SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SIXTEENTH REPORT

OF

2000

8 November 2000

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MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

(1)

(a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The Committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTEENTH REPORT OF 2000

The Committee presents its Sixteenth Report of 2000 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Broadcasting Services Amendment Bill (No. 4) 1999
(new citation: Broadcasting Services Amendment Bill 2000)

Fuel Quality Standards Bill 2000

Broadcasting Services Amendment Bill (No. 4) 1999
(New Citation: Broadcasting Services Amendment Bill 2000)

Introduction

The Committee dealt with this bill in *Alert Digest No 1 of 2000*, in which it made various comments. The Minister for Communications, Information Technology and the Arts has responded to those comments in a letter dated 3 May 2000. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 1 of 2000

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the following Acts:

Broadcasting Services Act 1992 to provide a scheme for the regulation of international broadcasting services transmitted from Australia which requires the Minister for Foreign Affairs to make a national interest assessment of whether a service is likely to be contrary to the national interest;

Administrative Decisions (Judicial Review) Act 1977 to provide that decisions of the Minister for Foreign Affairs in relation to the proposed international broadcasting scheme are not subject to a requirement under the Act to provide a statement of reasons; and

Radiocommunications Act 1992 to provide that only persons who have an international broadcasting licence allocated by the ABA under the Broadcasting Act may be issued with a transmitter licence authorising operation of a transmitter for transmitting an international broadcasting service by the Australian Communications Authority.

No reasons for decision
Schedule 1, Part 1, Item 1

Schedule 1 to this bill is apparently identical to Schedule 3 to the Broadcasting Services Amendment Bill (No 3) 1999, considered above.

This Schedule also contains a scheme for the regulation of international broadcasting services transmitted from Australia. The Scheme enables the Minister for Foreign Affairs to refuse an application for a licence, or to warn a licence-holder, or to suspend or cancel a licence, where an international broadcasting service, or proposed service, is seen as contrary to Australia's national interest.

Item 1 of Part 1 of Schedule 1 to this bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* so that these decisions are not subject to the requirement in that Act that a statement of reasons be provided. The Explanatory Memorandum again observes that "the nature of these decisions is such that exposure of the reasons for the decisions could itself be contrary to Australia's national interest".

As noted above, the Committee is concerned at the apparent finality of such decisions. If there is no obligation to provide reasons under the *Administrative Decisions (Judicial Review) Act 1977*, it is not clear what other rights of review or appeal (if any) are available to licensees where the Minister makes such a decision.

The Committee notes that under proposed subsection 121FL(6), a licensee must be given a reasonable opportunity to send a submission to the ABA where a licence is cancelled, and the ABA must forward this submission to the Minister, but there seems to be no obligation on the Minister to actually consider the submission, and no similar procedure for making a submission where a licence is suspended rather than cancelled.

Where a licence is refused, suspended or cancelled, it is also not clear whether there is any right of appeal to the courts, and whether any such right of appeal extends to a consideration of the merits of the Minister's decision. The Committee, therefore, **seeks the Minister's advice** as to these matters.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Committee's Alert Digest 1/00 commented on the Broadcasting Services Amendment Bill (No.3) 1999 and Broadcasting Services Amendment Bill (No.4) 1999 (BSAB 4). In the second reading debate on Broadcasting Services Amendment Bill (No.3) 1999 in the House of Representatives on 7 December 1999, the Government moved an amendment to the Bill to remove Schedule 3 - International Broadcasting Services from the Bill. On 9 December 1999 the Government introduced BSAB 4 into the House. BSAB 4 contains the proposed amendments to the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* and the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) in relation to international broadcasting services.

The Committee has noted its concern about the apparent finality of decisions of the Minister for Foreign Affairs under the proposed new Part 8B of the BSA, the licensing regime for international broadcasting services. Under proposed new Part 8B of the BSA the Minister may direct the Australian Broadcasting Authority (ABA):

(a) not to allocate an international broadcasting licence to an applicant if the Minister for Foreign Affairs is of the opinion that the proposed service is likely to be contrary to the national interest;
(b) to issue a formal warning to an international broadcasting licensee if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest;
(c) to suspend an international broadcasting licence if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest; or
(d) to cancel an international broadcasting licence if the Minister for ForeignAffairs is of the opinion that the service is contrary to the national interest.

