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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

FUELS RATIONING BILL 2018

EXPLANATORY STATEMENT

**Presented by
Shane Rattenbury MLA
Minister for Climate Change and Sustainability**

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Fuels Rationing Bill 2018* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview

Purpose of this Bill

This Bill establishes a framework for approving, implementing and enforcing fuel rationing measures in the unlikely event of a fuel shortage. The framework provides for scrutiny of potential rationing measures while enabling the Executive to act swiftly to respond in the event of a fuel shortage. The ACT signed an Intergovernmental Agreement (IGA) in relation to a National Liquid Fuel Emergency in October 2006. The IGA is designed to ensure a harmonised response by Commonwealth, State and Territory governments to a liquid fuel emergency, recognising that such emergencies invariably occur across geographic boundaries.

The Bill enables the ACT Government to develop and approve a fuel rationing scheme as a disallowable instrument which will outline a number of fuel rationing measures that may be implemented by the Minister in the event or likely event of a fuel shortage. This will enable the ACT Government to implement fuel rationing in a manner consistent with the other jurisdictions, that minimises the costs and impacts to consumers, and allows for essential fuel users (such as police and emergency services) to be exempted from fuel restrictions.

The Commonwealth *Liquid Fuel Emergency Act 1984* and its subordinate legislation *Liquid Fuel Emergency (Activities — Essential Users) Determination 2008* provide a list of entities which have been identified as essential to the health, safety or welfare of the community. All Australian jurisdictions have agreed that the list of essential users as defined in the Commonwealth Determination should be granted exemptions to general fuel restrictions. The ACT Government intends to provide specific provisions for the entities which have been identified as essential users through the current Commonwealth legislation, or subsequent determinations, in line with the IGA. These entities may still be subject to a level of fuel restriction. Further detail of fuel restrictions and exemptions to fuel restrictions will be provided for in a fuel restriction scheme.

Powers

Clause 8 of the Bill provides the Minister the power to approve a fuel restriction scheme as a disallowable instrument. A fuels restriction scheme provides a framework for fuel restriction measures which can be utilised in the event of a fuel shortage. The fuel restriction scheme will outline a number of stages, which relate to the severity of a potential fuel shortage.

Clause 11 of the Bill provides the Minister the power to declare that a fuel restriction under an approved fuel restriction scheme is in place for a specified period of time, with a maximum period being three months, to address a shortage or likely shortage of fuel. The Minister must repeal a fuel restriction if the Minister is satisfied the restriction is no longer necessary to address the fuel shortage. Clause 14 of the Bill allows the Minister to extend a declaration period for a fuel restriction. Part 3 of the Bill provides powers to inspectors to ensure that fuel restrictions are complied with.

Consistency

The introduction of this legislation allows for a swift response to a fuel shortage that is consistent with response measures agreed to by the Commonwealth Government and other jurisdictional governments. The Bill establishes powers to respond to a shortage of liquid fuel supplies in a manner compliant with the Intergovernmental Agreement (IGA) In Relation to a National Liquid Fuel Emergency 2006, which commits all jurisdictions to a consistent response to liquid fuel shortage. This consistency in response is essential as fuel shortages invariably occur across geographic boundaries.

The Bill also brings consistency to the legislative framework for responding to other energy shortages within the Territory, including electricity and gas. The framework of the Bill is similar to that of the established *Utilities (Electricity Restrictions) Regulation 2004* and the *Utilities (Gas Restrictions) Regulation 2005* which provide frameworks for the Minister to respond to potential shortages of electricity and gas respectively.

Effect on other legislation

The Bill also repeals the *Fuels Control Act 1979*.

Human Rights Implications

The Bill is consistent with the *Human Rights Act 2004* (HRA). The supply of liquid fuels is essential to daily life. The failure of a consistent supply of liquid fuels is a risk to life, health and safety if that supply severely inhibits the functions of emergency services.

Section 28 (Human rights may be limited) of the HRA may apply in the circumstance where the potential decrease in the supply of liquid fuels or other fuel emergency would pose a risk to the broader ACT community. This Bill puts the frameworks in place to ensure that in the event of a liquid fuel shortage, the failure of supply to emergency services will be minimised or avoided.

It is crucial that, in the event of a fuel emergency, fuel restrictions are able to be implemented and enforced within a short timeframe and cannot be overturned easily. The Bill provides:

- powers to inspectors to allow for investigation of potential non-compliance with fuel restrictions;
- penalties for non-compliance with fuel restrictions;
- Penalties for non-compliance with directions by inspectors; and
- restrictions on review processes.

