

Statutory Review –

*Biofuels Act 2007*

August 2020



# Contents

<b>1.</b>	<b>Executive Summary</b>	<b>2</b>
<b>2.</b>	<b>Recommendations</b>	<b>3</b>
<b>3.</b>	<b>Introduction</b>	<b>4</b>
	Biofuels in Australia	4
	Background and context for the Act	4
	Review of the Act	5
<b>4.</b>	<b>Review findings and recommendations</b>	<b>6</b>
	4.1 Minimum biofuel requirements	6
	4.2 Exemptions from the minimum fuel requirements	10
	4.3 Registration, returns and records	12
	4.4 Biofuels Expert Panel	14
	4.5 Consumer uptake of biofuels	15
	4.6 The role of the Independent Pricing and Regulatory Tribunal (IPART)	17
<b>5.</b>	<b>Appendix A</b>	<b>18</b>
	Consultation approach	18
	List of submissions to the Review	18

# 1. Executive Summary

The *Biofuels Act 2007* (the Act) and the *Biofuels Regulation (No 2) 2016* (the Regulation) provides the regulatory framework for the sale of biofuels in NSW. The primary objective of the Act is to support the development of a sustainable and competitive biofuels industry in NSW.

The Act is administered by the Minister for Better Regulation and Innovation (the Minister). Section 32 of the Act requires that the Act be reviewed to assess whether its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. The outcome of the review was due to be tabled in both Houses of Parliament by 30 June 2020. The COVID-19 pandemic and disruptions in the Parliamentary schedule postponed the tabling in parliament.

The Department of Customer Service (the Department) completed the review on behalf of the Minister. To assist in conducting the review, the Department released a discussion paper in October 2019, receiving 24 submissions. These submissions have been analysed and have made a valuable contribution to the Review.

The Review finds that the regulatory framework and objectives of the Act continue to be largely appropriate. As a result, the recommendations are mostly structural and are designed to reduce regulatory burden and improve the regulatory regime. The Review makes eight recommendations following consideration of stakeholder feedback to the public consultation in October 2019 and an analysis of the costs and benefits of potential options. Proposals are made to strengthen the Act's effectiveness and continue existing elements where they remain appropriate.

Feedback from consultation generally acknowledged the improvements following the 2016 amendments and raised various ideas for further improvements. There are opportunities to ease the regulatory burden on businesses complying with the mandate while maintaining the robustness of the compliance regime.

The Review acknowledges that the minimum biofuels sale requirements (or mandate) have not been met since being increased to their current levels. The reasons for this are numerous, including low price differentials between several types of fuel, customer concerns about ethanol blends and in the case of biodiesel, a lack of supply. These barriers are not insurmountable, and the NSW Government remains committed to the objectives of the Act. The existing framework remains the best way to foster a sustainable and competitive biofuels industry.

## 2. Recommendations

**Recommendation 1:** The existing minimum biofuel requirements for ethanol and biodiesel should continue as currently provided for under Part 2 of the Act.

**Recommendation 2:** Fully digitise the exemption application process for volume fuel retailers.

**Recommendation 3:** Amend the Act to introduce greater transparency around exemption decisions by providing for the specific disclosure of data such as:

- the de-identified grounds for, and durations of, exemptions;
- collated data on exemptions determined within a specified period.

**Recommendation 4:** Amend the Act to remove the requirement for primary wholesalers to be registered with NSW Fair Trading and to report volumes of petrol sold.

**Recommendation 5:** Reduce the frequency of reporting requirements from quarterly to every six months.

**Recommendation 6:** Amend the Act to allow the Panel to add up to one additional representative from a category which would be prescribed by regulation if needed in the future.

**Recommendation 7:** Create a new awareness campaign to create greater consumer awareness of the benefits of ethanol-blended fuel. The campaign could include:

- a focus on the safety of ethanol in cars by continuing the E10 vehicle compatibility check from the E10 Fuel for Thought website
- examining the feasibility of integrating the vehicle compatibility check with the Fuel Check app
- targeted information on the benefits and costs savings of purchasing E10 by seniors who use the new Regional Seniors Travel Card by Service NSW
- information about the potential environmental benefits of using biofuels.

**Recommendation 8:** IPART should continue to undertake its role as currently prescribed under the Act.

## 3. Introduction

### Biofuels in Australia

Biofuels are liquid fuels made from organic material, such as starch, sugar, animal fats and vegetable oils. In Australia, biofuels are generally derived from the waste amassed from the production of other products, such as flour.