As a result of the proposed amendment to the AD(JR) Act to amend Schedule 2 of the Act to include these decisions of the Minister for Foreign Affairs, section 13 of the AD(JR) Act does not apply in relation to these decisions. Section 13 of the AD(JR) Act places an obligation on a decision maker to provide a statement of reasons to a person entitled to make an application to the Court under section 5 of the Act for judicial review of a decision, where that person requests a statement of reasons from the decision maker. The processes for review of a decision by the Minister for Foreign Affairs under the AD(JR) Act are otherwise unaltered by BSAB 4.

The proposed exemption from the requirement to provide a statement of reasons under section 13 of the AD(JR) Act does not prevent the Minister for Foreign Affairs from giving reasons for a decision if the Minister decides it would be appropriate to do so. However, the Minister for Foreign Affairs would not be required to give a statement of reasons and would be expected not to do so in cases in which giving a statement of reasons would be contrary to the national interest.

In addition to, or instead of, seeking review of a decision by the Minister for Foreign Affairs under proposed new Part 8B of the BSA under the AD(JR) Act, a person could seek review on common law grounds. The main common law grounds of review are breach of the rules of natural justice, ultra vires (decision exceeds power), jurisdictional error, error of law on the face of the record, and failure to perform a duty.

In order to initiate common law review of a decision, a person aggrieved by a decision of the Minister for Foreign Affairs under proposed Part 8B of the BSA would take action against the Minister in the Federal Court. If a person was not satisfied with the outcome of the action in the Federal Court, the person could seek leave to appeal to the High Court.

There is no provision for review of the merits of a decision by the Minister for Foreign Affairs. This is consistent with guidelines in relation to decisions which should be subject to merits review issued by the Administrative Review Council in July 1999. The guidelines include policy decisions of a high political content as a factor that may justify excluding merits review. In the guidelines, a specific example of a policy decision of a high political content is a decision affecting Australia's relations with other countries.

The Committee has also raised two concerns in relation to the proposed power for the Minister for Foreign Affairs to cancel and suspend a licence. The first is the lack of a specific provision requiring the Minister for Foreign Affairs to consider any submission made in relation to a proposed cancellation of an international broadcasting licence; the second that the power of the Minister for Foreign Affairs to suspend a licence does not contain a similar procedure prior to the exercise of a power to suspend an international broadcasting licence.

In relation to the first issue, I am advised that it is not necessary for the Bill to specify that the Minister for Foreign Affairs is required to consider any submission. Failure of the Minister to consider a submission would amount to a breach of the rules of natural justice, which is a ground for review of a decision under the AD(JR) Act and is a common law ground of review.

In relation to the Committee's concern about the lack of a specific opportunity for a licensee to make a submission before the decision to suspend a licence, the specific requirement in relation to the cancellation of an international broadcasting licence has been included in proposed new Part 8B of the BSA because cancellation of a licence is a very significant act that would be likely to have a permanent impact on an international broadcasting licensee. As such it was considered appropriate that, if the Minister for Foreign Affairs was considering exercising his or her power to cancel a licence, there should be a statutory requirement for the licensee to be informed of the possible decision and a statutory requirement that a licensee be given the opportunity to provide a submission to the Minister. In contrast, the suspension of an international broadcasting licence would have a more modest impact on a broadcaster, as it is only for a specified period. It was considered inappropriate to include a mandatory consultation requirement before suspension because of the need to ensure that swift temporary action could be taken by the Minister for Foreign Affairs in the national interest.

In practice, if the Minister for Foreign Affairs was considering suspending a licence, it would be incumbent on the Minister to have regard to the rules of natural justice, including the hearing rule. Failure to do so could render a decision void, as it would be a ground for review of a decision to suspend a licence.

