

Passed by both Houses



New South Wales

Biofuels Amendment Bill 2016

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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,*

, 2016



New South Wales

Biofuels Amendment Bill 2016

Act No , 2016

An Act to amend the *Biofuels Act 2007* to modify the minimum biofuel requirements and their application and to extend requirements for the provision of information.

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.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Biofuels Amendment Act 2016*.

2 Commencement

- (1) Sections 1 and 2 and Schedule 1 commence on the date of assent to this Act.
- (2) This Act (except sections 1 and 2 and Schedule 1) commences on a day or days to be appointed by proclamation.

Schedule 1 Interim amendments of Biofuels Act 2007 No 23

Schedule 1 Savings, transitional and other provisions

Insert after Part 4:

Part 5 Return by operators of service stations for purposes of Biofuels Amendment Act 2016

6 Return by operators of service stations

- (1) A person who operates or controls the operation of a service station (within the meaning of section 4A) must provide a return to the Secretary as required by the Secretary by notice published in the Gazette.
Maximum penalty: 500 penalty units.
- (2) The notice must specify:
 - (a) the period for which the return is to be provided, and
 - (b) the manner and form in which the return is to be provided, and
 - (c) the date by which the return is to be provided.
- (3) The return is to specify the following information in respect of sales of petrol and diesel fuel by the person during the period for which the return is provided:
 - (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 specified in the notice.
- (4) If the period for which the return is to be provided is a relevant period, compliance with section 11 by a major retailer is to be taken to be compliance with this clause.
- (5) For the purposes of section 29, an offence under subclause (1) is prescribed as a penalty notice offence and \$5,500 is prescribed as the amount of the penalty payable for the offence if dealt with under section 29.
- (6) This clause ceases to have effect on the commencement of Schedule 2 [14] to the *Biofuels Amendment Act 2016*.

Schedule 2 Principal amendments of Biofuels Act 2007 No 23

[1] **Long title**

Insert “and to require information to be provided in respect of such sales” after “State”.

[2] **Section 3 Definitions**

Omit the definitions of *major retailer* and *volume fuel seller* from section 3 (1).

[3] **Section 3 (1), definition of “minimum biofuel requirement”**

Omit “section 6 or 7”. Insert instead “section 6, 7 or 8”.

[4] **Section 3 (1)**

Insert in alphabetical order:

IPART means the Independent Pricing and Regulatory Tribunal.

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.

volume fuel retailer is defined in section 4A.

volume fuel retailer’s service station means:

- (a) a service station operated by the volume fuel retailer, or
- (b) a service station the operation of which is controlled by the volume fuel retailer,

whether or not the service station is a volume fuel service station.

volume fuel service station means a service station at which:

- (a) 3 or more types of petrol or diesel fuel are available for sale by retail for the fuelling of motor vehicles at the service station (for example, regular unleaded petrol, unleaded petrol that has a research octane number of not less than 95 and diesel fuel), and
- (b) the total volume of petrol and diesel fuel sold by retail for the fuelling of motor vehicles at the service station (calculated as set out in section 9) exceeds a threshold prescribed by the regulations.

[5] **Section 4A**

Omit the section. Insert instead:

4A Volume fuel retailer

- (1) In this Act:

volume fuel retailer means:

- (a) a person who operates or controls the operation of a volume fuel service station (whether or not the person also operates or controls the operation of any other service station and whether or not the person is also a fuel wholesaler), or
- (b) a person who operates or controls the operation of 20 or more service stations, none of which are volume fuel service stations.

- (2) The regulations may include any other person or class of persons in the definition of *volume fuel retailer*.

- (3) The regulations may exclude a person or class of persons from the definition of *volume fuel retailer*.

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

Omit “a volume fuel seller” from section 5 (1). Insert instead “wholesale or retail”.

[7] Section 5 (2)

Omit “by one volume fuel seller to another volume fuel seller”.

Insert instead “by one wholesaler to another or by one retailer to another”.

[8] Section 6 Minimum ethanol requirement for volume fuel retailers

Omit “seller” wherever occurring in section 6 (1). Insert instead “retailer”.

[9] Section 7 Minimum biodiesel requirement for volume fuel retailers

Omit “seller” wherever occurring in section 7 (1). Insert instead “retailer”.

