

Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015.

Policy objectives

The objectives of the Bill are to amend the *Liquid Fuels Supply Act 1984* (the Act) to:

- provide assurance to existing ethanol and biodiesel producers and stimulate investment in a biofuels industry in Queensland
- contribute to regional growth and jobs creation
- reduce greenhouse gas emissions from motor vehicles, and
- take advantage of the emerging second generation technologies for biofuels from a range of feedstock.

Reasons for the Policy Objectives

The Bill delivers on the Queensland Government's commitment to grow the biofuels industry in Queensland.

To achieve this, the Government is introducing a biobased petrol mandate and a biobased diesel mandate to grow the biofuels industry and support the further development of a high-tech bio-manufacturing industry—but doing this in a managed and responsible way to ensure optimal outcomes for the Queensland economy and jobs growth, while at the same time protecting the environment, minimising costs to industry and avoiding unintended consequences.

The biofuel industry and particularly ethanol has struggled to advance due to a lack of long-term policy certainty and decisions of previous governments not to support a mandate. Ethanol-blended fuels containing up to 10 per cent ethanol (E10) have been offered in Queensland for more than a decade but sales have declined from a peak of around 900 megalitres (ML) of ethanol-blended fuel sold in Queensland in 2010 to around 350 ML in 2013-14. This is the equivalent of approximately 90 ML and 35 ML of ethanol respectively.

Bio-manufacturing, or bio-refining, can convert biomass into a range of value-added chemicals, plastics and fuel. Bio-manufacturing uses advanced technologies to transform organic material such as agricultural feedstock and waste into a range of products, including bio-crude oil which can be refined into different fuels including petrol and diesel.

Queensland is in a strong position to take advantage of a global growth opportunity in bio-manufacturing with its tropical and subtropical climate, technically advanced agricultural sector and availability of large biomass supplies including waste.

But there are potential negative effects if the mandated target for biobased petrol were set too high initially or increased at a predetermined time or a predetermined rate. As such, the Bill provides for a 2 per cent mandate for biobased petrol that can include ethanol or other biobased fuel. Practically speaking, this is a mandate to support the uptake of ethanol blended fuels in the first instance, but the Bill allows for inclusion of other biofuels in the future, for example, bio-crude oil derived from waste or algae that can be refined into petrol or diesel.

The 2 per cent is to be calculated against total sales of regular unleaded petrol plus a regular petrol blend (such as E10) but excluding premium petrol, ensuring consumers will retain choice at the bowser. A higher mandated target at this point may affect consumers' choice of fuel at the service station and/or exceed local production capacity for ethanol, forcing fuel sellers to import ethanol or source other biobased petrol from interstate or abroad and would not allow sufficient lead time for fuel sellers to install or convert facilities for its supply to consumers.

Total production capacity of Queensland's two ethanol producers is around 140 ML per year, which is estimated to be capable in the longer term of meeting a mandate of between 2.8 and 4.7 per cent depending on Queensland's future fuel sales.

In response to the discussion paper: *Towards a clean energy economy: achieving a biofuel mandate for Queensland June 2015* and stakeholder consultations, the Bill also sets an initial 0.5 per cent mandated target for biobased diesel. Biobased diesel includes both biodiesel and other renewable diesel fuels produced from plant oils and animal oils, biomass or waste. The production capacity of Queensland's only biodiesel facility at Narangba is around 30 ML of biodiesel per year using tallow and used cooking oil as its feedstock.

The mandated targets for ethanol and biodiesel, while prescribed in the Bill can be increased or altered by regulation. The Government's decision however to increase the biobased petrol mandate from 2 per cent and similarly to increase the 0.5 per cent for biobased diesel will be subject to a review and recommendation from the Queensland Productivity Commission. The Commission will consider the economic, social and environmental benefits of the mandated targets and how they support domestic production of biofuels, and support growth in Queensland's bio-manufacturing industry, as opposed to growing an importation market from interstate or abroad for biobased fuels and other biobased products.

Achievement of policy objectives

The Bill achieves the policy objectives by setting a mandate for biobased petrol and biobased diesel.

Level of the mandate

The Bill imposes a requirement on certain fuel sellers to meet a sales target for biobased petrol, starting at 2 per cent of total sales of regular unleaded and a regular petrol blend (such as E10), and a sales target for biobased diesel starting at 0.5 per cent of total sales of diesel and a biobased diesel blend.

Increasing the mandated percentages

The minimum percentages for biobased petrol and biobased diesel can be increased, or decreased by regulation. The Bill specifies the minimum amounts for sustainable biobased petrol and sustainable biobased diesel, unless a regulation prescribes the minimum amount. While not reflected in the Bill, any increases to the mandates will be subject to review and advice from the Queensland Productivity Commission.

Liable parties

The Bill requires fuel wholesalers (if a regulation prescribes a percentage) and fuel retailers with 10 or more service stations or which sell more than a threshold volume of petrol in a calendar quarter to sell the '*minimum amount*' of sustainable biofuel and:

- submit quarterly returns to the chief executive to demonstrate compliance with the mandates, and
- retain records of all fuel sales supporting the returns for a minimum of two years.

Fuel retailers who own or operate less than 10 service stations may be liable to meet the mandate for biobased petrol if they sell more than 250 000 litres of a combined volume of petrol fuel in a calendar quarter at any one of the service stations that the fuel retailer owns or operates. If a fuel retailer is not selling a blended fuel, the 250 000 litres would relate to the combined volume of regular unleaded petrol and premium unleaded petrol.

Based on industry feedback, this threshold attempts to strike a balance between the impost of the mandates and equity in the retail sector. The New South Wales (NSW) arrangements, which exclude retailers with less than 20 service stations has led to situations where similar sized competing service stations in close proximity with one being obligated to sell E10 and the other not. However, the threshold amount will be able to be adjusted by regulation over time and potentially before the biofuels mandate commences if it needs to be. For those fuel retailers that exceed the threshold amount, the 2 per cent biobased petrol mandate will be calculated differently, and only against total sales of regular unleaded and a regular petrol blend at the service stations which trigger the threshold amount, rather than total volumes across all sites.

