

# Biofuels Act 2007 No 23

[2007-23]



New South Wales

## Status Information

### Currency of version

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### 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 2017 No 22](#), Sch 3.4 (not commenced — to commence on 7.7.2017)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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 and to require information to be provided in respect of such sales.

## 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.

**Department** means the Department of Finance, Services and Innovation.

**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.

**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.

**investigator** means a person appointed as an investigator under section 18.

**IPART** means the Independent Pricing and Regulatory Tribunal.

**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).

**Secretary** means the Secretary of the Department.

**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.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (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 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**.

## **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 wholesale or retail 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 wholesaler to another or by one retailer to another.
- (2A) (Repealed)
- (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 retailers**

- (1) A volume fuel retailer must ensure that the volume of ethanol sold by the retailer (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 retailer 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 retailers**

- (1) A volume fuel retailer must ensure that the volume of biodiesel sold by the retailer (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 retailer 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 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.

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

- (1) For the purpose of determining the volume of petrol sold by a volume fuel retailer, 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 retailer, 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.



**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.

**9B Exemptions from minimum biofuel requirements**

- (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.

(1A) (Repealed)

(2) The Minister is not to grant an exemption unless the proposed exemption has been referred to the Expert Panel and the Minister has considered any advice of the Panel on the proposed exemption.

(3) An exemption can be granted subject to conditions.

(3A) A person must not contravene a condition of an exemption.

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.

(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.

**Note—**

A partial exemption has the effect that the relevant section then applies to require that the volume of ethanol (in petrol ethanol blend) or volume of biodiesel (in biodiesel blend) sold by the volume fuel retailer concerned is not less than the specified minimum ethanol percentage or specified minimum biodiesel percentage of the total volume of all petrol or diesel fuel sold by that retailer during the relevant period.

(5) An exemption may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors, and
- (b) apply differently according to different factors of a specified kind, and

- (c) be granted for a specified period or for an indefinite period, and
- (d) if granted for a specified period, be granted before, during or after that period.

(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.

(6) An exemption that is granted for:

- (a) a specified period remains in force for that period, and
- (b) an indefinite period remains in force until it is revoked.

A condition of an exemption may, according to its terms, continue in force after the exemption has ceased to be in force.

- (7) The Minister may vary or revoke an exemption (including by imposing, varying or revoking a condition of the exemption) at any time by notice in writing to the volume fuel retailer concerned.
- (8) However, the Minister is not to vary or revoke an exemption unless the proposed variation or revocation has been referred to the Expert Panel and the Minister has considered any advice of the Panel on the proposed variation or revocation.
- (9) The regulations may make provision for or with respect to applications for exemptions.

**Note—**

An exemption from compliance with a minimum biofuel requirement does not affect the obligation to comply with section 10, 11 or 12.

**9C 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 retailers 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 Gazettes No 105 of 17.7.2009, p 4110; No 133 of 10.12.2010, p 5811; No 66 of 30.6.2011, p 4667 and No 133 of 23.12.2011, p 7415.

- (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 retailer 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 retailer 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 10, 11 or 12.

### **Part 3 Registration, returns and records**

#### **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.

**12 Keeping of records**

- (1) A person must keep such records in respect of sales of petrol and diesel fuel by the person as may be necessary to enable the person 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 register, furnish returns or keep records**

- (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.

- (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—500 penalty units, or
- (b) in the case of a second or subsequent offence—5,000 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—500 penalty units, or
- (b) in the case of a second or subsequent offence—5,000 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** (Renumbered as section 23)

**15** (Renumbered as section 9B)

**16 (Repealed)**

**17** (Renumbered as section 9C)

## **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.

## **Part 4 Enforcement**

### **18 Appointment of investigators**

- (1) The Secretary may appoint any person employed in the Department as an investigator for the purposes of this Act.
- (2) The Secretary 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 person required to be registered under section 10,
  - (b) any person whom the investigator reasonably believes has been supplied with ethanol, biodiesel, petrol or diesel fuel by a person required to be registered under section 10,
  - (c) any person whom the investigator reasonably believes has supplied a person required to be registered under section 10 with ethanol, biodiesel, petrol or diesel fuel.

## **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 person required to be registered under section 10, 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 person required to be registered under section 10, or
  - (c) used for the conduct of a business by a person whom the investigator reasonably believes has supplied a person required to be registered under section 10 with ethanol, biodiesel, petrol or diesel fuel.
- (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 ethanol, biodiesel, 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 ethanol, biodiesel, petrol or diesel fuel,
  - (c1) take for analysis or examination samples of ethanol, biodiesel, 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 Compliance reporting by Minister**

- (1) The Minister may from time to time publish information about compliance with the requirements of this Act.
- (2) Without limiting this section, the Minister may publish the names of persons 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.
- (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.

