



# Liquid Fuel Emergency Act 1984

No. 5, 1984

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## About this compilation

### This compilation

This is a compilation of the *Liquid Fuel Emergency Act 1984* that shows the text of the law as amended and in force on 16 December 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to facilitate the management of liquid fuel that is, or is likely to be, in short supply, and for related purposes**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Liquid Fuel Emergency Act 1984*.

### **2 Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.

### **3 Interpretation**

(1) In this Act, unless the contrary intention appears:

***Agreement*** means the Agreement on an International Energy Program done at Paris on 18 November 1974, as in force from time to time.

Note: The Agreement is in Australian Treaty Series 1979 No. 7 ([1979] ATS 7) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***aircraft*** means any machine or craft that can derive support in the atmosphere from the reactions of the air or from buoyancy but does not include an air-cushion vehicle.

***Australia***, when used in a geographical sense, includes the external Territories.

***authority of the Commonwealth*** means:

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or

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- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

***civil penalty provision*** means subsection 12(9), 13(9), 14(6) or (7), 14A(6) or (7), 17(8), 18(6), 19(5), 20(7), 21(9), 22(9), 23(9) or 24(9).

***corporation*** means a body corporate that:

- (a) is a foreign corporation;
- (b) is a trading corporation; or
- (c) is incorporated in an internal Territory.

***Court*** means the Federal Court of Australia.

***emergency reserve commitment*** has the meaning given by Article 2 of the Agreement.

***Energy Minister*** means:

- (a) in relation to a State—the Minister of the State who, under a law of that State, is responsible, or principally responsible, for the administration of emergency measures relating to any liquid fuel shortage that might affect that State; and
- (aa) in relation to the Australian Capital Territory—the person appointed as a Minister under section 41 of the *Australian Capital Territory (Self-Government) Act 1988* who, under a law of that Territory, is responsible, or principally responsible, for the administration of emergency measures relating to any liquid fuel shortage that might affect that Territory; and
- (b) in relation to the Northern Territory—the person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* who, under a law of that Territory, is responsible, or principally responsible, for the administration of emergency measures relating to any liquid fuel shortage that might affect that Territory; and
- (c) in relation to the Jervis Bay Territory and an external Territory (other than an external Territory referred to in



paragraph (d))—the Minister administering the *Jervis Bay Territory Acceptance Act 1915*; and

- (d) in relation to the Australian Antarctic Territory and the Territory of Heard Island and McDonald Islands—the Minister administering the *Australian Antarctic Territory Acceptance Act 1933*.

**enter**, in relation to a ship or an aircraft, includes board.

**examine** includes account, measure, weigh, grade or gauge.

**foreign corporation** means a foreign corporation to which paragraph 51(xx) of the Constitution is applicable, and includes a body corporate that is incorporated in an external Territory.

**liquid fuel** means liquid petroleum, a liquid petroleum product, a liquid petrochemical, methanol or ethanol.

**liquid petrochemical** means a substance that is a petrochemical and is in a liquid state at standard temperature and pressure.

**liquid petroleum** means a substance that is petroleum and is in a liquid state at:

- (a) standard temperature and pressure; or
- (b) a temperature and pressure prescribed for the purposes of this definition.

**liquid petroleum product** means any substance that is a petroleum product and is in a liquid state at:

- (a) standard temperature and pressure; or
- (b) a temperature and pressure prescribed for the purposes of this definition.

**offence against this Act** means:

- (a) an offence against subsection 14(8) or (9), 14A(8) or (9), 29(5), 30(2) or 33(2); or
- (b) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act; or
- (c) an offence against:

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- (i) section 6 of the *Crimes Act 1914*; or
  - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence referred to in paragraph (a) or (b) of this definition.

***officer of a State***, in relation to a State, means:

- (a) an officer or employee of the State;
- (b) a member of the police force of the State; or
- (c) a person who constitutes, is a member of, or is employed by, an authority established by or under a law of the State.

***officer of the Australian Capital Territory*** means:

- (a) an officer or employee of the Australian Capital Territory; or
- (b) a member or special member of the Australian Federal Police providing police services in relation to the Australian Capital Territory; or
- (c) a person who constitutes, is a member of, or is employed by, an authority established by or under a law of the Australian Capital Territory.

***officer of the Northern Territory*** means:

- (a) an officer or employee of the Northern Territory;
- (b) a member of the police force of the Northern Territory; or
- (c) a person who constitutes, is a member of, or is employed by, an authority established by or under a law of the Northern Territory.

***oil stocks*** means oil stocks under Article 1 of the Annex to the Agreement which can be credited toward Australia's emergency reserve commitment in accordance with the Agreement.

***period of national liquid fuel emergency*** means a period specified in a Proclamation made under subsection 16(1).

***petrochemical*** means a substance (not being a petroleum product), whether in a gaseous, liquid or solid state, manufactured from any of, or from a mixture of any of, the following substances, that is to say, a petroleum product, petroleum or a petroliferous mineral.

***petroleum*** means:

- (a) any naturally occurring hydrocarbon or mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of a hydrocarbon or hydrocarbons and of another substance or other substances, whether in a gaseous, liquid or solid state.

***petroleum product*** means:

- (a) any hydrocarbon or mixture of hydrocarbons produced by subjecting petroleum to a process of refining or produced from petroliferous minerals; or
- (b) any mixture of a hydrocarbon or hydrocarbons so produced with another substance or other substances.

***planning period***, in relation to a period of national liquid fuel emergency, means a period determined under subsection 9(1).

***price*** includes a charge of any description.

***refined liquid petroleum product*** means:

- (a) a liquid petroleum product, being:
  - (i) aviation gasoline;
  - (ii) motor spirit;
  - (iii) aviation turbine fuel;
  - (iv) lighting kerosine;
  - (v) heating oil;
  - (vi) power kerosine;
  - (vii) automotive distillate;
  - (viii) industrial diesel fuel;
  - (ix) liquid petroleum gas;
  - (x) fuel oil;
  - (xi) bitumen;
  - (xii) naphtha;
  - (xiii) lubricating oil; or
  - (xiv) lubricating grease;

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- (b) a liquid petroleum product (other than a liquid petroleum product referred to in paragraph (a)) that is declared by the regulations to be a refined liquid petroleum product for the purposes of this Act;
- (c) methanol; or
- (d) ethanol.

**relevant fuel industry corporation** means a corporation that:

- (a) is engaged in the importation into Australia, or in the exportation from Australia, of liquid fuel;
- (b) is engaged in the recovery of petroleum;
- (c) is engaged in the refining or production of liquid fuel; or
- (d) is engaged in the sale, in Australia, of liquid fuel, either in bulk or otherwise;

whether or not that activity constitutes the sole or principal activity in which the corporation is engaged.

**relevant liquid fuel**, in relation to a period of national liquid fuel emergency, means a liquid fuel the shortage or likely shortage of which resulted in the declaration of that national liquid fuel emergency.

**relevant person** means a person, other than a corporation, who:

- (a) is engaged in the importation into Australia, or the exportation from Australia, of liquid fuel; or
- (b) is engaged in the sale in Australia of liquid fuel, either in bulk or otherwise;

whether or not that activity constitutes the sole or principal activity in which the person is engaged.

**ship** means a vessel or boat of any description and includes:

- (a) any floating structure; and
- (b) any air-cushion vehicle.

**trading corporation** means a trading corporation to which paragraph 51(xx) of the Constitution is applicable.

- (2) In this Act, a reference to standard temperature and pressure is a reference to a temperature of 15 degrees Celsius and a pressure of 101.325 kilopascals.
- (3) In this Act, a reference to trading or commercial activities is a reference to trading activities or commercial activities carried on within Australia or carried on between Australia and places outside Australia.
- (4) The express references in this Act to corporations and bodies corporate shall not be taken to imply that references to persons do not also include references to persons who are not natural persons.
- (5) For the purposes of this Act, in interpreting whether a purchase of a particular kind of refined liquid petroleum product is a purchase in bulk, regard shall be had to all relevant matters, including, but without limiting the generality of the foregoing, such matters (if any) as are prescribed in relation to refined liquid petroleum products of that kind.

#### **4 Extension of Act to external Territories**

This Act extends to every external Territory.

#### **5 Act to bind Crown**

- (1) This Act binds the Crown in each of its capacities.
- (1A) This Act does not make the Crown liable to be prosecuted for an offence.
- (2) A direction under this Act has no effect to the extent that, but for this subsection, it would prevent the exercise of powers, or the performance of functions, of government of a State, of the Australian Capital Territory or of the Northern Territory.