There are two main types of biofuels produced in Australia that are used in cars and the transportation industry. These are bioethanol and biodiesel. For simplicity, the term 'biofuels' is generally used throughout this report to refer to both bioethanol and biodiesel. The production of these two fuels involves blending biofuels with regular unleaded petrol and diesel fuel. E10 and E85 are the most commonly available bioethanol blends, with E10 containing 10 per cent ethanol and E85 containing 85 per cent. Biodiesel is available in a number of different blends, with the most common being B5 (5 per cent biodiesel) and B20 (20 per cent biodiesel).

The Commonwealth government regulates the production of ethanol blended fuels, and producers must meet certain requirements for ethanol to be added to petrol for fuel.

Biofuels have been found to improve environmental quality by reducing emissions of harmful pollutants and greenhouse gases. A CSIRO study found that E10 fuel produced in Australia has between two to five per cent lower carbon dioxide emissions than regular unleaded petrol.<sup>1</sup> E10 is considered to be a safe and reliable fuel, and most vehicles built since 2000 will be compatible with E10 blended fuel. For compatible vehicles, there should be no change to performance or drivability.<sup>2</sup>

### Background and context for the Act

The *Biofuels Act 2007* was introduced with the primary objective of supporting the development of a sustainable and competitive biofuels industry in NSW, as well as:

- improving air quality,
- addressing climate change by reducing greenhouse gas emissions,
- providing consumers with cheaper fuel options,
- reducing the reliance of NSW on imported petroleum products, and
- supporting regional development.<sup>3</sup>

At the centre of the Act is the biofuels mandate. The first biofuels mandate in Australia commenced in NSW on 1 October 2007. The mandate required certain fuel retailers to sell a minimum percentage of biofuels. It was introduced as a step towards reducing NSW's dependence on fossil fuels and reducing the state's reliance on imported petroleum products. The Act initially only applied to primary fuel wholesalers, such as Caltex, BP, Mobil and Shell, and required these wholesalers to ensure that bioethanol made up a minimum of two per cent of fuel sold in NSW.

The Act was amended in 2009 to include a series of increases to the ethanol mandate, as well as introducing a mandate for the sale of biodiesel. Currently, the bioethanol mandate in NSW is six per cent and the biodiesel mandate is two per cent. Queensland is the only other Australian state that has a biofuels mandate. It requires that four per cent of all fuel sold must be ethanol and 0.5 per cent of all diesel must be biodiesel.

The Act was last reviewed and revised in 2016 so that the biofuels mandate now only applies to volume fuel retailers. Volume fuel retailers are defined as a person who operates 20 or more service

---

<sup>1</sup> CSIRO, *Biofuels in Australia – an overview of issues and prospects*, 2007, p. 5.

<sup>2</sup> <https://e10ok.initiatives.qld.gov.au/about/vehicle-performance>

<sup>3</sup> NSW Fair Trading, *Regulatory Impact Statement: Biofuels Regulation – May 2016*, p. 3.

stations or any person who operates a volume fuel service station. A volume fuel service station is one which sells three or more types of petrol or diesel and sells more than 900,000 litres per quarter of petrol and diesel combined, in two consecutive quarters. There are approximately 200 volume fuel retailers captured under this definition, which operate almost 1,000 volume fuel service stations in NSW. These changes were enacted following a 2015 report commissioned by the Independent Pricing and Regulatory Tribunal (IPART), which identified and assessed the effectiveness of options to increase the uptake of ethanol blended petrol in NSW.

The biofuels mandate is a standalone energy policy. However, it can also be considered as part of the Government's broader agenda to achieve sustainability in the transport sector, which includes other developments in sustainable fuel technologies including electric vehicles, hydrogen and drop-in fuels. Recently the Government has been developing policies to diversify the state's energy mix, through commitments to invest in fast charging for electric and hybrid vehicles as outlined in the National Hydrogen Strategy, the NSW Electric and Hybrid Vehicle Plan and other plans.

## **Review of the Act**

The Department has conducted this Review on behalf of the Minister for Better Regulation and Innovation in accordance with section 32 of the Act. This report outlines the findings and conclusions of the Review and makes eight recommendations regarding the future operation of the Act and its supporting Regulation. More details about the conduct of the Review are available at Appendix A.

## 4. Review findings and recommendations

### 4.1 Minimum biofuel requirements

The biofuels mandate is established by the minimum biofuel requirements set out in Part 2 of the Act.

Sections 6 and 7 of the Act establish the sales requirements, which mandate that at least six per cent of all petrol sold in NSW by volume fuel retailers must be ethanol and that two per cent of all diesel sold must be biodiesel. The Act indicates an intention to increase the biodiesel mandate to five per cent from January 2012, however, that particular provision never commenced and so the biodiesel mandate continues to be two per cent.

