



**Submission on the Consultation Paper
*'Review of the Instruments under the
Liquid Fuel Emergency Act 1984'***

Submission to:

The Department of the Environment & Energy

September 2018

AIP Submission to the LFE Act Instruments Review Consultation

Table of Contents

1. ABOUT AIP AND MEMBER COMPANIES -----	3
ABOUT AIP -----	3
ABOUT AIP MEMBER COMPANIES-----	3
2. INTRODUCTION -----	4
3. INDUSTRY MANAGEMENT OF LIQUID FUELS SUPPLY & DISRUPTIONS -----	5
AUSTRALIAN FUELS SUPPLY CHAIN -----	5
INDUSTRY MANAGEMENT OF SUPPLY & DISRUPTIONS -----	7
THE ROLE OF MAJOR FUELS USERS -----	9
4. OBJECTIVES OF THE ACT, SUPPORTING INSTRUMENTS AND THE NATIONAL EMERGENCY RESPONSE PLAN -----	11
CONTEXT -----	11
OBJECTIVES OF THE ACT, NLFERP & INSTRUMENTS -----	11
ASSESSMENT OF FIT-FOR-PURPOSE -----	12
5. AIP COMMENTS ON THE LIQUID FUEL EMERGENCY GUIDELINES 2008 -----	14
6. AIP COMMENTS ON THE ESSENTIAL USERS DETERMINATION -----	14

Key Messages

- AIP considers that the Guidelines and Essential Users Determination remain ‘fit-for-purpose’ and should be remade.
- These instruments continue to strike the right balance between ensuring appropriate consultations and consideration, and the need to plan in advance and act quickly in a national emergency.
- Australia has robust emergency response plans for managing a national liquid fuel emergency.
- These plans reflect Australian market characteristics, utilise proven market and commercial response mechanisms, and adopt those IEA approaches (eg. demand restraint) that will be effective in our market and operating environment.
- The national plan and supporting instruments were developed and refined over many years through NOSEC and have been regularly reviewed and tested via planning, scenario and desktop exercises.
- This package has been agreed between all governments and the fuels industry, and jurisdictions have agreed to align emergency plans with the national plan; this recognises the robustness of current arrangements and the need for a coordinated and rapid response during a national emergency.
- The plans and instruments have provided a stable policy and operational framework for government and industry to make robust contingency and operational plans, the value of which is significant.
- Therefore, a compelling case needs to be demonstrated for any major changes to this carefully integrated/aligned and consistent response framework which has been durable and well tested.
- While current industry response strategies to supply disruptions have been proven to be highly effective, these can be further enhanced by the more widespread adoption of active supply management and business continuity planning by major fuel users supporting the economy.
- It is well established, as noted in the Consultation Paper, that the *Liquid Fuels Emergency Act* and its instruments were not designed to reduce the risk for major fuel users of a fuel supply shortage.
- Instead, a core objective of the Act and supporting instruments is “to encourage the more effective management of fuel supply risks by those persons or organisations that have the capacity to do so”.

1. ABOUT AIP AND MEMBER COMPANIES

About AIP

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards.

AIP provides a wide range of factual information and industry data to assist policy makers, analysts and the community in understanding the key market and industry factors influencing Australia's downstream petroleum sector. AIP is represented on key advisory bodies including the ATO Petroleum Stakeholder Group (PSG), the Fuel Standards Consultative Committee (FSCC), the National Oil Supplies Emergency Committee (NOSEC) and National Plan Strategic Industry Advisory Forum (NPSIAF) and AIP sponsors or manages important industry environmental and health programs. The Australian Marine Oil Spill Centre (AMOSC) is a wholly owned AIP subsidiary.

AIP presents this Submission to the Department on behalf of AIP's core member companies:

- BP Australia Pty Ltd
- Caltex Australia Limited
- Mobil Oil Australia Pty Ltd
- Viva Energy Australia Pty Ltd.

AIP is happy for this submission to be provided to NOSEC members to support its consideration of any proposed amendments to these instruments. Should you require additional information, the relevant contact details are: Nathan Dickens, Deputy CEO, AIP at aip@aip.com.au

About AIP Member Companies

AIP member companies operate across all or some of the liquid fuels supply chain including crude and petroleum product imports, refinery operations, fuel storage, terminal and distribution networks, marketing and retail. Underpinning this supply chain is considerable industry investment in supply infrastructure, and a requirement for significant ongoing investment in maintaining and expanding capacity. Over the last decade, AIP member companies have invested over \$10 billion to maintain the reliability and efficiency of supply meeting fuel quality standards.

AIP member companies deliver the majority of bulk fuel supply to the Australian market.

- In relation to conventional petroleum fuels, AIP member companies operate all major petroleum refineries in Australia and supply around 90 percent of the transport fuel market with bulk petroleum fuels.
- In relation to gaseous fuels, AIP member companies are the major suppliers of bulk LPG to the domestic market, representing around two thirds of the market.
- In relation to biofuels, AIP member companies are the largest suppliers of ethanol and biodiesel blend fuels to the Australian market.