Rights in criminal proceedings (s22)

Nature of the right affected: Section 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The Bill applies strict liability offences for non-compliance with fuel restrictions and for non-compliance with directions by inspectors. These offences engage with s22(1) of the HRA. In a strict liability offence, there is no requirement to establish a fault element, such as intention, knowledge, recklessness or negligence.

Importance of the purpose of the limitation: For fuel restriction measures to be effective in maintaining essential services in the community, compliance is essential. Strict liability offences have been included in this legislation to maintain the integrity of the regulatory regime and to ensure that there is no question that fuel restriction measures must be complied. These penalties reduce financial incentives to contravene a declared fuels rationing measure. The clauses are intended to ensure that people are aware of fuel restriction measures, do not contravene them, and do not prevent inspectors from performing their required functions.

Nature and extent of limitation: Each strict liability offence has been carefully considered and safeguard measures have been included to limit the human rights impacts. The Bill provides many safeguards to inform people of their obligations under fuel restrictions and the penalties for non-compliance.

Three of the seven strict liability offences involve a person contravening a direction of an inspector. There are requirements in this Act that inspectors must produce an identity card and contemporaneously inform the person that failing to comply with their direction is an offence.

It should also be noted that the sale of fuel is a heavily regulated industry. The directorate will provide clear communications material to businesses which sell fuel in the ACT to inform them of the commencement of the Act and their responsibilities under the Act. These businesses will also be notified of fuel restriction scheme approvals and of fuel restriction declarations. It is reasonable that these businesses will be compliant of any declared fuel restriction measures.

Relationship between the limitation and its purpose: The limitation of the strict liability offences included in this Bill is warranted because in the event of a fuel shortage where fuels restrictions are necessary, measures need to be implemented effectively and within a short timeframe. There must be no doubt in people's minds as to whether they need to comply with the fuels restrictions. Compliance is necessary to ensure the continued functioning of essential services to prevent injury, illness or serious detriment to the community.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: If the strict liability offences included in this Bill were not classed as strict liability this would reduce certainty relating to peoples responsibilities under this Act. This would impede the ability of fuel restriction measures to be implemented as swiftly and effectively as the management of a fuel shortage event may require.

Provisions which include strict liability offences:

- **Clause 10:** A person carrying on a business of selling fuel must provide written notice to the director-general stating the person's name, email address and various details relating to the business. A person must provide notice to the director-general within 14 days if any of this information changes.

Safeguard to minimise the extent of the limitation: The Environment, Planning and Sustainable Development Directorate will inform all businesses which sell fuel in the ACT of their responsibilities under this Bill prior to the commencement of the Bill. New fuel station businesses will be informed of their responsibilities under this Bill at the time that they apply for a development approval.

Relationship between the limitation and its purpose: This clause is essential to ensure that the Executive is able to notify fuel businesses immediately in the event a fuel restriction is declared. This notification is vital to the implementation and enforcement of fuel restrictions as fuel businesses will play a crucial role in the implementation of any fuel restriction. The penalty for contravening clause 10 is 50 penalty units. The size of this penalty is essential to ensure that fuel businesses are contactable in the event of fuel restrictions. Penalties in clauses 13 and 18 specify that a fuel business can only be penalised for not displaying fuel restriction signage and contravening a fuel restriction if they have been notified of the fuel restriction. The ability to inform the community of fuel restrictions and to enforce fuel restrictions is essential to the function of the Bill. In the event of an emergency, fuel businesses will play a crucial role in notifying the community of fuel restrictions.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: As per the requirements of Section 42 of the *Environment Protection Act 1997*, the activity 'storage of petroleum products in a facility designed to store more than 50m³ of products' requires an Environmental Approval (EA). The Environmental Protection Authority's current EA process includes a provision that businesses must provide two contact details for the business if it meets the above mentioned activity criteria. However, this process is not legislated within the *Environment Protection Act 1997* and so could be subject to change. It should also be noted that while most sellers of fuels would meet the activity criteria (that is, storing petroleum products and having storage capacity of more than 50m³ of products), not all fuel sellers in the ACT meet this criteria. As clause 18 of the Bill stipulates that fuel sellers must be notified of fuel restrictions in order to be accountable for breaching a fuel restriction, it is essential that the Minister can have certainty that all fuel sellers can be notified of fuel restrictions in a defined process. If the process of notifying fuel sellers misses a fuel selling business, that business would not be subject to a fuel restriction scheme until the time it was notified.

- **Clause 13 (2):** A fuel seller, that has been given notice of fuel restrictions under section (12)(1)(c), must ensure that a notice stating that a fuel restriction is in force is placed in a place visible to buyers at the fuel sellers business where fuel subject to fuel restrictions is offered for sale.