For fuel wholesalers, the biobased petrol requirement will apply only if a regulation is made to prescribe a percentage for the definition of '*wholesale percentage*'. Therefore, initially, fuel retailers will be subject to biobased petrol mandate but not fuel wholesalers. Given the supply chain arrangements between wholesalers and retailers, it should only be necessary to apply the biobased petrol mandate at the wholesale level if there is evidence that sufficient supplies of biobased petrol are not being made available to retailers.

However fuel wholesalers are subject to the biobased diesel mandate but not fuel retailers. Up to 5 per cent biodiesel can currently be added to mineral diesel in Australia without a requirement to label the fuel as a blend or provide other consumer information under the Commonwealth legislated fuel standards for diesel. In contrast to petrol, the consumer doesn't know or have a choice in purchasing diesel that contains biodiesel as it is common for biodiesel to be blended with diesel. Other types of biobased diesel sometimes referred to as renewable diesel can be produced from biomass or waste, must meet the fuel quality standard for diesel rather than biodiesel and can be blended with mineral diesel in any quantity. Renewable diesel can be a product in its own right or blended with mineral diesel.

Registration and initial report

Based on industry feedback to the discussion paper, the Bill requires all fuel sellers to be registered within one month of the relevant provisions commencing, providing the chief

executive with details of the business and fuel facilities such as the number of service stations a retailer owns or operates, their location and types of fuel sold at each fuel facility.

A report on volumes of fuel sold will be required from all fuel sellers, both fuel wholesalers and fuel retailers within one month of the relevant provisions commencing, for the previous calendar quarter. For example, if this requirement is commenced on 1 January 2016, the initial report will relate to the calendar quarter beginning on 1 October 2015, and six months before the mandate is proposed to come into effect.

The fuel sellers' register, in conjunction with the initial report required under section 60 on volumes of fuel sold for one calendar quarter, will assist the department to understand the structure of the industry and the volumes and type of fuel being sold into the Queensland market and therefore to identify which fuel retailers will potentially be liable to meet the biofuels mandate for biobased petrol.

As the department does not hold or have access to existing reliable data on the fuel industry in Queensland, it is necessary to oblige all fuel sellers to be registered and to keep the register up to date as well as to provide the initial report on fuel sales to provide a reliable base line of data.

The intention is to commence the registration and initial report obligations at least three to six months before a biofuels mandate under sections 35B or 35C commence to apply.

Unlike the quarterly returns, information contained in the initial report on fuel sales and registration information will be treated in strict confidence and no confidential information will be published.

Sustainability criteria

The sustainability criteria are intended to reduce the likelihood of unintended environmental impacts such as increased use of fertiliser and runoff entering the Great Barrier Reef. Fuel sellers may only count biobased petrol, such as ethanol in blended petrol that is consistent with the 'sustainability criteria', that is, ethanol or other biofuel derived from a sustainable source of feedstock, towards meeting the mandated percentages. Similarly, biobased diesel that meets the sustainability criteria will be eligible to be counted towards meeting the biobased diesel mandate. The sustainability criteria will be prescribed by regulation.

Exemptions and suspensions

Individual fuel sellers will be able to apply to the Minister for an exemption from meeting the biobased petrol or biobased diesel mandate and the Minister will have powers to suspend the operation of the mandates for up to one year, if for example, there is an industry-wide shortage of biofuels. Before granting an exemption, the Minister may consult 'stakeholders', for example a person or entity with expertise or an interest in biobased petrol or biobased diesel and/or arrange for an audit of the fuel seller's business.

Publishing data on performance

The Bill provides for the chief executive to publish information about the performance of fuel sellers towards meeting the mandates, derived from fuel sellers' quarterly returns, on the department's website.

Annual reports

Once the mandates have commenced, all fuel sellers will be required to give the chief executive an annual report on total volumes of fuel sold in a financial year. The report

must state the volume of petrol, petrol-biobased petrol blend, diesel, and diesel-biobased diesel blend that the fuel seller supplied from each of the fuel seller's fuel facilities—

- in the last financial year, and
- in each calendar quarter in the last financial year.

Some fuel sellers will be obligated to meet the biofuels mandates and submit quarterly returns. As such to avoid duplicate reporting, if the fuel seller gives the chief executive the information required in an annual report, in or with the quarterly returns given under section 35E for the calendar quarters in the financial year, the fuel seller does not have to provide the annual report.

Alternative ways of achieving policy objectives

An alternative option to legislating mandated targets would be to set a voluntary target for biofuels sales in Queensland. However, experience has proved this approach is not capable of delivering on the policy objectives. A legislated mandate is a commitment from Government that will provide policy certainty to the biofuel industry to enable it to plan and invest accordingly.

Estimated cost for government implementation

The Queensland Government will oversee implementation of the Bill and the ongoing administration of the biofuels mandates. Compliance with the mandated minimum requirements for biobased petrol and biobased diesel will be monitored by scrutiny of fuel sellers' quarterly returns. The proposals in the Bill will be implemented with the assistance of relevant government departments, in particular the departments of: The Premier and Cabinet; Energy and Water Supply; and Environment and Heritage Protection; as well as the Queensland Treasury from within existing government resources.

There will be some costs for government in establishing the fuel sellers' register and a secure repository for fuel sellers' registration details and reports to be provided under the Bill.

The Department of Environment and Heritage will lead development of the 'sustainability criteria' to determine appropriate and sustainable practices in growing a biofuels industry. For example, it will not be possible to count biodiesel produced from imported virgin palm oil from unsustainable sources towards meeting the biobased diesel mandate.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles under section 4 of the *Legislative Standards Act 1992*. The following provisions of the Bill may not be consistent with or may breach the fundamental legislative principles.

