

Regulatory Impact Statement

Fuels Rationing (Fuel Restriction Scheme) Approval 2019

DI2019-226

1. Introduction

The ACT Fuel Restriction Scheme ('the Scheme') is a disallowable instrument made under the *Fuels Rationing Act 2019* ('the Act').

The Scheme provides fuel restrictions in two stages. Stage 1 fuel restrictions include a number of voluntary fuel restrictions that may be imposed and Stage 2 fuel restrictions include a number of mandatory restrictions that may be imposed. The Scheme also provides guidance regarding the circumstances under which the Minister may exempt an entity from a declared fuel restriction.

Guidelines for the Scheme have also been developed as a policy document to support the understanding of the Scheme and to provide guidance in implementing fuel restriction measures in the unlikely event of a fuel shortage that requires government intervention.

The Act establishes a framework for approving, implementing and enforcing fuel rationing measures in 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.

The Act was developed to bring the Territory into compliance with the Intergovernmental Agreement in relation to a National Liquid Fuel Emergency (the IGA) to which it is a signatory. The IGA is designed to ensure a harmonised response by Commonwealth, state and territory governments to a liquid fuel emergency, recognising that such emergencies invariably occur across geographic boundaries.

The IGA requires that parties agree to take all necessary actions to ensure that they have the ability to implement measures under the *Liquid Fuel Emergency Act 1984* (Cth) including the development and testing of liquid fuel emergency response system procedures; and that each state and territory government recognises the importance of and will strive to ensure its own emergency response plan achieves and maintains consistency with the National Liquid Fuel Emergency Response Plan (NLFERP).

Signatories to the IGA recognise that the liquid fuel industry is best placed to implement market-based supply balancing mechanisms as the preliminary response to a national liquid fuels supply shortfall; and market-based options for managing a national liquid fuel emergency shall be pursued with the objective of minimising an intervention and disruption to the orderly conduct of the liquid fuel industry, including the operation of the market price mechanism.

2. The authorising law

Fuels Rationing Act 2019

The Act was notified on 11 April 2019 and will commence on 11 October 2019. The powers provided under the Act may be used by the Minister in the event or likely event that a shortage of liquid fuel supplies is severe enough that normal industry processes, fuel stored, alternative supplies, and price fluctuations could not alone guarantee sufficient supply. These powers of the Act would be used in response to advice from the National Oil Supplies Emergency Committee (NOSEC), which is a subcommittee of the Council of Australian Governments (COAG) Energy Council.

NOSEC includes representatives from the Commonwealth, state and territory governments as well as representatives from the liquid fuel industry. The ACT Government will make decisions regarding response to liquid fuel emergencies in consultation with NOSEC. This consultation process will allow the ACT Government to align its response to a liquid fuel emergency with other jurisdictions, particularly NSW.

The liquid fuel emergency management legislation of the Commonwealth and other jurisdictional governments provide relatively broad powers to their responsible ministers to enact fuel restriction measures in response to a liquid fuel emergency. All NOSEC members have agreed to the framework for managing a national liquid fuel emergency including principals for fuel restriction measures and communications that are detailed in the NLFERP. In the event of a liquid fuel emergency NOSEC members will work together to manage the emergency. Due to the rarity of liquid fuel emergencies, the current best practice methodology for managing liquid fuel emergencies is not a clear and tested methodology. It is important that all jurisdictions are able to monitor the emergency and adjust their responses to a liquid fuel emergency quickly and in unison with other jurisdictions to respond to the particular circumstances of a liquid fuel emergency.

The Act has been structured to allow for fuel restriction measures to be updated quickly to ensure that the ACT is able to maintain consistency with other states and territories and the Commonwealth in responding to liquid fuel emergencies. It does this by placing the detail of fuel restriction measures in disallowable instrument. Disallowable instruments can be changed quickly, while providing for scrutiny from the Legislative Assembly. In almost all situations, powers from the Act would be used in conjunction with similar powers being exercised by other jurisdictions.

