

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

Report No. 8, 55th Parliament
Utilities, Science and Innovation Committee
November 2015

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Contents

Abbreviations	3
Glossary	4
Chair’s foreword	5
Recommendations	6
1. Introduction	8
1.1 Role of the Committee	8
1.2 Inquiry process	8
1.3 Objectives of the Bill	8
1.4 Consultation on the Bill	9
Committee comment	10
1.5 Should the Bill be passed?	10
2. Policy background and context	11
2.1 Biofuels and the benefits of increasing their use	11
2.1.1 What are biofuels and how are they processed?	11
2.1.2 Environmental and health benefits of using Biofuel	13
2.2 Overseas policy initiatives	14
2.2.1 United States	14
2.2.2 Brazil	15
2.2.3 New Zealand	16
2.3 Biofuel mandates in Australia	17
2.3.1 Commonwealth regulation of biofuels	17
2.3.2 Australian states and territories - overview	18
2.3.3 The NSW fuel ethanol mandate	18
2.3.4 Queensland	21
3. Examination of the Bill	24
3.1 Legislating for the biofuels mandate	24
3.1.1 Initial biobased petrol mandate	24
3.1.2 Initial biobased diesel mandate	30
3.1.3 Commencement date for the biofuels mandate	34
Committee comment and recommendations	35
3.1.4 Power to amend/suspend the mandate percentages by regulation	37
Committee comment and recommendations	43
3.2 Liable parties	45
3.2.1 Biobased petrol mandate threshold	45
3.2.2 Service station infrastructure upgrades including planning applications	49
3.2.3 Infrastructure requirements for blending the biodiesel product	53
3.2.4 Assessment of the financial impact of the biofuels mandate on industry	54
Committee comment and recommendations	55
3.2.5 Exemptions	57
Committee comment and recommendation	60

3.2.6	Registration and reporting requirements	61
	Committee comment	63
3.3	Compliance and enforcement regime including penalties	63
	Committee comment	64
3.4	Sustainability criteria and compliance model	64
	Committee comment	68
3.5	Consultation on regulations to be made under the Act	68
	Committee comment and recommendation	69
3.6	Consumer demand	70
3.6.1	Education and awareness	70
3.6.2	Price differential between biobased petrol and regular unleaded petrol	75
	Committee comment and recommendations	76
4.	Compliance with the <i>Legislative Standards Act 1992</i>	79
4.1	Fundamental legislative principles	79
4.1.1	Rights and liberties of individuals	79
	Committee comment	80
	Committee comment	80
4.1.2	Institution of Parliament	81
	Committee comment	82
4.1.3	Scrutiny of the Legislative Assembly	82
	Committee comment	84
4.2	Proposed new and amended offence provisions	84
	Committee comment	85
4.3	Explanatory notes	87
	Committee comment	87
	Appendix A – List of Submissions	88
	Appendix B – List of witnesses at public hearings	89

Abbreviations

the Act	<i>Liquid Fuel Supply Act 1984</i>
ACAPMA	Australasian Convenience and Petroleum Marketers Association
AIP	Australian Institute of Petroleum
the Bill	Liquid Fuel Supply (Ethanol and Other Biofuels mandate) Amendment Bill 2015
BAA	Biofuels Association of Australia
cpl	cents per litre
DEHP	Department of Environment and Heritage Protection
DEWS	Department of Energy and Water Supply
The Discussion Paper	<i>Towards a clean energy economy: achieving a biofuel mandate for Queensland June 2015</i>
E10	10 per cent ethanol
E85	85 per cent ethanol
EBP	ethanol blended petrol
EIAP	Ethanol Industry Action Plan
EPG	Ethanol Production Grants
FAME	fatty acid methyl ester
FLP	fundamental legislative principle
GBR	Great Barrier Reef
IAME	Institute of Automotive and Mechanical Engineers
IPART	Independent Pricing and Regulatory Tribunal
JCU	James Cook University
the LSA	<i>Legislative Standards Act 1992</i>
M	million
ML	megalitres
the Minister	Minister for Main Roads, Road Safety and Ports and Minister for Energy and Water Supply

MTA Queensland	Motor Trades Association of Queensland
NSW	New South Wales
OQPC	Office of the Queensland Parliamentary Counsel
PULP	premium unleaded petrol
QoN	Question on Notice
QPC	Queensland Productivity Commission
RACQ	Royal Automobile Club of Queensland
RFS	Renewable Fuel Standard
RIS	Regulatory Impact Statement
RULP	regular unleaded petrol
SDIIC	State Development, Infrastructure and Industry Committee
US	United States

Glossary

biobased diesel and petrol	biodiesel, ethanol and other fuel produced from plant oils or animal oils or biomass or waste
diesel	fuel for diesel engines produced from petroleum
diesel fuel	diesel or a biobased diesel blend
fuel facility	a place from which a fuel seller supplies petrol or diesel sold by the fuel seller, for example a service station, a depot, refinery or terminal
fuel retailer	an individual or corporation who sells petrol or diesel to the public other than for resale by members of the public
fuel seller	a fuel retailer or fuel wholesaler
fuel wholesaler	an individual or corporation who sells petrol or diesel to fuel retailers for resale by the retailers, whether or not they also sell petrol or diesel to another person for the person's own use
petrol fuel	petrol or bio-based petrol blend
sustainable biobased diesel and petrol	biobased diesel and petrol that complies with the sustainability criteria for biobased diesel and petrol prescribed by regulation

Chair's foreword

This report presents a summary of the Utilities, Science and Innovation Committee's examination of the Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015.

The Committee's task is to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The Committee heard from a wide-range of stakeholders including the growers of biofuel feedstocks and their representatives, ethanol and biodiesel producers, fuel suppliers and their representatives, and the RACQ representing the motoring public.

The Committee has carefully considered the evidence provided by each submitter and witness, along with advice received from the Department of Energy and Water Supply and the Department of Environment and Heritage Protection, and has proposed amendments to the Bill as well as changes to the proposed implementation process.

The Government and non-Government members of the Committee hold differing views on whether the expected commencement date for the biofuels mandate will allow sufficient lead-in time for implementation of the mandates. Non-Government members are of the view that a delay of six months, to 1 January 2017, would provide sufficient additional lead-in time. Government members are of the view that the proposed commencement date of 1 July 2016 will provide sufficient lead-in time.

While the Committee does not make a recommendation on the level of the initial biobased petrol mandate (2 per cent), it is concerned that this mandate level is unlikely to encourage additional investment in Queensland's biofuel industry. The Committee strongly supports an increase in the mandate level, as soon as practicable, to encourage further investment in the industry. It is therefore in favour of option 1 for the proposed mandate pathway (4 percent from 1 July 2019) and would support a 4 per cent mandate being implemented even earlier if this is determined to be achievable.

I am pleased to inform the House that each of the recommendations made in the report have been agreed to unanimously by Committee members. The Committee is of the view that the recommendations it has made, if endorsed by the Queensland Parliament, will provide acceptable solutions to many of the issues raised by stakeholders.

The Committee has agreed to recommend that the Bill be passed, and is strongly of the view that bipartisan support is required for the biofuels mandate to succeed in achieving their policy objectives over the longer term.

I would like to thank Committee members for the constructive way in which they discussed the issues raised in evidence, and proposed practical solutions.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on the Bill and provided evidence at the public hearings. I also thank the Committee's Secretariat, the Queensland Parliamentary Library, the Department of Energy and Water Supply and the Department of Environment and Heritage Protection for their assistance.

I commend this Report to the House.



Mr Shane King MP
Chair

November 2015

Recommendations

Recommendation 1 **10**

The Committee recommends the Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015 be passed.

Recommendation 2 **37**

The Committee recommends the Minister, when making a final decision on the commencement date for the biobased petrol mandate, ensure there is sufficient lead-in time for the finalisation of the following matters:

- analysis of the fuel sales data to determine an appropriate volumetric threshold level
- development of the sustainability criteria and compliance model in consultation with stakeholders
- development of the compliance and enforcement regime in consultation with stakeholders
- development of the exemptions framework in consultation with stakeholders
- development and implementation of an extensive public education and awareness program in consultation with stakeholders
- upgrades to service station infrastructure.

Recommendation 3 **37**

The Committee recommends that the Bill be amended to ensure there are no unintended consequences for fuel retailers in the areas where low aromatic fuel is required to replace regular unleaded petrol including E10, either by:

- specifically excluding low aromatic fuel from the definition of regular petrol in section 2 of the Bill or
- through an alternative solution presented by the Minister during the Consideration-in-Detail debate on the Bill.

Recommendation 4 **44**

The Committee recommends that in order to provide assurance to existing ethanol and biodiesel producers and to stimulate investment in the biofuels industry in Queensland sections 35B(3) and 35C(3) of the Bill be amended to provide that:

- the minimum percentage for the biofuels mandate cannot be prescribed by regulation to be less than the initial targets of 2 per cent for biobased petrol and 0.5 per cent for biodiesel
- only increases to the biofuels mandate can be prescribed by regulation, requiring any reduction in the mandated targets to be introduced through an amendment to the Act.

Recommendation 5 **45**

The Committee recommends that:

- the Minister, in his second reading speech, explain how section 35J of the Bill precludes the remaking a further suspension declaration following an initial 12 month suspension, and if it does not preclude a further declaration
- the Bill be amended to ensure that the mandate can only be suspended for more than 12 months through an amendment to the Act.

- Recommendation 6** 57
- The Committee recommends that:
- Section 35A(5) of the Bill be amended to provide that the threshold amount cannot be prescribed by regulation to be lower than 250,000 litres, and
 - if an increase in the threshold amount is required following analysis of the fuel sales data in 2016, the amendment regulation be made in time to allow a reasonable period for liable petrol retailers to undertake necessary infrastructure upgrades.
- Recommendation 7** 57
- The Committee recommends that the Minister consult with relevant planning authorities to ensure mechanisms are put in place to facilitate timely and rapid planning approvals for service station operators needing to undertake infrastructure upgrades to enable the sale of ethanol blended petrol.
- Recommendation 8** 60
- The Committee recommends that either section 35G of the Bill be amended to include a timeframe for making a decision on exemption applications, or as an alternative, the exemption framework which is to be developed over the coming months, include timeframe guidelines for the ministerial decision making process.
- Recommendation 9** 69
- The Committee recommends that the Department of Energy and Water Supply develop a consultation protocol that will be adhered to for all regulations made or amended under the Act and that the protocol be published on the departmental website.
- Recommendation 10** 77
- The Committee recommends that the Minister, in his second reading speech, commit to the Government providing funds toward, and leading, a comprehensive consumer education and awareness campaign in conjunction with industry and consumer groups, to dispel myths and negative perceptions on the use of fuel ethanol in vehicles and to promote its benefits.
- Recommendation 11** 77
- The Committee recommends that the Department of Energy and Water Supply work with organisations such as the Automotive Trades Institute of Technology and the Institute of Automotive and Mechanical Engineers to ensure educational materials around the validity of ethanol blended fuels are used to educate mechanics and automotive trainees and also for ongoing education purposes, to ensure mechanics and automotive tradespeople are aware of the latest information about ethanol blended fuel compatibility of vehicles.
- Recommendation 12** 78
- The Committee recommends that the Government “lead by example” by including a requirement in the *QFleet Efficiency and Utilisation Policy for the Queensland Government motor vehicle fleet* that drivers of QFleet cars refuel using ethanol blend (E10) where practicable.
- Recommendation 13** 78
- The Committee recommends that the Minister, in his second reading speech, make a statement that the mechanism for applying the biobased petrol requirement to wholesalers (prescribed in section 35B(3) of the Bill) may be triggered if the full price differential between biobased petrol and regular unleaded petrol is not passed through by the wholesalers to the retailers to ensure an adequate price differential to encourage consumers to buy biobased petrol.

1. Introduction

1.1 Role of the Committee

The Utilities, Science and Innovation Committee is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Main Roads, Road Safety and Ports
- Energy and Water Supply
- Housing and Public Works
- Science, Information Technology and Innovation

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs)
- for subordinate legislation – its lawfulness.

The Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015 (the Bill) was introduced into the House and referred to the Committee on 15 September 2015. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 17 November 2015.

1.2 Inquiry process

On 17 September 2015, the Committee wrote to the Department of Energy and Water Supply (DEWS) seeking advice on the Bill, invited stakeholders and subscribers to lodge written submissions and issued a media release announcing its inquiry.

The Committee received 18 submissions (see **Appendix A**) as well as written advice from DEWS and from the Department of Environment and Heritage Protection (DEHP) on the Bill and in response to matters raised in submissions.

A public briefing on the Bill was held in Brisbane on 14 October 2015 with DEWS and DEHP. Public hearings were held in Mackay on 22 October 2015 and in Brisbane on 28 October 2015 where a total of 37 witnesses provided evidence to the Committee (see **Appendix B**).

The Committee also undertook a site visit to the Wilmar BioEthanol Distillery in Sarina where the Committee was provided with a briefing on the ethanol production process and a tour of the site.

1.3 Objectives of the Bill

The Explanatory Notes state that the policy objectives of the Bill are to:

- provide assurance to existing ethanol and biodiesel producers and stimulate investment in the biofuels industry in Queensland
- contribute to regional growth and jobs creation
- reduce greenhouse gas emissions from motor vehicles

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

- take advantage of the emerging second generation technologies for biofuels from a range of feedstock.²

The Bill proposes to achieve these objectives by amending the *Liquid Fuel Supply Act 1984* (the Act) to impose a requirement on certain fuel sellers to meet a sales target for biobased petrol, starting from 2 per cent of total sales of regular unleaded and a regular petrol blend (such as E10³), and a sales target for biobased diesel starting at 0.5 percent of total sales of diesel and a biobased blend. It is proposed that these mandated targets can be increased or altered by regulation.⁴

The Bill proposes that all fuel sellers be required to register within one-month of the relevant provisions commencing, and for them to provide a report on the volumes of fuel sold for the previous calendar quarter. The biodiesel mandate would then commence three to six months after the registration and initial report obligations.⁵

1.4 Consultation on the Bill

The Explanatory Notes provide details of the industry consultation undertaken on the proposed biofuels mandate in April and May 2015. The Government then released a discussion paper: *Towards a clean energy economy: achieving a biofuel mandate for Queensland June 2015* (the Discussion Paper) and called for submissions with a closing date of 3 July 2015. During consultation on the Discussion Paper, DEWS, in conjunction with partner agencies, researchers and industry experts held nine public forums and three industry workshops across the state. Almost 300 people attended the public forums which were held in Dalby, Bundaberg, Townsville, Ingham, Ayr, Mackay, Mareeba, Brisbane and Innisfail.⁶

DEWS received 88 submissions 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.⁷ A [consultation report](#) documenting the outcomes of the consultation process was published in September 2015.⁸

A key stakeholder group has been established and has had input on key aspects of the Bill since July 2015. DEWS advises that this group will continue to provide advice to the Government on a range of implementation issues. The stakeholder group includes the following representatives:

- major fuel suppliers - the Australian Institute of Petroleum (AIP),
- small, medium and independent fuel suppliers – Australasian Convenience and Petroleum Marketers Association (ACAPMA)
- the biofuels industry – Biofuels Association of Australia (BAA)
- consumers and the motoring public – Royal Automobile Club of Queensland (RACQ)
- research and development – James Cook University (JCU).⁹

² Explanatory Notes:1

³ 10 per cent ethanol

⁴ Explanatory Notes:1-2

⁵ Explanatory Notes:3-4

⁶ Explanatory Notes:9

⁷ Explanatory Notes:9

⁸ DEWS, [Consultation Report: Biofuel mandate](#), Oct 2015

⁹ Explanatory Notes:9

The Explanatory Notes provide the following summary of the results of the consultation process:

- overall, biofuel 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
- 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 the 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
- there was broad support for a biobased diesel mandate
- there was broad support for increasing the targets for both types of biofuel over time in line with industry development and consumer demand.¹⁰

Stakeholders, in their submissions to the Committee, were generally supportive of the consultation process undertaken in developing the parameters of the policy direction through the Discussion paper.

Committee comment

Committee comment

The Committee notes the extensive consultation undertaken by the Queensland Government in developing the parameters of the policy direction contained in Bill and also with the key stakeholder group on key aspects of the draft Bill.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives it seeks to achieve, and consideration of the information provided by the departments and from submitters, the Committee is making a unanimous recommendation that the Bill be passed.

While the Committee has no hesitation in supporting the biofuels mandate it does make a number of recommendations that it believes are critical to ensuring the success of the biofuels mandate policy.

Recommendation 1

The Committee recommends the Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015 be passed.

¹⁰ Explanatory Notes:9

2. Policy background and context

2.1 Biofuels and the benefits of increasing their use

2.1.1 What are biofuels and how are they processed?

Bioethanol (commonly known as 'ethanol') is an alcohol made by fermenting the sugar and starch components of plant materials using yeast such as *saccharomyces cerevisiae*. As a general rule, any material containing hydrocarbons can be used as a feedstock for conversion into a biofuel.¹¹

There is not a clear definition between first generation or conventional biofuels and second generation or advanced biofuels. The following are working definitions are provided by the DEWS:

First generation – conventional biofuels

First generation biofuels, also known as conventional biofuels, include sugar and starch-based ethanol, oil-crop biodiesel (both edible and inedible oil crops), and used cooking oil.¹² These fuels are produced using conventional production methods – fermentation to make ethanol, and transesterification to make biodiesel.

Fermentation is the process where simple sugars are converted into an alcohol (ethanol). Transesterification is the process where fatty acid chains are converted into a mineral diesel replacement (biodiesel) known as a fatty acid methyl ester (FAME) or fatty acid ethyl ester.

Second generation – advanced biofuels

Second generation biofuels, also known as advanced generation biofuels, cover a range of feedstocks and production technologies that are in the demonstration or pre-commercialisation phase, or, involve highly efficient production methods using low value feedstocks.

Types of biofuels

- **ethanol**: an alcohol produced from fermenting simple plant sugars
- **biodiesel**: A liquid FAME which is a mineral diesel replacement. Also defined as a mono alkyl ester derived from vegetable (plant) oils or animal fats¹³
- **renewable diesel** (known as co-processed renewable diesel in the United States (US)): when small amounts of vegetable (plant) oils or animal fats are blended during the conventional petroleum refining process
- **syngas**: a synthetic gas produced from a gasification or Fischer-Tropsch process. It is primarily comprised of hydrogen and carbon monoxide with some carbon dioxide. It is an intermediary gas which can be reformed into methane or liquid hydrocarbons including petrol, diesel and aviation fuel equivalents
- **biocrude from hydrothermal liquefaction**: A crude oil replacement which can be refined into multiple petroleum-like products in a similar way as oil is currently refined. The hydrothermal liquefaction process mimics geological processes of converting biomass or other high hydrocarbon containing materials like plastics into a liquid product similar to crude oil.¹⁴

¹¹ DEWS, Response to QoN at the public briefing, 19 Oct 2015:6

¹² International Energy Agency, 2011, *Technology roadmap: Biofuels for transport*, International Energy Agency, Paris, http://www.iea.org/publications/freepublications/publication/biofuels_roadmap_web.pdf

¹³ section 3, Fuel Standard (Biodiesel) Determination 2003 (Cth), s.3 *Excise Tariff Act 1921* (Cth)

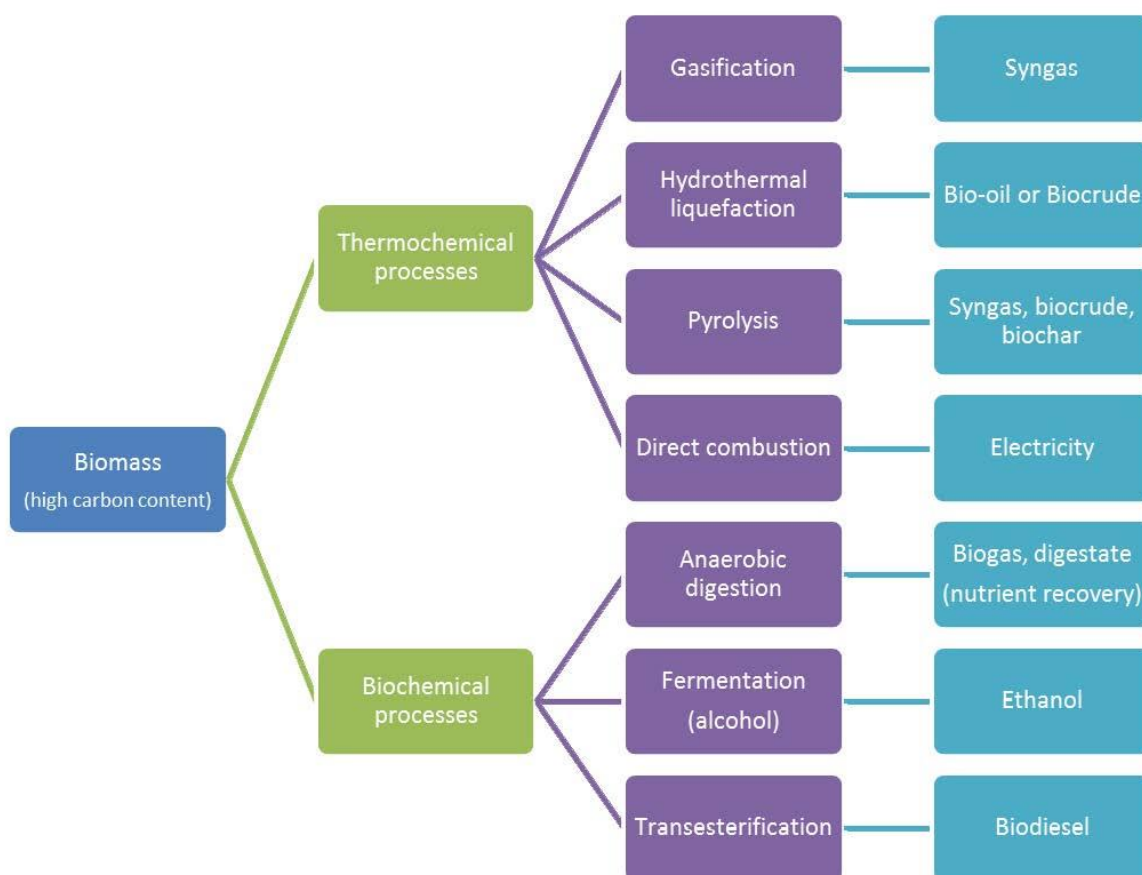
¹⁴ DEWS, Response to QoN at the public briefing, 19 Oct 2015:6-7

Biofuel conversion technologies

Types of biofuel conversion or production technology include:

- **biochemical:** conversion technology using enzymatic or microbiological processes. Processes and biofuels in this class include:
 - **first generation:** fermentation, transesterification (produces biodiesel)
 - **second generation:** lignocellulosic ethanol, yeast fermentation.
- **thermochemical:** conversion technology using heat, pressure or a combination. These are second generation or advanced technologies and include gasification (Fischer-Tropsch) of biomass.
- **hybrid:** process involving both biochemical and thermochemical.¹⁵

Biofuel production pathways¹⁶



¹⁵ A biochemical conversion technology is based on enzymatic or microbiological processes. See IEA Bioenergy Task 39, <http://demoplants.bioenergy2020.eu/#biochemical> (referenced in DEWS, Response to QoN at the public briefing, 19 Oct 2015:7-8)

¹⁶ Provided by DEWS, Response to Question on Notice (QoN) (public briefing), 19 Oct 2015:9 (Adapted from Brennan, L and P Owende, 2010, Biofuels from microalgae – a review of technologies for production, processing, and extractions of biofuels and co-products, Renewable and Sustainable Energy Reviews 14: 557 - 577, adapted from Tsukahara, K and S Sawayama, 2005, Liquid fuel production using microalgae, Journal of the Japan Petroleum Institute, 48(5) 251-9.

