

Passed by both Houses



New South Wales

# Biofuel (Ethanol Content) Amendment Bill 2009

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Biofuel (Ethanol Content) Act 2007 No 23	3
Schedule 2 Amendment of other Acts	17

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2009*



New South Wales

## **Biofuel (Ethanol Content) Amendment Bill 2009**

Act No , 2009

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An Act to amend the *Biofuel (Ethanol Content) Act 2007* to make further provision with respect to the required ethanol content in petrol sold in NSW and to make provision with respect to a required biodiesel content in diesel fuel; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Biofuel (Ethanol Content) Amendment Act 2009*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

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

### **[1] Long title**

Omit “to provide for a minimum ethanol content requirement in respect of the total volume of petrol sales in the State”.

Insert instead “to provide for a minimum ethanol and biodiesel content requirement in respect of petrol and diesel fuel sales in the State”.

### **[2] Section 1 Name of Act**

Omit “*Biofuel (Ethanol Content) Act 2007*”.

Insert instead “*Biofuels Act 2007*”.

### **[3] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

***biodiesel*** means a diesel fuel obtained by esterification of oil derived from plants or animals.

***biodiesel blend*** means diesel fuel that contains biodiesel (such as the fuel known as B5).

***biofuel sustainability standard*** means a standard, in respect of the sustainable manufacture of ethanol or biodiesel, prescribed by the regulations for the purposes of this definition.

***diesel fuel*** means a petroleum-based fuel (whether or not containing biodiesel) for internal combustion engines that is sold as diesel fuel or as a biodiesel blend.

***E10*** means petrol-ethanol blend that contains between 9% and 10% ethanol by volume, being ethanol that complies with a biofuel sustainability standard.

***ethanol*** means ethanol derived from renewable biological feedstock.

***fuel wholesaler*** means a person engaged in a business of selling petrol or diesel fuel for resale (whether or not that business also involves the sale of petrol or diesel fuel by retail).

***major retailer*** is defined in section 4A.

***minimum biofuel requirement*** means a requirement imposed by section 6, 7 or 8.

***regular unleaded petrol*** means unleaded petrol that has a research octane number of less than 95.

***volume fuel seller*** means a major retailer or primary wholesaler.

**[4] Section 3 (1), definition of “Expert Panel”**

Omit “section 20”. Insert instead “section 24”.

**[5] Section 3 (1), definition of “petrol wholesaler”**

Omit the definition.

**[6] Section 3 (1), definition of “relevant period”**

Omit the definition. Insert instead:

*relevant period*—see subsection (1A).

**[7] Section 3 (1A)**

Insert after section 3 (1):

- (1A) Each of the 3-month periods that starts at the beginning of October, January, April and July in each year is a *relevant period* for the purposes of this Act. The regulations can change what is a *relevant period* for the purposes of this Act.

**[8] Section 4**

Omit the section. Insert instead:

**4 Primary wholesalers**

- (1) In this Act:

*primary wholesaler* means a fuel wholesaler who operates or supplies petrol or diesel fuel from any of the following facilities (whether or not in New South Wales) in connection with fuel wholesaling:

- (a) an oil refinery,
- (b) a shipping facility,
- (c) a facility to which petrol or diesel fuel is shipped by pipeline from an oil refinery or a shipping facility,
- (d) a facility to which petrol or diesel fuel is supplied by pipeline from a facility referred to in paragraph (c).

- (2) The regulations may include any other fuel wholesaler or class of fuel wholesalers in the definition of *primary wholesaler*.
- (3) A regulation under subsection (2) may apply to a fuel wholesaler generally or may be limited so as to apply only to the primary wholesaling of petrol or to the primary wholesaling of diesel fuel.
- (4) The regulations may exclude a person or class of persons from the definition of *primary wholesaler*.

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**[9] Section 4A**

Insert after section 4:

**4A Major retailers**

- (1) In this Act:  
*major retailer* means a person who operates or controls the operation of more than 20 service stations.
- (2) The regulations may include any other person or class of persons in the definition of *major retailer*.
- (3) The regulations may exclude a person or class of persons from the definition of *major retailer*.
- (4) In this section, *service station* means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol or diesel fuel, whether or not any other fuel or other product is sold there and whether or not the building or place is used for any other purpose.