Powers

Section 8 (3) of the Act provides the Minister with the power to approve a fuel restriction scheme as a disallowable instrument. A fuels restriction scheme provides a framework for fuel restriction measures which can be utilised in the event of a fuel shortage or likely fuel shortage. Section 9 of the Act provides that an approved fuel restriction scheme must include the imposition of restrictions in different stages, and a range of restrictions that may be imposed under each stage, including the following:

- (i) the amount or type of fuel to which the restrictions apply;
- (ii) the circumstances in which the restrictions apply; and
- (iii) the class of buyers, sellers or other people to whom the restrictions apply.

Section 9 (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.

Section 11 of the Act provides the Minister power to declare that a fuel restriction, under an approved fuel restriction scheme, is in place for a specified period of time, with a maximum period being three months, to address a shortage or likely shortage of fuel. The Minister must repeal a fuel restriction if the Minister is satisfied there is no longer a shortage or likely shortage of fuel. Section 14 of the Act allows the Minister to extend a declaration period for a fuel restriction for not more than 3 months. Part 3 of the Act provides powers to inspectors to ensure that fuel restrictions are complied with.

The powers of the Act are broadly consistent with those that exist in regulations made under the *Utilities Act 2000* (ACT) to respond to electricity, natural gas, or water shortages.

3. Policy Objectives of the Scheme

Managing energy supply is critical to the functioning of a modern economy. The Act is an important measure to strengthen the resilience of the Territory and the nation, as it improves the ability of the Territory to manage and respond to a potential liquid fuel shortage.

The objective of the scheme is to provide power for the Minister to restrict the use of fuels to meet one or more of the following objectives (stated in section 11 (1) (b) of the Act) in the event or likely event of a fuel shortage:

Section 11 (1) (b)

- (i) facilitate as far as practicable, the provision of efficient, reliable and sustainable fuel supplies to consumers; or*
- (ii) protect the interest of consumers; or*
- (iii) manage the safety and security of the fuel distribution chain; or*
- (iv) protect public safety; or*
- (v) comply with international agreements or commitments; or*
- (vi) assist a State or another Territory in doing anything mentioned in subparagraphs (i) to (v).*

Policy problems to be addressed in meeting the policy objectives

Policy problems that need to be considered and addressed in order to successfully achieve the policy objectives are detailed below.

Characteristics of effective retail rationing of fuel identified in the NLFERP

In developing the NLFERP, the Commonwealth Government identified five key characteristics in relation to effective retail fuel rationing. These key characteristics have been embedded in the NLFERP and its supporting policy and operational framework:

- 3.1 That it achieves the required demand response by constraining demand Australia wide and providing fair and transparent allocation of available fuel supply.
- 3.2 That it is practical to implement and administer. This includes rapid implementation, utilising existing business infrastructure and practices and with the buy-in of retail fuel sites and fuel purchasers.
- 3.3 The system should be easy to understand and communicate to the general public. It must also reflect normal consumer behaviours where possible.
- 3.4 That it is flexible to the circumstances of each individual emergency situation.
- 3.5 That it provides a clearly defined (and appropriately limited) decision making framework.

The ACT fuel restriction scheme should meet each of the above stated characteristics. Further to the above stated goals, the ACT has identified that the scheme should address the following policy problems:

- 3.6 There are services such as utilities and waste management that are not currently explicitly provided for in the *Liquid Fuel Emergency Act 1984* (Cth) and its supporting legislation. The ACT Government recognises the need to ensure that these essential services can continue their critical functions in the event of a liquid fuel emergency. Noting that in the event of a national liquid fuel emergency, Commonwealth legislation may override any jurisdictional legislation that

does not align. It is therefore important that fuel users do not have a false sense that they will be provided for in a liquid fuel emergency.

- 3.7 Increasing the number of exemptions from a fuel restrictions will result in a reduction of total available fuel supply during an emergency.
- 3.8 The ACT Scheme should be compatible with the *Liquid Fuel Emergency Act 1984* (Cth) and its supporting legislation and guidelines, the IGA and the NLFERP.
- 3.9 Fuel users should be encouraged to develop contingency planning to ensure that they are able to continue their essential functions with reduced fuel supplies. This will increase the resilience of the Territory. Fuel users may be less likely to do this if they think that they may be exempt from fuel restrictions.