The Australian refining industry is also a significant contributor to the domestic economy providing direct and indirect economic benefits from its own activities and underpins the competitiveness of key export industries like mining, agriculture and manufacturing. In addition, as a technologically advanced industry, the refining industry employs and trains many highly skilled technical staff and international expertise flows readily into the Australian workforce.

2. INTRODUCTION

Given their very significant role and investments in supplying the majority of bulk fuel supply to the Australian market, AIP and its member companies have a very strong interest in government legislation impacting on the operation of the downstream petroleum industry - both in the normal course of business, and in emergency situations where rapid and effective industry responses are necessary to minimise community and economic dislocation.

AIP and its member companies support the process of consultation on the ongoing effectiveness of the *Liquid Fuels Emergency Guidelines 2008* ('the Guidelines') and the *Liquid Fuel Emergency (Activities - Essential Users) Determination 2008* ('the Determination') under the *Liquid Fuels Emergency Act 1984* ('LFE Act') before the instruments sunset in April 2019. These subordinate instruments are carefully aligned with core objectives of the LFE Act, as well as the objectives, policy principles and operation of *National Liquid Fuel Emergency Response Plan* (NLFERP). This integrated legislative and planning package has been agreed by all governments and the petroleum industry, and has been regularly reviewed and tested over the last decade.

As foundation members of the *National Oil Supplies Emergency Committee* (NOSEC), AIP and its member companies have invested heavily in the development and testing of this robust emergency response framework, recognising that governments and industry have a clear responsibility to prepare sound contingency plans to respond to any national liquid fuels emergency. In this context, and their vital operation role in the unlikely event of a National Emergency, AIP and its member companies are uniquely placed to contribute to this consultation.

The Consultation Paper underscores this by noting that the longstanding policy of all Australian governments is to allow the industry to manage fuel supply disruptions without government intervention. The Paper notes that *"this approach is validated by the strong track record of the petroleum industry in ensuring a stable, secure supply of crude oil and petroleum products"*.

This submission focuses on key issues raised in the Consultation Paper and provides key market and operational context to the consideration of the matters and questions raised.

In [Section 3](#), the basis for governments' well-based confidence in industry supply management is explained, together with the important role of *major fuel users* in supporting both the objectives of the LFE Act and effective industry response strategies in a national emergency situation.

[Section 4](#) reiterates the objectives of the LFE Act, supporting instruments and the NLFERP, which provides key performance benchmarks for the consideration of whether the instruments are 'fit-for-purpose' and also for any proposed changes to their current form.

[Sections 5&6](#) provides AIP and member company comments on the Guidelines and Determination, which currently strike the right balance between ensuring effective planning and preparations for a national emergency, and ensuring that during such an event available fuel supply is managed and allocated in the most efficient, fair and timely way to help minimise impacts of the shortage.

3. INDUSTRY MANAGEMENT OF LIQUID FUELS SUPPLY & DISRUPTIONS

Australian Fuels Supply Chain

Australia is well serviced by a resilient and diverse supply chain that delivers a high level of reliability by global standards, despite the significant challenges in distributing fuel across such a large country with a geographically dispersed population.

The Australian supply chain includes crude oil and petroleum product shipments into and around Australia, refinery throughput, bulk fuel storage tanks, extensive terminal, storage and distribution networks, around 7000 retail outlets, and the fuel storage facilities of major fuel users.

The fuel supply chain works to match Australian fuel demand and quality specifications, including in different Australian jurisdictions, with international and domestic refinery capabilities.

There are strong business pressures on refiners and fuel suppliers to maintain a resilient and efficient supply chain, since this is essential to reliable supply.

The Australian fuel supply chain and associated infrastructure has been independently assessed as being secure and functioning efficiently and effectively to meet Australia's current and future fuel supply needs. This performance is underpinned by considerable industry investment in new and expanded supply infrastructure, and a requirement for significant ongoing investment to maintain the existing capacity. The risks associated with these investments are minimised through long term supply contracts with suppliers, major fuel users and customers.

Industry Investment in Supply Infrastructure the last 5 years

- AIP member companies have also invested heavily in strengthening the capacity, resilience and flexibility of their supply chains.
- Total investment in Australian refineries has been over \$2 billion over the last 5 years.
 - This includes the completion of major refinery maintenance cycles ('turnarounds') more recently and investments in increased production capacity, utilities augmentation, recycling projects and debottlenecking programs.
- There have also been major infrastructure investments in new pipelines, pumping capacity and connects, and supply chain investments to improve port, import, gantry and distribution capacity.
- AIP members have also continued to invest heavily in expanded storage capacity across Australia, with more investment planned.
- Since 2012, close to half a billion litres of new storage capacity has been installed or is currently being constructed by AIP member companies – an investment of around \$400 million in new tanks.
 - This investment has been focused in locations experiencing strong demand growth for transport fuels, particularly for jet fuel, and also diesel and premium petrol grades.
 - Crude oil storage is being expanded by 30-40% at the two Victorian refineries to increase their production efficiencies and capabilities, and also strengthen fuel supply security.
- According to official Government statistics, the industry's investment program has kept pace with the growth in fuel demand and, as a result, commercial fuel stocks have been maintained at the longstanding levels needed to ensure reliable and safe supply to the Australian market.