DEWS advises that the definitions of biobased petrol and biobased diesel in the Bill allow for future development of second generation biofuels to meet the mandate when they become available.¹⁷

At this point in time in Queensland we are talking first-generation fuels, biofuels. So it is generally made by... simple sugars.. the by-product of sugar and sorghum—they basically take simple sugars and convert them into ethanol. So there is not necessarily any difference in the outcome.

Second-generation biofuels are a little bit more interesting. They are usually produced by biomass, or woody crops. So you can potentially grow other types of crops or use other parts of the sugar cane to be able to produce this second generation. It is not in any commercial viability at this point in time, but we hope that over time it can be potentially moved into that commercial side of things and have new facilities across Queensland, not based necessarily just on first-generation ethanol production but, more importantly, the second generation, which is quite exciting.¹⁸

Queensland currently sources its ethanol from sorghum and sugar cane. Sorghum is processed at the United Petroleum refinery in Dalby (capacity 80 ML per year) and the Wilmar Bioethanol refinery at Sarina uses the molasses from sugar cane as its feedstock (capacity 90 ML). These refineries have a positive impact on the economies of Queensland's western areas as well as the coastal plains.¹⁹

2.1.2 Environmental and health benefits of using Biofuel

Ethanol can be used as a fuel for vehicles. It is usually blended with petrol and retails as ethanol blended petrol (EBP) in competition with regular unleaded petrol (RULP) and premium unleaded petrol (PULP). The most common type of EBP is E10 which is RULP containing up to 10 per cent ethanol.²⁰

The use of biofuels has a number of environmental benefits, including reduced greenhouse gas emissions. The Minister for Main Roads, Ports and Road Safety and Minister for Energy and Water Supply (the Minister) when introducing the Bill to the Queensland Parliament stated:

..using E10 instead of regular unleaded petrol can reduce greenhouse gas emission by three to five per cent, depending on the feedstock used to create the ethanol.²¹

DEWS provides further advice on the environmental benefits of increasing the use of biofuels:

In terms of environmental benefits, at this point in time it really depends on the feedstock that is used in terms of the development of the biofuel. There are two plants in Queensland. At the moment if you used petrol E10 fuels from those two sources we think that it would decrease greenhouse gas emissions by three to five per cent, but there is a case that production can lead to adverse environmental impacts. So these impacts would have to be avoided by appropriate policy which is being developed by our colleagues in EHP.

..... Ethanol as a fuel and when it is blended with E10 decreases greenhouse gases compared to normal unleaded fuel. The CSIRO have done studies in relation to that as a fact. Obviously it really depends on the feedstock that is used. If there is a feedstock that is used that may have other impacts potentially on the reef or on other parts of the environment, then the impacts would be more significant and therefore would not be as beneficial to Queensland.²²

¹⁷ DEWS, public briefing transcript, 14 Oct 2015:2

¹⁸ DEWS, public briefing transcript, 14 Oct 2015:13

¹⁹ DEWS, public briefing transcript, 14 Oct 2015:9

²⁰ ACCC, '[Monitoring of the Australian petroleum industry: Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia](#)', Dec 2013:47

²¹ Minister, Introductory Speech, Hansard transcript, 15 Sep 2015:1737

²² DEWS, public briefing transcript, 14 Oct 2015:6

TfA Project Group provides a list of the environmental benefits of ethanol in its submission, including:

- reduces greenhouse gas emissions by 34-96 per cent depending on the feedstock
- reduces carbon dioxide emissions by 26-86 per cent
- is non-toxic, bio-degradable and does not permanently affect the water table
- is not carcinogenic unlike some components of gasoline such as benzene.²³

Energreen Nutrition provides evidence of the health benefits of transitioning to biodiesel in its submission, and concludes that not only, therefore, will a move towards biodiesel fuels reduce the prevalence of emissions that cause asthma, reduced lung function, respiratory disease and cardiovascular disease but also cancer.²⁴

DEWS supports this view advising that several studies indicate that biodiesel blends produce less particulate matter compared with mineral diesel fuels:

*Lowering particulate matter emissions from fuel combustion can contribute to better air quality and population health as diesel particulate matter is a declared carcinogen by the World Health Organisation and is also associated with cardio-respiratory disease.*²⁵

2.2 Overseas policy initiatives

2.2.1 United States

The Renewable Fuel Standard (RFS) was established under the *Energy Policy Act of 2005*, which required 7.5 billion gallons of renewable-fuel to be blended into gasoline by 2012.

The [Energy Independence and Security Act 2007](#) expanded the operation of the original RFS by:

- including diesel as well as gasoline
- increasing the volume of renewable fuel required to be blended into transportation fuel from 9 billion gallons in 2008 to 36 billion gallons by 2022²⁶
- establishing new categories of renewable fuel with separate volume requirements for each fuel
- making lifecycle greenhouse gas performance threshold standards to ensure that each category of renewable fuel emits fewer greenhouse gases than the petroleum fuel it replaces.

To accelerate industry progress in meeting legislated targets for biofuels, the US Department of Energy has invested more than \$1 billion in research, development, and demonstration projects to improve and scale up low-cost biomass conversion technologies and to ensure a reliable supply of high-quality commodity feedstocks for conversion.²⁷

In 2013, the [Environmental Protection Agency](#) reduced the mandated volume of ethanol for 2014 to 15.21 billion gallons (57.58 billion litres), down from 62.65 billion litres in 2013. This was undertaken due to the fact that reduced fuel demand had seen the mandated volume of ethanol reach what is termed the 'blend wall', which is 10 per cent of the volume of fuel sales. Ethanol is not permitted to exceed 10 per cent of total fuel sales unless specifically marketed as E15 (available in only a limited number of retail outlets), hence the ethanol volume had to be reduced.

²³ TfA Project Group, submission 3:4

²⁴ Energreen Nutrition, submission 9:2

²⁵ DEWS, Response to issues raised in submissions, 23 Oct 2015:12

²⁶ Director of the Office of Transportation and Air Quality Office of Air and Radiation, US Environmental Protection Agency, [Statement to the US Senate Committee on Environment and Public Works](#), 11 Dec 2013: 2

²⁷ Bioenergy Technologies Office, [Bioenergy Frequently Asked Questions](#), (accessed on 20 Oct 2015).

In 2014, there was some speculation that the US Government might reduce or even scrap the corn-based ethanol mandate, partly due to concerns about impact of food production.²⁸ The US produces approximately 40 per cent of the global corn harvest and up to 40 per cent of this is used in the production of ethanol.²⁹ A further concern was that below-forecast fuel sales would mean that the 'blending wall' would be breached again.³⁰ This led to a [lengthy delay](#) in the announcement of the mandated volumes for 2014 and 2015, which have not yet been released.

On 10 April 2015, the US Environmental Protection Agency stated that they would release the (retrospective) mandated ethanol volumes for 2014 and 2015 on 30 November 2015, but did not give any indication of what this volume would be.³¹ In recent years the trend has been to set the mandated volume at the volume produced in the previous year.

In March 2015, Senators Toomey, Feinstein and Flake proposed an [amendment](#) to the RFS which would remove the corn-ethanol component of the RFS, but retain mandated volumes for more advanced cellulosic ethanol and biofuels. Critics suggest this amendment is unworkable given the current state of technology and supply, and that it may actually delay the adoption of more advanced biofuels. Whilst the *Energy Independence and Security Act* mandates volumes to be produced by more advanced cellulosic methods, the reality is that the supply is simply not available to comply with this directive. In 2014 the cellulosic biofuel was supposed to total at least 6.62 billion litres, when the industry actually produced less than 378 million litres.³² Advanced biofuel production remains challenging and expensive, with most production by companies with significant corn-ethanol experience and private funding sources.³³

[Analysis](#) of the RFS suggests that the primary beneficiaries are ethanol blenders.

2.2.2 Brazil

Brazil is the other major country involved in the development of ethanol mandates, with the US.³⁴

According to a research paper by the US Department of Agriculture titled [Brazil's Ethanol Industry: looking forward](#), large-scale production and use of fuel ethanol from sugarcane began in Brazil in 1975, in response to soaring oil prices and a crisis in the international sugar market. The government program implemented to stimulate the ethanol production industry resulted in new commercial uses for sugarcane and made Brazil a pioneer in the use of ethanol as a motor vehicle fuel.

Legislation enacted in 2003 requires ethanol content of between 20 and 25 per cent (E20 to E25), with the executive branch of government able to adjust levels within that range. In 2011, the ethanol blend mandate was reduced from E25 to E20 due to low availability of supply (Provisional Measure #532 of April 2011). However, E25 was reinstated in June 2012. Virtually all bio-ethanol in Brazil is produced from domestically-grown sugarcane.

Given the high proportion of ethanol used in vehicle fuel in Brazil, renewable energy represents 46 per cent of Brazil's total annual energy supply, compared to 7 per cent of the US annual supply. Brazil has also developed cars that operate only on high content ethanol fuels, including 100 per cent ethanol fuel. According to a paper by academic Dan Hofstrand on [Brazil's ethanol industry](#), 'flex fuel' vehicles were introduced to the country in 2003, which can run on any combination of mineral fuel and ethanol. Seventy percent of new cars sold in Brazil are flex fuel vehicles.

²⁸ J Stafford, [Producers Panic as Ethanol Mandate Loses Support](#), *OilPrice.com*, 2 Jan 2014

²⁹ J Conca, [It's Final – Corn Ethanol Is Of No Use](#), *Forbes*, 20 Apr 2014

³⁰ J Stafford, [Producers Panic as Ethanol Mandate Loses Support](#), *OilPrice.com*, 2 Jan 2014

³¹ T Cama, [EPA settles lawsuit over ethanol mandate](#), *The Hill*, 10 Apr 2014

³² M Phillips, [Ethanol, Fighting for Its Life, Gets a Temporary Reprieve](#), *Bloomberg Business*, 24 Nov 2014

³³ R Fitzpatrick, Cellulosic Ethanol is Getting a Big Boost from Corn, for Now', *Third Way*, 2 Apr 2015

³⁴ International Monetary Fund, [World Economic Outlook](#), Apr 2014

In September 2014, a law was [approved](#) in Brazil increasing the mandated ethanol component to 27.5 per cent (provided there are no technical difficulties with the higher blend) and the allowable biodiesel mix in petrochemical diesel was increased from 5 to 7 per cent. The Under Secretary of the Ministry of Agriculture in charge of the program wants to source more of the raw material from small family farmers.³⁵

Critics [argue](#) that the presence of subsidies for fuel in order to curb inflation mean that much ethanol production is currently uneconomic.

2.2.3 New Zealand

Bioethanol is exempt from New Zealand's excise duty. Thus, an excise of 50.5 cents per litre (cpl) is only paid on the petrol portion of the fuel, and no excise is paid on the bioethanol portion. There was a brief period in 2008 when New Zealand had an ethanol mandate but it was replaced by the excise duty exemption by the then new government to fulfil an election commitment.

New Zealand currently produces bioethanol from whey, a dairy industry by-product. There is one producer of bio-ethanol, Anchor Ethanol, a subsidiary of the dairy giant, Fonterra.³⁶

Bioethanol is usually formed from the fermentation of sugar or starch into alcohol using crops such as corn or sugarcane as the base. New Zealand does not lend itself to growing sugar cane or corn and instead its ethanol comes from whey. In the early 1980s, Fonterra was seeking to find a solution to dispose of lactose, because its high nutrient levels made it difficult to dispose of in waterways. Fonterra started to distil the lactose into ethanol.

Today, Anchor Ethanol produces more than 20 million litres (ML) of high-quality, pharmaceutical grade ethanol at three manufacturing plants across the north island.³⁷ Its high quality makes the New Zealand ethanol more valuable when sold for beverage and industrial use, as opposed to use in fuel. Production of the ethanol is constrained and variable because its processing is predicated on the amount of by-product available at the end cycle of the dairy industry. Factors such as upstream product mix and the weather affect how much whey is left for ethanol production.

Biofuel Sales Obligation

A biofuel sales obligation was implemented in 2008 by the then New Zealand Labour Government. The then Climate Change Minister, David Parker, said the requirement would reduce greenhouse gas emissions by more than a million tonnes between 2008 and 2012.³⁸

Part 3A of the [Energy \(Fuels, Levies, and References\) Act 2008 \(NZ\)](#) commenced in October 2008 and, among other things, introduced the biofuels sales obligation. It aimed to create a biofuel sales obligation in New Zealand, under which every fuel supplier's fuel sales would have to include a minimum percentage of biofuels.³⁹

The necessary requirements were specified by an Order in Council. Under the biofuels sales obligation, biofuels had to comprise 0.5 per cent of oil companies' sales in 2008, with obligation levels rising by 0.5% increments to reach 2.5 per cent in 2012. Provision was made in sections 34X and 34Y for the calculation of the relevant penalties for non-compliance with the obligation in accordance with a complex formula.

³⁵ New biofuel mandates take effect in Brazil, *Soybean and Corn Advisor*, 1 Oct 2014

³⁶ Fonterra, [Anchor Ethanol Ltd](#), (accessed on 20 Oct 2015)

³⁷ Bioenergy Association of New Zealand, [Anchor Ethanol Ltd](#), (accessed on 12 May 2015); Biofuels in New Zealand, [Who's Who in New Zealand Biofuels](#), (accessed on 12 May 2015)

³⁸ D Parker (Minister for Climate Change), [Government requires Biofuels sales](#), media releases, 13 Feb 2007

³⁹ The Act also, among other things, enabled fuel quality standards for biofuels to be set or prescribed.

Mr David Parker, the then Minister for Energy, believed that the measure would contribute to the move from depending on imported fossil fuels towards renewable alternatives and he said that there were businesses wishing to invest in the new industry.⁴⁰ However, the obligation remained in place for only around two months.

Biodiesel Grants Scheme

Part 3A of the [Energy \(Fuels, Levies, and References\) Act 2008 \(NZ\)](#) was repealed by the incoming National Party government in December 2008 under the [Energy \(Fuels, Levies, and References\) Biofuel Obligation Repeal Act 2008 \(NZ\)](#), seeking to fulfil an election promise to remove the Biofuel Sales Obligation. It was intended that the Government would, instead, apply a consistent tax incentive for sustainable biofuels, exempting ethanol and biodiesel from excise and road-user charges in proportion to the blend.⁴¹

When the above repeal Act was passed, the then Energy and Resources Minister, Gerry Brownlee said that in order to meet the now defunct biofuels obligation, oil companies had had to blend 10 million litres of biofuel into petrol and diesel sold in New Zealand in 2008.⁴²

The Biofuel Sales Obligation was replaced with a [Biodiesel Grants Scheme](#), administered by the Energy Efficiency and Conservation Authority, which ran until 30 June 2012. As bioethanol was, and remains, exempt from excise duty, the biodiesel subsidy sought to bring the two biofuels into line. The Scheme allowed for grants of up to 42.5 cpl to biodiesel producers who sold 10 000 or more litres of eligible biodiesel each month.⁴³

When the Scheme ended, the Government said that the focus would then be to promote advanced biofuels rather than first generation biodiesel. It was noted that \$37.6 million (M) had already been invested through the Ministry of Science and Innovation into research into advanced biofuels, which are likely to provide a much greater volume and valuable source of renewable energy for New Zealand.⁴⁴

In May 2012, Opposition Spokesperson on Energy and Climate, Moana Mackey, urged the Government to reinstate the biofuels sales obligation saying that it had provided certainty for biofuel companies which might be considering investing in the New Zealand market. Ms Mackey said that the obligation had been replaced by 'a costly subsidy for biodiesel which was clearly unworkable'.⁴⁵

The Queensland Parliament's State Development, Industry and innovation Committee (SDIIC) stated in its Report No.52 that 'the lack of import protections associated with the ethanol mandate made it difficult for local producers to compete with imported ethanol' in New Zealand.⁴⁶

2.3 Biofuel mandates in Australia

2.3.1 Commonwealth regulation of biofuels

The Commonwealth Government does not mandate any minimum inclusion of biofuels in petrol or diesel sold in Australia. Rather, Commonwealth regulations cap the proportion of ethanol that can be added to petrol at 10 per cent on the basis that petrol containing ethanol blends of 20 per cent or

⁴⁰ Minister for Energy, [Legislation passes to enable sustainable biofuels](#), media release, 3 Sep 2008

⁴¹ P Wong, [Energy \(Fuels, Levies, and References\) Biofuel Obligation Repeal Bill 2008 \(NZ\): Second Reading](#), New Zealand, House of Representatives, *Debates*, 16 Dec 2008

⁴² Minister for Energy and Resources, [Biofuel Obligation Law Repealed](#), media release, 17 Dec 2008

⁴³ Minister for Energy and Resources, [Biodiesel Grants Scheme to be Extended](#), media release, 6 Jul 2010

⁴⁴ Minister of Energy and Resources, [Thousands more NZ homes to be insulated](#), media release, 24 May 2012

⁴⁵ M Mackey, [Government should reinstate the biofuel obligation](#), 27 May 2012

⁴⁶ SDIIC, [Liquid Fuel Supply \(Ethanol\) Amendment Bill 2014](#), Report No 52, Oct 2014:5

more could cause engine problems in some older vehicles.⁴⁷ The Commonwealth has also made a fuel quality standard and fuel quality information (labelling) standard for E85 to enable its use in cars that have been specifically built or modified to use this level of ethanol blend. These include flexible-fuel vehicles and V8 racing supercars.⁴⁸

The Ethanol Production Grants (EPG) program was introduced by the Howard Government in 2002 to encourage the use of ethanol fuel and increase the capacity of the domestic industry. Grants were payable to domestic ethanol producers at a rate of 38.143 cpl (the same rate as the excise duty) for eligible fuel ethanol produced for transport use in Australia. This meant, in effect, the excise duty on domestically produced ethanol was 0 cpl.

However a number of independent reports identified problems with the EPG and it was terminated in June 2015, following an announcement in the 2014/2015 Budget.⁴⁹ A report by the Bureau of Resources and Energy Economics found the subsidy provided almost no benefit to farmers and the benefit to motorists was less than it should have been.⁵⁰ The subsidy provided an effective excise differential of 3.8 cpl compared with RULP but the average price differential at the bowser was only 2 cpl. Around 40 per cent of the \$108M annual subsidy (2012/2013) was not being passed on to motorists.

From 1 July 2016, excise (without a rebate) will be introduced progressively at a rate of increase of 2.5 per cent every year until it reaches 12.5 per cent for fuel ethanol (which is 50 per cent of the energy content equivalent tax rate), and indexed with reference to the consumer price index every six months.⁵¹

2.3.2 Australian states and territories - overview

Of the Australian states and territories, currently only New South Wales (NSW) has a legislative mandate requiring that fuel ethanol make up 6 per cent of the total volume of fuel sold at the primary wholesale level.

The Victorian Government considered introducing ethanol mandates but, ultimately, decided against doing so following a report by the Victorian Parliament's Economic Development and Infrastructure Committee.⁵² The South Australian Government introduced a low vehicle emissions strategy in 2013 committing to increasing the number of low emissions vehicles in South Australia.⁵³ The Western Australian Government was unwilling to implement a mandate of ethanol content in regular unleaded fuel due its unintended distortionary impacts.⁵⁴

2.3.3 The NSW fuel ethanol mandate

Overview

NSW has a fuel ethanol mandate under the [Biofuels Act 2007 \(NSW\)](#), which initially required that fuel ethanol comprise at least 2 per cent of the total volume of petrol sold at the primary wholesale level in NSW from October 2007 (when the Act commenced). This minimum amount was subsequently raised to 4 per cent, and was raised again to 6 per cent from October 2011.

⁴⁷ Australian Government, Department of Environment, [Ethanol labelling standard](#), (accessed on 20 Oct 2015)

⁴⁸ Australian Government, Department of Environment, [Ethanol E85 fuel quality and fuel quality information standards](#), (accessed on 16 Nov 2015)

⁴⁹ R Webb, '[Taxation treatment of ethanol and biodiesel](#)', [Budget Review 2014-15](#), (accessed 21 Sep 2015)

⁵⁰ J Norman, 'E10 consumers missing out on full subsidy discount, ethanol report finds', [ABC](#), 11 Feb 2014

⁵¹ Australian Government, Australian Taxation Office, [Excise on fuel ethanol](#), 13 July 2015

⁵² See Economic Development and Infrastructure Committee, [Inquiry into Mandatory Ethanol and Biofuels Targets in Victoria](#), Final Report, 6 February 2008

⁵³ Biofuels Association of Australia, [State biofuels policy](#), (accessed on 6 Oct 2015)

⁵⁴ '[WA Government rejects ethanol mandate](#)', [Farm Weekly](#), 29 Sep 2009, online, (accessed on 6 Oct 2015)

The current mandate in NSW is for 6 per cent of the total volume of petrol sold to be ethanol. In addition, a certain percentage of the total volume of diesel sold is to be biodiesel and this percentage is currently mandated at 2 per cent biodiesel.