**[10] Section 5 Act applies only to sales to person in NSW or for delivery in NSW**

Omit “petrol by a primary wholesaler” from section 5 (1).

Insert instead “petrol or diesel fuel by a volume fuel seller”.

**[11] Section 5 (2) and (3)**

Insert “or diesel fuel” after “petrol” wherever occurring.

**[12] Section 5 (2A)**

Insert after section 5 (2):

- (2A) Sections 6 and 7 do not apply to a sale of petrol or diesel fuel by a primary wholesaler to a major retailer.

**[13] Parts 2 and 3**

Omit the Parts. Insert instead:

**Part 2 Minimum biofuel requirements**

**6 Minimum ethanol requirement for volume fuel sellers**

- (1) A volume fuel seller must ensure that the volume of ethanol sold by the seller (in petrol-ethanol blend) during a relevant period is not less than the minimum ethanol percentage of the total volume

of all petrol (including petrol-ethanol blend) sold by the seller during the relevant period.

- (2) The *minimum ethanol percentage* is:
  - (a) 2% for any relevant period before a relevant period to which paragraph (b) or (c) applies, or
  - (b) 4% for a relevant period that starts on or after 1 January 2010 other than a relevant period to which paragraph (c) applies, or
  - (c) 6% for a relevant period that starts on or after 1 January 2011.
- (3) Only ethanol that complies with a biofuel sustainability standard may be counted towards the volume of ethanol sold for the purposes of this section.

#### **7 Minimum biodiesel requirement for volume fuel sellers**

- (1) A volume fuel seller must ensure that the volume of biodiesel sold by the seller (in biodiesel blend) during a relevant period is not less than the minimum biodiesel percentage of the total volume of all diesel fuel (including biodiesel blend) sold by the seller during the relevant period.
- (2) The minimum biodiesel percentage is:
  - (a) 2% for any relevant period before a relevant period to which paragraph (b) applies, or
  - (b) 5% for a relevant period that starts on or after 1 January 2012.
- (3) Only biodiesel that complies with a biofuel sustainability standard may be counted towards the volume of biodiesel sold for the purposes of this section.

#### **8 Regular unleaded petrol to be E10**

- (1) A primary wholesaler must not sell regular unleaded petrol unless the petrol is E10.

**Note. E10** is defined in section 3 (1) to mean petrol-ethanol blend that contains between 9% and 10% ethanol by volume, being ethanol that complies with a biofuel sustainability standard.
- (2) This section takes effect on 1 July 2011 or on a later date that is prescribed by the regulations as the start date for the purposes of this section.

- (3) A regulation to prescribe a date as a later start date for the purposes of this section cannot be made except on the recommendation of the Minister. The Minister is not to recommend the making of such a regulation unless the Minister has first obtained the advice of the Expert Panel on the proposed regulation.
- (4) In providing its advice, the Expert Panel is to consult with the relevant industry about the proposed start date.
- (5) This section does not apply in respect of sales of petrol by a primary wholesaler to a person who is the holder of an E10 exemption under section 16, in accordance with any conditions of that exemption.

#### **9 Method for determining volumes of petrol and biodiesel**

- (1) For the purpose of determining the volume of petrol sold by a volume fuel seller, the volume of petrol that is petrol-ethanol blend is to be determined as the combined volume of petrol and ethanol in the petrol-ethanol blend (that is, by including the volume of the ethanol).
- (2) For the purpose of determining the volume of diesel fuel sold by a volume fuel seller, the volume of diesel fuel that is biodiesel blend is to be determined as the combined volume of diesel fuel and biodiesel in the biodiesel blend (that is, by including the volume of the biodiesel).
- (3) The regulations may provide for the way in which the volume of petrol, ethanol, diesel fuel and biodiesel is to be determined for the purposes of this Act.

### **Part 3 Compliance**

#### **10 Offence—failure to comply with minimum biofuel requirements**

- (1) A person who fails to comply with a minimum biofuel requirement is guilty of an offence.  
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.
- (2) It is a defence to a prosecution for a failure to comply with a minimum biofuel requirement if the defendant proves that the defendant took all reasonable steps to comply with the requirement.