I trust this addresses the Committee's concerns.

The Committee thanks the Minister for this response and accepts that there may be difficulties in providing for administrative review where policy decisions involve a high political content.

However, this provision authorises the Minister to make decisions which, in effect, restrict freedom of expression in Australia. Where a provision authorises a Minister to make such a decision on objective criteria, then the bona fides of its exercise are transparent, and may be assessed. But where a provision authorises a Minister to make such a decision on subjective grounds – such as the 'national interest' – then it is much more difficult to assess the bona fides of its exercise.

One approach that may be taken in these circumstances is appropriate consultation. For example, appointments of judicial officers are discretionary, but only made after appropriate (and non-partisan) consultation. The Committee **would appreciate further advice from the Minister** as to whether there are any criteria against which such a Ministerial decision to restrict freedom of expression can later be assessed, or whether it is proposed that there be any non-partisan consultation prior to its exercise.

Pending the Minister's further advice, the Committee continues to draw Senators' attention to this provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Fuel Quality Standards Bill 2000

Introduction

The Committee dealt with this bill in *Alert Digest No. 13 of 2000*, in which it made various comments. The Minister for Environment and Heritage responded to those comments in a letter dated 9 October 2000.

In its *Fourteenth Report of 2000*, the Committee sought further advice on the issue of transitional provisions. The Minister has further responded in a letter dated 7 November 2000. A copy of the letter is attached to this report. An extract from the *Fourteenth Report of 2000* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 13 of 2000

This bill was introduced into the Senate on 7 September 2000 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Environment and Heritage]

The bill establishes a framework to set, implement and enforce national quality standards for fuels. It aims to regulate fuel quality to reduce pollutants and emissions arising from the use of fuel that may cause environmental, greenhouse and health problems; to facilitate the adoption of better engine and emission control technologies; and to allow for the more effective operation of engines. In particular, the bill:

- creates offences relating to the supply of fuel that does not comply with a fuel standard; to the alteration of fuel which is subject to a fuel standard; and to the supply or importation of a fuel additive that is entered in the Register of Prohibited Fuel Additives;
- sets out an enforcement regime for the purposes of compliance monitoring and prosecuting offences under its provisions; and
- sets out record-keeping and reporting obligations which apply to persons supplying or importing fuels which are subject to a fuel standard.

Transitional provisions
General comment

As noted above, this bill establishes a framework for setting mandatory national fuel quality standards. In his Second Reading Speech, the Minister states that "if Australia is to reap the environmental benefits of evolving emission control and fuel efficiency technologies, fuel standards need to keep pace with vehicle standards". It is possible, in these circumstances, that some engines (for example, those used to power vintage or veteran cars) may no longer be able to use fuel that complies with quality standards set by reference to more recent vehicle standards, and that such engines cannot be modified to accommodate new or changing standards.

Further, not all motors are used to power motor vehicles (for example, they may be used in pumps or in mining or farm equipment). It is possible that these motors will no longer be able to operate using fuel that must comply with a modified vehicle standard. The Committee is concerned that individuals may be disadvantaged in these circumstances and **seeks the Minister's advice** as to what transitional arrangements are proposed to ensure that individuals will not be disadvantaged by the imposition of mandatory quality standards.

Pending the Minister's advice, the Committee draws Senators' attention to these provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Government does not propose any transitional arrangements targeted at individuals. The policy underpinning the legislation will, in a number of ways, ensure that the impacts on individuals are minimised.

1. Standards specifically designed to maintain efficient operation of petrol and diesel engines will be included in the national fuel quality standards for petrol and automotive diesel. While the initial focus in the development of standards has been on the environmental impacts of fuel quality, the consultation process has brought the need for operability standards to the Government's attention.

   The fuel characteristics which are most likely to affect the operation of diesel engines relate to lubricity of the fuel and the formation of wax in the fuel as a result of cold winter temperatures. Commonwealth agencies have already commenced work with the Federal Chamber of Automotive Industries (FCAI) and the Australian Institute of Petroleum (AIP), in consultation with other key stakeholders, to develop operability standards.

