



Australian Capital Territory

Fuels Rationing Act 2019

A2019-11

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Australian Capital Territory

Fuels Rationing Act 2019

A2019-11

An Act for the rationing and restriction of fuels, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Fuels Rationing Act 2019*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*inspector*, for part 3 (Enforcement)—see section 17.’ means that the term ‘inspector’ is defined in that section for part 3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 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.

5 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.

Part 2 Fuel restriction scheme

6 Meaning of *fuel*

(1) In this Act:

fuel means—

- (a) petroleum; or
- (b) a petroleum product; or
- (c) a petrochemical; or
- (d) any other liquid fuel manufactured for use in an internal combustion engine; or
- (e) anything else prescribed by regulation.

Examples—par (d)

- biodiesel
- ethanol fuel
- hydrogen-based fuel

(2) In this section:

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:

- (a) petroleum;
- (b) a petroleum product;
- (c) 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:
 - (i) hydrogen sulphide;
 - (ii) nitrogen;
 - (iii) helium;
 - (iv) 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 produced with another substance.

7 Meaning of *use*

- (1) In this Act:

use, of a fuel, includes the following:

- (a) buy;
- (b) sell;
- (c) hold;
- (d) distribute.

(2) In this section:

buy includes—

- (a) buy by wholesale, retail, auction or tender; and
- (b) obtain by barter or exchange.

sell includes—

- (a) sell by wholesale, retail, auction or tender; and
- (b) barter or exchange; and
- (c) supply for profit or other commercial gain; and
- (d) offer for sale, receive for sale or expose for sale; and
- (e) have in possession for sale.

8 Approved fuel restriction scheme

- (1) The Minister may approve a scheme to restrict the use of fuels to deal with a shortage or likely shortage of fuel (an *approved fuel restriction scheme*).
- (2) In approving a scheme, the Minister must consider whether the scheme achieves 1 or more of the outcomes mentioned in section 11 (1) (b).
- (3) An approved fuel restriction scheme is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Note 2 The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

Note 3 Power to make a statutory instrument (including an approved fuel restriction scheme) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

9 Scope of fuel restriction scheme

- (1) The Minister may approve a fuel restriction scheme under section 8 only if the scheme provides for—
 - (a) the imposition of restrictions in different stages; and
 - (b) a range of restrictions that may be imposed under each stage, including the following:
 - (i) the amount or type of fuel to which the restrictions apply;
 - (ii) the circumstances in which the restrictions apply;
 - (iii) the class of buyers, sellers or other people to whom the restrictions apply.
- (2) An approved fuel restriction scheme may include provision for the Minister to exempt an entity from a fuel restriction if compliance with the restriction would cause the entity or anyone else serious detriment.

Examples—serious detriment

- 1 A medical waste disposal service requires fuel to transport the medical waste for incineration and without an exemption the service would not be able to provide its service and a serious public health risk may arise.
- 2 A public bus service requires fuel to transport commuters who may have limited use of their vehicles due to fuel restrictions. Without an exemption, the service may not be able to provide buses which would severely disrupt the movements of commuters.

10 Fuel seller must give notice

- (1) A person who carries on a business of selling fuel (a *fuel seller*), whether by wholesale or retail, must give the director-general a written notice stating—
 - (a) the fuel seller's name and email address; and
 - (b) the address and telephone number of each place where the fuel seller 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 fuel seller must give the notice not later than 14 days after the day the fuel seller starts to carry on the business.
- (3) If the fuel seller is carrying on the business on or immediately before the day this section commences (the *commencement day*), the fuel seller must give the notice not later than 14 days after the commencement day.
- (4) Subsection (3) and this subsection expire 12 months after the commencement day.
- (5) If a fuel seller has given a notice under subsection (1), the fuel seller must give the director-general a 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.
- (6) If a fuel seller stops carrying on the business, the fuel seller must, not later than 14 days after the day the fuel seller stops carrying on the business, give the director-general a written notice stating—
- (a) that the fuel seller has stopped carrying on the business; and
 - (b) the date the fuel seller stopped carrying on the business.
- (7) A fuel seller commits an offence if the fuel seller—
- (a) is required to give a notice to the director-general under this section; and
 - (b) does not give the notice in accordance with this section.
- Maximum penalty: 50 penalty units.
- (8) An offence against this section is a strict liability offence.