- (3) The regulations may make provision for or with respect to prescribing actions the taking of which by a volume fuel seller will constitute the taking of reasonable steps to comply with a biofuel requirement.
- (4) The regulations do not prevent a volume fuel seller from proving that other actions taken by the volume fuel seller constitute the taking of reasonable steps to comply with a biofuel requirement.

**11 Returns by volume fuel sellers**

- (1) A volume fuel seller must furnish a return to the Director-General within 1 month after the end of each relevant period.
- (2) The return is to specify the following information in respect of sales of petrol and diesel fuel by the volume fuel seller during the relevant period:
  - (a) the total volume of petrol sold (including petrol-ethanol blend),
  - (b) the total volume of ethanol sold (in the form of petrol-ethanol blend),
  - (c) the total volume of diesel fuel sold (including biodiesel blend),
  - (d) the total volume of biodiesel sold (in the form of biodiesel blend),
  - (e) such other information as may be prescribed by the regulations.
- (3) The return is to be in such form as the Director-General may from time to time require and notify to volume fuel sellers.

**12 Keeping of records by volume fuel sellers**

- (1) A volume fuel seller must keep such records in respect of sales of petrol and diesel fuel by the volume fuel seller as may be necessary to enable the volume fuel seller to furnish the returns required by section 11.
- (2) Those records are to include records of such transactions and other matters in connection with petrol and diesel fuel sales as the regulations may require.
- (3) The regulations may prescribe the form and manner in which records are to be kept and the period for which records are to be retained.

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**13 Offence—failure to furnish returns or keep records**

- (1) A person who fails to furnish a return in compliance with section 11 or who in purported compliance with that section furnishes a return containing information that the person knows (or ought reasonably to know) is false or misleading in a material particular is guilty of an offence.

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.

- (2) A person who fails to keep and retain records in compliance with section 12 or who in purported compliance with that section makes a record containing information that the person knows (or ought reasonably to know) is false or misleading in a material particular is guilty of an offence.

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.

- (3) It is a defence to a prosecution for a failure to keep and retain records in compliance with section 12 if the defendant proves that the defendant had a reasonable excuse for the failure.

**14 Compliance reporting by Minister**

- (1) The Minister may from time to time publish information about compliance with the requirements of this Act by volume fuel sellers.
- (2) Without limiting this section, the Minister may publish the names of volume fuel sellers who fail to comply with any provision of this Act, together with information about the nature and extent of any such failure.
- (3) Information published under this section can include a copy of any return furnished under this Act by a volume fuel seller.
- (4) The regulations can prohibit the publication under this section of specified information or information of a specified kind, for the purpose of protecting commercial in confidence information.

## **15 Exemptions from minimum biofuel requirements**

- (1) The Minister may by order in writing exempt a specified person from compliance with a minimum biofuel requirement if the Minister is satisfied that:
  - (a) compliance by the person with the requirement is uneconomic because of the price at which the person is reasonably able to obtain ethanol or biodiesel, or
  - (b) circumstances exist that are prescribed by the regulations as justifying exempting the person from compliance with the requirement.
- (2) The Minister is not to grant an exemption without first referring the proposed exemption to the Expert Panel for advice and considering the advice of the Expert Panel on the proposed exemption.
- (3) An exemption can be granted subject to conditions.
- (4) An exemption can be granted as a partial exemption specifying a percentage that is less than the minimum ethanol percentage or minimum biodiesel percentage applicable under section 6 or 7 (with the result that the relevant section then applies to require that the volume of petrol or diesel fuel sold by the volume fuel seller during a relevant period covered by the exemption is not less than that specified percentage of the total volume of all petrol or diesel fuel sold by the volume fuel seller during the relevant period).
- (5) An exemption that is granted for a specified period remains in force for that period.
- (6) An exemption that is not granted for a specified period remains in force until it is revoked. The Minister may revoke such an exemption at any time by notice in writing to the volume fuel seller concerned.

**Note.** An exemption from compliance with a minimum biofuel requirement does not affect the obligation to comply with section 11 (Returns by volume fuel sellers) or 12 (Keeping of records by volume fuel sellers).