Clause 6 inserts section 35B (Sustainable biobased petrol requirement) and section 35C (Sustainable biobased diesel requirement) which require certain fuel sellers to comply with the 'minimum amount' that is, the mandated targets that may be prescribed by regulation. The Bill states an initial mandate of 2 per cent for biobased petrol and 0.5 per cent for biobased diesel but these amounts may be amended by regulation. The biobased petrol mandate will apply to fuel wholesalers only if a regulation prescribes a percentage for the definition of 'wholesale percentage'.

The regulation-making powers are necessary to ensure that the growth of the biofuels industry in Queensland occurs in a responsible and managed way. Given the supply chain arrangements between wholesalers and retailers, it should only be necessary to apply the biobased petrol mandate at the wholesale level if there is evidence that sufficient supplies of biobased petrol are not being made available to retailers. A future regulation may apply a different percentage at the wholesale level compared to the 'retail percentage' and will be informed by the industry reports to be provided to the chief executive under the Bill.

Under section 35A (Application of div 1) a small fuel retailer who sells more than 250 000 litres of petrol fuel in a calendar quarter from one or more of the service stations the person owns or operates, will become liable to meet the 2 per cent mandate for biobased petrol. While the threshold amount has been determined on the best available estimates of fuel sales and industry composition, the amount may need to be adjusted over time and potentially before the mandate commences. The regulation-making power will enable this to occur in a timely manner should this be necessary and provides the flexibility needed to ensure the threshold is set at the appropriate level.

It is also necessary to provide for the '*sustainability criteria*' to be prescribed by way of regulation, subsequent to the passage of the Bill. There will be extensive consultation with industry and other stakeholders in developing the criteria with the intention that they are available in sufficient time before the provisions of the Bill imposing the biofuels mandates commence.

Clause 6 inserts new section 35G (Granting exemption) which gives the Minister power to exempt a fuel seller from complying with the mandates on application by the fuel seller. This provision may vary the effect of the Act and thus may not have sufficient regard to the institution of Parliament. The provision is needed to provide flexibility to address unintended consequences and protect individual fuel sellers from unreasonable obligations. The Minister's decision is not subject to review, although judicial review is not prevented. The grounds for an exemption are clearly stated in section 35G and the Minister may consult with a person or entity with relevant expertise in government and industry, and/or arrange for an audit of the fuel seller's business before deciding to grant or not grant an exemption.

Clause 6 inserts new section 35J (Suspending sustainable biofuel requirement) which gives the Minister power to suspend, by declaration, the application of the mandates to all fuel sellers or a class of fuel sellers if there are sufficient grounds to do so, such as evidence of an industry-wide shortage of the supply of sustainable biofuels or a sustainable biofuel blend. This power may vary the application of the Act and thus may not have sufficient regard to the institution of Parliament. It may be arguable that suspension of the mandates should be a decision of Parliament. However, the provision is considered justified and is necessary to ensure circumstances which may arise on an industry-wide basis or affecting a significant number of fuel sellers can be addressed quickly. The declaration cannot suspend a mandate for more than one year. If an amendment to the Act is needed, this period should be sufficient to enable that to occur. The declaration is deemed to be subordinate legislation and therefore will be subject to Parliamentary scrutiny and disallowance.

Clause 6 inserts section 35R (Publishing information) and 35S (Compensation). Section 35R allows the chief executive to publish information derived from fuel sellers' quarterly returns on the department's website. This may be considered an invasion of privacy. Publication of the performance of fuel sellers' compliance with the biofuels mandates is a key element of the scheme in Queensland as it is in NSW and is considered to be justified. To protect commercial-in-confidence information, only percentages of

sustainable biofuel in the fuel sold by fuel sellers will be published. The NSW scheme has an equivalent provision on which this section in the Bill has been drafted.

Section 35S excludes the operation of the compensation provisions of section 50 of the Act in relation to a provision of part 5A, or a direction, prohibition or requisition directed to the fuel seller for part 5A. This may be considered an inconsistency for the Act as a whole. Section 50 provides compensation for costs to relevant parties (on application and within time) and for which the party is not otherwise indemnified, arising generally in emergency or extraordinary situations. The operation of part 5A can be distinguished from the other provisions of the Act in this regard. It is considered inappropriate to provide compensation to fuel sellers for their costs in meeting or complying with a regulatory obligation imposed under or relating to part 5A. However, a claim is not prevented if the person giving a direction, prohibition or requisition to a fuel seller for part 5A did not act in good faith or acted with negligence.

Offences and penalties

The Bill includes a number of new offence provisions and penalties. These offences and penalties have been drafted with reference to the equivalent offences and penalties in the NSW legislation. Maximum penalties have been set at a lower level to that of the NSW legislation, although are at a higher level to penalties generally within the Act. This may be considered inconsistent. The new penalties need to be set at a level that will provide a deterrent to non-compliance and as such at a higher level than existing penalties.

The following are offences in new part 5A, division 1 (Sale of sustainable biofuel) inserted by clause 6 of the Bill.

Section 35B (Sustainable biobased petrol requirement) provides an offence for failure of a fuel seller to sell at least the minimum amount of sustainable biobased petrol in each calendar quarter, with a maximum penalty of 200 penalty units for a first offence and 2 000 penalty units for a second or later offence; and section 35C (Sustainable biobased diesel requirement) provides an offence for failure of a fuel seller to sell at least the minimum amount of sustainable biobased diesel in each calendar quarter, with a maximum penalty of 200 penalty units for a first offence and 2 000 penalty units for a second or later offence. Although the penalties for non-compliance are significant, it is noted the penalties prescribed for the equivalent offences in the NSW scheme are 500 and 5 000 penalty units for a first and subsequent offence, respectively. Section 35D (Defence for sustainable biofuel requirement) provides a defence for a fuel seller in any prosecution against the fuel seller for non-compliance with section 35B or 35C to prove they took all reasonable steps to prevent the offence. The court may have regard to the 'reasonable steps' taken by the fuel seller to comply with the provisions as outlined in the section.

