

BIOFUELS FURTHER AMENDMENT BILL 2012

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Bill introduced on motion by Mr Chris Hartcher, read a first time and printed.

Second Reading

Mr CHRIS HARTCHER (Terrigal—Minister for Resources and Energy, Special Minister of State, and Minister for the Central Coast) [4.14 p.m.]: I move:

That this bill be now read a second time.

The Biofuels Further Amendment Bill 2012 introduces a number of important changes to improve the administration and enforcement of the Biofuels Act 2007. The bill will clarify the way in which exemptions from the minimum biofuel requirements can be granted, varied or revoked. The bill will also increase the maximum penalties for key offences and clarify the powers of investigators in administering and enforcing the Act and the Biofuels Regulation 2007. The Biofuels Act 2007 establishes minimum biofuel requirements for petrol and diesel fuel sold by volume fuel sellers in New South Wales. The Government is committed to the 6 per cent ethanol mandate and the 2 per cent biodiesel mandate. The bill will not make any changes to these mandates. However, the Government recognises that achieving both mandates will be challenging for volume fuel sellers in the short to medium term.

Earlier this year the Independent Pricing and Regulatory Tribunal provided its report on "Ethanol supply and demand in New South Wales". The tribunal found that, while there is sufficient supply in New South Wales to meet the 6 per cent ethanol mandate, there will not be sufficient demand to achieve it. The reality is that volume fuel sellers can influence, but not control, the product choices of their customers. As such, a fair, workable and enforceable framework for granting exemptions to the mandate is required. By workable, I mean a framework that enables exemptions to be granted where required while still driving companies to meet the 6 per cent mandate in the future. Administrative changes have already been made to deal with exemption applications to make the process more transparent.

These interim changes include an update on market conditions for ethanol and biodiesel, and make it clear that companies must submit a business plan with an application. It also requires the expert panel, in providing advice on exemption applications, to consider whether a volume fuel seller has demonstrated that it has genuinely taken all reasonable actions to meet the minimum biofuel requirement. But more fundamental changes are needed to ensure that the exemption framework in the Act is fair, workable and enforceable. This bill sets out a number of amendments that the Government is proposing. Business plans are a major tool to drive and monitor a company's progress towards achieving the mandated target. The Government currently requires volume fuel sellers to develop and submit business plans with exemption applications.

The business plan must set out the steps that will be taken by the company to increase the proportion of biofuel sold and the milestones for delivering these steps. The bill makes important changes to ensure that these business plans will be implemented by volume fuel sellers over the short and medium term. Conditions may be imposed as part of an exemption which require particular actions to be undertaken during the period of the exemption or beyond it. Providing for conditions to apply beyond the term of an exemption will also enable the Government to drive longer-term activities such as infrastructure projects or marketing strategies. The Act and regulations currently provide that the Minister may grant an exemption from the minimum biofuels mandate on one of three grounds: compliance with the mandate is uneconomic, compliance may result in a risk to public health or safety, or other extraordinary circumstances exist. This bill includes an additional ground on which an exemption can be granted.

With this change it will be possible to grant an exemption from the mandate if a volume fuel seller has taken, is taking or will take all reasonable steps to comply with the relevant minimum biofuel requirement. This is to align the ministerial power to grant an exemption with the defence that is available to a volume fuel seller in a prosecution for failing to meet the mandate. The amendments also clarify that an exemption can be granted on the basis that one or more of the grounds for the exemption, together or separately, justify the exemption. Market conditions can change at any time. As such, circumstances may arise during a reporting period which means that a volume fuel seller is unable to comply with the mandate. The way the Act currently operates means that a company in this situation would have little choice but to stop selling fuel altogether. Continuing to operate would mean that it would be in breach of the law and liable to prosecution.

Suspension of fuel supplies can severely disrupt fuel markets, adversely affecting small businesses and a great many motorists. To deal with this situation the bill makes it clear that an exemption can be varied in appropriate circumstances. The bill also makes it clear that an exemption can be granted for a specified period. It is intended that exemptions will be granted for no longer than three years. The bill provides that exemptions granted for a specified period will be able to be granted before, during or after that period. This is a much more streamlined exemptions framework compared with that currently in place in the Act. An exemption to the mandate can be granted in full or in part. If a partial exemption is granted it means that in effect the volume fuel seller must meet a revised mandate. For example, in the case of ethanol, a partial exemption of 2 per cent means that a volume fuel seller must meet a revised mandate of 4 per cent.