There are significant commercial incentives for efficient infrastructure and supply chain management including:

- maximum utilisation of infrastructure (including via hosting and joint venture arrangements)
- an ongoing program of infrastructure maintenance
- holding fuel stocks which reflect a robust commercial assessment of demand, operational conditions and risks in each location
- regular review of supply chain operations and infrastructure adequacy.

Regular reviews by the industry have led to the construction of new or expanded supply infrastructure and fuel storage in key import and demand centres around Australia, to better meet changes in the customer base and the fuel products they require.

Within this supply chain, diversification of supply sources is one of the most important elements of liquid fuel supply security. Diversity of supply avoids over-reliance on any single supply source and helps mitigate risks from potential supply disruptions.

Australia has a high level of supply diversity built into its fuel supply chain including multiple supply networks into Australia, a number of domestic refineries, multiple and flexible import and distribution networks in each State/Territory, and a range of alternative fuel suppliers and importers throughout the supply chain. This means that fuel can be delivered in a number of ways to where it is needed, during normal operations and also during supply disruptions or other emergency situations.

Australia's liquid fuel supply security risks are spread between imported crudes and products from a variety of different sources (20+ sources for imported crude oil and 25+ sources for imported products) and domestic crudes and products from a variety of different sources.

Australia's capacity to process crude oil in domestic refineries, including Australian crude, provides additional supply diversification and flexibility, underpinning our supply security.

Also, over the last decade the growing volume and frequency of petroleum products imported into Australia have increased domestic supply reliability. About 2–3 weeks of supply owned by Australian companies is typically on the water at any time, with a large proportion of this stock in Australian waters. This is some 30 per cent of all stock owned by AIP member companies.

The significant volume and wide distribution of cargoes of crude oil and petroleum products on the water serves as floating storage which provides a diverse and flexible source of supply. It also provides an efficient and cost effective logistical and storage solution, which is now fundamental to managing ongoing reliable supply of liquid fuels to Australian markets and customers.

The highest level of fuel supply flexibility and reliability is achieved when stock on water can be readily diverted between Australian locations on an as needs basis.

Australia's access to diverse supply sources and well-established international and domestic supply networks suggests that any future disruption risks are unlikely to compromise Australia's access to the physical supply of liquid fuels.

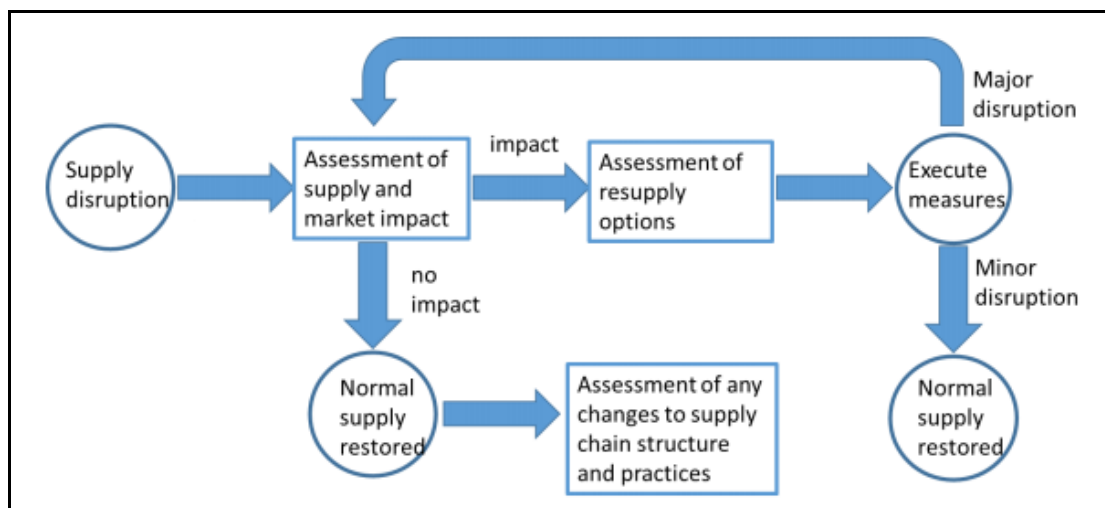
Industry Management of Supply & Disruptions

AIP members seek to ensure continuous and reliable supply of fuel to all customers and areas of Australia, which involves simultaneously managing all aspects of the supply chain. Industry considers reliable supply of high quality fuel essential to maintain customer brand loyalty, as well as to maximise business commercial viability.

