



New South Wales

# Biofuels Regulation 2022

under the

Biofuels Act 2007

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Biofuels Act 2007*.

VICTOR DOMINELLO, MP  
Minister for Fair Trading

## Explanatory note

The object of this Regulation is to repeal and remake, with amendments, the *Biofuels Regulation (No 2) 2016*.

The Regulation provides for the following—

- (a) prescribing standards for the definition of *biofuel sustainability standard*,
- (b) prescribing the threshold for deeming service stations to be volume fuel service stations,
- (c) prescribing the relevant period for the *Biofuels Act 2007 (the Act)*,
- (d) excluding certain persons from the definition of *primary wholesaler*,
- (e) minimum biofuel requirements, including defences to, and exemptions from, the requirements,
- (f) returns and records required to be kept or provided to the Secretary,
- (g) the offences under the Act for which penalty notices may be issued, including the amounts payable.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Proposed section 6 of this Regulation is made under a Henry VIII provision.

Proposed section 7 of this Regulation is arguably made under a Henry VIII provision because the section impliedly amends the Act by affecting the application of the Act.

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## Biofuels Regulation 2022

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Biofuels Regulation 2022*.

#### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

**Note**— This Regulation repeals and replaces the *Biofuels Regulation (No 2) 2016*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definition

In this Regulation—

*the Act* means the *Biofuels Act 2007*.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

#### 4 Definition of “biofuel sustainability standard”—the Act, s 3

For the Act, section 3(1), definition of *biofuel sustainability standard*, the following standards are prescribed—

- (a) *RSB Principles & Criteria (Version 3.0)*, published by the Roundtable on Sustainable Biomaterials in November 2016,
- (b) ISO 13065:2015, *Sustainability criteria for bioenergy*, published in September 2015.

#### 5 Definition of “volume fuel service station”—the Act, s 3

For the Act, section 3(1), definition of *volume fuel service station*, paragraph (b), the prescribed threshold for the last 2 immediately preceding relevant periods is 1,800,000L in each period.

#### 6 Definition of “relevant period”—the Act, s 3

For the Act, section 3(1A), each 6-month period starting at the beginning of January and July in each year is a *relevant period*.

#### 7 Definition of “primary wholesaler”—the Act, s 4

For the Act, section 4(4), the following persons are excluded from the definition of *primary wholesaler*—

- (a) Mobil Oil Australia Pty Ltd (ACN 004 052 984),

- (b) Viva Energy Australia Pty Ltd (ACN 004 610 459),
- (c) Freedom Fuels Australia Pty Ltd (ACN 093 244 761).

## Part 2 Minimum biofuel requirements

### 8 Availability of petrol-ethanol blend for retail sale—the Act, s 8

For the Act, section 8, petrol-ethanol blend must be as accessible to a customer attending the volume fuel retailer's volume fuel service station as—

- (a) regular unleaded petrol, or
- (b) if regular unleaded petrol is not available for sale at the service station—another type of petrol.

### 9 Defence for failure to comply with minimum ethanol requirements—the Act, s 9A

For the Act, section 9A(2)(a), in relation to a prosecution for failure to comply with the minimum ethanol requirement imposed by the Act, section 6, the steps are—

- (a) upgrade the volume fuel retailer's infrastructure to enable the retailer to distribute sufficient petrol-ethanol blend to comply with the requirement, and
- (b) ensure facilities for the sale of petrol-ethanol blend are available at the volume fuel retailer's service stations, and
- (c) secure, on a continuing basis, sufficient supplies of ethanol or petrol-ethanol blend to comply with the requirement, and
- (d) market, on a continuing basis, petrol-ethanol blend to support compliance with the requirement, including by ensuring the price of E10 is conspicuously displayed on a sign alongside the price of other fuels at each volume fuel retailer's service station at which E10 is sold by retail, and
- (e) ensure, on a continuing basis, all E10 sold by the volume fuel retailer contains at least 9% ethanol.

