



New South Wales

Biofuels Further Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Biofuels Act 2007* (*the Act*) and the *Biofuels Regulation 2007* (*the Regulation*) as follows:

- (a) to make clear how exemptions from the minimum biofuel requirements under the Act are to be applied for, granted, varied and revoked,
- (b) to increase the maximum penalties for certain offences under the Act and Regulation,
- (c) to clarify the powers of investigators in administering and enforcing the Act and Regulation,
- (d) to modify the constitution and procedure of the Expert Panel under the Act,
- (e) to provide that proceedings for an offence against the Act or the Regulation must be commenced within 2 years of the date of the alleged offence,
- (f) to make other amendments of a minor, savings or transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Biofuels Act 2007 No 23

Amendments relating to exemptions from minimum biofuel requirements

Schedule 1 [5] amends the provision that empowers the Minister for Resources and Energy (*the Minister*) to grant an exemption from the minimum biofuel requirements under the Act. The amendment:

- (a) provides for an additional ground for exemption, being that the Minister is satisfied that the applicant for the exemption has taken, is taking or will take all reasonable steps to comply with the requirement, and
- (b) provides that the Minister may grant an exemption if the Minister is satisfied that one or more of the specified grounds exist and that those grounds, separately or in combination, justify the grant of the exemption.

Schedule 2 [2] makes a consequential amendment.

Schedule 1 [7] makes it an offence to contravene a condition of such an exemption. The maximum penalty for the offence is 500 penalty units (currently \$55,000) in the case of a first offence or 5,000 penalty units (currently \$550,000) in the case of a second or subsequent offence.

Schedule 1 [6] and [8] make amendments to the exemption provisions:

- (a) to make it clear that the Minister is not to grant an exemption or vary or revoke an exemption unless the Minister has consulted the Expert Panel and has considered any advice of the Panel on the proposed grant, variation or revocation, and
- (b) to clarify the general operation of those exemptions, and
- (c) to provide that regulations may make provision for or with respect to applications for exemptions.

Schedule 2 [5] amends the Regulation to provide that applications for exemptions are:

- (a) to be made in the manner and form approved by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services, and
- (b) to be accompanied by the documents specified by that Director-General.

Amendments relating to powers of investigators

Schedule 1 [10], [11] and [13] make amendments to provide that:

- (a) the powers of investigators under the Act to require the production of certain information, records or evidence may be exercised in relation to persons that

- the investigator reasonably believes have supplied a volume fuel seller with ethanol, biodiesel, petrol or diesel fuel, and
- (b) the powers of investigators under the Act to enter and inspect certain premises may be exercised in relation to premises that the investigator reasonably believes are used for the conduct of a business by a person whom the investigator reasonably believes has supplied a volume fuel seller with ethanol, biodiesel, petrol or diesel fuel, and
 - (c) while on premises that an investigator has entered in the exercise of such a power, the investigator may take for analysis or examination samples of ethanol, biodiesel, petrol or diesel fuel.

Schedule 1 [9] and [12] make law revision amendments.

Schedule 1 [2] inserts a definition as a consequential amendment.

Amendments relating to the Expert Panel

Schedule 1 [14] amends the provision establishing the Expert Panel to take account of changes to the structure of the Public Service.

Schedule 1 [15] amends that provision to provide that the Expert Panel may include up to 3 persons appointed by the Minister who have recent experience or expertise in the petroleum or biofuels industry.

Schedule 1 [21] inserts a Schedule into the Act containing provisions dealing with the constitution and procedure of the Expert Panel.

Schedule 1 [16] and [17] make consequential amendments.

Amendments relating to offences

Schedule 1 [3] and [4] increase the maximum penalties for the offences under sections 10 (failure to comply with minimum biofuel requirements) and 13 (failure to furnish returns or keep records) from 100 penalty units (currently \$11,000) in the case of a first offence or 1,000 penalty units (currently \$110,000) in the case of a second or subsequent offence to 500 penalty units (currently \$55,000) in the case of a first offence or 5,000 penalty units (currently \$550,000) in the case of a second or subsequent offence. **Schedule 2 [6]** makes corresponding increases to the penalty notice amounts in the schedule of penalty notice offences to the Regulation.

Schedule 1 [18] increases the maximum monetary penalty that the Local Court may impose if dealing with an offence under the Act or the regulations under the Act from 100 penalty units (currently \$11,000) in the case of a first offence to 500 penalty units (currently \$55,000).

Schedule 1 [19] provides that proceedings for offences against the Act or the regulations must be commenced within 2 years of the date of the alleged offence (rather than within the 6 month limit that would otherwise apply).

Schedule 2 [3] also amends the Regulation to increase the maximum penalty for the offence of engaging in the business of a volume fuel seller without being registered from 10 penalty units (currently \$1,100) to 100 penalty units (currently \$11,000).

Other amendments

Schedule 1 [1] makes amendments to update certain references.

Schedule 1 [20] makes an amendment of a savings and transitional nature.

Schedule 2 Amendment of Biofuels Regulation 2007

Amendment relating to reasonable steps for compliance with volumetric biofuel requirement

The Act provides for a defence to a prosecution for a failure to comply with a minimum biofuel requirement under the Act if the defendant proves that the defendant took all reasonable steps to comply with the requirement—section 10 (2) of the Act. Section 10 (3) provides that the regulations under the Act may prescribe actions the taking of which by a volume fuel seller will constitute the taking of reasonable steps to comply with a biofuel requirement.

Schedule 2 [1] provides for an additional action by a volume fuel seller to constitute the taking of those reasonable steps, being the taking of all reasonable action (on a continuing basis) to ensure that all E10 sold by the volume fuel seller contains at least 9% ethanol.

Amendments relating to registration of volume fuel sellers

Schedule 2 [4] makes it an offence for a person to contravene a condition of registration as a volume fuel seller. The offence carries a maximum penalty of 100 penalty units (currently \$11,000).

Schedule 2 [7] prescribes the two new offences as penalty notice offences, being the offence of engaging in the business of a volume fuel seller without being registered and the proposed offence of contravening a condition of registration as a volume fuel seller. The penalty notice amount is to be \$1,100.