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Biofuels Amendment Bill 2016 (Proof)

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| Speakers | Colless The Hon Rick ; Primrose The Hon Peter ; Brown The Hon Robert ; Green The Hon Paul |
| Business | Bill, First Reading, Second Reading, Motion |

BIOFUELS AMENDMENT BILL 2016

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Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Rick Colless, on behalf of the Hon. John Ajaka.

Motion by the Hon. Rick Colless, on behalf of the Hon. John Ajaka, agreed to:

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Second Reading

The Hon. RICK COLLESS (Parliamentary Secretary) [12.34 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Biofuels Amendment Bill 2016.

The Biofuels Amendment Bill 2016 represents a significant package of reforms aimed at ensuring the objectives of the New South Wales biofuels mandate are met.

It should be noted that when the Biofuel (Ethanol Content) Bill was introduced in 2007 the mandate received bipartisan support. That remains the case today.

The mandate is also supported by the National Roads and Motorists' Association [NRMA], the State's peak motoring body, with more than 2.5 million members.

It should be acknowledged at the outset that ethanol mandates are not without controversy, but that controversy is certainly not unique to New South Wales. Mandates concerning the ethanol content of fuel and consumption targets exist in more than 50 countries around the world, including the United States of America, Canada, France and Brazil.

Debate about the merits of ethanol-blended fuel is nothing new. Government intervention in a free market is never desirable. The Government understands why, philosophically, it creates unease among some members of this House, but we must recognise that we do not live in a free market utopia.

The oil industry belies many free market principles. One only needs to listen to the public on talkback radio or read the letters to the editor section in the papers to ascertain the level of scepticism the public has towards the fuel industry, and the level of transparency and competition within the fuel industry, particularly, as it ultimately translates to prices at the pump.

If petrol is a grudge product for most consumers, ethanol is the ultimate grudge for most oil companies. Why would they voluntarily supplant their sale of hydrocarbons with a cheaper agricultural waste product?

The answer is that without incentives or compulsion they are very unlikely to do so. This is why government mandate is required.

Indeed, I am not aware of any jurisdiction in the world where a strong and viable biofuels market has been successfully established and maintained without government intervention. That is the reality we live in. If we want a sustainable and competitive biofuels market in New South Wales, we need a strong and enforceable mandate.

The reality is that governments regularly intervene in the market to protect consumers against unchecked market forces. That is why we have agencies such as Fair Trading, the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, the Energy and Water Ombudsman, and the State Insurance Regulation Authority, amongst many others.

Let me be very clear: The Government's focus is squarely on the consumer interest. It is important that E10 is a competitively priced product and that price is reflected at the bowser. It is important that consumers be given a choice between E10, regular unleaded and premium fuels.

It is important that we have more transparency in the market, including real-time prices available online, and transparency on the true cost of ethanol production and it is passed through to the bowser. It is important that we encourage a viable and competitive homegrown biofuels industry. This is what this bill seeks to do.

Since assuming responsibility for the biofuels mandate nine months ago, the Minister for Innovation and Better Regulation has sought to work collaboratively and constructively with all interested stakeholders to develop a workable solution.

It is true that the Minister has met with Manildra on several occasions to discuss the operation of the mandate. Manildra Group has invested more than \$330 million in its ethanol plant and equipment in New South Wales. It has geared up its production capacity in anticipation of an increase in consumption towards the mandated 6 per cent. Manildra has an important role in this.

But there are many other important stakeholders that the Minister has met on numerous occasions. They include the NRMA, representing motorists; Australian Convenience and Petroleum Marketers Association [ACAPMA], representing the retailers and service station operators; and the Biofuels Association and the Australian Institute of Petroleum, representing the oil companies.

The Minister has met with all of them on multiple occasions.

It is true that due to the scale of its production capacity, Manildra is a near monopoly provider of ethanol fuel in New South Wales. It is important that we create a competitive homegrown biofuels industry. However, this will never happen without a strong and robust government mandate. Indeed, that is what the mandate was designed to do.

The Government is also very mindful of the need to balance the objectives of the mandate against the interests of small to medium fuel retailers and franchisees, many of whom can be categorised legitimately as small business owners.

That is why everything set out in the legislation is subject to further detailed consultation on the regulations, which will determine key elements of the reform including volume thresholds, the cost of tank infrastructure upgrades and the grounds upon which retailers can apply for exemptions.

