



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.

First print



New South Wales

Biofuels Further Amendment Bill 2012

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New South Wales

Biofuels Further Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Biofuels Act 2007* to make further provision regarding minimum ethanol and biodiesel content requirements in respect of petrol and diesel fuel sales in the State; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Biofuels Further Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1 Amendment of Biofuels Act 2007 No 23

[1] Section 3 Definitions

Omit the definitions of *Department* and *Director-General* from section 3 (1).

Insert instead, respectively:

Department means the Department of Trade and Investment,
Regional Infrastructure and Services.

Director-General means the Director-General of the
Department.

[2] Section 3 (1)

Insert in alphabetical order:

investigator means a person appointed as an investigator under
section 18.

**[3] Section 10 Offence—failure to comply with minimum biofuel
requirements**

Omit the following from section 10 (1):

Maximum penalty:

- (a) in the case of a first offence—100 penalty units, or
- (b) in the case of a second or subsequent offence—
1,000 penalty units.

Insert instead:

Maximum penalty:

- (a) in the case of a first offence—500 penalty units, or
- (b) in the case of a second or subsequent offence—
5,000 penalty units.

[4] Section 13 Offence—failure to furnish returns or keep records

Omit the following wherever occurring in section 13 (1) and (2):

Maximum penalty:

- (a) in the case of a first offence—100 penalty units, or
- (b) in the case of a second or subsequent offence—
1,000 penalty units.

Insert instead:

Maximum penalty:

- (a) in the case of a first offence—500 penalty units, or

(b) in the case of a second or subsequent offence—	1
5,000 penalty units.	2
[5] Section 15 Exemptions from minimum biofuel requirements	3
Omit section 15 (1). Insert instead:	4
(1) The Minister may by order in writing exempt a specified person	5
from compliance with a minimum biofuel requirement if the	6
Minister is satisfied that one or more of the following	7
circumstances exist and that those circumstances, separately or in	8
combination, justify the grant of the exemption:	9
(a) it is uneconomic for the person to comply with the	10
requirement because of the price at which the person is	11
reasonably able to obtain ethanol or biodiesel,	12
(b) the person has taken, is taking or will take all reasonable	13
steps to comply with the requirement,	14
(c) other circumstances as are prescribed by the regulations	15
for the purposes of this section.	16
(1A) The Minister, for the purpose of determining whether he or she is	17
satisfied that a person has taken, is taking or will take all	18
reasonable steps to comply with a minimum biofuel requirement,	19
may have regard to whether the person has taken the actions	20
prescribed under section 10 (3) (if any).	21
[6] Section 15 (2)	22
Omit the subsection. Insert instead:	23
(2) The Minister is not to grant an exemption unless the proposed	24
exemption has been referred to the Expert Panel and the Minister	25
has considered any advice of the Panel on the proposed	26
exemption.	27
[7] Section 15 (3A)	28
Insert after section 15 (3):	29
(3A) A person must not contravene a condition of an exemption.	30
Maximum penalty:	31
(a) in the case of a first offence—500 penalty units, or	32
(b) in the case of a second or subsequent offence—	33
5,000 penalty units.	34

[8] Section 15 (5)–(9)	1
Omit section 15 (5) and (6). Insert instead:	2
(5) An exemption may:	3
(a) apply generally or be limited in its application by reference to specified exceptions or factors, and	4
(b) apply differently according to different factors of a specified kind, and	6
(c) be granted for a specified period or for an indefinite period, and	8
(d) if granted for a specified period, be granted before, during or after that period.	10
(6) An exemption that is granted for:	12
(a) a specified period remains in force for that period, and	13
(b) an indefinite period remains in force until it is revoked.	14
A condition of an exemption may, according to its terms, continue in force after the exemption has ceased to be in force.	15
(7) The Minister may vary or revoke an exemption (including by imposing, varying or revoking a condition of the exemption) at any time by notice in writing to the volume fuel seller concerned.	17
(8) However, the Minister is not to vary or revoke an exemption unless the proposed variation or revocation has been referred to the Expert Panel and the Minister has considered any advice of the Panel on the proposed variation or revocation.	19
(9) The regulations may make provision for or with respect to applications for exemptions.	20
[9] Section 19 Power of investigator to obtain information, records and evidence	26
Insert “ethanol, biodiesel,” before “petrol or diesel fuel” in section 19 (2) (b).	27
[10] Section 19 (2) (c)	28
Insert after section 19 (2) (b):	29
(c) any person whom the investigator reasonably believes has supplied a volume fuel seller with ethanol, biodiesel, petrol or diesel fuel.	30
	31
	32
	33