11 Declaration of fuel restriction

- (1) The Minister may declare that a restriction under an approved fuel restriction scheme is in force (a *fuel restriction*) if satisfied that—
- (a) there is a shortage, or likely shortage, of fuel; and
 - (b) the declaration is necessary to—
 - (i) facilitate, as far as practicable, the provision of efficient, reliable and sustainable fuel supplies to consumers; or
 - (ii) protect the interest of consumers; or
 - (iii) manage the safety and security of the fuel distribution chain; or
 - (iv) protect public safety; or
 - (v) comply with international agreements or commitments; or
 - (vi) assist a State or another Territory in doing anything mentioned in subparagraphs (i) to (v).

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (2) The declaration may state that the restriction applies in relation to 1 or more of the following:
- (a) a stated class of people;
 - (b) a stated amount or type of fuel;
 - (c) a stated time or day;
 - (d) any other stated circumstance.
- (3) The declaration must state the period (not longer than 3 months) the fuel restriction is in force.
- (4) However, if the Minister is satisfied there is no longer a shortage, or likely shortage of fuel, the Minister must repeal the declaration.

- (5) A declaration is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 The power to make a declaration includes the power to amend or repeal the declaration. The power to amend or repeal the declaration is exercisable in the same way, and subject to the same conditions, as the power to make the declaration (see [Legislation Act](#), s 46).

Note 3 Power to make a statutory instrument (including a declaration) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

- (6) A declaration may provide for its commencement on or before the declaration's notification day.

- (7) However—

- (a) a declaration may not provide for a commencement date or time that would result in the declaration commencing before it is made; and
- (b) a declaration may not commence before it is notified under the [Legislation Act](#) unless the Minister is satisfied that the circumstances are of such seriousness and urgency that commencement before notification is necessary.

12 Publication of fuel restriction

- (1) As soon as possible after making a declaration under section 11 that a fuel restriction is in force, the Minister must ensure that notice of the restriction is—

- (a) broadcast in the ACT by television or radio; and
- (b) given in a public notice; and
- (c) given, in writing, to a fuel seller who—
 - (i) has given a notice to the director-general under section 10; and

(ii) is offering fuel for sale that is subject to the fuel restriction.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).

(2) A failure to comply with subsection (1) does not affect the validity of the declaration.

13 Fuel restriction signage

(1) This section applies if a fuel seller is given notice of a fuel restriction under section 12 (1) (c).

(2) The fuel seller must ensure that a notice stating that a fuel restriction is in force (a **fuel restriction notice**) is displayed—

(a) at the fuel seller's business where fuel subject to the fuel restriction is offered for sale; and

(b) in a place where the notice is reasonably visible to buyers of the fuel before the fuel is bought.

Example

at the bowser

Maximum penalty: 50 penalty units.

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

(4) A fuel restriction notice must—

(a) state that—

(i) a fuel restriction is in force; and

(ii) penalties for noncompliance with the fuel restriction may apply under this Act; and

(iii) further information can be found on an ACT government website; and

(b) be at least A4 size.

14 Extension of fuel restriction

- (1) The Minister may extend the period mentioned in section 11 (3) (the *declaration period*) for not more than 3 months.
- (2) An extension must not be made earlier than 1 month before the day the declaration period ends.
- (3) The Minister may extend the period only if the Minister is satisfied that a continuation of a shortage, or likely shortage of fuel, requires a fuel restriction to remain in force.

Example

A 3-month declaration of a fuel restriction is in force during a critical fuel shortage to ensure sustainable fuel use for the ACT. During the final month of the declaration period, the critical shortage still exists. The Minister is satisfied that the fuel restriction is required to remain in force and extends the period.

- (4) However, if the Minister is satisfied there is no longer a shortage, or likely shortage of fuel, the Minister must repeal the extension.
- (5) An extension is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

15 Fuel restriction—limit on proceedings

- (1) A person must not start a proceeding in a court challenging a decision under any of the following provisions more than 30 days after the decision is made:
 - (a) section 8 (Approved fuel restriction scheme);
 - (b) section 11 (Declaration of fuel restriction);
 - (c) section 14 (Extension of fuel restriction).
- (2) If a proceeding in relation to a decision mentioned in subsection (1) is started within 30 days, the proceeding is not subject to an interlocutory injunction in any court.

