to be added as an additional option. Additional bowsers or tanks should not therefore be needed at existing sites.

5.20 Issues were also raised about the level of subsidy available to remote locations, particularly in Western Australia. Concern was expressed that, given the absence of a storage depot in Western Australia, the freight subsidies are not covering cost of transporting fuel to remote communities in central Western Australia and the Kimberley.<sup>16</sup>

## **Recommendation 8**

**5.21 The committee recommends that the Australian government review distribution subsidies and their calculation for remote regions, particularly in Western Australia.**

### **Commercial disadvantage**

5.22 Another reason sometimes given by retailers for not converting to low aromatic fuel is that it may put them at a commercial disadvantage. Wiluna Traders, cited above, referred to their belief that they were gaining fuel sales because a local competitor was stocking low aromatic fuel. They also expressed concern about the risks to changing, if their rivals did not:

In our discussions about changing to Opal fuel we are quite willing to change and all we asked is that the Towns around us, also only had Opal fuel. Meekatharra is our main concern and as a Business decision, after all

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14 Mr Ben Clifton, Business Manager, Indervon Pty Ltd, *Committee Hansard*, 25 June 2012, p. 19.

15 Mr Roy Chisholm, Tilmouth Roadhouse Pty Ltd, Correspondence received 18 July 2012, Senate Standing Committee on Community Affairs, Low Aromatic Fuel Bill 2012.

16 Mr Ben Clifton, Business Manager, Indervon Pty Ltd, *Committee Hansard*, 25 June 2012, p. 17.

1/3 of our Aboriginal population either live or go there every week to purchase Alcohol or food or do Banking business & possibly get Fuel.<sup>17</sup>

5.23 Mr Catchlove made the point that to the best of his knowledge, no fuel retailer had suffered any commercial loss as a result of the switch to Opal fuel within Alice Springs.<sup>18</sup> The committee notes that the situation in Alice Springs demonstrates that no commercial disadvantage is incurred when a whole community or region switches to Opal. The committee acknowledges that the Commonwealth rollout of Opal is being done on a regional basis.

### **Concerns about substitution by sniffers**

5.24 Ms Eade said that members of the business community were hesitant about the bill because they had concerns that if RULP was prohibited, sniffers would simply substitute RULP with other volatile substances.<sup>19</sup>

5.25 Dr Boffa, accepted that some level of substitution occurs. However, he noted that organisations such as CAYLUS had a positive impact on reducing the substitution of deodorants and paints.<sup>20</sup> Furthermore, Dr Boffa pointed out that even if some substitution does occur, the effects of other volatile substances are much less harmful than petrol:

Substitution will happen. The point I was making before is that I would not want government or anyone to think that, because substitution could happen, it is not worth mandating Opal, because it clearly is. Even without CAYLUS addressing substitution, and even if some of these young people went from petrol to paint or other things, it is nowhere near as harmful.<sup>21</sup>

### **Premium low aromatic fuel**

5.26 Some retail outlets that were mentioned during the course of the inquiry stock premium unleaded petrol (PULP) either in addition to RULP, or as the only fuel they keep onsite. Like RULP, PULP is sniffable. However, unlike RULP, it cannot be substituted using existing low aromatic fuel.

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17 Mr Bryce Boxall, Wiluna Traders, Correspondence received 10 September 2012, Senate Standing Committee on Community Affairs, Low Aromatic Fuel Bill 2012.

18 Mr Craig Catchlove, Director, Corporate and Community Services, Alice Springs Town Council, *Committee Hansard*, 24 July 2012, p. 16.

19 Ms Kay Eade, Executive Officer, Northern Territory Chamber of Commerce, *Committee Hansard*, 25 June 2012, p. 31.

20 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, pp. 26, 29.

21 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 31.

