



## Liquid Fuel Emergency Amendment Bill 2007

Mary Anne Neilsen  
Law and Bills Digest Section

### Contents

Purpose.....	1
Background.....	1
Liquid Fuel Emergency Act 1984.....	1
ACIL Tasman Review of the Liquid Fuel Emergency Act 1984 .....	2
Senate Economics Committee Inquiry .....	3
Position of significant interest groups .....	3
Financial implications.....	3
Main provisions .....	3
Ministerial directions and the <i>Legislative Instruments Act 2003</i> .....	3
Instruments that are not legislative instruments .....	4
Commencement dates.....	5
Disallowance and sunseting clauses.....	5

Other provisions dealing with procedures for instruments.....	6
‘High priority’ users and ‘essential’ users .....	6
Compensation for complying with ministerial directions.....	7
Penalty and enforcement provisions .....	7
Exemption from legal action.....	8
Review of decisions .....	8
Exemption from breach of Part IV of the Trade Practices Act 1974.....	8
References to the Australian Capital Territory .....	8
Delegations .....	9
Minor amendments .....	9
Endnotes.....	9

## Liquid Fuel Emergency Amendment Bill 2007

**Date introduced:** 28 March 2007

**House:** House of Representatives

**Portfolio:** Industry, Tourism and Resources

**Commencement:** The Bill's formal provisions commence on Royal Assent. The substantive provisions commence six months after Royal Assent unless commenced earlier by proclamation.

### Purpose

The purpose of the Bill is to implement legislative amendments responding to the report, *Review of the Liquid Fuel Emergency Act 1984*. The report was prepared by the consultancy firm ACIL Tasman on behalf of the Department of Industry, Tourism and Resources.

### Background

#### Liquid Fuel Emergency Act 1984

The *Liquid Fuel Emergency Act 1984* (LFE Act) commenced in March 1984. As the then sponsoring Minister, the Hon Barry Jones MP, said in his second reading speech:

The Government has a clear national responsibility to prepare contingency plans against any foreseeable national emergency. The fundamental objectives of a national response to a major fuel shortage should be to minimise the total impact on the community – in terms of maintaining essential services and minimising economic dislocation and to ensure that available supplies are distributed as equitably as possible.

The purpose of this Bill is to equip the Commonwealth Government with the authority needed to prepare for and handle a national liquid fuel supply emergency. This would be done in close cooperation with the governments of the States and the Northern Territory.<sup>1</sup>

The LFE Act gives the Australian Government a range of powers to prepare for and manage a possible liquid fuel supply emergency. In particular, Part II of the Act provides the powers to plan for an emergency and take contingency actions, as necessary, at times before an actual emergency is identified. These powers include requiring relevant fuel industry organisations to maintain minimum levels of reserve stocks, develop certain emergency procedures and to maintain and provide statistical information.<sup>2</sup>

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Part III of the Act provides the Governor-General with the power to declare a national liquid fuel emergency during periods of shortfall in liquid fuels. Part III also provides the Australian Government with emergency powers to regulate supplies of liquid fuels to bulk and retail customers, to regulate maintenance of stock levels and their transfer, to direct the sale of liquid fuels to specified customers and to regulate refinery operations. Many of the powers conferred by the Act can be delegated to Commonwealth officials, and State and Territory Ministers and officials. The Act also provides for the implementation of a national system to ration fuels consistent with Australia's obligations as a member of the International Energy Agency.<sup>3</sup>

During a national liquid fuel emergency, the Minister has the power to allocate bulk supplies and ensure supplies to certain essential or high priority users. The determination of essential or high priority users is subject to procedures set out in the Act and the Guidelines created under the Act.<sup>4</sup>

The LFE Act only contemplates the declaration of an emergency in extreme circumstances. The Act can not be used to manage intermittent supply shortages, and does not enable the Australian Government to override State and Territory authority during a localised liquid fuel emergency.<sup>5</sup>

To date, the LFE Act has never been activated to deal with a national liquid fuel emergency.