Nonetheless, unplanned events can create fuel supply challenges at short notice including unplanned refinery disruptions, breakdowns in key supply infrastructure or pipelines, delays in ship arrivals, natural disasters, and customer demand exceeding contracted supply requirements.

Each supply disruption develops in its own way and requires dynamic industry management. Almost all supply problems are capable of being managed by industry and the market. However, there are also well-established arrangements for relevant ministers and departmental officials to be kept fully informed of developments when there are supply disruptions so that governments are well positioned to assist with supply management if needed.

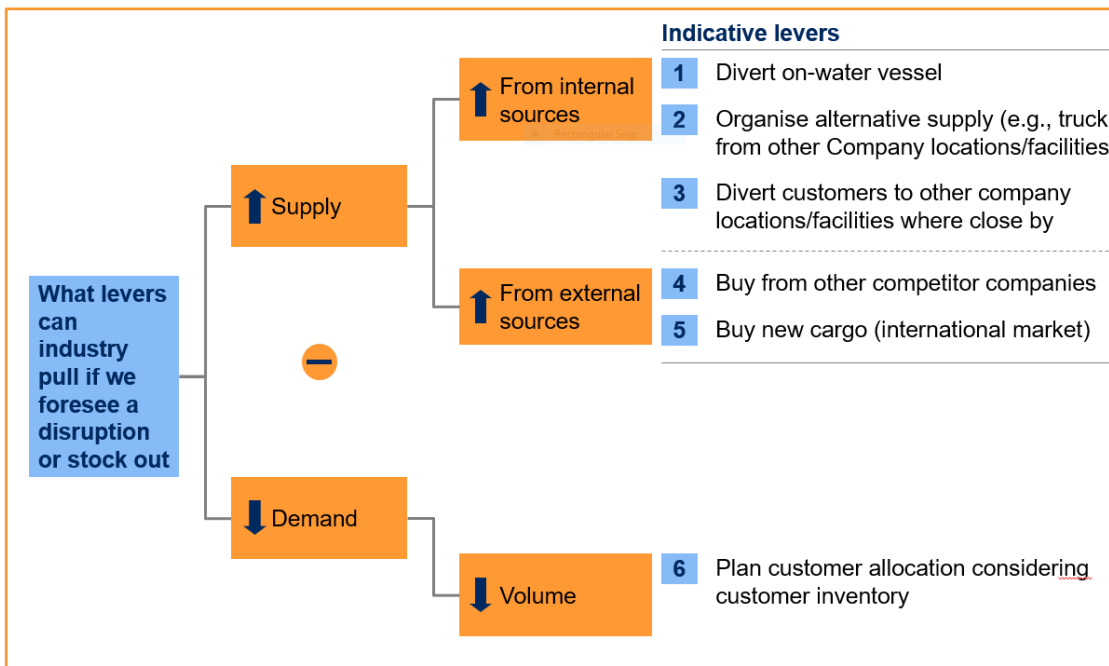
As the management of reliable fuel supply is the industry's core commercial business, there is constant monitoring and review by fuel suppliers of supply chains, customer demand, commercial stockholdings and bulk fuel transfers/shipping in every location. As a result, a disruption event which impacts or is likely to impact the supply chain or reliability will set off a reasonably orthodox organisational management approach to managing risk – as illustrated in the chart below. The fuels industry is no different from other industries in that regard, except its responses will take place within the timeframes to which the fuels industry operates.



As noted in the Consultation Paper, industry has rapid and comprehensive industry response strategies in place to address or replace any lost supply, including:

- numerous technical options within refineries
- utilising alternative supply infrastructure and supply and distribution routes
- sourcing supplies from other Australian refiners and fuel wholesalers
- sourcing supplies from international sources and the spot market
- equitably allocating bulk fuel to customers
- drawing down industry stockholdings.

Industry response strategies, in simple terms, are illustrated in the chart below.



Given the wide range of logistical options and contingencies, the management of fuel supply disruptions is dynamic to respond to specific market circumstances at the time, which is more targeted and valuable. As this is part of normal day-to-day industry operational processes, it is not handled like emergency situations in the electricity and gas sectors, and even very serious fuel supply disruptions are handled in a similar way to moderate disruptions (but would typically involve a broader range of response options, internal parties and external stakeholders).

The flexibility of the fuels supply chain to respond to specific events or circumstances also greatly assists the management of emergencies outside of the industry’s direct control (e.g. other energy sectors, extreme weather events). For example, the petroleum industry provided good support and diesel supply to other energy sectors experiencing problems such as the Varanus Island gas explosion and the Tasmanian electricity disruption.