## 6 Operation of Act

- (1) The Minister shall not exercise his or her powers under all or any of the following provisions, namely, sections 12, 13, 17, 18, 19, 20, 21, 22, 23 or 24 except:
- (a) for purposes related to the defence of Australia, including, but without limiting the generality of the foregoing, the purpose of ensuring the availability in Australia at all times of liquid fuel essential to the reasonable requirements of the community;
  - (b) for the purpose of giving effect to the Agreement;
  - (c) for purposes in connection with all or any of the Territories;
  - (d) for the purpose of protecting the existence of Australia as a nation;
  - (e) for the purpose of ensuring that trade or commerce:
    - (i) between Australia and places outside Australia;
    - (ii) among the States; or
    - (iii) engaged in by a corporation;may be carried on without obstruction or hindrance;
  - (f) to the extent that the Constitution permits, for the purpose of ensuring that trade or commerce:
    - (i) between Australia and places outside Australia;
    - (ii) among the States; or
    - (iii) engaged in by a corporation;may be carried on in an efficient, competitive and profitable manner; or
  - (g) for the purpose of ensuring that the supply of goods or services by or to the Commonwealth or an authority or instrumentality of the Commonwealth may be carried on without obstruction or hindrance.
- (2) In subsection (1), a reference to a corporation shall be construed as including a reference to any financial corporation to which paragraph 51(xx) of the Constitution is applicable including a body corporate that carries on as its sole or principal business the business of banking (other than State banking not extending

beyond the limits of the State concerned) or insurance (other than State insurance not extending beyond the limits of the State concerned).

### **7 Additional operation of Act in relation to relevant fuel industry corporations**

- (1) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect that it would have if section 6, subsection (2) of this section, sections 22 and 24 and subsection 47(2) were omitted.
- (2) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect that it would have if:
  - (a) section 6, subsection (1) of this section, sections 22 and 24 and subsection 47(2) were omitted; and
  - (b) a direction under section 12, 13, 17, 18 or 20 applicable to a trading corporation had no effect to the extent that, but for this paragraph, the direction related to an act or thing done, or omitted to be done, by the corporation otherwise than for the purposes of its trading or commercial activities.

### **8 Additional operation of Act in relation to relevant persons**

Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect that it would have if:

- (a) each reference in sections 22 and 24 to the trading or commercial activities of a relevant person were, by express provision, confined to trading or commercial activities of that relevant person carried on:
  - (i) between Australia and places outside Australia;
  - (ii) among the States;
  - (iii) within a Territory, between a State and a Territory, or between Territories; or

- (iv) by way of the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth; and
- (b) section 6 were omitted.

## **9 Minister must determine planning periods**

- (1) The Minister must, by legislative instrument, determine a period that forms part of a period of national liquid fuel emergency to be a planning period in relation to that period of national liquid fuel emergency.
- (2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to a determination under subsection (1).
- (3) If the period of national liquid fuel emergency terminates before the end of a planning period, the planning period ends at the same time.
- (4) The Minister must, as soon as practicable after making a determination under subsection (1), give a copy of the determination to the Energy Minister for each State and Territory.

## **10 Bulk customers of relevant fuel industry corporations or of relevant persons**

- (1) The Minister may, by writing, identify a person or an organisation as a bulk customer of a particular relevant fuel industry corporation, or of a particular relevant person, in relation to a particular refined liquid petroleum product.

*Instrument not a legislative instrument*

- (2) An instrument under subsection (1) is not a legislative instrument.



*Guidelines*

- (3) An instrument under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the instrument is made.
- (4) The Minister must, by legislative instrument, make guidelines for the purposes of this section.
- (2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to guidelines made under subsection (4).

*Limits on revocation*

- (6) The Minister must not revoke an instrument under subsection (1) unless he or she is satisfied that the person or organisation has ceased to carry on activities because of which the person or organisation was identified as such a bulk customer.

*Status as bulk customer during period of national liquid fuel emergency*

- (7) Subject to subsection (8), a person or an organisation identified as a bulk customer of a particular relevant fuel industry corporation or of a particular relevant person in relation to a particular refined liquid petroleum product is taken for the purposes of this Act:
  - (a) if the identification is in force immediately before the start of a period of national liquid fuel emergency—to be such a bulk customer for all of that period; or
  - (b) if the identification occurs during a planning period in relation to a period of national liquid fuel emergency—to be such a bulk customer during:
    - (i) that part of the planning period that is after the identification; and
    - (ii) each later planning period in relation to that period of national liquid fuel emergency.

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*Effect of revocation during a period of national liquid fuel emergency*

- (8) If:
- (a) the Minister revokes an instrument identifying a person or an organisation as a bulk customer of a particular relevant fuel industry corporation or of a particular relevant person in relation to a particular refined liquid petroleum product; and
  - (b) the revocation occurs during a period of national liquid fuel emergency;

that person or organisation is taken, for the purposes of this Act, to cease to be such a bulk customer at the end of the planning period in which the revocation was made.

*Notice of decisions*

- (9) If the Minister makes a decision:
- (a) identifying, or refusing to identify, a person or organisation as a bulk customer of a relevant fuel industry corporation, or of a relevant person, in relation to a particular refined liquid petroleum product; or
  - (b) revoking the identification of a person or organisation as such a bulk customer;

the Minister must, as soon as practicable after making the decision, give notice of the decision to that person or organisation.

## **11 Essential users of refined liquid petroleum products**

- (1) The Minister may, by writing, identify a person or organisation as an essential user of a particular refined liquid petroleum product in a particular State or Territory if, and only if, the activities carried on by that person or organisation in that State or Territory are or include:
- (a) activities related to the defence of Australia; or
  - (b) activities related to the provision of that product as fuel for ships and aircraft engaged in trade or commerce:
    - (i) between Australia and places outside Australia; or

- (ii) among the States; or
- (iii) between a State and a Territory or between Territories;  
or
- (c) activities related to the export of that product from Australia;  
or
- (d) activities determined under subsection (3).

*Instrument not a legislative instrument*

- (2) An instrument under subsection (1) is not a legislative instrument.

*Determination of activities*

- (3) The Minister may, by legislative instrument, determine activities for the purposes of paragraph (1)(d). The Minister must not determine an activity unless the Minister is satisfied that it is essential to the health, safety or welfare of the community.

*Guidelines*

- (4) An instrument under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the instrument is made.
- (5) The Minister must, by legislative instrument, make guidelines for the purposes of this section.

*Retrospective application of instruments*

- (6) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
  - (a) an instrument under subsection (3);
  - (b) guidelines made under subsection (5).

*Limits on revocation*

- (7) The Minister must not revoke an instrument under subsection (1) unless he or she is satisfied that the person or organisation has

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ceased to carry on activities because of which the person or organisation was identified as such an essential user.

*Status as essential user during period of national liquid fuel emergency*

- (8) Subject to subsection (9), a person or organisation identified as an essential user of a particular refined liquid petroleum product in a particular State or Territory is taken for the purposes of this Act:
- (a) if the identification is in force immediately before the start of a period of national liquid fuel emergency—to be such an essential user for all of that period; or
  - (b) if the identification occurs during a planning period in relation to a period of national liquid fuel emergency—to be such an essential user during:
    - (i) that part of the planning period that is after the identification; and
    - (ii) each later planning period in relation to that period of national liquid fuel emergency.

*Effect of revocation during a period of national liquid fuel emergency*

- (9) If:
- (a) the Minister revokes an instrument identifying a person or an organisation as an essential user of a particular refined liquid petroleum product in a particular State or Territory; and
  - (b) the revocation occurs during a period of national liquid fuel emergency;
- that person or organisation is taken, for the purposes of this Act, to cease to be such an essential user at the end of the planning period in which the revocation was made.

*Notice of decisions*

- (10) If the Minister makes a decision:

- (a) identifying, or refusing to identify, a person or organisation as an essential user of a particular refined liquid petroleum product in a State or Territory; or
- (b) revoking the identification of a person or organisation as such an essential user;

the Minister must, as soon as practicable after making the decision, give notice of the decision to that person or organisation and to the Energy Minister for that State or Territory.

### **11A Application of the *Criminal Code***

Chapter 2 (except Part 2.5) of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## Part II—Contingency planning powers

### 12 Minister may direct relevant fuel industry corporations to maintain reserves etc.

- (1) The Minister may, by writing, direct a relevant fuel industry corporation:
  - (a) to maintain at all times after a specified day, at specified places in Australia, specified quantities of reserve supplies of a specified kind of liquid fuel; or
  - (b) to accumulate, by a specified day, specified quantities of reserve supplies of a specified kind of liquid fuel and to maintain, at all times after that day, such quantities of reserve supplies of liquid fuel of that kind at specified places in Australia.
- (2) The Minister must not give a direction under subsection (1) during a period of national liquid fuel emergency.

Note: Section 17 deals with giving directions of a kind mentioned in subsection (1) of this section during a period of national liquid fuel emergency.

#### *Purpose of direction*

- (3) The Minister must not give a direction under subsection (1) unless it is for the purpose of ensuring that, in the event of a period of national liquid fuel emergency, the relevant fuel industry corporation will be in a position to comply with any direction that could be given to it during that period under Part III.

#### *Direction not a legislative instrument*

- (4) A direction under subsection (1) is not a legislative instrument.

*Guidelines*

- (5) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (6) The Minister must, by legislative instrument, make guidelines for the purposes of this section.
- (7) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to guidelines made under subsection (6).

*Variation of quantities*

- (8) If:
  - (a) a relevant fuel industry corporation is required by a direction under subsection (1) to maintain at a particular place a particular quantity of reserve supplies of liquid fuel of a particular kind; and
  - (b) the Minister is satisfied that particular temporary circumstances exist;the Minister may, in order to meet those circumstances, vary in writing the direction to specify a lesser quantity of reserve supplies of liquid fuel of that kind that the corporation needs to maintain at that place during a specified period.

