



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON ECONOMICS

**Reference: Liquid Fuel Emergency Amendment Bill 2007**

MONDAY, 23 APRIL 2007

MELBOURNE

BY AUTHORITY OF THE SENATE



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**SENATE STANDING COMMITTEE ON  
ECONOMICS**

**Monday, 23 April 2007**

**Members:** Senator Ronaldson (*Chair*), Senator Stephens (*Deputy Chair*), Senators Bernardi, Chapman, Hurley, Joyce, Murray and Webber

**Substitute members:** Senator Allison to replace Senator Murray

**Participating members:** Senators Adams, Allison, Barnett, Bartlett, Boswell, Bob Brown, George Campbell, Carr, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fifield, Forshaw, Hogg, Kemp, Kirk, Lightfoot, Ludwig, Marshall, Ian Macdonald, McGauran, Milne, Nettle, O'Brien, Parry, Payne, Robert Ray, Sherry, Siewert, Watson and Wong

**Senators in attendance:** Senators Bernardi, Hurley, Ronaldson and Webber

**Terms of reference for the inquiry:**

Liquid Fuel Emergency Amendment Bill 2007

**WITNESSES**

**TILLEY, Dr John William, Executive Director, Australian Institute of Petroleum ..... 1**



**Committee met at 12.39 pm****TILLEY, Dr John William, Executive Director, Australian Institute of Petroleum**

**CHAIR (Senator Ronaldson)**—I declare this hearing open. Dr Tilley, you have appeared before Senate committees before so you are aware of the normal opening statements and other cautions that chairs give. I will assume that you have a very good memory and I will not go through it all again except to repeat that your evidence is protected by parliamentary privilege and it is unlawful for anyone to threaten or disadvantage you on account of evidence given to this committee. The Senate may treat such action as contempt. It is also a contempt to give false or misleading evidence to the committee. Thank you most sincerely for accommodating the committee this morning. We are very grateful that you have taken the time to attend personally. Thank you for coming in earlier. Could you outline the Australian Institute of Petroleum's views on the Liquid Fuel Emergency Amendment Bill 2007.

**Dr Tilley**—We appreciate the opportunity to talk with the committee today. I am representing the Australian Institute of Petroleum and I am speaking on behalf of the four major refiner-marketers in Australia—that is, BP, Shell, ExxonMobil and Caltex. The major refiners operate all of the refineries in Australia and handle a large proportion of the wholesale distribution of fuel. We have a limited role in the retail side of the market. We have been actively consulted throughout the public consultation process around the review of the liquid fuel emergency legislation. AIP and my member companies are members of the National Oil Supply Emergency Committee, which is a committee of Commonwealth and state officials and industry representatives who have a responsibility for advising federal and state governments on implementation aspects of the liquid fuel emergency legislation. So we have participated in an extensive round of consultations about the legislation.

In broad terms we are reasonably comfortable with the package of amendments that have been put forward. We believe they represent a reasonable reflection of a market based approach to liquid fuel supply in Australia and clearly define the role that governments are likely to play in the event of a very significant disruption to fuel supplies in Australia. Our submission outlines current procedures and practices for ensuring reliable supplies of liquid fuels across the country. The mechanisms that are in place for dealing with what we would regard as day-to-day hiccups in the supply chain have been robustly tested during significant down time at Australian refineries over the years and also tested in light of disruptions to imported fuel supplies or crude oil supplies. So we believe that there is a sound practical approach already available and in place to deliver liquid fuel supplies even during a major emergency. The approach the legislation takes, particularly in the amending parts of the legislation, is for industry and government to work very closely together to ensure the maximum availability of fuel supply to all the people who are regarded as essential users. The remaining fuel would be equitably distributed amongst all other fuel users. We believe that there is a very sensible and workable framework for industry to be aware of government expectations as to how ministers might exercise their directions under the legislation in an emergency and that that framework provides ample opportunity for consultation between industry and government to make sure that arrangements are practical and workable. There are a number of changes in light of the general review by ACIL, and we are quite comfortable with those changes.

The issues that we raised in our submission around the compensation mechanisms and price-capping powers we believe to be a reasonable compromise. In our view, if there are additional costs incurred as a result of directions issued by ministers, whether they be federal or state, then there must be a mechanism for recovering those costs, whether it is the government providing compensation for the additional costs or the consumer wearing the costs. We think the legislation provides for that framework. We have noted a reservation that some states have indicated that they intend retaining a reserve power to cap fuel prices during an emergency if they so chose. But we also note in the intergovernmental agreement, which has been agreed between federal and state governments, that there is a framework there in which those states—and it is not all states—have indicated that they would only exercise that power if they believed that the fuel prices were out of alignment with a formula which is based on import parity pricing plus reasonable costs of getting the fuel into the Australian markets and to consumers. That is our overview of the legislation. I believe that my members are reasonably comfortable with the package of amendments.

**CHAIR**—My only question was in relation to the compensation aspects. I think you answered that. I think you said that you are comfortable with that as a reasonable compromise.

**Senator HURLEY**—I have a question relating to the explanatory memorandum. On page 7 it talks about the states and territories not being able to work together to develop a common form of legislation and that that was one of the reasons for this act coming together. Is there any attempt still to do that or has that been entirely superseded by the legislation?

**Dr Tilley**—I think you would have to ask the department. The industry members of that committee have not been privy to the Commonwealth-state discussions. At the end of the day we were informed that a number of the states felt that it would be difficult to adopt common form legislation in this area given that most of their emergency powers, as I understand it, in state legislation are covered in a raft of other pieces of legislation which deal with other circumstances.