The [Biofuels Act 2007 \(NSW\)](#) and the [Biofuels Regulation 2007 \(NSW\)](#) apply to volume fuel sellers, defined as primary wholesalers (those operating or supplying petrol from oil refineries, shipping facilities or blending ethanol with petrol for resale in NSW) and major retailers (retailers operating or controlling the operation of more than 20 service stations).

A volume fuel seller must ensure a minimum ethanol content of 6 per cent in respect of the total volume of petrol sold to a person in NSW or for delivery in NSW.⁵⁵

The 2007 Act was amended in 2009 to:⁵⁶

- increase the volumetric ethanol mandate to 4 per cent from 1 January 2010 with a further increase to 6 per cent starting 1 October 2011⁵⁷
- to make the *Biofuels Act* applicable to diesel wholesalers and establish a volumetric biodiesel mandate of 2 per cent
- require all regular grade unleaded petrol to be E10 from 1 July 2011 (this requirement was subsequently repealed in May 2012).⁵⁸

This latter E10 requirement was initially deferred by Regulation until 1 July 2012 and, finally repealed on 29 May 2012 by the [Biofuels Amendment Act 2012](#).⁵⁹ When announcing the repeal of the E10 mandate, the then NSW Premier said that he was determined to do everything possible to assist families facing increased cost of living pressures and not force people to buy more expensive premium petrol. Mr O'Farrell said that the Government remained committed to promoting ethanol as a long term alternative fuel which will create hundreds of jobs in NSW. In the same statement, the then Premier confirmed that the 6 per cent ethanol mandate would remain.⁶⁰

The 2 per cent statewide average ethanol content was achieved in September 2008, less than one year after the mandate began.⁶¹ However, exemptions granted to fuel companies have stalled the increasing use of ethanol. Ethanol producers in NSW complain that due to exemptions, only 2.7 per cent of fuel sold in the state is ethanol.⁶² Current Biofuels marketplace data is available from the [NSW Fair Trading Biofuels website](#).

⁵⁵ The legislation provides wholesalers with the flexibility to source ethanol from local or alternative sources: C Hartcher (Minister for Resources and Energy, Special Minister of State, Minister for the Central Coast), [NSW ethanol mandate rises to 6 per cent from 1 October 2011](#), media release, 28 September 2011. There was also a requirement to report quarterly the total volume of petrol sales, including petrol ethanol blends, and the total volume of ethanol in the petrol sold. See also, NSW Government, Trade & Investment, Resources & Energy, [Biofuels legislation](#), (accessed on 20 Oct 2015)

⁵⁶ The 2009 amending Act allows suspension of minimum biofuel requirements in certain circumstances such as where sufficient feedstock or production of biofuels is not available or there are health and safety concerns etc (see s 17). It also established a [sustainability standard for biofuels](#).

⁵⁷ C Hartcher (Minister for Resources and Energy, Special Minister of State, Minister for the Central Coast), [NSW ethanol mandate rises to 6 per cent from 1 October 2011](#), media release, 28 Sep 2011

⁵⁸ B O'Farrell (Premier of NSW, Minister for Western Sydney), [Regular unleaded petrol to be retained in NSW](#), media release, 31 Jan 2012

⁵⁹ B O'Farrell, [Regular unleaded petrol to be retained in NSW](#), media release, 31 Jan 2012

⁶⁰ B O'Farrell, [Regular unleaded petrol to be retained in NSW](#), media release, 31 Jan 2012

⁶¹ NSW Government, Biofuels marketplace data, [Office of Biofuels](#), Office of Fair Training, (accessed 20 Oct 2015)

⁶² [Ethanol exemptions costing Manildra 'millions', company calls for national mandate](#), *ABC Rural*, 12 Aug 2015

In early 2012, the Independent Pricing and Regulatory Tribunal (IPART) was asked by the NSW Government to report on the supply and demand for ethanol. IPART's March 2012 Final Report, [Ethanol supply and demand in NSW](#), reported that there was sufficient production capacity to meet the 6 per cent mandate but identified certain issues, particularly concentrated ethanol supply due to the very few producers, that made achieving the 6 per cent mandate a challenge.

Enforcement in NSW

A person who fails to comply with a minimum biofuel requirement is guilty of an offence, unless it can be shown that reasonable steps were taken to comply (section 10). The maximum penalty is, in the case of a first offence—\$55,000 and in the case of a second or subsequent offence—\$550,000.⁶³

The same penalties (first and subsequent offences) apply for volume fuel sellers who fail to keep records or lodge returns (section 13).

Volume fuel sellers unable to meet the biofuels mandate can apply for an exemption. The [Exemptions framework](#) sets out the eligibility grounds and process for applying for an exemption.

Recent developments in NSW

In July 2015, it was [reported](#) that the NSW Government was seeking a review of the current mandate and had referred the matter to IPART.⁶⁴

An RACQ Fact Sheet (April 2015) - [Ethanol blended fuels policy](#) - referring to a report by the Office of the Chief Economist, Department of Industry and Science (Federal), *Australian Petroleum Statistics*, 2010 to 2015, comments that:

During 2010, the NSW ethanol mandate caused a dramatic increase in E10 sales and a comparable drop in RULP sales. However, the most significant effect has been the increase in the sales of PULP. In January 2010 PULP accounted for 21.6% of all petrol sold in NSW, but this had increased to 30.9% by December 2010. Sales of PULP continued to increase throughout 2011 and 2012. In January 2015, PULP accounted for 44.0% of all petrol sales in NSW and was the largest selling petrol grade.

The NSW ethanol mandate has achieved only a 3% ethanol volume share despite the current legislation prescribing a 6% ethanol volume share. Fuel companies in NSW receive on-going Ministerial exemptions for failing to meet the prescribed mandate.

*Biofuels are a global presence and large scale production occurs in China, Brazil and the United States. Biofuel production in the United States is mainly ethanol and biodiesel. Corn is the main feedstock for producing ethanol. I believe they have nearly 200 plants. As at 1 January 2015, the United States had a production capacity of about 56 billion litres a year. In 2014 the United States produced about 41/2 billion litres of biodiesel.*⁶⁵

To achieve the 6 per cent mandate in NSW it was planned that sales of RULP would be banned in 2012. In preparation for the ban, many service stations began to replace RULP at the bowser with ethanol-blended fuels. This reduced consumer choice to either E10 or the more expensive PULP. In response, RULP sales declined while E10 and PULP sales increased. However, when the decision to ban RULP was subsequently overturned in 2012, sales of E10 gradually declined. NSW has not conducted a consumer education program to support its mandate.⁶⁶

⁶³ Under s 29 of the Act and the [Biofuels Regulation 2007](#), a person can pay the fine stated in a penalty notice served on the person if they do not wish to have the matter determined by a court. Clause 10 and the Schedule 1 of the Regulation provides that the relevant fine for a breach of the biofuel mandate is \$5,500.

⁶⁴ M Coultan, '[NSW orders review of ethanol fuel laws as regular rules](#)', *ACAPMag*, 15 Jul 2015

⁶⁵ Minister for Energy and Water Supply, Introductory Speech, Hansard Transcript, 15 Sep 2015:1736

⁶⁶ DEWS, Response to a Question on Notice (QoN) (public briefing), 19 Oct 2015:2

Data from the Australian Government's Office of the Chief Economist monthly report called the Australian Petroleum Statistics shows that sales of E10 in NSW are in decline.⁶⁷

RACQ considers that the ethanol mandate in NSW is a failure as it has not met its goals and it has resulted in increased fuel costs for motorists, many of which were forced to switch to PULP when RULP became unavailable.⁶⁸

2.3.4 Queensland

Previous proposals to legislate a biofuels mandate in Queensland

There have been several attempts to legislate an ethanol mandate in Queensland including:

- In September 2002, Mr Mike Horan MP, introduced the Liquid Fuel Supply Amendment Bill which sought to introduce a 10 per cent ethanol mandate. This bill failed at the second reading stage in November 2002.
- In 2006, Premier Peter Beattie MP, proposed a 5 per cent ethanol mandate to commence in 2011. In late 2010, Treasurer Andrew Fraser MP, announced that the Government was postponing the mandate for 12 months, at least in part due to proposed changes to the federal excise on ethanol.
- In May 2008, Mrs Rosemary Menkens MP, introduced a private members bill seeking to introduce an ethanol mandate for Queensland. This bill failed at the second reading stage in November 2008.
- On 3 April 2014, Mr Ray Hopper MP, introduced the Liquid Fuel (Ethanol) Amendment Bill 2014 into the Queensland Parliament. This bill lapsed due to the dissolution of the Legislative Assembly on 6 January 2015.

The 2014 bill proposed an ethanol mandate starting at 5 per cent, increasing to 10 per cent over time. The [SDIIC](#) which reported on this bill on 24 October 2014, recommended that the bill not be passed and that in considering any future ethanol mandate DEWS develop a public education campaign to focus on the benefits of ethanol blended fuel, a mandate be expanded to include other biofuels and a comprehensive analysis of the unintended consequences of the NSW mandate be undertaken.⁶⁹

While a biofuel mandate has never been implemented in Queensland, the Government has some prior experience in preparing for the introduction of an ethanol mandate. Under previous governments, customer education activities were implemented, as was an industry assistance package aimed at preparing fuel sites for the distribution and sale of ethanol blended fuel. For example, in 2005 the Queensland Government launched the \$7.3M Ethanol Industry Action Plan (EIAP). Included in the plan was a commitment of \$2.28M toward a customer education program to drive customer awareness of ethanol blended fuels.⁷⁰

Under the EIAP, the Government also offered grants to a selection of fuel sellers through the 'Queensland Ethanol Conversion Initiative'. Funding was provided to upgrade infrastructure ready for the sale of ethanol blended fuel. For example, this included financial support to clean and prepare fuel tanks, fuel lines, and dispensers; as well as prepare service station forecourts with the necessary signage to inform customers of the fuel types on sale.⁷¹

⁶⁷ DEWS, Response to QoN at the public briefing, 19 Oct 2015:2

⁶⁸ RACQ, public hearing transcript (Brisbane), 28 Oct 2015:14

⁶⁹ DEWS, public briefing transcript, 14 Oct 2015:2

⁷⁰ DEWS, Response to QoN at the public briefing, 19 Oct 2015:1

⁷¹ DEWS, Response to QoN at the public briefing, 19 Oct 2015:1

The RACQ Fact Sheet - [Ethanol blended fuels policy](#), comments that:

*In Queensland, the biofuels industry, and particularly ethanol, has struggled to advance due to a lack of long-term policy certainty. There have been a number of false starts to an ethanol mandate, including a proposal for a legislated mandate to start at the end of 2010. In Queensland, the use of ethanol blended fuel peaked in 2010-11 at around 900 million litres or 2.7 per cent of regular unleaded petrol sold, but has since fallen to around 350 million litres in 2013-14 or about 1.2 per cent of regular unleaded petrol. A legislated mandate of two per cent for biobased petrol such as ethanol will, therefore, provide the policy certainty that industry can take as a solid commitment from government to back the growth of a vibrant biofuels and bio-manufacturing industry in Queensland.*⁷²

Current Queensland policy proposal including key differences with the NSW scheme

The Bill currently before the Queensland Parliament is not part of national scheme legislation, however it has been drafted in consideration of the NSW scheme and is consistent with some aspects of that scheme:

*.. 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 level for both biobased petrol and biobased diesel through the regulation-making powers provided in the Bill.*⁷³

The Explanatory Notes point out that another key difference is that compliance against the NSW scheme is calculated using the total petrol and diesel volumes of the state, whereas in Queensland compliance against the biobased petrol mandate will be calculated using the total volume of RULP and 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.*⁷⁴

Another difference between the two schemes is that, 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 and exemption.⁷⁵

Queensland Biofutures Strategy

The Queensland Government is currently developing a 'Biofutures Strategy', which is a 10 year roadmap that the Government is developing to support the development of the biofuels and biotechnology sectors in Queensland. DEWS provides the following summary:

The introduction of the Liquid Fuel Supply (Ethanol and Other Biofuels Mandate) Amendment Bill 2015 is a key part of the Biofutures Strategy and provides certainty to the biofuels industry that it can invest, innovate, grow and create jobs.

While a commercially viable biofuels industry is highly beneficial in its own right, it is seen as an important step in the development of an industrial biotechnology industry in Queensland providing a feedstock on biobased products, technology development and transfer.

The biofuel and industrial biotechnology sector is emerging worldwide as a growing and increasingly valuable and viable industry. Queensland has the potential to become a leading producer of bioproducts and technologies, creating new markets for both technology developers and agriculture producers and providing significant regional development prospects for the state.

⁷² Minister for Energy and Water Supply, Introductory Speech, Hansard Transcript, 15 Sep 2015:1736

⁷³ Explanatory Notes:10

⁷⁴ Explanatory Notes:10

⁷⁵ Explanatory Notes:10

The Biofutures Strategy will provide leadership and direction needed for Queensland to capitalise on its competitive advantages and become an attractive destination for large-scale industrial biotechnology investment.

Industrial biotechnology (sometimes referred to as bio-manufacturing) is the commercial production of fuels, chemicals, plastics and other materials from biobased feedstocks, using advanced technologies. It encompasses a broad spectrum of scientific and industrial technologies to convert renewable feedstocks into diverse range of bioproducts. Agriculture, forestry, waste, biosolids and algae feedstocks can all generate a range of chemicals, as well as advanced aviation fuel, synthetic rubber, cosmetics, detergents and textiles.

Current production technologies used to produce biofuels in Queensland use first generation technologies producing ethanol from sugarcane molasses and sorghum, and biodiesel from used cooking oil and tallow.

In continuing to develop the Biofutures Strategy, the government will work in partnership with key stakeholders in the biofuels and industrial biotechnology sector, research and innovation partners and peak bodies. Both targeted stakeholder and public consultation are planned as the Strategy is developed.....

The Department of State Development is leading the development of the Strategy. Further information on the Biofutures Strategy is available at: <http://www.dilqp.qld.gov.au/industry-development/biofutures.html>.⁷⁶

The Department of State Development released a consultation paper: [Queensland Biofutures 10-Year Roadmap](#) on 5 November 2015. Comments and submissions are to be provided by Friday, 18 December 2015 and the public consultation will inform a Biofutures Roadmap and action plan which is to be completed by mid-2016.⁷⁷

⁷⁶ DEWS, response to QoN at the Brisbane public hearing, 30 Oct 2015:1

⁷⁷ Premier and Minister for the Arts, Media Statement: Ten-year roadmap seeks bio futures directions for Queensland, 5 Nov 2015

3. Examination of the Bill

This section of the report discusses issues raised during the Committee's examination of the Bill. It also includes examination of a number of implementation issues that were brought to the Committee's attention during its inquiry in the Bill.

Where the report refers to "the Minister" it is referring to the Minister for Main Roads, Road Safety and Ports and the Minister for Energy and Water Supply.

3.1 Legislating for the biofuels mandate

The Bill provides that 2 per cent be the minimum amount "retail percentage" for sustainable biobased petrol sales in each calendar quarter (section 35B(3)) and 0.5 per cent be the minimum amount for sustainable biobased diesel sales in each calendar quarter (section 35C(3)), unless another percentage is prescribed by regulation.

3.1.1 Initial biobased petrol mandate

Proposed sections 35A(1), 35B(1) and 35B(3)

The Bill proposes to place a requirement on certain fuel sellers to meet a sales target for sustainable biobased petrol, starting from 2 per cent of total sales of RULP and a regular petrol blend (such as E10), but excluding PULP, in each calendar quarter. This method for calculating the mandate percentage is designed to ensure consumers retain choice at the bowser.⁷⁸ DEWS provides the following explanation:

Unlike in NSW, the Queensland Government's mandate provides for an ethanol sales volume calculated on sales of RULP and E10 only, rather than on sales of all petrol. By calculating fuel sellers required ethanol volumes based on sales of RULP and E10, it is anticipated that a significant number of fuel companies will continue to offer both RULP and PULP, consequently ensuring that consumer choice remains in Queensland. Other service stations will need to consider their options for meeting the mandate be that through upgrading their infrastructure or changing their product offerings.⁷⁹

The Explanatory Notes to the Bill provide the reasoning behind the proposal that 2 per cent be the initial level for biobased petrol mandate:

Queensland is in a strong position to take advantage of a global growth opportunity in bio-manufacturing with its tropical and sub-tropical 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 predetermined rate.....

... A higher mandated target at his point may affect consumer's 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 for its supply to customers.⁸⁰

⁷⁸ Explanatory Notes:2

⁷⁹ DEWS, Response to QoN at the public briefing, 19 Oct 2015:2

⁸⁰ Explanatory Notes:2

Examination of related issues

Production capacity and biobased petrol sales

In 2013-14, ethanol consumption was about 35 ML or about 1.2 per cent of regular unleaded fuel. Current ethanol petrol use is less than in 2010 when use reached its highest point of 2.68 per cent.⁸¹

DEWS advises that while a 2 per cent mandate will require a two-thirds increase in ethanol sales from the current level, local production capacity of Queensland's two operating plants is capable of meeting this demand.⁸² The 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.⁸³

DEWS provides the following two key reasons for the recent decline in biobased petrol demand:

A number of retailers have stopped selling E10 as an option and have increased the sales of premium products. Five years ago or more, in a lot of places there was only one premium product; now there are two or three different premium products, including some places selling premium diesel products as well. That has been at the expense of E10 or ethanol blended fuels at the petrol stations.

While there has been a decrease in sales and some of that can be attributed to lack of demand, it is also probably attributable to the fact that there has been a lack of supply over that period of time. Our government did provide some industry support leading up to 2011. In a lot of cases that included upgrades to tankage and things like that—not in all cases have they continued selling E10 or ethanol blended products at those locations.⁸⁴

Feedback from the public forums held earlier in 2015 confirms that low sales may be attributable to a lack of availability with many attendees advising that they cannot buy E10 at their local petrol station.⁸⁵

DEWS explains that retailers make the decision about what petrol products they will provide at their particular location:

Obviously based on their market research, they would have a different combination of petrol products available. But from the evidence that we look at in the data, particularly the Australian petroleum statistics and other data sources, including the RACQ, premium products do have a greater profit potentially for retailers so they are providing more of those choices at the petrol bowser.⁸⁶

In response to a question from the Committee about methods the Government could employ to encourage retailers to buy ethanol produced in Queensland, DEWS advises:

The mandate itself does not specifically require Queensland ethanol to be purchased for the sale and be counted as part of our mandate. We obviously cannot do that, because of the Constitution and allowing freedom of trade between states. So we cannot necessarily dictate to fuel producers to use ethanol produced in Queensland. However, if there is a transport cost—if you are taking it from somewhere else to sell it in regional locations—you would hope that there is a cost incentive there for fuel providers and wholesalers up in North Queensland, for example, to be purchasing it at the location for financial reasons.⁸⁷

⁸¹ DEWS, public briefing transcript, 14 Oct 2015:10

⁸² DEWS, public briefing transcript, 14 Oct 2015:2

⁸³ Explanatory Notes:2

⁸⁴ DEWS, public briefing transcript, 14 Oct 2015:10

⁸⁵ DEWS, public briefing transcript, 14 Oct 2015:10

⁸⁶ DEWS, public briefing transcript, 14 Oct 2015:10

⁸⁷ DEWS, public briefing transcript, 14 Oct 2015:5

Is a biobased petrol mandate required and if so, at what initial level?

There are widely divergent views from stakeholders about the proposed initial level for the biobased fuels mandate, and on whether a legislated mandate is required at all.

ACAPMA, AIP and petroleum suppliers (wholesalers and major retailers) generally oppose legislated mandates for any fuels.⁸⁸ ACAPMA, for example, would prefer to see industry development assistance coupled with end consumer incentives to support the growth of alternative fuels:

This position is informed by our analysis of Australian and international experience with the use of fuel mandates which suggest that these initiatives almost always generate significant and unintended consequences for consumers and related industries – the aggregate cost of which far exceeds any benefit to the biofuels and agricultural industries.⁸⁹

The Motor Trades Association of Queensland (MTA Queensland) argues that the proposed mandate:

... is a political imperative as opposed to a genuine policy to grow the biofuels industry in Queensland initiative. An ethanol mandate was not a contestable policy plank for which the major political parties sought an imprimatur from the electorate at the recent general election. It has attracted bipartisan party support at this time due to the unique composition of the Queensland Parliament.⁹⁰

While MTA Queensland was originally generally supported the phase-in of an ethanol blended fuel mandate with some reservations, after perusing the Bill the Association submits it is:

..now most apprehensive about the policy and its implementation of the mandate due to the costs imposed; the regulatory impacts on service station petrol retailers; and proceeding without a full cost-benefit evaluations. The view is that the policy settings are subjective lacking a comprehensive cost-benefit evaluation of costs and regulatory implications of a state-wide mandate.⁹¹

MTA Queensland is also opposed to the mandate being legislated until an educational program has been implemented and until after the Queensland Productivity Commission (QPC) review. Its preference is for the Government in the first instance to implement an educational program on the advantages of biofuels petrol and diesel for the consumer, industry and the environment in the lead up to and completion of the proposed QPC's consideration of 'the economic, social and environmental benefits of the mandated targets'.⁹²

Stakeholders involved in the biofuels industry all support the Bill's proposal to legislate mandates. Canegrowers Mackay point out the opportunities the mandate will provide for regional Queensland:

Canegrowers in general are very appreciative of the Bill that has been put forward. I think the key factor is that it starts to present an opportunity that might start to lock in some clarity for future investment and for some future growth. Diversity across this region is important going forward, and the opportunity for industry as a whole to continue to grow both horizontally and vertically is very important.... The Bill has the opportunity to provide some certainty for growers.....

