



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.



New South Wales

# Biofuels Amendment Bill 2016

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New South Wales

# Biofuels Amendment Bill 2016

No. , 2016

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## **A Bill for**

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.

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

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**1 Name of Act**

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This Act is the *Biofuels Amendment Act 2016*.

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**2 Commencement**

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(1) Sections 1 and 2 and Schedule 1 commence on the date of assent to this Act.

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(2) This Act (except sections 1 and 2 and Schedule 1) commences on a day or days to be appointed by proclamation.

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<b>Schedule 1</b>	<b>Interim amendments of Biofuels Act 2007 No 23</b>	1
<b>Schedule 1 Savings, transitional and other provisions</b>		2
Insert after Part 4:		3
<b>Part 5</b>	<b>Return by operators of service stations for purposes of Biofuels Amendment Act 2016</b>	4
<b>6</b>	<b>Return by operators of service stations</b>	6
(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.	7 8 9 10
(2)	The notice must specify:	11
(a)	the period for which the return is to be provided, and	12
(b)	the manner and form in which the return is to be provided, and	13
(c)	the date by which the return is to be provided.	14
(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:	15 16
(a)	the total volume of petrol sold (including petrol-ethanol blend),	17
(b)	the total volume of ethanol sold (in the form of petrol-ethanol blend),	18
(c)	the total volume of diesel fuel sold (including biodiesel blend),	19
(d)	the total volume of biodiesel sold (in the form of biodiesel blend),	20
(e)	such other information as may be specified in the notice.	21
(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.	22 23 24
(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.	25 26 27
(6)	This clause ceases to have effect on the commencement of Schedule 2 [14] to the <i>Biofuels Amendment Act 2016</i> .	28 29



<b>Schedule 2</b>	<b>Principal amendments of Biofuels Act 2007 No 23</b>	1
<b>[1] Long title</b>		2
	Insert “and to require information to be provided in respect of such sales” after “State”.	3
<b>[2] Section 3 Definitions</b>		4
	Omit the definitions of <i>major retailer</i> and <i>volume fuel seller</i> from section 3 (1).	5
<b>[3] Section 3 (1), definition of “minimum biofuel requirement”</b>		6
	Omit “section 6 or 7”. Insert instead “section 6, 7 or 8”.	7
<b>[4] Section 3 (1)</b>		8
	Insert in alphabetical order:	9
	<i>IPART</i> means the Independent Pricing and Regulatory Tribunal.	10
	<i>service station</i> 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.	11 12 13 14
	<i>volume fuel retailer</i> is defined in section 4A.	15
	<i>volume fuel retailer’s service station</i> means:	16
	(a) a service station operated by the volume fuel retailer, or	17
	(b) a service station the operation of which is controlled by the volume fuel retailer,	18 19
	whether or not the service station is a volume fuel service station.	20
	<i>volume fuel service station</i> means a service station at which:	21
	(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	22 23 24 25
	(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.	26 27 28
<b>[5] Section 4A</b>		29
	Omit the section. Insert instead:	30
<b>4A Volume fuel retailer</b>		31
(1)	In this Act:	32
	<i>volume fuel retailer</i> means:	33
	(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	34 35 36 37
	(b) a person who operates or controls the operation of 20 or more service stations, none of which are volume fuel service stations.	38 39
(2)	The regulations may include any other person or class of persons in the definition of <i>volume fuel retailer</i> .	40 41
(3)	The regulations may exclude a person or class of persons from the definition of <i>volume fuel retailer</i> .	42 43