## **16 Business specific exemptions from E10 requirement**

- (1) The Minister may by order in writing grant an E10 exemption to:
  - (a) a person who sells petrol by retail in the course of carrying on a small business if the Minister is satisfied that limiting the sales by the small business of regular unleaded petrol to E10 would cause the business significant hardship, or

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- (b) a person who sells petrol by retail in the course of carrying on a business if the Minister is satisfied that the person sells petrol wholly or predominantly for the fuelling of vessels or watercraft (such as at a marina).
  - (2) An E10 exemption entitles the person to be sold regular unleaded petrol that is not E10 and, accordingly, a primary wholesaler does not commit an offence under section 8 by selling regular unleaded petrol that is not E10 to the holder of an E10 exemption in accordance with any conditions of the exemption.
  - (3) The Minister is not to grant an exemption without first referring the proposed exemption to the Expert Panel for advice and considering the advice of the Expert Panel on the proposed exemption.
  - (4) An exemption from the E10 requirement can be granted subject to conditions.
  - (5) An exemption from the E10 requirement that is granted for a specified period remains in force for that period.
  - (6) An exemption from the E10 requirement that is not granted for a specified period remains in force until it is revoked. The Minister may revoke such an exemption at any time by notice in writing to the person concerned.
  - (7) In this section, a *small business* means a business that has less than 20 employees.

**17 Suspension of minimum biofuel requirements**

- (1) The Minister may by order published in the Gazette suspend the operation of a minimum biofuel requirement if satisfied that compliance with that requirement:
  - (a) is uneconomic as a result of the price at which volume fuel sellers are reasonably able to obtain ethanol or biodiesel or industry-wide ethanol or biodiesel shortages, as appropriate, or
  - (b) may result in a risk to public health or safety, or
  - (c) may have an adverse effect on the retail price of petrol or diesel fuel for motorists, or
  - (d) may have an adverse effect on grain or food stock availability, or
  - (e) may substantially inflate grain or food stock prices, or

- (f) may have a significant adverse environmental impact on water availability or quality, soil fertility and health or biodiversity, or
  - (g) should be suspended for some other extraordinary reason.
- (2) The Minister is not to suspend the operation of a minimum biofuel requirement without first referring the proposed suspension to the Expert Panel for advice and considering the advice of the Expert Panel on the proposed suspension.
  - (3) A suspension can be granted as a partial suspension specifying a percentage that is less than the minimum ethanol percentage or minimum biodiesel percentage applicable under section 6 or 7 (with the result that the relevant section then applies to require that the volume of ethanol or biodiesel sold by a volume fuel seller during a relevant period covered by the suspension is not less than that specified percentage of the total volume of all petrol or diesel fuel (as appropriate) sold by the volume fuel seller during the relevant period).
  - (4) A suspension granted for a specified period remains in force for that period.
  - (5) A suspension that is not granted for a specified period (an *indefinite suspension*) remains in force until it is revoked.
  - (6) The Minister must keep an indefinite suspension under periodic review and must revoke the suspension when satisfied that grounds for the suspension no longer exist. The Minister revokes an indefinite suspension by notice in writing published in the Gazette.

**Note.** The suspension of operation of section 6 or 7 does not affect the obligation to comply with section 11 (Returns by volume fuel sellers) or 12 (Keeping of records by volume fuel sellers).

**[14] Existing sections 14–28**

Renumber as sections 18–32.

**[15] Section 19 Power of investigator to obtain information, records and evidence (as renumbered by Schedule 1 [14])**

Omit “primary wholesaler” from section 19 (2) (a).

Insert instead “volume fuel seller”.

**[16] Section 19 (2) (b) (as renumbered by Schedule 1 [14])**

Omit “petrol by a primary wholesaler”.

Insert instead “petrol or diesel fuel by a volume fuel seller”.

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**[17] Section 20 Powers of investigators (as renumbered by Schedule 1 [14])**

Omit “primary wholesaler” from section 20 (2) (a).

Insert instead “volume fuel seller”.

**[18] Section 20 (2) (b) (as renumbered by Schedule 1 [14])**

Omit “petrol by a primary wholesaler”.