⁸⁸ See submissions 8, 10, 13, 16, 17

⁸⁹ ACAPMA, submission 8:4

⁹⁰ MTA Queensland, submission 14:2

⁹¹ MTA Queensland, submission 14:2

⁹² MTA Queensland, submission 14:5

So what does this potential Bill underpin? I think it underpins the opportunity for development across regional Queensland. It underpins the opportunity for jobs growth across regional Queensland. It underpins the opportunity for us to be a leader in Australia regarding clean, green fuel commodities.⁹³

Wilmar BioEthanol agrees, adding:

I think ethanol is a pathway. We are thinking that where we might end up in Queensland if we get to say, 10 per cent of all fuel.. that is three more plants [the size of the Sarina Bioethanol plant] that we can build in Queensland. That is three more sugar mills that get the opportunity to bolt something interesting on the back of it, diversify their workforce and diversity their income stream. I think it is worth doing, but I think the size of the prize is much bigger than that. I think that ethanol is a good pathway to other advanced products – hydrocarbon, plastics, jet fuel, diesel drop-in replacement fuels into the future.⁹⁴

Aurecon argues that Government intervention is required to ensure the success of the policy, advising that whether it be Thailand, Brazil, America or Europe, there is no ethanol industry in the world that has got off on a level playing field and private enterprise.⁹⁵

AgForce Grains also maintains that a voluntary approach would not achieve the policy objectives:

AgForce Grains agrees with the Bill's Explanatory Notes that a voluntary target for biofuel sales in Queensland would not be capable of delivering policy objectives and certainty to a biofuels industry. As such AgForce Grains agrees with implementing a percentage requirement for the sale of biofuels.⁹⁶

BAA provides the following summary of what it sees as the benefits to Queensland of introducing the mandate:

- leverage Queensland's agricultural base to create value adding options for farmers
- reduce greenhouse gas emissions
- improve air quality
- take some important first steps in improving Queensland's fuel security by developing alternative fuels in the wake of the announcements of oil refining closures
- position Queensland as a global player at the forefront of an emerging advanced biofuel industry
- take a leadership position in advocating for clean energy.⁹⁷

While feedstock producers, refineries, and the biofuel research and production industry all support a mandated percentage, most argue that a 2 per cent initial mandate is too low and recommend between 3 per cent and 5 percent be set as the initial target. They submit the proposed mandate level will be a major disincentive to any new investment by growers, millers and the ethanol industry and will not achieve the stated objectives of the legislation.⁹⁸

⁹³ Canegrowers Mackay, public hearing transcript (Mackay), 22 Oct 2015:11

⁹⁴ Wilmar BioEthanol, public hearing transcript (Mackay), 22 Oct 2015:4

⁹⁵ Mr Stephen Cutting, Aurecon Gladstone-Mackay, public hearing transcript (Mackay), 22 Oct 2015:24

⁹⁶ AgForce Grains, submission 12:2

⁹⁷ BAA, submission 4:1

⁹⁸ For example, see submissions 1,3,4,5,7,12, 15, 18

Examples of the evidence provided by these stakeholders are provide below:

- AgForce Grains submits “... *there would be no creation of jobs, no stimulation of regional economies or communities, and it would not provide any certainty or added incentive to invest and grow the industry in Queensland*”.⁹⁹
- TfA Project Group submits a 2 per cent mandate “*will still only utilise 42% of the existing production capacity which we would consider unlikely to achieve the Bill Objectives of providing assurance to existing ethanol producers.... It is clear that a mandate of 2% which utilises less than half of the existing production capacity does not provide a sound business case to develop further biofuels plants in Queensland*”.¹⁰⁰
- Wilmar BioEthanol “.. *believes the starting percentage of 2 per cent is too low as it is well below existing production capacity and also well below the level that had been achieved in Queensland leading up to the 2010 mandate implementation. Queensland got to 3 per cent without the mandate in 2009 therefore there is capacity to a higher blend rate a lot faster... We believe the starting percentage should be raised to 3 or 4 per cent in order to stabilise the existing industry and give the best chance to encourage new investment*”.¹⁰¹

RACQ and Energreen Nutrition, on the other hand, support 2 per cent as an appropriate starting level:

- RACQ maintains “*...this will provide surety of demand supporting new investment in ethanol production, while providing on-going availability of 100% mineral unleaded petrol for the motorists with non-E10 compliant vehicles. RACQ would support an increase to 3% as E10 compatibility becomes more common in the Queensland vehicle fleet*”.¹⁰²
- Energreen Nutrition supports an initial target of 2 per cent on the basis it will allow for demand to be addressed by current local capacity. It also argues for a growth formula, such as 3 per cent by 2018 and 5 per cent by 2020, to be prescribed to allow for the growing of the industry’s feedstock production, processing and refining facilities.¹⁰³

DEWS’ response to the concerns raised in by stakeholders states that the 2 per cent starting point is appropriate and that in making this determination:

.. Government consulted widely and is taking a measured approach. Starting at 2 per cent is an increase from around 35 ML of ethanol per year (1.2 per cent) to around 60 ML, an increase from 350 ML of E10 to 600 ML of E10 per year.¹⁰⁴

At the public briefing, DEWS provided additional information on why the Government is proposing an initial biobased petrol mandate of 2 per cent:

... two per cent was an interesting exercise in consultation.... We talked to people about what the starting rate should be and we also received a number of submissions. It was a very contentious issue across-the-board. In regional Queensland, people did want a higher percentage, but then a number of industry players also wanted no percentage at all.

So when we were looking at the potential impacts on retailers.... and weighing them up against the potential development that this mandate could actually provide the biofuels industry in Queensland, we thought two per cent was a reasonable start. It would not unfairly burden retailers to a large extent but at the same time it would give policy certainty to the existing players in the biofuels space—so the facilities at both Sarina and Dalby—but also

⁹⁹ AgForce Grains, submission 12:2

¹⁰⁰ TfA Project Group, submission 3:2-3

¹⁰¹ Wilmar BioEthanol, submission 7:1

¹⁰² RACQ, submission 11:1

¹⁰³ Energreen Nutrition, submission 9:2

¹⁰⁴ DEWS, Response to issues raised in submissions, 23 Oct 2015:1

show that new industry would be welcome in Queensland by putting in a commencing rate of two per cent. That is reasonable and that will not necessarily fall over within the first year.

We are confident that two per cent can be reached with the support that government needs to [provide]..... an education campaign and also working with our industry partners to work through some of the implementation issues with them. That is how we got to the two per cent and at this point in time we think that is a reasonable rate compared to the experiences that New South Wales and other places have had, too.¹⁰⁵

DEWS points out that while Queensland production capacity can already meet the 2 per cent this is not the only factor to take into account in relation to the starting percentage as:

- fuel retailers need enough time to upgrade and convert retail sites to sell E10 (only approximately 350 out of 1380 fuel retailers currently sell E10) and the fuel distribution network is unlikely to have capacity by mid-2016 to supply enough fuel to meet a mandate above 2 per cent
- time is needed for consumer behaviour at the fuel bowsers to change
- there is a need to ensure that ethanol producers are ready to meet demand so the mandate supports domestic production as opposed to growing an import market from interstate and abroad
- 2 per cent will support consumer choice at the bowser
- the Government intends to increase the mandates over time.¹⁰⁶

Low Aromatic Fuel

AIP and Viva Energy submit that the RULP definition in the legislation should specifically exclude low aromatic fuel (LAF) as it is not possible to produce an E10 LAF.¹⁰⁷

At the public hearing in Brisbane, AIP explained that LAF is supplied to combat the devastating impacts of petrol sniffing and should be explicitly excluded from the mandate and the calculation of the 2 per cent requirement.¹⁰⁸

Viva Energy provides:

Viva Energy is the proud supplier of Low Aromatic Fuel (LAF) to designated petrol sniffing prevention areas in North Queensland, including the Gulf of Carpentaria and Cape York regions. The information about the potential issues involved in combining E10 and LAF in the AIP submission has been provided by Viva Energy's Product Quality Manager. Given these issues, and the potential for an E10/LAF blend to undermine the successful adoption of low aromatic fuel in affected areas, we strongly endorse the proposal put forward in the AIP submission that the definition of Regular Unleaded Petrol in the Bill be amended to specifically exclude volumes of Low Aromatic Fuel, whether this fuel is being sold as a RULP replacement by the retailer on a voluntary basis or as a result of the Federal Government having used their powers under the Low Aromatic Fuel Bill 2012 to prohibit the supply of Regular Unleaded in a designated area.¹⁰⁹

The response from DEWS regarding the LAP issue is that it is exploring options to ensure that there are no unintended consequences on fuel retailers in areas where LAF is required to replace RULP, including E10 and that options will be presented during the Consideration-in-detail debate on the Bill.¹¹⁰

¹⁰⁵ DEWS, public briefing transcript, 14 Oct 2015:4

¹⁰⁶ DEWS, Response to issues raised in submissions, 23 Oct 2015:1-2

¹⁰⁷ AIP, submission 13:12-14 and Viva Energy, submission 10:2

¹⁰⁸ AIP, public hearing transcript (Brisbane), 28 Oct 2015:19

¹⁰⁹ Viva Energy, submission 10:2

¹¹⁰ DEWS, Response to issues raised in submissions, 23 Oct 2015:13

E10 and higher ethanol blends

While the Bill proposes a “biobased petrol” mandate, DEWS advises that, practically speaking, ethanol blended fuel is currently the only commercial available biobased petrol sold in Queensland and Australia. E10 is mostly unleaded petrol blended with up to 10 per cent ethanol, but some retailers also sell premium high-octane E10.¹¹¹

The Bill does not propose to limit the percentage blend of ethanol to E10, however a number of submitters recommend that the scheme cater for higher blend mandates (for example, E85). Mackay Sugar provides the example of Brazil where the use of E85 or other higher blends close to regional ethanol producers can significantly reduce the transport distribution distance (and hence costs) compared to more widely distributed lower E10 blends.¹¹²

DEWS provides the following response:

*The Australian Government is responsible for setting fuel quality standards and all retail fuel sold in Australia must comply with these standards. Currently, the Australian Government has standards for both E10 (containing 10 per cent ethanol) and E85 (containing 85 per cent ethanol) blended fuels. There is potential in the future to work with the Australian Government to develop new standards for more ethanol blended fuels such as E15. The Bill allows for different blends like E15 to meet the mandate if permitted by future Australian Government fuel standards.*¹¹³

3.1.2 Initial biobased diesel mandate

Proposed section 35C(3)

The Bill proposes an initial 0.5 per cent mandated target for sustainable biobased diesel, including both biodiesel and other renewable diesel fuels produced from plants and animal oils, biomass or waste. This target will apply to fuel wholesalers (not retailers) and can be increased or altered by regulation.¹¹⁴

DEWS provides the following explanation for why the biodiesel mandate will only apply to wholesalers:

*The large volumes of diesel are sold directly by fuel wholesalers and to this end users such as mining and transport companies bypass fuel retailers. Therefore, wholesalers of diesel are subject to the mandate, not retailers.*¹¹⁵

Examination of related issues

Production capacity

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.¹¹⁶ This volume is estimated to be close to the volume that will be required under the proposed initial biobased diesel mandate.¹¹⁷

The Explanatory Notes advise that up to 5 per cent biodiesel can 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

¹¹¹ DEWS, public briefing transcript, 14 Oct 2015:2

¹¹² Mackay Sugar, submission 1:2

¹¹³ DEWS, Response to issues raised in submissions, 23 Oct 2015:2

¹¹⁴ Explanatory Notes:2-3

¹¹⁵ DEWS, public briefing transcript:2

¹¹⁶ Explanatory Notes:2

¹¹⁷ DEWS, Response to issues raised in submissions, 23 Oct 2015:3

*waste, must meet the fuel quality standard of 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.*¹¹⁸

Is a biobased diesel mandate necessary?

As noted earlier in this report, the major oil companies and their industry association (the AIP) do not support mandates, in principle, on the basis that they distort the fuels market. Instead, they support market-based mechanisms, which they argue, have delivered a strongly competitive fuels market with robust supply security.¹¹⁹

For example, Viva Energy points out that they see biofuels as part of the broader fuel mix and have worked hard during the past decade (investing \$20 M in biofuels infrastructure across NSW, Victoria and Queensland) to embed biofuels in the market as a sustainable fuel choice for customers. They submit:

*In general, we do not support fuel mandates and believe that consumers should be given the choice to buy the fuel that is right for their vehicle and their budget. We believe that if biofuels are priced competitively and supported by consumers then they will find their place in the market and will do so in a way that is sufficient and sustainable, rather than relying on regulations.*¹²⁰

Caltex advises that it does not support the biodiesel mandate on the grounds of weak and unpredictable commercial customer demand, multimillion dollar investment in infrastructure costs and potential supply challenges given there is only one biodiesel supplier in the Queensland market.¹²¹

As previously noted, ACAPMA opposes legislative mandates for any fuel¹²² and MTA Queensland has grave concerns about the cost implications for fuel retailers and recommends the mandate not be legislated until after the QPC review.¹²³

However, other submitters support the initial biodiesel target and believe it should be increased over time if local production is sufficient and no issues in quality arise.¹²⁴ For example, the only commercial biodiesel producer in Queensland, Ecotech Biodiesel (Consolidated Bio Diesel Pty Ltd) submits:

The choice of 0.5% as the initial mandated level is a sensible volume to support existing suppliers without compromising the mandate in its intimal phase. The increase in mandate should be in accordance with the capabilities found within Queensland, however with a clear understanding that future investment will be rewarded with the growing demand.

*A mandate rising to 5% over a 5-10 year time frame would produce 10-15 facilities the size of Ecotech and produce a bio-refining industry producing a range of products that are beneficial to the Queensland economy.*¹²⁵

Engreen Nutrition, which has invested significant funds towards biofuel research projects, points out that investors in the manufacture and supply of biodiesel are dependent on a reliable feedstock supply at reasonable costs:

The State Government also has an interest in the effect the mandate has on, what are at present, largely agricultural feedstocks...

¹¹⁸ Explanatory Notes:3

¹¹⁹ See submissions 10, 13, 16 and 17

¹²⁰ Viva Energy, submission 10:1

¹²¹ Caltex, public hearing transcript (Brisbane), 28 Oct 2015:20-21

¹²² ACAPMA, submission 8:4

¹²³ MTA Queensland, submission 14:5

¹²⁴ For example, see submissions 2, 4, 6, 9, 11

¹²⁵ Ecotech Biodiesel, submission 6:1-2

A reliable demand, established by a reasonable mandate level, will attract innovation, development and investment in sources of feedstocks, including such crops as Pongamia, which do not compete with human and agricultural food crops. In this area of biofuel technology.. Queensland has the opportunity to become a world leader....

This mandate will provide for the entrance of new participants, capital and labour to the benefit of Queensland as the market grows.¹²⁶

Is the biodiesel target achievable? – supply and industry capacity issues

A number of submitters raise a concern that diesel wholesalers may not be able to comply with the biodiesel mandate.¹²⁷ In particular, wholesalers raise a concern that there are uncertainties around biodiesel supply, quality and blending facilities in Queensland which may make compliance with the mandate difficult.¹²⁸

Viva Energy submits that it is premature to consider implementation of a mandate at this time and recommends that a detailed assessment of the biodiesel industry's capability to supply is undertaken before the mandate is finally determined:

To comply with the mandate, Viva energy estimates that it would require at least 6.5 million litres of B100 per annum. Whether the sole biodiesel producer in Queensland will be able to reliably and rateably supply this amount of B100 to Viva Energy, and whether the product quality of that B100 would meet Viva Energy's stringent requirements, remains to be seen. To source B100 from other domestic producers would seem at this stage to be cost prohibitive, given the trucking distances involved.¹²⁹

This position is supported by the AIP in its submission:

AIP does not support the setting of mandate level for biodiesel as there is poor understanding of the market and the capabilities of existing and potential producers to supply biodiesel...

AIP strongly suggests that there is further detailed assessment of the potential for a sustainable biodiesel industry before a percentage is set in legislation.¹³⁰

In addition, AIP points to the fact that imported biodiesel, which was supplying 60 per cent of the market demand, has now been closed off with the changes to the Commonwealth excise and customs framework which was applied from 1 July 2015.¹³¹

Energreen Nutrition notes the concerns raised with regard to competition for existing biodiesel fuel stocks and possible price distortions and responds:

A mandate would create demand for a floor price and a logical forward growth to allow commercially viable investment by companies such as ours in new biodiesel feedstocks...

.. to encourage investment in regional development the Queensland government needs merely to give certainty of a realistic path to a mandate for biodiesel. Given this, businesses such as ours would invest, facilitate investment and create new and second-generation biofuel feedstocks that could be used in the regions and processed in the regions. We currently have 640 hectares of pongamia in a trial plantation at Spring Gully near Roma in cooperation with Origin Energy.¹³²

¹²⁶ Energreen Nutrition, submission 9:3 and public hearing transcript (Brisbane), 28 Oct 2015:8

¹²⁷ For example, see AIP submission 13:15 and ExxonMobil, submission 17:1

¹²⁸ Viva Energy, submission 10:2-3, AIP, submission 13:4

¹²⁹ Viva Energy, submission 10:3

¹³⁰ AIP, submission 13:4

¹³¹ AIP, public hearing transcript (Brisbane), 28 Oct 2015:20

¹³² Energreen Nutrition, public hearing transcript (Brisbane), 28 Oct 2015:6

Ecotech Biodiesel advises that, based on Australian statistics, 6.7 billion litres of diesel came into Queensland last year:

When you go through the figures on that, 0.5 per cent is about 37 million litres, which is slightly above the capacity of Ecotech as it now stands. So 0.5 per cent will not only be met in its entirety or close to its entirety by Ecotech but also immediately stimulates options for other companies to become involved.¹³³

The response provided by DEWS is that it expects the existing supplier of biodiesel will have sufficient capacity to supply the majority of biodiesel needed to meet the initial mandate:

This facility only uses tallow or used cooking oil as feedstocks and can meet the existing standards required by AIP members, which are the nationally set fuel quality standards established under the Fuel Quality Standards Act 2000.

There are current inline blending facilities operating in Queensland, including at the existing biodiesel supplier. Many wholesalers already have existing agreements to provide various biodiesel blends, including B20 and B50, to some commercial and industrial customers. The biodiesel in these higher blends can count towards the overall half percent biodiesel mandate.¹³⁴

Bio Processing Australia raises a concern that if the mandate does not increase over time to allow for the regional expansion of biodiesel plants, fuel wholesalers might only purchase biodiesel from southeast Queensland which would reduce the opportunity to grow a regional bio-production economy.¹³⁵ Energreen Nutrition also supports an increase for the biodiesel mandate over time – 2 per cent by 2018 and 5 per cent by 2020.¹³⁶

DEWS notes the concern raised by Bio Processing Australia and other submitters and advises that the 30 ML of biodiesel currently produced in Queensland is close to the volume required under the initial biobased diesel mandate. It also anticipates that fuel companies will seek a diversified supply of biodiesel that will be available across the State and close to their customers to minimize transportation costs:

It is expected that a starting percentage of half a percent will also drive sufficient demands to encourage investment in new plants.... Investment decisions will be influenced by factors such as access to and availability of feedstock, as well as access to utilities, transportation and other infrastructure.¹³⁷

Energreen Nutrition provides evidence that there are enough biodiesel feedstocks to support a biodiesel mandate of up to 2 per cent:

But beyond that, at this point in time any higher mandate, unless we have additional feedstocks, would probably ramp up the prices for feedstocks which would make the industry unprofitable.¹³⁸

¹³³ Ecotech Biodiesel, public hearing transcript (Brisbane), 28 Oct 2015:9

¹³⁴ DEWS, response to issues raised in submissions, 23 Oct 2015:13

¹³⁵ Bio Processing Australia, submission 2:1

¹³⁶ Energreen, submission 9:2

¹³⁷ DEWS, response to issues raised in submissions, 23 Oct 2015:3

¹³⁸ Energreen Nutrition, public hearing transcript (Brisbane), 28 Oct 2015:8

3.1.3 Commencement date for the biofuels mandate

The Minister has advised Parliament that 1 July 2016 is the intended date for commencement of the provisions that will introduce the biofuels mandate.¹³⁹ This date is also provided on the DEWS' [website](#).

BAA provides evidence about the lead-in time required for development and investment in the biofuel industry:

*The general period from inception of the idea to commissioning product is somewhere between three and five years depending on how aggressive you want to be with that process. ...There are quite a lot of things, as you can appreciate, that you need to bring together. Generally with these sorts of builds they have around an 18-month construction period. If you think of 18 months in planning and 18 months in construction, that gives three years. That would be your tightest time frame.*¹⁴⁰

Stakeholders hold divergent views on the suitability of the proposed commencement date. For example, Bio Processing Australia supports the proposed date and submits:

*I am told there is a push to delay the Queensland mandate for biodiesel production back to 2017 – this is not good for the industry (or our company as we need to start planning our expanded plant asap) as I think local biodiesel producers need to make the most out of the federal excise policy asap.*¹⁴¹

Other stakeholders have raised concerns about the proposed 2016 commencement date, including MTA Queensland's submission that consideration the Bill should be deferred until the proposed QPC review has been undertaken.¹⁴²

ASMC raises a concern regarding the lack available of data to determine the amount of ethanol that will be required to meet the biofuels mandate and that this will impact on the forward planning and contracting by biofuel producers:

*While a 2% ethanol mandate and 0.5% biodiesel mandate has been prescribed in the legislation, to commence on 1 July 2016, the government currently has insufficient information to determine how large this absolute volume actually is. While it is recognized and understood that from 1 January 2016 there will be a mandatory requirement for fuel stations to provide data, it is highly unlikely that the issue of exemption will be resolved prior to the commencement of this mandate, which is likely to have an impact on the forward planning and contracting of biofuel producers.*¹⁴³

AIP also suggests that the proposed commencement date of 1 July 2016 has the potential to treat retailers inequitably as some retailers do not currently supply ethanol blends while other retailers supply volumes close to the mandate. Consequently AIP considers that the commencement date should be delayed until at least 1 July 2017.¹⁴⁴

Caltex recommends that exemptions be provided until 1 July 2017 to those retailers with a compliance plan that includes a site conversion program as this would ensure there continued to be an industry-wide increase in ethanol-compatible sites and therefore overall ethanol volumes and importantly, for the government, such an extension would mitigate the need for exemptions from the outset of the mandate.¹⁴⁵

¹³⁹ Hansard transcript, 15 Sep 2015:1736

¹⁴⁰ BAA, public hearing transcript (Mackay), 22 Oct 2015:4

¹⁴¹ Bio Processing Australia, submission 2 (Correspondence attached to submission)

¹⁴² MTA Queensland, submission 14:2-3

¹⁴³ ASMC, submission 15:3

¹⁴⁴ AIP, submission 13:3 and public hearing transcript (Brisbane), 28 Oct 2015:19

¹⁴⁵ Caltex, submission 16:5

Caltex advises that given the significant investment called for under both mandates and the lead-in times required, they would not be able to meet the 1 July 2016 start date and would likely need to apply for exemptions from the outset.¹⁴⁶

Other concerns raised about whether the proposed commencement date will provide sufficient lead-in time, include:

- the data on fuel sale volumes and locations is required to determine appropriate threshold levels but will not be provided to the Government until January 2016 at the earliest
- the sustainability criteria and compliance model, the exemptions framework and the compliance and enforcement regime are still to be finalised
- fuel retailers need adequate time to plan for, and undertake, any required infrastructure upgrades
- an extensive education and awareness campaign is required to facilitate increased consumer demand prior to commencement of the mandates.