<b>[6] Section 5 Act applies only to sales to person in NSW or for delivery in NSW</b>	1
Omit “a volume fuel seller” from section 5 (1). Insert instead “wholesale or retail”.	2
<b>[7] Section 5 (2)</b>	3
Omit “by one volume fuel seller to another volume fuel seller”.	4
Insert instead “by one wholesaler to another or by one retailer to another”.	5
<b>[8] Section 6 Minimum ethanol requirement for volume fuel retailers</b>	6
Omit “seller” wherever occurring in section 6 (1). Insert instead “retailer”.	7
<b>[9] Section 7 Minimum biodiesel requirement for volume fuel retailers</b>	8
Omit “seller” wherever occurring in section 7 (1). Insert instead “retailer”.	9
<b>[10] Section 8</b>	10
Insert after section 7:	11
<b>8 Availability of petrol-ethanol blend for retail sale</b>	12
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.	13 14 15
<b>[11] Section 9 Method for determining volumes of petrol and biodiesel</b>	16
Omit “seller” wherever occurring in section 9 (1) and (2). Insert instead “retailer”.	17
<b>[12] Section 9A</b>	18
Insert after section 9:	19
<b>9A Offence—failure to comply with minimum biofuel requirements</b>	20
(1) A volume fuel retailer who fails to comply with a minimum biofuel requirement is guilty of an offence.	21 22
Maximum penalty:	23
(a) in the case of a first offence—500 penalty units, or	24
(b) in the case of a second or subsequent offence—5,000 penalty units.	25
(2) It is a defence to a prosecution for failure to comply with a minimum biofuel requirement if the defendant proves that:	26 27
(a) the defendant has taken the steps set out in the regulations to comply with the requirement, or	28 29
(b) the defendant has otherwise taken all reasonable steps to comply with the requirement, or	30 31
(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:	32 33 34
(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	35 36 37
(ii) because of the price at which the defendant was reasonably able to produce or obtain petrol-ethanol blend for retail sale, or	38 39
(iii) on grounds set out in the regulations, or	40
(iv) on any other grounds, or	41

	(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:	1
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		3
	(i) because of the price at which the defendant was reasonably able to produce or obtain biodiesel blend for retail sale, or	4
		5
	(ii) on grounds set out in the regulations, or	6
	(iii) on any other grounds.	7
<b>[13]</b>	<b>Part 3, heading</b>	8
	Omit the heading. Insert instead:	9
	<b>Part 3 Registration, returns and records</b>	10
<b>[14]</b>	<b>Sections 10 and 11</b>	11
	Omit the sections. Insert instead:	12
	<b>10 Registration of primary wholesalers, volume fuel retailers and other operators of service stations</b>	13
		14
	(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.	15
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	(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.	20
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	(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.	23
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	<b>11 Returns by primary wholesalers, volume fuel retailers and other operators of service stations</b>	26
		27
	(1) A person required to be registered under section 10 must provide returns to the Secretary as required by the regulations.	28
		29
	(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:	30
		31
	(a) the total volume of petrol sold (including petrol-ethanol blend),	32
	(b) the total volume of ethanol sold (in the form of petrol-ethanol blend),	33
	(c) the total volume of diesel fuel sold (including biodiesel blend),	34
	(d) the total volume of biodiesel sold (in the form of biodiesel blend),	35
	(e) such other information as may be specified in the regulations.	36
<b>[15]</b>	<b>Section 12 Keeping of records</b>	37
	Omit “volume fuel seller” wherever occurring in section 12 (1). Insert instead “person”.	38

<b>[16] Section 13 Offence—failure to register, furnish returns or keep records</b>	1
Insert before section 13 (1):	2
(1A) A person who fails to register or keep registration details up-to-date in compliance with section 10 is guilty of an offence.	3
Maximum penalty: 100 penalty units.	4
<b>[17] Section 14 Compliance reporting by Minister</b>	5
Omit “by volume fuel sellers” from section 14 (1).	6
<b>[18] Section 14 (2)</b>	7
Omit “volume fuel sellers”. Insert instead “persons”.	8
<b>[19] Section 14 (3)</b>	9
Omit “by a volume fuel seller”.	10
<b>[20] Section 14 (as amended by this Act)</b>	11
Renumber the section as section 23 and transfer it to the end of Part 4.	12
<b>[21] Section 15 Exemptions from minimum biofuel requirements</b>	13
Omit section 15 (1) and (1A). Insert instead:	14
(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:	15
(a) that, if the retailer were prosecuted for failure to comply with the requirement, the retailer would have a defence to the prosecution, or	16
(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	17
(c) that compliance by the retailer may result in a risk to public health or safety, or	18
(d) that the exemption should be granted on other grounds specified in the regulations, or	19
(e) that there are other extraordinary circumstances justifying the grant of the exemption.	20
<b>[22] Section 15 (4), note</b>	21
Omit “seller” wherever occurring. Insert instead “retailer”.	22
<b>[23] Section 15 (5A)</b>	23
Insert after section 15 (5):	24
(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:	25
(a) may be subject to conditions specifying the steps to be taken, and	26
(b) must not be granted for a period exceeding that specified in the regulations.	27
<b>[24] Section 15 (7)</b>	28
Omit “seller”. Insert instead “retailer”.	29