[11] Section 20 Powers of investigators	1
Insert at the end of section 20 (2) (b):	2
, or	3
(c) 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.	4 5 6
[12] Section 20 (3) (a) and (c)	7
Insert “ethanol, biodiesel,” before “petrol or diesel fuel” wherever occurring.	8
[13] Section 20 (3) (c1)	9
Insert after section 20 (3) (c):	10
(c1) take for analysis or examination samples of ethanol, biodiesel, petrol or diesel fuel,	11 12
[14] Section 24 Expert Panel	13
Omit section 24 (1) (a). Insert instead:	14
(a) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services or the Director-General’s nominee,	15 16 17
(a1) an officer of the Department of Trade and Investment, Regional Infrastructure and Services with expertise in regional industry development nominated by the Director-General of the Department,	18 19 20 21
(a2) the Chief Executive of the Office of Environment and Heritage or the Chief Executive’s nominee,	22 23
(a3) the Director-General of the Department of Primary Industries or the Director-General’s nominee,	24 25
(a4) the Commissioner for Fair Trading or the Commissioner’s nominee,	26 27
(a5) the Director-General of the Department of Finance and Services or the Director-General’s nominee,	28 29
[15] Section 24 (1) (c)	30
Insert after section 24 (1) (b):	31
(c) up to 3 persons appointed by the Minister who have recent experience or expertise in the petroleum or biofuels industry.	32 33 34

[16] Section 24 (2) and (2A)	1
Omit section 24 (2). Insert instead:	2
(2) The Director-General of the Department is to be the Chairperson of the Expert Panel.	3 4
(2A) Schedule 2 contains provisions relating to the constitution and procedure of the Expert Panel.	5 6
[17] Section 24 (3) (a) and (b)	7
Omit section 24 (3) (a). Insert instead:	8
(a) a proposed exemption from, or a proposed suspension of, the operation of a minimum biofuel requirement, and	9 10
(b) a proposed variation or revocation of such an exemption, and	11 12
[18] Section 27 Proceedings for offences	13
Omit “100 penalty units” from section 27 (2).	14
Insert instead “500 penalty units”.	15
[19] Section 27 (3)	16
Insert after section 27 (2):	17
(3) Proceedings for an offence against this Act or the regulations must be commenced within 2 years of the date of the alleged offence.	18 19 20
[20] Schedule 1 Savings, transitional and other provisions	21
Insert at the end of the Schedule:	22
 Part 4 Provision consequent on enactment of Biofuels Further Amendment Act 2012	 23 24
5 Pending exemption applications	25
Section 15, as amended by the <i>Biofuels Further Amendment Act 2012</i> , extends to an application for an exemption that has been made but not determined before that section was so amended.	26 27 28

[21] Schedule 2	1
Insert after Schedule 1:	2
Schedule 2 Constitution and procedure of Expert Panel	3
	4
(Section 24 (2A))	5
Part 1 General	6
1 Definitions	7
In this Schedule:	8
<i>appointed member</i> means a person who is appointed by the Minister as a member of the Expert Panel.	9
<i>Chairperson</i> means the Chairperson of the Expert Panel.	10
<i>member</i> means any member of the Expert Panel.	11
	12
Part 2 Constitution	13
2 Terms of office of members	14
Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	15
	16
	17
	18
3 Part-time appointments	19
Appointed members hold office as part-time members.	20
4 Remuneration	21
An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	22
	23
	24
5 Vacancy in office of member	25
(1) The office of an appointed member becomes vacant if the member:	26
	27
(a) dies, or	28
(b) completes a term of office and is not re-appointed, or	29
(c) resigns the office by instrument in writing addressed to the Minister, or	30
	31

(d)	is removed from office by the Minister under this clause, or	1 2
(e)	is absent from 3 consecutive meetings of the Expert Panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or	3 4 5 6 7
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	8 9 10 11
(g)	becomes a mentally incapacitated person, or	12
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	13 14 15 16 17
(2)	The Minister may remove an appointed member from office at any time.	18 19
6	Disclosure of pecuniary interests	20
(1)	If:	21
(a)	a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Expert Panel, and	22 23 24
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	25 26 27
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Expert Panel.	28 29 30
(2)	A disclosure by a member at a meeting of the Expert Panel that the member:	31 32
(a)	is a member, or is in the employment, of a specified company or other body, or	33 34
(b)	is a partner, or is in the employment, of a specified person, or	35 36
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	37 38
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which	39 40

