

# Biofuels Act 2007 No 23

[2007-23]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Biofuel (Ethanol Content) Act 2007
- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2010 No 59](#) (not commenced — to commence on 9.7.2010)

### Authorisation

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# Biofuels Act 2007 No 23



New South Wales

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# Biofuels Act 2007 No 23



New South Wales

An Act to provide for a minimum ethanol and biodiesel content requirement in respect of petrol and diesel fuel sales in the State.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Biofuels Act 2007*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**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.

**Director-General** means the Director-General of the Department of Lands.

**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.

**exercise** a function includes perform a duty.

**Expert Panel** means the Expert Panel established by section 24.

**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).

**function** includes a power, authority or duty.

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

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

**petrol** means a petroleum based fuel (whether or not containing ethanol) for spark-ignition internal combustion engines that is sold as petrol or as petrol-ethanol blend, but does not include diesel fuel, aviation fuel, liquid petroleum gas and such other fuels as may be prescribed by the regulations.

**petrol-ethanol blend** means petrol that contains ethanol (such as the fuel known as E10).

**primary wholesaler** is defined in section 4.

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

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

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

(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.

(2) Notes included in this Act do not form part of this Act.

#### **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**.

#### **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.

#### **5 Act applies only to sales to person in NSW or for delivery in NSW**

- (1) This Act applies to the sale of petrol or diesel fuel by a volume fuel seller to a person in New South Wales or for delivery in New South Wales (whether or not the sale is made in New South Wales).
- (2) This Act does not apply to a sale of petrol or diesel fuel by one primary wholesaler to another primary wholesaler.
- (2A) Sections 6 and 7 do not apply to a sale of petrol or diesel fuel by a primary wholesaler to a major retailer.
- (3) A sale of petrol or diesel fuel is considered to be a sale for delivery in New South Wales if the terms (whether express or implied) of the sale or any contract for the sale:
  - (a) require either party to the sale to deliver, or arrange delivery of, the petrol or diesel fuel into or within New South Wales, or

- (b) contemplate delivery of the petrol or diesel fuel into or within New South Wales.
- (4) The regulations may exclude any sale or class of sales from the application of all or specified provisions of this Act.

## 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.

#### **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
  - (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.

### **Editorial note—**

For orders under this subsection, see GG No 105 of 17.7.2009, p 4110.

- (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).

## **Part 4 Enforcement**

### **18 Appointment of investigators**

- (1) The Director-General may appoint any member of staff of the Department of Lands as an investigator for the purposes of this Act.
- (2) The Director-General is to provide an investigator with a certificate of authority.

### **19 Power of investigator to obtain information, records and evidence**

- (1) If an investigator believes on reasonable grounds that a person is capable of giving information, producing records or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations or that may assist in ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, the investigator may, by notice in writing given to the person, require the person:
  - (a) to provide an investigator, in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the investigator within the time and in the manner specified in the notice, with any such information, or
  - (b) to produce to an investigator, in accordance with the notice, any such records, or
  - (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such records.
- (2) The powers conferred by this section may only be exercised to impose a requirement on the following persons:
  - (a) any volume fuel seller,
  - (b) any person whom the investigator reasonably believes has been supplied with petrol or diesel fuel by a volume fuel seller.

### **20 Powers of investigators**

- (1) An investigator may exercise the powers conferred by this section for the purpose of:
  - (a) ascertaining whether the provisions of this Act or the regulations are being

complied with or have been contravened, or

- (b) obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.
- (2) An investigator may enter and inspect at any reasonable time any premises that the investigator believes on reasonable grounds are premises:
  - (a) used for the conduct of any aspect of the business of a volume fuel seller, or
  - (b) used for the conduct of a business by a person whom the investigator reasonably believes has been supplied with petrol or diesel fuel by a volume fuel seller.
- (3) While on premises entered under this section, an investigator may do any one or more of the following:
  - (a) require any person on those premises to produce any records in the possession or under the control of that person relating to the sale or purchase of petrol or diesel fuel,
  - (b) inspect and take copies of, or extracts or notes from, any such records and, if the investigator considers it necessary to do so for the purpose of obtaining evidence, seize any such records,
  - (c) require any person on those premises to answer questions or otherwise furnish information in relation to the sale or purchase of petrol or diesel fuel,
  - (d) require the owner or occupier of those premises to provide the investigator with such assistance and facilities as is or are reasonably necessary to enable the investigator to exercise the functions of an investigator under this section.
- (4) An investigator is not entitled to enter a part of premises used for residential purposes, except with the consent of the occupier of the part.
- (5) An investigator must, when exercising on any premises any function of the investigator under this Part, produce the investigator's certificate of authority to any person apparently in charge of the premises who requests its production.