Industry is confident in its supply management and the commercial stockholdings held and has a very longstanding reputation for reliably and safely meeting their customers’ demands. This confidence is demonstrated by the fact there has been no widespread or sustained fuel shortage for decades in Australia (including during major global disruptions and wars like the US Hurricanes, GFC, Iraq War, Kuwait invasion, and Libya crisis).

In this context, AIP members believe that the most appropriate action for dealing with all but the most serious supply disruption is for the market to be allowed to operate with minimal government intervention. This view is supported in the Consultation Paper, the LFE Act, the National Liquid Fuels Emergency Response Plan (NLFERP) and in the Emergency Plans at a jurisdictional level.

While current industry response strategies are highly effective, these can be further enhanced by the more widespread adoption of active supply management and business continuity planning by major fuel users supporting the economy.

The Role of Major Fuels Users

AIP member companies believe that fuel users are best placed to make decisions about their need for liquid fuels, and the way they use those fuels, based on information about the price and availability of fuels meeting their operational requirements.

Major fuel users can also make the best decisions about how they will manage the risks of a disruption so that their commercial and community interests are maintained.

Therefore, it is in the interests of all fuel users to understand their own fuel use and to consider how best to manage the potential impacts of reduced fuel supply, including:

- identification of current fuel supply management arrangements, the location, capacity and utilisation of supply infrastructure and storage, and demand by fuel type across business operational activities
- categorisation of business activities from highest to lowest priority, with fuel use for each activity clearly quantified and monitored (including differences in fuel use between normal and peak or emergency times)
- assessment of how a significant reduction in fuel supply for a prolonged period would be managed, including the use of different modes of operation during shortages (e.g. cancellation or deferral of non-essential activities).

Following this analysis, a robust business continuity plan should be established with effective response options to deal with the specific (and varying) circumstances of any fuel supply disruption.

Actions should also be taken to address any unacceptable business risks arising from a fuel supply shortage, including investing in extra stockholdings and storage capacity, improving fuel supply management (either on their own or through their major fuel supplier), and changing business operations to avoid or minimise the impact of possible fuel supply disruptions.

Based on this knowledge of customer planning and needs for various petroleum products in locations across Australia, the petroleum industry is able to develop and operate an optimally efficient supply chain, and best manage any supply disruption that might occur.

This planning approach is emphasised in the Consultation Paper and reflected in national and jurisdictional emergency plans for liquid fuels, where all fuel users are expected to have business continuity plans to manage the impact of a fuel supply disruption on their operations, particularly large fuel users with the resources, expertise and business incentives to do so.

Effective contingency plans and actions taken by major fuel users will:

- reduce the need for intervention by government
- help maintain emergency/essential services to the community
- minimise the economic and community dislocation of any disruption
- ensure that available supplies are distributed as equitably as possible
- support normal fuel supply being restored in the most effective and timely way.

Importantly, it is well established that the *Liquid Fuels Emergency Act* and supporting instruments were not designed to manage or reduce the risk for consumers or major fuel users of a fuel supply shortage, as noted in the Consultation Paper. Reviews of the LFE Act and instruments since commencement have stressed that it is incumbent on all fuel users whose activities are dependent on uninterrupted fuel supplies to undertake their own risk assessments and make their own emergency arrangements.

However, fuel users and consumers have become accustomed to reliable supply to the domestic market. As a consequence, bulk fuel users, as well as many individuals, have assumed that supplies will always be readily available, and that there is no need for users to develop their own risk management arrangements to avoid the impacts of a supply disruption. At the same time, a community perception has developed that any disruption in supply, however minor, is viewed as indicative of a crisis.

This context is directly relevant to this review and particularly the consideration of the essential users determination according priority access to fuel in a national liquid fuels emergency. That is, the need to ensure the maintenance of an ongoing focus on, and the creation of incentives for, active supply management and continuity planning by major fuel users.

For major fuel users seeking essential user status, the key question must be asked in this review as to whether these parties have taken concrete actions and made a genuine investment in contingency planning as the LFE Act and supporting emergency response plans recommend, whilst also recognising that all parties will need to prioritise and conserve fuel use during a national emergency.

4. OBJECTIVES OF THE ACT, SUPPORTING INSTRUMENTS AND THE NATIONAL EMERGENCY RESPONSE PLAN

Context

In the event of a national liquid fuels emergency, the Governor General may, when circumstances require, declare a national liquid fuel emergency under the Australian Government's LFE Act. The declaration of a national liquid fuel emergency requires prior consultation with State and Territory governments. The LFE Act is supported by *Guidelines* which were issued in 2008, an *Essential Users Determination* (2008) and an *Inter-Governmental Agreement* (IGA) of 2006. The IGA sets out the parameters for the cooperative response of the Commonwealth, States and Territories in the event of an emergency.