### 10 Defence for failure to comply with minimum biodiesel requirements—the Act, s 9A

For the Act, section 9A(2)(a), in relation to a prosecution for failure to comply with the minimum biodiesel requirement imposed by the Act, section 7, the steps are—

- (a) upgrade the volume fuel retailer's infrastructure to enable the retailer to distribute sufficient biodiesel blend to comply with the requirement, and
- (b) ensure facilities for the sale of biodiesel blend are available at the volume fuel retailer's service stations, and
- (c) secure, on a continuing basis, sufficient supplies of biodiesel blend to comply with the requirement, and
- (d) market, on a continuing basis, biodiesel blend to support compliance with the requirement.

### 11 Defence for failure to ensure availability of petrol-ethanol blend for retail sale—the Act, s 9A

For the Act, section 9A(2)(c)(iii), in relation to a prosecution for failure to comply with the petrol-ethanol blend requirement imposed by the Act, section 8, the following grounds are set out—

- (a) despite the defendant's best efforts, the defendant had not been able to secure finance to install or upgrade necessary infrastructure at the service station to meet the requirement,
- (b) the following costs were not economically viable, considering the price for the petrol-ethanol blend that would be charged to recover the costs—
  - (i) the capital costs of installing or upgrading infrastructure at the service station,

- (ii) if the service station is in a remote or regional area—the recurrent costs of transporting petrol-ethanol blend to the service station.

**12 Exemption period for taking steps to comply with minimum biofuel requirements—the Act, s 9B**

For the Act, section 9B(5A)(b), a 2-year period is prescribed.

**13 Applications for exemptions from minimum biofuel requirements—the Act, s 9B**

For the Act, section 9B(9), the Secretary may require a volume fuel retailer to provide the Secretary with information the Minister may reasonably require to determine the retailer's application for an exemption.

## Part 3 Returns and records

### 14 Returns by volume fuel retailers and certain service station operators—the Act, s 11

- (1) For the Act, section 11(1), a volume fuel retailer or relevant service station operator must provide an electronic return to the Secretary within 1 month after the end of the relevant period.
- (2) For the Act, section 11(2)(e), the return must specify the following information in relation to sales of petrol at service stations operated by the volume fuel retailer or relevant service station operator during the relevant period—
  - (a) the number of service stations at which petrol-ethanol blend or regular unleaded petrol is available for sale,
  - (b) of the service stations specified in paragraph (a), the number that are volume fuel service stations,
  - (c) the number of bowsers and nozzles used for the purposes of delivering petrol-ethanol blend or regular unleaded petrol at each service station.
- (3) In this section—

**relevant service station operator** means an operator of a service station, other than a volume fuel retailer, who was registered as a volume fuel retailer in the 2 relevant periods immediately before the relevant period to which the return relates.

### 15 Keeping of records—the Act, s 12

- (1) For the Act, section 12(2), the records must, for each transaction, include—
  - (a) the volume of petrol or diesel fuel sold, and
  - (b) whether the petrol sold was petrol-ethanol blend, and
  - (c) whether the diesel fuel sold was biodiesel blend, and
  - (d) for a sale of petrol-ethanol blend—the amount of ethanol in the petrol-ethanol blend, and
  - (e) for a sale of biodiesel blend—the amount of biodiesel in the biodiesel blend, and
  - (f) for a sale of petrol-ethanol blend or biodiesel blend—whether the blend complies with a biofuel sustainability standard.
- (2) For the Act, section 12(3), the records of petrol or diesel fuel sold during a relevant period—
  - (a) may be kept in written or electronic form, in the form of copies of invoices or other records of sale, and
  - (b) must be kept for at least 3 years after the end of the relevant period to which the records relate.

## **Part 4 Miscellaneous**

### **16 Repeal and saving**

- (1) The *Biofuels Regulation (No 2) 2016* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Biofuels Regulation (No 2) 2016*, had effect under that Regulation continues to have effect under this Regulation.



## Schedule 1 Penalty notice offences

### 1 Application of Schedule

- (1) For the Act, section 29(2)—
  - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
  - (a) that limited kind of offence, or
  - (b) an offence committed in those limited circumstances.

<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 13(1A)	\$1,100
Section 13(1)—for failing to provide a return in compliance with the Act, section 11	\$5,500
Section 13(2)—for failing to keep and retain records in compliance with the Act, section 12	\$5,500

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