Section 35E (Quarterly returns) provides an offence for failure of a fuel seller to give the chief executive a return within one month after the end of each calendar quarter, with a maximum penalty of 100 penalty units. The fuel seller is liable unless they have a reasonable excuse.

Section 35F (Record keeping) provides an offence for failure of a fuel seller to keep relevant sales records for each quarter for at least two years after the end of the calendar quarter in which the sales happened, with a maximum penalty of 100 penalty units. The fuel seller commits the offence unless they have a reasonable excuse.

Section 35H (Complying with conditions of exemption) provides an offence for failure of a fuel seller to comply with the conditions of an exemption, with a maximum penalty of 200 penalty units. This offence is a strict liability provision but is considered justified in

this instance because of the nature of the offence. Exemption conditions may provide for compliance with a reduced biofuel requirement for a period or a full exemption for a period of time. The maximum penalty is equivalent to the maximum penalty for the first offence of non-compliance with a sustainable biofuel requirement.

The following are offences in new part 5A, division 2 (Register of fuel sellers) and division 3 (Other provisions) inserted by clause 6 of the Bill. For consistency, all offences have a maximum penalty of 100 penalty units and are not strict liability, that is, the offence is committed unless the fuel seller has a reasonable excuse or other defence. Clause 9 inserts sections 59 and 60 establishing comparable provisions and penalties in the transitional provisions for the Bill.

The obligations imposed on fuel sellers under new part 5A, divisions 2 and 3 and sections 59 and 60, to register, provide an initial report on volumes of fuel sold in a calendar quarter and subsequently to submit annual reports on volumes of fuel sold are necessary impositions on fuel sellers to enable the efficient administration of the mandates and ongoing review. Although they impose some additional regulatory burden on fuel sellers, it is not expected that compliance will be an onerous task, as the information is already collected by fuel sellers for business, taxation and fuel excise purposes. The reporting periods have been purposely aligned to financial years and calendar quarters to minimise the burden of providing the reports to the chief executive.

Section 35M (Giving registration information) provides an offence for failure of a fuel seller to give the chief executive their registration information within one month of becoming a fuel seller unless they have a reasonable excuse. Note that section 59 inserted by clause 9 (Giving registration information) imposes an equivalent obligation on existing fuel sellers to provide their registration information within one month of the provision commencing.

Section 35N (Notifying changes) provides an offence for failure to notify the chief executive of any change to the fuel seller's registration information or to provide notice if the fuel seller stops being a fuel seller within one month of the change or ceasing to be a fuel seller unless they have a reasonable excuse.

Section 35O (Obtaining complete and clear information) provides an offence for failure to give the chief executive stated information within no less than 14 days in response to a notice from the chief executive unless they have a reasonable excuse.

Section 35P (Reporting fuel sold) provides an offence for failure to provide a report to the chief executive on volumes of fuel sold for a financial year by 31 July each year unless they have a reasonable excuse.

Section 35Q (False and misleading information) provides an offence for a person to give the chief executive information the person knows is false or misleading in a material particular. However, the offence does not apply if, when giving the information in a document, the person tells the chief executive how the document is false or misleading and the person gives the correct information to the chief executive.

Section 60 (Giving initial report) provides an offence for failure to give the chief executive a report on total volumes of fuel sold in the calendar quarter preceding commencement of the section, unless they have a reasonable excuse.

The maximum penalties assigned to the new offences are considered appropriate and proportionate with the nature of the offences and provide a sufficient deterrent to non-compliance.

Consultation

Extensive industry consultation was undertaken in April and May 2015. Following this, the Government foreshadowed its intention to introduce a biofuels mandate with the release of a discussion paper: *Towards a clean energy economy: achieving a biofuel mandate for Queensland June 2015*.

During June 2015, as part of the consultation on the discussion paper, the Department of Energy and Water Supply (the department) in conjunction with partner agencies, researchers and industry experts held nine public forums and three industry workshops in different parts of the state. Almost 300 people attended the public forums in Dalby, Bundaberg, Townsville, Ingham, Ayr, Mackay, Mareeba, Brisbane and Innisfail.

At the close of submissions on 3 July 2015, 88 written submissions had been received from a diverse range of stakeholders including major oil companies, individual community members, fuel wholesalers and retailers, cane farmers, tertiary institutions, the meat and livestock industry, biofuel refineries and proponents, the motor industry and peak agricultural bodies.

The results of written submissions and the public and industry forums have informed the development of the Bill and enabled refinements to be made to the proposed framework for introduction of the mandates. A consultation report documenting the outcomes of the consultation program is to be published on the department's website.

Consultation with a key stakeholder group representing major fuel suppliers (Australian Institute of Petroleum), small, medium and independent fuel suppliers (Australasian Convenience and Petroleum Marketers Association), the biofuels industry (Biofuels Association of Australia) consumers and the motoring public (RACQ) and research and development (James Cook University) has been ongoing since the close of submissions. The group has provided input on key aspects of the Bill and will provide advice to government in coming months on a range of implementation issues.

Results of consultation

Community and industry stakeholders

Overall, industry stakeholders have indicated that a legislated mandate for biobased petrol and biobased diesel will provide the demand they need to develop a biofuel industry in Queensland.

The RACQ supports a 2 per cent biobased petrol mandate from 2016, as long as consumer choice of fuel is maintained. The major oil companies are prepared to support the proposed 2 per cent mandate, however they do not believe a mandate should be applied to wholesalers. The peak body representing wholesale distributors and small service station operators has identified the possible costs to install new tanks for biobased petrol that includes ethanol.

Many stakeholders suggested that an education campaign will be essential to overcoming the myths surrounding ethanol-blended petrol. Further work will be undertaken to determine the role that government, industry and peak bodies will play in a consumer education and awareness campaign.

There was broad support for a biobased diesel mandate and for increasing the targets for both types of biofuel over time in line with industry development and consumer demand.

Government

All Queensland departments and agencies consulted support the Bill.