Alongside the sales requirements, volume fuel sellers must also meet availability requirements. These are provided for in the Act and the Regulation and require retailers to:

- ensure that a petrol-ethanol blend is made available at each of the volume fuel retailer's volume fuel service stations (section 8 of the Act)
- ensure that, at each of a volume fuel retailer's volume fuel service stations, petrol-ethanol blend is made as accessible to the customer as any other type of petrol (clause 8 of the Regulation).

These minimum biofuel requirements are intended together to assist in achieving the overall objectives of the Act.

#### Sales requirements for ethanol and biodiesel

For a volume fuel retailer to meet the six per cent ethanol mandate, at least 60 per cent of petrol sold would need to be E10. As demonstrated in Figure 1 below, in 2018-19, only 25 per cent of fuel sales were E10.<sup>4</sup>

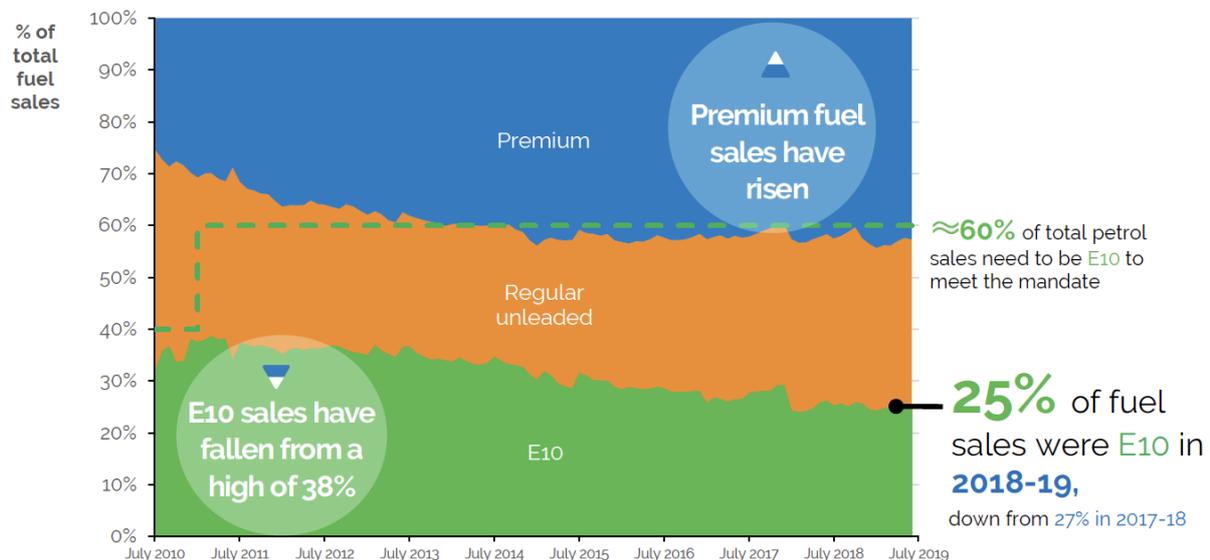


Figure 1: E10 Sales since July 2010, source: IPART, Ethanol Market Monitoring 2018/19 (Final Report, December 2019)

<sup>4</sup> IPART, Ethanol Market Monitoring 2018/19 (Final Report, December 2019) p 5.

The Review sought stakeholder views on both the minimum ethanol and biodiesel requirements, including whether they remain appropriate or whether any changes are needed.

Submissions to the review put forward a wide range of views on the ethanol mandate. Some submissions from biofuel producers and some members of the public sought an increase to or strengthening of the ethanol requirements. There were varying suggestions for how this could be achieved, including requiring petrol at all grades to be a blend of ethanol, including premium unleaded petrol (PULP); requiring a universal blend at 1-2% of every litre sold containing ethanol; and regulating E10 to consist of exactly 10 per cent of ethanol, up from its current approximate nine per cent.

Some submissions opposed the mandate, with some arguing the mandate should be abolished entirely. These submissions expressed concerns about the effectiveness of the mandate, the administrative burden it imposes on retailers and the plateauing, or even declining, use of biofuels in NSW despite the mandate. As an alternative to removing the mandate, some submissions suggested either lowering the mandate or shifting to an aspirational target, rather than prescribing a minimum percentage in the Act.