Following media speculation, the Minister has put on the record the position of the Australasian Convenience and Petroleum Marketers Association—the organisation representing fuel retailers and service station operators, both big and small, in relation to the mandate.

ACAPMA is fundamentally opposed to the ethanol mandate. That position has not changed. It was opposed to the introduction of an ethanol mandate in Queensland last year, but sought to work constructively with that government on the detail and implementation process. Likewise in New South Wales, ACAPMA Chief Executive Officer Mark McKenzie has committed to working constructively with the New South Wales Government on the implementation of our reforms.

In particular, the Minister and ACAPMA have a shared interest in getting the necessary data to make informed decisions regarding thresholds for liability. This will ensure there are sufficient safeguards for small fuel retail businesses in New South Wales: who is in and who is out; what are the true infrastructure upgrade costs; how can operators obtain an exemption on the basis of having taken reasonable steps to comply; or simply not being able to afford to comply in the first place.

The truth is that we currently do not have that granular level of detail required to make these informed decisions. That is why the Government is working collaboratively with ACAPMA and other important stakeholders in the sector to get the appropriate data so we can make informed decisions on an issue that impacts on people's livelihoods. That is the responsible course of action of a responsible government.

Prior to detailing the provisions of the bill, it is important to set out the four major benefits of a strong biofuels market, backed by a government mandate.

The first benefit is that E10 is the most cost-efficient petrol in the marketplace. It is worth stating the obvious: Ethanol is the cheapest component of ethanol-blended fuel. It is widely acknowledged that E10's main competitor, regular unleaded, is 3 per cent more energy efficient. This means that on your average tank you will drive 3 per cent further with regular unleaded than you would with E10. That is, if your car takes you 400 kilometres on a tank of E10, it will take you 412 kilometres on a tank of regular unleaded.

Therefore, E10 is price competitive when it is 3 per cent cheaper than regular unleaded. Unfortunately, if you look at service stations across New South Wales it rarely is. Most of the majors have it locked in at a 2 per cent leader differential when compared to regular unleaded. Some majors have even dropped the differential to 1.6 cents per litre. Others, like United Group, which produces its own ethanol, sells E10 at a 4 cent per litre differential to regular unleaded. Consequently, it is performing far

better against the mandated 6 per cent than other oil companies in the market place.

According to performance data United Group is tracking at around 5 per cent, meaning E10 represents almost half of its total fuel sales. If the average price of petrol is \$1.10 to \$1.20 per litre, it does not take much investigation to conclude that E10 is currently not being priced competitively.

Let us be clear, at the current price we will never reach the mandated 6 per cent. For price-sensitive motorists E10 is not an economically rational option because it is being outpriced by regular unleaded. Given that 10 per cent of E10 is ethanol and ethanol is the cheapest component, this pricing situation defies logic.

That is why the Government has asked the Independent Pricing and Regulatory Tribunal [IPART] for the first time to regulate the wholesale price of ethanol.

IPART will maintain also a watching brief on retail prices to ensure that any reductions in the wholesale price resulting from its new oversight is passed through to the bowser.

This price regulation will take effect later this year and will significantly change the market dynamic. No longer will ethanol producers and oil companies be able to blame each other for the uncompetitive pricing of E10.

The public will have access to information that demonstrates the true cost of production and the true purchase cost to oil companies. Once established, IPART's benchmarking mechanism will help to ensure E10 is more competitive. Competitive pricing is the key to success for the mandate.

The second benefit is that consumption of biofuels dilutes our dependence on foreign oil.

This is the elephant in the room and not many people want to discuss it, but talk to the NRMA, talk to the economists and the fuel security experts and you will soon realise that in the event of an oil crisis Australia is pretty much at the bottom of the barrel.

We are extremely vulnerable to disruptions in the supply of foreign oil. The majority of our mobility depends on regular and reliable access to oil supplies from geopolitically unstable regimes and the fuel that is derived from it.

According to a report commissioned by the NRMA in 2013, Australia's energy dependency on foreign oil has increased dramatically from 60 per cent in 2000 to 91 per cent in 2013. The maths is pretty simple: The more ethanol and biodiesel we use in our fuels the less dependent we will be on foreign oil in the event of a crisis.