	may arise after the date of the disclosure and which is required to be disclosed under subclause (1).	1 2
(3)	Particulars of any disclosure made under this clause must be recorded by the Expert Panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Expert Panel.	3 4 5 6
(4)	After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Expert Panel otherwise determines:	7 8 9
	(a) be present during any deliberation of the Expert Panel with respect to the matter, or	10 11
	(b) take part in any decision of the Expert Panel with respect to the matter.	12 13
(5)	For the purposes of the making of a determination by the Expert Panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:	14 15 16 17
	(a) be present during any deliberation of the Expert Panel for the purpose of making the determination, or	18 19
	(b) take part in the making by the Expert Panel of the determination.	20 21
(6)	A contravention of this clause does not invalidate any decision of the Expert Panel.	22 23
(7)	This clause applies to a member of a committee of the Expert Panel and the committee in the same way as it applies to a member of the Expert Panel and the Expert Panel.	24 25 26
7	Effect of certain other Acts	27
(1)	Chapter 2 of the <i>Public Sector Employment and Management Act 2002</i> does not apply to or in respect of the appointment of an appointed member.	28 29 30
(2)	If by or under any Act provision is made:	31
	(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	32 33 34
	(b) prohibiting the person from engaging in employment outside the duties of that office,	35 36
	the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or	37 38

from accepting and retaining any remuneration payable to the person under this Act as a member.	1 2
8 Personal liability	3
A matter or thing done or omitted to be done by the Expert Panel, a member of the Expert Panel or a person acting under the direction of the Expert Panel does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.	4 5 6 7 8 9
Part 3 Procedure	10
9 General procedure	11
The procedure for the calling of meetings of the Expert Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Expert Panel.	12 13 14
10 Quorum	15
The quorum for a meeting of the Expert Panel is a majority of its members for the time being.	16 17
11 Presiding member	18
(1) The Chairperson or, in the absence of the Chairperson, the Director-General's nominee, is to preside at a meeting of the Expert Panel.	19 20 21
(2) In the absence of both the Chairperson and the Director-General's nominee, another member of the Expert Panel elected by the members of the Expert Panel who are present is to preside at a meeting of the Expert Panel.	22 23 24 25
(3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	26 27
12 Voting	28
A decision supported by a majority of the votes cast at a meeting of the Expert Panel at which a quorum is present is the decision of the Expert Panel.	29 30 31
13 Transaction of business outside meetings or by telephone	32
(1) The Expert Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Expert Panel for the time being, and a resolution in writing approved in	33 34 35

	writing by a majority of those members is taken to be a decision of the Expert Panel.	1 2
(2)	The Expert Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	3 4 5 6 7
(3)	For the purposes of:	8
	(a) the approval of a resolution under subclause (1), or	9
	(b) a meeting held in accordance with subclause (2),	10
	each member has the same voting rights as they have at an ordinary meeting of the Expert Panel.	11 12
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Expert Panel.	13 14 15
(5)	Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	16 17 18
14	First meeting	19
	The Chairperson may call the first meeting of the Expert Panel after the commencement of this Schedule in such manner as the Chairperson thinks fit.	20 21 22

Schedule 2	Amendment of Biofuels Regulation 2007	1
[1]	Clause 7 Reasonable steps for compliance with volumetric biofuel requirement	2
	Insert after clause 7 (e):	3
	(f) 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.	4
		5
		6
		7
[2]	Clause 9 Grounds for exemption	8
	Omit “as a circumstance that justifies the exemption of a person from compliance with a minimum biofuel requirement”.	9
		10
[3]	Clause 9A Registration of volume fuel sellers	11
	Omit “10 penalty units” from clause 9A (1). Insert instead “100 penalty units”.	12
[4]	Clause 9A (5A)	13
	Insert after clause 9A (5):	14
	(5A) A person must not contravene a condition of registration.	15
	Maximum penalty: 100 penalty units.	16
[5]	Clause 9B	17
	Insert after clause 9A:	18
	9B Applications for exemptions	19
	(1) An application for an exemption under section 15 of the Act:	20
	(a) is to be made in the manner and form approved by the Director-General, and	21
		22
	(b) is to be accompanied by the documents specified by the Director-General.	23
		24
	(2) Nothing in this clause prevents the Minister granting an exemption in the absence of an application.	25
		26
[6]	Schedule 1 Penalty notice offences	27
	Omit “\$1,100” wherever occurring in Column 2 of the Schedule.	28
	Insert instead “\$5,500”.	29

Biofuels Further Amendment Bill 2012

Schedule 2 Amendment of Biofuels Regulation 2007

[7] Schedule 1

Insert at the end of the Schedule:

Biofuels Regulation 2007

Clause 9A (1)	\$1,100
Clause 9A (5A)	\$1,100

1
2
3