Safeguard to minimise the extent of the limitation: The penalty only applies to the fuel seller if they have been given notice of fuel restrictions. Clause 12 (1)(c) requires the Minister must provide written notice of fuel restrictions to fuel sellers who have given notice under section 10 and are offering a fuel subject to fuel restrictions for sale. The Environment, Planning and Sustainable Development Directorate will undertake thorough communications at the time that the Bill is approved to ensure that fuel sellers are aware of their obligations under the Bill.

Relationship between the limitation and its purpose: The display of fuel restriction signage is an essential aspect of the Bill that supports the communication of fuel restrictions to the community.

- **Clause 18 (1):** A fuel seller commits an offence if the fuel seller has been notified of fuel restrictions under the section 12 (1) (c) and contravenes a fuel restriction.
- **Clause 18 (2)** a person other than a fuel seller commits an offence if the notice under section 12 (1) (a) and the person contravenes a fuel restriction.

Safeguard to minimise the extent of the limitation:

Clause 18 (1) – A fuel seller must have been notified of a fuel restriction to be liable for contravening a fuel restriction. This requirement provides protections for fuel sellers to ensure that they are aware of fuel restrictions and can support communication measures to the community by displaying fuel restriction signage as per the provision in clause 13.

Clause 18 (2) - A person other than a fuel seller is only liable for this penalty if fuel restrictions have been broadcast in the ACT by television or radio as per section 12 (1) (a). It is reasonable to expect that a person will be aware that fuel restrictions are in force due to signage that will be displayed in fuel selling businesses. Clause 13 stipulates a fuel restriction notice must be displayed in a place where it is reasonably visible to customers before fuel is bought. Section 12 (1) (b) also states that the Minister must give public notice of fuel restrictions via an ACT Government website or in a daily newspaper.

Relationship between the limitation and its purpose: This strict liability offence is essential to remove any doubt that people may have as to their obligation to comply with fuel restrictions. It is essential that people understand that they will be penalised if they contravene a fuel restriction. The penalty reduces any financial incentive to contravene a fuel restriction.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: If a further safeguard stipulating that fuel restriction signage must be displayed at the point that a person contravened a fuel restriction, this could provide an incentive for individuals to remove signage.

- **Clause 19 (4):** A person commits an offence if the person fails to provide information as requested by an inspector under section 19(2).

Safeguard to minimise the extent of the limitation: Clause 19 (3) stipulates that the request must be in writing and must identify the person on whom the notice is served, state why the information is required, and provide details of the penalties for non-compliance.

Relationship between the limitation and its purpose: The Executive must have the ability to monitor fuel supplies in the Territory during a fuel shortage in order to ensure that adequate fuel restriction measures are implemented to guarantee the safety of the community.

- **Clause 21 (1):** A person commits an offence if an inspector gives the person a direction under clause 20, which relates to action that must be taken to ensure fuel is used in accordance with the restriction; and the person contravenes the direction.

Safeguard to minimise the extent of the limitation: Clause 20 stipulates the conditions that an inspector must meet in order to provide an occupier of a premises with a direction and ensure that the occupier is aware of the penalties for non-compliance. Clause 21 (3) stipulates that it is a permissible defence if a person can provide evidence that they took all reasonable steps to comply with the direction.

Relationship between the limitation and its purpose: It is essential to the objective of the Bill that fuel stations comply with the fuel restrictions. In order to ensure that restrictions are complied with, inspectors must be able to investigate all circumstances where there may be non-compliance.

- **Clause 29 (6):** A person commits an offence if the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under clause 29 (4); and the person does not have an inspector's approval to interfere with the thing.

Safeguard to minimise the extent of the limitation: There is a requirement for an inspector to place a notice in a conspicuous place which identifies that the thing is seized. This ensures that a person is aware that it is an offence to interfere with the seized thing.

Relationship between the limitation and its purpose: This clause is essential to support the compliance of fuel restrictions by preventing persons from avoiding penalties by tampering with evidence.

- **Clause 31 (1):** A person commits an offence if the person is the subject of a name and address direction or an evidence direction and fails to comply with the direction.

Safeguard to minimise the extent of the limitation: Clause 31 (3) requires that the inspector produce their identity card for inspection by the person and warns the person that failure to comply with the direction is an offence. This ensures that the person is made aware of the consequences of not complying with a direction. Clause 30 stipulates that the inspector may only make this direction if the inspector believes on reasonable grounds that a person has committed, is committing or is about to commit an offence against the Bill, or that a person may be able to assist in the investigation of an offence against this Bill.