Insert instead “petrol or diesel fuel by a volume fuel seller”.

**[19] Section 20 (3) (a) and (c) (as renumbered by Schedule 1 [14])**

Insert “or diesel fuel” after “petrol” wherever occurring.

**[20] Section 23 Registration of volume fuel sellers (as renumbered by Schedule 1 [14])**

Omit “primary wholesalers” wherever occurring in section 23 (1) and (2).

Insert instead “volume fuel sellers”.

**[21] Section 23 (2) (e) (as renumbered by Schedule 1 [14])**

Omit “primary wholesaler”. Insert instead “volume fuel seller”.

**[22] Section 24 (as renumbered by Schedule 1 [14])**

Omit the section. Insert instead:

**24 Expert Panel**

- (1) An Expert Panel is established consisting of the following as members of the Expert Panel:
  - (a) the Department heads of the Department of Lands, the Department of State and Regional Development, the Department of Primary Industries, the Department of Environment and Climate Change and the Department of Commerce, or their nominees,
  - (b) the Secretary of the Treasury or the Secretary’s nominee.
- (2) The Director-General of the Department of Lands or that Director-General’s nominee is to chair the Expert Panel.
- (3) The function of the Expert Panel is to provide advice to the Minister on:
  - (a) any proposal referred to the Panel by the Minister for the granting of an exemption from, or the suspension of, the operation of a minimum biofuel requirement, and

- (b) any proposal referred to the Panel by the Minister for the start date of a regulation under section 8 (2), and
  - (c) such other matters in connection with the operation of this Act as may be referred to the Expert Panel by the Minister.
- (4) The Minister can issue guidelines to the Expert Panel from time to time as to:
- (a) the matters that are relevant for the purpose of determining whether grounds exist for the grant of an exemption from or suspension of the operation of a minimum biofuel requirement, and
  - (b) such other matters in connection with the operation of this Act as may be referred to the Expert Panel by the Minister.

**[23] Section 26 Liability (as renumbered by Schedule 1 [14])**

Insert “or the biodiesel content of diesel fuel supplied by diesel fuel suppliers” after “suppliers” in section 26 (1) (c).

**[24] Section 26 (2), definition of “the State” (as renumbered by Schedule 1 [14])**

Omit “section 14”. Insert instead “section 18”.

**[25] Section 31 (as renumbered by Schedule 1 [14])**

Omit the section. Insert instead:

**31 Delegation**

The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

[26] **Schedule 1**

Insert after section 32 (as renumbered by Schedule 1 [14]):

**Schedule 1 Savings, transitional and other provisions**

**Part 1 General**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Biofuel (Ethanol Content) Amendment Act 2009*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2 Provisions consequent on enactment of Biofuel (Ethanol Content) Amendment Act 2009**

**2 Definition**

In this Part:

*amending Act* means the *Biofuel (Ethanol Content) Amendment Act 2009*.

**3 First relevant period for major retailers and sellers of diesel fuel and biodiesel**

The first relevant period to which section 11 (as inserted by the amending Act) applies in respect of:

- (a) sales of petrol and petrol-ethanol blend by a major retailer, and
- (b) sales of diesel fuel and biodiesel blend by a volume fuel seller,

is the first relevant period to start on or after the commencement of Schedule 1 [13] to the amending Act.

**[27] The whole Act (other than section 24 (as substituted by Schedule 1 [22]))**

Omit “Department of State and Regional Development” wherever occurring.

Insert instead “Department of Lands”.

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## **Schedule 2    Amendment of other Acts**

### **2.1    Fines Act 1996 No 99**

#### **Schedule 1 Statutory provisions under which penalty notices issued**

Omit “*Biofuel (Ethanol Content) Act 2007*, section 25”.

Insert instead “*Biofuels Act 2007*, section 29”.

### **2.2    Miscellaneous Acts (Local Court) Amendment Act 2007 No 94**

#### **Schedule 2 Amendments replacing “a Local Court” with “the Local Court”**

Omit the matter relating to the *Biofuel (Ethanol Content) Act 2007*.

Insert instead in Columns 1 and 2, respectively:

*Biofuels Act 2007* No 23

Section 27 (1) (a) and (2)