



Australian Capital Territory

Fuels Control Act 1979

A1979-14

Republication No 6

Effective: 25 November 2005 – 30 June 2006

Republication date: 25 November 2005

Last amendment made by A2005-56
(republication for commenced expiry)

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Fuels Control Act 1979* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 25 November 2005. It also includes any amendment, repeal or expiry affecting the republished law to 25 November 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Fuels Control Act 1979

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25/11/05

Fuels Control Act 1979
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Australian Capital Territory

Fuels Control Act 1979

An Act relating to the distribution of certain fuels in the ACT

1 Short title

This Act may be cited as the *Fuels Control Act 1979*.

2 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

controller means the Controller of Fuels under section 3.

declared fuel means a fuel in relation to which a declaration under section 11 is in force.

fuel means petroleum, a petroleum product or a petrochemical.

inspector means an inspector under section 5.

petrochemical means a substance, whether in a gaseous, liquid or solid state, but not being a petroleum product, 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, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of a hydrocarbon or hydrocarbons, whether in a gaseous, liquid or solid state, and 1 or more of the following, that is to say, hydrogen sulphide, nitrogen, helium and carbon dioxide.

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.

prescribed business means a business of selling fuels, whether by wholesale or retail.

2A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

2B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

3 Controller of Fuels

- (1) There shall be a Controller of Fuels.
- (2) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of the Controller of Fuels.

- (3) The controller shall be the public servant for the time being performing the duties of the public service office referred to in subsection (2).

4 Delegation

The controller may, by instrument, delegate any or all of his or her powers to a public servant.

5 Inspectors

- (1) There may be 1 or more inspectors for this Act.
- (2) An inspector shall perform such functions, subject to this Act, as the controller directs.
- (3) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of an inspector.
- (4) An inspector shall be any public servant for the time being performing the duties of a public service office referred to in subsection (3).

5A Identity cards

- (1) The chief executive must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an inspector; and

- (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

6 Controller may make recommendations to the Minister

The controller may make recommendations to the Minister on any matter relating to the storage, supply or use of fuels in the ACT.

7 Person carrying on prescribed business must give controller notice

- (1) A person who carries on a prescribed business must give the controller a written notice setting out—
 - (a) the person's name; and
 - (b) the address and telephone number of each place where the person carries on the business; and
 - (c) the kinds of fuel that can be stored at each place; and
 - (d) the quantity of each kind of fuel that can be stored at each place.
- (2) The person must give the notice not later than 14 days after the day the person starts to carry on the prescribed business.
- (3) If a person has given a notice under subsection (1), the person must give the controller written notice of a change in any of the particulars stated in the notice not later than 14 days after the day the change happens.
- (4) If a person stops carrying on a prescribed business, the person must, not later than 14 days after the day the person stops carrying on the business, give the controller a written notice stating—
 - (a) that the person has stopped carrying on the business; and

(b) the date the person stopped carrying on the business.

(5) A person commits an offence if—

- (a) the person is required to give a notice to the controller under this section; and
- (b) the person does not give the notice in accordance with this section.

Maximum penalty: 5 penalty units.

(6) An offence against this section is a strict liability offence.

8 Controller may require information

(1) The controller may, by written notice, require a person who carries on a prescribed business to give to the controller, in writing and as soon as practicable (but no later than 14 days after the day the person is given the notice), for each kind of fuel stated in the notice, particulars of—

- (a) the quantity of fuel held by the person; and
- (b) the quantity of fuel sold by the person during the period stated in the notice.

Note For how a notice may be served, see the Legislation Act, pt 19.5.

(2) A person commits an offence if the person does not comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units.

(3) An offence against this section is a strict liability offence.