*Civil penalty*

- (9) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1) (including such a direction as varied under subsection (8)).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

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*Notice of decisions*

- (10) The Minister must give notice of a direction under subsection (1) to the relevant fuel industry corporation. The direction comes into force when the notice is given.
- (11) The Minister must give notice of a variation under subsection (8) to the relevant fuel industry corporation. The variation comes into effect when the notice is given.

*Relationship with section 17*

- (12) If:
  - (a) a direction (the **earlier direction**) given to a relevant fuel industry corporation under subsection (1) is in force; and
  - (b) a direction (the **later direction**) is given to the corporation under subsection 17(1);then the earlier direction ceases to be in force at the time the later direction comes into force.

**13 Minister may direct relevant fuel industry corporations to develop bulk allocation procedures**

- (1) The Minister may direct each relevant fuel industry corporation that:
  - (a) is included in a class of relevant fuel industry corporations in relation to which guidelines under subsection (3) are in force; and
  - (b) supplies a refined liquid petroleum product of a kind specified in those guidelines;to give to the Minister, in a specified form and by a specified day, particulars of procedures the corporation has developed to enable it to allocate bulk supplies of that product in accordance with those guidelines.
- (2) A direction given under subsection (1) is a legislative instrument.



Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

#### *Guidelines*

- (3) The Minister must, by legislative instrument, make guidelines relating to a specified class of relevant fuel industry corporations allocating bulk supplies of a specified kind of refined liquid petroleum product to:
- (a) persons who in the event of a period of national liquid fuel emergency; or
  - (b) organisations that in the event of a period of national liquid fuel emergency;
- would be likely to be, during the whole or a part of that period, bulk customers of that class of relevant fuel industry corporations in relation to that product.

#### *Retrospective application of instruments*

- (4) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
- (a) a direction given under subsection (1);
  - (b) guidelines made under subsection (3).

#### *Approval of procedures*

- (5) If:
- (a) a relevant fuel industry corporation gives particulars of procedures to the Minister under subsection (1); and
  - (b) the Minister is satisfied that the procedures will enable the corporation to allocate bulk supplies of the product in accordance with the guidelines;
- the Minister must, by writing, approve those procedures.

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*Amendment of procedures*

- (6) If:
- (a) a relevant fuel industry corporation gives particulars of procedures to the Minister under subsection (1); and
  - (b) the Minister is not satisfied that the procedures will enable the corporation to allocate bulk supplies of the product in accordance with the guidelines;
- the Minister must, by writing, direct the corporation to:
- (c) make specified amendments of the procedures; and
  - (d) give to the Minister, in a specified form and by a specified day, particulars of the procedures as so amended.
- (7) If a relevant fuel industry corporation gives particulars of the procedures as so amended to the Minister under subsection (6), the Minister must, by writing, approve the procedures as so amended.

*Certain instruments are not legislative instruments*

- (8) The following are not legislative instruments:
- (a) an approval under subsection (5) or (7);
  - (b) a direction under subsection (6).

*Civil penalty*

- (9) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1) or (6).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

*Notice of decisions*

- (10) The Minister must give notice of an approval under subsection (5) or (7) to the relevant fuel industry corporation.
- (11) The Minister must give notice of a direction under subsection (6) to the relevant fuel industry corporation. The direction comes into force when the notice is given.

**14 Minister may direct relevant fuel industry corporations and relevant persons to maintain statistical information**

- (1) The Minister may direct:
- (a) each relevant fuel industry corporation included in a specified class of relevant fuel industry corporations; and
  - (b) each relevant person included in a specified class of relevant persons;

to maintain, in a specified form and after a specified day, specified statistical information relating to liquid fuels that come into the possession or under the control of that corporation or person after that day.

- (2) A direction given under subsection (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

*Guidelines*

- (3) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (4) The Minister must, by legislative instrument, make guidelines for the purposes of this section.

*Retrospective application of instruments*

- (5) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
- (a) a direction given under subsection (1);
  - (b) guidelines made under subsection (4).

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*Civil penalties*

- (6) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

- (7) A relevant person must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant person that contravenes such a direction to pay a pecuniary penalty.

*Criminal offences*

- (8) A relevant fuel industry corporation commits an offence if:
- (a) a direction is in force under subsection (1) in relation to the corporation; and
  - (b) the corporation maintains statistical information; and
  - (c) the corporation does so knowing that the information is false or misleading in a material particular; and
  - (d) the information is maintained in compliance or purported compliance with the direction.

Penalty: 500 penalty units.

Note: Section 14B sets out some procedural matters relating to the prosecution of this offence.

- (9) A relevant person commits an offence if:
- (a) a direction is in force under subsection (1) in relation to the person; and
  - (b) the person maintains statistical information; and
  - (c) the person does so knowing that the information is false or misleading in a material particular; and
  - (d) the information is maintained in compliance or purported compliance with the direction.

Penalty for contravention of this subsection: 100 penalty units, or imprisonment for 2 years, or both.

Note: Section 14B sets out some procedural matters relating to the prosecution of this offence.

#### **14A Minister may direct relevant fuel industry corporations and relevant persons to make available statistical information**

- (1) The Minister may, by writing, direct a relevant fuel industry corporation or a relevant person to make available:
- (a) to the Minister and each Energy Minister (if any) specified in the direction; and
  - (b) by the day specified in the direction;
- such of the statistical information that the corporation or person is required to maintain under section 14 as is specified in the direction.

##### *Direction not a legislative instrument*

- (2) A direction under subsection (1) is not a legislative instrument.

##### *Guidelines*

- (3) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (4) The Minister must, by legislative instrument, make guidelines for the purposes of this section.
- (5) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to guidelines made under subsection (4).

##### *Civil penalties*

- (6) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1).

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Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

- (7) A relevant person must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant person that contravenes such a direction to pay a pecuniary penalty.

*Criminal offences*

- (8) A relevant fuel industry corporation commits an offence if:
- (a) a direction is in force under subsection (1) in relation to the corporation; and
  - (b) the corporation makes available statistical information; and
  - (c) the corporation does so knowing that the information is false or misleading in a material particular; and
  - (d) the information is made available in compliance or purported compliance with the direction.

Penalty: 500 penalty units.

Note: Section 14B sets out some procedural matters relating to the prosecution of this offence.

- (9) A relevant person commits an offence if:
- (a) a direction is in force under subsection (1) in relation to the person; and
  - (b) the person makes available statistical information; and
  - (c) the person does so knowing that the information is false or misleading in a material particular; and
  - (d) the information is made available in compliance or purported compliance with the direction.

Penalty: 100 penalty units, or imprisonment for 2 years, or both.

Note: Section 14B sets out some procedural matters relating to the prosecution of this offence.

*Notice of decision*

- (10) The Minister must give notice of a direction under subsection (1) to the relevant fuel industry corporation or relevant person. The direction comes into force when the notice is given.

**14B Prosecution of offences against section 14 or 14A***Indictable offences*

- (1) An offence against subsection 14(8) or (9) or 14A(8) or (9) is an indictable offence.

*Court of summary jurisdiction may determine the charge*

- (2) However, if a person is charged with such an offence, a court of summary jurisdiction may, with the consent of the defendant and the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily.

*What penalty court of summary jurisdiction may impose*

- (3) If, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in subsection (1), the penalty that the court may impose is:
- (a) for an offence against subsection 14(8) or 14A(8)—a fine not exceeding 100 penalty units; and
  - (b) for an offence against subsection 14(9) or 14A(9)—a fine not exceeding 20 penalty units or imprisonment for a period not exceeding 12 months, or both.

**15 Minister may enter into arrangements to enable directions under sections 23 and 24 to be implemented**

- (1) The Minister may, on behalf of the Commonwealth and for the purpose of ensuring the effective operation of any directions that may be, or have been, given under sections 23 and 24, enter into arrangements with:
- (a) a Minister of a State on behalf of that State; or

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- (b) a person appointed as a Minister under section 41 of the *Australian Capital Territory (Self-Government) Act 1988* on behalf of the Australian Capital Territory; or
  - (c) a person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* on behalf of the Northern Territory; or
  - (d) an authority established by or under a law of the Commonwealth or of a State or Territory;  
for the carrying out of such measures (including preliminary measures) as the Minister considers necessary to facilitate the implementation of such directions.
- (2) An arrangement under subsection (1) may provide for reimbursement by the Commonwealth of the cost of the carrying out of the measures to which the arrangement relates.



## **Part III—Declaration of, and powers for dealing with, national liquid fuel emergency**

### **16 Declaration of national liquid fuel emergency**

- (1) Subject to this section, the Governor-General may, by Proclamation, declare that a national liquid fuel emergency will exist during a period specified in the Proclamation.
- (2) The Governor-General shall not make a Proclamation under subsection (1) unless:
  - (a) the Minister is satisfied that it is necessary in the public interest to do so by reason that there is a shortage, or the likelihood of a shortage, of liquid fuel, being a shortage of such magnitude as to require the making of directions under all or any of the following provisions, namely, sections 17, 18, 19, 20, 21, 22, 23 and 24; and
  - (b) either:
    - (i) a national emergency declaration (within the meaning of the *National Emergency Declaration Act 2020*) is in force; or
    - (ii) the Minister is satisfied that he or she has afforded the Energy Minister for each State, the Energy Minister for the Australian Capital Territory and the Energy Minister for the Northern Territory a reasonable opportunity to consult with the Minister concerning the shortage, or likelihood of a shortage, of liquid fuel.
- (3) Without limiting the generality of the matters to which the Minister is to have regard for the purposes of paragraph (2)(a), he or she shall have regard to the question whether the shortage, or the likelihood of a shortage, of the liquid fuel concerned is likely to be averted by the voluntary augmenting of supplies of the liquid fuel by relevant fuel industry corporations.