<b>[25] Section 15, note</b>	1
Omit “section 11 (Returns by volume fuel sellers) or 12 (Keeping of records by volume fuel sellers)”.	2
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Insert instead “section 10, 11 or 12”.	4
<b>[26] Section 15 (as amended by this Act)</b>	5
Renumber the section as section 9B and transfer it in appropriate order to Part 2.	6
<b>[27] Section 17 Suspension of minimum biofuel requirements</b>	7
Omit “sellers” from section 17 (1) (a). Insert instead “retailers”.	8
<b>[28] Section 17 (3)</b>	9
Omit “seller” wherever occurring. Insert instead “retailer”.	10
<b>[29] Section 17, note</b>	11
Omit “section 11 (Returns by volume fuel sellers) or 12 (Keeping of records by volume fuel sellers)”.	12
	13
Insert instead “section 10, 11 or 12”.	14
<b>[30] Section 17 (as amended by this Act)</b>	15
Renumber the section as section 9C and transfer it in appropriate order to Part 2.	16
<b>[31] Part 3A</b>	17
Insert after Part 3:	18
<b>Part 3A IPART functions</b>	19
<b>17A IPART functions</b>	20
(1) IPART has the following functions:	21
(a) to determine, and periodically review, a reasonable wholesale price for ethanol for use in the production of petrol-ethanol blend,	22
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(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.	24
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	26
(2) In determining a reasonable wholesale price for ethanol, IPART must:	27
(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	28
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(b) take into account the minimum biofuel requirements and disregard any exemptions from those requirements that may be granted under this Act.	32
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(3) IPART may conduct investigations for the purpose of enabling it to perform its functions under this section.	34
	35
(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 <i>Independent Pricing and Regulatory Tribunal Act 1992</i> apply to an investigation or report under this section in the same way as they apply to an investigation or report under that Act.	36
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(5)	Section 21 (1) of the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> does not apply so as to require IPART to hold any hearing for the purposes of an investigation under this section.	1 2 3
(6)	IPART may issue guidelines as to the manner in which it exercises its functions under this section.	4 5
(7)	IPART must keep the guidelines available for inspection by members of the public, free of charge, during normal office hours.	6 7
(8)	It is sufficient compliance with subsection (7) if a copy of the guidelines is made available to the public on IPART's website.	8 9
(9)	Copies of the guidelines are to be made available to members of the public, at cost, during normal office hours.	10 11
<b>[32]</b>	<b>Sections 19 and 20</b>	12
	Omit "volume fuel seller" wherever occurring.	13
	Insert instead "person required to be registered under section 10".	14
<b>[33]</b>	<b>Section 23 Registration of volume fuel sellers</b>	15
	Omit the section.	16
<b>[34]</b>	<b>Section 24 Expert Panel</b>	17
	Omit section 24 (2). Insert instead:	18
(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.	19 20 21
<b>[35]</b>	<b>Section 31 Delegation</b>	22
	Insert "or Secretary" after "Minister" wherever occurring.	23
<b>[36]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	24
	Insert in appropriate order:	25
<b>Part 6</b>	<b>Provisions consequent on enactment of Biofuels Amendment Act 2016</b>	26 27
<b>7</b>	<b>Registration</b>	28
	A person who is, immediately before the commencement of the <i>Biofuels Amendment Act 2016</i> , 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 <i>Biofuels Amendment Act 2016</i> .	29 30 31 32

**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*).

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