

# Fuels Rationing (Fuel Restriction Scheme) Approval 2019

Disallowable instrument DI2019–226

made under the

**Fuels Rationing Act 2019, s8 (Approved fuel restriction scheme)**

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Fuel Rationing (Fuel Restriction Scheme) Approval 2019* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the disallowable instrument and to help inform debate. It does not form part of the disallowable instrument and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the disallowable instrument. It is not, and is not meant to be, a comprehensive description of the disallowable instrument. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### Overview

The *Fuels Rationing Act 2019* (the Act) sets out a framework for approving, implementing and enforcing fuel rationing measures in the event of a fuel emergency. The framework provides for scrutiny of potential rationing measures while enabling the Executive to act swiftly to respond in the event of a fuel shortage.

Under section 8 (1) of the Act, the Minister may approve a scheme to restrict the use of fuels to deal with a shortage or likely shortage of fuel. An approved scheme is a disallowable instrument.

Section 8 (2) of the Act provides that an approved fuel restriction scheme may include provision for the Minister to exempt an entity from a fuel restriction if compliance with the restriction would cause the entity or anyone else serious detriment.

In approving a fuel restriction scheme, the Minister must consider whether the scheme achieves one or more of the outcomes listed in section 11 (1) (b) of the Act.

Section 9 of the Act provides criteria that a fuel restriction scheme must meet in order for the Minister to approve the fuel restriction scheme.

Guidelines have been prepared to provide further information to industry and the public on the operation of the Scheme. The Guidelines are available at <https://www.environment.act.gov.au/>.

### ***Consistency with laws of the Territory and other jurisdictions***

#### Commonwealth legislation and the Inter-governmental Agreement (IGA)

The Scheme allows for a swift response to a fuel shortage, which is consistent with response measures agreed to by the Commonwealth Government and other jurisdictions to minimise the costs and impacts to consumers, and allows for essential fuel users, such as police and emergency services, to be exempted from fuel restrictions. This will bring the ACT into compliance with the IGA in relation to a National Liquid Fuel Emergency to which it is a signatory.

The *Liquid Fuel Emergency Act 1984* (Cth) and its subordinate legislation the *Liquid Fuel Emergency (Activities — Essential Users) Determination 2008* (Cth) provide a list of entities which have been identified as essential to the health, safety or welfare of the community. All Australian jurisdictions have agreed that the essential users provided for in the Commonwealth determination should be granted exemptions to general fuel restrictions. The Class A Essential Users identified in the Scheme reflect essential users that have been identified in the Commonwealth Determination.

The *Liquid Fuel Emergency Act 1984* (Cth) provides broad power to the Commonwealth Minister to exempt a person or organisation from fuel restrictions if satisfied that the exemption is essential to the health, safety or welfare of the community. The ACT Scheme establishes a broad framework of users that the Minister may consider for exemption, in the context of the particular fuel emergency. For this reason, the Scheme includes Class B Essential Users, which are services that the Minister may consider making provisions for in a declaration of a fuel restriction, to ensure that the entities are able to continue their essential services.

#### ACT legislation

The Scheme is consistent with the ACT legislative framework for responding to other energy shortages, and broadly reflects the frameworks for managing shortages of gas and electricity in the ACT. Under the *Utilities Act 2000*, shortages in gas supply can be managed through gas restrictions, which are set out in the *Utilities (Gas Restriction Scheme) Approval 2005 (No 1)* under the *Utilities (Gas Restrictions) Regulation 2005*.

Shortages in electricity supply can be managed by electricity restrictions, which are set out in the *Utilities (Electricity Restriction Scheme) Approval 2004 (No 1)* under the *Utilities (Electricity Restriction Scheme) Regulation 2004*.

### ***Regulatory Impact Statement (RIS)***

In accordance with section 34 of the *Legislation Act 2001*, a RIS has been prepared as this instrument is likely to impose appreciable costs on the community. The RIS is notified alongside this instrument.

## ***Human Rights***

The scheme engages the *Human Rights Act 2004* (the HRA), notably the right to freedom of movement in section 13. However, the failure of a consistent supply of liquid fuels is a risk to life, health and safety if that supply severely inhibits the function of emergency services, and as such a proportionate limitation of the right to freedom of movement is necessary.

### **Right to freedom of movement**

**Nature of the right affected:** Section 13 of the HRA provides that everyone has the right to move freely within the ACT and to enter and leave it. The Scheme allows the Minister to apply mandatory fuel restriction measures to the sale and purchase of fuel in Stage 2 fuel restrictions in the event voluntary fuel restrictions are not sufficient. Limiting people's access to fuel may limit their ability to travel via combustion engine vehicles.