The existing mandate is a considerable target for retailers. IPART's 2015 report found that making all fuels an ethanol blend (except diesel) would impose substantial financial costs on wholesalers and require retailers to upgrade or invest in new infrastructure.<sup>5</sup> Significant costs would also be imposed on consumers that do not own an ethanol-compatible vehicle.<sup>6</sup>

At the same time, repealing or lowering the mandate at this stage could lead to further declines in current biofuel consumption levels which would undermine the intentions of the Act, as well as the significant financial investments made by retailers to comply with the mandate to date, such as the installation of new infrastructure.

On the biodiesel requirement, there were some suggestions to either limit the application of the requirement or to abolish the biodiesel mandate due to the lack of domestic supply, noting that the Commonwealth's high excise cost prevents the affordable importation of biodiesel.

On balance, the Review considers both the ethanol and biodiesel mandates are important mechanisms that assist in delivering the objectives of the Act. The introduction of the ethanol mandate has increased the overall consumption of ethanol in NSW and removing it risks adverse economic impacts for retailers who have sought to comply with the mandate, as well as a reversal of the consumption gains made. The Expert Panel has acknowledged the issue of limited domestic biodiesel supply through the broad provision of exemptions to retailers. These exemptions ensure that no retailer is penalised due to this lack of supply in the market. Keeping the biodiesel mandate in place means that it will be able to support the Act's objectives once the supply issue is resolved by the market.

### **Availability requirement for petrol-ethanol blends**

As noted above, the Act and the Regulation provide for availability requirements that volume fuel sellers must meet. Feedback on this requirement was again divergent, with some submissions wanting to remove the provision and others calling for a more stringent application of its requirements.

In complying with the availability requirements, retailers must report the number of bowsers and nozzles that are available for the delivery of petrol-ethanol blend at each service station. In 2018-19, more nozzles were dispensing E10 than RULP. Overall, the Review found that the current availability

---

<sup>5</sup> IPART, Ethanol Mandate Options to increase the uptake of ethanol blended petrol (Final Report, May 2015) p 57.

<sup>6</sup> IPART, Ethanol Mandate Options to increase the uptake of ethanol blended petrol (Final Report, May 2015) p 55.

requirements have assisted in delivering market penetration for E10 and improving the fuel's availability to consumers. Changes to the current approach could risk significant additional costs being imposed on businesses who have adjusted the placement of their bowsers and nozzles.

### **Biofuel sustainability standards and fuel quality standards**

As part of the minimum requirements under sections 6 and 7, only ethanol and biodiesel which complies with a prescribed biofuel sustainability standard may be counted towards the volume of fuel sold to meet the mandate. The Regulation currently prescribes two permissible standards:

- RSB Principles & Criteria for Sustainable Biofuel Production (Version 2.1), and
- ISO 13065:2015 Sustainability criteria for bioenergy.

Comments on sustainability standards ranged from suggestions to expand the current list of sustainability standards to increase flexibility and choice of options for producers, to questions about how to ensure producers are adhering to the sustainability standards. At this time, given the small number of producers in the market, it is considered that the current standards are sufficient, noting that additional standards can be added by regulation at a later date if considered necessary. Retailers can only count fuel that meets these standards towards the mandate, and it is therefore considered appropriate for them to continue to be responsible for verifying that any fuel bought is compliant.

Some submissions suggested that NSW should gradually align fuel quality standards for ethanol-blended fuel with European Union Standards. The European Union generally sets an octane rating of RON 95 for market fuels while for E10 in NSW the rating is approximately RON 94. However, fuel quality standards are a matter for the Commonwealth under the *Fuel Quality Standards Act 2000* (Cth).

The octane rating of E10 was also raised as a possible factor influencing consumer attitudes towards the fuel. The Fair Trading Regulation 2019 provides that the octane rating of fuel must be displayed on the fuel pump, and the octane rating of a fuel is the Research Octane Number (RON) rounded down to the next whole number. Manildra has suggested instead using the American Society for Testing and Materials (ASTM) approach to rounding so that the octane rating of E10 as displayed on petrol pumps is rounded up to 95 where the RON is 94.5 or over. Manildra considers that this could lessen consumer concerns about purchasing E10, as most imported cars state that RON95 fuel should be used, although they are compatible with E10.

The Review is concerned that, as E10 is not exactly a 10% blend of ethanol, its RON can be around RON 94 or up to nearly 95. This compares with premium unleaded petrol which is consistently RON 95 or higher. The Review considers it could be misleading to label E10 as RON 95 and is not convinced that this would lead to an increase in ethanol consumption.