2. Standards for petrol will accommodate owners of those older petrol vehicles which cannot operate on regular unleaded petrol (many older models with low compression engines and hardened valve seats can already use unleaded fuel). Vehicles with high compression engines and soft exhaust valve seats will need to use an alternative fuel known as "Lead Replacement Petrol" (LRP). LRP is premium unleaded petrol with an anti-valve seat recession (AVSR) additive blended at the refinery. The higher octane rating of the fuel and added AVSR allow LRP to be used as a substitute in these vehicles. A number of companies are already supplying a LRP.

   Vehicles with soft valve seats can also have their engines rebuilt using hardened valves and valve seat inserts, allowing them to use regular or premium unleaded petrol instead of LRP. Although no pre-1986 vehicle owner will need to pursue such mechanical modification, some owners may choose this option to allow the use of cheaper regular unleaded petrol. This option is likely to be cost effective only for those vehicles, such as historical cars, that are kept for a long period of time when LRP will no longer be available. Once LRP ceases to be available, the remaining option for these vehicles will be to use unleaded petrol with an anti-valve seat recession additive purchased at the service station.

3. Diesel standards will not be mandatory for off-road diesel users until 2006. The commitments set out in the *Measures for a Better Environment* package indicated that requirements for low sulphur diesel would be targeted at road vehicles, until 50ppm sulphur is mandated for all automotive diesel in 2006. If there is a significant demand from off-road users for diesel with a sulfur content higher than prescribed in the standards, the legislation will not impede its supply.

4. The approvals process set out in Division 3 of Part 2 was included to cover circumstances where the application of the standards would be inappropriate or excessively burdensome, and it is possible to exempt or vary the standards without compromising the objectives of the legislation. A mining company, for example, could apply for an approval for supply of fuel formulated specifically to meet the requirements of its equipment.

I thank the Committee for its examination of the Bill.

The Committee thanks the Minister for this response, which addresses some of its concerns.

However, the Committee refers to the Minister's statement that "diesel standards will not be mandatory for off-road diesel users until 2006". This implies that such standards <u>will</u> be mandatory after that date. The Committee notes the Minister's subsequent observation that "if there is a significant demand from off-road users for diesel with a sulfur content higher than prescribed in the standards, the legislation will not impede its supply". The Committee would appreciate the Minister's further advice clarifying how a mandatory standard will not impede the supply of fuel which does not meet that standard.

Pending the Minister's further advice, the Committee continues to draw attention to these provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the further response from the Minister dated 6 November 2000

My response to the Committee's original comments on the Bill (in *Alert Digest No. 13 of 2000*) focused on the measures that the Government is taking to ensure that the impacts on individuals arising from the introduction of fuel standards will be minimised.

This response was not intended to give the impression diesel with a sulfur content higher than prescribed in the standards would continue to be available to off-road users after 2006. The period from now until 2006 is regarded as the transitional period during which fuel quality standards will be harmonised with international standards. I do not, however, anticipate that harmonisation of fuel standards in 2006 will create problems for owners of older off-road vehicles or engines.

Diesel producers and importers have a direct interest in ensuring that the fuel they supply meets the needs of consumers. This 'self interest' will be backed up by the standards governing 'operability' characteristics of fuel, which I mentioned in my previous response.

I appreciate that the Bill currently before the Senate is silent in relation to the protection of the specific interests which the Committee is seeking to safeguard. The Bill does, however, require that standards be made in consultation with a range of interested parties. This reflects the process that is under way in relation to the first standards to apply to petrol and diesel. My department has received submissions on the standards not only from fuel producers and new vehicle manufacturers. The view of other interested groups, such as farmers' and mining organisations have been sought, and received, during this process.

I am confident that the development of standards under the new legislation will be carried out in a manner which takes into account the personal rights of all interested parties.