5.27 The general view heard by the committee is that sniffing of PULP is not a significant problem. This is at least in part because the overwhelming majority of vehicles used in central Australia run on either regular fuel or diesel, rather than PULP:

I think another factor there is that, to date, there have not been substantial issues with sniffing premium because, largely, people who sniff petrol are not buying it—they are stealing it; and because, largely, the cars that are around them are cars that use standard unleaded.<sup>22</sup>

5.28 The committee is aware of some evidence that RULP fuel consumption may be on the decline in general, in favour of PULP or diesel. Ben Clifton commented on what he was hearing in industry circles:

Unleaded is on the decline in general in the rest of the country and it is all heading towards premium fuels. A lot of that has got to do with the car manufacturers saying, 'You can only put premium 95 or premium 98 in our car,' let alone Opal being not up to the specification but regular unleaded. The biggest emerging market in the next 10 to 15 years is biofuels. If anything was to come out of this BP would look to make a bio-blended low aromatic fuel. It seems regular unleaded is on the decline, as are unleaded car sales on the decline. It has been documented that diesel has taken over as the preferred choice of vehicle based around fuel economy.<sup>23</sup>

5.29 The committee asked DoHA about trends in the use of the fuel production subsidy. Noting a small decline in the number of litres for which a subsidy has been claimed, the Department commented:

The fuel industry has reported that in recent years there is a national trend towards the use of diesel and premium fuels rather than the 91 octane unleaded grade of petrol. In addition, the Department of Health and Ageing is also aware that anecdotally there has been a decrease in self-drive tourism which may also affect demand for Opal fuel.<sup>24</sup>

5.30 CAYLUS representatives indicated that they are aware that the rise of premium fuel could present an issue in future, though it is not yet doing so:

[A]s forecast, there is that discussion about there being less use of standard unleaded down the track. We have not yet seen any evidence of that and, as mentioned, we tend to focus our efforts on where the sniffing is now. Should that start to rear its head—and it sounds like it will, down the track—accepting that there may never be an Opal premium and we have this window of time where all the cars around that generation are standard unleaded cars, to us that is all the more reason we cannot spend five

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22 Mr Tristan Ray, CAYLUS, *Committee Hansard*, Wednesday 25 July 2012, p. 44.

23 Mr Ben Clifton, Business Manager, Indervon Pty Ltd, *Committee Hansard*, 25 June 2012, p. 19.

24 Answer to question on notice #3 from Department of Health and Ageing, received 17 September 2012.

years—or 30 years, as someone mentioned yesterday—or even two negotiating this. We need to do this in a hurry and grab this window of opportunity, and we think mandating legislation is going to give us the best chance of grabbing the window.<sup>25</sup>

5.31 In some locations, premium fuel is managed through locking of the bowsers, so that motorists have to get a key, to ensure it is being used only in car fuel tanks.<sup>26</sup> The committee understands that a low aromatic fuel of equivalent octane to PULP already exists, though not for use in cars; it has no information on the costs or other factors involved.

### *Committee view*

5.32 The committee was disappointed at the persistence of misinformation about the performance of low aromatic fuel in engines. It remains the case that no first-hand evidence has been provided of engine damage or failure that can be attributed to the use of this fuel, rather than to other factors such as fuel contamination, vehicle age and unrelated mechanical failures.

5.33 The persistence of such myths indicates that there may be limits to what can be achieved through education and awareness campaigns. It also suggests that the voluntary roll-out of low aromatic fuel may never be fully complete: there may always be a number of stakeholders who, for whatever reason, decline to stock the product even if its safety can be assured, and no economic disadvantage to the retailer arises from its adoption.

5.34 Given that certain retailers have consistently opposed Opal, and that potential commercial disadvantage has been one of the reasons cited for opposing Opal, the committee considers that an approach based on the declaration of low aromatic fuel regions, as envisaged in the bill, may be the best way to ensure consistency of supply within the market for regular fuel and thereby prevent any potential commercial disadvantage.

5.35 More generally, the evidence received by the committee endorses a regional approach to roll-out, attempting to ensure all retail outlets in an area switch over to the new fuel. The bill is not necessary in order to adopt the regional approach. On the contrary, that has been the tactic for the voluntary program, and as chapter three showed, it has achieved considerable success. The bill would however make it easier to ensure regional adoption of low aromatic fuel in those known cases where individual outlets refuse to cooperate in the longer term.

5.36 RULP still accounts for the majority of the petrol market in remote regions of Australia. However, the increase in the numbers of cars that require premium fuel

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25 Mr Tristan Ray, CAYLUS, *Committee Hansard*, Wednesday 25 July 2012, p. 44.

26 Answer to question on notice from Voyages Indigenous Tourism Australia, received 25 July 2012; *Committee Hansard*, 25 June 2012, p. 43.

means that the current opportunity to tackle petrol sniffing based primarily on substituting Opal for RULP and having some restrictions on the sale of PULP may change if the current growth in premium fuel use continues.