4. How the proposed Scheme addresses the identified policy problems to meet the policy objective

The Scheme and its Guidelines addresses the policy problems 3.4, 3.5 and 3.8 by providing the Minister with direction for the implementation of Stage 1 fuel restrictions and Stage 2 fuel restrictions. Each stage of fuel restrictions includes restriction measures that may be implemented in a liquid fuel emergency. Stage 1 fuel restrictions are voluntary fuel restriction measures, which, if declared by the Minister, apply to all people in the event or likely event of a fuel shortage. A declaration of a voluntary Stage 1 fuel restriction will include information on which type of fuel the restriction applies to and may include further information, in accordance with Section 11 (2) of the Act. This allows the fuel restriction measures to be tailored to the circumstance of the fuel emergency. Stage 1 fuel restrictions are consistent with voluntary fuel restriction measures in the NLFERP.

Stage 2 fuel restriction measures are mandatory fuel restrictions, where voluntary fuel restrictions are not sufficient to manage a shortage or likely shortage of fuel. If the Minister makes a declaration that a Stage 2 fuel restriction measure is in force, the declaration will include information on the amount and type of fuel to which the restriction applies. When declaring that stage 2 fuel restriction measures are in force, the Minister may provide conditions by which fuel may be sold and purchased. An example of a condition is that fuel must be pumped directly into a vehicle. The Guidelines provide guidance for conditions that should be included in the fuel restriction declaration for Stage 2 fuel restrictions. These restrictions and conditions described in the Scheme and Guidelines are in line with the NLFERP.

The Scheme details some fuel users that provide essential services to the community, which may be exempted from fuel restrictions by the Minister. The Scheme identifies two classes of essential fuel users that the Minister may consider for exemptions from fuel restrictions, Class A Essential Users and Class B Essential Users. The Class A Essential Users list is consistent with Essential Users identified in the subordinate legislation of the *Liquid Fuels Emergency Act 1984* (Cth): the *Liquid Fuel Emergency (Activities-Essential Users) Determination 2019*. Providing exemptions for these entities from Stage 2 fuel restrictions is consistent with the NLFERP.

The inclusion of the Class B Essential User list in the Scheme seeks to strike the right balance to address policy objectives 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9. It has been identified that, depending on the circumstance of a liquid fuel emergency, Class B Essential Users may not require exemptions from fuel restrictions to deliver their essential functions. The Minister may or may not exempt a Class B user in a fuel restriction declaration, in accordance with the circumstances of the fuel shortage. The Guidelines clearly state that Class B Essential Users may not be exempted in a fuel

restriction declaration, and note that the *Liquid Fuels Emergency Act 1984* (Cth) includes no provisions for these fuel users.

The Guidelines strongly encourage all fuel users to develop contingency plans to ensure that they can continue their essential functions with reduced fuel supplies. The Guidelines also include information to support organisations to develop contingency plans. This aims to support organisations to plan procedures that will allow them to continue their essential functions with reduced access to fuel in the event of fuel restrictions.

The inclusion of Class B Essential Users in the Scheme addresses policy problem 3.4 by allowing the Minister to provide for essential services, which are not explicitly provided for in the Commonwealth legislation and NLFERP, in a fuel restriction declaration, if an exemption is necessary. The Scheme provides that the Minister may exempt an entity for a specific activity. The Guidelines provide further guidance on specific activities that the Minister may choose to make provision for in the event of declaration of a fuel restriction.

Policy objectives 3.2 and 3.3 state that declared fuel restrictions and their associated exemptions need to be easy to understand, communicate and implement. Section 12 of the Fuels Rationing Act provides that as soon as possible after making a fuel restriction declaration, the Minister must ensure that notice of the restriction is given in writing to fuel selling businesses, in addition to broader public notice. This written notice will provide specific information on all declared fuel restrictions and each fuel restriction exemption. The notification will include information on the identification required for each type of exempt fuel user. The Guidelines also provide information on the required identification of exempt entities.

5. Consistency of the disallowable instrument with the authorising law

The Scheme is consistent with the Act in that it provides a framework for the Minister to act swiftly to respond to a liquid fuel emergency. The Scheme is consistent with sections 8 and 9 of the Act which provide criteria for the Minister to consider in approving a fuel restriction scheme and guidance on the scope of a Scheme.