We may be talking only in percentage points, but in the event of a global oil crisis that could be the difference between business as usual and our State's economy grinding to a halt. For example, Brazil, the United States and most European nations are in a far stronger fuel security position than we are in the event of such an emergency.

The third benefit is that using ethanol-blended fuel makes productive economic use of an agricultural waste product.

Unlike petrol, ethanol is a renewable resource. In New South Wales ethanol is predominantly made from starch as a by-product of wheat production.

For our farmers ethanol production is the only viable use for this resource. Without a market for ethanol this by-product would go to waste, cutting the already thin margins facing our farmers. Many would be forced to significantly cut back on production if the sale of starch for ethanol production was no longer an option. Across Australia more than 5,000 wheat, sugar and grain farmers rely on ethanol production. It is safe to say that without the mandate many of these jobs would no longer be viable.

Ethanol is an important opportunity to reduce our reliance on oil imports and carbon dioxide omissions, all by using agricultural waste.

The fourth benefit is that a vibrant biofuels market supports regional jobs. The production of E10 supports thousands of jobs across regional New South Wales across both the agriculture and manufacturing industries. According to an independent review of the industry, nationwide ethanol production delivers 3,000 direct jobs and a further 20,000 indirect jobs. The industry contributes \$402 million in gross domestic product [GDP] every year. The majority of these jobs are located in regional New South Wales; for example, the jobs provided by the ethanol plant in Nowra.

In addition, cities and towns across New South Wales are home to ethanol industry workers, including Manildra, Gunnedah and Narrandera.

These are skilled, high-wage regional jobs that cannot be exported or outsourced.

Given the huge strain on manufacturing and agriculture facing Australia it is important that we continue to support the thousands of regional jobs delivered by the ethanol industry.

I will now address some key reform measures. The first measure is the regulation of the wholesale price of ethanol. The second is the transition from wholesale to retail compliance. The third is a tighter and clearer exemptions framework. The fourth is an

information campaign, and the fifth is the establishment of an online fuel board.

The first measure is the regulation of the wholesale price of ethanol. As I discussed earlier, part of the reform package will require IPART to have a role in helping to ensure that E10 is sold at a competitive price.

IPART will do this by regulating the wholesale price of ethanol. They will determine a fair price for ethanol, a key input into the price of E10.

IPART will also monitor retail prices to ensure reductions in the wholesale price are being passed through to consumers at the bowser.

The second measure is the transition from wholesale to retail compliance. Consumer awareness of and demand for E10 increases with availability of the fuel.

What we have seen in recent years is a reduction in the availability of E10 on service station forecourts.

In many instances E10 bowsers have been removed and replaced with regular unleaded or premium fuels.

As mentioned earlier, this Government supports consumers having a choice between E10 and regular unleaded. But we support a choice in an environment in which E10 is fairly and competitively priced.

At the moment that clearly does not exist. Experience in other countries demonstrates that the more consumers understand the properties of ethanol fuel the more willing they are to buy it. That is why these reforms address availability of E10 by expanding the reach of the legislation.

The Government has listened to industry about how this will impact on newly regulated businesses, particularly small businesses and small- and medium-sized enterprises.

This was also detailed in the announcement the Government made on 20 December 2015.

Industry was also concerned that there needed to be more transparency about how the mandate worked. While wholesalers were required to comply with the mandate, their ability to influence retail sales was very limited.

The reforms address this. Industry representatives were concerned at the lack of a level playing field. Some service stations with a small number of sites but very large sale volumes were not required to comply with a mandate. These reforms address this.

The focus is now clearly on retail sites where most petrol is purchased. All service stations that sell three or more types of petrol and diesel, and have sales above a prescribed threshold will need to comply with the mandate.

The threshold will be prescribed in the regulation, which will be the subject of a regulatory impact statement. The regulatory impact statement process will give the Minister an opportunity for meaningful consultation with the industry on this crucial policy setting. Making a decision on the appropriate threshold requires good data.

The threshold will be set to target the majors, not small businesses.

The Minister has listened extensively to the community and understands that for mum-and-dad operators, many in regional areas, complying with the mandate is often not possible.

The Government will honour its commitment to industry and small operators, and will establish a working group to develop thresholds after the required data is obtained.

The reforms also include a measure to allow the Government to collect sales data across the whole retail fuel market. This data is essential. It will allow us to see how the reforms are working and will allow for further regulatory refinement, if required.