5.37 If the complete substitution of RULP with low aromatic fuel in affected areas does not take place soon, governments risk firstly allowing the petrol sniffing culture to persist, and secondly, being faced with a larger problem in the foreseeable future when low aromatic alternatives to premium fuel might need to be developed in order to try and contain the problem of petrol sniffing.

5.38 Proceeding with a legislative approach would, as the report to government by SACES pointed out, provide significant benefits including reduced harm to individuals, families and communities, lower health costs and increased productivity, over and above the costs of implementing the legislation. If the use of premium fuel increases significantly in affected communities, the cost and complexity of the policy could increase. For this reason, the committee believes that timing is critical and that an opportunity to finish the job should be grasped.



## Chapter 6

### A holistic approach to petrol sniffing

6.1 Both previous reports by the Community Affairs committee have emphasised the importance of a holistic approach to petrol sniffing that includes a comprehensive low aromatic fuel strategy, the sustained commitment to, and funding of, a range of community-based diversionary and development programs in Indigenous communities, effective policing strategies, and complementary health care strategies.

6.2 Concerns were raised by Mr Brian Gleeson about whether the current bill is a stand-alone measure or part of a 'multi-faceted approach to addressing petrol sniffing'. Mr Gleeson stated 'that effective efforts to address substance abuse must deal with both supply and demand issues with a heavy focus on investing in preventative measures'.<sup>1</sup>

6.3 The committee acknowledges that Senator Siewert has said that the bill needs to be part of a suite of measures, and that her second reading speech stated that low aromatic fuel is:

a vital element of a broader strategy — a comprehensive response which addresses the underlying causes of petrol sniffing, including a combination of supply, demand and harm minimisation measures. Such a response must include community management plans; youth services; effective and culturally sensitive policing; treatment and rehab services and information services. Many of these components already exist and are quite successful — but the missing piece of the puzzle is the power to regulate fuel.<sup>2</sup>

6.4 The committee notes below some of the elements of a comprehensive approach that were presented in evidence at the hearings into the bill, as well as some of the concerns that were raised about these complementary strategies.

#### *Complementary health care strategies*

##### *Early childhood development programs*

6.5 The nature of early childhood development was raised as a crucial indicator of future susceptibility to addiction in teenage children. Dr Boffa noted that several major studies have linked addiction, mental health problems and chronic disease to adverse outcomes in early childhood, particularly up to the age of three.<sup>3</sup>

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1 Mr Brian Gleeson, Office of the Coordinator General for Remote Indigenous Services, *Submission 3*.

2 Senator Rachel Siewert, Low Aromatic Fuel Bill 2012, Second Reading Speech, *Senate Hansard*, 1 March 2012, p. 1363.

3 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 27.

6.6 Dr Boffa said that good support programs for parents with young children 'can make a big difference even in quite alienating, adverse social environments', but these programs are 'not being implemented'. Yet, according to Dr Boffa, the implementation of early childhood support programs now could help prevent a generation of young people susceptible to addiction in a decade.<sup>4</sup>

#### *Primary healthcare addiction services*

6.7 Concerns were raised by Ms Ah Chee and Dr Boffa about the fragmentation of primary healthcare service delivery with respect to substance abuse. Dr Boffa said that the current level of funding was not necessarily the issue, but suggested instead that the problem lay with securing agreement on a service model that incorporated a permanent addiction service within each primary healthcare service:

We think the treatment of addictions needs to be a core part of primary healthcare service delivery across the board. Every health service has to have the capacity to treat young people and adults that are addicted to any substance. And it is the same treatment approach. Irrespective of the substance, it is those three streams of care that Donna [Ah Chee] mentioned earlier. Pharmacotherapies, psychotherapy—often cognitive behaviour therapy—and social support and advocacy are what you need to do, whether the addiction is paint, petrol, alcohol or marijuana, and I do not think we are very good at that. We fund separate programs for each drug, and then, even within those separate programs, the doctor is sitting over here in the clinic, there are other staff over there dealing with petrol and there are a few other people coming in to deal with some other drug. There are multiple providers, and it is a privatised mess.