### **Compliance and enforcement approach**

Under section 9A of the Act, a volume fuel retailer that fails to comply with the minimum biofuel requirements is guilty of an offence with penalties of up to \$5,500. The Act allows for the granting of exemptions from meeting these minimum requirements. Once an exemption is granted, a retailer is not required to comply and there is no basis to issue fines or to prosecute businesses failing to meet the mandate.

Throughout the review, some stakeholders expressed the view that a stricter approach to enforcement is necessary to ensure compliance with the minimum biofuel requirements, including

issuing fines and prosecutions for any breach. Other stakeholders submitted that increasing penalty amounts or imposing fines will not increase consumer uptake of ethanol.

The compliance and enforcement powers within the Act remain largely untested due to the ongoing granting of exemptions. Strengthening the compliance and enforcement approach in the absence of increased consumer demand for biofuels is unlikely to have any real effect on meeting the mandate and would likely impose additional cost burdens on businesses.

**Recommendation 1:** The existing minimum fuel requirements for ethanol and biodiesel should continue as currently provided for under Part 2 of the Act.

## 4.2 Exemptions from the minimum fuel requirements

The Act allows the Minister to grant an exemption from a minimum biofuel requirement, with a number of grounds for exemptions. The exemptions framework was amended in 2016.

The Department has prepared and published the *Biofuels Exemption Framework and Guidelines* to assist retailers with determining what information they need to attach to an exemption application.

Exemptions may only be granted after consideration of advice from the Expert Panel. The Panel reviews all exemption applications and provides advice to the Secretary of the Department of Customer Service. The Secretary then makes the decision on the exemption, including whether to impose any conditions to the exemption, on the Minister's behalf.

### The exemptions process

Currently, volume fuel retailers may apply for an exemption on the Fair Trading website, which is also linked from the FuelCheck reporting site. Alternatively, retailers can complete a form and email the Department their exemption application with the required information. Exemption applications are assessed by the Panel on a case-by-case basis following a regulated process.

While the Act provides for exemptions to be granted for an indefinite or specified period, the Guidelines suggest that, in practice, exemptions should be for no longer than 2 years. These measures were established to ensure non-compliant fuel retailers work towards meeting the mandate.

The Review sought stakeholder feedback on the current exemption process. While some submissions acknowledged improvements made by the 2016 amendments to the Act, other feedback suggested that the current exemptions process undermines the effectiveness of the mandate. Other submissions proposed introducing more efficient and/or automated processes that could allow for exemptions which extend beyond the current maximum of two years, or expressed concern that the process to apply for an exemption is not user friendly. These submissions highlighted difficulties with using the existing online system and suggested that the means of lodging an application could be modernised.

The Review considered all feedback and has concluded that, in seeking to balance the diverse views on this issue, it is appropriate to retain the Minister's discretionary exemption powers in the Act. Granting exemptions for a limited timeframe allows flexibility to routinely review and determine whether an exemption is still required if the circumstances of the retailer change. An automatic process would still require retailers to periodically provide documentation to justify the exemption, which is unlikely to significantly reduce the administrative burden on retailers under the current application process.

If stricter processes or additional steps were adopted, this may add to the cost businesses incur in applying for an exemption. Imposing a limit on how many times an exemption can be granted would also create undue pressure on businesses that are unable to meet the mandate.

Reflecting on stakeholder feedback about the user-friendliness of the application system, the Review considers there is scope to streamline further and modernise. There has already been significant work to digitise the application process and this has assisted to reduce the time taken to process an application. However, there appears to be scope to further expand this digitisation process, consistent with the Government's support for digitising Government service provision as well as the NSW Better Regulation principles. Implementation of this proposal could include simple changes such as the

provision of a writable PDF format application on the website, while consideration is given to whether wider system changes are needed over a longer term.

**Recommendation 2:** Fully digitise the exemption application process for volume fuel retailers.

### Transparency around exemption decisions

Part 5 of the Act, which covers the operation of the Expert Panel, contains a specific secrecy provision that is intended to safeguard the commercial-in-confidence information that is provided to the Expert Panel, the Minister and the Secretary or other Department employee as part of an exemption application. This provision also prevents disclosure under the *Government Information (Public Access) Act 2009*.

Information can be shared under certain circumstances, such as following a direction of the Secretary if the Secretary certifies that it is necessary to do so in the public interest. Section 23 of the Act also provides that the Minister may from time to time publish information about compliance with the requirements of the Act.

Manildra suggested that the deliberations of the Expert Panel should be made public when granting exemptions, to provide greater transparency and clarity as to the reasons for exemptions.