I thank the Committee for its examination of the Bill.

The Committee thanks the Minister for this further response.

Barney Cooney
Chairman

SENATOR THE HON RICHARD ALSTON
Minister for Communications, Information Technology and the Arts
Deputy Leader of the Government in the Senate

RECEIVED
4 MAY 2000
Senate Standing C'ttee
for the Scrutiny of Bills

Senator B Cooney
Chairman
Senate Standing Committee for Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

3 MAY 2000

Dear Senator Cooney Barney.

The Committee's Alert Digest 1/00 commented on the Broadcasting Services Amendment Bill (No.3) 1999 and Broadcasting Services Amendment Bill (No.4) 1999 (BSAB 4). In the second reading debate on Broadcasting Services Amendment Bill (No.3) 1999 in the House of Representatives on 7 December 1999, the Government moved an amendment to the Bill to remove Schedule 3 – International Broadcasting Services from the Bill. On 9 December 1999 the Government introduced BSAB 4 into the House. BSAB 4 contains the proposed amendments to the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* and the *Administrative Decisions (Judicial Review) Act 1977* (AD(JR) Act) in relation to international broadcasting services.

The Committee has noted its concern about the apparent finality of decisions of the Minister for Foreign Affairs under the proposed new Part 8B of the BSA, the licensing regime for international broadcasting services. Under proposed new Part 8B of the BSA the Minister may direct the Australian Broadcasting Authority (ABA):

(a) not to allocate an international broadcasting licence to an applicant if the Minister for Foreign Affairs is of the opinion that the proposed service is likely to be contrary to the national interest;
(b) to issue a formal warning to an international broadcasting licensee if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest;
(c) to suspend an international broadcasting licence if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest; or
(d) to cancel an international broadcasting licence if the Minister for Foreign Affairs is of the opinion that the service is contrary to the national interest.

As a result of the proposed amendment to the AD(JR) Act to amend Schedule 2 of the Act to include these decisions of the Minister for Foreign Affairs, section 13 of the AD(JR) Act does not apply in relation to these decisions. Section 13 of the AD(JR) Act places an obligation on a decision maker to provide a statement of reasons to a person entitled to make an application to the Court under section 5 of the Act for judicial review of a decision, where that person requests a statement of reasons from the decision maker. The processes for review of a decision by the Minister for Foreign Affairs under the AD(JR) Act are otherwise unaltered by BSAB 4.

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The proposed exemption from the requirement to provide a statement of reasons under section 13 of the AD(JR) Act does not prevent the Minister for Foreign Affairs from giving reasons for a decision if the Minister decides it would be appropriate to do so. However, the Minister for Foreign Affairs would not be required to give a statement of reasons and would be expected not to do so in cases in which giving a statement of reasons would be contrary to the national interest.

In addition to, or instead of, seeking review of a decision by the Minister for Foreign Affairs under proposed new Part 8B of the BSA under the AD(JR) Act, a person could seek review on common law grounds. The main common law grounds of review are breach of the rules of natural justice, ultra vires (decision exceeds power), jurisdictional error, error of law on the face of the record, and failure to perform a duty.

In order to initiate common law review of a decision, a person aggrieved by a decision of the Minister for Foreign Affairs under proposed Part 8B of the BSA would take action against the Minister in the Federal Court. If a person was not satisfied with the outcome of the action in the Federal Court, the person could seek leave to appeal to the High Court.

There is no provision for review of the merits of a decision by the Minister for Foreign Affairs. This is consistent with guidelines in relation to decisions which should be subject to merits review issued by the Administrative Review Council in July 1999. The guidelines include policy decisions of a high political content as a factor that may justify excluding merits review. In the guidelines, a specific example of a policy decision of a high political content is a decision affecting Australia's relations with other countries.

The Committee has also raised two concerns in relation to the proposed power for the Minister for Foreign Affairs to cancel and suspend a licence. The first is the lack of a specific provision requiring the Minister for Foreign Affairs to consider any submission made in relation to a proposed cancellation of an international broadcasting licence; the second that the power of the Minister for Foreign Affairs to suspend a licence does not contain a similar procedure prior to the exercise of a power to suspend an international broadcasting licence.