6. Consistency with policy objectives of other Territory law

The framework of the Act and the Scheme broadly reflect the frameworks for managing shortages of gas, electricity and water 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*.

Shortages in water supply can be managed through water restrictions, which are set out in the *Utilities (Water Restriction Scheme) Approval 2010 (No 1)* under the *Utilities (Water Conservation) Regulation 2006*.

The approval of the Scheme under the *Fuels Rationing Act 2019* will provide broad consistency in ACT processes for the management of all types of essential services.

The framework of the Scheme varies from that of the restriction schemes for gas, electricity and water, which have more levels of restrictions and focus on the use of the restricted utility for specific activities.

The Scheme has been developed with only 2 stages: voluntary and mandatory. Voluntary restrictions focus on reducing the use of fuel through specific activities and mandatory restrictions focus on reducing the sale and purchase of fuel. This reflects the difference in the way the community accesses and uses liquid fuel compared to utilities and the available methods for compliance.

Unlike fuel, utilities are supplied directly to a premises and need to be available at all times. It is not possible to restrict the delivery of utilities to individual premises while allowing occupants to use the utility at the time that it is needed. This is why utility restriction schemes focus on restricting the use of the utility for particular activities. On the other hand, once purchased, fuel can be used at the convenience of the consumer, and once a consumer is using fuel to power a vehicle, the purpose of travel is not clear to anybody outside of the vehicle.

Restriction schemes for utilities have more restriction levels, which increase in accordance with the severity of the shortage, reducing the activities and frequency of activities available for the community to use the utility. The fuel restriction scheme differs as it only has two levels. In the event of a liquid fuel shortage the price signal for fuel will act as a natural deterrent for purchasing fuel. Further to this, the Minister will determine the limit on purchase and sale of fuel in accordance with the severity of the emergency. Limits on purchase and sale of fuel will be lower if the emergency is more severe. It will then be the responsibility of consumers to manage their usage within the confines of the fuel restriction. Options to ensure compliance with mandatory restrictions that limit the purchase and sale of fuel will be considered at an appropriate time.

7. Reasonable alternate way of achieving policy objectives

7.1 Do Nothing

This is not reasonable option.

While the likelihood of a liquid fuel emergency is extremely low, it is essential that the ACT has legislation in place to allow best practice emergency procedures to be implemented quickly should the need arise.

A do nothing option would not be compliant with the IGA.

7.2 Fuel restriction scheme which only includes voluntary measures

This is not a reasonable option.

Voluntary restrictions alone may not be sufficient to secure sufficient fuel reserves to ensure that essential services can continue to function throughout a liquid fuel emergency.

This approach would not be compliant with the IGA.

7.3 Replicate the framework of the *Liquid Fuel Emergency Act 1984 (Cth)* and the NLFERP in its entirety

As a signatory to the IGA, the ACT has committed to strive to ensure that its own emergency response plan achieves and maintains consistency with the NLFERP, however, it recognises the need to ensure that services which are essential to the health and wellbeing of the ACT

community, beyond the Essential Users identified in the *Liquid Fuel Emergency Act 1984* (Cth), can continue to function.

The *Liquid Fuel Emergency Act 1984* (Cth) provides broad power to the Commonwealth Minister to exempt a person or organisation as an essential user, beyond those identified in the *Liquid Fuel Emergency (Activities-Essential Users) Determination 2019*, if satisfied that such an exemption is essential to the health, safety or welfare of the community. In developing the Scheme, the ACT preference is that decisions regarding the entities that may be considered for exemption, beyond those identified in the *Liquid Fuel Emergency (Activities-Essential Users) Determination 2019*, where possible, are identified ahead of time in order to allow for greater planning and preparation to support swift action if a liquid fuel emergency does occur. The identification of potential exemptions in the Class B essential user list allows the ACT Government to be flexible to the circumstances of a liquid fuel emergency and to act swiftly to protect the health and welfare of the community. This level of preparation would be consistent with ACT energy emergency legislation for electricity and gas.