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- (4) The period specified in the Proclamation under subsection (1) shall be expressed to commence on a date not earlier than the date on which the Proclamation is published in the *Gazette* and shall not exceed 3 months.
- (5) At any time during a period of national liquid fuel emergency specified in a Proclamation under subsection (1), the Governor-General may, and if the Minister becomes satisfied that it is no longer in the public interest that that period of national liquid fuel emergency should continue, shall, by Proclamation, revoke the first-mentioned Proclamation and, upon the revocation of the first-mentioned Proclamation, the period of national liquid fuel emergency terminates.

**17 Minister may direct relevant fuel industry corporations to maintain reserves etc.**

- (1) During a period of national liquid fuel emergency, the Minister may, by writing, direct a relevant fuel industry corporation:
  - (a) to maintain at all times after a specified day, at specified places in Australia, specified quantities of reserve supplies of a specified kind of liquid fuel; or
  - (b) to accumulate, by a specified day, specified quantities of reserve supplies of a specified kind of liquid fuel and to maintain, at all times after that day, such quantities of reserve supplies of liquid fuel of that kind at specified places in Australia.

*Purpose of direction*

- (2) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.

*Direction not a legislative instrument*

- (3) A direction under subsection (1) is not a legislative instrument.

*Guidelines*

- (4) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (5) The Minister must, by legislative instrument, make guidelines for the purposes of this section.
- (6) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to guidelines made under subsection (5).

*Variation of quantities*

- (7) If:
  - (a) a relevant fuel industry corporation is required by a direction under subsection (1) to maintain at a particular place a particular quantity of reserve supplies of liquid fuel of a particular kind; and
  - (b) the Minister is satisfied that particular temporary circumstances exist;the Minister may, in order to meet those circumstances, vary in writing the direction to specify a lesser quantity of reserve supplies of liquid fuel of that kind that the corporation needs to maintain at that place during a specified period.

*Civil penalty*

- (8) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1) (including such a direction as varied under subsection (7)).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

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*Notice of decisions*

- (9) The Minister must give notice of a direction under subsection (1) to the relevant fuel industry corporation. The direction comes into force when the notice is given.
- (10) The Minister must give notice of a variation under subsection (7) to the relevant fuel industry corporation. The variation comes into effect when the notice is given.

**18 Minister may direct transfer of liquid fuel**

- (1) During a period of national liquid fuel emergency, the Minister may, by writing, direct a relevant fuel industry corporation to cause a specified quantity of liquid fuel of a specified kind that is held by the corporation at a specified place (the *old place*) in Australia to be transferred by a specified day to another specified place (the *new place*) in Australia.
- (2) The new place:
  - (a) must be a place at which the corporation has adequate facilities to hold the quantity of liquid fuel to be transferred; and
  - (b) if the old place is situated in a State, the Australian Capital Territory or the Northern Territory and the transfer is for purposes that do not include any or all of the purposes mentioned in subsection (3)—must not be situated in the same State or Territory as the old place.
- (3) The purposes are as follows:
  - (a) purposes related to the defence of Australia;
  - (b) purposes related to the provision of fuel for ships and aircraft engaged in trade and commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) between a State and a Territory or between Territories;
  - (c) purposes related to the export of liquid fuel from Australia;

- (d) purposes related to the carrying on of an activity to which paragraph 11(1)(d) applies.

*Purpose of direction*

- (4) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.

*Direction not a legislative instrument*

- (5) A direction under subsection (1) is not a legislative instrument.

*Civil penalty*

- (6) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

*Notice of decision*

- (7) The Minister must give notice of a direction under subsection (1) to the relevant fuel industry corporation. The direction comes into force when the notice is given.

## **19 Minister may direct liquid fuel to be available for purchase**

- (1) During a period of national liquid fuel emergency, the Minister may, by writing, direct a relevant fuel industry corporation, in the course of its trading or commercial activities, to take such measures as are necessary to make a specified quantity of liquid fuel of a specified kind available for purchase on or before a specified day at a specified place by one or more specified persons.

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*Purpose of direction*

- (2) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.

*Direction may deal with price*

- (3) A direction given under subsection (1) to a relevant fuel industry corporation may provide that the price at which the liquid fuel is to be made available to a person in accordance with that direction is to be:
- (a) such price as is agreed upon by the corporation and that person; or
  - (b) in the absence of such agreement—such price as is determined by a specified person by arbitration.

*Direction not a legislative instrument*

- (4) A direction under subsection (1) is not a legislative instrument.

*Civil penalty*

- (5) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

*Notice of decision*

- (6) The Minister must give notice of a direction under subsection (1) to the relevant fuel industry corporation. The direction comes into force when the notice is given.

**20 Minister may give directions as to output from refineries**

- (1) During a period of national liquid fuel emergency, the Minister may, by writing, direct a relevant fuel industry corporation that is engaged in producing or refining liquid fuel to produce in

Australia, during a specified period, a specified quantity of liquid fuel of a specified kind.

*Purpose of direction*

- (2) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.

*Direction not a legislative instrument*

- (3) A direction under subsection (1) is not a legislative instrument.

*Guidelines*

- (4) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (5) The Minister must, by legislative instrument, make guidelines for the purposes of this section.
- (6) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to guidelines made under subsection (5).

*Civil penalty*

- (7) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

*Notice of decision*

- (8) The Minister must give notice of a direction under subsection (1) to the relevant fuel industry corporation. The direction comes into force when the notice is given.

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**21 Minister may give directions with respect to allocation by corporations of liquid fuel to bulk customers**

- (1) During a period of national liquid fuel emergency, the Minister may direct each relevant fuel industry corporation that, in the course of its trading or commercial activities:
- (a) ordinarily makes a specified kind of refined liquid petroleum product available for purchase in bulk in a State or Territory; and
  - (b) ordinarily makes that product available for such purchase by persons or organisations that are bulk customers of the corporation in relation to that product;
- to make that product available for purchase in bulk in that State or Territory by those persons or organisations in such quantities as are specified in, or worked out in accordance with, the direction.
- (2) A direction under subsection (1) must specify that the product is to be made available for purchase in accordance with bulk allocation procedures approved by the Minister under section 13.

*Limitations on directions*

- (3) A direction under subsection (1) has effect in relation to one or more planning periods, in relation to the period of national liquid fuel emergency, that are specified in the direction. However, the direction has no effect in relation to any part of a planning period that occurs before the day on which the direction takes effect.
- (4) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.

*Direction is a legislative instrument*

- (5) A direction given under subsection (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.



Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

*Guidelines*

- (6) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (7) The Minister must, by legislative instrument, make guidelines for the purposes of this section.

*Retrospective application of instruments*

- (8) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
  - (a) a direction given under subsection (1);
  - (b) guidelines made under subsection (7).

*Civil penalty*

- (9) A relevant fuel industry corporation must not, without reasonable excuse:
  - (a) contravene a direction in force under subsection (1); or
  - (b) make the kind of refined liquid petroleum product covered by a direction in force under subsection (1) available for purchase in bulk, during a period covered by the direction, by a person who is not a bulk customer of the corporation in relation to that product.

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

*Reasonable excuses*

- (10) It is a reasonable excuse for the purposes of paragraph (9)(a) if the person or organisation in respect of which the contravention is alleged to have occurred:

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- (a) is not an essential user of the refined liquid petroleum product concerned in the State or Territory concerned at the time of the alleged contravention; and
  - (b) refused or failed to produce to the relevant fuel industry corporation concerned a copy of the notice given to the person or organisation under subsection 10(9) stating the person or organisation to be a bulk customer of the corporation in relation to that product.
- (11) It is a reasonable excuse for the purposes of paragraph (9)(a) if the person or organisation in respect of which the contravention is alleged to have occurred:
- (a) is an essential user of the refined liquid petroleum product concerned in the State or Territory concerned at the time of the alleged contravention; and
  - (b) refused or failed to produce to the relevant fuel industry corporation concerned a copy of the following notices:
    - (i) the notice given to the person or organisation under subsection 10(9) stating the person or organisation to be a bulk customer of the corporation in relation to that product;
    - (ii) the notice given to the person or organisation under subsection 11(10) stating the person or organisation to be an essential user of that product in that State or Territory.
- (12) Subsections (10) and (11) do not limit subsection (9).

**22 Minister may give directions with respect to allocation by relevant persons of liquid fuel to bulk customers**

- (1) During a period of national liquid fuel emergency, the Minister may direct each relevant person who, in the course of the person's trading or commercial activities:
- (a) ordinarily makes a specified kind of refined liquid petroleum product available for purchase in bulk in a State or Territory; and

- (b) ordinarily makes that product available for such purchase by persons or organisations that are bulk customers of the relevant person in relation to that product;  
to make that product available for purchase in bulk in that State or Territory by those persons or organisations in such quantities as are specified in, or worked out in accordance with, the direction.
- (2) A direction under subsection (1) must specify that the product is to be made available for purchase in accordance with bulk allocation procedures specified in the direction.