#### **ACIL Tasman Review of the Liquid Fuel Emergency Act 1984**

In 2004, a consultancy firm, ACIL Tasman, was contracted by the Department of Industry, Tourism and Resources to conduct a review of the LFE Act for the National Oil Supplies Emergency Committee (NOSEC)<sup>6</sup>. The key task of this Review was to assess whether government intervention for the preparation for and management of a national liquid fuel emergency is appropriate and, if so, in what circumstances and what methods of intervention would be the most efficient, effective and fair.

The Review in its [report](#) made 31 recommendations, across a range of matters, including several proposed legislative changes to improve the operation of the Act. Many of these were accepted by the Ministerial Council on Energy and by the Government in its response in December 2005. The Bill gives effect to the [Government response](#) with respect to the recommended legislative amendments.

The Explanatory Memorandum states that the changes proposed in the Bill are intended to facilitate two outcomes:

- to encourage the more effective management of fuel supply risks by those persons or organisations that have the capacity to do so, and

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- to ensure that the Act's administrative arrangements remain efficient, effective and sufficiently flexible to deal with the many different circumstances that could require the exercise of the Government's powers under the Act.<sup>7</sup>

### Senate Economics Committee Inquiry

On 29 March 2007, the Senate referred the Liquid Fuel Emergency Amendment Bill 2007 to the Economics Committee for [inquiry](#) and report by 8 May 2007. As at 1 May 2007, only one submission had been received, from the Australian Institute of Petroleum (AIP). AIP is an industry association, its core member companies being BP Australia Pty Ltd, Caltex Australia Ltd, Mobil Oil Australia Pty Ltd and Shell Company of Australia Ltd.<sup>8</sup> AIP, in its submission and at public hearings, indicated it had been consulted extensively at all stages of the review of the current legislation and was in broad support of the Bill.

### Position of significant interest groups

Apart from the AIP submission to the Senate inquiry, there does not appear to be any public comment on the Bill from interest groups, media commentators or from the opposition and minor parties.

## Financial implications

The Explanatory Memorandum states that the Bill has no financial impact.<sup>9</sup>

## Main provisions

Discussion of the main provisions is according to themes rather than by item numbers.

### Ministerial directions and the *Legislative Instruments Act 2003*

Parts II and III of the LFE Act deals in the main with Ministerial powers to issue directions for both the planning of and managing a liquid fuel emergency. The Bill repeals a number of the provisions dealing with Ministerial directions (i.e. sections 9–15 and 17–24) and rewrites them so that they conform with the *Legislative Instruments Act 2003*.

The Legislative Instruments Act commenced on 1 January 2005 and was designed to establish a 'comprehensive regime for the registration, tabling, scrutiny and sunseting of Commonwealth legislative instruments'.

The Legislative Instruments Act defines a legislative instrument as a written instrument:

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

(a) that is of a legislative character; and

(b) that is or was made in the exercise of a power delegated by the Parliament.

If an instrument is a legislative instrument then, in general, it must be registered in the Federal Register of Legislative Instruments, tabled in Parliament, is subject to parliamentary scrutiny and disallowance and is subject to sunseting (i.e. automatic repeal 10 years after it commences or is required to be registered.)

Instruments that are not legislative instruments

Not all instruments are legislative instruments—for example, they may not be legislative in character, the Legislative Instruments Act may identify them specifically as not being legislative instruments, their primary legislation may declare them not to be legislative instruments or the Attorney-General may certify that they are not legislative instruments.

The Bill provides that a number of instruments made under it are not legislative instruments. In particular, the following Ministerial directions are not legislative instruments.