Sitting underneath the LFE Act and the IGA is the *National Liquid Fuel Emergency Response Plan* (NLFERP) developed by the Commonwealth Government, in partnership with State and Territory governments and fuel industry representatives via the *National Oil Supplies Emergency Committee* (NOSEC). The NLFERP details the policy, operational and communications plans for a coordinated response to a national liquid fuels emergency.

This 'package' of instruments and plans and their underpinning policy principles were developed and refined over many years through NOSEC and have been regularly reviewed and tested via planning and scenario exercises. Importantly, they have been agreed between all levels of government and the petroleum industry and have provided a stable policy and operational framework for government and industry contingency planning.

Jurisdictional governments have also agreed to align their own emergency management plans for liquid fuels with the NLFERP and the essential user determination, recognising the robustness of these arrangements. Many jurisdictional governments have already achieved this which will ensure the greatest efficiency, certainty and effectiveness in the operational management of supply disruptions wherever they occur.

Given the significant investment to date of all levels of governments and industry, we consider that a compelling case needs to be demonstrated for any substantive change to this carefully integrated and aligned response framework which has been well considered and tested, and has been particularly durable for good reasons.

Objectives of the Act, NLFERP & Instruments

As noted in the Consultation Paper, the circumstances that would require the declaration of a national liquid fuel emergency are rare and the vulnerability of Australia to an emergency situation, although changing over time, is considered to be very low. Indeed, the circumstances have not arisen since the LFE Act came into force in 1984.

In this context, the instruments and NLFERP aim to ensure effective planning and preparations for a National liquid fuels emergency, and also ensure that during a liquid fuel shortage available fuel supply is managed and allocated in the most efficient and fair way, to help minimise the economic impacts of the shortage.

- As noted in the Consultation Paper, *“the LFE Act is not intended to be used to manage minor or intermittent supply shortages. The LFE Act is intended to be used where the consequences of a disruption are of a national scale or the disruption is beyond the capacity of the industry and relevant State and Territory Governments to manage without support.”*

There are three overarching objectives embedded in the current NLFERP and its supporting framework:

- first, providing operational certainty for industry and fuel users, so that decisive and quick action can be taken with certainty and in the interests of maintaining supply to the whole economy;
- second, providing a clear decision-making framework for the Minister/s with little ambiguity in relation to the approach to be adopted by government; and
- third, ensuring that fuel users understand the need to take preventative actions to manage the risks of a supply disruption on their own activities and operation.

AIP and NOSEC’s longstanding view is that maintaining the integrity, clarity and efficiency of the existing operational framework is paramount.

The previous comprehensive review of the NLFERP agreed with the strong message in the Explanatory Memorandum that accompanied the *Liquid Fuel Amendment Bill 2007* that:

“The LFE Act does not, and was never intended to, manage or reduce the risk for consumers of a fuel supply shortage.... It is therefore incumbent on all fuel users whose activities are dependent on uninterruptible fuel supplies to undertake their own risk assessments and make their own emergency arrangements.”

Further, the 2007 amendments to the LFE Act were strongly focused on achieving two key outcomes, namely:

- *“to encourage the more effective management of fuel supply risks by those persons or organisations that have the capacity to do so; and*
- *to ensure that the Act’s administrative arrangements remain efficient, effective and sufficiently flexible to deal with the many different circumstances that could require the exercise of the Government’s powers under the Act.”*

AIP therefore considers that any proposed amendments to the guidelines or essential user determination will need to demonstrate that they will better achieve these objectives compared to current arrangements, whilst also maintaining essential services, minimising economic dislocation and ensuring that available supplies are distributed as fairly as possible.

Assessment of Fit-for-Purpose

The circumstances that would require the declaration of a national liquid fuel emergency are rare and the vulnerability of Australia to an emergency situation, although changing over time, is considered to be very low. Indeed, the circumstances have not arisen since the LFE Act came into force in 1984.

So, the challenge in this consultation is how to assess ‘fit for purpose’ for instruments that have never been utilised (and are unlikely to be).

The Consultation Paper refers to the extent to which the regulations “*are operating effectively*” and “*are achieving its purpose*”.

However, there is an absence of real world experience with the operation and impacts of these specific instruments to make judgements on these matters. Similarly, the compliance and administrative costs associated with the instruments cannot be measured or evaluated, since they will be specific to the nature of the disruption and the prevailing market circumstances. Such assessments can only be made with accuracy in retrospect - that is, after the national liquid fuel emergency has occurred and a review conducted of the operation and effectiveness of the instruments.

Instead, fit for purpose must largely be assessed in terms of the alignment of the instruments with the established objectives of the Act (noted above and below). This includes, as noted in the Consultation Paper, “*the extent to which targeted problems are solved*” like the more effective management of fuel supply risks by major fuel users stressed in the LFE Act review.

Also, heavy reliance must be placed on the experience and advice of the fuels industry in responding to a broad range of liquid fuel disruptions both domestically and through their international operations, and the expertise of government emergency responders within jurisdictions which have more experience over time with localised supply disruptions. Both of these key sources of advice are strongly represented on NOSEC and are integral to the operation of the NLFERP.