Consistency with legislation of other jurisdictions

The Bill is not part of national scheme legislation. However, NSW has established mandates for ethanol and biodiesel. The Bill has been drafted in consideration of the NSW scheme and is consistent with some aspects of that scheme; however a key difference is that the Queensland Government will have greater control over the timing of any increase to the mandates as well as determining the absolute threshold for both biobased petrol and biobased diesel through regulation-making powers provided in the Bill.

Another key difference is that compliance against the NSW scheme is calculated using the total petrol and diesel volumes in the state, whereas in Queensland compliance against the biobased petrol mandate will be calculated using the total volume of regular unleaded petrol and a regular petrol blend (such as E10), rather than all petrol sold. This means that sales of premium unleaded petrol will not be used when calculating compliance volumes and maintains customer choice at the bowser.

Unlike NSW which has an expert panel that advises the Minister on exemption applications from fuel sellers, the Minister will be able to seek advice from a person or entity with expertise or an interest in biofuel before granting an exemption.

Notes on provisions

1 Short title

Clause 1 provides the short title of the Act is the *Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Act 2015* (this Act).

2 Commencement

Clause 2 provides for commencement of this Act to be on a day fixed by proclamation.

3 Act Amended

Clause 3 provides that this Act amends the *Liquid Fuel Supply Act 1984*.

4 Amendment of s 5 (Interpretation)

Clause 4 subclauses (1) and (2) amend the heading of section 5 and insert new definitions for the purposes of the Bill, including for the following key terms reproduced here:

biobased diesel means—

- (a) biodiesel
- (b) other fuel for diesel engines produced from—
 - (i) plant oils or animal oils; or
 - (ii) biomass; or
 - (iii) waste.

biobased petrol means—

- (a) ethanol
- (b) other fuel for petrol engines produced from—
 - (i) plant oils or animal oils; or
 - (ii) biomass; or
 - (iii) waste.

The definitions for ‘biobased diesel’ and ‘biobased petrol’ include the potential for other biobased fuel additives apart from ethanol and biodiesel, as these become available in commercial quantities.

biodiesel has the meaning given under the *Fuel Quality Standards Act 2000* (Cwlth).

calendar quarter means a period of 3 calendar months starting on 1 January, 1 April, 1 July or 1 October of a year.

diesel means fuel for diesel engines produced from petroleum.

diesel-biobased diesel blend means a blend of diesel and biobased diesel.

fuel facility means a place from which a fuel seller supplies petrol or diesel sold by the fuel seller.

Example for a fuel retailer—

a service station

Example for a fuel wholesaler—

a depot, refinery or terminal

fuel retailer means a person who sells petrol or diesel to the public other than for resale by members of the public.

While the definitions for ‘fuel retailer’ and ‘fuel wholesaler’ reference a person, under the *Acts Interpretation Act 1954*, a ‘person’ includes an individual and a corporation.

fuel seller means a fuel retailer or a fuel wholesaler.

fuel wholesaler means a person who sells petrol or diesel to fuel retailers for resale by the retailers, whether or not the person also sells petrol or diesel to another person for the person’s own use.

A large volume of diesel sold in Queensland by fuel wholesalers is sold directly to major fuel users such as agricultural, mining or transport companies bypassing the fuel retailer. The definition of fuel wholesaler therefore recognises this. Such sales are to be considered as sales by the fuel wholesaler.

petrol-biobased petrol blend means a blend of petrol and biobased petrol.

premium petrol means petrol that complies with the fuel standard for premium unleaded petrol under the *Fuel Quality Standards Act 2000* (Cwlth).

regular petrol means petrol that is not premium petrol.

The definition of ‘regular petrol’ does not reference the Commonwealth fuel quality standards, however, any regular unleaded petrol or petrol blended with ethanol would need to comply with the applicable standards for petrol and ethanol under the *Fuel Quality Standards Act 2000* (Cwlth).

sustainable biobased diesel means biobased diesel that complies with the sustainability criteria for biobased diesel prescribed by regulation.

sustainable biobased petrol means biobased petrol that complies with the sustainability criteria for biobased petrol prescribed by regulation.

sustainable biofuel means—

- (a) sustainable biobased diesel; or
- (b) sustainable biobased petrol.

sustainable biofuel blend means—

- (a) a diesel-biobased diesel blend containing sustainable biobased diesel; or
- (b) a petrol-biobased petrol blend containing sustainable biobased petrol.

sustainable biofuel requirement means a requirement under section 35B or 35C.

Subclauses (3) and (4) provide that the Dictionary in schedule 1 defines particular words for the *Liquid Fuel Supply Act 1984* and relocates all definitions in section 5 to schedule 1 as inserted by the Bill, under clause 10.

5 Amendment of s 26 (Application for permit)

Clause 5 replaces ‘prescribed form’ with ‘approved form’, as a consequence of clause 8 which inserts a power for the chief executive to approve forms for use under the Act.

6 Replacement of pt 5A (Ethanol substitution)

Clause 6 replaces existing part 5A with a new part 5A dealing with the biofuels mandates for biobased petrol e.g. fuel containing ethanol and biobased diesel e.g. fuel containing biodiesel.

Part 5A Sustainable biofuel in petrol or diesel

Division 1 Sale of sustainable biofuel

Subdivision 1 Application of div 1

Section 35A Application of div 1

Section 35A provides for application of division 1.

Division 1 applies to the sale of petrol or a petrol-biobased petrol blend (***petrol fuel***), and the sale of diesel or a biobased diesel blend (***diesel fuel***), by a fuel seller—

- to a person in Queensland, or
- for delivery in Queensland, whether or not the sale is made in Queensland.

A sale of petrol fuel or diesel fuel is for delivery in Queensland if the terms of the sale—

- require a party to the sale to deliver, or arrange for delivery of the petrol fuel or diesel fuel into or within Queensland, or
- provide for delivery of the petrol fuel or diesel fuel into or within Queensland.

