

BIOFUELS FURTHER AMENDMENT BILL 2012
Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.56 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

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.

This is part of the Government's commitment to working to achieve a secure, renewable and sustainable energy future.

A key part of this vision is regional development—including the creation of jobs in regional New South Wales.

The Act defines a volume fuel seller as certain primary wholesalers and major retailers who operate or control more than twenty service stations in New South Wales.

The minimum ethanol requirement imposes an obligation on all volume fuel sellers to ensure that ethanol makes up at least six per cent of the total volume of petrol they sell, or deliver for sale, in New South Wales.

The minimum biodiesel requirement imposes an obligation on volume fuel sellers to ensure that biodiesel makes up at least two per cent of all diesel fuel they sell, or deliver for sale, in New South Wales.

The Government is committed to the six per cent ethanol mandate and the two 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".

IPART found that while there is sufficient supply in New South Wales to meet the six 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 six per cent mandate in the future.

The Biofuels Act left to us by Labor is unworkable.

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 that the Expert Panel, in providing advice on exemption applications, considers whether a volume fuel seller has demonstrated that it has genuinely taken all reasonable actions to meet the minimum biofuel requirement.

But there are more fundamental changes needed to ensure 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. These include:

- 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 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 far more streamlined exemptions framework compared to 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 the volume fuel seller in effect has to meet a revised mandate. For example, in the case of ethanol, a partial exemption of two per cent means a volume fuel seller has to meet a revised mandate of four 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 comprised 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 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.

Taken 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, which 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 six percent 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 two percent 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 two percent to five percent.

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 five 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 five 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 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.