9 Powers of inspector

(1) Where a declaration under section 11 (1) is in force, an inspector may, at any reasonable hour of the day or night—

- (a) inspect premises at which a prescribed business is carried on, and any books or documents at those premises that relate to that business; and
 - (b) inspect any receptacles or equipment on the premises; and
 - (c) inspect any vehicle that is on the premises, being a vehicle that is so constructed as to be capable of transporting fuel; and
 - (d) require the occupier, or person for the time being in charge of the premises, to inform him or her of the nature of the substance held in any receptacle or equipment on the premises; and
 - (e) require the occupier, or any person employed at the premises, in the presence of the inspector—
 - (i) to open any receptacle or equipment on the premises; and
 - (ii) to measure the contents of any such receptacle or equipment; and
 - (f) require the driver, or the person in charge, of a vehicle referred to in paragraph (c) to inform him or her whether the vehicle is carrying fuel and, if so, inform him or her of the nature of the fuel; and
 - (g) require the driver, or the person in charge, of a vehicle referred to in paragraph (c), in the presence of the inspector—
 - (i) to open any tank or receptacle on the vehicle; and
 - (ii) to measure the contents of the tank or receptacle.
- (2) A person commits an offence if—
- (a) the person fails to take reasonable steps to comply with a requirement made of the person by an inspector under subsection (1); and

- (b) the inspector complies with any request made under subsection (4) (a).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (3) An offence against this section is a strict liability offence.
- (4) An inspector who enters premises under this section is not authorised to remain on the premises if—
 - (a) the occupier, or the person in charge, of the premises asks the inspector to produce the inspector's identity card; and
 - (b) the inspector does not produce the identity card.

10 Controller may require information from persons having storage capacity exceeding the prescribed capacity

- (1) The controller may, by notice in writing given to a person who is the occupier of premises on which there are storage facilities for fuel to a capacity exceeding the capacity specified in the notice, require that person to give to the controller, within the period specified in the notice, a notice in writing signed by the occupier and stating—
 - (a) the capacity of those storage facilities; and
 - (b) the kind or kinds of fuel held in those storage facilities when the notice was signed; and
 - (c) the quantity of each kind of fuel so held when the notice was signed; and
 - (d) the usual rate of use of each kind of fuel held in those storage facilities; and
 - (e) the persons or class of persons who are the usual users of each kind of fuel held in those storage facilities.

Note For how a notice may be served, see the Legislation Act, pt 19.5.

- (2) A person commits an offence if the person does not comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) The controller may, in a notice under subsection (1), specify a different capacity for storage facilities on residential and commercial premises.

11 Declaration

- (1) Where there are reasonable grounds for believing—
- (a) that the maintenance of essential services in the ACT is, or is about to be, affected by a reduction of the supply of a fuel to the ACT; or
 - (b) that undue hardship is being suffered, or is likely to be suffered, by residents of the ACT by reason of a reduction of the supply of a fuel to the ACT; or
 - (c) that undue hardship is being suffered, or is likely to be suffered, by residents of the ACT by reason of difficulties in the distribution of a fuel within the ACT;

the Minister may, in writing, declare that an emergency exists in relation to that fuel.

- (2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) Unless it is sooner repealed, a declaration expires 28 days after the day it is notified under the *Legislation Act 2001*.

12 Powers of emergency services authority during emergency

- (1) Where a declaration under section 11 (1) is in force, the emergency services authority may, by instrument in writing given to a person

who is carrying on a prescribed business either wholly or partly in the ACT, make any 1 or more of the following requirements:

- (a) a requirement that the person not sell a declared fuel specified in the instrument unless the quantity of that fuel that would remain in storage at the premises, or each of the premises, as the case may be, at which the person conducts his or her business in the ACT exceeds a quantity specified in the instrument;
- (b) a requirement that the person not sell that fuel by retail to persons other than persons approved by the emergency services authority;
- (c) a requirement that the person not sell that fuel by retail to any person, except on such days and at such times as are specified in the instrument;
- (d) a requirement that the person sell that fuel by retail to the owner or driver of a motor vehicle—
 - (i) where the last number on the numberplates affixed to the motor vehicle is an even number—only on even numbered days of the month; and
 - (ii) where the last number on the numberplates affixed to the motor vehicle is an odd number—only on odd numbered days of the month;
- (e) a requirement that the person not refuse to sell that fuel by retail to any person who does not operate an account with, or who is not a regular customer of, the prescribed business carried on by the firstmentioned person;
- (f) a requirement that the person not display or exhibit on or near the premises at which he or she carries on the prescribed business any notice or sign containing the words ‘account customers only’ or ‘regular customers only’, either alone or in combination with any other words, or any other words indicating or implying that the person will sell fuel only to

persons who operate an account with, or who are regular customers of, that business;