Relationship between the limitation and its purpose: It is essential to the objective of the Bill that fuel restrictions are complied with. In order to ensure that restrictions are complied with, inspectors must be able to investigate all circumstances where there may be non-compliance.

Right to privacy and reputation (s12)

Nature of the right affected: Section 12 of the HRA provides that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and not to have his or her reputation unlawfully attacked. Clause 25(2)(b) and clause 30 of this Bill engage with the right to privacy.

- **Clause 10** provides that a person who carries on a business of selling fuel must give the director-general written notice stating the seller's name and email address and further details for each business location where the fuel seller carries on their business. The seller must keep these details up to date.

Importance of the purpose of the limitation: This clause is essential to ensure that the Executive is able to notify fuel businesses immediately in the event a fuel restriction is declared. This notification is vital to the implementation and enforcement of fuel restrictions as fuel businesses will play a crucial role in the implementation of any fuel restriction.

Safeguard to minimise the extent of the limitation: This information will be managed in accordance with the *Information Privacy Act 2014* (ACT) which regulates how personal information is handled by ACT public sector agencies.

Relationship between the limitation and its purpose: The selling of fuel is a highly regulated industry which plays an important function in society and the economy. The intention of this Bill is to ensure that fuel rationing measures can be implemented to ensure that a stable supply of fuel is available to maintain the function of essential services. It is critical that the Executive is able to notify fuel sellers of the commencement of fuel restrictions so that fuel restrictions can be implemented. It is therefore reasonable that fuel sellers provide contact details and other relevant information to the Executive for communication purposes.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: No appropriate, less restrictive means have been identified to address the purpose of this clause.

- **Clause 25(2)(b)** provides an inspector the right to enter a premises which is being used for residential purposes, only if the premises is also the place from which a business subject to fuel restrictions is conducted.

Importance of the purpose of the limitation: It is important that inspectors have the ability to thoroughly investigate potential breaches of fuel restrictions in order to enforce the provisions of the Bill effectively and with efficiency. Enforcement of fuel restriction measures is crucial to the effectiveness of the Bill.

Safeguard to minimise the extent of the limitation: Clause 25(2)(a) specifies that an inspector may not enter a part of a residential premises which is only being used for residential purposes. Further to this, clause 25(1) provides that an inspector may only enter a premises which is not open to the public if they have the occupier's consent to enter the property; or if the inspector believes on reasonable grounds that there is a serious and urgent risk to public safety and that entry to the premises is necessary; or if the entry to the premises is in accordance to a search warrant.

Clause 24 stipulates that an inspector must show the inspector's identity card prior to exercising any powers under this Bill. Clause 27(1) stipulates the information that an inspector must provide to an occupier of a premises at the time of a request to enter the premises. The inspector must inform the occupier of their right to refuse consent. The inspector must provide the reason for the request to enter, and inform the occupier of the powers that the inspector has to collect evidence on the premises. Clauses 27(2 to 4) stipulate that that in order to confirm that an occupier has provided consent for an inspector to enter a property, the occupier must sign a consent form and provides a copy to both parties. These provisions provide protections to ensure that inspectors do not have the right to arbitrarily interfere with a person's home.

It should also be noted that it is unlikely that a business which is subject to fuel restrictions would normally contain a residential area.

Relationship between the limitation and its purpose: It is necessary to include Clause 25(2)(b) in the Bill because a business which is subject to fuel restrictions should not be exempt from the scrutiny of an inspector simply on the grounds that the premises contains a residential area; this would provide a loophole which could prevent the effective enforcement of fuels rationing measures.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: No appropriate, less restrictive means have been identified to address the purpose of this clause.

- **Clause 30** provides powers to inspectors to direct a person to provide their name and address to the inspector.

Importance of the purpose of the limitation: The purpose of this clause is to ensure that inspectors have adequate power to investigate and report potential breaches of fuel restrictions. This is essential to allow the enforcement of fuel restriction measures to ensure that measures are complied with.

Safeguard to minimise the extent of the limitation: Clause 30(1) provides that the inspector may only make this direction if he or she believes on reasonable grounds that a person has committed, is committing or is about to commit an offence against the Bill, or that a person may be able to assist in the investigation of an offence against this Act. Any personal information obtained by an inspector will be managed in accordance with the *Information Privacy Act 2014* (ACT) which regulates how personal information is handled by ACT public sector agencies.

Relationship between the limitation and its purpose: Clause 30 is warranted because it is necessary for an inspector to gather information in order to enforce the provisions of the Bill effectively and with accuracy. The ability to enforce fuel restriction measures is crucial to the effectiveness of the Bill.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: No appropriate, less restrictive means have been identified to address the purpose of this clause.