## **Part 5 Miscellaneous**

### **24 Expert Panel**

- (1) An Expert Panel is established consisting of the following as members of the Expert Panel:
  - (a) the Secretary or the Secretary's nominee,
    - (a1) a person employed in the Department of Industry with expertise in regional industry development nominated by the Secretary of that Department,
    - (a2) the Chairperson of the Environment Protection Authority or the Chairperson's nominee,
    - (a3) the Director-General of the Department of Primary Industries within the Department of Industry, Skills and Regional Development or the Director-General's nominee,
    - (a4) the Commissioner for Fair Trading or the Commissioner's nominee,
    - (a5) (Repealed)
  - (b) the Secretary of the Treasury or the Secretary's nominee,
  - (c) up to 3 persons appointed by the Minister who have recent experience or expertise in the petroleum or biofuels industry.
- (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.
- (2A) Schedule 2 contains provisions relating to the constitution and procedure of the

Expert Panel.

- (3) The function of the Expert Panel is to provide advice to the Minister on:
  - (a) a proposed exemption from, or a proposed suspension of, the operation of a minimum biofuel requirement, and
  - (b) a proposed variation or revocation of such an exemption, 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 Secretary and a person who is or was employed in the Department,
  - (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 Secretary, if the Secretary 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 Proceedings for 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 500 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Proceedings for an offence against this Act or the regulations must be commenced within 2 years of the date of the alleged 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 person employed in the Department authorised in writing by the Secretary 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 or Secretary may delegate the exercise of any function of the Minister or Secretary under this Act (other than this power of delegation) to:

- (a) any person employed in 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 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.

## **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*

any other Act that amends this Act

- (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.

### **Part 3 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2012](#)**

#### **4 Exemption from minimum biofuel requirements**

An order made by the Minister under section 15 (4) that was in force immediately before the substitution of that subsection by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2012](#) is taken to have been made under that subsection as so substituted.

### **Part 4 Provision consequent on enactment of [Biofuels Further Amendment Act 2012](#)**

#### **5 Pending exemption applications**

Section 15, as amended by the [Biofuels Further Amendment Act 2012](#), extends to an application for an exemption that has been made but not determined before that section was so amended.

### **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*.

## 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*).

## Schedule 2 Constitution and procedure of Expert Panel

(Section 24 (2A))

### Part 1 General

#### 1 Definitions

In this Schedule:

**appointed member** means a person who is appointed by the Minister as a member of the Expert Panel.

**Chairperson** means the Chairperson of the Expert Panel.

**member** means any member of the Expert Panel.

## **Part 2 Constitution**

### **2 Terms of office of members**

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Part-time appointments**

Appointed members hold office as part-time members.

### **4 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **5 Vacancy in office of member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 3 consecutive meetings of the Expert Panel of which reasonable notice has been given to the member personally, by post or by email to an email address provided by the member for that purpose, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

## **6 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Expert Panel, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Expert Panel.

(2) A disclosure by a member at a meeting of the Expert Panel that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Expert Panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Expert Panel.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Expert Panel otherwise determines:

- (a) be present during any deliberation of the Expert Panel with respect to the matter, or
- (b) take part in any decision of the Expert Panel with respect to the matter.

(5) For the purposes of the making of a determination by the Expert Panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Expert Panel for the purpose of making the determination, or
- (b) take part in the making by the Expert Panel of the determination.

(6) A contravention of this clause does not invalidate any decision of the Expert Panel.

(7) This clause applies to a member of a committee of the Expert Panel and the committee in the same way as it applies to a member of the Expert Panel and the Expert Panel.

## **7 Effect of certain other Acts**

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **8 Personal liability**

A matter or thing done or omitted to be done by the Expert Panel, a member of the Expert Panel or a person acting under the direction of the Expert Panel does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **9 General procedure**

The procedure for the calling of meetings of the Expert Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Expert Panel.

### **10 Quorum**

The quorum for a meeting of the Expert Panel is a majority of its members for the time being.

### **11 Presiding member**

(1) The Chairperson or, in the absence of the Chairperson, the Secretary's nominee, is to preside at a meeting of the Expert Panel.

- (2) In the absence of both the Chairperson and the Secretary's nominee, another member of the Expert Panel elected by the members of the Expert Panel who are present is to preside at a meeting of the Expert Panel.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Expert Panel at which a quorum is present is the decision of the Expert Panel.

## **13 Transaction of business outside meetings or by telephone**

- (1) The Expert Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Expert Panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Expert Panel.
- (2) The Expert Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),each member has the same voting rights as they have at an ordinary meeting of the Expert Panel.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Expert Panel.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic transmission of the information in the papers concerned.

## **14 First meeting**

The Chairperson may call the first meeting of the Expert Panel after the commencement of this Schedule in such manner as the Chairperson thinks fit.