[10] Section 8

Insert after section 7:

8 Availability of petrol-ethanol blend for retail sale

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.

[11] Section 9 Method for determining volumes of petrol and biodiesel

Omit “seller” wherever occurring in section 9 (1) and (2). Insert instead “retailer”.

[12] Section 9A

Insert after section 9:

9A Offence—failure to comply with minimum biofuel requirements

(1) A volume fuel retailer who fails to comply with a minimum biofuel requirement is guilty of an offence.

Maximum penalty:

- (a) in the case of a first offence—500 penalty units, or
- (b) in the case of a second or subsequent offence—5,000 penalty units.

(2) It is a defence to a prosecution for failure to comply with a minimum biofuel requirement if the defendant proves that:

- (a) the defendant has taken the steps set out in the regulations to comply with the requirement, or
- (b) the defendant has otherwise taken all reasonable steps to comply with the requirement, or
- (c) in the case of a requirement imposed by section 6 or 8—at the time of the alleged offence, it was not economically viable for the defendant to comply with the requirement:
 - (i) because the wholesale price of ethanol for use in the production of petrol-ethanol blend exceeded the reasonable wholesale price determined by IPART under section 17A (1) (a), or
 - (ii) because of the price at which the defendant was reasonably able to produce or obtain petrol-ethanol blend for retail sale, or
 - (iii) on grounds set out in the regulations, or
 - (iv) on any other grounds, or

- (d) in the case of a requirement imposed by section 7—at the time of the alleged offence, it was not economically viable for the defendant to comply with the requirement:
 - (i) because of the price at which the defendant was reasonably able to produce or obtain biodiesel blend for retail sale, or
 - (ii) on grounds set out in the regulations, or
 - (iii) on any other grounds.

[13] Part 3, heading

Omit the heading. Insert instead:

Part 3 Registration, returns and records

[14] Sections 10 and 11

Omit the sections. Insert instead:

10 Registration of primary wholesalers, volume fuel retailers and other operators of service stations

- (1) A person who carries on the business of a primary wholesaler or who operates or controls the operation of a service station must register as a primary wholesaler, a volume fuel retailer or an operator of a service station who is not a volume fuel retailer by taking the steps required by the Secretary by order published on the NSW legislation website.
- (2) The Secretary is to publish, on the Department's website, a register containing the names and contact details of persons who are registered as volume fuel retailers.
- (3) A person who is registered under this section must keep the registration details up-to-date by taking the steps required by the Secretary, within the period allowed by the Secretary, by order published on the NSW legislation website.

11 Returns by primary wholesalers, volume fuel retailers and other operators of service stations

- (1) A person required to be registered under section 10 must provide returns to the Secretary as required by the regulations.
- (2) A return is to specify the following information in respect of sales of petrol and diesel fuel by the person during the period for which the return is required:
 - (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 specified in the regulations.

[15] Section 12 Keeping of records

Omit "volume fuel seller" wherever occurring in section 12 (1). Insert instead "person".

[16] Section 13 Offence—failure to register, furnish returns or keep records

Insert before section 13 (1):

- (1A) A person who fails to register or keep registration details up-to-date in compliance with section 10 is guilty of an offence.
Maximum penalty: 100 penalty units.

[17] Section 14 Compliance reporting by Minister

Omit “by volume fuel sellers” from section 14 (1).

[18] Section 14 (2)

Omit “volume fuel sellers”. Insert instead “persons”.

[19] Section 14 (3)

Omit “by a volume fuel seller”.

[20] Section 14 (as amended by this Act)

Renumber the section as section 23 and transfer it to the end of Part 4.

[21] Section 15 Exemptions from minimum biofuel requirements

Omit section 15 (1) and (1A). Insert instead:

- (1) The Minister may, on application, exempt a volume fuel retailer from compliance with a specified minimum biofuel requirement if the retailer satisfies the Minister:
- (a) that, if the retailer were prosecuted for failure to comply with the requirement, the retailer would have a defence to the prosecution, or
Note. See section 9A (2).
 - (b) 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, or
 - (c) that compliance by the retailer may result in a risk to public health or safety, or
 - (d) that the exemption should be granted on other grounds specified in the regulations, or
 - (e) that there are other extraordinary circumstances justifying the grant of the exemption.