Right to a fair trial (s21)

Nature of the right affected: Clause 21 of the HRA provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Clause 29, Clause 15 and Clause 106 engage with the right to a fair trial by providing inspectors the right to seize things and by limiting proceedings against the Minister's decisions under **Clauses 8, 11 and 14** of the Bill.

- **Clause 29** provides powers to inspectors to seize things. The seizure of things without the supervision of a court process could be considered to conflict with the right to a fair trial as a court process should determine matters which relate to confiscation of property.

Purpose of the limitation: The objective of Clause 29 is to ensure that items which may relate to an offence under the Bill are able to be thoroughly examined, in order to establish facts relating to the potential offence that would support a fair trial or other compliance process. This is essential to the ability to enforce fuel restrictions.

Safeguard to minimise the extent of the limitation: Subdivision 3.2.4 outlines procedures to account for seized items. Clause 37 stipulates that the inspector must provide the owner of the seized thing with a receipt. Clause 39 stipulates that the owner of a thing must have access to inspect the thing and to photograph or make a copy of the seized item. Clause 40 requires that the seized thing is returned to its owner within 90 days, unless an offence relating to the thing is proved and a court orders the forfeiture of the thing.

Relationship between the limitation and its purpose: It is necessary for an inspector to gather information in order to enforce the provisions of the Bill effectively and with accuracy. Without the power for an inspector to seize things, the ability for material to be analysed or for evidence to be used in a prosecution would be limited. This would provide insufficient ability for fuel restrictions to be enforced.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: No appropriate, less restrictive means have been identified to address the purpose of this clause.

- **Clause 15(1)** clarifies that an application for a review of a decision made under clauses 8, 11 or 14 of the Bill must be instituted within 30 days from the date of the decision.
- **Clause 15 (2)** stipulates that a court may not suspend a fuel restriction scheme or a fuel restriction simply because court proceeding have been initiated.

Purpose of the limitation: The inclusion of these provisions in the Bill provides certainty and strength to the potential fuel restriction measures which are essential to effectively manage potential fuel shortages.

Safeguard to minimise the extent of the limitation: Clause 11 (3) stipulates that the maximum period of time that the Minister can declare a fuel restriction in place is three months. Clause 11 (4) stipulates that the Minister must repeal a declaration if the Minister is satisfied that there is no longer a shortage or likely shortage of fuel. If the Minister extends the period that a fuel restriction is in force under clause 14, this is a separate decision to the original fuel restriction declaration and the 30 day timeframe for a review of the decision begins again.

Relationship between the limitation and its purpose: The implementation of this time frame for a review of a decision provides certainty to the scheme and to declared fuel restrictions. This certainty is essential for:

- the community to have confidence that the management of the fuel restrictions will ensure the reliable continuity of emergency services; and
- stakeholders to be able to plan their processes for adaptation to fuel restrictions.

The 30 day time frame provides sufficient time for affected persons to commence proceedings for a review of the decision.

Less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve: No appropriate, less restrictive means have been identified to address the purpose of these provisions.

Fuels Rationing Bill 2018

Detail

Part 1 Preliminary

Clause 1 Name of Act

This clause sets out the name of the Act.

Clause 2 Commencement

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

Clause 3 Legislation amended

This clause provides that the dictionary at the end of the Act is part of the Act.

Clause 4 Notes

This clause provides that a note included in the Act is explanatory and is not part of the Act.

Clause 5 Offences against Act—application of Criminal Code etc

This clause provides that other legislation including the *Criminal Code* and the *Legislation Act* apply in relation to offences against the Act.

Part 2 Fuel restriction scheme

Clause 6 and 7 Meaning of *fuel* and meaning of *use*

Clauses 6 and 7 provide definitions of the words *fuel* and *use* in the Act.

Clause 8 Approved fuel restriction scheme

A fuel rationing scheme provides a framework outlining varying fuel restriction measures that may be applied in different fuel shortage scenarios.

This clause establishes the circumstances under which the Minister may approve a fuel rationing scheme. The approval is disallowable in the Assembly. This allows for scrutiny of the scheme by the Legislative Assembly.

Clause 9 Scope of fuel restriction scheme

This clause outlines the requirements for what a fuel restriction scheme must provide for, in order for the Minister to approve the scheme. Clause 9 (1) stipulates that an approved fuels rationing scheme must include varying fuel restriction measures which may be applied to manage fuel shortages. Clause 9 (2) gives the Minister the discretion to exempt entities from a fuel restriction scheme, which are essential to the wellbeing of the ACT community. For example this clause would provide the Minister the discretion to exempt public transport from fuel restrictions on the grounds that without providing an assured method of transport there would be an extreme likelihood that a person or persons would suffer a serious detriment.