The Committee's considers each of these issues in detail in later sections of the Committee's report.

Committee comment and recommendations

Committee comment

Legislated biobased fuel mandates

The Committee has examined the arguments for and against legislating biobased fuel mandates as well as the dialogue about what the initial level of the targets should be. The Committee notes that the views of stakeholders are widely divergent on both these issues.

The Committee has come to the conclusion that legislating biobased fuel mandates is necessary to stimulate investment in the biofuel industry and to reduce greenhouse gas emissions from motor vehicles. It has therefore recommended that the Bill be passed.

After careful consideration, the Committee has decided to support the proposed initial sales targets of 2 per cent for sustainable biobased petrol and 0.5 per cent for sustainable biodiesel on the basis that:

- existing Queensland suppliers of biofuels have sufficient capacity to supply the fuel required to meet these initial targets
- the exclusion of premium petrol from the total sales volume calculation for biobased petrol will maintain consumer choice at the bowser allowing those motorists who drive older, incompatible cars to continue to buy premium petrol
- the initial targets are more likely to be achievable from a consumer demand perspective in the short term while motorists adjust to the use of biobased fuels.

However, the Committee is concerned that the initial biobased petrol mandate percentage has not been set at a level which will encourage additional investment in the biofuel industry in Queensland and is of the view that the biobased petrol mandate should be increased as soon as practicable to encourage further investment.

The Committee is therefore in favour of option 1 for the [biobased petrol mandate pathways](#) (that is, 4 percent from 1 July 2019) and would support a 4 per cent mandate being implemented even earlier if this is determined to be achievable. The Committee provides a detailed examination of the issues related to mandate pathways in the next section of this report.

¹⁴⁶ Caltex, public hearing transcript (Brisbane), 28 Oct 2015:21

Low aromatic fuel

The Committee has examined the recommendation by some stakeholders that the definition of regular unleaded petrol in the Bill should specifically exclude volumes of low aromatic fuel (LAF) as well the advice from the Department that it is considering options to ensure there are no unintended consequences on fuel retailers in areas where LAF is required to replace regular unleaded petrol, including E10, and that these options will be presented during the Consideration-in-Detail debate on the Bill.

The Committee is recommending that the Bill be amended to specifically exclude LAF from the definition of regular petrol unless a more appropriate solution is presented by the Minister during the Consideration-in-Detail debate on the Bill.

Mandate commencement date

The Committee has noted the proposed commencement date of 1 Jul 2016 for the mandates and has discussed whether this timeframe will provide sufficient lead-in time, given:

- the data on fuel sale volumes and locations (required to determine appropriate threshold levels) will not be provided to the Government until January 2016 at the earliest
- the lack of current fuel sales data may also impact on the ability of the biofuel industry to forward plan, and contract with feedstock producers
- the sustainability criteria and compliance model is still to be finalised
- the exemptions framework is still to be finalised
- the compliance and enforcement regime is still to be finalised
- the time it is likely to take for fuel retailers to plan for, and undertake, any required infrastructure upgrades
- the time required for an extensive education and awareness campaign to facilitate increased consumer demand prior to commencement of the mandates.

The Committee discussed the risk that insufficient lead-in time may lead to a significant number of, what would otherwise be, unnecessary exemption applications and the fact that this could undermine the policy intent of the mandate initiative.

While a number of stakeholders have requested that consideration of the Bill be deferred until the implementation issues are resolved, the Committee does not agree with this approach as it has concluded that it is critical to pass the legislation as quickly as possible to provide assurance to the biofuel industry that the Queensland Parliament supports the proposed mandates; and to enable the provisions requiring fuel seller registration and reporting to commence by early 2016.

Non-Government members are of the view that a delay of six months in the commencement date, to 1 January 2017, would provide sufficient additional lead-in time for both Government and industry. Government members are of the view that the proposed commencement date of 1 July 2016 may provide sufficient time for the considered implementation.

The Committee has agreed to recommend that the Minister, when making a final decision on the commencement date, ensure there is sufficient lead-in time to mitigate the risk of the policy intent of the legislation being undermined by the granting of numerous exemptions to fuel retailers; and to enable sufficient time for the finalization of the matters listed above.

Recommendation 2

The Committee recommends the Minister, when making a final decision on the commencement date for the biobased petrol mandate, ensure there is sufficient lead-in time for the finalisation of the following matters:

- analysis of the fuel sales data to determine an appropriate volumetric threshold level
- development of the sustainability criteria and compliance model in consultation with stakeholders
- development of the compliance and enforcement regime in consultation with stakeholders
- development of the exemptions framework in consultation with stakeholders
- development and implementation of an extensive public education and awareness program in consultation with stakeholders
- upgrades to service station infrastructure.

Recommendation 3

The Committee recommends that the Bill be amended to ensure there are no unintended consequences for fuel retailers in the areas where low aromatic fuel is required to replace regular unleaded petrol including E10, either by:

- specifically excluding low aromatic fuel from the definition of regular petrol in section 2 of the Bill or
- through an alternative solution presented by the Minister during the Consideration-in-Detail debate on the Bill.

3.1.4 Power to amend/suspend the mandate percentages by regulation***Proposed sections 35B(3), 35C(3) and 35J***

Proposed new sections 35B(3) and 35C(3) provide that the mandated targets can be increased or reduced by regulation.

The Explanatory Notes state that any decision by the Government to increase the target will be subject to a review and recommendation from the QPC and that the QPC 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.¹⁴⁷

Proposed section 35J of the Bill provides the Minister with the power to make a declaration temporarily suspending either or both mandates for up to one year under certain circumstances, for example if there is an industry-wide shortage of biofuels. At the public briefing DEWS provided the following example regarding the application of section 35J:

*The suspension provisions enable the minister to suspend the operation of the mandate for up to one year in specified circumstance. It is envisaged that this would be exercised if, for example, a natural disaster wiped out the supply of feedstocks for ethanol in Queensland.*¹⁴⁸

¹⁴⁷ Explanatory Notes:2

¹⁴⁸ DEWS, public briefing transcript, 14 Oct 2015:3

The Explanatory Notes specify that given the Minister's declaration may suspend the operation of the 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 the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance is given within 14 sitting days after the legislation is tabled in the Legislative Assembly.¹⁴⁹

The Bill also provides a power for the Minister to cancel a suspension if the Minister is satisfied that the suspension is no longer necessary.¹⁵⁰

Examination of related issues

The biofuel feedstock and production industries consistently raise a serious concern in their evidence that the Bill, as currently drafted, does not provide any protection for the growers of feedstocks or biofuel producers nor any incentive to invest in the biofuel industry. Arguments put in support of this contention include that the Bill:

- allows for the initial targets to be reduced by regulation
- provides too much flexibility for the Government of the day to amend the targets
- does not prescribe a clear schedule for specific increases in the target over a number of years
- includes suspension provisions that are a serious impediment to the policy objectives of the Bill and the commitment to grow the biofuels industry in Queensland.¹⁵¹

Power to amend the mandate percentages by regulation and pathways for increases

Numerous submitters raise a concern that the Bill's provisions enabling the Government to increase and reduce the mandates by regulation pointing out that this approach adds to the uncertainty already experienced by the biofuel industry.

Wilmar BioEthanol points to the policy uncertainty that has impacted the Australian biofuel industry over recent years:

*The biofuel space is an area that has suffered considerable because of policy uncertainty, both at a state and federal level, with mandates and excise regimes changing over the last six years in NSW, Queensland and federally. It is an industry that sorely needs some policy certainty to move forward.*¹⁵²

As an example, it provides that the federal excise has "chopped and changed":

*Ethanol was supposed to have an effective zero excise until 2021. That got changed in last year's federal budget and now it will ramp up from July next year as 2.5 cents per litre over a five year period. So we will go from effectively zero excise to 12.5 cents excise over a period of time.*¹⁵³

A cane grower in the Mackay region provides evidence that, without certainty, growers will not grow additional cane to supply ethanol producers:

If you want to produce bigger quantities or large quantities of ethanol, there would have to be more cane grown, and I can tell you that unless cane growers are going to have some certainty as to what their returns are going to be out of it nobody will grow one stick of cane

¹⁴⁹ Explanatory Notes:17

¹⁵⁰ Explanatory Notes:18

¹⁵¹ See for example, Mackay Sugar submission 1:1 and AgForce Grains, submission 12:3;

¹⁵² Wilmar Bioethanol, public hearing transcript (Mackay), 22 Oct 2015:4

¹⁵³ Wilmar Bioethanol, public hearing transcript (Mackay), 22 Oct 2015:4

for producing ethanol. The industry is difficult enough as it is now with the uncertainty... For anyone in the growing side of the industry to want to go into growing cane to produce ethanol, they would want certainty and they would want to know what they are going to get for it.¹⁵⁴

While acknowledging the Government's intention that the mandate levels need to be able to be increased by regulation, the issue about the lack of certainty is highlighted by the ASMC:

The regulation of the mandated percentage, while providing the government of the day with the agility to increase the minimum threshold, also opens the opportunity for incumbent and future governments to politicise the mandates, "bouncing" the retailer percentage from year to year. The recent experience of the Renewable Energy Target (RET) over the last two years is a salient reminder of how campaigning by large, interested companies can quickly distort bipartisan policy. This will neither facilitate the growth of the biofuels sector, the express purpose of developing this legislative amendment, nor will it provide protection for producers or suppliers around the infrastructure installed throughout the supply chain to meet specific targets.¹⁵⁵

AgForce Grains voices its concern that the Bill does not include a regulated requirement to incrementally increase the mandated targets for biofuel sales and submits that tying incremental increases into the Bill will provide further assurances to industry of market growth and supply.¹⁵⁶

ASMC agrees:

In the absence of a ramp in the legislation (i.e staged increases in the mandated retail percentage against a timeline), the legislation will have little to no impact on stimulating biofuel production investment.... Regulation (transient legislation) will not provide investor confidence, given the ease with which it can be modified.

There is no regulation floor for the biofuels mandate. Just as regulation is intended by the Government to be used to increase the mandate, there is nothing in the legislation to prevent the regulation prescribing a mandate below 2% for ethanol. Nor is there a requirement for them to increase the retail percentage of mandated ethanol. This will undermine the intent to drive the penetration of biofuels in Queensland.¹⁵⁷

TfA Project Group recommends a schedule be included in the Bill incorporating an increase to 6 per cent within three years and 8 per cent within four years as this would provide certainty for the industry, an incentive for fuel retailers to negotiate supply agreements, and an adequate timeframe for the establishment of new biofuel plants:

Investment in future ethanol production requires both certainty in terms of ethanol sales and also a time frame in order for new plants to gain development approvals, project finance and to complete construction. Periodic reviews and incremental increases in the mandate percentage are unlikely to facilitate the development of new plants without provisions that define future growth in ethanol demand.

The establishment of new ethanol plants realistically takes in the order of two to three years, however critical to this process is fuel retailers making commitments to future offtake agreements in order for new biofuel plants to secure finance.

We recommend the inclusion of a schedule similar to that within the original NSW Biofuels Act 2007 outlining a gradual increase in the mandate over a period of three to four years. Such a strategy would provide critical industry planning framework:

¹⁵⁴ Mr Les Durnsford, public hearing transcript (Mackay), 22 Oct 2015:13

¹⁵⁵ ASMC, submission 15:2

¹⁵⁶ AgForce Grains, submission 12:3

¹⁵⁷ ASMC, submission 15:2

- *fuel retailers will need to secure increase ethanol supplies.*
- *developers will have a basis in which to negotiate future supply contracts.*
- *once developers have sales agreement commitments, this will form the basis of securing project finance to develop and construct new biofuels plants in Queensland.*
- *a realistic time period will be available to develop new biofuels production plants.*¹⁵⁸

Mackay Sugar submits that the biobased target should be ramped linearly to between 6 and 10 per cent over a set timeframe (for example, 5 years). While they support the review of the operation of the mandates by the QPC to improve operational efficiencies, they assert there will be a major reluctance for potential Queensland biofuel producers to invest if there is a possibility that developing markets can be undermined by annual legislated changes to the target:

We understand that a mandated target must be set at levels to ensure that new cost-competitive ethanol producers progressively enter the market, with no upward pressure on fuel prices due to supply constraints or inefficient manufacturing. However, excessively low and/or changing mandated targets provide far too much sovereign risk for new biofuel investors when compounded with other investment risks such as:

- *low world oil prices and variable exchange rates*
- *cost and availability of biofuel feedstocks (weather dependence)*
- *capital construction costs*
- *production efficiencies and costs*
- *Commonwealth changes to excise on biofuels*
- *introduction of electric vehicles.*¹⁵⁹

The Mackay Sugar submission also points out that market volume certainty is required for wholesalers and retailers to adequately plan for investment in their distribution infrastructure.¹⁶⁰

Wilmar BioEthanol submits that the starting percentage for the biobased petrol mandate should be 3 or 4 per cent and this should be increased to encourage new investment and that the policy should outline a time frame for these increases.¹⁶¹

A number of stakeholders also provide comments on the potential to increase the biobased diesel target, including:

- **Energreen Nutrition** recommends that the Bill be expanded to include a path to achieve a 2 to 5 per cent biodiesel level¹⁶²
- **Bio Processing Australia** advocates for an increase over time to allow for regional expansion of biodiesel plants¹⁶³
- **Ecotech Biodiesel** submits any increase should allow enough lead-in time to ensure supply and demand are matched and achievable.¹⁶⁴

¹⁵⁸ TfA Project Group, submission 3:3

¹⁵⁹ Mackay Sugar, submission 1:2

¹⁶⁰ Mackay Sugar, submission 1:2

¹⁶¹ Wilmar BioEthanol, submission 7:1

¹⁶² Energreen Nutrition, submission 9:2

¹⁶³ Bio Processing Australia, submission:2

¹⁶⁴ Ecotech Biodiesel, submission 6:1

DEWS provides the following response to the issues raised in evidence about the Bill's proposal that the mandate percentages be able to be increased and reduced by regulation:

The Bill allows for the mandate percentages to be changed by regulation which reflects the Government's intention to increase the mandates over time. Allowing these increases to be made by regulation rather than prescribing them directly in the legislation means they will be able to be made appropriately for market conditions at the time, for example, with reference to the pace of biofuel industry development. Future increases to the mandates, while not reflected in the Bill, will be subject to review from the Queensland Productivity Commission.¹⁶⁵

When the Committee asked about the level of consultation likely to occur before any changes are made to the mandates, DEWS response was:

There are two ways that it can change. One is, yes, by regulation. You would ordinarily go through the regulatory impact statement process to make those changes. But the process that we have outlined in the policy is for the Queensland Productivity Commission to do the consultation and cost-benefit analysis of any increases. Going back to if you are doing it under a different section—you are doing it as a suspension of the mandate—there is a stakeholder group that we can set up under the act that will have different industry representatives.¹⁶⁶

This proposed review by the QPC is generally supported by stakeholders, including the RACQ, which submits that any increase by regulation to a volume greater than 3 per cent for ethanol and 5 per cent for biodiesel would require extensive evaluation and consultation to ensure consumers are not adversely affected.¹⁶⁷ However, other stakeholders are concerned that the proposed QPC review will unnecessarily delay increases in the mandate. For example, Manildra Group submits that the review:

... circumvents the Government's intent to drive regional investment, capital expenditure, jobs and the development of a biofuel industry.

This productivity commission review signals to investors and industry a lack of commitment by the Government to the fuel ethanol mandate.¹⁶⁸

DEWS provides the following clarification about the intended timeframe for the QPC review:

The intention ... is that it will apply when the percentage of two per cent increases. Obviously the bill has not been passed yet and the two per cent applies from next year, so there will be some time, I would assume, before the QPC is tasked to do that work. The QPC has just established its first two inquiries at present, so we will be looking at how it is tasked. Something I also touched on in the opening address is the pathway over a period of time for the mandates in Queensland, and that is something as well that will likely be discussed with industry over the coming months.¹⁶⁹

At the public hearing DEWS provided advice on progress in relation to the development of potential pathways for increases in the mandates:

The department has been working on potential pathways for increases to the mandates since the bill has been introduced into parliament. It will be a matter for the minister when those potential pathways are released for public consultation, but I imagine that would be quite imminent. Once we have had a conversation with the community about some different options, we will go to the Productivity Commission for the review. We have not set the terms of reference for that review yet so we do not know how long that would take, but the

¹⁶⁵ DEWS, response to issues raised in submissions, 23 Oct 2015:16

¹⁶⁶ DEWS, public briefing transcript, 14 Oct 2015:12

¹⁶⁷ RACQ, submission 11:2

¹⁶⁸ Manildra Group, submission 18:2

¹⁶⁹ DEWS, public briefing transcript, 14 Oct 2015:11

*commitment at the moment is not to impose increases until a Productivity Commission review has been done.*¹⁷⁰

On 11 November 2015, while the Committee was in the process of finalising this report, [options for pathways](#) to increase the mandate percentages were published on the DEWS website.

The proposed options provided for the biobased petrol mandate pathways are:

- Option 1: the mandate to increase to 4 per cent of sales from 1 July 2019
- Option 2: the mandate to increase to 4 per cent of sales from 1 July 2020

The proposed options provided for the biobased diesel mandate pathways are:

- Option 1: the mandate to increase to 2 per cent of sales from 1 July 2019
- Option 2: the mandate to remain at 0.5 percent until 1 July 2018 and increase by 0.5% on 1 July 2019 and 1 July 2020 to reach 1.5%.¹⁷¹

Feedback is being sought from stakeholders by mid-December 2015. DEWS has also published the [independent industry consultant report](#) on which it has based the proposed pathway options.

Suspension provisions

In the main, stakeholders support the suspension provisions contained in the Bill, however AgForce Grains raises a concern that the suspension criteria included in section 35J of the Bill are not prescriptive enough to ensure a suspension decision is made with sufficient justification and provides the following examples:

- it is not clear at what level it would be considered that there was an industry-wide shortage of supply
- nor does the Bill prescribe a period of time over which the shortage of supply or lack of demand for biofuel would need to occur to satisfy the need to suspend the mandate.¹⁷²

AgForce Grains also raises a concern that stakeholder consultation on a proposed suspension should not be optional for the Minister, as it believes:

*.. stakeholder consultation must be a requirement prior to making a suspension decision to ensure appropriate and broad information and data is received related to supply, demand or impact on the mandate that is occurring.*¹⁷³

DEWS' response to this concern is to outline the powers that section 35J provides to the Minister to suspend the application of the mandates to all fuel sellers or a class of fuel sellers if there are sufficient grounds to do so and advise that suspensions, as regulations, will be subject to Parliamentary scrutiny and disallowance. The following example is provided:

*The Minister could temporarily suspend the mandate requirement throughout Queensland under subsections 35J(a)(i) and (c) in the Bill to make more feed available for livestock. The declaration cannot suspend a mandate for more than one year. This strikes a balance between the need to ensure the mandate is effective with recognising the potential for external factors to prevent suppliers from meeting it.*¹⁷⁴

¹⁷⁰ DEWS, public hearing transcripts (Brisbane), 28 Oct 2015:27

¹⁷¹ DEWS, <https://www.dews.qld.gov.au/energy-industry/renewable-energy/projects/biofuel-mandate> (accessed on 11 November 2015)

¹⁷² AgForce Grains, submission 12:3

¹⁷³ AgForce grains, submission 12:3

¹⁷⁴ DEWS, response to issues raised in submissions, 23 Oct 2015:16

The Explanatory Notes confirm that the suspension declaration cannot suspend a mandate for more than one year and that *“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.”*¹⁷⁵

However, DEWS contradicted this advice in its response to a question taken on notice at the public briefing in which it advised the Committee that if the situation does not improve by the end of 12 months, the Minister can remake a suspension declaration under 35J for another period of up to one year.¹⁷⁶

With regards stakeholder consultation on suspension declarations, DEWS advises:

.... Before making a suspension declaration, or cancelling a suspension declaration, the Bill states the Minister may consult with “stakeholders”. A stakeholder is defined in section 4 of the Bill and includes “an entity involved in, or representing, the biofuel industry, feedstock industry, fuel industry, motor vehicle industry, consumers of feedstock or motor vehicle users”.

Committee comment and recommendations

Committee comment

Regulatory power to reduce the mandated percentages

The Committee is concerned that the Bill, as currently drafted, does not provide certainty for feedstock producers or biofuel producers about the future level of the mandated percentages and that this will impact on investment in the industry. In particular, the Committee is concerned that the Bill provides the power to reduce the mandates (including the initial targets) by regulation and that this will undermine the policy objectives of the legislation.

Many stakeholders have pointed to the fact that long term certainty is critical for the development and continual investment in the biofuel industry and that without certainty, the industry will be unable to secure financing for projects and expansion opportunities.