All fuel wholesalers and certain fuel retailers of a particular size are parties liable under part 5A to meet the biofuels mandates and report on compliance with selling the required volumes on a quarterly basis through quarterly returns under section 35E.

All fuel wholesalers are liable to meet the biobased diesel requirement and the biobased petrol mandate only if a regulation prescribes a wholesale percentage. However, sales of petrol fuel or diesel fuel by one fuel wholesaler to another fuel wholesaler are not included. This will avoid double counting of fuel sales at the wholesale level.

Fuel retailers are not liable to meet the biobased diesel requirement and will only be liable to meet the biobased petrol requirement, if –

- they own or operate more than 10 service stations, or
- sell more than the threshold amount of petrol fuel in a calendar quarter at any one of the service stations that the fuel retailer owns or operates.

The threshold amount set in the Bill is 250 000 litres of petrol fuel but this may be adjusted by regulation.

A service station is defined under clause 4 and includes a business that may be used for another purpose or multiple purposes, such as a retail shopping outlet.

Smaller fuel retailers with less than 10 service stations that sell low volumes of fuel will not be caught by the biofuels mandate for biobased petrol or the related quarterly returns, but will need to be registered and comply with annual reporting obligations.

Subdivision 2 Sustainable biofuel requirements for fuel sellers

Section 35B Sustainable biobased petrol requirement

Section 35B provides that a fuel seller (fuel wholesalers and fuel retailers) must sell at least the minimum amount of sustainable biobased petrol in each calendar quarter.

The ‘minimum amount’ is the biofuels mandate for petrol—which can include petrol blended with ethanol or petrol blended with other biobased petrol, for example a fuel that

has been produced by refining bio-crude oil derived from waste or algae, if it meets the sustainability criteria. For a fuel retailer the minimum amount is the percentage prescribed by regulation, or if not prescribed by regulation 2 per cent of total sales of regular petrol and regular petrol-biobased petrol blend, excluding premium unleaded petrol, sold across all sites. For a fuel wholesaler, the minimum amount is the percentage prescribed by regulation. Therefore, fuel wholesalers will not be required to meet the biobased petrol mandate unless a regulation is made under this section to prescribe a percentage. The percentage may be different from that set for fuel retailers.

For a fuel retailer with less than 10 service stations and who triggers the threshold amount under section 35A(3)(b), the 2 per cent is to be calculated against total sales of regular unleaded petrol and regular petrol-biobased petrol blend, excluding premium fuels, sold from the particular sites which exceed the threshold amount only rather than the total volumes across all sites.

Although bio-crude oil and the refined biobased petrol or diesel that can be produced from it is not currently available in commercial quantities, it is expected that as the biofuels industry grows this will change. The biobased petrol mandate therefore makes provision for fuel sellers to meet the minimum amount with biobased petrol from these sources.

A fuel seller can count both regular petrol-biobased petrol blend, such as E10 and premium petrol-biobased petrol blend towards meeting the 2 per cent volume, if the biobased petrol meets the sustainability criteria, that is, it is derived from a sustainable source of feedstock.

By way of example, a fuel retailer sells 80 000 litres of regular unleaded petrol and 20 000 litres of a regular petrol-biobased petrol blend that is E10 together totalling 100 000 litres in a calendar quarter. For this scenario, the minimum volume of sustainable biobased petrol sold in regular petrol-biobased petrol blend or premium petrol-biobased petrol blend for the calendar quarter is 2 000 litres or 20 000 litres of 10 per cent blended fuel.

An offence is provided for non-compliance with the minimum amount with a maximum penalty of 200 penalty units for a first offence and 2 000 penalty units for a second or later offence.

Section 35C Sustainable biobased diesel requirement

Section 35C provides that a fuel seller, in this case fuel wholesalers only, must sell at least the minimum amount of sustainable biobased diesel in each calendar quarter.

The 'minimum amount' is the biofuels mandate for diesel. It means the percentage prescribed by regulation, or if not prescribed by regulation 0.5 per cent of diesel and diesel-biobased diesel blend sold for the calendar quarter.

A fuel seller can only count sustainable biobased diesel towards meeting the biofuels mandate for diesel, that is, biobased diesel that meets the sustainability criteria and is derived from a sustainable source of feedstock.

An offence is provided for non-compliance with the minimum amount with a maximum penalty of 200 penalty units for a first offence and 2 000 penalty units for a second or later offence.

Section 35D Defence for sustainable biofuel requirement

Section 35D provides that in a proceeding against a person (a fuel seller) for failure to comply with section 35B or 35C, it is a defence for the person charged to prove that they took all reasonable steps to prevent the offence.

Subsection (2) provides the court may have regard to the following in deciding whether the person took all reasonable steps to prevent the offence—

- efforts the person made to secure enough supply of a sustainable biofuel blend
- efforts the person made to promote the sale of a sustainable biofuel blend
- any upgrade of infrastructure the person arranged to enable enough sales of a sustainable biofuel blend
- facilities the person made available for the sale of a sustainable biofuel blend.

Subdivision 3 Returns and record keeping

Section 35E Quarterly returns

Section 35E provides that a fuel seller must give a return, in the approved form, to the chief executive officer within one month of the end of each calendar quarter.

An offence is provided for non-compliance unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

For fuel wholesalers and fuel retailers, the return must include the following volumes of fuel sold by the fuel seller in the calendar quarter—

- petrol and petrol-biobased petrol blend
- regular petrol
- regular petrol-biobased petrol blend
- premium petrol-biobased petrol blend
- sustainable biobased petrol sold in the petrol-biobased petrol blend.

For a fuel wholesaler, the return must also include the following volumes of fuel sold by the fuel wholesaler in the calendar quarter—

- diesel and diesel-biobased diesel blend
- diesel-biobased diesel blend
- sustainable biodiesel sold in the diesel-biobased diesel blend.

Note that section 58 provides that the requirement to submit quarterly reports for biobased petrol will not apply for fuel wholesalers until a regulation prescribes a 'wholesale percentage'.