Clause 10 Person carrying on fuel business must give notice

This clause stipulates that a person carrying on a fuel business must provide written notice to the director-general stating the person's name and email address; the address and telephone number of each place where the person carries on the business; the kinds of fuel that can be stored at each place; and the quantity of each kind of fuel that can be stored at each place. This information will be used by the director-general to comply with clause 12 – Publication of fuel restriction.

A person must provide notice to the director-general within 14 days if any of this information changes. A person commits an offence if the person is required to give notice to the director-general and fails to do so. This is a strict liability offence.

Clause 11 Declaration of fuel restriction

Clause 11 stipulates that the Minister may declare that a fuel restriction (under an approved fuel restriction scheme) is in force if satisfied that there is a shortage or likely shortage of fuel and that restrictions are necessary to achieve any of the outcomes specified in clause 11 (1) (b). The declaration may include further detail regarding the fuel restriction that is being implemented, including applying the restrictions to a stated class of people; a stated amount or type of fuel; or a stated time of day. The ability for the declaration to 'fine tune' restriction measures that are set out in an approved scheme is an essential aspect of the Bill. It allows the Government response to a potential fuel shortage event to be tailored to the specific circumstances.

Clause 11(3) provides that the Minister must declare a period of time for the fuel restriction, with a maximum period being three months.

Clause 11(4) provides that the Minister must repeal a fuel restriction if the Minister is satisfied that there is no longer a shortage or likely shortage of fuel.

The Bill provides that the declaration is a notifiable instrument. This means that a fuel restriction can be declared without further parliamentary scrutiny however the scope of the declaration is restricted to the framework and objectives of the approved fuel restriction scheme.

Clause 11(6) allows for the early commencement of the fuel restriction declaration. Under section 73 of the *Legislation Act 2001*, a notifiable instrument commences on the day after it is notified. This provision allows the Minister to specify an earlier time for commencement of the declaration if the Minister is satisfied that the earlier commencement is necessary due to the seriousness or urgency of the fuel shortage. The Bill includes obligations on the Minister to publicise the making of the declaration at clause 12.

Clause 12 Publication of fuel restriction

This clause stipulates the requirements for the Minister to provide public notice of a fuel restriction being in place. It is intended to ensure the community and relevant businesses is aware that the restriction is in place and will be enforced, as there are penalties for non-compliance. This clause also provides that a failure to provide public notice of a fuel restriction scheme does not affect the validity of a declaration under clause 11.

Clause 13 Fuel restriction signage

This clause requires that a person who carries out a business of selling fuel, who has been given notice of the restriction under clause 12, must ensure that each location where their business sells fuel subject to a restriction must display a notice stating that restriction is in force. The clause also stipulates requirements for the size, visibility and content of the size. A failure to display the notice is a strict liability offence with a maximum penalty of 50 penalty units. The strict liability is justified because clause 12 ensures that the Minister will inform the occupiers of relevant premises that fuel restrictions are in place. The communications plan for this Bill will ensure that fuel selling businesses will be informed of their obligations under this Bill prior to its enactment. The purpose of this clause is to further support the communication of fuel restrictions to members of the community.

Clause 14 Extension of fuel restriction

The clause outlines the conditions under which the Minister may extend a fuel restriction scheme declaration. The extension must not be made earlier than one month before the day the prior declaration period ends, and must not be for a period more than three months. This limits the ability for the Minister to extend a fuel restriction indefinitely. Limiting the Minister's power to declare an extension to the final month of an existing declaration, increases the certainty that the Minister will have the necessary information to decide whether an extension is in fact necessary. If a person does not believe that an extension of a fuel restriction is justified they will be able to initiate a review of the decision within 30 days from the date of the decision (see clause 15). The Minister must repeal a fuel restriction if he or she is satisfied that there is no longer a shortage or expected shortage of fuel.

An extension is a notifiable instrument.

Clause 15 Fuel restriction—limit on proceedings

This clause provides that a person cannot start a proceeding in a court to challenge a decision under clause 8 (approval of a fuel restriction scheme), 11 (declaration of a fuel restriction) or 14 (extension of a fuel restriction), more than 30 days after the decision is made. Additionally, if a proceeding is started within those 30 days, it is not subject to an interlocutory injunction (which would suspend the effects of the decision for the period of the court process) in any court. This clause is intended to ensure a fuel restriction can be implemented to address any fuel shortage issues rapidly and effectively without impediment in the duration of a court process. This is necessary to provide certainty to the community about their obligations under the fuel restrictions.