## **21 Interference with investigator**

A person must not:

- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an investigator under this Part, or
- (b) wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's powers under this Part, or

- (c) furnish an investigator with information that the person knows (or ought reasonably to know) is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

## **22 Seizure of records**

- (1) If an investigator seizes any records under this Part, they may be retained by the investigator until the completion of any proceedings (including proceedings on appeal) in which they may be evidence but only if the person from whom the records were seized is provided, within a reasonable time after the seizure, with a copy of the records certified by an investigator as a true copy.
- (2) A copy of records provided under this section is, as evidence, of equal validity to the records of which it is certified to be a copy.

## **23 Registration of volume fuel sellers**

- (1) The regulations may make provision for or with respect to requiring volume fuel sellers to be registered for the purposes of this Act.
- (2) In particular, the regulations may make provision for or with respect to any of the following matters in connection with the registration of volume fuel sellers:
  - (a) applications for registration,
  - (b) the keeping and administration of a register, and the regulation of access to the register,
  - (c) the imposition of conditions on registration,
  - (d) the cancellation or suspension of registration (for example, for a contravention of a provision of this Act),
  - (e) prohibiting a person from engaging in the business of a volume fuel seller unless registered in accordance with the regulations,
  - (f) the review by the Administrative Decisions Tribunal of decisions made in respect of registration.

# **Part 5 Miscellaneous**

## **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.

## **25 Secrecy**

(1) This section applies to the following persons:

(a) the Minister,

(b) the Director-General and a person who is or was a member of staff of the Department of Lands,

(c) a person who is or was a member of the Expert Panel.

(2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act:

(a) make a record of any information, acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act, or

(b) divulge or communicate to any person any such information.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.



- (3) A person to whom this section applies cannot be required:
- (a) to produce to any person or body any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or
  - (b) to divulge or communicate to any person or body any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act.
- (4) Despite this section, a person to whom this section applies may divulge any such information:
- (a) for the purposes of and in accordance with this Act, or
  - (b) for the purposes of a prosecution under this Act, or
  - (c) in accordance with a direction of the Director-General, if the Director-General certifies that it is necessary to do so in the public interest, or
  - (d) to any person or body prescribed by the regulations.
- (5) A person or body to whom information is divulged under subsection (4), and any person or employee under the control of that person or body, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) in respect of that information as if he or she were a person to whom this section applies and had acquired the information in the exercise of functions under this Act.
- (6) In this section:
- body** includes any court, tribunal, authority or body having power to require the production of documents or the answering of questions.
- produce** includes permit access to.

## 26 Liability

- (1) The State does not incur any liability, and compensation is not payable by or on behalf of the State, arising directly or indirectly from any of the following matters occurring before or after the commencement of this section:
- (a) the enactment or operation of this Act,
  - (b) the exercise by any person of a function under this Act or a failure to exercise any such function,
  - (c) any statement or conduct relating to the regulation of the ethanol content of petrol supplied by petrol suppliers or the biodiesel content of diesel fuel supplied by diesel fuel suppliers.

(2) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false or misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes an officer, employee or agent of the Crown and an investigator appointed under section 18.

**this Act** includes any regulation made under this Act and any suspension or exemption under this Act.

## 27 Offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of summarily before:
  - (a) the Local Court, or
  - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

## 28 Authority to prosecute

Proceedings for an offence against this Act or the regulations may be instituted only with the written consent of the Minister.

## 29 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.

- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, **authorised officer** means a member of staff of the Department of Lands authorised in writing by the Director-General as an authorised officer for the purposes of this section.

### 30 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

### 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.

### 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 be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

## 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.