*Limitations on directions*

- (3) A direction under subsection (1) has effect in relation to one or more planning periods, in relation to the period of national liquid fuel emergency, that are specified in the direction. However, the direction has no effect in relation to any part of a planning period that occurs before the day on which the direction takes effect.
- (4) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.

*Direction is a legislative instrument*

- (5) A direction given under subsection (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

*Guidelines*

- (6) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.

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- (7) The Minister must, by legislative instrument, make guidelines for the purposes of this section.

*Retrospective application of instruments*

- (8) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
- (a) a direction given under subsection (1);
  - (b) guidelines made under subsection (7).

*Civil penalty*

- (9) A relevant person must not, without reasonable excuse:
- (a) contravene a direction in force under subsection (1); or
  - (b) make the kind of refined liquid petroleum product covered by a direction in force under subsection (1) available for purchase in bulk, during a period covered by the direction, by a person who is not a bulk customer of the relevant person in relation to that product.

Note: Under section 34, the Court may order a relevant person that contravenes such a direction to pay a pecuniary penalty.

*Reasonable excuses*

- (10) It is a reasonable excuse for the purposes of paragraph (9)(a) if the person or organisation in respect of which the contravention is alleged to have occurred:
- (a) is not an essential user of the refined liquid petroleum product concerned in the State or Territory concerned at the time of the alleged contravention; and
  - (b) refused or failed to produce to the relevant person concerned a copy of the notice given to the person or organisation under subsection 10(9) stating the person or organisation to be a bulk customer of the relevant person in relation to that product.

- (11) It is a reasonable excuse for the purposes of paragraph (9)(a) if the person or organisation in respect of which the contravention is alleged to have occurred:
- (a) is an essential user of the refined liquid petroleum product concerned in the State or Territory concerned at the time of the alleged contravention; and
  - (b) refused or failed to produce to the relevant person concerned a copy of the following notices:
    - (i) the notice given to the person or organisation under subsection 10(9) stating the person or organisation to be a bulk customer of the relevant person in relation to that product;
    - (ii) the notice given to the person or organisation under subsection 11(10) stating the person or organisation to be an essential user of that product in that State or Territory.
- (12) Subsections (10) and (11) do not limit subsection (9).

### **23 Minister may give directions to corporations regulating or prohibiting supply of liquid fuel**

- (1) During a period of national liquid fuel emergency, the Minister may give directions regulating or prohibiting the supply by relevant fuel industry corporations, in the course of their trading or commercial activities, of specified refined liquid petroleum products to persons generally or to specified persons.

#### *Limitations on directions*

- (2) A direction under subsection (1) has effect in relation to one or more planning periods, in relation to the period of national liquid fuel emergency, that are specified in the direction. However, the direction has no effect in relation to any part of a planning period that occurs before the day on which the direction takes effect.

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- (3) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.
- (4) The Minister must not give a direction under subsection (1) that relates only to the supply of refined liquid petroleum products to persons who are bulk customers of relevant fuel industry corporations.

*Direction is a legislative instrument*

- (5) A direction given under subsection (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

*Guidelines*

- (6) A direction under subsection (1) must be in accordance with any guidelines made under this section.
- (7) The Minister must, by legislative instrument, make guidelines for the purposes of this section.

*Retrospective application of instruments*

- (8) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
  - (a) a direction given under subsection (1);
  - (b) guidelines made under subsection (7).

*Civil penalty*

- (9) A relevant fuel industry corporation must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant fuel industry corporation that contravenes such a direction to pay a pecuniary penalty.

## **24 Minister may give directions to relevant persons regulating or prohibiting supply of liquid fuel**

- (1) During a period of national liquid fuel emergency, the Minister may give directions regulating or prohibiting the supply by relevant persons, in the course of their trading or commercial activities, of specified refined liquid petroleum products to persons generally or to specified persons.

### *Limitations on directions*

- (2) A direction under subsection (1) has effect in relation to one or more planning periods, in relation to the period of national liquid fuel emergency, that are specified in the direction. However, the direction has no effect in relation to any part of a planning period that occurs before the day on which the direction takes effect.
- (3) The Minister must not give a direction under subsection (1) unless it is for the purpose of dealing with a shortage or likely shortage of relevant liquid fuel.
- (4) The Minister must not give a direction under subsection (1) that relates only to the supply of refined liquid petroleum products to persons who are bulk customers of relevant persons.

### *Direction is a legislative instrument*

- (5) A direction given under subsection (1) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 44(2)(b) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the direction: see regulations made for the purposes of paragraph 54(2)(b) of that Act.

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*Guidelines*

- (6) A direction under subsection (1) must be in accordance with any guidelines made under this section that are in force at the time the direction is given.
- (7) The Minister must, by legislative instrument, make guidelines for the purposes of this section.

*Retrospective application of instruments*

- (8) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the following instruments:
  - (a) a direction given under subsection (1);
  - (b) guidelines made under subsection (7).

*Civil penalty*

- (9) A relevant person must not, without reasonable excuse, contravene a direction in force under subsection (1).

Note: Under section 34, the Court may order a relevant person who contravenes such a direction to pay a pecuniary penalty.

**25 Directions under section 21, 22, 23 or 24 not to regulate price**

- (1) A direction under subsection 21(1) or 22(1) requiring a refined liquid petroleum product to be made available for purchase in a State or Territory shall not make provision for the determination of the price, or the maximum price, at which persons to whom that direction is given:
  - (a) may make that product available for purchase in that State or Territory in accordance with that direction; or
  - (b) may make available for purchase services in connection with the making available for purchase of that product in that State or Territory in accordance with that direction.
- (2) A direction under subsection 23(1) or 24(1) regulating or prohibiting the supply of a refined liquid petroleum product shall



not make provision for the determination of the price, or the maximum price, at which persons to whom that direction is given:

- (a) may supply that product in accordance with that direction; or
  - (b) may supply services in connection with the supply of that product in accordance with that direction.
- (3) It is the intention of the Parliament that, without limiting the generality of section 51, this Act shall not apply to the exclusion of a law of a State or Territory in so far as that law makes:
- (a) in relation to a refined liquid petroleum product in respect of which a direction might be given under subsection 21(1) or 22(1)—provision of the kind referred to in subsection (1) of this section; or
  - (b) in relation to a refined liquid petroleum product of a kind in respect of which a direction might be given under subsection 23(1) or 24(1)—provision of the kind referred to in subsection (2) of this section.

## **26 Certain directions to be published**

As soon as practicable after the Minister has given a direction under section 21, 22, 23 or 24, the Minister shall cause a copy of the direction to be published in each State, in the Northern Territory and in the Australian Capital Territory in a newspaper circulating generally in that State or Territory.

## **27 When directions under this Part cease to be in force**

- (1) Subject to subsection (2), a direction given under this Part remains in force until the end of the period of national liquid fuel emergency in which it was given unless it is:
- (a) sooner revoked; or
  - (b) sooner set aside by a court.
- (2) If:
- (a) during a period (the *earlier period*) of national liquid fuel emergency, a Proclamation under subsection 16(1) declares that a national liquid fuel emergency will exist during a

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period (the *later period*) starting immediately after the end of the earlier period; and

- (b) a direction under this Part is in force immediately before the end of the earlier period (including because of one or more previous applications of this subsection);

the direction continues in force until the end of the later period unless it is:

- (c) sooner revoked; or
- (d) sooner set aside by a court.

## **Part IV—Enforcement**

### **29 Appointment of authorised persons**

- (1) The Minister may, by instrument in writing, appoint a specified person, or persons included in a specified class of persons, to be an authorised person or authorised persons, as the case may be, for the purpose of the exercise by that person or those persons of the powers of an authorised person under this Act or of such of those powers as are specified in the instrument.
- (2) Without limiting the generality of subsection (1) and subject to subsection (2A), the Minister may appoint as authorised persons for the purposes of this Act, persons who are officers of a State, officers of the Australian Capital Territory or officers of the Northern Territory.
- (2A) The Minister must not appoint a person as an authorised person unless the Minister is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an authorised person.
- (4) The Minister may cause to be issued to an authorised person an identity card in a form approved by him or her by instrument in writing.
- (5) A person commits an offence if:
  - (a) the person has been issued with an identity card under subsection (4); and
  - (b) the person ceases to be an authorised person; and
  - (c) the person does not return the identity card to the Minister, or to a person nominated under subsection (5AA), as soon as practicable after ceasing to be an authorised person.

Penalty: 1 penalty unit.

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(5AA) The Minister may, by writing, nominate a person for the purposes of paragraph (5)(c).

(5A) An offence against subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(6) The Minister may issue a certificate stating that a person specified in the certificate was, at a time, or at all times during a period, specified in the certificate an authorised person for the purpose of the exercise of all of the powers of an authorised person under this Act or of such of those powers as are specified in the certificate and such a certificate is *prima facie* evidence of the matters certified.

### 29A Authorised persons to carry and produce identity cards

#### *Authorised person must carry card*

(1) An authorised person must carry his or her identity card at all times when exercising powers as an authorised person.

#### *Authorised person must produce card on request*

(2) An authorised person is not entitled to exercise any powers under this Part in relation to land or premises or a vehicle, ship or aircraft if:

- (a) the owner or occupier of the land or premises, or the owner or person in charge of the vehicle, ship or aircraft, has requested the authorised person to produce the authorised person's identity card for inspection by the person making the request; and
- (b) the authorised person fails to comply with the request.