7.4 Develop a fuel restriction scheme that is compatible with the IGA and has an expanded list of entities to be considered for exemptions from fuel restrictions

This is the preferred option.

The proposed disallowable instrument and Guidelines will provide:

- guidance to the Executive to support effective swift action in the management of a liquid fuel emergency while supporting policy problem 3.4, to allow fuel restriction measures to be flexible to the circumstances of each individual emergency situation.
- the flexibility required to respond to the particular circumstances of a liquid fuel emergency.
- that a notification of a fuel restriction declaration will include comprehensive information for fuel selling businesses regarding the fuel restrictions which are enacted, exempt fuel users, and appropriate identification for exempt fuel users. This will support policy problems 3.2 and 3.3 that the scheme be easy to understand and implement.
- compatibility with the IGA, the *Liquid Fuels Emergency Act 1984* (Cth) and its subordinate legislation and the NLFERP.
- advice to Class B Essential Users that they will not be guaranteed exemption from fuel restrictions which strengthens the need for contingency planning.
- improved understanding of liquid fuel emergency management processes for fuel selling businesses.
- consistency with emergency management legislation for electricity, gas, and water.

Option 7.4 is the preferred option because it is compatible with the *Liquid Fuels Emergency Act 1984* (Cth), its subordinate legislation and the NLFERP, while providing further guidance regarding essential services provided to the ACT community that may require support to function. Further guidance on the instrument is provided by way of publicly accessible guidelines.

8. Costs and benefits of implementing the Scheme

The objective of the Scheme is to allow the Minister to restrict the use of fuels to meet one or more of the objectives in Section 11 (1) (b) of the Act in the event or likely event of a fuel shortage.

In order to meet these objectives, fuel restrictions must reduce the overall consumption of fuel in the Territory to ensure that essential services can continue to function and the ongoing availability of fuel to the community.

The costs and benefits of implementing the Scheme as per option 7.4 compared to a do nothing scenario have been identified for each stakeholder group in the table below.

Sector	Costs	Benefits
Stakeholders	<ul style="list-style-type: none"> • Obtaining advice on new legislation. • Protocols and training may need to be developed to ensure compliance with the Fuel Restriction Scheme. 	<ul style="list-style-type: none"> • Improved certainty and understanding of fuel restriction processes. • Providing for necessary and effective limitation on fuel supplies in response to an emergency, for the benefit of the community as a whole. • Access to functioning essential services in the event of a liquid fuel emergency. • Fuel resources maintained to support the provision of sustained access to fuel in the event of a liquid fuel emergency. <p>Advice provided on methods to reduce fuel consumption.</p>
Government	<ul style="list-style-type: none"> • Communication and public education costs. • Analysis required to identify appropriate exemptions for Class B Essential Users. 	<ul style="list-style-type: none"> • Improved processes for emergency procedures. • Guidance for decision making in the event of a liquid fuel emergency. • Providing for necessary and effective limitation on fuel supplies in response to an emergency, for the benefit of the community as a whole. • Consistency with ACT gas, electricity and water shortage management legislation framework. • Compliant with the IGA. • Compatible with the NLFERP.
Class A Essential Users		<ul style="list-style-type: none"> • Access to fuel stocks to support continued function of services in the event of a liquid fuel emergency.

Class B Essential Users	<ul style="list-style-type: none"> • There is a risk that Class B Essential Users may assume that they will be provided for in all liquid fuel emergencies. The Guidelines encourage these entities to develop and maintain contingency planning to manage their services with reduced access to fuel. 	<ul style="list-style-type: none"> • Provide a safety net to allow the Minister to make provisions for essential users beyond the Class A Essential User list to enable their essential function to continue in the event of a liquid fuel emergency that is managed by the ACT Government. • Informed that in a national liquid fuel emergency, the Commonwealth may not provide exemptions for Class B Essential Users, supporting the need to develop and maintain contingency plans.
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Options 7.1 and 7.2 are not viable as they are not compliant with the IGA and will not provide adequate protection to community safety and wellbeing. For this reason the cost benefit analysis comparison below will compare the costs and benefits of the preferred option 7.4 with option 7.3.