16 Application of Act to emergency services and police

- (1) This Act does not apply to the exercise or purported exercise of a function by—
- (a) a relevant person under the *Emergencies Act 2004* for the purpose of protecting life, property or the environment; or
 - (b) a police officer for the purpose of protecting life or property.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) In this section:

emergency controller—see the *Emergencies Act 2004*, dictionary.

relevant person means—

- (a) the emergency controller; or
- (b) a member of the ambulance service; or
- (c) a member of the fire and rescue service; or
- (d) a member of the rural fire service; or
- (e) a member of the SES; or
- (f) any other person under the control of—
 - (i) the emergency controller; or
 - (ii) the chief officer (ambulance service); or
 - (iii) the chief officer (fire and rescue service); or
 - (iv) the chief officer (rural fire service); or
 - (v) the chief officer (SES); or
- (g) a police officer.

Part 3 Enforcement

Division 3.1 Fuel restriction offences

17 Definitions—pt 3

In this part:

identity card means an identity card issued under the *Dangerous Substances Act 2004*, section 208.

inspector means an inspector under the *Dangerous Substances Act 2004*, section 207.

Note An *inspector* includes a police officer (see *Dangerous Substances Act 2004*, s 207 (1)).

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

18 Contravening fuel restriction

- (1) A fuel seller commits an offence if the fuel seller—
 - (a) is notified of a fuel restriction under section 12 (1) (c); and
 - (b) contravenes the fuel restriction.

Maximum penalty: 50 penalty units.

- (2) A person other than a fuel seller commits an offence—
 - (a) if notice of a fuel restriction is given under section 12 (1) (a) or (b); and
 - (b) the person contravenes the fuel restriction.

Maximum penalty: 50 penalty units.

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

19 Inspector may require information

- (1) This section applies if an inspector reasonably requires information from a person who is subject to a fuel restriction.
- (2) An inspector may require the person to give, in writing, to the inspector as soon as practicable (but not later than 14 days after the day the notice is given) the following information:
- (a) the types of fuel held by the person;
 - (b) the quantity of a fuel held by the person;
 - (c) the quantity of a fuel sold by the person during a stated period.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (3) A requirement under subsection (2) must be in writing and—
- (a) identify the person to whom the notice is given; and
 - (b) state why the information is required; and
 - (c) set out the maximum penalty, on conviction, for a failure to comply with the notice.
- (4) A person commits an offence if the person fails to comply with a requirement under subsection (2).
- Maximum penalty: 50 penalty units.
- (5) An offence against this section is a strict liability offence.

20 Directions by inspector

- (1) This section applies if an inspector believes on reasonable grounds that—
- (a) fuel has been used, or is being used, on premises in contravention of a fuel restriction; or

- (b) fuel has been used on premises in contravention of a fuel restriction and that a further contravention is likely.
- (2) The inspector may give the occupier of the premises a written direction to take action stated in the direction to ensure that fuel is used in accordance with the fuel restriction.
- (3) It is sufficient if the direction is addressed to ‘the occupier’ of the premises.
- (4) The direction must state—
 - (a) a reasonable period within which the person must comply with the direction; and
 - (b) the penalty for failure to comply with the direction.

Note For other ways in which the direction may be given, see the [Legislation Act](#), pt 19.5.

21 Offence—contravene direction of inspector

- (1) A person commits an offence if—
 - (a) an inspector gives the person a direction under section 20; and
 - (b) the person contravenes the direction.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
 - (3) This section does not apply if the person took all reasonable steps to comply with the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

22 Ending unauthorised use of fuel

- (1) An inspector may arrange to stop the supply of fuel to premises if the inspector believes on reasonable grounds that a person is contravening a direction under section 20.

- (2) An inspector may also arrange to stop the supply of fuel to premises if the inspector believes on reasonable grounds that—
- (a) fuel is being used on premises in contravention of a fuel restriction; and
 - (b) a direction under section 20 is unlikely to end the contravention because, for example—
 - (i) the premises are unoccupied (whether temporarily or permanently); or
 - (ii) after making reasonable inquiries, the inspector cannot find the occupier of the premises; or
 - (iii) the occupier is unlikely to comply with the direction; and
 - (c) the contravention is likely to continue unless action is taken under this section.
- (3) The inspector must give the occupier of the premises a written notice stating that the supply of fuel will be stopped.
- (4) It is sufficient if the notice is addressed to ‘the occupier’ of the premises.

Note For other ways in which the notice may be given, see the [Legislation Act](#), pt 19.5.

Division 3.2 Inspectors

Subdivision 3.2.1 General

23 Definitions—div 3.2

In this division:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

warrant means a warrant issued under subdivision 3.2.3 (Search warrants).