The third measure relates to a tighter and clearer exemptions framework.

There will be enhancements to the existing exemptions regime, including provision for an exemption of up to two years for those businesses that need time to transition to the new arrangements.

Exemptions are also available for retailers who have been unable to comply with the mandate despite having taken all reasonable steps to do so.

New, more objective measures will be added to the "reasonable steps" test in the legislation to reduce uncertainty for industry. The test will be clearer and easier to understand. A lack of clarity around the current exemption framework has restricted the effectiveness of the current mandate.

Providing a stronger and more objective framework will go a long way in supporting ethanol consumption in a way that is fair and simple for industry to comply with.

The fourth measure is an information campaign. To better inform consumers, the Government will deliver a community education and awareness campaign on the benefits of ethanol. The campaign will give motorists the facts on the compatibility and performance of vehicles using E10 fuel. It will also explain energy disparity between fuels, highlighting that at a certain price point, ethanol is the most cost-effective option.

Central to this campaign will be busting the myths and old wives' tales around the use of ethanol-blended fuel.

More than 85 per cent of petrol vehicles on our roads can use E10. Indeed, many run better on it because of the higher research octane number [RON] properties it has.

The campaign will provide consumers with the facts needed to make informed decisions at the bowser. IPART estimated that the education campaign alone could increase ethanol sales by around 10 per cent.

The NRMA has been fully supportive of the campaign and the Minister will be working closely with the NRMA to ensure the Government can convey the facts to as many motorists as possible.

The fifth measure is the creation of the online fuel board. Consumers will benefit from these reforms as they will put downward pressure on E10 prices, increase the availability of E10 and boost transparency in the fuel market.

Last week, the Government introduced amendments to the Fair Trading Act to establish an online fuel price board.

This will provide an opportunity for consumers to save money by finding a better deal on fuel. One of the fuels that service stations must report on for the online price board will be E10.

These two reforms will work together to make sure consumers know how price competitive E10 really is. E10 is generally the cheapest petrol available at New South Wales garages, and should be by a decent margin.

As a relatively recent initiative, the online fuel board has not been considered in IPART's projections on ethanol uptake. Having already witnessed the broad support for the online price board, it will be an important measure to drive increased competition and therefore consumption in the marketplace. In partnership with the ethanol information campaign, I am confident the price board will help increase ethanol consumption in New South Wales.

From 1 July 2015, New South Wales Fair Trading became responsible for administering the Biofuels Act 2007. The Government has undertaken a number of reforms since that time.

Since that date, the Minister has worked closely with all interested parties to ensure the objectives of the Biofuels Act are being met.

In September 2015, the Minister wrote to the chair of the expert panel established under section 24 of the Biofuels Act, with a set of strengthened guidelines for consideration when granting exemptions.

This included a limitation on the maximum period for an exemption in advance to three months as well as more prescriptive guidance on what constitutes "all reasonable steps".

In addition to this, Fair Trading wrote to every service station in New South Wales informing them that the RON of E10 fuel is 94 and that should be accurately displayed on the bowsers. Many service stations were incorrectly labelling the fuel as 91, causing confusion with consumers.

In February this year, Fair Trading undertook a further compliance operation to ensure compliance with the RON labelling was occurring. We have received a number of third party endorsements for the reforms proposed by the Government.

The NRMA supported the E10 mandate when it was first introduced, with bipartisan support in 2008, and continues to support it today. On 20 December 2015 the NRMA also issued a media release stating its support for the Government's decision to introduce a new online petrol portal, forcing all service stations to display their prices in real time. NRMA President Kyle Loades said:

... supporting a home-grown biofuels industry was the only way to reduce Australia's dependence on imported fuel and provide protection from petrol price volatility.

United Petroleum also strongly supports the bill and stated:

... Ethanol mandates in order to break major oil company strangleholds on the fuel supply chain are not unusual and have been shown to be best practice by Government.

United has also refuted claims that converting tanks and pumps to E10 would be cost prohibitive—estimating its own conversions in New South Wales to be between \$7,000 and \$25,000.

The Chief Executive Officer of the New South Wales Council of Social Service [NCOSS], Tracy Howe, said in relation to the online fuel board:

... Having access to petrol prices in real time will empower motorists to make the best possible choice for their family and their budget.

Better informing consumers will also help realise the benefits of fuel retailer competition and force stations to sell petrol at more reasonable prices.