The money is there to do much, much better. If we funded according to need and we agreed on a service model, there is enough money now in the Northern Territory to make sure that every primary healthcare service has a permanent addiction service, and it is one of our bugbears that it has taken so long.<sup>5</sup>

#### *Drug and Alcohol programs*

6.8 Ongoing funding for effective complementary healthcare programs means that experienced people and programs are already on the ground ready to respond quickly when outbreaks of petrol sniffing occur, thereby minimising the scale of the sniffing outbreak.<sup>6</sup> *Makin' Tracks* run by the National Indigenous Drug and Alcohol Committee (NIDAC) was a mobile drug and alcohol program that covered a large area of South, Central and Western Australia with a particular focus on rural and remote

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4 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 27.

5 Dr John Boffa, Public Health Medical Officer, Central Australian Aboriginal Congress, *Committee Hansard*, 24 July 2012, p. 31.

6 Mr Scott Wilson, Co-deputy Chair, National Indigenous Drug and Alcohol Committee, *Committee Hansard*, 16 August 2012, p. 2.

communities. *Makin' Tracks* ran from 1999 until 30 June 2012 and employed two 'highly skilled Aboriginal drug and alcohol workers' that both had a masters in Indigenous health. However, NIDAC had to terminate both workers because they did not succeed in the latest funding round.<sup>7</sup>

### *Mental health funding*

6.9 Dr Brett Cowling noted several challenges relating to primary health care in the Ngaanyatjarra lands including the geographical size of the area and its remoteness, the absence of tri-state agreements to deal with large patient flows from WA to the NT, and the paucity of funding for mental health support and suicide prevention.<sup>8</sup>

6.10 Dr Cowling confirmed the evidence received from other groups such as NPY Women's Council that the majority of mental health clients in the Ngaanyatjarra lands would have had contact with some form of volatile substance.<sup>9</sup>

### *Case management*

6.11 Dedicated resources for youth case management and family engagement that target the core issues underlying petrol sniffing are an important complement to the low aromatic fuel strategy. Ms Williamson expressed the view that intensive work with an identified core group is an ideal addition to youth diversionary activities.<sup>10</sup> However, funding provision varies and case management is funded in the NT and SA, but not in WA.<sup>11</sup>

### *Youth programs*

6.12 Youth diversionary programs based on sport and recreation and arts programs are available in the NT, SA and WA. Funding for the programs in the different states and territories comes from different bodies including DoHA, the AGD, and FaHCSIA.<sup>12</sup>

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7 Mr Scott Wilson, Co-deputy Chair, National Indigenous Drug and Alcohol Committee, *Committee Hansard*, 16 August 2012, p. 3.

8 Dr Brett Cowling, CEO, Ngaanyatjarra Health Service, *Committee Hansard*, 25 July 2012, p. 23.

9 Dr Brett Cowling, CEO, Ngaanyatjarra Health Service, *Committee Hansard*, 25 July 2012, p. 24.

10 Ms Christine Williamson, Manager, Youth program, NPY Women's Council, *Committee Hansard*, 25 July, pp. 2–3.

11 Ms Christine Williamson, Manager, Youth program, NPY Women's Council, *Committee Hansard*, 25 July, p. 2; Dr Brett Cowling, CEO, Ngaanyatjarra Health Service, *Committee Hansard*, 25 July 2012, p. 24.

12 Ms Christine Williamson, Manager, Youth program, NPY Women's Council, *Committee Hansard*, 25 July, p. 2.

6.13 Outbreaks of petrol sniffing were said to be more likely to occur in communities with low levels of youth support and services.<sup>13</sup> Short-term funding from the AGD currently allows CAYLUS to coordinate the provision of a youth worker as an emergency response to a petrol sniffing outbreak.<sup>14</sup>

6.14 Having a team of local Indigenous youth workers in each community is a good long term goal. This has occurred at Mount Theo over a long period of time, while at Titjikala Ms Lisa Sharman has recently become a youth team leader after five years as a youth worker. There are distinct advantages to having a team, particularly one that includes some members from outside the community, because a team can operate more effectively across a number of families and across various cultural protocols.<sup>15</sup>

6.15 The Youth in Communities funding provided by FaHCSIA does not cover a number of regions in the Central Desert and Barkly Shires. Mr McFarland noted that there seems to be a disconnect between the 'commitment to youth service provision and the petrol sniffing strategies zone', and that perhaps the zoning concept needed revisiting if it imposed limits on which Shires could gain access to youth services.<sup>16</sup>

### ***Partnerships between stakeholders***

6.16 Mr Scott Wilson noted the importance of cooperation between the Commonwealth and states because of the differences in responsibilities. He pointed out, however, that the states have responsibility for the delivery of many programs and services, and emphasised the importance of developing good stakeholder partnerships on the ground and that NIDAC would 'encourage working partnerships between community based patrols, law enforcement, and drug and alcohol treatment services' across all jurisdictions.<sup>17</sup>

## **Senator Claire Moore**

### **Chair**

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13 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 45; Mr Scott Wilson, Co-deputy Chair, National Indigenous Drug and Alcohol Committee, *Committee Hansard*, 16 August 2012, p. 4.

