



New South Wales

Biofuel (Ethanol Content) Amendment Bill 2009

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Biofuel (Ethanol Content) Act 2007* (**the Act**) as follows:

- (a) to provide for increases to the mandated minimum ethanol content for total petrol sales in NSW (currently 2%),
- (b) to make provision for a mandated minimum biodiesel content for total diesel fuel sales in NSW,
- (c) to provide that such mandates will apply to major retailers, in addition to primary wholesalers, of petrol and diesel fuel,
- (d) to provide that from July 2011 regular unleaded petrol sold in NSW by primary wholesalers must contain 10% ethanol.

The Bill renames the *Biofuel (Ethanol Content) Act 2007* as the *Biofuels Act 2007*.

Outline of provisions

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

* Amended in committee—see table at end of volume.

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

Schedule 1 Amendment of Biofuel (Ethanol Content) Act 2007 No 23

Minimum biofuel requirements

Currently, the Act imposes a minimum ethanol percentage mandate on sales of petrol by a primary wholesaler to persons in NSW or for delivery in NSW.

Schedule 1 [13] substitutes Part 2 (substituted sections 6–9) of the Act to specify new minimum biofuel requirements imposed on primary wholesalers and major retailers, together known as volume fuel sellers.

At present, a primary wholesaler of petrol must ensure that the volume of ethanol sold by them (in the form of petrol-ethanol blend) during a certain period is not less than 2% of the volume of all petrol sold by them in that period. Substituted section 6 maintains that requirement, but provides that the percentage is to be increased to 4% from the beginning of 2010 and 6% from the beginning of 2011, respectively. The minimum ethanol percentage will now also apply to a major retailer.

Substituted section 7 imposes on a volume fuel seller a minimum biodiesel percentage in respect of the volume of all diesel fuel sold by the seller (in the form of biodiesel blend). On the commencement of the proposed section, the minimum biodiesel percentage will be 2%. This percentage is to be increased to 5% from the beginning of 2012.

Substituted section 8 provides that from July 2011, or a later date prescribed by the regulations, a primary wholesaler must not sell regular unleaded petrol (unleaded petrol that has a research octane number of less than 95) unless the petrol is petrol-ethanol blend that contains between 9% and 10% ethanol by volume (known as E10).

Only ethanol or biodiesel that complies with a standard prescribed by the regulations in respect of the sustainable manufacture of ethanol or biodiesel may be counted towards a minimum biofuel requirement.

Substituted section 9 substantially re-enacts provisions currently applying in respect of determining the volume of petrol sold and extends the provisions to the sale of diesel fuel.

Schedule 1 [3] and [5]–[9] insert or amend definitions in the Act, including definitions of *biodiesel*, *biodiesel blend*, *biofuel sustainability standard*, *diesel fuel*, *E10*, *ethanol*, *fuel wholesaler*, *major retailer*, *relevant period*, *primary wholesaler* and *volume fuel seller*, as a consequence of the new minimum biofuel requirements.

Schedule 1 [10] extends the application of the Act to now include both petrol and diesel fuel sales by a primary wholesaler and a major retailer, that is, a person operates or controls the operation of more than 20 service stations.

Schedule 1 [12] provides that the ethanol and biodiesel mandates (under substituted sections 6 and 7) do not apply to sales of petrol or diesel fuel by a primary wholesaler to a major retailer.

Schedule 1 [4], [11], [14]–[21], [23] and [24] make amendments consequential on the new minimum biofuel requirements.

Schedule 1 [2] changes the name of the Act from the *Biofuel (Ethanol Content) Act 2007* to the *Biofuels Act 2007* to reflect the additional biofuel (biodiesel) that will now be covered by the Act. **Schedule 1 [1]** amends the long title of the Act consequentially.

Compliance

Schedule 1 [13] also substitutes Part 3 (substituted sections 10–17) of the Act to make a number of changes in respect of offences, exemptions from and suspensions of minimum biofuel requirements and other compliance-related matters.

Substituted section 10 substantially re-enacts the current section that makes it an offence for a primary wholesaler of petrol to fail to comply with the minimum 2% ethanol sales volume requirement, but instead makes it an offence for a person to fail to comply with a minimum biofuel requirement.

Substituted sections 11 and 12 substantially re-enact the current requirements that primary wholesalers of petrol furnish returns and keep adequate records in respect of petrol and ethanol sales, extending the requirements to major retailers and to cover diesel fuel and biodiesel sales.

Substituted section 13 substantially re-enacts the current section that makes it an offence for a primary wholesaler to fail to furnish the required returns or keep the required records, or to furnish or keep returns or records containing false or misleading information. The offence will now also apply to major retailers.

Substituted section 14 substantially re-enacts the current section that authorises the Minister to publish information about compliance by primary wholesalers with the requirements of the Act, extending the authorisation to publication of information about compliance by major retailers.

Substituted section 15 substantially re-enacts the current exemption provisions that provide for the Minister to exempt a primary wholesaler from the 2% ethanol mandate, extending this to exemptions from a minimum biofuel requirement.

Substituted section 16 provides that the Minister may grant an E10 exemption to a person who is a small business selling petrol by retail or a business that sells petrol by retail for the fuelling of vessels or watercraft. An E10 exemption entitles the person to be sold regular unleaded petrol that is not E10 from a primary wholesaler.

Substituted section 17 substantially re-enacts the current suspension provisions that provide for the Minister to suspend the operation of the minimum 2% ethanol mandate, extending this to suspensions of a minimum biofuel requirement.

Miscellaneous amendments

Schedule 1 [22] provides that the Director-General of the Department of Lands (or his or her nominee) is to chair the Expert Panel that advises the Minister on any proposed exemption from or suspension of a minimum biofuel requirement. The current chair, the Director-General of the Department of State and Regional Development (or his or her nominee), will now be a member of the Expert Panel. The Secretary of the Treasury (or the Secretary's nominee) will also be a member of the Expert Panel. The item also amends the current Expert Panel provisions consequential on the new minimum biofuel requirements.

Schedule 1 [25] repeals a redundant provision and inserts a new provision that permits the Minister to delegate his or her functions under the Act.

Schedule 1 [26] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and inserts savings and transitional provisions consequent on the amendments.

Schedule 1 [27] updates references to a Department.

Schedule 2 Amendment of other Acts

Schedule 2.1 and 2.2 amend the *Fines Act 1996* and the *Miscellaneous Acts (Local Court) Amendment Act 2007*, respectively, as a consequence of the renaming of the *Biofuel (Ethanol Content) Act 2007* as the *Biofuels Act 2007* by Schedule 1 [2] and the renumbering of provisions by Schedule 1 [14].