Ministerial directions:

- identifying bulk customers of fuel industry corporations (**new subsection 10(1)**)
- identifying ‘essential users’ of refined liquid petroleum products (**new section 11**)
- directing relevant fuel industry corporations to maintain reserve supplies of liquid fuels (**new subsection 12(1)**)
- approving the bulk allocation procedures of relevant fuel industry corporations (**new subsections 13(5) and (7)**)
- directing relevant fuel industry corporations to make available statistical information they are required to maintain (**new subsection 14A(1)**)
- directing relevant fuel industry corporations to maintain and accumulate specified quantities of reserve supplies of liquid fuels during a period of national liquid fuel emergency (**new subsection 17(1)**)
- directing relevant fuel industry corporations to transfer specified quantities of liquid fuel during a period of national liquid fuel emergency (**new subsection 18(1)**)
- directing relevant fuel industry corporations to make available specified quantities of liquid fuel available for purchase during a period of national liquid fuel emergency (**new subsection 19(1)**)
- directing relevant fuel industry corporations to produce specified quantities and/or types of liquid fuel during a period of national liquid fuel emergency (**new subsection 20(1)**).

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Commencement dates

Under the Legislative Instruments Act, the default commencement date of a legislative instrument is the beginning of the day *after* it is registered (subsection 12(2)). This rule is subject to any contrary provision in the enabling legislation.

Many of the new provisions in the Bill have been exempted from subsection 12(2) of the Legislative Instruments Act so as to enable certain legislative instruments to take effect prior to their registration. For example, under the re-written sections such as **new sections 10–14A, 17, and 20–24**, the Minister is required to make guidelines to assist decision-makers when exercising their powers of issuing directions in relation to liquid fuel emergency planning and procedures. These guidelines are exempted from subsection 12(2) of the Legislative Instruments Act, and are to take effect *prior* to registration—the stated rationale being that the Minister may need to revise and amend the Guidelines to respond quickly to changing circumstances, such as where the circumstances of the emergency had not been previously contemplated and the existing Guidelines cause an unforeseen and/or unintended effect.<sup>10</sup>

## Disallowance and sunseting clauses

Several of the legislative instruments that are to be made under the Act will not be subject to the disallowance or sunseting provisions of the Legislative Instruments Act. In particular, these are Ministerial directions to:

- relevant fuel industry corporations to develop procedures that will enable the allocation of bulk supplies of a particular fuel product (**new section 13**)
- relevant fuel industry corporations and relevant persons to maintain specified statistical information relating to liquid fuels in their possession or under their control (**new section 14**)
- relevant fuel industry corporations to institute a bulk allocation procedure that was approved under section 13 in order to make certain amounts of fuel available to bulk customers (**new section 21**)
- relevant persons to institute a bulk allocation procedure which is specified in the direction to make certain amounts of fuel available to bulk customers (**new section 22**)
- regulate or prohibit the supply of fuel by a relevant fuel industry corporation to particular persons or to persons generally (**new section 23**)
- regulate or prohibit the supply of fuel by a relevant person to particular persons or to persons generally (**new section 24**)

The effect is that these directions can not be disallowed by the Parliament and will remain in force until they end or are revoked by the Minister.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Other provisions dealing with procedures for instruments

Existing section 41 deals with Parliamentary disallowance procedures for instruments made under the Act. **Item 77** repeals section 41 as it encompasses procedures that predate the *Legislative Instruments Act 2003*. **Item 77** also inserts **new sections 41** and **41A**. **New section 41** confirms that guidelines under the Act may be made at any time (whether or not during an emergency). **New section 41A** is another confirmation clause stating that where the Act grants a power to make directions, guidelines and other instruments, this also includes the power to vary or revoke those instruments. **Item 82** is a related amendment.

### 'High priority' users and 'essential' users

Under existing section 11, the Minister has the power to identify 'essential' or 'high priority' users for the purpose of providing them with priority access to fuel during a national liquid fuel emergency. **Item 14** rewrites section 11. Amongst other things it removes the concept of 'high priority' user<sup>11</sup> and tightens the definition of 'essential' user.

Under existing section 11, the Minister may identify essential or high priority users where their activities relate to:

- the defence of Australia
- the provision of fuel for ships and aircraft engaged in trade or commerce, both domestic and international
- the export of liquid fuels from Australia, and
- activities that the Minister determines to be activities of 'national significance'.

**New subsection 11(3)** retains the first three categories of users but removes users involved in activities that the Minister determines to be of *national significance*. Instead, the Minister may identify an essential user where satisfied that the user undertakes activities which are '*essential to the health, safety and welfare of the community*'.