Section 35F Record keeping

Section 35F provides that a fuel seller must keep sales records supporting their quarterly returns of the following fuel sales for at least two years after the end of the calendar quarter in which the sale occurred—

- petrol
- petrol-biobased petrol blend
- diesel
- diesel-biobased diesel blend.

An offence is provided for non-compliance with the section unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

Note that section 58 provides that the requirement to keep records does not apply for fuel wholesalers for biobased petrol until a regulation prescribes a 'wholesale percentage'.

Subdivision 4 Exemption from sustainable biofuel requirement

Section 35G Granting exemption

Section 35G provides that the Minister may, on application by a fuel seller in the approved form, exempt a fuel seller from complying with a sustainable biofuel requirement for a stated period, if the Minister is satisfied—

- the fuel seller cannot get enough sustainable biofuel or sustainable biofuel blend because of a shortage in the supply of the biofuel or blend
- complying with the requirement would threaten the viability of the fuel seller's business, or
- there are other extraordinary circumstances to justify granting an exemption.

The period of exemption may be prospective or for a previous calendar quarter or both. Given that smaller fuel retailers may not know whether they will sell more than 250 000 litres of petrol from any one service station in a calendar quarter until the end of a period, there may be insufficient time to sell the minimum amount of biobased petrol in that period or apply and have an exemption granted before the period ends.

Subsection (2) provides that before granting the exemption to a fuel seller, the Minister may—

- consult with stakeholders
- arrange for the fuel seller's business to be audited
- ask the fuel seller to give further information relevant to the application.

A stakeholder, as defined under clause 4, is an entity, including a person, with expertise or an interest in biobased diesel or biobased petrol, and includes, for example—

- a government agency of Queensland, another State or the Commonwealth, and
- an entity involved in or representing, the biofuel industry, feedstock industry, fuel industry, motor vehicle industry, consumers of feedstock or motor vehicles users.

Subsection (3) provides that if the fuel seller does not give the Minister the further information within 14 days after being asked, the application is taken to have been withdrawn.

Subsection (4) provides that the Minister may grant an exemption on stated conditions.

Without limiting the conditions the Minister may state, a condition may require the fuel seller to sell a stated amount of sustainable biofuel in a calendar quarter that is less than the amount required under a sustainable biofuel requirement under section 35B or 35C.

While an exemption is in place, a fuel seller must still meet the requirements to provide quarterly returns and keep sales records for the required period.

Section 35H Complying with conditions of exemption

Section 35H provides an offence for non-compliance with the conditions of an exemption, with a maximum penalty of 200 penalty units.

Section 35I Cancelling exemption

Section 35I provides that the Minister may, by written notice to a fuel seller, cancel an exemption if the Minister is satisfied—

- the reasons for which the exemption was granted no longer apply, or
- the fuel seller has contravened a condition of the exemption.

However the Minister must, before cancelling an exemption, give the fuel seller an opportunity to make written submissions about the proposed cancellation and the Minister must consider the submissions of the fuel seller.

The Minister may also, before cancelling an exemption, arrange for an audit of the fuel seller's business or consult with stakeholders.

The Minister must ensure the cancellation of an exemption takes effect from the end of a calendar quarter.

Subdivision 5 Suspension of sustainable biofuel requirement

Section 35J Suspending sustainable biofuel requirement

Section 35J provides power for the Minister to suspend the operation of a sustainable biofuel requirement under section 35B or 35C for all fuel sellers or a class of fuel sellers, if satisfied—

- there is an industry-wide shortage in the supply of sustainable biofuel or a sustainable biofuel blend, or not enough demand for sustainable biofuel or a sustainable biofuel blend, or
- supply of sustainable biofuel or a sustainable biofuel blend poses a risk to public health or safety, or
- that requiring compliance with a sustainable biofuel requirement is having, or may have an adverse impact on Queensland's economy, or
- there are other extraordinary circumstances, such as road closures as a result of a natural disaster limiting supply.

However, the Minister may only suspend the operation of the mandates under section 35B or 35C for up to one year. The Minister may, in the same declaration, suspend the operation of all or stated provisions of part 5A.

The Minister may consult with stakeholders before making a declaration.

Given the Minister's declaration may suspend the operation of legislation, the declaration is taken to be subordinate legislation, which means it must be tabled in Parliament within 14 sitting days after it is notified and therefore can be subject to disallowance by Parliament.

The Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

35K Cancelling suspension

Section 35K provides a power for the Minister to cancel a suspension if the Minister is satisfied the suspension is no longer necessary.

The Minister may consult stakeholders before cancelling a suspension and the declaration is also subordinate legislation.

Division 2 Register of fuel sellers

35L Establishing register

Section 35L provides for the chief executive to establish a register of all fuel sellers. The register can be kept in any form the chief executive considers appropriate, including in electronic form.

The fuel sellers' register, in conjunction with the initial report required under section 60 on volumes of fuel sold for one calendar quarter, will assist the department to build a picture of the industry and establish a data set on the volumes and type of fuel being sold into the Queensland market and to identify which fuel retailers will potentially be liable to meet the biofuels mandate for biobased petrol.

As the department does not hold or have access to existing reliable data on the fuel industry in Queensland, it is necessary to oblige all fuel sellers to be registered and to keep the register up to date as well as to provide the initial report on fuel sales to provide a reliable data set.

The intention is to commence the registration and initial report obligations at least three to six months before a biofuels mandate under sections 35B or 35C will commence to apply.

Unlike the quarterly returns, information contained in the initial report on fuel sales and registration information will be treated in strict confidence and no confidential information will be published.

35M Giving registration information

Section 35M provides that fuel sellers will be required to give the chief executive their 'registration information' as defined under clause 4, in an approved form, including—

- the fuel seller's name, business address, phone number and email address
- the address of each of the fuel seller's fuel facilities
- the type of fuel sold at each of the fuel facilities.