Thus, this review and the assessment of fit for purpose needs to be cognisant of the longstanding advice of these key stakeholders, as well as the policy and operational certainty that has been provided by the stable and consistent approach in these instruments over many years.

We also consider that fit for purpose assessment should include the extent to which the current arrangements:

- maintain the effectiveness and timeliness of the industry/government response to the National LFE
- provide a clear and robust framework which is easily understood by all fuel users nationally
- maintains a fair allocation of available fuel supplies in the event of a national emergency (recognising everyone will need to prioritise their fuel use)
- encourage active supply management and business continuity planning by major fuel users on their own and commercial terms
- provide a clear decision-making framework and role for government
- provide certainty for industry for supply and logistical planning purposes.

Based on previous reviews which concluded that these objectives are already met by the current arrangements, any proposed changes to the instruments need to demonstrate that they will better achieve the objectives compared to the status quo.

It is AIP and NOSEC’s longstanding view that Australia has robust emergency response plans and frameworks for managing a national liquid fuel emergency. These plans reflect Australian market characteristics, utilise proven market and commercial response mechanisms, and adopt those IEA approaches (e.g. demand restraint) that will be effective in our market and operating environment.

5. AIP COMMENTS ON THE LIQUID FUEL EMERGENCY GUIDELINES 2008

AIP considers that the Guidelines remain fit for-purpose, and should be remade to provide future certainty for industry and government operations.

Overall, they continue to strike the right balance between ensuring appropriate consultations and consideration by the Minister, and the need for industry and governments to plan in advance and be able to act quickly in the event of an emergency.

AIP and its member companies also consider that the current Guidelines:

- continue to reflect industry practices
- have not been impacted significantly by market developments and changes since 2007
- appropriately balance equity, fairness and flexibility.

We have not been able to identify any required amendments to the Guidelines which would significantly improve their clarity or operation, or to better align with the underpinning objectives of the legislation and operational framework.

In making this assessment, AIP and its member companies have placed a significant premium on the planning certainty that the current arrangements have provided for industry and governments over a long time period, and their alignment with both state-based plans and internal company processes/planning now.

AIP's comments on the Guideline dealing with the identification of essential users are made in the context of the Essential User Determination 2008 below.

6. AIP COMMENTS ON THE ESSENTIAL USERS DETERMINATION

Identifying those fuel users that should have the highest priority access to fuel during a national liquid fuel emergency is necessary to achieve the objectives of the LFE Act.

As a result, it has been the Australian Government's and NOSEC's longstanding objective to establish clear, concise and economically defensible criteria to enable the easy identification of those fuel users that ought to be given the highest priority during a national emergency. Importantly, the criteria should also signal to the market that fuels users outside this criteria need to engage in active supply management and business continuity planning on their own business and commercial terms.

The fuels industry and governments all agree that emergency services should have 'priority access' to fuel in an emergency. These fuel users are defined as 'Essential Users' in the LFE Act and in the Liquid Fuel Emergency (Essential Users) Determination 2008 and include:

- defence of Australia
- ambulance services
- corrective services
- fire or rescue services
- police services
- state emergency services
- public transport and taxi services.

Importantly, all Australian governments have agreed, under Intergovernmental Agreement, to *“develop a common list of essential users for national liquid fuels emergencies that will be utilized in the national, state and territory plans.”*

During a national emergency, essential users are not guaranteed supply but are entitled to fuel above and beyond that which is available to other fuel users. **It is highly unlikely that fuel supply would ever be restricted to only essential users.**

All other fuel users will continue to receive a proportion of their normal fuel supply (under a bulk allocation or retail rationing scheme directed by government) depending on the specific emergency circumstances and the available fuel supply at that time.

While all businesses and consumers will receive an equitable share of the available fuel supply, all parties will need to prioritise and conserve fuel use during a national emergency.

It should also be noted that fuel provided under the essential user arrangements is done so for the sole purpose of providing the activities listed in the Determination and where there is a DIRECT connection between the service being provided and the supply of fuel. A fuel user who provides those services but who also has fuel needs above those required to undertake the listed activities will need to obtain additional fuel in the same way as other fuel users. This is the reason why only vehicles that are readily identifiable as belonging to an Essential User category will be entitled to fuel as an Essential User during a period of retail rationing directed by government.

In order to be effective, the LFE Act and Guidelines/Determination must provide a mechanism that enables the ready identification of essential users prior to (or in anticipation of) a national liquid fuel supply emergency. A quick and accurate identification of this user group will expedite the response to a national liquid fuel emergency and ensure that providing fuel supplies to other fuel users is extended for as long as possible.

