

EXPLANATORY STATEMENT

Liquid Fuel Emergency Act 1984

Liquid Fuel Emergency (Activities – Essential Users) Determination 2019

Legislative basis

Under subsection 11(3) of the *Liquid Fuel Emergency Act 1984* (the Act), the Minister responsible for administering the Act, may, by legislative instrument, determine, for the purpose of paragraph 11(1)(d) of the Act, activities of users of refined liquid petroleum products, if he or she is satisfied that the activities are essential to the health, safety or welfare of the community. If activities determined under subsection 11(3) are carried on by a person or organisation, the Minister may then identify that person or organisation as an essential user of fuel under subsection 11(1) of the Act.

Purpose of the Instrument

The *Liquid Fuel Emergency (Activities – Essential Users) Determination 2019* (Determination) is a legislative instrument under the Act. Its purpose is to provide a list of activities of users of refined liquid petroleum products, who the Minister may then identify as essential users if they are carrying on those activities. These activities are in addition to the activities provided in paragraphs 11(1)(a), (b) and (c) of the Act. This is intended to allow for greater planning and preparation by government and industry for a national liquid fuel emergency.

The Determination repeals and replaces the *Liquid Fuel Emergency (Activities – Essential Users) Determination 2008*.

Consultation

The Department of the Environment and Energy undertook a fit-for-purpose review in 2018 of the Determination and the *Liquid Fuel Emergency Guidelines 2008*. As part of this review, a targeted consultation paper was provided to stakeholders in August 2018 and 14 responses were received from industry, government and peak bodies.

Further consultation was undertaken over November and December 2018 with the National Oil Supplies Emergency Committee (NOSEC) on issues raised by stakeholders in response to the consultation paper. The NOSEC is a COAG Energy Council working group comprised of representatives of industry, State and Territory governments and the Australian Government.

Statement of Compatibility with Human Rights (prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of Legislative Instrument

The *Liquid Fuel Emergency Act 1984* (the Act) establishes a framework for the Australian Government, in consultation with State and Territory governments, to plan for, and respond to,

nationally significant liquid fuel shortages. The Act provides the Minister responsible for administering the Act with the power, in a declared national liquid fuel emergency, to intervene in the liquid fuel market.

The emergency powers provided under the Act include a power for the Minister to determine certain entities to be essential users of fuel if they carry on an activity specified in the Act, to allow for the preparation for liquid fuel emergencies.

The Determination is a legislative instrument made under subsection 11(3) of the Act. The Determination sets out activities (for the purposes of paragraph 11(1)(d) of the Act) of users of refined liquid petroleum products additional to those specified in the Act. The Minister may then identify entities carrying on one or more of these activities as essential users.

Human rights implications

The Determination does not engage any of the applicable rights and freedoms as it does not itself provide for the intervention in the liquid fuel market under the Act which may have human rights implications.

Regulatory Impact

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the 2019 Determination. The OBPR reference is ID 24009.

Details of the *Liquid Fuel Emergency (Activities – Essential Users) Determination 2019*

Part 1 – Preliminary

Section 1 – Name

1. Section 1 provides that the name of the instrument is the *Liquid Fuel Emergency (Activities – Essential Users) Determination 2019* (the Determination).

Section 2 – Commencement

2. Section 2 provides that the Determination commences the later of:
 - a. the day after the instrument is registered; and
 - b. immediately after the commencement of the *Liquid Fuel Emergency Guidelines 2019* (Guidelines).
3. The Determination does not commence at all if the Guidelines do not commence.
4. Section 10 of the Guidelines provides guidelines which apply to the Minister's decision whether to determine activities under subsection 11(3) of the *Liquid Fuel Emergency Act 1984* (the Act). This wording in the Guidelines is unchanged from that in the *Liquid Fuel Emergency Guidelines 2008* (previous Guidelines). However, the commencement of the Determination after the commencement of the Guidelines is intended to remove any doubt as to which guidelines apply to this Determination.

Section 3 – Authority

5. Section 3 provides that the Determination is made under the Act. In particular, subsection 11(3) of the Act confers power on the Minister to make a legislative Determination if satisfied that the activities are essential to the health, safety or welfare of the community.

Section 4 – Schedules

6. Section 4 is a machinery provision that allows each Schedule to operate according to its terms.

Section 5 – Definitions

7. Section 5 defines *Act* to mean the *Liquid Fuel Emergency Act 1984*.

Section 6 – Determination of activities

8. Section 6 sets out the activities determined for the purposes of paragraph 11(1)(d) of the Act. These are the activities carried out by:
 - a. an ambulance service;
 - b. a corrective service;
 - c. a fire or rescue service;
 - d. a police service;

- e. a public transport service;
 - f. a State Emergency Service or an equivalent organisation;
 - g. a taxi service.
9. These terms are intended to have their ordinary, everyday meaning.
10. The term “taxi service” is intended to include services by specially marked vehicles which provide a licensed taxi transport service under regulation. It is not intended to cover a ride-sharing service or private vehicles temporarily providing a passenger transport service.