14 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 45.

15 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 46.

16 Mr Blair McFarland, CAYLUS, *Committee Hansard*, 24 July 2012, p. 47.

17 Mr Scott Wilson, Co-deputy Chair, National Indigenous Drug and Alcohol Committee, *Committee Hansard*, 16 August 2012, p. 5.

# **Australian Greens**

## **Minority report**

### **Background**

The Australian Greens introduced the Low Aromatic Fuel Bill because petrol sniffing is a serious health and community issue that requires action. For many years now, the main strategy has been to ask retailers to voluntarily replace regular unleaded petrol with low aromatic fuel in affected communities. This voluntary roll-out of low aromatic fuel has been very successful in many areas. As the committee notes in chapter three of its report, the many stakeholders who have cooperated in this achievement are to be congratulated.

However, it has been known for many years that the approach is failing in some areas. The Senate Community Affairs committee in 2009 recognised the need for a legislative response to target areas where the voluntary roll-out had not succeeded in preventing access to sniffable petrol.

At that time, the committee noted that some retailers were resisting the sale of low aromatic fuel. The committee's unanimous report stated:

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.

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.

Six months passed and nothing was done. It is now over three years since that report, and petrol sniffing continues to plague some communities, while others have been freed of this scourge. The Australian Greens have introduced the current bill because the government failed to act on the committee's 2009 unanimous recommendation.

### **Constitutional powers**

There are several constitutional powers upon which legislation to extend the availability of low aromatic fuel could rely. The committee's report draws on submissions by two Sydney-based organisations with legal expertise, the Gilbert + Tobin Centre of Public Law and Jumbunna Indigenous House of Learning, that recommend that the powers upon which the bill draws should be broadened to include the territories power and the races power.

The Australian Greens understand the desire to ensure that the legislation is as comprehensive in scope as possible.

Nevertheless, both the territories and races powers are ones which the Australian Greens believe are ones that should be approached with caution, and used only when clearly necessary. We have regularly opposed the use of the territories power to impose top-down solutions on unwilling communities. The Australian Greens would want to consult with legal advisors and community representatives from affected areas in the Northern Territory and elsewhere, on their views about relying on other constitutional powers.

We also note that some complications may arise from the reliance on broader constitutional powers. Mr Brennan from the Gilbert + Tobin Centre of Public Law supported reliance on other powers, but nevertheless commented:

How far does the Parliament wish to go in regulating people or entities other than a trading corporation? I submit that the Bill would move well beyond its present design if it was extended, for example, to ‘persons’ and made referable to the Territories power and the races power. My understanding of the purpose of legislating in relation to LAF is to discourage retail fuel suppliers from resisting or subverting the rollout, based on evidence that a small number of suppliers have not responded positively to non-legislative encouragement. However, it is a very different thing to legislate generally for the criminalisation of conduct by individuals in relation to fuel, an area which is in any case, I understand, already regulated by legislation at the State and Territory level. In my submission it also complicates the issues surrounding reliance on the races power as well as raising questions about effectiveness, community acceptance and viable enforcement.

For those reasons, I recommend that if the constitutional basis to the Bill is extended to incorporate reliance on the Territories power and the races power, the targets for legal regulation be confined to a commercial, business or retail setting...

This approach may entail attention to the definition of ‘supply’ so as to confine it to a commercial supplier. Alternatively or in addition it may require careful wording of the entities referred to in the counterpart provisions to ss 8, 10 and 12 proposed above.<sup>1</sup>

The Australian Greens are willing to consider these issues. We note however that there was no definitive evidence received to indicate that either distributors, or retail outlets refusing to stock low aromatic fuel, were not corporations within the meaning of the bill. Thus we believe that the bill, as presently drafted, could be used to address known cases of the refusal of retailers to stock low aromatic fuel.

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1 *Submission 17*, p. 7.