Clause 16 Application of Act to emergency services and police

This clause provides that the Bill does not apply to emergency services under the *Emergencies Act 2004*, when exercising their functions for the purpose of protecting life or property or the environment, or to police officers for the purpose of protecting life and property. This provides an assurance that vital emergency services will continue to operate without impediment in the event of a fuel shortage. While the majority of exemptions to fuel restrictions will be provided for in the fuel restriction scheme, the ACT Government recognises that the life preserving nature of emergency services and police officers should be regarded separately.

Part 3 Enforcement

Division 3.1 Fuel restriction offences

Clause 17 Definitions—pt 3

This clause provides definitions for the terms *identity card* and *inspector* for Part 3.

Clause 18 Contravening fuel restriction

This clause provides that a person who carries on a business of selling fuel (a fuel seller) commits a strict liability offence if they have been notified of the fuel restriction under clause 12 (1) (c) and they contravene the fuel restriction.

It also provides that a person, other than a fuel seller, commits an offence if notice of the fuel restriction has been broadcast in the ACT on television or radio and the person contravenes the fuel restriction.

These offences are strict liability offences and carry a maximum penalty of 50 penalty units.

This clause is essential as it provides an overarching power to enforce fuel restrictions. The power to enforce fuel restrictions is crucial to the effective management of fuel in a fuel shortage. The high penalty for these offences is intended to remove any financial incentive a person may have for contravening a fuel restriction.

Clause 19 Inspector may require information

This clause provides that an inspector may require a person, who is subject to a fuel restriction, to provide certain information in writing as soon as is practical to do so and no later than 14 days after the notice is given. It outlines the information that may be required, and the requirements the inspector must meet when making a request in order for the person to clearly understand that they may be penalised if they fail to comply.

Allowing inspectors to collect this information provides a mechanism by which the amount of fuel resources available may be monitored. This information is essential in the effective ongoing management of the fuel shortage event. The clause states that failing to comply with a requirement to provide information is a strict liability offence with a maximum penalty of 50 penalty units. The primary intention of this clause is for inspectors to require information from persons carrying on a business of selling fuel. It is unlikely that a member of the public who is not carrying on a business would be required to provide this information.

Clause 20 Directions by inspector

This clause provides that an inspector may issue a written direction to the occupier of a premises, requiring the occupier to take action to ensure fuel is used in accordance with a fuel restriction. It outlines when this direction may be given and the information it must include.

Clause 21 Offence—contravene direction of inspector

This clause provides that a person commits a strict liability offence if they contravene a direction under clause 20, unless they took all reasonable steps to comply with the direction. The maximum penalty is 50 penalty units.

Clause 22 Ending unauthorised use of fuel

This clause provides that an inspector may arrange to stop the supply of fuel to a premises if the inspector believes the occupier is contravening a direction under clause 20. It also outlines other circumstances under which an inspector may arrange to stop the supply of fuel to a premises. This clause provides that the inspector must give the occupier a written notice stating that fuel supply will be stopped.

Division 3.2 Inspectors

Subdivision 3.2.1 General

Clause 23 Definitions—div 3.2

This clause provides definitions for the terms *connected*, *offence* and *warrant* for division 3.2.

Clause 24 Inspector must show identity card on exercising power

This clause requires an inspector to show their identity card to an individual before exercising a power under this Act. If the power affects a person other than the individual, the inspector must show their identity card to an individual the inspector reasonably believes is an employee, officer or agent of the person. This provision provides a safeguard to ensure that affected individuals are aware that the inspector is an authorised person.

Subdivision 3.2.2 Powers

Clause 25 Power to enter premises

This clause provides and outlines details of a power for an inspector to enter a premises for the purposes of the Bill, including limitations on this power relating to parts of a premises that are used for residential purposes.

Clause 26 Production of identity card

This clause requires an inspector to produce their identity card when asked by the occupier, where the inspector has entered premises under this part. If the inspector does not produce their identity card, they may not remain at the premises. This provision provides a safeguard to minimise the risk of unauthorised people from gaining entry to a premises by impersonating inspectors.

Clause 27 Consent to entry

This clause outlines the requirements of an inspector when seeking consent to enter premises under clause 25. Sub-clause 27 (1) specifies that the inspector must produce an inspectors card and specifies the details the information that the inspector must provide to the occupier to ensure that they understand their rights. Sub-clause 27 (2) specifies that the occupier must sign a written acknowledgement that the occupier has consented to the inspector entering the premises.