The Review considers that transparency in Government decision-making is important, particularly since all volume fuel retailers are currently exempt from the Act. However, any changes in this respect need to be carefully balanced with ensuring that commercially sensitive information, which has been provided to the Government in confidence, is appropriately protected.

In this context, the Review considers that there is scope for greater transparency on exemption decisions, without providing details of the reasons for specific exemptions, given the risks of this resulting in the publication of commercially sensitive data. It is proposed that the Act be amended to provide for the kinds of information that can be disclosed concerning exemption decisions, to the extent that it does not compromise businesses' commercial interests or diminish competition among fuel retailers. Such disclosure could include de-identified information on the grounds for granted exemptions, duration of exemptions, and collated data on the types of exemptions determined within specific periods. This sort of information could increase transparency as well as assist other applicants to understand factors that are considered as part of the exemption process.

**Recommendation 3:** Amend the Act to introduce greater transparency around exemption decisions by providing for the specific disclosure of data such as:

- the de-identified grounds for, and durations of, exemptions;
- collated data on exemptions determined within a specified period.

### 4.3 Registration, returns and records

Registration, lodging returns and record-keeping requirements help to determine the scope of the mandate and assist the Expert Panel in assessing whether an exemption should be granted. Both primary wholesalers and volume fuel retailers must provide Fair Trading with information on:

- the total volume of fuel sold for each quarter,
- the total volume of ethanol sold in the form of ethanol-blended fuel and
- the total volume of biodiesel sold in the form of biodiesel blend.

Clauses 11 and 12 of the Regulation specifies other information that must also be reported. Primary wholesalers, volume fuel retailers, and other operators of service stations who do not meet the definition of a volume fuel retailer are required to register with NSW Fair Trading under the Biofuels (Registration) Order 2016.

Fair Trading also proactively registers relevant entities. It does so by collating data from the FuelCheck app and service, which requires all service stations in NSW to register with the service. Fair Trading then reviews each service station's quarterly sales of fuel to determine whether they are captured by the Act. Fair Trading publishes the quarterly ethanol and biodiesel sales reported by major fuel retailers on its website.

#### Primary wholesaler registration and reporting requirements

As noted above, the Act currently requires primary wholesalers ('wholesalers') to be registered with Fair Trading and report volume sales. Wholesaler data helps to track the total supply of ethanol for use in fuel in NSW. However, reports from retailers are used to track compliance with the mandate.

Submissions to the Review raised concerns that wholesaler reporting may have led to data distortion, double counting and over reporting as retailers are also required to provide similar data.

The Review considered these submissions and agrees that wholesale data may not be providing sufficient benefits when compared to the cost of reporting. There may also be a risk of double reporting, as primary wholesalers often sell fuel across state boundaries as a bulk sale with high volumes sold. This can make it difficult for wholesalers to determine how much of each product is sold in each jurisdiction and risks inaccurate reporting. A review of the statistics provided by retailers concluded that these are sufficient to measure the sale of biofuels in NSW.

Removing the wholesaler reporting requirement should lead to a reduction in the cost of doing business in NSW by reducing the labour-intensive calculations required to report on volumes of fuel sold.

**Recommendation 4:** Amend the Act to remove the requirement for primary wholesalers to be registered with NSW Fair Trading and to report volumes of fuel sold.

#### Reporting frequency

Currently, the Act requires volume fuel retailers, service station operators and primary wholesalers to lodge returns with Fair Trading every 'relevant period'. A relevant period is defined in section 3(1A) of the Act as every three-month period that starts at the beginning of October, January, April and July each year. Reports must be lodged within one month after the end of each quarter.

The Act permits the Regulation to flexibly change what is defined as the 'relevant period'.

Several submissions suggested reducing the number of times that businesses are required to report their sales by changing the financial returns reporting period to six months or annually. Stakeholders submitted that this would ease the regulatory burden on fuel businesses which already have significant reporting requirements under other regulatory schemes.

Changing the relevant period from quarterly to every six months or annually could reduce the costs for businesses who comply with their reporting requirements under the Act.

The NSW Government is committed to simple and streamlined compliance reporting where possible. With this objective in mind, the Review considers there would be benefits to reducing the frequency of formal reporting to every six months. Such reports would still cover the two previous quarters so the data provided would indicate promptly whether a retailer is covered by the mandate.