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## **Other concerns with the drafting of the bill**

The committee makes two further recommendations:

that the government consider whether legislation should define more narrowly the fuels to which the bill would apply, but accepts that there should be capacity to regulate the management of premium fuel in some circumstances

And:

that there be further examination of the wording of the explanatory memorandum, consultation and exemption clauses, to ensure that fuel manufacturers are properly included, and the bill does not have unintended consequences in the event of supply bottlenecks or disruption.

The Australian Greens would support consideration of amendments to either bill or explanatory memorandum to address these recommendations. In particular, we would want to ensure that manufacturers are fully included in consultation processes. BP Australia, as manufacturer of low aromatic fuel, has been a significant player in the success of this initiative. We acknowledge their vital role, and would want to ensure their future engagement in actions targeting petrol sniffing.

### **'Continuing to consult' or a lack of commitment?**

The fifth recommendation of the current report is

that the Australian Government continue to consult with the relevant state and territory governments on the possibility of national legislation to mandate the supply of low aromatic fuel to ensure that there is agreed and coordinated action to address petrol supply.

The Australian Greens note that formal consultation with state and territory governments on the possibility of national legislation did not commence until months after the bill was introduced into the Senate, and only days before the committee conducted its hearings in Alice Springs. This does not reflect 'continued consultations': it is a late and begrudging decision to commence them.

Having started late, the Commonwealth has also apparently pre-judged some of the issues. Minister Snowden, in his letter to relevant state and territory ministers, stated: 'It is difficult to understand how Commonwealth legislation will have a greater impact than local state or territory legislation'.<sup>2</sup> The Australian Greens are unaware of any substantial evidence, either before the current inquiry or elsewhere, to support this perception. It also ignores the fact that community representatives, who the Minister says he wants to see 'acting together against petrol sniffing', are often the same people supporting a national legislative response.

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2 Additional information received: copies of letters from the Hon Warren Snowden MP, Minister for Indigenous Health, to state and territory ministers dated 20 July 2012.

Furthermore, the bill recognises the importance of community engagement. The bill states that, in determining whether to designate a low aromatic fuel area, the Minister *must* have regard to 'whether people living in the area have expressed their concerns about sniffing fuel' and whether they 'have expressed the view that their wellbeing will be improved if the area is designated as a low aromatic fuel area'.<sup>3</sup>

The current government appears to lack a proper sense of urgency around petrol sniffing:

- It has been known for some time that there is a potential fuel supply bottleneck that could affect the roll-out. However, it now appears that a new distribution facility in the Northern Territory will not be ready until mid-2013.
- The government has commissioned two evaluations relevant to the roll-out, with the main one being conducted over a time-frame in excess of three years. Furthermore, it was nearly a year after the Senate committee's 2009 report was tabled before that evaluation contract was even commenced.
- When the committee became aware that there was data being gathered by the Northern Territory about sniffing, but that the data was not being shared, it pursued this with the government, as the committee's report notes in chapter two.<sup>4</sup> Incredibly, as of 18 September this year, the matter had still not been resolved.<sup>5</sup>

The government appears to be dragging its heels on both legislation and evaluation.

## Conclusion

The bill introduced by the Australian Greens does not in itself cause anything to take place. It is enabling legislation. It gives the government the capacity, within a specified consultation framework, to resolve issues that are hampering the prevention of petrol sniffing.

The committee's report states that 'any legislative action to mandate the supply of low aromatic fuel needs to consider storage and supply issues, complement voluntary roll-out, and prioritise designated petrol sniffing strategy zones'. The Australian Greens do not understand how these points are relevant to the recommendation that the bill not be passed:

- This bill *does* consider storage and supply issues: it requires the minister to consult on these matters, explicitly setting as one of the criteria: 'the availability of low aromatic fuel in relation to the area'.

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3 Clause 14(3).

4 See also *Proof Committee Hansard*, 16 August 2012, p. 23.

5 Answer to question on notice #7 from FAHCSIA, received 18 September 2012.

- This bill *does* complement voluntary roll-out. Where voluntary roll-out is succeeding, no action need be taken under the bill, and the voluntary scheme could remain in place.
- This bill *can* prioritise petrol sniffing strategy zones. The Minister, in consultation with the communities and other stakeholders affected by the legislation, determines what areas might be declared under the bill. These could well be the current strategy zones.

In short, on the very criteria that the committee identify in the report, the bill can and should proceed.