**CHAIR**—There was no attempt to incorporate those concerns into this legislation anyway, was there?

**Dr Tilley**—No, the LFE legislation from our point of view is very firmly focused on liquid fuel supply during an emergency.

**CHAIR**—I have one other question. My reading of this last night was that, in the event of a terrorist attack and interruption to supply, there would be other measures that would be taken. Was that a correct or an incorrect reading?

**Dr Tilley**—In our submission we note that there are a variety of plans in place to deal with certain types of intervention in the Australian fuel supply chain. In the case of a catastrophic failure at a refinery there are already a whole range of plans for business recovery and for dealing with the incident itself. In the case of terrorist attacks national security groups have all sorts of plans in place to deal with the immediate aftermath of that. This legislation would sit in amongst all of those plans to provide the framework for the government to work with industry after such an event to make sure that everything was done that was able to be done and that needed to be done to ensure fuel supply to as much of the community as possible.



**CHAIR**—So this would sit over post event management?

**Dr Tilley**—Yes, it would sit over post event management. It is important to recognise that this legislation was never designed to deal with specific types of events which may well have other implications.

**Senator WEBBER**—I have two quick questions. Part of the legislation allows for increased capacity to delegate and sub delegate powers. Is industry happy with that and the process around that?

**Dr Tilley**—We were consulted extensively on that. Our understanding is that the government will provide a series of guidelines to all persons who have delegated powers about how they might exercise those delegations for further subdelegations.

Our main concern was to make sure that there was no conflict of interest in the primary or the secondary level of delegations. We feel that we have been given enough assurances. A framework, I gather, has been developed, at least in draft, by the government to facilitate that. For each of the delegatable powers I understand there is a draft available of which ministers are likely to be the recipients of delegations—that is following consultation between federal and state governments—and which officials at federal and state levels would hold delegations. The version of that that I saw—and I am not sure that it is a final version by any means—was one that I was quite comfortable with.

**Senator WEBBER**—Has the government given you a time line for when they anticipate that those guidelines will be finalised?

**Dr Tilley**—I have not seen one, but it is part of a broader series of issues that are being progressed within NOSEC—the government industry advisory group. We would assume that, unless there were significant difficulties with the version we have already seen, that is probably the final. I should reassure you that NOSEC is a very cooperative and constructive industry government committee that is working quite well to address many of the issues which flow out of the amendments to the legislation.

**Senator WEBBER**—My only other question goes to the proposed exemption for breach of part IV of the TPA. In the old act the way we deal with those issues is through a disallowable instrument rather than just granting an exemption. Is industry happy with that? I am sure they are. What reassurance can you give us that, by granting this exemption ahead of time rather than allowing for the usual debate we have about disallowable instruments, we are not going to find unnecessary breaches?

**Dr Tilley**—Industry is very conscious of your concerns around this area. One of the issues in the review of the legislation that was undertaken a couple of years ago was how to make sure that the members of industry that will be involved in supplying fuel to the market can actually talk amongst themselves during the preparation for an emergency, because in some cases there will be some advance notice. Certainly during an emergency it will be critical that members of industry are able to talk with each other and with the government collectively around the table so that the best commercial solutions can be arrived at in terms of which company is likely to be able to supply what amount of fuel to which location.

It may be that, as part of the emergency arrangements, the normal supply arrangements down to regional and even local service stations may have to be modified in order to ensure that someone has access to fuel to get it into the market. That was the concern—that, once an emergency has been declared, there would not be time to have extended debates over whether the TPA part IV provisions did apply or were exempt. It could take days rather than minutes or hours to solve that problem.

So, from industry's point of view, we were quite comfortable with that arrangement. The trade-off is that there is no TPA exemption in the preparatory phase of an emergency supply response. But it is clearly recognised by government and the ACCC itself that there would need to be a request from industry during that preparatory stage for industry to be given specific permission to consult amongst themselves and with government as to how to provide effective and efficient supplies to the market.

We would expect the ACCC to be actively monitoring whatever is going on both from a pricing point of view and from a general business practice point of view. I think you need to remember that government officials at federal and state level would be right in the middle of the decision-making process so any arrangements that were being made would be subject to scrutiny by at least one minister, I would have thought, from federal or state government.

**Senator WEBBER**—I think it is just important to get that process and those assurances on the public record.

**Dr Tilley**—Yes. From our point of view, we would be abiding by the Trade Practices Act provisions to the maximum extent during an emergency anyway, but having the exemption would mean that timely decisions would be able to be made in order to get the fuel supply out there.

**CHAIR**—So this is legislating a fairly healthy dose of common sense, isn't it?

**Dr Tilley**—The approach that industry has taken and that we believe that federal and state governments have taken is that it can only work if there is cooperation between all the players given that it is dealing with a fairly important market commodity at a time when there is going to be real constraints on its availability.

**Senator BERNARDI**—I have a question for clarification that you might be able to help me with. In your submission, you talk about how you comply with the IEA's 90-day stock holding requirements. In the explanatory memorandum it says that in 2005 we had 47 days worth of stock. Is there a difference between 90-day stock holding in the current—

**Dr Tilley**—The 90 days stock holding is a combination of crude oil and products. I would imagine that the 47 or 57 days' cover was just products.

**Senator BERNARDI**—It refers to 23 days of crude oil, 15 days of LPG et cetera.

**Dr Tilley**—Yes.

**Senator BERNARDI**—So there is no difference in definition?

**Dr Tilley**—No. The IEA requirement is an aggregate one and they have formulae for calculating the components of that which are built up from crude to LPG and petroleum products.

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**Senator BERNARDI**—Thank you for that. That is all I have.

**CHAIR**—As there are no further matters before the committee, I thank Hansard and my colleagues and I close the proceedings.

**Committee adjourned at 12.57 pm**