The amendments make it clear in the case of an exemption granted in advance for a number of quarters that different partial exemptions can be set for each quarter. This will ensure that the Government can impose realistic targets by requiring volume fuel sellers to plan for and take all reasonable steps to meet their revised mandate. Through these mechanisms the Government will be able to drive real progress to meeting the biofuel mandates.

As I have noted already, the Act currently provides for exemptions to be granted subject to

conditions. Conditions can also be imposed on a volume fuel seller as part of their registration. However, the Act does not make it an offence to breach such conditions. The bill will correct this serious omission and make conditions enforceable. The Act establishes an expert panel, which provides advice to me on matters such as suspension of mandates and exemptions. In its current form the expert panel is composed entirely of public servants. To provide a greater depth of industry-specific advice to support analysis of these increasingly important issues the bill provides for up to three persons with recent industry experience or expertise to be appointed as members of the expert panel. The appointment of industry members to the panel will be carried out in due course and will go through the standard government appointment processes of Cabinet. Further, the bill sets out the constitution and procedure of the expert panel.

To ensure that the policy objectives of the Act can be achieved it is important that the Minister and the department have effective powers to enforce compliance with the Act and the power to seek appropriate penalties in the event of non-compliance. The bill will give the Biofuels Act more teeth to encourage compliance. Currently, for example, the maximum penalty for a first offence of failing to comply with a minimum biofuels requirement is only 100 penalty units, that is, just \$11,000. The bill will increase maximum penalties to a level that is more appropriate for dealings with major corporations. The maximum penalty for a first offence will be increased to 500 penalty units, or \$55,000. The maximum penalty for a second or subsequent offence will be increased to 5,000 penalty units, or \$550,000.

The bill will also strengthen the powers of investigators appointed under the Act. The bill provides that investigators will now have the power to require a person who supplies a volume fuel seller with ethanol, biodiesel, petrol, or diesel fuel to produce certain information, records and evidence, and to inspect their premises. In addition, an investigator conducting an investigation of premises under the Act will now have the power to take samples of ethanol, biodiesel, petrol, or diesel fuel during that investigation. The bill makes a number of other minor changes to the Act and the associated regulation. Together these amendments will ensure that the objectives of the Act are better able to be delivered.

The ethanol industry in this State currently comprises only one producer, but that one producer—the Manildra Group—is an important regional employer that adds significant value to the grain produced by our farmers and is a major exporter. Ethanol is a very important product for Manildra. It is made from the low-grade starch residue that remains after vital gluten and high-grade starch are produced. A viable market for ethanol ensures that all of the value is extracted from every grain of processed wheat. Retention of the 6 per cent ethanol mandate will support continued regional production and encourage other ethanol producers to enter the market.

The biodiesel industry in this State also currently comprises only one producer, with one major project in the early stages of development. Local biodiesel production is not sufficient to support even the current 2 per cent biodiesel mandate, so we are reliant on imports from interstate and overseas. For this reason the Government decided in December 2011 to

suspend the scheduled increase in the biodiesel mandate from 2 per cent to 5 per cent. I am now pleased to report that National Biodiesel Limited has signed a lease with Port Kembla Port Corporation for a site for its 280 million litre per year soy biodiesel plant. When operational, this development will provide more than enough biodiesel to support the increased 5 per cent mandate. Importantly, it will also provide a new industry in Port Kembla, new opportunities for New South Wales farmers to grow soybeans as feedstock, and up to 800,000 tonnes per year of high quality soybean meal livestock and poultry feed. The development of the project will be monitored and the mandate will be increased to 5 percent as soon as it can be supported by the increase in local production from this development.

In summary, this bill makes a number of important changes to the Biofuels Act 2007 that will enable the Government to more effectively manage longer-term progress toward the biofuels mandates imposed by the Act. These changes will ensure that progress is driven in a way that is transparent and fair to all stakeholders. I commend the bill to the House.