Article Information

Author: Martin Lovell
Service: Projects, Infrastructure & Construction
Sector: Energy & Resources, Infrastructure, Power & Utilities, Renewables

---

Update: Diesel shortage in Australia: EFA underwriting announced, but contractors are still not “essential users”

This note provides an update to our earlier insight dated 22 March 2026, Diesel Shortage in Australia: What EPC and Major Contractors Must Do Now.

What has been announced?

The Commonwealth has announced that it will amend the *Export Finance and Insurance Corporation Act 1991* (Cth) to expand Export Finance Australia’s (EFA) powers to underwrite private-sector purchases of fuel, fertiliser and other essentials. EFA will be able to provide insurance, loans and other financial arrangements to de-risk additional cargoes that would otherwise be uneconomic or too risky. The Government says these powers target “additional supply”, including to meet uncontracted demand via independent distributors in regional Australia.

Current stock levels

As at 28 March 2026, Australia holds approximately 39 days of petrol (1.6 billion litres), 30 days of diesel (2.7 billion litres), and 30 days of jet fuel (8 million litres). Of the 81 fuel-carrying ships scheduled to arrive in April, six had been cancelled, but these have reportedly been more than replaced by new orders. The *Liquid Fuel Emergency Act 1984* (Cth) (**LFE Act**) has not been activated.

What the EFA measures do not do

EFA underwriting helps importers secure cargoes. It does not guarantee fuel to site, does not address price, and does not change contractors’ status under the fuel-emergency framework. This assessment is reinforced by the National Lique Fuel Emergency Response Plan (**NLFERP**) Policy Manual (an FOI-released document) (**Policy Manual**), which explains that site-level access in tight markets turns on contracted allocations and rationing mechanics, not on upstream financing support.

Contractors are not “essential users”

Under the NLFERP and the *Liquid Fuel Emergency (Activities—Essential Users) Determination 2019* (Cth), “essential users” who receive priority access to fuel during a declared emergency are limited to ambulance services, corrective services, fire and rescue services, police services, public transport services, State Emergency Services, and taxi services.

Construction, mining, and infrastructure contractors are not on the list. The NLFERP Guidance Note is explicit: the prevailing policy is that essential users have been identified, and the Minister will be advised not to extend essential user status. The onus is on fuel users to consider their own fuel use and prepare appropriate business continuity plans.

If rationing is imposed, contractors will compete with ordinary motorists for restricted supply. The preferred retail model is a daily “maximum transaction value”, and the Policy Manual’s worked example is $40 (~16 litres at current prices) which is immaterial for heavy plant and equipment.

Relevance for Principals

For Principals managing major projects, this announcement may have bearing on how you assess contractor claims and requests in the current environment.

- **Force majeure claims should be scrutinised carefully**. Clauses vary, but most require reasonable mitigation. EFA's intervention potentially raises the bar to require evidence of diligent efforts to secure fuel (including from independents) before entertaining any claim premised on unavailability.
- **Price-based claims are different**. Rising diesel costs rarely trigger force majeure. Absent a rise-and-fall clause, price risk typically sits with the contractor. Section 25 of the LFE Act bars Commonwealth price controls and the *Liquid Fuel Emergency Guidelines 2019* use price pass-through to restrain demand (with ACCC oversight). Keep availability-based time relief separate from price. Where escalation threatens critical works, consider temporary commercial arrangements to preserve programme continuity.
- **Rationing is not yet live but monitor closely**. If the LFE Act is invoked, require visibility over contractors' procurement, allocations and contingency plans for successive planning periods. Be prepared for change-in-law claims, as a Ministerial direction under ss 21–24 of the LFE Act imposing rationing or allocation controls would be a new legal requirement post-dating most existing contracts, and many change-in-law clauses extend to subordinate legislation and government directions that affect the contractor's ability to perform or increase its costs.

Relevance for Contractors

For EPC and major contractors, the advice in our earlier insight remains current. The EFA underwriting announcement will support supply but it does not change the underlying risk profile for your projects.

- **Do not assume underwriting will resolve site shortages**. Underwriting helps cargoes land; it does not assure delivery to site. Engage early with suppliers and independents; diversify where feasible.
- **Understand bulk allocation**. In tightening conditions, suppliers move to terminal "bulk allocations"—serving contracted customers pro-rata and suspending spot sales. The Policy Manual notes bulk customers are normally account customers with at least 15 months' purchasing history. If you lack contracted supply, you are first out when spot sales halt. Formalise supply now.
- **Force majeure remains a difficult path**. Active government and industry measures may make "genuine unavailability" harder to sustain. Focus on delay/disruption where supplier failure affects the critical path.
- **Price escalation risk is unchanged**. Underwriting does not target price. Price pass-through is deliberate policy. If your contract lacks diesel indexation, margins will erode. For live tenders and variations, include clear baselines, indices, collars and caps.
- **Prepare for rationing**. Review whether government-imposed rationing is a qualifying force majeure event. Separately, consider your change-in-law relief. If the Minister issues a direction under the LFE Act imposing rationing or allocation controls, that direction is subordinate legislation that post-dates your contract and restricts your ability to acquire fuel, potentially triggering time and (depending on drafting) cost relief under change-in-law clauses. Plan, as contemplated in the Policy Manual, for 10%, 30% or 50% supply reductions over 30 days and identify which activities you would defer; prioritise critical-path works accordingly.

Key takeaways

The EFA announcement is welcome, but does not change the risk landscape for major projects:

1. **EFA underwriting helps importers, not contractors**. The measures may improve aggregate supply into Australia, but do not guarantee fuel will reach your project site or address price.
2. **Contractors are not essential users**. If rationing is declared, construction and infrastructure projects will compete with ordinary motorists for restricted supply. There is currently no carve-out for major projects.
3. **Price pass-through is government policy**. The legislative framework prohibits price controls. Elevated diesel costs are here to stay for the duration of the crisis.
4. **Bulk allocation favours contracted customers**. Formalise your fuel supply arrangements now. Spot purchasers will be first to lose access if bulk allocations are imposed.
5. **Plan for 30%–50% supply reductions**. The NLFERP guidance contemplates scenario planning at these levels. Contractors should identify which site activities can be deferred and how critical path work will be prioritised if fuel is restricted.

Both Principals and Contractors should use this window to stress-test contractual positions, secure supply arrangements, and prepare for further escalation.

We will continue to monitor developments and provide further updates as the legislative amendments progress through Parliament and as the supply situation evolves.

A note on sources

Our analysis of the fuel-emergency framework draws on the *Liquid Fuel Emergency Act 1984* (Cth), the *Liquid Fuel*

Emergency Guidelines 2019 (Cth) and the *Liquid Fuel Emergency (Activities—Essential Users) Determination 2019* (Cth). We have also reviewed the NLFERP Policy Manual (v1.3, 7 June 2019), released under FOI (marked "AAT 2023/7886 – Material for Release"). The Policy Manual is administrative policy approved through NOSEC and by energy ministers; it sets out the operational architecture for rationing and allocation and is the clearest public articulation of how a declared emergency would be managed in practice. Ministers retain discretion to calibrate measures to the severity of any particular event.

If you would like to discuss further, please contact Martin Lovell.

Disclaimer: This publication is for general information only and is not legal advice. You should seek specific legal advice for your own circumstances.