The stated purpose of this amendment is to provide a clearer indication of the types of activities that are going to receive priority access to fuel in the event of a fuel supply disruption. The Explanatory Memorandum states:

The change sends a clear signal to fuel users that, unless they clearly fall within the definition, they will not be given priority access to scarce liquid fuels and should take whatever steps they deem necessary to mitigate a future supply disruption.<sup>12</sup>

The AIP, in its submission to the Senate inquiry, supports this change and states that discussions are well advanced between Commonwealth and State/Territory governments to develop an agreed schedule of essential users.<sup>13</sup>

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



## Compensation for complying with ministerial directions

The LFE Act provides that the Minister may issue directions to certain fuel industry participants to achieve the objectives of the Act. For example such directions could require an oil refinery to maximise its production of particular fuels, or could require a fuel distributor to transfer its products from one location to another. Where such directions incur costs that would otherwise not have been incurred, the Act makes provision for compensation. **Items 83 and 84** amend section 46, one of these compensation provisions. The effect is that the right to compensation is removed for persons that suffer loss, injury or damage as a result of complying with a direction issued *during* a national liquid fuel emergency. Compensation would still be available for such loss suffered as a result of complying with a direction issued during the planning period *prior* to the emergency (i.e. under Part II of the Act). However such compensation would no longer take into account the loss of the community at large and the compensation would only be payable where the loss can not be recouped from the market (**new subsection 46(2)**).

The Explanatory Memorandum explains the rationale for this change arguing that providing for Part II compensation (but not Part III compensation) is more equitable and would reduce the burden of compensation on the Government.<sup>14</sup>

## Penalty and enforcement provisions

There are several amendments to the penalty provisions that reflect more up-to-date drafting practices.

For example, **item 66** repeals and replaces subsection 34(1), the pecuniary penalty provision. It separates the concepts into three separate subsections, changes references from dollar penalties to penalty units and updates references to the various sections of the Act which, if breached may attract a pecuniary penalty. **New subsection 34(1A)** provides that in determining the pecuniary penalty, the Court must have regard to all relevant matters including the nature and extent of the contravention, its consequences, the circumstances in which the contravention took place and the previous conduct of the person. **Item 68** repeals the existing references to Part 2.4 of the *Criminal Code* (dealing with attempt, conspiracy etc) and sets out in **new subsection 34(3)** the specific activities that are sufficient to contravene a civil penalty provision. If a person:

- attempts to contravene a civil penalty provision
- encourages, assists or induces a third person to contravene a civil penalty provision
- has been knowingly involved in a contravention of a civil penalty provision or
- conspired with others to contravene a civil penalty provision

they will be taken to have contravened the provision.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

**Items 1, 11, 39, 48, 54, 59, 66–72 and 74** make amendments that update the references to offences under the Act and insert the term ‘civil penalty provision’ in preference to the term ‘relevant provision of this Act’. Pages 31 to 35 of the Explanatory Memorandum provide a useful list of the offences against the Act and the relevant offence provisions in the *Crimes Act 1914*.

There are other proposed amendments to the enforcement provisions, for example:

- search warrants are to be issued by a magistrate rather than a justice of the peace (**item 56**), and
- the powers of authorised officers<sup>15</sup> in relation to inspection and seizure are clarified (**items 31, 36, 54, 56, 61 and 64 and 65**).

### Exemption from legal action

Directions issued during a national liquid fuel emergency may cause a breach of contract. Existing section 47 provides immunity from legal action for a breach of contract in these circumstances. **Items 86 and 87** have the effect of extending this exemption so that directions issued prior to a national liquid fuel emergency (i.e. directions issued under Part II of the Act) would be immune from legal action for a breach of contract.