### **Recommendation 1**

**Subject to consideration of the issues identified in recommendations 1 to 4 in the committee's report, the bill should proceed.**

**Senator Rachel Siewert**

**Western Australia**



# **APPENDIX 1**

## **Submissions and Additional Information received by the Committee**

- 1** Mr Andrew Stojanovski
- 2** National Indigenous Drug and Alcohol Committee
- 3** Office of the Coordinator General for Remote Indigenous Services
- 4** Public Health Association of Australia (PHAA)
- 5** Aboriginal Peak Organisations Northern Territory
- 6** Office of The Children's Commissioner Northern Territory
- 7** NPY Women's Council
- 8** Central Australian Youth Link Up Service
- 9** Barkly Shire Council
- 10** Central Land Council
- 11** Warlpiri Youth Development Aboriginal Corporation (WYDAC)
- 12** Mr Trevor Edmond
- 13** Local Government Association of the NT
- 14** Jumbunna Indigenous House of Learning
- 15** BP Australia Pty Ltd
- 16** National Aboriginal Community Controlled Health Organisation (NACCHO)
- 17** Gilbert + Tobin Centre of Public Law
- 18** Alcohol and other Drugs Council of Australia
- 19** Australian Government
- 20** Shell Australia Limited

**Additional Information Received**

- 1 Copies of letters from the Hon Warren Snowdon MP, Minister for Indigenous Health, to State and Territory Ministers dated 20 July 2012
- 2 Additional Information from Warlpiri Youth Development Aboriginal Corporation, received 29 July 2012
- 3 Tabled document from Mr David Hewitt, at Alice Springs public hearing 24 July 2012
- 4 Tabled document from Central Australian Youth Link Up Service (CAYLUS), at Alice Springs public hearing 24 July 2012
- 5 Tabled document from Central Australian Youth Link Up Service (CAYLUS), at Alice Springs public hearing 24 July 2012
- 6 Tabled document from Department of Families, Housing, Community Services and Indigenous Affairs, at Canberra public hearing 16 August 2012
- 7 Correction from the Department of Health and Ageing to evidence given at Canberra public hearing 16 August 2012

**Correspondence**

- 1 Correspondence from Warlpiri Youth Development Aboriginal Corporation (WYDAC), received 10 July 2012
- 2 Correspondence from Mt Dare Hotel, received 13 July 2012
- 3 Correspondence from Tilmouth Roadhouse Pty Ltd, received 18 July 2012
- 4 Correspondence from Wycliffe Well Holiday Park, received 18 July 2012
- 5 Correspondence from South Australian Minister for Mental Health and Substance Abuse, John Hill, received 27 August 2012
- 6 Correspondence from Wiluna Traders, received 10 September 2012

**Answers to Questions on Notice**

- 1** Answer to question on notice from Voyages Indigenous Tourism Australia, received 25 July 2012
- 2** Answers to questions on notice from the Department of Education, Employment and Workplace Relations, received 10 September 2012
- 3** Answers to questions on notice from the Attorney-General's Department, received 10 September 2012
- 4** Answers to questions on notice numbers 4,5,6,8,10,13,14,18,19,20,23,24,25, 27,29 from the Department of Health and Ageing, received 13 September 2012
- 5** Answers to questions on notice numbers 17 and 30 from the Department of Health and Ageing, received 14 September 2012
- 6** Answers to questions on notice numbers 1,2,3,9,11,12,15,21,22,26,28 from the Department of Health and Ageing, received 17 September 2012
- 7** Answers to questions on notice from Department of Families, Housing, Community Services & Indigenous Affairs, received 18 September 2012
- 8** Answers to questions on notice number 16 from the Department of Health and Ageing, received 19 September 2012
- 9** Answer to question on notice number 7 from the Department of Health and Ageing, received 25 September 2012