**Importance of the purpose of the limitation:** The Scheme must have the power to limit the sale and purchase of fuel in order to secure adequate fuel supplies to support the continued function of essential services such as police, ambulance and emergency services.

**Nature and extent of the limitation:** While the enactment of a fuel restriction under the Scheme may limit people's ability to travel via combustion engine vehicles, it is most likely that people will still be able to purchase limited volumes of fuel under Stage 2 fuel restrictions to fuel their personal and business vehicles. It is also the intention of the Scheme that public transport and taxi services will continue to operate during fuel restrictions, which will support the free movement of people. The Scheme does not in any way limit the free movement of people for methods of transport that do not require fuel.

**Relationship between the limitation and its purpose:** The ability for the Minister to limit the sale and purchase of fuel is essential to ensure that sufficient fuel is available to support the continued function of essential services such as police, ambulance and emergency services.

**Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve:** Voluntary fuel restriction measures may be used to reduce the consumption of fuel to manage a shortage of fuel. However, in some circumstances, voluntary restrictions will not be sufficient to secure adequate fuel supplies for the continued operation of essential services. The Scheme provides that Stage 2 (mandatory) fuel restrictions may only be enacted if voluntary fuel restrictions are not sufficient to meet one or more objectives outlined in Section 11 (1) (b) of the Act.

## ***Scrutiny of Bills Committee's principles***

The RIS notified alongside this instrument provides an assessment of the Scheme's consistency with the Committee's terms of reference.

## ***Outline of the provisions***

### **Section 1- Name of the instrument**

This section names the instrument.

### **Section 2- Commencement**

This section provides that the instrument commences on the commencement of the *Fuels Rationing Act 2019*.

### **Section 3- Approval of a fuel restriction scheme**

This section provides that the Minister approves the fuel restriction scheme set out in Schedule 1.

### **Schedule 1- Fuel Restriction Scheme**

The Fuel Restriction Scheme provides details of Stage 1 Fuel Restrictions and Stage 2 Fuel Restrictions. It provides a framework for the Minister to declare a fuel restriction measure is in force in the event or likely event of a fuel shortage, and depending on the circumstances of the fuel shortage. The Scheme also provides a framework for the Minister to exempt certain entities from fuel restrictions.

#### Stage 1 Fuel Restrictions

The Fuel Restriction Scheme provides that the Minister may declare that Stage 1 Voluntary Fuel Restrictions are in force if the Minister is satisfied that fuel restriction measures are necessary to meet one or more objectives in section 11 (1) (b) of the Act. The Minister may then declare one or more fuel restriction measure from Stage 1 Fuel Restrictions, including but not limited to those detailed in Table 1 of the instrument. Voluntary restriction measures limit non-essential use of fuel.

#### Stage 2 Fuel Restrictions

The Scheme provides that the Minister may enact a Stage 2 fuel restriction if voluntary fuel restrictions are not sufficient to meet one or more of the objectives outlined in Section 11 (1)(b) of the Act. Stage 2 fuel restrictions are mandatory.

#### Exemptions from Fuel Restrictions

The Scheme provides that the Minister may exempt certain fuel user entities from Stage 2 fuel restrictions.

#### *Class A Essential Users*

Class A Essential Users include but are not limited to the entities listed in Table 3. The Minister may exempt Class A Essential Users from all Stage 2 fuel restrictions. The Minister may provide that an essential user is exempt only for a specific activity; for example refuelling identifiable vehicles.

Class A Essential Users, listed in Table 3, reflect the users identified in the *Liquid Fuel Emergency (Activities—Essential Users) Determination 2019 (Cth)* under the *Liquid Fuel Emergency 1984 (Cth)*, which defines users that have been determined to be essential to the health, safety or welfare of the community. All Australian jurisdictions, as signatories to the IGA, have agreed that the list of essential users as defined in the Commonwealth Determination should be granted exemptions to general fuel restrictions.

#### *Class B Essential Users*

Class B Essential Users include but are not limited to the entities listed in Table 4. The Scheme provides that the Minister may make an exemption for one or more additional entities from a Stage 2 fuel restriction, in response to the particular circumstances of a fuel emergency, if satisfied that compliance with the fuel restriction would cause the entity or anyone else serious detriment. Class B Essential Users have been included in the Scheme to support swift, tailored action in response to a liquid fuel emergency.

In declaring a fuel restriction measure is in force, the Minister may make a provision to allow an entity access to fuel for a specific activity. For example if there is an electricity shortage while fuel restrictions are in force, the Minister may choose to exempt an entity from fuel restrictions to allow for purchase of fuel for backup electricity generation.