### Review of decisions

Section 44 provides a regime for the review of decisions made under the Act. **Item 80** amends this section by updating the list of ‘reviewable decisions’ to reflect the redrafting and renumbering of provisions in the Bill. Page 57 of the Explanatory Memorandum provides a useful list of the decisions that would be reviewable. It is of interest that the Government did not support the Review’s recommendation to exclude Ministerial directions from review.<sup>16</sup>

### Exemption from breach of Part IV of the Trade Practices Act 1974

**Item 79** repeals and replaces section 43. The effect of **new section 43** is to provide an exemption from prosecution for a breach of Part IV of the *Trade Practices Act 1974* where the conduct was required by a direction under the Liquid Fuel Emergency Act. Part IV of the Trade Practices Act deals with anti-competitive conduct. This amendment is a response to concerns in the petroleum industry that any uncertainty associated with the Trade Practices Act be removed so that pro-active rather than cautious preparatory work can be undertaken to mitigate the effects of a liquid fuel emergency.<sup>17</sup>

### References to the Australian Capital Territory

As stated above, the purpose of the Act is to ‘equip the Commonwealth Government with the authority needed to prepare for and handle a national liquid fuel supply emergency.’

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

This is to be done in close cooperation with the governments of the States and the Territories. In 1984, at the time of introduction of the Act, the Australian Capital Territory had not become a self-governing entity and therefore was not referred to in the Act. **Items 3 – 6, 8, 13, 18, 30, 92 and 98** propose amendments to include references to the Australian Capital Territory in its own right.<sup>18</sup>

## Delegations

Section 49 deals with the Minister's power of delegation. Amongst other things, it provides that the Minister may delegate any powers under the Act, apart from those powers listed in paragraphs 49(1)(a), (b) and (c). **Item 88 – 96** make several amendments to this section, the most significant being a new power of further delegation. Specifically **new subsection 49(2)** provides that a delegate of the Minister under subsection 49(1) may further delegate any of his or her delegated powers or functions to another person. This power of further delegation must be done with the Minister's approval (**new subsection 49(3)**).<sup>19</sup>

## Minor amendments

Minor drafting amendments include:

- replacement of references to 'servant' with 'employee' (for example **items 75 and 76**)
- replacement of references to 'matter' with 'article' (for example paragraph 31(1)(e) provides that an authorized person may inspect any land, premises, vehicle, ship aircraft, *matter* or thing for the purposes of determining whether an offence under the Act has been committed. **Item 49** proposes to amend this so that an *authorised* person may inspect any [...] *article* or thing.
- replacement of the word 'authorized' with 'authorised' (for example **items 45–47, 58 and 61**)
- removal of gender specific language throughout the LFE Act (**Schedule 2**).

## Endnotes

---

1. Hansard, House of Representatives, 24 August, 1983, p. 156.
2. Explanatory Memorandum, p. 7.
3. ACIL Tasman, *Review of the Liquid Fuel Emergency Act 1984*, p. 1.
4. Explanatory Memorandum, p. 7.
5. *ibid.*

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

6. NOSEC is a committee established by the Federal, State and Territory Governments to formulate an overall response to a widespread fuel shortage. NOSEC comprises officials from the Australian, State and Territory Governments and the oil industry, and reports to the Ministerial Council on Energy.
7. Explanatory Memorandum, p. 2.
8. AIP, Submission to the Inquiry into the Liquid Fuel Emergency Amendment Bill 2007, 19 April 2007, p. 2.
9. Explanatory Memorandum, p. 2.
10. *ibid.*, p. 47.
11. Australian Government Response to Review Recommendations, recommendation 19.
12. Explanatory Memorandum, p. 38.
13. AIP, Submission to the Inquiry into the Liquid Fuel Emergency Amendment Bill 2007, 19 April 2007, p. 6
14. Explanatory Memorandum, p. 23.
15. The Explanatory Memorandum states that authorised officers would normally be police officers in the relevant jurisdiction.
16. Australian Government Response to Review Recommendations, recommendations 23 and 24.
17. ACIL Tasman, *Review of the Liquid Fuel Emergency Act 1984*, p. xix.
18. This implements recommendation 25 of the ACIL Tasman Review.
19. This implements recommendation 27 of the ACIL Tasman Review.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

---

© Copyright Commonwealth of Australia 2007

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

---

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2438.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*