### 30 Power to require persons to furnish information and produce documents

(1) Where an authorised person has reason to believe that a person is capable of furnishing information or producing documents relating

to a matter that is relevant to the exercise of a power, or the performance of a function, conferred or imposed on the Minister by or under this Act or that constitutes, or may constitute, a contravention of a civil penalty provision or an offence against this Act, he or she may, by notice in writing served on that person, require that person:

- (a) to furnish to him or her, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information; or
- (b) to produce to him or her, or to any other authorised person specified in the notice, in accordance with the notice, any such documents.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for giving false or misleading information or documents.

- (2) A person must not:
  - (a) refuse to comply with a notice under this section; or
  - (b) fail to comply with a notice under this section.

Penalty: 30 penalty units.

- (2A) Subsection (2) does not apply to the extent that the person is not capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A), see subsection 13.3(3) of the *Criminal Code*.

- (2B) An offence against paragraph (2)(b) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or the production of the document might tend to incriminate the person or to render the person liable to a pecuniary penalty in accordance with section 34, but the information or the production of the document is not admissible in evidence against the person in any criminal proceedings other than:
  - (a) proceedings for an offence against subsection (2); or

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- (b) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to this section.
- (6) A person is not required to furnish information or produce a document containing information in pursuance of this section if there is in force a law of the Commonwealth prohibiting the person from disclosing the information or producing the document, whether the prohibition is absolute or is subject to exceptions or qualifications.
- (7) An authorised person may inspect a document produced in pursuance of a notice under subsection (1) and may make copies of, or take extracts from, the document.
- (8) An authorised person may, for the purposes of this Act, take, and retain for so long as is necessary for those purposes, possession of a document produced in pursuance of a notice under subsection (1) but the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the authorised person under his or her hand to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original.
- (9) Until such a certified copy of a document is supplied, the authorised person having possession of the document shall, at such times and place as he or she thinks appropriate, permit the person otherwise entitled to the document, or a person authorised by that person, to inspect and make copies of or take extracts from the document.

### 31 Inspection

- (1) For the purposes of ascertaining whether a person has contravened or is contravening a civil penalty provision or has committed or is committing an offence against this Act, an authorised person may do any one or more of the following:
- (a) enter any land or premises;
  - (b) enter any vehicle, ship or aircraft;

- (c) search any land, premises, vehicle, ship or aircraft;
  - (d) break open any hold or compartment or any container or other receptacle (including any place that could be used as a receptacle);
  - (e) inspect and examine any land, premises, vehicle, ship, aircraft, article or thing;
  - (f) secure any land, premises, vehicle, ship, aircraft, article or thing;
  - (g) take samples of any article or thing (including parts of land, premises, vehicles, ships or aircraft);
  - (h) take extracts from, and make copies of, any document.
- (1A) However, an authorised person is not entitled to exercise a power under subsection (1) unless:
- (a) the occupier of the land or premises, or the person in charge of the vehicle, ship or aircraft, consents to the exercise of the power; or
  - (b) a warrant is in force under subsection (4) authorising the exercise of the power; or
  - (c) subsection (6) authorises the exercise of the power.
- (2) Samples of any article or thing taken in accordance with subsection (1) shall be dealt with as prescribed.

*Warrants*

- (3) An authorised person may apply to a magistrate for a warrant under this section in relation to land or premises or a vehicle, ship or aircraft.
- (4) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting a person has contravened or is contravening a civil penalty provision or has committed or is committing an offence against this Act.
- (5) The warrant must:

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- (a) authorise an authorised person to exercise the powers set out in subsection (1) of this section and section 32 in relation to the land, premises, vehicle, ship or aircraft; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

*Emergency exercise of powers*

- (6) An authorised person may exercise the powers set out in subsection (1) of this section and section 32 in relation to land or premises or a vehicle, ship or aircraft if the person believes on reasonable grounds that:
  - (a) there is situated upon the land, or upon or in the premises, vehicle, ship or aircraft, any article or thing that may afford evidence of a contravention of a civil penalty provision or an offence against this Act; and
  - (b) the exercise of those powers is necessary to prevent the concealment, loss or destruction of the article or thing.
- (7) However, subsection (6) does not apply unless the powers set out in subsection (1) of this section and section 32 are exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under subsection (4) of this section.

*Stopping and detaining vehicles, ships or aircraft*

- (8) If an authorised person may enter a vehicle, ship or aircraft under subsection (1), the person may stop and detain the vehicle, ship or aircraft:
  - (a) for that purpose; and
  - (b) for the purpose of exercising a power under paragraph (1)(c), (d), (e), (f), (g) or (h); and



- (c) if the person may enter the vehicle, ship or aircraft in accordance with a warrant in force under subsection (4) or in accordance with subsection (6)—for the purpose of exercising a power under section 32.

*Availability of assistance and use of force*

- (9) An authorised person may obtain such assistance as is necessary and reasonable in the circumstances in:
  - (a) exercising a power under subsection (1) with the consent of the occupier of the land or premises, or the person in charge of the vehicle, ship or aircraft; or
  - (b) exercising a power under subsection (8) because of the person being able to enter the vehicle, ship or aircraft with such consent.
- (10) An authorised person may obtain such assistance, and use such force against persons and things, as is necessary and reasonable in the circumstances in:
  - (a) exercising a power under subsection (1) in accordance with a warrant in force under subsection (4) or in accordance with subsection (6); or
  - (b) exercising a power under subsection (8) because of the person being able to enter the vehicle, ship or aircraft in accordance with a warrant in force under subsection (4) or in accordance with subsection (6); or
  - (c) exercising a power under section 32.

### **31A Nature of powers conferred on magistrates**

- (1) A power conferred on a magistrate by section 31 is conferred on the magistrate in a personal capacity and not as a court or a member of a court. The magistrate need not accept the power conferred.
- (2) A magistrate exercising such a power has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

### 32 Seizure

- (1) An authorised person may seize any article or thing that he or she believes on reasonable grounds will afford evidence of the contravention of a civil penalty provision or an offence against this Act and may retain the article or thing until the expiration of 60 days after the seizure or, if proceedings in respect of which the article or thing may afford evidence are instituted within that period, until those proceedings (including any appeal to a court in relation to those proceedings) are terminated.
- (1A) However, an authorised person is not entitled to exercise a power under subsection (1) unless:
  - (a) a warrant is in force under subsection 31(4) authorising the exercise of the power; or
  - (b) subsection 31(6) authorises the exercise of the power.
- (2) The Minister may authorise any liquid fuel, or any other article or thing, seized under subsection (1) to be released to the owner, or to the person from whose possession the liquid fuel or the other article or thing was seized, either unconditionally or on such conditions as are specified in the authority, including conditions as to the giving of security for payment of their value if they are forfeited under section 38.

### 32A Consent

- (1) Before obtaining the consent of a person for the purposes of paragraph 31(1A)(a), the authorised person must inform the person that the person may refuse consent.
- (2) A consent of a person is not effective for the purposes of paragraph 31(1A)(a) unless the consent is voluntary.
- (3) If an authorised person entered land or premises or a vehicle, ship or aircraft because of the consent of a person, the authorised person must leave the land, premises, vehicle, ship or aircraft if the person withdraws the consent.

**33 Persons to provide authorised persons with reasonable facilities and assistance**

- (1) An authorised person may require:
- (a) the owner or occupier of any land or premises entered by the authorised person under section 31; or
  - (b) the owner or person in charge of any vehicle, ship or aircraft entered by the authorised person under section 31;
- to provide the authorised person with reasonable facilities and assistance for the effective exercise of the authorised person's powers under that section or section 32 in relation to the land, premises, vehicle, ship or aircraft.
- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
  - (b) the person breaches the requirement.

Penalty for contravention of this subsection: 30 penalty units or imprisonment for 6 months, or both.

**34 Civil penalty orders**

- (1) If the Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth a pecuniary penalty.

*Determining amount of pecuniary penalty*

- (1A) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the consequences of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) the previous conduct of the person.

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*Maximum pecuniary penalty*

- (1B) The pecuniary penalty payable under subsection (1) is not to exceed:
- (a) for a contravention of subsection 12(9), 17(8) or 20(7):
    - (i) by a person other than a body corporate—500 penalty units; or
    - (ii) by a body corporate—2,500 penalty units; and
  - (b) for a contravention of subsection 18(6) or 19(5):
    - (i) by a person other than a body corporate—300 penalty units; or
    - (ii) by a body corporate—1,500 penalty units; and
  - (c) for a contravention of subsection 13(9), 14(6) or (7) or 14A(6) or (7):
    - (i) by a person other than a body corporate—100 penalty units; or
    - (ii) by a body corporate—500 penalty units; and
  - (d) for a contravention of subsection 21(9), 22(9), 23(9) or 24(9):
    - (i) by a person other than a body corporate—30 penalty units; or
    - (ii) by a body corporate—150 penalty units.

