



New South Wales

Biofuels Amendment Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Biofuels Act 2007* (the **principal Act**):

- (a) to extend the categories of retailers of petrol or diesel fuel who must comply with minimum biofuel requirements, and
- (b) to impose additional requirements on retailers of petrol or diesel fuel to make petrol-ethanol blend available for sale, and
- (c) to remove the obligation for wholesalers of petrol or diesel fuel to comply with minimum biofuel requirements but retain their obligation to provide returns, and
- (d) to require retailers of petrol or diesel fuel who are not subject to the minimum biofuel requirements to provide returns in accordance with the regulations, and
- (e) to provide IPART with power to make a determination about the reasonable wholesale price of ethanol, and
- (f) to require all operators of service stations to provide a return principally for the purpose of setting an appropriate threshold in the regulations for compliance with the minimum biofuel requirements as proposed to be amended.

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 amendments in Schedule 1 to the proposed Act on assent and for the commencement of the amendments in Schedule 2 on a day or days to be appointed by proclamation.

Schedule 1 Interim amendments of Biofuels Act 2007 No 23

Schedule 1 amends the principal Act by inserting a provision to require all operators of service stations to provide a return to the Secretary principally for the purpose of setting an appropriate threshold in the regulations for compliance with the minimum biofuel requirements as proposed to be amended by Schedule 2. Non-compliance with the requirement to provide a return will be a penalty notice offence.

Schedule 2 Principal amendments of Biofuels Act 2007 No 23

Schedule 2 [1] amends the long title of the principal Act to recognise the object of gathering information about sales of petrol and diesel fuel.

Schedule 2 [2]–[4] amend the definitions section of the principal Act to accommodate the proposed amendments to other provisions of the principal Act.

Schedule 2 [5] substitutes section 4A of the principal Act which sets out the categories of retailers to whom minimum biofuel requirements apply.

The terminology “major retailers” is proposed to be altered to “volume fuel retailers”. Currently, the expression captures a person who operates or controls the operation of more than 20 service stations. Proposed section 4A provides that the new expression captures a person who operates or controls the operation of a volume fuel service station or a person who operates or controls the operation of 20 or more service stations, none of which are volume fuel service stations.

A definition of *volume fuel service station* is proposed to be included in section 3 of the principal Act. The definition has 2 limbs: 3 or more types of petrol or diesel fuel must be sold at the service station and the total volume of petrol and diesel fuel sold at the service station must exceed a threshold prescribed by the regulations. The definition of *service station* remains the same but has been shifted from current section 4A to section 3 of the principal Act.

Schedule 2 [8] and [9] make amendments to sections 6 and 7 of the principal Act to remove the obligation of volume fuel wholesalers to comply with minimum biofuel requirements. Volume fuel wholesalers will still be subject to requirements relating to registration, returns and records. This change necessitates some restructuring of the principal Act. Current sections 10, 15 and 17 are brought into Part 2 dealing with minimum biofuel requirements. Part 3 is renamed, reflecting that it will impose obligations on both retailers and wholesalers in relation to registration, returns and records. Current section 14 about compliance reporting is moved to Part 4 (Enforcement) since it deals with both the minimum biofuel requirements and the requirements for the provision of information.

Schedule 2 [10] inserts section 8 into the principal Act which imposes a further minimum biofuel requirement on volume fuel retailers, namely, that a volume fuel retailer must ensure that, at each of the retailer’s volume fuel service stations, petrol-ethanol blend is available for sale by retail for the fuelling of motor vehicles in a manner that complies with the regulations. It is intended that the regulations will set out requirements relating to accessibility of the fuel in comparison to another type or other types of fuel.