Fuel sellers will have one month after becoming a fuel seller in which to submit the registration information to the chief executive. For existing fuel sellers, new section 59 inserted by clause 9, provides that the obligation to submit the registration information will be within one month of that section commencing.

An offence is provided for non-compliance unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

35N Notifying changes

Section 35N(1) provides that a fuel seller must notify the chief executive of any change to the fuel seller's registration information within one month after the change happens.

An offence is provided for non-compliance unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

Under subsection (2), if a person stops being a fuel seller, they must notify the chief executive of that fact within one month after the person stops being a fuel seller.

An offence is provided for non-compliance unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

35O Obtaining complete and clear information

Section 35O provides the chief executive with power to request further information if the registration information or other information given by a fuel seller under the division is not clear or complete.

The chief executive may, by written notice, require the fuel seller to give stated information to the chief executive within a stated reasonable period of not less than 14 days. The fuel seller must comply with the notice.

An offence is provided for non-compliance unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

Division 3 Other provisions

35P Reporting fuel sold

Section 35P(1) provides that a fuel seller must give a report, in the approved form, to the chief executive before 31 July each financial year, unless the fuel seller has a reasonable excuse.

An offence applies with a maximum penalty of 100 penalty units.

Under subsection (2), the report must state the volume of petrol, petrol-biobased petrol blend, diesel, and diesel-biobased diesel blend that the fuel seller supplied from each of the fuel seller's fuel facilities—

- in the last financial year, and
- in each calendar quarter in the last financial year.

Not all fuel sellers will be obligated to meet the biofuels mandates and submit quarterly returns. As such to avoid duplicate reporting, subsection (3) provides that, if the fuel seller gives the chief executive the information required under subsection (2) in or with the quarterly returns given under section 35E for the calendar quarters in the financial year, the fuel seller does not have to provide the report under subsection (1).

Section 35Q False or misleading information

Section 35Q creates an offence for a fuel seller to give the chief executive information under part 5A that the person knows is false or misleading in a material particular with a maximum penalty of 100 penalty units to apply for non-compliance.

However, the fuel seller does not commit an offence if the person, when giving information in a document—

- tells the chief executive, to the best of the person's ability, how the document is false or misleading, and
- if the person has, or can reasonably obtain the correct information—gives the correct information.

Subsection (3) provides that section 47 of the Act, which provides an offence for use of false documents, does not apply to the information to which subsection (1) applies.

Section 35R Publishing information

Section 35R provides that the chief executive may publish information that will be derived from fuel sellers' quarterly returns on the department's website, about sustainable biofuel sold in a calendar quarter including—

- the amount of sustainable biofuel sold by all fuel sellers
- the amount of sustainable biobased petrol, stated as a percentage of the combined volume of regular petrol and petrol-biobased petrol blend, sold by—
 - all fuel sellers, or
 - stated fuel sellers
- the amount of sustainable biobased diesel, stated as a percentage of the combined volume of diesel and diesel-biobased diesel blend, sold by—
 - all fuel sellers, or
 - stated fuel sellers.

Section 35S Compensation

Section 35S provides that current section 50 (Compensation for loss occasioned by compliance with directions) of the Act does not apply to a fuel seller complying with, or giving effect to—

- a provision of part 5A, or
- a direction, prohibition or requisition directed to the fuel seller for part 5A.

Subsection (2) provides that subsection (1)(b) applies only if the person giving or making the direction, prohibition or requisition acted in good faith and without negligence.

7 Amendment of s 52 (Exemption from Act)

Clause 7 amends section 52 to provide that an exemption under subsection (1) must not be granted for a provision of part 5A. This is because exemption provisions for part 5A are included in the part itself.

8 Insertion of new s 56A

Clause 8 inserts new section 56A which provides a power for the chief executive to approve forms for use under the Act.

9 Insertion of new pt 8

Clause 9 inserts a new part 8 for the Act.

Part 8 Transitional provisions for Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Act 2015

Section 58 Application of particular provisions to sale of petrol or petrol-biobased petrol blend by fuel wholesaler

Section 58 provides that for a fuel wholesaler, the obligations imposed by sections 35B, 35E and 35F do not apply to the wholesaler, until a regulation is prescribed under section 35B(3) for the definition of '*wholesale percentage*'. That is, a fuel wholesaler is not liable to meet the biobased petrol mandate, submit quarterly returns or keep relevant sales records to the extent that these requirements relate to biobased petrol until a percentage is prescribed. However, all fuel wholesalers will need to be registered, submit a report on fuel sales under section 60 within the requisite time, and submit annual reports required under section 35P.

Section 59 Giving registration information

Section 59 applies to a person who, immediately before the commencement of the section is a fuel seller.

Fuel sellers will have one month after the section commences in which to submit the registration information to the chief executive.

Therefore, existing fuel sellers will have one month to give the chief executive their registration information after the commencement, and persons who subsequently become fuel sellers will also have one month to provide their registration information to the chief executive, under section 35M.

Section 60 Giving initial report

Section 60 provides that a fuel seller must give a report, in the approved form, to the chief executive within one month after the section commences.

An offence applies unless the fuel seller has a reasonable excuse, with a maximum penalty of 100 penalty units.

The report must state the volume of petrol, petrol-biobased petrol blend, diesel, and diesel-biobased diesel blend that the fuel seller supplied from each of the fuel seller's fuel facilities in the calendar quarter just before the commencement day.

The initial report of volumes of fuel sold for one calendar quarter will assist the department to build a picture of the industry and create a data set on the volumes and type of fuel being sold into the Queensland market and to identify which fuel retailers will potentially be liable to meet the biofuels mandate for biobased petrol.

The offence under section 35R of giving false or misleading information will apply to the information in the report under this section.

Section 61 Reporting fuel sold

Section 61 makes provision for reporting periods under section 35P (Reporting fuel sold) should that section commence on a day that is not 1 July.

10 Insertion of new sch 1

Clause 10 inserts Schedule 1 Dictionary into the Act.