24 Inspector must show identity card on exercising power

- (1) If an inspector exercises a power under this Act that affects an individual, the inspector must first show the inspector's identity card to the individual.
- (2) If an inspector exercises a power under this Act that affects a person, other than an individual, the inspector must first show the inspector's identity card to an individual the inspector believes on reasonable grounds is an employee, officer or agent of the person.

Examples—person other than an individual

- corporation
- partnership

Subdivision 3.2.2 Powers

25 Power to enter premises

- (1) For this Act, an inspector may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) at any time, enter premises if the inspector believes on reasonable grounds that—
 - (i) there is a risk to public safety; and
 - (ii) the risk is so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
 - (d) enter premises in accordance with a search warrant.
- (2) However—
 - (a) subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes; and
 - (b) subsection (1) (c) does not authorise entry into premises that are used for residential purposes, unless the premises are also the place from which a business subject to a fuel restriction is conducted.
- (3) An inspector may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an inspector may enter premises under subsection (1) without payment of an entry fee or other charge.

- (5) An inspector may—
- (a) for subsection (1) (a), (b) or (c)—enter the premises with necessary assistance; and
 - (b) for subsection (1) (d)—enter the premises with necessary assistance and force.

Note A search warrant to enter premises, issued under this Act, permits an inspector to enter premises with any necessary assistance and force.

- (6) In this section:

necessary assistance, for an inspector entering premises, includes the attendance of 1 or more people who, in the opinion of the inspector, have knowledge or skills that could assist the inspector to carry out the inspector's function.

26 Production of identity card

An inspector and any other person other than a police officer who is accompanying the inspector may not remain at premises entered under this part if the inspector does not produce the inspector's identity card when asked by the occupier.

27 Consent to entry

- (1) When seeking the consent of an occupier to enter premises under section 25 (1) (b) (Power to enter premises), an inspector must—
- (a) produce the inspector's identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the inspector; and

- (iii) that anything found and seized under this part may be used in evidence in court; and
 - (iv) that consent may be refused.
- (2) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the inspector; and
 - (iii) that anything found and seized under this part may be used in evidence in court; and
 - (iv) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the inspector under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

28 General powers on entry to premises

- (1) An inspector who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) make sketches, drawings or any other kind of record (including photographs, films, audio, video or other recordings);
 - (e) require the occupier, or anyone at the premises, to give the inspector reasonable help to exercise a power under this part.

Note The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

29 Power to seize things

- (1) An inspector who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An inspector who enters premises under a warrant under this part may seize anything at the premises that the inspector is authorised to seize under the warrant.
- (3) An inspector who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
 - (a) the thing is connected with an offence against this Act; and

- (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Having seized a thing, an inspector may—
 - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (5) If access to a thing is restricted under subsection (4) (b), the inspector must place a notice in a conspicuous place identifying that the thing is seized.
- (6) A person commits an offence if—
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4); and
 - (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (7) An offence against subsection (6) is a strict liability offence.

30 Direction to give name and address

- (1) This section applies if an inspector believes on reasonable grounds that a person—
 - (a) has committed, is committing or is about to commit an offence against this Act; or

(b) may be able to assist in the investigation of an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

(2) The inspector may direct the person to give the inspector, immediately, any of the following personal details (*a name and address direction*):

- (a) the person's full name;
- (b) the person's home address.

Note The inspector must first show the person the inspector's identity card (see s 24).

(3) If the inspector believes on reasonable grounds that a personal detail given by a person in response to a name and address direction is false or misleading, the inspector may direct the person to produce evidence immediately of the correctness of the detail (*an evidence direction*).

(4) If an inspector gives a direction to a person, the inspector must tell the person that it is an offence if the person fails to comply with the direction.

(5) If an inspector gives a direction to a person, the inspector must give the direction in a language, or in a way of communicating, that the inspector believes on reasonable grounds the person is likely to understand.

31 Offence—fail to comply with direction to give name and address etc

- (1) A person commits an offence if the person—
 - (a) is the subject of—
 - (i) a name and address direction; or

- (ii) an evidence direction; and
- (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the inspector, before giving the direction, did not—
 - (a) produce the inspector's identity card for inspection by the person; or
 - (b) warn the person that failure to comply with the direction is an offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) In this section:

direction means a name and address direction or an evidence direction.

Subdivision 3.2.3 Search warrants

32 Warrants generally

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must—
 - (a) be sworn; and
 - (b) state the grounds on which the warrant is sought.

- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state—
 - (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector’s powers under this part; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant’s issue, when the warrant ends.