*Conduct contravening more than one civil penalty provision*

- (2) If conduct constitutes a contravention of 2 or more civil penalty provisions, a proceeding may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions but a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

*Ancillary contraventions*

- (3) For the purposes of this section, a person is taken to have contravened a civil penalty provision if:
- (a) the person has attempted to contravene the provision; or
  - (b) the person has aided, abetted, counselled or procured a person to contravene the provision; or

- (c) the person has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene the provision; or
- (d) the person has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the provision; or
- (e) the person has conspired with others to contravene the provision.

### **35 Civil action for recovery of pecuniary penalties**

- (1) The Minister may institute a proceeding in the Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 34.
- (2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.

### **36 Criminal proceedings not to be brought for contraventions of civil penalty provisions**

Criminal proceedings do not lie against a person by reason only that the person has contravened a civil penalty provision.

### **37 Injunctions**

- (1) Where a person has engaged, is engaging, or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of a civil penalty provision, the Court may on the application of:
  - (a) the Minister; or
  - (b) any person whose interests have been, are or would be affected by the conduct;grant an injunction restraining the first-mentioned person from engaging in the conduct and, if, in the opinion of the Court, it is desirable to do so, requiring that person to do any act or thing.
- (2) Where:

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- (a) a person has refused or failed, is refusing or failing or is proposing to refuse or fail to do an act or thing; and
  - (b) that refusal or failure is, or would be, a contravention of a civil penalty provision;
- the Court may, on the application of:
- (c) the Minister; or
  - (d) any person whose interests have been, are or would be affected by that refusal or failure;
- grant an injunction requiring the first-mentioned person to do that act or thing.
- (3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining the person from engaging in conduct of the kind referred to in that subsection pending the determination of the application.
- (4) The Court may discharge or vary an injunction granted under subsection (1), (2) or (3).
- (5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised:
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

- (6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised:
- (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the Minister makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Minister or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

### **38 Forfeiture**

- (1) Where a court:
- (a) orders a person to pay a pecuniary penalty under section 34 in respect of a contravention by the person of a civil penalty provision;
  - (b) convicts a person of an offence against this Act; or
  - (c) makes an order under section 19B of the *Crimes Act 1914* in relation to an offence against this Act;
- the court may order the forfeiture to the Commonwealth of any article used or otherwise involved in the contravention or in the commission of the offence.
- (2) The Minister may, by instrument in writing, direct that an article forfeited under this section be sold or otherwise disposed of upon such conditions (if any) as are specified in the instrument of direction and, pending his or her direction, the article shall be kept in such custody as he or she directs.

#### **40 Conduct by employees or agents of bodies corporate**

- (1) Where, in a proceeding under section 34 or 37 in respect of any conduct engaged in by a body corporate, being conduct in relation to which a civil penalty provision applies, it is necessary to establish the intention of the body corporate, it is sufficient to show that an employee or agent of the body corporate by whom the conduct was engaged in had that intention.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate or by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (3) In this section, a reference to engaging in conduct is a reference to doing or refusing to do any act or thing.



## **Part IVA—Power to reserve or purchase oil stocks**

### **40A Reservation or purchase of oil stocks**

- (1) For the purpose of giving effect to the Agreement, the Secretary may, on behalf of the Commonwealth, enter into a contract (including a ticketing contract) with an Australian or foreign entity for:
  - (a) the reservation for the Commonwealth of oil stocks owned by the Australian or foreign entity; or
  - (b) the purchase of oil stocks by the Commonwealth from the Australian or foreign entity.
- (2) Subsection (1) does not impliedly limit the executive power of the Commonwealth to enter into agreements.

## Part V—Miscellaneous

### 41 Making of guidelines

To avoid doubt, guidelines under this Act may be made at any time (whether or not during a period of national liquid fuel emergency).

#### 41A Variation or revocation of instruments

- (1) The following instruments may be varied or revoked in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*:
  - (a) a direction given under this Act;
  - (b) guidelines made under this Act;
  - (c) any other instrument made under this Act.
- (2) Subsection (1) is in addition to any power conferred by this Act to vary or revoke such an instrument.

### 42 Consultation between Ministers concerning emergency procedures

- (1) The Minister shall not make a determination for the purposes of subsection 9(1) or paragraph 11(1)(d) or give a direction under Part II or III unless he or she has given notice in a manner specified in the regulations to the Energy Minister for each State or Territory of his or her intention to make such a determination or give such a direction, as the case may be, and has afforded a reasonable opportunity to the Energy Minister for each State or Territory to consult with him or her concerning the matters to which the determination or direction, as the case may be, is to relate.
- (2) The Minister may, by writing signed by him or her, issue a certificate setting out such facts as he or she considers relevant with respect to a matter referred to in subsection (1).

- (3) A certificate purporting to be issued under subsection (2) is *prima facie* evidence of the facts stated in it.

#### 43 Operation of the *Competition and Consumer Act 2010*

Anything that is done in compliance with a direction under this Act is authorised for the purposes of subparagraph 51(1)(a)(i) of the *Competition and Consumer Act 2010*.

Note: That subparagraph has the effect that anything so done is disregarded in deciding whether a person has contravened Part IV (Restrictive trade practices) of the *Competition and Consumer Act 2010*.

#### 44 Reconsideration and review of decisions

- (1) In this section, unless the contrary intention appears:

**decision** has the same meaning as it has in the *Administrative Appeals Tribunal Act 1975*.

**reviewable decision** means a decision of the Minister:

- (a) under subsection 10(1); or
  - (b) to revoke an instrument under subsection 10(1); or
  - (c) under subsection 11(1); or
  - (d) to revoke an instrument under subsection 11(1); or
  - (e) under subsection 12(1) or (8); or
  - (f) under subsection 13(6); or
  - (g) under subsection (2) of this section.
- (2) A person affected by a reviewable decision who is dissatisfied with the decision may, within the period of 3 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period), by notice in writing served on the person, allows, by notice in writing given to the Minister in a manner specified in the regulations, request the Minister to reconsider the decision.

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- (3) There shall be set out in the request the reasons for making the request.
- (4) The Minister shall, within 14 days after the receipt of the request, reconsider the decision and may affirm or revoke the decision or vary the decision in such manner as he or she thinks fit.
- (5) Where the Minister affirms, revokes, or varies a decision, he or she shall, by notice in writing served on the person who made the request, inform the person of the result of his or her reconsideration of the decision, set out the findings on material questions of fact, refer to the evidence or other material on which those findings were based and give his or her reasons for affirming, revoking or varying the decision, as the case may be.
- (6) Applications may be made to the Administrative Appeals Tribunal for review of reviewable decisions that have been affirmed or varied under subsection (4).
- (7) Where the Minister makes a reviewable decision and gives to the person or persons whose interests are affected by the decision notification in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision:
  - (a) may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the Minister in accordance with subsection (2); and
  - (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with a decision made by the Minister upon that reconsideration affirming or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so affirmed or varied.
- (8) Where the Minister makes a decision under subsection (4) affirming or varying a reviewable decision, the notice given under subsection (5) in relation to that decision shall include a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act*

1975, if he or she is dissatisfied with the decision so affirmed or varied, make application to the Administrative Appeals Tribunal for review of the decision.

- (9) Any failure to comply with the requirements of subsection (7) or (8) in relation to a decision does not affect the validity of the decision.

#### **45 Compensation for acquisition of property**

- (1) Where, but for this subsection, the operation of a provision of this Act would result in the acquisition of property from a person by another person otherwise than on just terms, there is payable to the person by that other person such amount of compensation as is agreed upon between those persons, or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than by virtue of this section shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.
- (3) In this section, *acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(xxxi) of the Constitution.

#### **46 Compensation for compliance with directions under Part II**

- (1) Subject to this section, where a person suffers loss, injury or damage by reason of the compliance by the person with a direction under Part II, there is payable to the person by the Commonwealth such amount of compensation in respect of that loss, injury or damage as is agreed between the Commonwealth and the person or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) In assessing the amount of compensation payable under subsection (1) in respect of loss, injury or damage suffered by a

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person, account is to be taken only of so much of the loss, injury or damage as the person is not, and is not likely to be, in a position to make good from the market supplied by the person.

- (3) Compensation is not payable under subsection (1) in respect of loss, injury or damage suffered by a person unless the person lodges a claim for compensation with the Minister within 12 months, or such longer period (if any) as is prescribed, after the loss, injury or damage was suffered.
- (4) Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than by virtue of this section shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.

**46A Exemption from suit—Ministers, Secretary and delegates**

No civil action, suit or proceeding lies against the following persons:

- (a) the Minister;
- (b) a person to whom powers or functions are delegated under subsection 49(1) or (2);
- (c) the Secretary;
- (d) a person to whom the Secretary's power under subsection 40A(1) (about entering into contracts for the reservation or purchase of oil stocks) is delegated under subsection 49(6);

in relation to anything done, or omitted to be done, reasonably and in good faith by the person in the exercise or performance, or the purported exercise or performance, of any power or function conferred or imposed by or under this Act.

**47 Exemption from suit—relevant fuel industry corporations and relevant persons**

- (1) No action or proceeding lies against a relevant fuel industry corporation for, or in relation to, a breach of a contract entered into

between that corporation and another person where, but for compliance by the corporation with a direction under Part II or III, the act or omission that is alleged to constitute the breach would not have occurred.