Schedule 2 [12] inserts section 9A into the principal Act which imposes an offence of non-compliance with a minimum biofuel requirement. This matter is currently dealt with in section 10 of the principal Act. The proposed section limits the offence to retailers and adjusts the defences available. It introduces a new defence of proving that it is not economically viable to comply with a minimum biofuel requirement. In the case of petrol-ethanol blend, this can be because the wholesale price of ethanol for use in the production of petrol-ethanol blend exceeds the reasonable wholesale price determined by IPART under proposed section 17A (1) (a).

Schedule 2 [13] modifies the heading to Part 3 because, following the restructuring of the principal Act, the Part will impose obligations on both wholesalers and retailers in relation to registration, returns and records.

Schedule 2 [14] elevates the scheme for registration of wholesalers and retailers from the regulations to the Act and inserts proposed section 10 into the principal Act. The registration scheme is extended to cover retailers who are not subject to the minimum biofuel requirements but who may be subject to the information gathering powers.

It also replaces section 11 of the principal Act. Under proposed section 11, a person required to be registered is obliged to provide returns to the Secretary as set out in the regulations.

Schedule 2 [15] amends section 12 of the principal Act to apply the section to all persons required to be registered.

Schedule 2 [16] amends section 13 of the principal Act to make it an offence not to register as required by proposed section 10.

Schedule 2 [21]–[26] adjust the Minister's power to grant exemptions from the minimum biofuel requirements and move section 15 of the principal Act into Part 2. The proposed grounds of exemption for a volume fuel retailer are as follows:

- that, if the retailer were prosecuted for failure to comply with the requirement, the retailer would have a defence to the prosecution,
- that the exemption is reasonable in order to allow the retailer a period within which to take the steps required to establish a defence to a prosecution for failure to comply with the requirement,
- that compliance by the retailer may result in a risk to public health or safety,
- that the exemption should be granted on other grounds specified in the regulations,
- that there are other extraordinary circumstances justifying the grant of the exemption.

Proposed subsection (5A) allows an exemption that is granted in order to allow a retailer a period within which to take steps to comply with a minimum biofuel requirement to be subject to conditions specifying the steps to be taken and requires it to be limited to a term not exceeding that set out in the regulations.

Schedule 2 [31] inserts proposed Part 3A into the principal Act to confer the following functions on IPART:

- to determine, and periodically review, a reasonable wholesale price for ethanol for use in the production of petrol-ethanol blend,
- to monitor the retail market (including prices) for petrol-ethanol blend and make reports to the Minister on the effect of a determination on that market.

In determining a reasonable wholesale price for ethanol, IPART is required:

- to consider the price at which ethanol would need to be sold by wholesale for use in the production of petrol-ethanol blend for the wholesale market for ethanol and petrol-ethanol blend and the retail market for petrol-ethanol blend to be economically viable, and
- to take into account the minimum biofuel requirements and disregard any exemptions from those requirements that may be granted under the principal Act.

Schedule 2 [32] amends sections 19 and 20 of the principal Act to extend the powers of authorised officers so that they apply to the new categories of persons required to comply with obligations under the Act.

Schedule 2 [34] modifies section 24 of the principal Act so that, rather than the Chairperson of the Expert Panel being the Secretary, the Secretary may determine whether to act as Chairperson himself or herself or, instead, to nominate another person or the Commissioner for Fair Trading, or to allow the Commissioner for Fair Trading to nominate another person, to be the Chairperson. The principal Act requires various matters to be referred to the Expert Panel for a recommendation.

Schedule 2 [35] amends section 31 of the principal Act to allow the Secretary, as well as the Minister, to delegate functions and powers under the principal Act.

Schedule 2 [36] inserts into the principal Act a transitional provision to ensure that registration as a volume fuel seller under the regulations continues to operate as registration under proposed section 10 of the principal Act and a transitional provision to equate an IPART determination made under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992* as to the wholesale price or maximum wholesale price of ethanol to a price determined under section 17A (1) (a), as proposed to be inserted.

The remaining amendments (**Schedule 2 [6], [7], [11], [17]–[20], [27]–[30]** and **[33]**) are consequential.