[22] Section 15 (4), note

Omit “seller” wherever occurring. Insert instead “retailer”.

[23] Section 15 (5A)

Insert after section 15 (5):

- (5A) An exemption that is granted in order to allow a person a period within which to take steps to comply with a minimum biofuel requirement:
- (a) may be subject to conditions specifying the steps to be taken, and
 - (b) must not be granted for a period exceeding that specified in the regulations.

- [24] Section 15 (7)**
Omit “seller”. Insert instead “retailer”.
- [25] Section 15, note**
Omit “section 11 (Returns by volume fuel sellers) or 12 (Keeping of records by volume fuel sellers)”.
Insert instead “section 10, 11 or 12”.
- [26] Section 15 (as amended by this Act)**
Renumber the section as section 9B and transfer it in appropriate order to Part 2.
- [27] Section 17 Suspension of minimum biofuel requirements**
Omit “sellers” from section 17 (1) (a). Insert instead “retailers”.
- [28] Section 17 (3)**
Omit “seller” wherever occurring. Insert instead “retailer”.
- [29] Section 17, note**
Omit “section 11 (Returns by volume fuel sellers) or 12 (Keeping of records by volume fuel sellers)”.
Insert instead “section 10, 11 or 12”.
- [30] Section 17 (as amended by this Act)**
Renumber the section as section 9C and transfer it in appropriate order to Part 2.
- [31] Part 3A**
Insert after Part 3:

Part 3A IPART functions

17A IPART functions

- (1) IPART has the following functions:
 - (a) to determine, and periodically review, a reasonable wholesale price for ethanol for use in the production of petrol-ethanol blend,
 - (b) to monitor the retail market (including prices) for petrol-ethanol blend and make reports to the Minister on the effect of a determination under paragraph (a) on that market.
- (2) In determining a reasonable wholesale price for ethanol, IPART must:
 - (a) 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
 - (b) take into account the minimum biofuel requirements and disregard any exemptions from those requirements that may be granted under this Act.
- (3) IPART may conduct investigations for the purpose of enabling it to perform its functions under this section.
- (4) Subject to this section, and except to the extent to which the regulations otherwise provide, the provisions of Divisions 6 and 7 of Part 3 of the

Independent Pricing and Regulatory Tribunal Act 1992 apply to an investigation or report under this section in the same way as they apply to an investigation or report under that Act.

- (5) Section 21 (1) of the *Independent Pricing and Regulatory Tribunal Act 1992* does not apply so as to require IPART to hold any hearing for the purposes of an investigation under this section.
- (6) IPART may issue guidelines as to the manner in which it exercises its functions under this section.
- (7) IPART must keep the guidelines available for inspection by members of the public, free of charge, during normal office hours.
- (8) It is sufficient compliance with subsection (7) if a copy of the guidelines is made available to the public on IPART's website.
- (9) Copies of the guidelines are to be made available to members of the public, at cost, during normal office hours.

[32] Sections 19 and 20

Omit "volume fuel seller" wherever occurring.

Insert instead "person required to be registered under section 10".

[33] Section 23 Registration of volume fuel sellers

Omit the section.

[34] Section 24 Expert Panel

Omit section 24 (2). Insert instead:

- (2) The Chairperson of the Expert Panel is the Secretary, the Secretary's nominee, the Commissioner for Fair Trading or the Commissioner's nominee, as determined by the Secretary.

[35] Section 31 Delegation

Insert "or Secretary" after "Minister" wherever occurring.

[36] Section 32

Omit the section. Insert instead:

32 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to commence before 30 June 2019.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after that date.

[37] Schedule 1 Savings, transitional and other provisions

Insert in appropriate order:

Part 6 Provisions consequent on enactment of Biofuels Amendment Act 2016

7 Registration

A person who is, immediately before the commencement of the *Biofuels Amendment Act 2016*, registered as a volume fuel seller under the regulations made under this Act is to be taken to be registered in the appropriate category under section 10 as inserted by the *Biofuels Amendment Act 2016*.

8 Price determination

If, before the commencement of this clause, the Minister has, under section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, referred to IPART the making of a report on the wholesale price or maximum wholesale price of ethanol and IPART has made such a report, the price set out in the report is to be taken to be a price determined under section 17A (1) (a) (as inserted by the *Biofuels Amendment Act 2016*).