- (g) a requirement that the person not sell that fuel by wholesale except to such persons, and at such times and in such quantities, as the emergency services authority approves;
 - (h) a requirement that the person not sell, to any person at one time, a quantity of that fuel exceeding a quantity specified in the instrument;
 - (i) a requirement that the total quantity of that fuel sold by the person during a period specified in the instrument not exceed a quantity specified in the instrument;
 - (j) a requirement that the person not remove that fuel from the ACT unless the quantity of that fuel that would remain in storage at the premises, or each of the premises, as the case may be, at which the person conducts his or her business in the ACT exceeds a quantity specified in the instrument.
- (2) A person commits an offence if the person fails to comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) An offence against this section is a strict liability offence.

12A Controller to give information to authority

- (1) This section applies if a declaration under section 11 (1) is in force.
- (2) The controller must give the emergency services authority any information required by the authority about the storage, supply or use of declared fuel.

13 Expiration of requirements

- (1) Subject to subsection (2) and unless it is sooner revoked, a requirement made under section 12 (1) ceases to have effect when the declaration under section 11 (1) ceases to be in force.
- (2) Where—
 - (a) a declaration under section 11 (1) ceases to be in force; and
 - (b) a further declaration under that subsection is made immediately upon the expiration of the firstmentioned declaration in relation to the same fuel;

a requirement made under section 12 (1) while the firstmentioned declaration was in force remains in force as if it had been made after the secondmentioned declaration was made.

15 Inspector may inspect vehicle suspected of transporting fuel

- (1) Where there are reasonable grounds for believing that a vehicle is being used, or is so constructed as to be capable of being used, for the transport of fuel, an inspector may—
 - (a) inspect the vehicle and any receptacle or equipment on the vehicle; and
 - (b) require the driver of the vehicle to inform him or her of—
 - (i) the nature of any substance being transported on the vehicle; and
 - (ii) the place where the substance was loaded on the vehicle; and
 - (iii) the person to whom, and the place at which, the substance is to be delivered.
- (2) For the purpose of inspecting a vehicle under subsection (1), an inspector may—

- (a) require the driver of the vehicle to stop the vehicle; or
 - (b) require the driver of the vehicle to remove the vehicle to a place specified by the inspector; or
 - (c) require the driver of the vehicle to open any receptacle or equipment on the vehicle; or
 - (d) enter, at any reasonable hour of the day or night, any land or premises on which the vehicle is found.
- (3) The driver of a vehicle commits an offence if the driver fails to comply with a requirement made of the driver by an inspector under this section.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

16 Control of disposal etc of certain fuel brought into ACT

- (1) A person commits an offence if—
- (a) the person brings declared fuel into the ACT; and
 - (b) the person—
 - (i) disposes of the fuel in the ACT; or
 - (ii) removes the fuel from the ACT; and
 - (c) the disposal or removal of the fuel is not in accordance with the directions of the controller.

Maximum penalty: 50 penalty units.

- (2) This section does not apply in relation to the fuel if a requirement has been made of the person under section 12 in relation to the fuel.
- (3) An offence against this section is a strict liability offence.

17 Application

A power conferred on an inspector by section 15—

- (a) may only be exercised while a declaration under section 11 (1) is in force; and
- (b) where a declaration is made in relation to the supply of a fuel specified in the declaration—may be exercised only in respect of the fuel so specified; and
- (c) does not affect the exercise by the controller, the emergency services authority or an inspector of a power conferred by any other provision of this Act.

20 Information not admissible in evidence

A statement in a notice given to the controller or any information given to the controller or to an inspector in compliance with a requirement made by the controller or an inspector under this Act is not admissible in evidence in a prosecution for an offence other than for an offence against this Act or against the Criminal Code, part 3.4 (False or misleading statements, information and documents) or section 361 (Obstructing Territory public official).

21 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Fuels Control Ordinance 1979* (Cwlth).