In conclusion, the Government thanks all industry representatives who participated in the roundtable held on 11 February this year. Industry consultation on the regulations is ongoing. The Minister is committed to working collaboratively to improve the effectiveness of this legislation. The consultation will also ensure that decisions that impact on the livelihood of small operators are based on facts not assertions.

The regulations will determine key elements of the reform including volume thresholds, the cost of tank infrastructure upgrades and the grounds upon which retailers can apply for exemptions. The Minister for Innovation and Better Regulation is pleased to lead on the Government's commitment for better regulation through the Biofuels Amendment Bill 2016.

I commend the bill to the House.

The Hon. PETER PRIMROSE [12.35 p.m.]: The Biofuels Act 2007 was the first of its kind in Australia, introduced by the Labor Government in June 2007. It followed a proud lineage of innovative and future-oriented legislation that are the hallmarks of Labor governments. In the 1980s the Wran Government spearheaded the nation when it banned lead in fuels; so, too, with the nation's first ever piece of biofuels legislation. Labor made this commitment on a number of grounds. First, we wanted to provide another price-competitive option for motorists who wanted to do something about the environment. Secondly, we wanted to provide another stimulus for the New South Wales regional economy, delivering another market for farmers, as well as an opportunity for new and expanded ethanol plants across regional New South Wales. Thirdly, it was a homegrown source that helped reduce our reliance on overseas fuel imports from the increasingly fractious Middle East. This was innovative legislation, the first in Australia, and Labor pushed ahead against the intransigence of the then Howard Liberal Government. A Federal scheme was always preferable, but Labor was up against a Coalition Government that would rather let the market decide, even if it meant sidelining a homegrown, more environmentally friendly alternative.

I note at the time of the debate that there was bipartisan support. The only voice of discontent, which was ironic for an environmentally positive initiative, was The Greens. It was a first for New South Wales and a first for Australia. The State Labor Government worked with the fuel industry and other stakeholders to make the mandate successful. In the first four years Labor achieved a lot: good policy and particularly good implementation of policy. This does not happen by accident—as Government members are now starting to find out. It comes about by consistent effort and resolve of purpose. The 2007 legislation worked by setting mandatory levels but allowing exemptions to be granted by the Minister on the advice of the expert panel to retailers. This was deliberately designed to keep the pressure on the major retailers and to ensure that to be granted an exemption they had to demonstrate how they were meeting the mandate, whether through promotion, infrastructure rollouts and the like.

When the mandate was introduced the amount of ethanol sold in New South Wales by volume was less than 1 per cent. By the middle of 2011, it was touching 4 per cent and the future was looking positive. There was a real groundswell of support, the major retailers were working with the Government and the first shoots of investment in regional New South Wales were starting to appear. By the end of the decade, we were starting to get the confidence to push the mandate to 6 per cent. In 2011 the mandate was working and expanding biofuels in New South Wales, which was up to 4 per cent, with biodiesel starting to gain traction under a similar mandated scheme. Then confusion, uncertainty, infighting and back-peddalling occurred. We are now trying to make up for what we lost over the past five years—the first five years of the O'Farrell-Baird Government.

Despite the unanimous support of Parliament in 2007, we knew there were opponents in the Coalition ranks. They are crazy brave, Infrastructure Partnerships Australia types, more commonly known as "the Ugliers". We knew they were there and, judging by accounts in the media and by the nonsense spouted forth by some of them in the House, they are still there and they are spreading. We take that as a matter of fact on this side of the House. There will always be an unhealthy group among the conservatives who will back the market over society, back large multinationals over small local business, back private wealth over common good, and back greed over compassion. What is most disturbing when it comes to biofuels is that we know some on the Government side were still supportive; they should have known that the rot was setting in but they were obviously unable, or unwilling, to do anything about it.

Take The Nationals members, for example. In 2007 they were falling over each other to get into the *Hansard* to show their support for ethanol. They were even reprimanding the Government for not implementing a 10 per cent mandate overnight, even though this would have caused calamity for the biofuel cause and chaos in the fuel market in New South Wales. Nevertheless, I thought The Nationals would have taken on the biofuel cause when that party came to government with the Liberal Party. But, then again, when have The Nationals members ever spoken up in the interests of rural and regional New South Wales, particularly when they are thrown a few crumbs by their Liberal masters in government?