DEWS’ advice is that it is the intention of the Government to increase the mandates and not to reduce them, but this is not reflected in the drafting of sections 35B(3) and 35C(3) in the Bill. The Committee is strongly of the view that, given the significant impact any long-term reduction in the mandates will have for investment in the biofuel industry, the mandated percentages should only be able to be reduced by amendment to the Act, not by regulation.

The Committee is therefore recommending that the Bill be amended so that sections 35B(3) and 35C(3) only provide the power for the mandates to be increased by regulation, not reduced.

Suspension provisions

The Committee notes the power provided to the Minister (under section 35J of the Bill) to temporarily suspend the operation of the mandates for all fuel sellers, or a stated class of fuel sellers, through a Ministerial declaration under certain circumstances, including situations where there is an industry-wide shortage of biofuels and for a period of up to 12 months.

While the Committee supports this provision, it has a concern about the advice received from the Department of Energy and Water Supply ([response to a Question on Notice](#)) that the Minister will be able to remake a suspension declaration for a further 12 months if the situation which triggered the suspension does not improve by the end of the first year. The Committee’s concern is that this could, in effect, mean the mandate is indefinitely suspended by back-to-back ministerial declarations.

¹⁷⁵ Explanatory Notes:6

¹⁷⁶ DEWS, Response to QoN, (public briefing), 19 Oct 2015:4

Given the implications of an extended suspension for the biofuel industry, the Committee is of the view that the Ministerial suspension powers should be limited to one period of up to 12 months as prescribed in section 35J(2) of the Bill and as advised in the Explanatory Notes.

The Committee considers that if the situation is so extraordinary as to justify a suspension of the mandates for more than 12 months, the mandate percentages should be subject to the full scrutiny of Parliament through proposed amendments to the Act, following consultation with stakeholders.

The Bill amendments being proposed by the Committee in relation to the powers provided to reduce the mandated percentages by regulation and the suspension powers will, if endorsed by the Parliament, provide the biofuel industry with an increased level of certainty on which to base planning for future investment.

Pathways for increasing the mandates

Many stakeholders have raised an issue about the lack of a proposed schedule or timeline for increases in the mandates and that this is likely to significantly impact on the ability of both the biofuel industry and the fuel retailers to plan ahead to ensure they are ready to meet any higher mandates that are imposed. The Committee, in considering this issue, noted the advice from DEWS that it has been working on potential pathways for increases in the mandate since the Bill was introduced into Parliament.

The Committee is of the view that, without these pathways, the legislation will have little impact on stimulating biofuel production investment in Queensland and will reduce the ability of fuel retailers to plan for any future infrastructure upgrades required to meet increased mandate percentages.

The Committee therefore agreed to recommend that the Minister provide clarification in his second reading speech about the timeline proposed for assessing future increases to mandates, or if the timeline had not yet been finalised, that he provide details of the potential pathways that are being considered.

The Committee notes that DEWS published [possible options for pathways](#) to increase the mandate percentages on its website on 11 November 2015 and is seeking feedback from stakeholders by mid-December 2015. DEWS also published the [independent industry consultant report](#) on which it has based the proposed pathway options.

The Committee is satisfied that the publication of the options for pathways, along with the consultation process, will go some way toward alleviating the concerns raised by stakeholders about the lack of a timeframe for the consideration of increases in the biobased fuel mandates. As noted in the previous Committee comment, the Committee supports option 1 of the proposed pathways and would like to see an even earlier date for the increase to 4 per cent if this is determined to be achievable.

Recommendation 4

The Committee recommends that in order to provide assurance to existing ethanol and biodiesel producers and to stimulate investment in the biofuels industry in Queensland sections 35B(3) and 35C(3) of the Bill be amended to provide that:

- the minimum percentage for the biofuels mandate cannot be prescribed by regulation to be less than the initial targets of 2 per cent for biobased petrol and 0.5 per cent for biodiesel
- only increases to the biofuels mandate can be prescribed by regulation, requiring any reduction in the mandated targets to be introduced through an amendment to the Act.

Recommendation 5

The Committee recommends that:

- the Minister, in his second reading speech, explain how section 35J of the Bill precludes the remaking a further suspension declaration following an initial 12 month suspension, and if it does not preclude a further declaration
- the Bill be amended to ensure that the mandate can only be suspended for more than 12 months through an amendment to the Act.

3.2 Liable parties**3.2.1 Biobased petrol mandate threshold*****Proposed sections 35A and 35B***

The Bill proposes that there be a volumetric fuel sale threshold as well as using the number of service station owned and operated to determine which fuel retailers would be liable under the legislation.

Clause 6 of the Bill (section 35A) proposes that a fuel retailer will be liable to meet the 2 per cent mandate for sustainable biobased petrol if they:

- sell more than the threshold amount of petrol fuel (250,000 litres) in a calendar quarter at any one of the service stations they own or operate OR
- own or operate 10 or more service stations.

Therefore, 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 in a calendar quarter at any one of the service stations they own or operate. If a fuel retailer is not selling a blended fuel, the 250 000 litres would relate to the combined volume of RULP and PULP.¹⁷⁷

DEWS provides the following examples of how the threshold will operate:

... we have done the retail threshold in two ways. One is if you have own more than 10 petrol retail locations. If you are a sole retailer and you operate out of Thargomindah, for example, and that is the only one, you will not be captured by this legislation. But also it is a volumetric thing, too. So if you own one petrol station in Queensland but you have an enormous retail outlet that potentially can be one of the largest in Queensland—and I will name Costco, for example, up in the electorate of the chair—they, for example, sell a lot of petrol but would not be captured by a 10 retail site thing. So we decided to go with the volumetric one as well just to capture some of those people who should be selling it but ensuring that we are not unintentionally capturing some of the smaller retailers as well.¹⁷⁸

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*’ in section 35B(3). The Explanatory Notes state that it should only be necessary to apply the petrol mandate at the wholesale level if there is evidence that sufficient supplies of biobased petrol are not being made available to retailers.¹⁷⁹ DEWS advises:

In terms of the bill itself, the bill does require wholesalers to make it available, but at this point in time what we have done is set the required percentage of the mandate for

¹⁷⁷ Explanatory Notes:3

¹⁷⁸ DEWS, public briefing transcript:3-4

¹⁷⁹ Explanatory Notes:3

wholesalers at zero so that, if wholesalers in the future indicate that they are not providing it, then the minister does have that power to set it at another percentage.

... If for some reason during the implementation of the mandate there was a supply issue, as in wholesalers were not supplying sufficient quantities to the retailers so that they could meet their mandate, the government could introduce a mandate on to the wholesalers.¹⁸⁰

Examination of related issues

Power to apply the biobased petrol mandate to wholesalers – section 35B(3)

A number of submitters, including ACAPMA, AIP and fuel wholesalers, raise a concern with the Bill providing that the biobased petrol mandate may be imposed on wholesalers by regulation. They believe the biobased liability should rest only with retailers due to their direct control over what is sold on the service station forecourt.¹⁸¹ ACAPMA contends that any mechanism forcing liability of fuel wholesalers risks breach of the Australian Competition Law with respect to *third line forcing*.¹⁸²

Viva Energy submits that this provision in the Bill is unnecessary and:

.. will not significantly improve the amount of ethanol sold in Queensland. Fuel wholesalers respond to their customers' demand for fuel. If their customers, which will be the fuel retailers, require the wholesaler to supply them with ethanol blend fuel in order to meet the mandate, then that ought to be a sufficient economic signal for the wholesalers to make that fuel available. Applying the mandate to wholesalers as well will not strengthen that signal, but will add complexity to reporting and raises the potential for double-counting or overlooked volume.¹⁸³

DEWS' response is that if wholesalers do not have a responsibility for meeting the mandate, there is a risk that retailers might not be able to secure supplies of biobased petrol to sell at their service stations.¹⁸⁴

The proposed thresholds

AIP strongly urges the Government to collect and analyse data on retail site numbers and volumes to assist in determining whether a 2 percent mandate is achievable and to assist in the design of any exemptions framework.¹⁸⁵

DEWS' response to AIP's recommendation is that:

The 2 per cent mandate does not require biobased petrol sales at all service stations but instead, that a retailer sells a total of 2 per cent of RULP and biobased petrol blend calculated across all their sites. This means that retailers may be able to meet their total mandate obligations by exceeding the mandate at one site to offset not meeting the mandate at another site. Fuel retailers' sales strategy to meet the mandate will be a matter for them. The Government will continue to work with fuel sellers on implementing the mandate.¹⁸⁶

AgForce Grains is one of the submitters that support prescribing the volume of fuel sold to capture those operators who may own less than 10 service stations but sell large amount of petrol on the basis that this approach should assist in alleviating any undue pressure on small operators to comply with

¹⁸⁰ DEWS, public briefing transcript, 14 Oct 2015:5

¹⁸¹ For example, see submissions 8 and 10

¹⁸² ACAPMA, submission 8:5

¹⁸³ Viva Energy, submission10:2

¹⁸⁴ DEWS, response to issues raised in submissions, 23 Oct 2015:10

¹⁸⁵ AIP, submission 13:3

¹⁸⁶ DEWS, response to issues raised in submissions, 23 Oct 2015:17

the mandate. However, they reserve judgement on the proposed 250,000 litre threshold amount per calendar quarter as:

*Whilst it essentially aligns with anecdotal discussions AgForce Grains held with small operators as part of our previous submissions, it may need to be reviewed as the industry and demand grows and supply becomes more readily available and accessible for small operators.*¹⁸⁷

CANEGROWERS raises a concern that the proposed threshold levels will result in retailers in regional areas (who are not liable parties) having no incentive to provide E10, therefore denying consumers the choice to buy E10 and defeating the purpose of the reform.¹⁸⁸

A number of submitters, including ACAPMA and AIP recommend that the threshold should be raised from 250,000 litres to at least 500,000 litres on the basis that the current threshold will result in a large and unnecessary compliance burden on Government and industry due to the high number of exemption applications expected.¹⁸⁹

ACAPMA submits that the proposed threshold will capture a larger number of smaller service stations that would need to spend between \$100,000 and \$900,000 to comply with the mandate.¹⁹⁰ AIP adds that setting the compliance burden at a low level will require significant numbers of small retailers to assess their suitability for the supply of ethanol blends and this could impose costs on them that may not be justified and may threaten the sites viability.¹⁹¹

At the Brisbane public hearing ACAPMA recommended that the threshold be changed to 4 million litres per year to avoid a flood of exemption applications:

*For some reason this one million has come out of nowhere and we are not sure what it's actually based on. Our view would be that it needs to be high. It needs to be at least two million litres in terms of shutting out the threshold... I dare say that I am going to be spending the majority of my time after 1 July writing exemption applications for the majority of the retailers in this state and therefore we are putting a lot of stress in the fact that the only recourse available to us to protect our industry is to actually seek exemption. By setting the threshold so low we expect that the government is going to get a flood of applications for exemption on economic grounds.*¹⁹²

MTA Queensland claims the proposed volumetric threshold has been designed to “entrap as many petrol retailers into the biofuels mandate net as possible” and that it:

*..suggests no understanding of the business models or the spatiality of the 1,3080 service station sites in a State as decentralised as Queensland. The anecdotal information is that unless it is a rural based business, a business turning over a quantum of 250,000 litres in a calendar quarter is unviable.*¹⁹³

It recommends an increase in the threshold to 4 million litres of liquid fuels annually with provisions for the following exemptions:

- the capital cost imposed on the fuel retailers is reasonably likely to exceed \$30,000 with provision for exemptions below this level on a case-by-case basis where financial hardship can be demonstrated

¹⁸⁷ AgForce Grains, submission 12:2

¹⁸⁸ CANEGROWERS, submission 5:2

¹⁸⁹ See, for example submission 8:6 and submission 13:14

¹⁹⁰ ACAPMA, submission 8:6

¹⁹¹ AIP, submission 13:14

¹⁹² ACAPMA, public hearing transcript (Brisbane), 28 Oct 2015:16

¹⁹³ MTA Queensland, submission 14:5

- the fuel retailer cannot receive supplies of E10 at a wholesale cost that is reasonably competitive with the retail unleaded price.¹⁹⁴

DEWS advises that while there was a lot of feedback from stakeholders on the volumetric threshold during consultation on the Discussion Paper, there was no consensus across different groups as to what the threshold should be.¹⁹⁵ The Explanatory Notes provide the rationale for setting the volumetric threshold at 250,000 litres of petrol sold per quarter:

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 volume across all sites.¹⁹⁶

DEWS further advises that it does not want to unduly capture small retailers under the definition of liable parties in the legislation:

... so we actually have to get that threshold right and that will be occurring through the reporting mechanisms that we have put in place in the legislation. So from next year we will be able to have a good look at the data and be able to determine whether the 250,000 litres that we have prescribed at this point is the appropriate level and that we are not unduly capturing people that are small retailers in small areas.¹⁹⁷

In response to a question from the Committee about why the 250,000 litre threshold was selected, DEWS provides the following key points:

- Government does not have really good independent data for government to make a really valued assessment of what that level should be
- the data used to determine the proposed threshold was based on the Australian petroleum statistics, information provided confidentially by some of the wholesalers as well as other sources
- DEWS believes 250,000 ML a quarter, or a million a year, is a reasonable start
- the volumetric threshold level will be able to be amended by regulation if an analysis of the data provided early in 2016 (assuming the legislation is passed in 2015), determines that the proposed threshold captures too high a percentage (more than 75-80 per cent) of the retailers.¹⁹⁸

DEWS provides further evidence on the problem of attempting to determine a threshold without the relevant data:

There are various views around this. I think ACAPMA have had four million to five million. AIP I think have indicated around two million. Other people think our one million is more accurate. I think the Biofuels Association actually think we are way over target as well. Again, we will see what happens when the data comes in.

¹⁹⁴ MTA Queensland, submission 14:6

¹⁹⁵ DEWS, public briefing transcript, 14 Oct 2015:2

¹⁹⁶ Explanatory Notes:3

¹⁹⁷ DEWS, public briefing transcript, 14 Oct 2015:3

¹⁹⁸ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:28-29

*There is a significant disparity between all of that data but, again, we want to see what percentage of the market we capture through the reporting requirement. That is why, even though the mandate does not commence until 1 July next year, the requirement for reporting does commence six months prior to the commencement date, so that we can actually get a full picture of what is going on in the market.*¹⁹⁹

In relation to the difference between the liable parties proposed in the Queensland mandate and the NSW mandate, DEWS advises:

*When we did the public consultation, the discussion paper suggested perhaps a 10 service station retail sales limit to be captured by the mandate That is half of what New South Wales had, which was 20 sites. Some of the information we have from the New South Wales mandate was that it only captured those big retailers and that quite substantial smaller retailers were not being captured by the mandate. During the consultation, the feedback we got from people was that 10 is probably the right number but that we should have considered a volumetric threshold, so taking that feedback on board you will see that the legislation now has a volumetric threshold. The intention of that is to capture people who are selling quite reasonably large volumes of petrol but might not own 10 petrol sites.*²⁰⁰

Finally, in response to the issues raised in submissions DEWS provides that the threshold volume attempts to strike a balance between the impost of the mandates and equity in the retail sector and further:

*While the threshold amount has been determined on the basis of industry consultation and the best available estimates of fuel sales and industry composition, the amount may need to be adjusted over time. 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. The legislation includes mandatory data reporting to help inform the Government's future policy decisions on this threshold.*²⁰¹

3.2.2 Service station infrastructure upgrades including planning applications

Cost of infrastructure upgrades

DEWS provides the following advice on the estimated costs of service station upgrades required to comply with the mandate:

We have been working with our industry stakeholders to get a full handle on the actual costs that could be incurred by retailers across Queensland..... we have been working with a number of retailers in regional Queensland. For commercial-in-confidence reasons I do not want to name who they are, but my team has been going out and talking to them in different places and sitting down and getting a handle on the costs that potentially could be incurred as a result of that.

*It obviously depends on the age of the tankage that they already have in place and what they have had in those tanks before. So for some people, it may be just a case of changing at the bowser the signage, but to other people it may have costs of upwards of a couple of million dollars.*²⁰²

MTA Queensland submits that the costs of upgrading fuel seller infrastructure to comply with the mandate are high. They advise that the estimated capital cost per unit to introduce ethanol where the tankage pipework and dispensers are not ethanol blended fuel compatible is between \$25,000 and

¹⁹⁹ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:28-29

²⁰⁰ DEWS, public briefing transcript, 14 Oct 2015:11

²⁰¹ DEWS, Response to issues raised in submissions, 23 Oct 2015:18

²⁰² DEWS, public briefing transcript, 14 Oct 2015:3

\$30,000 per site, with additional reconfiguration of pipelines possibly incurring a further \$40,000 to \$80,000, and replacement costs for a large tank being between \$200,000 to \$300,000 (excluding the costs of disruption to business operation). They also advise that the costs to upgrade infrastructure will inevitably be passed onto consumers and may reduce the competitiveness of E10.²⁰³

At the public hearing in Brisbane, an ACAPMA witness who owns a family service station business, advised that they have estimated the cost of converting their 20 sites would be around \$6M and this would be a considerable financial burden given that consumers would not increase their demand for fuel overall:

It was a quick estimation, because it triggers a lot of things like driveway drainage and the stormwater drainage now that has to go into the stormwater. That has to be filtered because of the new state legislation. If you want to put in a new tank and you have contaminated soil, you have to get rid of the soil. So that comes at a cost to go to the dump. We just built a new site in Rockhampton. It cost \$300,000 to get rid of the contaminated soil off the site. It had to go down to Ipswich. It was not from fuel contamination, but it was still contamination and that is an example of the costs we face.²⁰⁴

ACAPMA provides evidence about the time frame that will be required to ensure compliance:

I think the bigger issue around time frame with compliance is the fact that the changes that need to be made to individual forecourts are going to vary and therefore some of those may take 12 to 18 months, some of them might be able to be done within a reasonably tight timeframe of clearing out a tank and changing the bowser signage which means it might be done in three or four months.²⁰⁵

In its response to issues raised in submissions, DEWS advises the costs will vary between sites and:

The Queensland Government recognizes that there may be circumstances where complying with the requirements would threaten the viability of a particular fuel seller's business; and the legislation allows the Minister to take this into account when considering whether to grant an exemption and the conditions of any exemption.²⁰⁶

MTA Queensland submits there could be increased public environmental risks if fuel seller infrastructure is not compatible with ethanol-blended fuel.²⁰⁷ DEWS responds that ethanol-blended fuel has been sold safely for many years in Queensland and is readily available in approximately 25 per cent of Queensland's service stations and that regardless of the type of fuel sold at a service station, all stations operating in Queensland must manage and maintain their sites in compliance with workplace health and safety legislation and the conditions of planning and environmental approvals.²⁰⁸

In response to the issues about costs and timeframes raised in the MTA Queensland's submission DEWS states that the Government is committed to growing the biofuels and bio-manufacturing industries so that Queensland can transition to a clean energy future:

However, the Government also recognises that Queensland's fuel sellers will be key partners in this journey and will need to make infrastructure adjustments so that this vision can be achieved. The Queensland Government appreciates the feedback provided by the MTAQ highlighting the challenges that fuel sellers will face.²⁰⁹

²⁰³ MTA Queensland, submission 14:4-5

²⁰⁴ Mr Wessell, ACAPMA, public hearing transcript (Brisbane), 28 Oct 2015:13 and 16

²⁰⁵ ACAPMA, public hearing transcript (Brisbane), 28 Oct 2015:18

²⁰⁶ DEWS, Response to issues raised in submissions, 23 Oct 2015:19

²⁰⁷ MTA Queensland, submission 14:2

²⁰⁸ DEWS, Response to issues raised in submissions, 23 Oct 2015:19

²⁰⁹ DEWS response to issues raised in submissions, 23 Oct 2015:19

BAA points out that where tank replacement is due to the current tank having high levels of corrosion, these costs should not be attributed to ethanol per se, but rather normal business capital to avoid environmental contamination as a result of leaking fuel into the soil:

It should be noted that the Queensland Government provided funding through the Queensland Ethanol Conversion Initiative to assist in the transition for service stations and wholesalers to provide ethanol to the market. The impact of the \$4.3M already invested in this sector should provide a solid baseline for Queensland to quickly regain the 500+ sites that were offering E10 in 2009 at little cost to the industry.²¹⁰

In response to a question from the Committee about whether there has been an estimate undertaken of the timeframe required for fuel suppliers to have the infrastructure improvements in place to meet a higher mandate of 3 to 5 per cent, DEWS provides the following advice:

Not at this point in time. I think what is publicly available is really only through the Australian petroleum statistics, and this has been part of the significant problem that our team has really faced in relation to this issue—that is, the availability of independent data about what are the true costs, what are the current sale levels et cetera. Our bill goes part of the way in terms of requiring reporting of data annually and then for liable parties quarterly so that we can start having a bigger picture of what is going on in the fuel market in Queensland.

In relation to when we think people would be able to do the three per cent and five per cent, we do not know the demand side. It is not just a case of supply being able to meet four per cent and five per cent straightaway. That might be the case, but it is about the whole of market. You need the demand there from consumers as well as you need the retailers and others to be able to actually do it. That is why we have decided on the two per cent rather than a higher level, because we do believe that that is attainable at this point in time, and then continue working over the next few years around what increases should look like and how we can actually meet them as well, with those people who are actually affected—so the retailers and the wholesale businesses as well.

.... in the bill there is some data reporting that is key to us understanding the industry and what the sales will be from the commencement of the bill until the mandate comes into place. That will give us a lot more information about what we think is capable.²¹¹

Planning applications

In response to a question from the Committee about whether there are any planning issues in relation to petrol stations owners that need to upgrade their tanks or facilities DEWS advised that this had not been raised an issue:

We have an interdepartmental committee and the department is represented on that. We take issues to it and we knock it around different departments, but it has not been raised as an issue yet.²¹²

In response to a Question on Notice, DEWS provides the following information about planning approvals:

Whether new planning approvals are required for infrastructure upgrades such as tank replacement or adding new tanks depends on the conditions the fuel station's existing planning approval is operating under.