- (2) No action or proceeding lies against a relevant person for, or in relation to, breach of a contract entered into between that relevant person and another person where, but for compliance by the relevant person with a direction under Part II or III, the act or omission that is alleged to constitute the breach would not have occurred.
- (3) Nothing in this section shall be taken to affect a right to compensation conferred upon a person by section 45.

#### **48 Jurisdiction of courts**

- (1) Jurisdiction is conferred on the Court with respect to matters arising under section 34 or 37 and that jurisdiction is exclusive of the jurisdiction of all other courts other than the jurisdiction of the High Court under section 75 of the Constitution.
- (2) Subject to subsection (1), the Supreme Court of each State is invested with federal jurisdiction and jurisdiction is conferred on the Federal Court of Australia and, to the extent that the Constitution permits, on the Supreme Court of each Territory, with respect to all matters arising under this Act.
- (3) The inferior courts of each State are invested with federal jurisdiction, and jurisdiction is conferred on the inferior courts of each Territory, within the limits, other than limits as to subject-matter, of their several jurisdictions, with respect to matters arising under section 45 or 46.
- (4) An appeal lies to the Court from a judgment or order of a court of a State or Territory exercising jurisdiction under this Act.
- (5) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (4).

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- (6) Except as provided in subsection (4) or (5), no appeal lies from a judgment or order referred to in subsection (4).
- (7) A reference in subsection (3) to an inferior court shall be read as a reference to:
  - (a) a County Court, District Court or Local Court; or
  - (b) a court of summary jurisdiction exercising civil jurisdiction; being a court having jurisdiction in actions for the recovery of debts up to an amount not less than the amount of compensation claimed.

## 49 Delegation

### *Delegations by the Minister*

- (1) The Minister may, by writing, delegate to a person all or any of the Minister's powers or functions under this Act, other than those under these provisions:
  - (a) subsection 10(4), 11(5), 12(6), 13(3), 14(4), 14A(4), 17(5), 20(5), 21(7), 22(7), 23(7) or 24(7) (about making of guidelines);
  - (b) subsection 13(1) (about directing the giving of bulk allocation procedures to the Minister);
  - (c) subsection 14(1) or 14A(1) (about directing the maintaining or making available of statistical information relating to liquid fuels);
  - (d) subsection (3) of this section (about giving agreement to a further delegation).

Note: Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* deal with delegations.

### *Further delegations*

- (2) A person to whom powers or functions are delegated under subsection (1) may, by writing, delegate any of those powers or functions to another person.



- (3) However, a delegation under subsection (2) has no effect unless it is done with the Minister's agreement.
- (3A) Subject to subsection (3B) of this section, sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a delegation under subsection (2) of this section in the same way as they apply to a delegation under subsection (1) of this section.
- (3B) A power or function that is exercised or performed by a person under a delegation under subsection (2) is taken, for the purposes of this Act, to have been exercised or performed by the Minister.

*Ministerial arrangements*

- (4) The Minister may, on behalf of the Commonwealth, enter into such arrangements with the Energy Minister for a State on behalf of that State as he or she considers to be appropriate to facilitate the delegation under this section of powers or functions under this Act to the Energy Minister for that State or to an officer of that State.
- (4A) The Minister may, on behalf of the Commonwealth, enter into such arrangements with the Energy Minister for the Australian Capital Territory on behalf of that Territory as he or she considers to be appropriate to facilitate the delegation under this section of powers or functions under this Act to the Energy Minister for that Territory or to an officer of that Territory.
- (5) The Minister may, on behalf of the Commonwealth, enter into such arrangements with the Energy Minister for the Northern Territory on behalf of that Territory as he or she considers to be appropriate to facilitate the delegation under this section of powers or functions under this Act to the Energy Minister for the Northern Territory or to an officer of the Northern Territory.

*Delegation by the Secretary*

- (6) The Secretary may, by writing, delegate the Secretary's power under subsection 40A(1) (about entering into contracts for the reservation or purchase of oil stocks) to an SES employee, or an acting SES employee, in the Department.

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- (7) In exercising powers under a delegation under subsection (6), the delegate must comply with any directions of the Secretary.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

## 51 Operation of State and Territory laws

This Act is not intended to affect the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

## 52 Directions to prevail over inconsistent Commonwealth, State or Territory law

Subject to section 51, a direction under this Act has effect notwithstanding any law of the Commonwealth (other than this Act), or any law of a State or Territory, that is inconsistent with that direction.

## 53 Act not to confer powers on State or Territory Energy Ministers by implication

Nothing in this Act shall be taken, by implication, to confer a power upon the Energy Minister for a State, the Energy Minister for the Australian Capital Territory or the Energy Minister for the Northern Territory.

## 55 Repeal of *Liquid Fuel (Defence Stocks) Act 1949*

The *Liquid Fuel (Defence Stocks) Act 1949* is repealed.

## 56 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Liquid Fuel Emergency Act 1984	5, 1984	27 Mar 1984	27 Mar 1984	
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	Sch 1: 3 July 1985 (s 2(1))	—
Liquid Fuel Emergency Amendment Act 1987	9, 1987	25 Mar 1987	25 Mar 1987	—
Evidence (Transitional Provisions and Consequential Amendments) Act 1995	3, 1995	23 Feb 1995	Part 1: 23 Feb 1995 (s 2(1)) Sch: 18 Apr 1995 (s 2(13))	s. 14
Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Act 2001	140, 2001	1 Oct 2001	2 Oct 2001	s. 4
Liquid Fuel Emergency Amendment Act 2007	86, 2007	21 June 2007	Schedules 1 and 2: 21 Dec 2007 Remainder: Royal Assent	Sch. 1 (item 99)
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 74): 1 Jan 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 756) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 25): 24 June 2014	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sep 2015	Sch 1 (items 331–355): 5 Mar 2016 (s 2(1) item 2)	—
Liquid Fuel Emergency Amendment Act 2017	103, 2017	14 Sept 2017	1 Jan 2018 (s 2(1) item 1)	—
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 2 (item 20): 29 Dec 2018 (s 2(1) item 3)	—
National Emergency Declaration (Consequential Amendments) Act 2020	129, 2020	15 Dec 2020	Sch 1 (item 27): 16 Dec 2020 (s 2(1) item 2)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Title .....	am No 103, 2017
<b>Part I</b>	
s 3 .....	am No 65, 1985; No 140, 2001; No 86, 2007; No 46, 2011; No 31, 2014; No 103, 2017 ed C15
ss. 5, 6.....	am No. 86, 2007
s 9.....	rs No 86, 2007 am No 126, 2015
s 10.....	rs No 86, 2007 am No 126, 2015
s 11.....	rs No 86, 2007 am No 126, 2015
s 11A.....	ad No. 140, 2001
<b>Part II</b>	
s 12.....	rs No 86, 2007 am No 126, 2015
s 13.....	rs No 86, 2007 am No 126, 2015
s. 14.....	am No 140, 2001 rs No 86, 2007 am No 126, 2015
s 14A.....	ad No 86, 2007 am No 126, 2015
s 14B.....	ad No 86, 2007
s 15.....	rs No. 86, 2007
<b>Part III</b>	
s 16.....	am No. 86, 2007; No 129, 2020
s 17.....	rs No 86, 2007

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am No 126, 2015
s 18.....	rs No 86, 2007
s 19.....	rs No 86, 2007
s 20.....	rs No 86, 2007
	am No 126, 2015
s 21.....	rs No 86, 2007
	am No 126, 2015
s 22.....	rs No 86, 2007
	am No 126, 2015
s 23.....	rs No 86, 2007
	am No 126, 2015
s 24.....	rs No 86, 2007
	am No 126, 2015
s 25.....	am No. 86, 2007
s 27.....	rs No. 86, 2007
<b>Part IV</b>	
s 28.....	rep No. 140, 2001
s 29.....	am No 140, 2001; No 86, 2007; No 67, 2018
s 29A.....	ad No. 86, 2007
s 30.....	am No. 140, 2001; No. 86, 2007
s 31.....	am No. 86, 2007
s 31A.....	ad No. 86, 2007
s 32.....	am No. 86, 2007
s 32A.....	ad No. 86, 2007
s 33.....	rs No. 86, 2007
s 34.....	am No. 140, 2001; No. 86, 2007
ss. 36–38.....	am No. 86, 2007
s 39.....	rep No. 86, 2007
s 40.....	am No. 86, 2007
<b>Part IVA</b>	
Part IVA.....	ad No 103, 2017

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 40A .....	ad No 103, 2017
<b>Part V</b>	
s 41 .....	rs No. 86, 2007
s 41A .....	ad No. 86, 2007
s 42 .....	am No. 86, 2007
s 43 .....	am No. 65, 1985; No. 3, 1995 rs No. 86, 2007 am No. 103, 2010
s 44 .....	am No. 86, 2007
s 46 .....	am No. 86, 2007
s 46A .....	ad No 86, 2007 am No 103, 2017
s 47 .....	am No. 86, 2007
s 49 .....	am No 86, 2007; No 103, 2017
s 50 .....	rep No. 86, 2007
s 53 .....	am No. 86, 2007
s 54 .....	rep No. 9, 1987

**Endnote 5—Editorial changes**

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

**Subsection 3(1)**

**Kind of editorial change**

Reordering of definitions

**Details of editorial change**

This compilation was editorially changed to move the definitions of *Agreement* and *officer of a State* in subsection 3(1) to the correct alphabetical positions.