33 Warrants—application other than in person

- (1) An inspector may apply for a warrant by phone, fax, radio, email, letter or other form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.

- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately provide a written copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to provide a written copy of the warrant to the inspector—
 - (a) the magistrate must tell the inspector—
 - (i) what the terms of the warrant are; and
 - (ii) the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this part.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents mentioned in subsection (7), the magistrate must attach them to the warrant.

- (9) A court must find that a power exercised by an inspector was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

34 Search warrants—announcement before entry

- (1) An inspector must, before anyone enters premises under a search warrant—
- (a) announce that the inspector is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) The inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the inspector or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

35 Details of search warrant to be given to occupier etc

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

36 Occupier entitled to be present during search etc

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Subdivision 3.2.4 Return and forfeiture of things seized

37 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an inspector under this part, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously at the place of seizure under section 29 (Power to seize things).

- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the inspector's name, and how to contact the inspector;
 - (d) if the thing is moved from the premises where it is seized—
where the thing is to be taken.

38 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An inspector may apply to a magistrate for an extension of time if the inspector believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

39 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect the thing; and
- (b) photograph the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

40 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
 - (a) a prosecution for an offence relating to the thing is not instituted within 90 days of the seizure; or
 - (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.

- (2) A thing seized under this part is forfeited to the Territory if a court—
 - (a) finds an offence relating to the thing to be proved; and
 - (b) orders the forfeiture.
- (3) If subsection (2) (a) applies, but a court does not order forfeiture of the thing seized, the Territory must return the thing to its owner or pay reasonable compensation to the owner for the loss of the thing.

Subdivision 3.2.5 Miscellaneous

41 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an inspector must take all reasonable steps to ensure that the inspector, and any person assisting the inspector, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an inspector, or a person assisting an inspector, damages anything in the exercise or purported exercise of a function under this part, the inspector must give written notice of the particulars of the damage to the person whom the inspector believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

42 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
 - (a) an inspector; or
 - (b) a person assisting an inspector.

- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

43 Protection from liability

- (1) An inspector or a person assisting an inspector, is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any liability that would, apart from this section, attach to the inspector or a person assisting the inspector, attaches instead to the Territory.
- (3) In this section:
conduct means an act or omission to do an act.

Part 4 Miscellaneous

44 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Part 10 Transitional

100 Meaning of *commencement day*—pt 10

In this part:

commencement day means the day this Act, section 3 commences.

101 Inspectors

- (1) This section applies to a person who, immediately before the commencement day, is an inspector under the *Fuels Control Act 1979*.
- (2) The person is, on the commencement day, taken to be an inspector for this Act.

102 Identity cards

- (1) This section applies to a person who, immediately before the commencement day, holds an identity card issued under the *Fuels Control Act 1979*, section 5A.
- (2) The identity card is, on the commencement day, taken to be an identity card for this Act.

103 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

104 Expiry—pt 10

This part expires 2 years after the commencement day.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Part 11 Repeals

105 Legislation repealed

- (1) The *Fuels Control Act 1979* (A1979-14) is repealed.
- (2) All legislative instruments under the *Fuels Control Act 1979* are repealed.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACT
- ambulance service
- chief officer (ambulance service)
- chief officer (fire and rescue service)
- chief officer (rural fire service)
- chief officer (SES)
- contravene
- director-general (see s 163)
- entity
- Executive
- fail
- fire and rescue service
- instrument (see s 14)
- Minister (see s 162)
- notification
- penalty unit (see s 133)
- police officer
- rural fire service
- SES
- State
- territory law
- the Territory.

approved fuel restriction scheme—see section 8.

connected, for division 3.2 (Inspectors)—see section 23.

evidence direction—see section 30 (3).

fuel—see section 6 (1).

fuel restriction—see section 11 (1).

fuel seller—see section 10 (1).

identity card, for part 3 (Enforcement)—see section 17.

inspector, for part 3 (Enforcement)—see section 17.

name and address direction—see section 30 (2).

occupier, of premises, for part 3 (Enforcement)—see section 17.

offence, for division 3.2 (Inspectors)—see section 23.

premises includes any land, structure or vehicle and any part of an area of land, a structure or vehicle.

use, of a fuel—see section 7 (1).

warrant, for division 3.2 (Inspectors)—see section 23.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 11 April 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Fuels Rationing Bill 2019, which originated in the Legislative Assembly as the Fuels Rationing Bill 2018 and was passed by the Assembly on 4 April 2019.

Clerk of the Legislative Assembly

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