In relation to the first issue, I am advised that it is not necessary for the Bill to specify that the Minister for Foreign Affairs is required to consider any submission. Failure of the Minister to consider a submission would amount to a breach of the rules of natural justice, which is a ground for review of a decision under the AD(JR) Act and is a common law ground of review.

In relation to the Committee's concern about the lack of a specific opportunity for a licensee to make a submission before the decision to suspend a licence, the specific requirement in relation to the cancellation of an international broadcasting licence has been included in proposed new Part 8B of the BSA because cancellation of a licence is a very significant act that would be likely to have a permanent impact on an international broadcasting licensee. As such it was considered appropriate that, if the Minister for Foreign Affairs was considering exercising his or her power to cancel a licence, there should be a statutory requirement for the licensee to be informed of the

possible decision and a statutory requirement that a licensee be given the opportunity to provide a submission to the Minister. In contrast, the suspension of an international broadcasting licence would have a more modest impact on a broadcaster, as it is only for a specified period. It was considered inappropriate to include a mandatory consultation requirement before suspension because of the need to ensure that swift temporary action could be taken by the Minister for Foreign Affairs in the national interest.

In practice, if the Minister for Foreign Affairs was considering suspending a licence, it would be incumbent on the Minister to have regard to the rules of natural justice, including the hearing rule. Failure to do so could render a decision void, as it would be a ground for review of a decision to suspend a licence.

I trust this addresses the Committee's concerns.

Richard Alston

RICHARD ALSTON
Minister for Communications, Information Technology
and the Arts

Senator the Hon Robert Hill

Leader of the Government in the Senate
Minister for the Environment and Heritage

- 7 NOV 2000

Senator B Cooney
Chairman
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Cooney

I refer to comments on the Fuel Quality Standards Bill 2000, contained in the *Fourteenth Report of 2000* (11 October 2000) of the Senate Standing Committee for the Scrutiny of Bills. The Committee has sought my response to those comments as the Minister responsible for this Bill.

My response to the Committee's original comments on the Bill (in *Alert Digest No. 13 of 2000*) focused on the measures that the Government is taking to ensure that the impacts on individuals arising from the introduction of fuel standards will be minimised.

This response was not intended to give the impression diesel with a sulfur content higher than prescribed in the standards would continue to be available to off-road users after 2006. The period from now until 2006 is regarded as the transitional period during which fuel quality standards will be harmonised with international standards. I do not, however, anticipate that harmonisation of fuel standards in 2006 will create problems for owners of older off-road vehicles or engines.

Diesel producers and importers have a direct interest in ensuring that the fuel they supply meets the needs of consumers. This 'self interest' will be backed up by the standards governing 'operability' characteristics of fuel, which I mentioned in my previous response.

I appreciate that the Bill currently before the Senate is silent in relation to the protection of the specific interests which the Committee is seeking to safeguard. The Bill does, however, require that standards be made in consultation with a range of interested parties. This reflects the process that is under way in relation to the first standards to apply to petrol and diesel. My department has received submissions on the standards not only from fuel producers and new vehicle manufacturers. The views of other interested groups, such as farmers' and mining organisations have been sought, and received, during this process.

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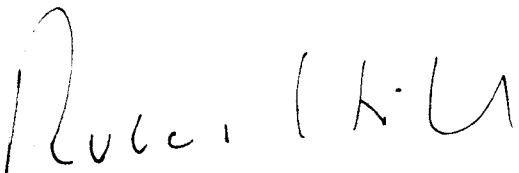
I am confident that the development of standards under the new legislation will be carried out in a manner which takes into account the personal rights of all interested parties.

The contact officer in my department in relation to these proposals is Ms Chris Schweizer, telephone 6274 1581.

I thank the Committee for its examination of the Bill.

Yours sincerely



Robert Hill