The current Determination is well equipped to achieve this goal in AIP’s view, because it:

- is consistent with legislation and the overall liquid fuel emergency response framework
- is a clear and robust framework which is easily understood by all key stakeholders
- is administratively simple and can be easily, rapidly and efficiently implemented on the ground
- provides a clear decision-making framework and role for government
- provides certainty for industry for supply and logistical planning purposes.

This assessment has been confirmed in regular NOSEC reviews of the Determination.

Overall, AIP considers that the current legislated framework for essential users provides operational certainty for fuel users, industry and governments and provides implementation, compliance and administrative efficiencies. This enables decisive and quick action to be taken in the interests of maintaining available supply to the whole economy. Importantly, it also ensures that major fuel users understand the need to make contingency plans and take actions to manage the risks of a supply disruption on their own activities.

Consequently, AIP considers that the activities listed in the Determination remain fit for purpose and no clear case has been demonstrated for change or additional activities being included.

The Consultation Paper also seeks stakeholder views specifically on the case for utilities and liquid-fuel fired power system generators being identified as essential users.

AIP's high level comments below relate to these services and to any fuel users seeking essential user status beyond those listed in the current Determination.

The previous review of the LFE Act and Guidelines concluded that broadening out the nature of the essential user category (beyond the currently agreed and non-debatable activities):

- *could reduce available fuel supply much more quickly than is intended or appropriate in the event of a national liquid fuel emergency;*
- *would not maximise the amount of fuel that will be available to those activities which are deemed most deserving (police, ambulance and other emergency service providers); the cost to Government, consumers and the general community as a result of a failure to supply the necessary liquid fuels to these users would be high to extreme;*
- *would increase complexity and time to respond to a national liquid fuel emergency and might not ensure the remaining fuel supplies to other fuel users is extended for as long as possible;*
- *could increase compliance and administrative complexity and burdens (impacting on timeliness and effectiveness of response) related to implementation measures like issuing permits or approvals for activities which do not have clearly identifiable vehicles related to the service;*
- *would almost certainly induce underinvestment in contingency planning by fuel users in anticipation of preferential treatment by the Australian Government; this lack of investment is likely to lead to a greater burden being borne by members of the community, who are generally unable to invest to mitigate a national liquid fuel emergency;*
- *could encourage rent seeking behaviour by these fuel users, adding a further burden to the effective and coordinated response to a national liquid fuel emergency.*

AIP and NOSEC understand that many fuel users are likely to expect preferential supply on the basis that their activities are related to, or support, the activities of the current list of essential users and they should also be included on the list.

However, AIP notes once again, that any fuel user outside the current list of essential users will still receive a proportion of their normal fuel supply as directed by government (under a bulk allocation if they have an existing supply contract or via the retail rationing scheme) and could continue to support these activities through prioritisation of their fuel use within their own activities.

Therefore, in the consideration of any addition to the current essential user list, these other fuel users would need to demonstrate that:

- there is a most urgent and critical need for fuel (for community health, safety and welfare) and a direct connection between the specific service provided and an uninterrupted supply of fuel
- concrete actions and business continuity plans cannot be undertaken by these fuel users to manage the risks of a supply shortage to their business activities as the LFE Act intended
- the negative outcomes identified above from the previous review of the LFE Act and Guidelines would not be generated by their inclusion in the Determination.

If these crucial tests are met, a wide range of fuel-use information and data would need to be provided by other major fuel users for serious assessment and consideration. For example, for these activities information would need to be supplied on:

- total fuel use, by grade, business activity and location - during normal and emergency operating conditions
- the scope, capacity and locations of fuel using infrastructure and equipment
- whether such activities and equipment are supported by onsite fuel storage and an existing fuel supply contract.

This information is essential to understand the impacts on planning and ready identification of essential users prior to (or in anticipation of) a national liquid fuel supply emergency. It is also important to understanding how their inclusion on the essential users list would reduce available supply to other Australian industries, businesses and community sectors (who will be relying on an equitable share of the remaining available fuel supply) and what is the justification for this.

The strength of the current essential users list is that it fully meets all these performance benchmarks and the fuel use of these identified activities, across Australian jurisdictions and in different modes of operation, is well established and has assisted in the formulation of current government and industry response plans, and indeed the NLFERP itself.

AIP notes that 'utilities' comprise a very wide range of government and private businesses with significant resources and expertise in broader emergency planning. Further, the total fuel use of these services is not known, nor the importance of fuel to maintaining the principle business activities of these services during normal and emergency modes of operation.

We would expect that large-scale liquid fuel fired power generators would already have fuel supply and storage infrastructure and contracted supply to maintain their everyday business operation, and also have established plans to manage the risks of interrupted fuel supply. Similarly, if an individual liquid fuel electricity generator is considered to be a 'critical back-up' to cover the loss of baseload generation or transmission capacity, that facility needs to have sufficient on-site fuel storage capacity and contract(s) with one or more fuel suppliers to ensure that such a generator can perform this role during an electricity "crisis".