Endnotes

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

Fuels Control Act 1979 No 14

notified 20 June 1979

commenced 20 June 1979

as amended by

Fuels Control (Amendment) Ordinance 1982 No 5

notified 4 March 1982

commenced 4 March 1982

Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1

notified 10 May 1989

s 1, s 2 commenced 10 May 1989 (s 2 (1))

remainder commenced 11 May 1989 (s 2 (2) and Cwlth Gaz 1989 No S164)

Legislation after becoming Territory enactment

Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1

notified 15 December 1994 (Gaz 1994 No S280)

s 1, s 2 commenced 15 December 1994 (s 2 (1))

sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Legislation (Consequential Amendments) Act 2001 No 44 pt 160

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 160 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Criminal Code (Theft, Fraud, Bribery and Related Offences)**Amendment Act 2004 A2004-15 sch 2 pt 2.39**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.39 commenced 9 April 2004 (s 2 (1))

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.23

notified LR 27 October 2005

s 1, s 2 commenced 27 October 2005 (LA s 75 (1))

sch 1 pt 1.23 commenced 24 November 2005 (s 2)

Emergencies Amendment Act 2005 A2005-56 sch 1 pt 1.1

notified LR 23 November 2005

s 1, s 2 commenced 23 November 2005 (LA s 75 (1))

sch 1 pt 1.1 commenced 24 November 2005 (s 2)

4 Amendment history**Definitions for Act**s 2 def **controller** sub 1994 No 97 sch pt 1
def **inspector** sub 1994 No 97 sch pt 1**Notes**

s 2A ins A2005-54 amdt 1.156

Offences against Act—application of Criminal Code etc

s 2B ins A2005-54 amdt 1.156

Controller of Fuels

s 3 sub 1994 No 97 sch pt 1

Delegations 4 am 1982 No 5; 1989 No 38 sch 1
sub 1994 No 97 sch pt 1

Endnotes

4 Amendment history

Inspectors

s 5 sub 1994 No 97 sch pt 1

Identity cards

s 5A ins 1994 No 97 sch pt 1
am 1998 No 54 sch
sub A2005-54 amdt 1.157
(5)-(7) exp 24 November 2005 (s 5A (7))

Person carrying on prescribed business must give controller notice

s 7 am 1998 No 54 sch
sub A2005-54 amdt 1.158

Controller may require information

s 8 am 1998 No 54 sch
sub A2005-54 amdt 1.158

Powers of inspector

s 9 am 1982 No 5; 1994 No 97 sch pt 1; 1998 No 54 sch;
A2005-54 amdt 1.159

Controller may require information from persons having storage capacity exceeding the prescribed capacity

s 10 am 1982 No 5; 1998 No 54 sch; A2005-54 amdts 1.160-1.162

Declaration

s 11 am 2001 No 44 amdt 1.1862, amdt 1.1863

Powers of emergency services authority during emergency

s 12 hdg sub A2005-56 amdt 1.1
s 12 am 1982 No 5; 1998 No 54 sch; pars renum R3 LA; A2005-54
amdt 1.163; A2005-56 amdt 1.2

Controller to give information to authority

s 12A ins A2005-56 amdt 1.3

Powers of inspector

s 14 om 1982 No 5

Inspector may inspect vehicle suspected of transporting fuel

s 15 am 1998 No 54 sch; A2005-54 amdt 1.164

Control of disposal etc of certain fuel brought into ACT

s 16 am 1998 No 54 sch
sub A2005-54 amdt 1.165
am A2005-56 amdt 1.4

Application

s 17 am A2005-56 amdt 1.5

Obstruction of controller or an inspector

s 18 am 1998 No 54 sch
om A2004-15 amdt 2.87

Service of notices

s 19 am 1982 No 5
om A2005-54 amdt 1.166

Information not admissible in evidence

s 20 orig s 20 am 1989 No 38 sch
sub as s 21 2001 No 44 amdt 1.1864
pres (prev s 19A) ins 1982 No 5
renum 2001 No 44 amdt 1.1865
am A2004-15 amdt 2.88

Regulation-making power

s 21 ins 2001 No 44 amdt 1.1864

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	ord 1989 No 38	31 July 1991
2	Act 1998 No 54	31 March 1999
3	A2001-44	14 January 2002
4	A2004-15	9 April 2004
5	A2005-56	24 November 2005