**Recommendation 5:** Reduce the frequency of reporting requirements from quarterly to every six months.

## 4.4 Biofuels Expert Panel

The constitution of the Panel is set out in section 24 of the Act. Membership is by Ministerial appointment and members may hold office for four years and be re-appointed. The Act establishes the Panel as consisting of:

- the Secretary of the Department of Customer Service or the Secretary's nominee,
- a person employed in the Department of Industry with expertise in regional industry development nominated by the Secretary of that Department,
- the Chairperson of the Environment Protection Authority or the Chairperson's nominee
- the Director-General of the Department of Primary Industries within the Department of Industry or the Director-General's nominee,
- the Commissioner for Fair Trading or the Commissioner's nominee
- the Secretary of the Treasury or the Secretary's nominee
- up to three persons appointed by the Minister who has recent experience or expertise in the petroleum or biofuels industry.

The three industry representatives currently on the Panel are nominees from Bioenergy Australia, the Australian Institute of Petroleum and the NRMA.

The role of the Expert Panel is to advise the Minister on:

- proposed exemptions from the mandate and other biofuels requirements and the variation or revocation of such exemptions,
- the suspension of the biofuel minimum requirements, and
- other matters related to the Act that may be referred to the Expert Panel by the Minister.

### Membership of the Biofuels Expert Panel

During the review, feedback was sought on the role and composition of the Biofuels Expert Panel. Some stakeholders suggested possible changes to the composition of the Panel, with one submission suggesting the inclusion of members with more scientific expertise, such as the Commonwealth Scientific and Industrial Research Organisation (CSIRO). Manildra proposed reducing the number of departmental representatives and instead adding more industry representatives, including at least one domestic biofuel producer.

The Review has examined the current composition and considers that is not appropriate for individual retailers to be on the Panel due to the commercially sensitive information that it considers. Additionally, while industry expertise plays a vital role in ensuring the Panel understands issues in the biofuels market, there was little evidence provided to support the immediate need for additional representatives. That said, the market is evolving, and new industries and technologies are emerging and developing. On this basis, it is considered that there would be merit in future-proofing the Panel membership by introducing flexibility within the Act to allow the Minister to appoint up to one additional industry panel member that may be needed to represent changes in the sector.

**Recommendation 6:** Amend the Act to allow up to one additional representative to be added to the Panel from a category which would be prescribed by regulation, so that such a representative can be added if necessary, in the future.

## **4.5 Consumer uptake of biofuels**

### **Facilitating change of consumer behaviour**

A key focus of the Review was on ways to generate or increase consumer demand for biofuels. Overcoming consumer aversion to or uncertainty about ethanol-blended products will be vital to increasing biofuel uptake to meet the mandate and develop a sustainable and competitive biofuels industry in NSW.

Previous Government information campaigns, such as the 2017 E10 Fuel for Thought campaign, were aimed at dispelling misconceptions about E10 by educating and assuring consumers about the safety of E10 for use in compatible petrol vehicles.

Despite this, a number of submissions shared concern over an apparent lack of consumer uptake of biofuels, naming it as the primary factor behind retailers being unable to meet the mandate. While some submitted that the mandate should be repealed for this very reason, others sought further action by the Government to inform consumers about the benefits of ethanol-blended fuel and encourage biofuel uptake.

In this context, the Review recommends the development of a refreshed education campaign. This could be used to help invigorate uptake of E10 as a fuel of choice for consumers. This campaign should be multifaceted and use several marketing channels to target various parts of the community. Given increased community concerns about the environment and climate change, and about self-sufficiency and fuel security in the wake of COVID-19, the campaign could highlight the environmental benefits of ethanol blended fuel and other benefits, such as reduced reliance on imported fuel and support for regional jobs.

There is potential for the campaign to leverage off existing Government resources, including the two key communication tools that currently support the biofuels mandate in NSW – the FuelCheck app and E10 Fuel for Thought campaign. In particular, one proposed option is to explore the feasibility of integrating the E10 compatibility checker (that is part of the E10 Fuel for Thought campaign) into the FuelCheck app and website. The FuelCheck website delivers real time fuel prices of every service station in NSW to consumers on their individual digital devices and has significant uptake amongst consumers. Since its launch in August 2016, the FuelCheck website has had 13 million visits and the app was downloaded more than 946,231 times as at May 2020.

An education campaign could additionally tap into other existing Government resources, such as the new regional seniors' travel card utilised by Service NSW. The regional seniors travel card is a \$250 prepaid card for eligible seniors living in regional, rural and remote areas of NSW to spend on travel costs, including fuel. Promoting the benefit of cost savings from purchasing E10 fuel may encourage more seniors to purchase it over other fuel options.