Sector	Costs of implementing option 7.4 compared to option 7.3	Benefits of implementing option 7.4 compared to option 7.3
Stakeholders	<ul style="list-style-type: none"> • Potential for confusion between Commonwealth and ACT liquid fuel emergency management legislation. • Potential costs for further legal advice due to variance with Commonwealth legislation 	<ul style="list-style-type: none"> • Improved certainty regarding processes for a liquid fuel emergency that is managed by the ACT Government. • Ability to tailor a declaration to the particular fuel shortage situation in the ACT. • Providing further guidance to the Executive to consider Class B Essential Users may result in swifter action in responding to a liquid fuel emergency, which would support improved community outcomes.
Government	<ul style="list-style-type: none"> • Potential for confusion between Commonwealth and ACT liquid fuel emergency management legislation. 	<ul style="list-style-type: none"> • Improved processes for emergency procedures. • Further guidance for decision making in the event of a liquid fuel emergency. • Consistency with ACT legislative frameworks for managing shortages of gas, electricity and water supplies. • Ability to tailor a declaration to the particular fuel shortage situation in the ACT,

		<p>consistent with Government’s obligation to protect the safety and wellbeing of the ACT community.</p> <ul style="list-style-type: none"> • Improved reputational confidence in essential ACT Government services’ ability to function in a liquid fuel emergency.
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9. Assessment of the consistency of the proposed law with the Scrutiny of Bills Committee principles

Accord with the general objects of the Act

The Scheme is in accordance with the general objects of the Act in that it allows for the Minister to restrict the use of fuels to meet one or more of the objectives in Section 11 (1) (b) in the event or likely event of a fuel shortage.

Unduly trespasses on personal rights and liberties

Limitations on fuel access may trespass on personal rights and liberties; notably the right to freedom of movement in the *Human Rights Act 2004*. However, any limitation is proportionate and necessary to ensure the objects of the Act can be met and a fuel shortage adequately provided for to ensure the safe and effective functioning of the community as a whole. The Explanatory Statement notified alongside the instrument contains a detailed analysis of the human rights affected by this instrument.

Rights, liberties and/or obligations unduly dependent upon non reviewable decisions

The Scheme must be flexible to ensure that the Minister can respond to the exact circumstances of a liquid fuel emergency and can make decisions in unison with other jurisdictions. It is impossible to foresee the exact circumstances of all potential liquid fuel emergencies. For this reason the Scheme provides powers for the Minister to include further conditions on the sale and purchase of fuel in Stage 2 fuel restrictions and to provide exemptions from fuel restrictions to fuel users beyond those listed in the Class A or Class B Essential Users List in a declaration of a fuel restriction.

Section 11 of the Act provides that a declaration of a fuel restriction is a notifiable instrument, which must comply with the requirements set out in section 11 (1), (3), (4) and (7) of the Act.

The scope of merits review is limited by section 15 of the Act. Section 15 provides that a person cannot commence a court proceeding more than 30 days after a decision is made under section 8, section 11 or section 14 of the Act, and if a proceeding is commenced within 30 days of the decision, the proceeding is not subject to an injunction. Section 15 is designed to ensure that the purpose of the Act, to allow for a declaration to be made in an emergency situation, is not undermined. If an injunction were able to be granted, this may see the declared fuel restriction be immediately halted. It is in the interests of public safety that the Scheme and declared fuel restrictions be effective.

While the decisions under the Act are not subject to merits review, they may be subject to judicial review if requirements regarding grounds and standing are met. This framework for review is appropriate considering the need for declared fuel restrictions to be effective and tailored to the particular circumstances of the liquid fuel emergency.

Contains matters which should properly be dealt with in an Act of the Legislative Assembly

The Act was drafted to so that the detail of fuel restriction measures is developed in the fuels restriction scheme, a disallowable instrument. Declaring this information by way of disallowable instrument gives the Minister the flexibility to quickly make changes to the approach taken in managing a liquid fuel emergency, if necessary, while allowing scrutiny from the Legislative Assembly. The ability to change the Scheme quickly is an important factor in complying with the IGA because it will ensure that the ACT can maintain consistency with the other jurisdictions in responding to a liquid fuel emergency.