Clause 28 General powers on entry to premises

This clause outlines the powers an inspector, who enters premises under this part, has for the purposes of this Bill. The powers include inspecting/examining, taking measurements of conducting tests, taking samples and making records. The clause also provides that an inspector may require the occupier to provide reasonable help in exercising a power under this Bill, and that a person must take all reasonable steps to comply with this requirement. The maximum penalty for failing to comply is 50 penalty units.

Clause 29 Power to seize things

This clause outlines an inspector's power to seize items, including when and how they may do so. It also provides that it is a strict liability offence for a person to interfere with a seized item to which access has been restricted, without an inspector's permission. There is a maximum penalty of 50 penalty units. Clauses 37 to 40 also address return of seized items, and ensure that things aren't seized arbitrarily and without oversight of the courts

Clause 30 Direction to give name and address

This clause provides that an inspector may require a person to provide their name and address, and describes the circumstances under which this direction may be made and how it must be made, in consideration of a person's right to privacy. This provision is necessary for situations where an inspector is investigating a potential breach of the fuel restrictions and has reasonable grounds to believe the person they are speaking to is not being truthful about their identity.

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

This clause provides that it is a strict liability offence for a person to fail to comply with a direction to provide their name and address or to give evidence. The maximum penalty for this offence is 5 penalty units. However, the inspector must produce their identity card for inspection by the person and warn the person that failure to comply with the direction is an offence.

Subdivision 3.2.3 Search warrants

Clauses 32 – 36

Subdivision 3.2.3 clarifies what is required for an inspector to obtain a search warrant. The requirements are consistent with those in other ACT legislation.

Subdivision 3.2.4 Return and forfeiture of things seized

Clause 37 Receipt for things seized

This clause provides that an inspector must give a receipt for any items seized to the person from who they were seized, and lists the information the receipt must include. This receipt provides proof that the item has been seized and supports due process being carried out in the handling and return of the item.

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

This clause outlines the circumstances under which something, found at a premises that was entered under a search warrant, can be moved to another place for examination or processing.

Clause 39 Access to things seized

This clause describes the access that a person can have to a seized item.

Clause 40 Return of things seized

This clause outlines when a seized item must be returned. This is an important safeguard to the right to a fair trial.

Subdivision 3.2.5 Miscellaneous

Clause 41 Damage etc to be minimised

This clause provides that an inspector, in the exercise or purported exercise of a function under this part of the Bill, must take all reasonable steps to ensure that they, and any person assisting them, cause as little inconvenience, detriment and damage as possible. It also outlines the steps an inspector must take if damage is caused. The intention of this clause is to ensure that persons are only inconvenienced by the actions of inspectors when necessary. The requirement for the inspector to provide a written notice of any damage provides evidence of the damage to the owner which may be used to apply for compensation.

Clause 42 Compensation for exercise of enforcement powers

This clause provides for compensation to be claimed from the Territory if a person suffers loss or expense because of the exercise, or purported exercise, of a function under this Bill by an inspector or a person assisting an inspector. It also outlines the process and requirements for such a claim. The ability for people to seek compensation is essential to ensure that people do not suffer undue loss from the exercise of powers by inspectors.

Clause 43 Protection from liability

This clause outlines when an inspector, or a person assisting an inspector, is protected from civil liability when exercising the functions of this Bill. This protection of inspectors from liability ensures that they can carry out their duties reasonably under this Bill without threat of personal liability.

Part 4 Miscellaneous

Clause 44 Regulation-making power

This clause provides that the Executive may make regulations for this Bill.

Part 10 Transitional

Clause 100 Meaning of *commencement day*—pt 10

This clause provides a definition for the term *commencement day* in this part of the Bill.

Clause 101 Inspectors

This clause provides that a person who, before the commencement of this Bill, was an inspector under the *Fuels Control Act 1979* is taken to be an inspector for this Bill. This is essential to the smooth transition of responsibilities with the implementation of this Bill.

Clause 102 Identity cards

This clause provides that a person who, before the commencement of this Bill, held an identity card under the *Fuels Control Act 1979* is taken to hold an identity card for this Bill once it has commenced.

Clause 103 Transitional regulations

This clause provides for a regulation to prescribe transition matters necessary or convenient to be prescribed because of the enactment of this Bill.

Clause 104 Expiry—pt 10

This clause provides that this part expires 2 years after the day it commences. Also, that this part is a law to which the *Legislation Act 2001*, section 88 (repeal does not end effect of transitional laws etc) applies.

Part 11 Repeals and consequential amendments**Clause 105 Legislation repealed**

This clause repeals the *Fuels Control Act 1979* and all legislative instruments under that Act due to it being redundant.