**Recommendation 7:** Develop a new education campaign to create greater consumer awareness of the benefits of ethanol-blended fuel. The campaign could include:

- a focus on the safety of ethanol in cars by continuing the E10 vehicle compatibility check from the E10 Fuel for Thought website
- examining the feasibility of integrating the vehicle compatibility check with the Fuel Check app
- targeted information on the benefits and costs savings of purchasing E10 by seniors who use the new Regional Seniors Travel Card by Service NSW
- information about the potential environmental benefits of using biofuels, and other benefits such as reduced reliance on imported fuel and support for regional jobs.

## 4.6 The role of the Independent Pricing and Regulatory Tribunal (IPART)

In January 2015, the NSW Government asked the Independent Pricing and Regulatory Tribunal (IPART) to identify and assess options to increase the uptake of ethanol blended petrol in NSW, to meet the six per cent mandate. In its report, IPART set out options for reform the Government could introduce to improve the retail fuel industry's performance against the ethanol mandate, as well as measures to encourage more consumers to use E10.

Under the 2016 reforms to the Biofuels Act, IPART was given an ongoing role, under Part 3A of the Act, to determine and periodically review a reasonable wholesale price for ethanol for use in the production of petrol-ethanol blends such as E10. IPART is also required to monitor the retail market (including prices) for petrol-ethanol blends and report to the Minister on the market effect of a determination of the reasonable price for wholesale ethanol.

A number of submissions commented on IPART's role and the potential for possible further functions or reviews. Suggested topics included examining broader issues in the biofuels industry and market, options to address non-compliance, and monitoring of the retail pricing differential between alternative high-octane fuels and E10. One submission also raised technical concerns about how IPART calculates a reasonable wholesale price for ethanol.

The current regular IPART reporting that is required under the Act provides useful data and analysis on the biofuels market. IPART has also previously undertaken one-off investigations into biofuels and can do so again without any amendment to the Act. For example, the 2015 IPART report, which considered a range of options to increase the uptake of ethanol-blend, was undertaken as a one-off study and influenced the reforms to biofuels regulation introduced in 2016.

On this basis, a further mandated role for IPART is not considered necessary, with some of the proposed areas of investigation potentially overlapping with the Australian Competition & Consumer Commission (ACCC), such as monitoring premium petrol prices. The Government also continues to be able to request IPART undertake additional investigations as needed.

**Recommendation 8:** IPART should continue to undertake its role as currently prescribed under the Act.

## 5. Appendix A

### Consultation approach

On 1 October 2019, the Department released a Discussion Paper on the statutory review of the Act for the public to provide feedback on the regulation of biofuels in NSW. The Discussion Paper explored all parts of the current regulatory framework established by the Act and Regulation and welcomed comments on other general matters that are relevant to improving biofuels regulation.

The consultation was held for four-weeks, during which the Department received 24 submissions. Two of these submissions were confidential. The Discussion Paper was also publicised on the Department's social media channels, attracting 76 comments.

All the submissions made during the consultation were reviewed and considered as part of the statutory review of the Act and Regulation.

### List of submissions to the Review

- C.1 BP Australia
- C.2 NRMA
- C.3 Confidential
- C.4 Australasian Convenience and Petroleum Marketers Association
- C.5 Wilmar Sugar
- C.6 Caltex Australia
- C.7 Bioenergy Australia
- C.8 Australian Institute of Petroleum
- C.9 Manildra Group
- C.10 United Petroleum Pty Ltd
- C.11 Anna Harvey
- C.12 Anonymous submission
- C.13 John Taylor
- C.14 Jonathan Nichol
- C.15 Benjamin James Parker
- C.16 Confidential

- C.17 Anonymous submission
- C.18 Anonymous submission
- C.19 Anonymous submission
- C.20 Anonymous submission
- C.21 Anonymous submission
- C.22 Anonymous submission
- C.23 Anonymous submission
- C.24 Anonymous submission

**NSW Fair Trading**

**Address: PO Box 972, Parramatta NSW 2124**

**Phone: 13 32 20 | TTY 1300 723 404**

**Department of Customer Service**

**For more information contact: [Policy@customerservice.nsw.gov.au](mailto:Policy@customerservice.nsw.gov.au)**

Except for the NSW Government logo, you may freely copy, distribute, display or download this information with some important restrictions. See NSW Fair Trading's copyright policy at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) or email [publications@customerservice.nsw.gov.au](mailto:publications@customerservice.nsw.gov.au)

**Disclaimer**

This publication may contain information about the regulation and enforcement of doing business in NSW. It may include some of your obligations under some of the legislation that NSW Fair Trading administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

This material may be displayed, printed and reproduced without amendment for personal, in-house or non-commercial use.

© State of New South Wales through NSW Fair Trading