In most service stations, approval conditions and approved plans will usually specify the number, type and location of approved fuel tanks. If changes to the tank infrastructure were

²¹⁰ BAA, submission 4 (attachment 1:7)

²¹¹ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:27-28

²¹² DEWS, public briefing transcript, 14 Oct 2015:12

to conflict with the existing conditions, some form of new planning approval would be required. The local government would be responsible for assessing the new planning approval and conditions.

The planning approval process that will apply will depend on the type and extent of the change being undertaken.²¹³

For example:

For minor changes, the local government may elect to declare the upgrade 'generally in accordance' with the existing approval. This is a comparatively informal process usually involving a letter to the local government seeking confirmation.

If the upgrades require a formal change to a condition or the approval plan to reflect a new tank arrangement, a 'permissible change' can be sought. This involves an applicant requesting that the planning approval be amended and may attract an application fee from the local council (which may vary between councils). A permissible change application may also need to be made to the state government via the State Assessment and Referral Agency (SARA) depending on whether any state government agency conditions were attached to the approval and impacted by the proposed change.

A new development application would only be made if there was no valid planning approval in place for a service station or if the change to the tank infrastructure was considered too substantial to be addressed through the permissible change process. This process would be regulated by the Sustainable Planning Regulation 2009. In this situation, an entirely new development application would be required. This process generally takes between 6 to 12 months to complete and would attract application fees as well as a public notification process.²¹⁴

And further:

The application fees under the SARA process are standard across Queensland and are set out in Schedule 7A of the Sustainable Planning Regulation.

In most instances, a local government is the assessment manager for service station development applications. Therefore, matters such as land zoning under the local government's planning scheme and future intent for the land come into consideration.

A development application may be referred to the Department of Environment and Heritage Protection as an environmentally relevant activity if there was already a relevant environmental approval or if the upgrade to the infrastructure would result in bulk fuel storage across the whole site of 500,000 litres or more. This is regulated under the Environmental Protection Regulation 2008.²¹⁵

At the public hearing, in response to a question from the Committee about facilitation of the planning approval process for site upgrades, DEWS clarifies:

Yes, we have made contact with the department of local government and planning. The belief that we have in relation to these upgrades at two per cent is that it would be done at different times anyway. I think as ACPMA and the MTAQ alluded to, there will be some that need minor changes and some that will need major changes to their infrastructure and their forecourt. Some will trigger some different approval processes. Many might trigger other approval processes as well. Over a period of time, yes, there will be a need to go through different approval processes. But we think at this initial stage there will not be significant impact on

²¹³ DEWS, Response to QoN, (public briefing), 19 Oct 2015:6

²¹⁴ DEWS, Response to QoN, (public briefing), 19 Oct 2015:6

²¹⁵ DEWS, Response to QoN, (public briefing), 19 Oct 2015:6

*local government in terms of their planning approval processes nor EHP or other things like that.*²¹⁶

In relation to the timeliness of approvals, that is, will the site owner be able to get the planning approvals through in time for the mandate, DEWS advises:

*Then again this goes back to the exemptions framework that government will be developing to support this process. For example, if a retailer in a particular area needs to do these upgrades and they can demonstrate to government that they are working towards making those upgrades and it is going to take time, then they would not necessarily be liable for the mandate during that time. That is what we need to do in terms of the exemptions framework, to make that flexible to understand specific circumstances which will be very different for different retailers as well.*²¹⁷

The Committee asked a question about whether the use of exemptions to allow adequate time for retailers to undertake infrastructure upgrades would be setting the mandate policy up for failure in the first six-months. DEWS responded:

*No, not at two per cent. We do believe that we will still be able to meet the two per cent mandate from 1 July next year. If we were talking about significantly higher percentages, then we would be having a different conversation and we would not necessarily be meeting the mandate of those higher levels.*²¹⁸

3.2.3 Infrastructure requirements for blending the biodiesel product

The major fuel companies and AIP raise an issue about the lack of appropriate infrastructure to make the biodiesel blend for sale. BP advises:

*BP currently has no facilities available in Queensland to supply a biodiesel product. It would require significant investment. You will need in-line blending and heating facilities at a terminal or a refinery, and that is in a figure of about \$2 million.*²¹⁹

Viva Energy provides the following explanation:

I think we need to distinguish costs at a retail level of an introduction of a biodiesel mandate versus the costs further upstream of providing appropriate infrastructure to make that biodiesel. I think my colleagues from BP and Caltex have already mentioned the cost of \$2 million per terminal—and I would actually say in excess of that—to provide the appropriate infrastructure to make the biodiesel at a terminal. It requires: heated tanks, if you are considering a particular tallow biodiesel blend; associated pipework, which does need to be heat traced and lagged; and then an in-line injection blending system. So the costs are actually further upstream than the retail service station.

... to make a biodiesel blend that meets our product quality requirements, that has to be done at a terminal using an in-line blending system regardless of its end destination.

.... The heating is actually for the B100. The way that it works is we would receive in a supply of B100 from the relevant supplier. The blend does not happen until the point of truck loading. Up until that point, the tallow-UCO blend FAME, fatty acid methyl ester, needs to be kept heated, even in Queensland.

In winter, even in South-East Queensland, temperatures will drop low enough for pure biodiesel—B100 as it is known—to gel and become unpumpable and solidify effectively in the

²¹⁶ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:26

²¹⁷ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:26

²¹⁸ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:26

²¹⁹ BP, Public hearing transcript (Brisbane), 28 Oct 2015:22

*pumps in the pipeline, requiring quite a bit of work to reliquefy it. So the tanks need to be heated. The product needs to be received warm so it is pumpable. It needs to be kept warm and all the lines kept heated throughout the entire period until it is blended.*²²⁰

Caltex explains why the additional cost is an issue when demand is irregular:

*We do not support the introduction of the biodiesel component of the mandate because demand from our commercial customers for biodiesel blends is very small. Those commercial customers come and go from time to time through their tender process for their fuel supply. They can change their mind from one moment to the next about the value to their business of biodiesel. So we find that current demand for biodiesel blends in Queensland is low and is only a very small portion of our business. For us to comply with the half a per cent mandate, we would need to invest multimillions of dollars at our Lytton facility to make those products available, for little or perhaps no return whatsoever. So we do not see the value in the mandate and we certainly have some concerns about our reliance upon one biodiesel supplier.*²²¹

BAA, on the other hand, submits that investment in blending facilities at the wholesale or terminal level would be only be required for volumes of biodiesel blend in excess of 1 per cent.²²²

3.2.4 Assessment of the financial impact of the biofuels mandate on industry

A number of submitters raise an issue about the fact that a Regulatory Impact Statement (RIS) was not undertaken as part of the consultation process on the proposed mandates.

AIP submits:

..any intervention policy in the fuels market should be based on sound science, rigorous economic analysis, consumer (or end buyer) support, equitable application to market participants, and transparent assessment and implementation while minimising unintended consequences.

*In assessing these impacts, it is critical that any proposed policy is subject to a comprehensive RIS process. In conducting a RIS of any Queensland Government biofuels mandate it is imperative that there is good understanding of the Queensland liquid fuels market. Data on retail site numbers, ownership and volumes is particularly important given the lack of currently available information, which needs to be considered against potential market demand (or lack thereof).*²²³

MTA Queensland submits the compliance costs for fuel sellers are onerous quoting estimates of \$51 million for 80 per cent of the sites and \$324 million for all 1,380 service station sites:

*Generally, in the retail fuel sector there is dismay that it should carry an unfair compliance burden based on a decision of Government without a cost evaluation of the policy. The Bill is without recognition of the cost of the policy to small end retailers. It will be difficult for retailers to borrow funds from their bankers when the Government 'has no idea' of the success or failure of its policies.*²²⁴

²²⁰ Viva Energy, Public hearing transcript (Brisbane), 28 Oct 2015:22

²²¹ Caltex, Public hearing transcript (Brisbane), 28 Oct 2015:21-22

²²² BAA, submission 4 (attachment 1:4)

²²³ AIP, submission 13:5

²²⁴ MTA Queensland, submission 14:6

The Department's response to MTA Queensland's concerns provides:

In determining the starting point, government consulted widely on the costs and benefits and is taking a measured approach.

Queensland production capacity can meet a two per cent mandate. It also provides an appropriate ramp up for fuel sellers to upgrade their sites and supply chain infrastructure to physically supply E10 to motorists and for consumers to change their behaviour at the bowser.²²⁵

In response to a question from the Committee about why a RIS was not undertaken when a significant number of stakeholders have raised concerns about the impact of the mandates on the fuel industry, DEWS responds:

The government decided that at a level of two per cent there was not necessarily a need because the impact would be minimal at that point.....

What government committed to at the time was that we would approach each increase through the Queensland Productivity Commission. So any increase from the two per cent would have to be subject to a review by the Queensland Productivity Commission prior to that which would obviously involve a public process.²²⁶

Committee comment and recommendations

Committee comment

Volumetric threshold

The Committee has no way of assessing whether the proposed volumetric threshold is set at an appropriate level and notes that DEWS itself is not confident that the proposed threshold will capture the range of fuel retailers required to provide the anticipated balance between the impost of the mandates and equity in the retail sector.

While the Bill proposes a threshold of 250,000 litres per quarter, the Government intends to reassess this level when the data on fuel sales becomes available in 2016, and if necessary, make amendments to the threshold by regulation.

The Committee is concerned that the proposed approach may result in fuel retailers that sell marginally more than the legislated threshold, having to undertake costly infrastructure upgrades in order to comply with the legislation, only to find they are no longer captured by the threshold if it is increased following analysis of the fuel sales data.

The Committee is also concerned that without sufficient evidence to determine what the appropriate level should be, and without sufficient lead-in time for fuel sellers to make the required upgrades to their service stations to enable the sale of E10, there is likely to be an influx of avoidable exemption applications with the associated risk that the policy intent of the legislation will be undermined and the biofuels mandate will be viewed as ineffective.

As noted in a previous Committee comment, the Committee has concluded that it is critical to pass the legislation as quickly as possible to provide assurance to the biofuel industry and to enable the provisions requiring fuel seller registration and reporting to commence in early 2016.

²²⁵ DEWS, Response to issues raised in submissions, 23 Oct 2015:20

²²⁶ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:25-26

However, non-Government Committee members are of the view that a delay of six months in the commencement date for the biobased petrol mandate, to 1 January 2017, would provide sufficient additional lead-in time for the volumetric threshold level to be amended, if necessary, following an analysis of the fuel sale data. Government members are of the view that the proposed commencement date of 1 July 2016 is likely to provide sufficient time for the volumetric threshold level to be amended, if necessary.

As advised in an earlier section of the report, the Committee has agreed to recommend that the Minister, when making a final decision on the commencement date, ensure there is sufficient lead-in time to, amongst other matters, reassess the volumetric threshold level.

Infrastructure upgrades

The Committee has taken note of the concerns raised by the fuel suppliers about the additional costs imposed on them by the mandate and recognises the cost of upgrading infrastructure could, in some cases, be onerous. However, the Committee supports the Government's objective of growing the biofuels and bio-manufacturing industries and is of the view that until an independent review is undertaken it will be difficult to compare the costs and benefits of the biofuel mandates.

DEWS advises that infrastructure costs will vary from site to site but acknowledges that there may be circumstances where complying with the requirements could threaten the viability of a particular fuel seller's business. For these cases, the legislation allows the Minister to take this circumstance into account when considering whether to grant an exemption and when establishing the conditions of any exemption. The exemption process is discussed in the next section of the report.

The Committee has a concern that there is a potential for the planning approval processes required to enable any infrastructure upgrades at petrol stations, to unduly delay the works and preclude retailers from meeting the mandate by the proposed commencement date of 1 July 2016.

The Committee is therefore recommending that the Minister work with relevant planning authorities to ensure mechanisms are put in place to facilitate timely and rapid planning approvals for service station operators needing to undertake infrastructure upgrades to meet the biobased petrol mandate.

The Committee has also considered the advice from diesel wholesalers concerning the estimated costs of upgrading their infrastructure to enable the blending and supply of biodiesel. The Committee notes DEWS' advice that there are current inline blending facilities operating in Queensland, including at the existing biodiesel supplier and that many wholesalers already have existing agreements to provide various biodiesel blends, including B20 and B50, to some commercial and industrial customers.

Assessment of the impact of the proposed mandates on industry

Given the legislation's likely financial imposts on the fuel retail and biodiesel wholesale industries, the Committee would have preferred that a Regulatory Impact Statement (RIS) process had been undertaken prior to the introduction of the Bill to Parliament.

The RIS System Guidelines state that while regulation is often necessary to protect the community and environment and is an essential part of running a well-functioning economy and society, it is important to find an appropriate balance between the benefits and costs of regulation. One of the key objectives of the RIS system is to ensure, where regulation is necessary, that it is designed to minimise compliance and administrative costs for business, community and government and maximise the benefits to the Queensland economy.²²⁷

The Committee notes the advice from DEWS that a RIS was not seen as necessary on the basis that the likely impact of a 2 per cent biobased petrol mandate on industry would be minimal; and that prior to any increase in the initial mandated targets a review by the Queensland Productivity Commission (QPC) will be undertaken to consider the economic, social and environmental benefits of the mandated

²²⁷ Queensland Government, RIS System Guidelines, 2013:11

targets and how they support domestic production of biofuels, and support growth in Queensland's bio-manufacturing industry. The Committee is firmly of the view that it would have been preferable for such an assessment to be completed prior to the Bill being introduced.

The Committee notes that any decision by the Government to increase the mandate percentages will be subject to a review and recommendation from the QPC and that 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.²²⁸

Recommendation 6

The Committee recommends that:

- Section 35A(5) of the Bill be amended to provide that the threshold amount cannot be prescribed by regulation to be lower than 250,000 litres, and
- if an increase in the threshold amount is required following analysis of the fuel sales data in 2016, the amendment regulation be made in time to allow a reasonable period for liable petrol retailers to undertake necessary infrastructure upgrades.

Recommendation 7

The Committee recommends that the Minister consult with relevant planning authorities to ensure mechanisms are put in place to facilitate timely and rapid planning approvals for service station operators needing to undertake infrastructure upgrades to enable the sale of ethanol blended petrol.

3.2.5 Exemptions

Proposed section 35G

Individual fuel sellers will be able to apply to the Minister for an exemption from meeting the biobased petrol or biobased diesel mandate under section 35G of the Bill. The circumstances where a fuel seller may apply are set out in section 35G(1). DEWS advises:

Applications are to be dealt with case by case. Industry consultation suggested that stakeholders be consulted to develop a framework to assist the Minister's decision making process under section 35G. This would assist fuel sellers in their decisions about whether to apply for an exemption and, if yes, to prepare supporting applications. Section 35G(2)(a) expressly allows the Minister to consult with stakeholders before granting an exemption.

In contrast to the Minister's suspension powers, the Minister may, when granting an exemption, decide under section 35G(1)(b) and (5) in the Bill to reduce the mandate percentage for that fuel seller. An example may be where, due to the particular circumstances of a fuel retailer, fully complying with the mandate at all retail sites threatens the viability of the retailer's business. A condition of the exemption might be to temporarily reduce the mandate for that fuel retailer to an amount that recognises the number of sites the retailer

²²⁸ Explanatory Notes:2

has ready to sell E10. However, details of the framework will be developed with the assistance of stakeholders and the actual decisions will be a matter for the responsible Minister.

*Exemptions are administrative decisions and not subordinate legislation.*²²⁹

Before granting an exemption, the Minister may consult 'stakeholders' and/or arrange for an audit of the fuel seller's business.²³⁰ The Minister may also, 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. The Minister must first give the fuel seller an opportunity to make written submissions about the proposed cancellation and may also arrange for an audit of the fuel seller's business or consult with stakeholders.²³¹

The Committee received advice from DEWS at the public briefing that the development of the exemptions framework using the criteria set out in the Bill is to:

*... ensure exemptions do not undermine the policy objectives to increase the sales and investments in biofuels but at the same time see the mandate is applied fairly and is not unduly onerous.*²³²

Examination of related issues

A number of stakeholders point out that it is difficult to make comment on an exemptions framework that has not yet been developed, especially when there are still fundamental issues outstanding, such as, how long an exemption will be approved for and what the review process will be.²³³

ASMC points to the issue of exemptions, as applied in NSW, still being a concern with the Queensland Bill as:

*... the [NSW] government appetite for that mandate has waxed and waned. As a result, the willingness to enforce the legislation also goes up and down. So things like exemptions around how many service stations are involve – that changes the volume and therefore the certainty around the ethanol that is actually being produced and therefore the penetration. Some of these issues are still sitting there today I this legislation.*²³⁴

Energreen Nutrition makes a suggestion for assessing claims for biodiesel mandate exemptions:

*In regard to exemptions in the legislation we, through our sister company National Biodiesel, have experience under the New South Wales mandate, especially with claims for exemption. We support and commend the whole-of-enterprise profitability test for claims of exemption rather than simplistic 'a litre of biodiesel costs more than a litre of diesel'.*²³⁵

Caltex recommends that exemptions be lodged and approved on an annual basis in order to allow retailers to consider longer-term supply and demand factors when compiling their compliance reports.²³⁶

²²⁹ DEWS, Response to QoN, (public briefing), 19 Oct 2015:4

²³⁰ Explanatory Notes:4

²³¹ Explanatory Notes:17

²³² DEWS, public briefing transcript, 14 Oct 2015:3

²³³ see for example, AgForce submission 11, Attachment 1:12

²³⁴ ASMC, public hearing transcript (Brisbane), 28 Oct 2015:4

²³⁵ Energreen Nutrition, public hearing transcript (Brisbane), 28 Oct 2015:6

²³⁶ Caltex, submission 16:5

On the other hand, Manildra Group recommends any exemptions granted should be for no longer than one-quarter at a time and subject to string time compliance:

*It is critical that the exemptions framework is monitored closely, to ensure that it does not become the source of issues that may jeopardise the entire fuel ethanol mandate.*²³⁷

While RACQ supports the exemption regime it suggests a regulatory provision, as an interim measure, that fuel retailers with quarterly sales volumes between 250,000 and 500,000 litres be given special consideration when applying for exemptions to ease short-term financial burden on smaller retailers and that this exemption be prescribed by regulation.²³⁸

DEWS' response provides that it:

*... will work with industry representative groups in the coming months in developing the exemptions framework further refining circumstances that are appropriate and within the exemptions criteria stated in the Bill. However, it is not considered necessary that more exemption criteria be prescribed.*²³⁹

A number of submitters recommend the Minister seek specialist advice when considering exemption application:

- RACQ recommends an expert panel or implementation board be established to give advice to the Minister²⁴⁰
- Energreen Nutrition suggests that stakeholders with expertise in biofuels, including those working in research and development, should be consulted prior to the Minister granting an exemption²⁴¹
- MTA Queensland suggests that any exemption should be assessed and determined by an experienced, credible industry committee and the Minister advised accordingly as "*exemptions should not be a bureaucratic of political decision*".²⁴²

DEWS responds that once an individual fuel seller applies to the Minister for an exemption, the legislation allows the Minister the option to consult with 'stakeholders' before making a decision:

*A stakeholder includes a person or entity with expertise or an interest in biobased petrol or biobased diesel which is consistent with Energreen's suggestion. The stakeholders consulted will be a matter for the responsible Minister.*²⁴³

In its response to the MTA Queensland's recommendation, DEWS adds:

*The Department will work with industry representatives and groups in the coming months in developing the exemptions framework with the exemptions criteria stated in the Bill to ensure fuel sellers can meet their obligations as the mandate is implemented.*²⁴⁴

²³⁷ MAnildra Group, submission 18:3

²³⁸ RACQ, submission 11:2 and 3

²³⁹ DEWS response to submissions, 28 Oct 2015:14

²⁴⁰ RACQ, submission 11:2

²⁴¹ Energreen Nutrition, submission 9:4

²⁴² MTA Queensland, submission 14:6

²⁴³ DEWS, Response to issues raised in submissions, 23 Oct 2015:12

²⁴⁴ DEWS, Response to issues raised in submissions, 23 Oct 2015:20

Committee comment and recommendation

Committee comment

The Committee supports the proposed exemption provisions contained in the Bill and notes that an exemptions framework will be developed over the coming months to further refine circumstances that are appropriate within the proposed exemptions criteria established in section 35G(1) of the Bill.

The proposed threshold level has been examined in the previous section of this report and the Committee has made recommendations that section 35A(5) of the Bill be amended to provide that the threshold amount cannot be prescribed by regulation to be lower than 250,000 litres and if an increase in the threshold amount is required following analysis of the fuel sales data in 2016, the amendment regulation be made in time to allow a reasonable period for liable petrol retailers to undertake necessary infrastructure upgrades.

The Committee notes the recommendation from the RACQ that as an interim measure, fuel retailers with quarterly sales volumes between the legislated threshold (250,000 litres) and 500,000 litres be given special consideration when applying for exemptions to ease short-term financial burden on smaller retailers and that this exemption be prescribed by regulation.

The Committee has decided that the solution proposed by the RACQ will not be necessary if the threshold is set at an appropriate level following the review of data and any amendment regulation is made in time to allow a reasonable period for liable petrol retailers to undertake necessary infrastructure upgrades.

While stakeholders have not raised an issue about the absence of a prescribed timeframe for Ministerial consideration of an exemption in their evidence, the Committee believes that some assurance should be provided to fuel sellers that their application will be considered, and a decision made, within a certain timeframe. The Committee is therefore recommending that either section 35G of the Bill be amended to include a timeframe for making a decision on exemption applications, or as an alternative, the exemption framework which is to be developed over the coming months include timeframe guidelines for the ministerial decision making process. The Committee is of the view that the timeframe should not be so prescriptive that it compromises the investigation necessary to ensure an informed decision is made on the exemption application.

The Committee has considered the recommendations from stakeholders that an expert panel be established to provide advice to the Minister during the development of the exemption provisions and that the Minister consult that stakeholders with relevant expertise on each exemption application. The Bill proposes in section 35G(2)(a) that once a fuel seller applies to the Minister for an exemption the Minister may consult with stakeholders before making a decision.

The Committee is of the view that the Minister should consult with stakeholders during the development of the exemptions framework and notes DEWS' advice that this will occur. However, the Committee agrees with the proposed approach that it should be at the Minister's discretion to decide whether further consultation with stakeholders is undertaken on individual exemption applications and notes that this is the approach proposed in the Bill.