# **APPENDIX 2**

## **Public Hearings**

*Tuesday, 24 July 2012*

*Chifley Resort, Gumtree Room, Alice Springs*

### **Witnesses**

#### **Alice Springs Town Council**

Mr Craig Catchlove, Director, Corporate and Community Services

#### **Mr Willie Bookie, Lake Nash, Private capacity**

#### **Central Australian Aboriginal Congress**

Ms Donna Ah Chee, Acting Chief Executive Officer

Dr John Boffa, Public Health Medical Officer

#### **Central Australian Youth Link Up Service**

Mr Blair McFarland

Mr Tristan Ray, Policy Project Manager

#### **Mr David Hewitt, Private capacity**

#### **Mrs Margaret Hewitt, Private capacity**

#### **Lake Nash Night Patrol**

Mr George Anderson

Mr James Billy

#### **Papunya**

Mr Lance McDonald

#### **Public Health Association of Australia Inc.**

Adjunct Professor Michael Moore, Chief Executive Officer

#### **Titjikala**

Ms Lisa Sharman, Community Leader and Youth Worker

Mr Terry Simmons

**Warlpiri Youth Development Aboriginal Corporation**

Ms Susie Low, Chief Executive Officer

Mr Eddie Robertson, Chairperson

Mrs Lottie Robertson, Chairperson

*Wednesday, 25 July 2012*

*Chifley Resort, Gumtree Room, Alice Springs*

**Witnesses**

**Central Australian Youth Link Up Service**

Mr Blair McFarland

Mr Tristan Ray, Policy Project Manager

**Chamber of Commerce NT**

Ms Kay Eade, Executive Officer

**Gilbert and Tobin Centre of Public Law**

Mr Sean Brennan, Director Indigenous Legal Issues Project

**Mrs Nerida Giles, Private capacity**

**Indervon Pty Ltd**

Mr Benjamin Clifton, Business Manager

**Ngaanyatjarra Council**

Mr Gerard Coffey, Coordinator

**Ngaanyatjarra Health Service**

Dr Brett Cowling, Chief Executive Officer

**NPY Women's Council**

Ms Liza Balmer, Deputy Co-ordinator

Ms Christine Williamson, Manager, Youth Program

**Officer of the Northern Territory Children's Commissioner**

Dr Howard Bath, Children's Commissioner

*Thursday, 16 August 2012*

*Parliament House, Canberra*

**Witnesses**

**Attorney-General's Department**

Mr Daniel Abraham, Acting Assistant Secretary, Indigenous Policy and Service Delivery Branch

Mr Kym Duggan, First Assistant Secretary, Social Inclusion Division

**Department of Families, Housing, Community Services and Indigenous Affairs**

Ms Caroline Edwards, Group Manager, Strategic Priorities and Land Group

Mr Robert Ryan, Branch Manager, Remote Priorities Branch, Strategic Priorities and Land Group

**Department of Health and Ageing**

Ms Sue Champion, Acting First Assistant Secretary, Mental Health and Drug Treatment Division

Ms Julie Mansour, Director, Mental Health and Drug Treatment Division

Mr John Shevlin, Assistant Secretary, Mental Health and Drug Treatment Division

**Department of Education Employment and Workplace Relations**

Ms Joanne Skinner, Acting Branch Manager, Youth and Inclusive Education Group

**National Drug and Alcohol Committee**

Mrs Denise Gilchrist, Manager

Mr Scott Wilson, Co-deputy chair



## APPENDIX 3

### Analysis Regions and Key Towns

Region	Key Towns
Gulf (Qld)	Aurukun, Doomadgee, Mornington Island, Mount Isa.
East Arnhem (NT)	Groote Eylandt, Milingimbi Island, Nhulunbuy.
Jabiru and Katherine (NT)	Jabiru, Katherine, Maningrida, Wadeye.
Darwin (NT)	Adelaide River, Darwin, Howard Springs.
Kimberley (WA)	Balgo, Broome, Halls Creek, Mulan.
Tennant Creek (NT)	Tennant Creek, Barkly Homestead, Wauchope.
Northern Central Australia including Alice Springs (NT)	Alice Springs, Ross River, Ti Tree, Tilmouth Well.
Western Central Australia (NT)	Hermannsburg, Kintore, Rabbit Flat.
Southern Central Australia (NT)	Docker River, Finke, Titjikala.
Anangu Pitjantjatjara and surrounds (SA)	Cooper Pedy, Marla, Mintabie.
Ngaanyatjarra Lands (WA)	Cosmo Newbery, Laverton, Warburton.
Great Australian Bight (SA/WA)	Kalgoorlie, Nundroo, Yalata.

Source: The South Australian Centre for Economic Studies, *Cost Benefit Analysis of Legislation to Mandate the Supply of Opal Fuel in Regions of Australia*, Report commissioned by the Australian Government Department of Health and Ageing, Adelaide and Flinders Universities, January 2010, p. viii, Table 1.