Recommendation 8

The Committee recommends that either section 35G of the Bill be amended to include a timeframe for making a decision on exemption applications, or as an alternative, the exemption framework which is to be developed over the coming months, include timeframe guidelines for the ministerial decision making process.

3.2.6 Registration and reporting requirements

Proposed sections 35L to 35R and 59 to 61

Under section 60 of the Bill, all fuel sellers will be required to register within one-month of the relevant provisions commencing, and they will have to provide a report with the details of the business and fuel facilities such as the number of service stations a retailer owns or operates, their location and types of fuels sold at each fuel facility. They will also have to report on the volumes of fuel sold for the previous calendar quarter.²⁴⁵ The Explanatory Notes provide an example:

*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.*²⁴⁶

Once the biofuels mandate has commenced, proposed section 35P will require all fuel sellers to provide 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 their facilities in the last financial year and in each calendar quarter in the last financial year.²⁴⁷

Under proposed section 35M fuel sellers will have one month after becoming a fuel seller in which to submit the registration information to the chief executive and under proposed section 35N a fuel seller must also notify the chief executive of any change to the fuel seller's registration information within one month of the change happening.²⁴⁸

The Explanatory Notes detail the purpose of the reporting requirements:

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 sellers will 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.

*It is the intention to commence the registration and initial report obligations at least three to six months before the biofuels mandate under sections 35B or 35C commence to apply.*²⁴⁹

Some fuel sellers will be obliged to meet the biofuels mandates and submit quarterly returns. The Bill provides for the chief executive to publish information about the performance of fuel sellers towards meeting the mandates, derived from fuel seller's quarterly returns, on the DEWS' website.²⁵⁰ Section 35R of the Bill establishes which information about sustainable biofuel sold can be published on the DEWS' website.

²⁴⁵ Explanatory Notes:3-4

²⁴⁶ Explanatory Notes:4

²⁴⁷ Explanatory Notes:4

²⁴⁸ Explanatory Notes:18-19

²⁴⁹ Explanatory Notes:4

²⁵⁰ Explanatory Notes:4

Unlike the quarterly returns, the 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 under proposed.²⁵¹

Examination of related issues

The majority of stakeholders do not raise any issues with the proposed registration and reporting requirements. For example, ACAPMA advises that it is quite happy with the reporting time frame having a six month lead²⁵² and RACQ supports the creation of a register of fuel sellers and the reporting requirements detailed in the Bill.²⁵³

MTA Queensland has raised a concern that the registration and reporting requirements “*are an additional burden and an unexpected outlay at a time when all indicators suggest that business conditions are ‘tough’.*”²⁵⁴

DEWS’ response is that the obligations imposed on fuel sellers to register, provide an initial report on volumes of fuels sold in a calendar quarter and subsequently to submit annual reports on volumes of fuels sold are necessary impositions on fuel sellers to enable the efficient administration of the mandates and ongoing review:

*The establishment of the register was strongly supported by industry stakeholders during consultation on the discussion paper and without this information the Government will have no way to identify which fuel sellers are required to meet the mandate, monitor compliance, enforce the legislation or track performance on the scheme.*²⁵⁵

Further, while the Government recognises that the reporting arrangements 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.*²⁵⁶

DEWS advises that the proposed level of reporting from liable parties was selected noting that there is a gap in information on sale volumes and locations:

The reporting requirements were developed in consultation with industry recognising the Department does not have sufficient information on current fuel sale volumes and locations. The data collected through the reporting process will be used to:

- *inform the administration of the mandates*
- *design the exemptions framework*
- *implement the Government’s Biofutures strategy*
- *[inform] any future Queensland Productivity review on increases to the mandates.*²⁵⁷

The Committee requested further information on the proposed Fuel Sellers Register at the public briefing. DEWS response is contained in an answer to a Question on Notice:

The Fuel Sellers Register is central to delivering the biofuel mandate and is strongly supported by stakeholders including the fuel industry. Without it the Government will have no way to

²⁵¹ Explanatory Notes:18

²⁵² ACAPMA, public hearing transcript (Brisbane), 28 Oct 2015:18

²⁵³ RACQ, submission 11:2

²⁵⁴ MTA Queensland, submission 14:6 and public hearing transcript (Brisbane), 28 Oct 2015:18

²⁵⁵ DEWS response to issues raised in submissions, 23 Oct 2015:20

²⁵⁶ DEWS response to issues raised in submissions, 23 Oct 2015:20

²⁵⁷ DEWS, Response to issues raised in submissions, 23 Oct 2015:21

*identify which fuel sellers are required to meet the mandate; monitor compliance; enforce the legislation or track performance of the scheme. While the registry will record business details, its main purpose will be to capture fuel sales data to ascertain the liable status of fuel retailers by recording the total volume of fuel sales and ownership arrangements, as well as track fuel sales trends.*²⁵⁸

RACQ recommends that section 35R be amended to make it mandatory for the performance data to be published and that this data be published as aggregated data, at a scale sufficient to maintain retailer anonymity.²⁵⁹ DEWS' response is that the intention is that performance data will be published but it is not necessary to make this provision a mandatory requirement.²⁶⁰

Committee comment

The Committee is of the view that the collection of data from fuel retailers and wholesalers is vital to the efficient management of the mandates and ongoing review of the program.

The RACQ's recommendation that section 35R of the Bill be amended to make it mandatory for the performance data to be published has been considered by the Committee and it is satisfied with the advice received from DEWS that the intention is for the performance data to be published but it is not considered necessary to make this provision a mandatory requirement.

The Committee has also noted the concerns raised by MTA Queensland that the reporting and compliance costs for fuel retailers will be onerous. The Committee is satisfied with DEWS' advice that while the reporting arrangements do impose some additional regulatory burden on fuel sellers, it is not expected that compliance will be an onerous task as fuel sellers already collect the information for business, taxation and fuel excise purposes.

3.3 Compliance and enforcement regime including penalties

The Explanatory Notes advise that the Bill includes a number of new offence provisions and penalties and these 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 [they] are at a higher level to penalties generally within the Act... The new penalties need to be set at a level that will provide a deterrent to non-compliance.

*.... 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.*²⁶¹

The advice from DEWS at the public hearing was that the compliance and enforcement regime is still being developed in consultation with industry:

*We have to go to the government with a compliance and enforcement regime. It will have costs, but it is something that we cannot give you the detail on yet until we have finished the consultation with industry, come up with a draft proposal and take that to government for decision.*²⁶²

²⁵⁸ DEWS, Response to QoN at the public briefing, 19 Oct 2015:2

²⁵⁹ RACQ, submission 11:2

²⁶⁰ DEWS, Response to issues raised in submissions, 23 Oct 2015:14

²⁶¹ Explanatory Notes:6 and 8

²⁶² DEWS, public briefing transcript, 14 Oct 2015:12

Examination of related issues

Ecotech Biodiesel submits that given the penalties for biobased petrol and biodiesel mandate non-compliance are the same, they will provide little deterrent to wholesalers in the diesel market. It suggests the penalties be amended to reflect the differences in the obligated parties between petrol and diesel as “...a penalty system synchronised to the volume of petroleum product at a facility would ensure that penalties were a disincentive and reflected the gross turnover of the obligated parties.”²⁶³

DEWS’ response is that the proposal to synchronise penalties to the volume of petroleum at a facility is not part of the Government’s policy for the Bill and that maximum penalties are set at a lower level to that of the NSW legislation but at a higher level to penalties generally in the Act.²⁶⁴

ASMC points out that the penalty arrangements appear to be transparent and reasonable provided there is a genuine appetite by the Queensland Government to enforce:

*.. without a clear expectation by fuel sellers that non-compliance measures will be rigidly enforced, there is significant potential to undermine the effectiveness of the mandate.*²⁶⁵

Committee comment

Committee comment

The Committee considered the issue raised by Ecotech Biodiesel that legislating the same level of penalties for biobased petrol and biodiesel mandate non-compliance will provide little deterrent to wholesalers in the diesel market. Ecotech Biodiesel recommends a fairer approach would be to synchronise the penalty system to the volume of petroleum product at a facility as this would ensure that penalties are a disincentive and reflect the gross turnover of the obligated parties.

The Committee is satisfied with DEWS’ response that the proposal to synchronise penalties to the volume of petroleum at a facility is not part of the Government’s policy for the Bill.

The Committee also notes the warning provided by the Australian Sugar Milling Council that penalties for non-compliance will have to be rigidly enforced if the mandates are to be effective.

3.4 Sustainability criteria and compliance model

Proposed amendments to section 5(2) - definition of sustainable biofuels

The Bill provides for sustainability criteria to be prescribed by regulation. The Explanatory Notes state that 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 (GBR). Fuel sellers may only count biobased 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 biodiesel mandate. The sustainability criteria will be prescribed by regulation.²⁶⁶ DEWS notes:

The sustainability criteria will be subscribed by regulation with the work to develop the regulation to be led by our colleagues at the Department of Environment and Heritage Protection, with the criteria intended to mitigate the likelihood of unintended and adverse environmental consequences arising from the growth in biofuels production and use. The way

²⁶³ Ecotech Biodiesel, submission:6:2

²⁶⁴ DEWS response to submission:7

²⁶⁵ ASMC, submission 15:4

²⁶⁶ Explanatory Notes:4

*this works under the bill is that only biofuels that are compliant with the criteria are eligible to be counted towards meeting the mandates.*²⁶⁷

In relation to the potential impact on the GBR, DEHP advises:

.. currently the main threats to the reef have centred around excess nitrogen, fertiliser, pesticides and sediment. There is a lot of work going on at the moment, as you would be aware, to work with the industry to try to optimise those input rates and farming practices as well. So, whenever there is the prospect of expansion, it carries with it that elevated risk as well.

... the sustainability criteria that we are developing are still under development, and we will be consulting industry across a range of areas where we consider sustainability criteria need to be put in place. So it will cover all the feedstocks, not just feedstock that is produced in the Great Barrier Reef catchments. We are in development of those criteria and we are intending to undertake detailed consultation with industry in the development of those criteria.

.... In terms of measuring and monitoring the success of those criteria, obviously it will depend on the exact nature and detail of those criteria. We intend to be consistent with other government policies, programs and objectives. ... there is a lot of work happening in his space in terms of the reef... the intent would be to be consistent where we are—for example, in undertaking monitoring of the reef, we would be consistent with that process.

*....there are a number of industry programs at the moment that centre around performance and acceptable standards. The intent would be that we would mesh with those existing programs that have certification processes built in with them and try to leverage from those as far as a monitoring and consistency perspective.*²⁶⁸

Examination of related issues

ACAPMA submits that first generation biofuel production is not sustainable and therefore Queensland's current production capacity would be ineligible for the mandate:

*At this point in time our interpretation of the draft legislation is that no ethanol blended petrol or biodiesel currently being produced in Queensland can be considered as sustainable as they are First Generation Biofuels. First Generation Biofuels utilise feedstocks that compete with global food supply and some of these manufacturing processes have never been assessed as delivering negative GHG outcomes.*²⁶⁹

Ecotech Biodiesel supports the requirement for sustainably produced feedstocks or feedstocks from sustainable sources such as waste streams on the basis they will reduce pressure on feedstock supply and price allowing biofuels to remain competitive against mineral based fuels.²⁷⁰

Viva Energy states that it would be pleased to work with the Queensland Government in determining workable and appropriate sustainability criteria to be applied under the mandate although they agree that compliance with the sustainability criteria should be the responsibility of the biofuels producers but makes the following observation:

In our experience, different industry participants have different definitions of 'sustainable' and unless the criteria are clearly understood and are agreed to be workable by all parties, the criteria have the potential to be either ineffectual or too stringent. The global Shell Group

²⁶⁷ DEWS, public briefing transcript, 14 Oct 2015:3

²⁶⁸ DEHP, public briefing transcript, 14 Oct 2015:8-9

²⁶⁹ ACAPMA, submission 8:5

²⁷⁰ Ecotech Biodiesel, submission 6:2

*of Companies has deep experience in biofuels sustainability, and Viva Energy would be able to draw on its history with Shell to help inform this work with the Government.*²⁷¹

A number of submitters raise a concern that, in the absence of the regulation on the sustainability criteria, it is difficult to understand the issues that may be presented. The issues raised include that:

- until the sustainability criteria have been developed there is no way to assess whether they will limit supplies²⁷²
- the Government has not yet consulted with the sugar milling sector or broader industry on the development of the criteria and yet there is only 8 months until the mandates commence²⁷³
- the sustainability clause for feedstock like sugar cane need to recognise industry norms and standards such as Smartcane BMP otherwise it becomes subjective and leads to uncertainty. A potentially new level of sustainability standards totally unrelated to current practice would reduce investor confidence and defeat the purposes of the Bill²⁷⁴
- there are mechanisms already in place to sustainably use surface and groundwater resources, soil quality, and water quality within farming practices and a large proportion of grain farmers carry out practices in line with the voluntary, industry-led Grains BMP – no more stringent measures are required²⁷⁵
- in the absence of a national sustainable fuel standard, the Government consider adoption of the definition of sustainable biofuels from a credible international standards body such as the European Committee for Standardisation²⁷⁶
- compliance with the sustainability criteria should be the responsibility of biofuels producers and petrol wholesalers and retailers must be able to rely on the certification supplied by the ethanol supplier.²⁷⁷

DEWS' response to the issues raised in submissions is that the sustainability criteria will be developed by DEHP and they will consult widely with industry and stakeholders before the regulation is made. Stakeholders will have an opportunity to comment on and have input into the criteria at that time.²⁷⁸

DEHP explains in its response to issues raised in submissions that the environmental benefits of biofuels will depend on the feedstock and production methods and the function of the sustainability criteria is to address the environmental sustainability of domestically produced or imported biofuels without specification of type, price or availability. In particular:

- any specific requirement for the sustainability criteria will depend on the type of biofuel and feedstock and its production process
- in developing the criteria, the Government will assess existing state, national and international policies, practices and accreditation schemes for their potential to address the sustainability principles proposed in the June 2015 Discussion Paper which include Smartcane BMP, Grains

²⁷¹ See for example, Viva Energy, submission 10:2 and ASMC, submission 15:3

²⁷² AIP, submission 1:14

²⁷³ ASMC, submission 15:3

²⁷⁴ CANEGROWERS, submission 5:1, ASMC submission 15:3

²⁷⁵ AgForce, submission 12 (attachment 1:14-15)

²⁷⁶ ACAPMA, submission 8:5

²⁷⁷ Viva Energy, submission 10:2

²⁷⁸ DEWS, response to issues raised in submissions, 23 Oct 2015:6

BMP and existing legislative and regulatory arrangements for sustainable use of surface and groundwater resources, managing air, soil and water quality and vegetation management

- in developing the criteria the Government will review relevant international standards and criteria including the recently completed ISO Sustainability criteria for Bioenergy and the internationally recognised Bonsucro standard and the Government notes work currently underway to explore cross-compatibility between Smartcane BMP and Bonsucro
- the obligation to source sustainably produced biofuels will apply to both domestically produced and imported biofuels and the Government will investigate international voluntary standards that can be used for this purpose such as the ISO sustainability criteria for bioenergy and the Roundtable for Sustainable Biomaterials
- for the GBR and other sensitive catchments, there will be a need to ensure that the criteria are consistent with the Government's environmental objectives
- the criteria are not intended to address the potential impact of a biofuel mandate on food affordability or availability in Australia and for any imported biofuels used to meet the mandate, the Government may consider the use of an appropriate international standard that ensures the biofuel does not have adverse impacts on food security in the source country
- the Government understands that the definitions of sustainable biofuels will have a direct bearing on current and future supply volumes and it will undertake thorough consultation with key stakeholders over the coming months to develop the sustainability criteria and compliance model
- the compliance model is yet to be determined and will be the result of a development process.²⁷⁹

In response to a question from the Committee on the development of a monitoring program for compliance with the sustainability program DEHP states:

Ensuring biofuels are produced sustainably is a core requirement of the biofuel mandate and necessary to ensure the Government's environmental objectives and commitments, especially for the Great Barrier Reef, can be maintained through the expansion of biofuel production.

To achieve this outcome the Department of Environment and Heritage Protection (EHP) will lead the development of the sustainability criteria.

This includes assessing existing international and national policies, practices and accreditation schemes; developing a compliance model; undertaking a Life Cycle Assessment of the greenhouse gas emissions performance of Australian biofuels; making regulatory amendments; establishing systems and implementing the regime.

EHP will undertake extensive consultation with industry in the development of these criteria and associated compliance regime, including on appropriate timeframes and transitional mechanisms. The anticipated policy development process, timeframe and cost are currently under consideration. EHP will keep the Committee advised on the progress of the development of the sustainability criteria.²⁸⁰

In response to a question from the Committee about the timeframe for consulting on and developing the sustainability criteria, DEHP advises:

²⁷⁹ DEHP, response to issues raised in submissions, 23 Oct 2015

²⁸⁰ DEHP, Response to QoN, (public briefing), 19 Oct 2015:3

*The time frame for the sustainability criteria is something we do want to consult with industry on. We are starting to establish some consultation arrangements with industry. We are meeting with biofuel producers in about a month's time, and that will be the start of more formal consultation. One of the things we want to raise with them is the time frames and transitional arrangements.*²⁸¹

Committee comment

Committee Comment

The Committee has noted the concerns of stakeholders regarding the development of the sustainability criteria and compliance model and in particular, the concern that there may not be adequate consultation.

There are significant issues that still need to be resolved prior to the finalisation of the sustainability criteria and compliance model and many submitters have raised a concern that, until the sustainability criteria have been developed, there is no way to assess whether they will limit supplies of feedstock. Submitters are also concerned about the potential for a new level of sustainability standards, which may be unrelated to current standards and practice, to reduce investor confidence and defeat the objectives of the Bill. This concern is exemplified by ACAPMA's contention that, at this point of time, no ethanol blended petrol or biodiesel currently being produced in Queensland can be considered as sustainable use.²⁸²

As previously noted, the Committee has agreed to recommend that the Minister, when making a final decision on the commencement date, ensure there is sufficient lead in time to, amongst other matters, develop the sustainability criteria and compliance model in consultation with stakeholders.

The Committee is also recommending in the next section of the report that, given the significant impact the proposed regulatory changes could have on industry, DEWS develop a consultation protocol that will be adhered to in relation to all regulations made or amended under the Act and that the protocol be published on the DEWS' website.

3.5 Consultation on regulations to be made under the Act

As highlighted in previous sections of the Committee's report:

- the Bill proposes that significant changes to the biofuel mandate policy can be made through regulatory amendments including changes to the mandate percentages and introduction of the sustainability criteria
- a number of submitters raise serious concerns about the heavy use of regulations in the Bill.²⁸³

For example, Wilmar BioEthanol argues:

Another issue I have with the draft legislation is that it is currently very dependent on regulation that is not drafted yet. It is very hard to comment on regulations that do not exist. A lot of that regulation in my view should be in legislation. I don't know that we are going to get certainty for the industry if things like the sustainability criteria, the ramped up level, even the minimum ethanol blend level are not currently in the legislation...

*[It is important] that it is all put in place in a way that is legislated and has bipartisan support so it does not get chopped and changed moving forward.*²⁸⁴

²⁸¹ DEHP, public hearing transcript (Brisbane), 28 Oct 2015:27

²⁸² ACAPMA, submission 8:5

²⁸³ For example, see Manildra Group, submission 18:2

²⁸⁴ Wilmar BioEthanol, public hearing transcript (Mackay), 22 Oct 2015:4

Stakeholders are also concerned that the Government ensures there is an effective consultation framework to make sure the new regulations do not apply an unnecessary cost or burden on the emerging biofuels industry.²⁸⁵

DEWS' advice to the Committee is that the Government will continue to consult with stakeholders as the mandate is implemented to ensure the regulatory burden is not excessive.²⁸⁶

Committee comment and recommendation

Committee comment

The Committee notes the concerns raised by stakeholders regarding the heavy reliance on regulations proposed in the Bill and the fact that, in the absence of the draft regulations, it is difficult to assess the issues that may be presented by the regulations. The Bill proposes that the following measures be established or be able to be introduced and/or amended by regulation:

- increases and reductions in the biofuel mandates
- the volumetric threshold level for liable parties
- application of the biobased petrol mandate to wholesalers
- the sustainability criteria and compliance model
- ministerial declarations for suspending or reducing the mandates.

While the Committee recognises that a certain amount of flexibility is required and this necessitates the power to make a number amendments by regulation, it has made a number of recommendations in order to alleviate some of the concerns about the heavy reliance on regulations. These recommendations include:

- amending the Bill to remove the power to lower the mandate levels by regulation
- ensuring the Bill only allows for a once-off suspension of up to 12 months to be introduced by regulation
- reviewing the volumetric threshold when the necessary sales data becomes available, and adjusting it, if necessary, before the commencement of the mandates.

The Committee understands that subordinate legislation (regulations) are subject to Parliamentary scrutiny and disallowance but it is of the view that this scrutiny is limited as Parliament only has the opportunity to review regulations sometime after the provisions in them have already commenced.

The Committee is therefore recommending that, given the significant impact the proposed regulatory changes could have on industry, DEWS develop a consultation protocol that will be adhered to for any regulations made or amended under the Act and that the protocol be published on the DEWS' website.

Recommendation 9

The Committee recommends that the Department of Energy and Water Supply develop a consultation protocol that will be adhered to for all regulations made or amended under the Act and that the protocol be published on the departmental website.

²⁸⁵ see for example, BAA, submission 4:2 and RACQ, submission 11:2

²⁸⁶ DEWS response to submissions, 28 Oct 2015:5

3.6 Consumer demand

Consumer education is critical to the success of biofuels mandate as suppliers will not be able to meet the mandated targets without adequate demand. Consumers need to be confident that petrol blended with ethanol and biodiesel are safe to use in their cars and they are more likely to purchase biofuel products if there is a significant price differential to regular fuel products.

3.6.1 Education and awareness

While somewhere between 85 and 95 per cent of Queensland's car fleet is compatible with ethanol blended fuels, many consumers still believe that these fuels may damage any car. Evidence suggests the low uptake of biobased fuel by consumers may be due to a number of factors other than availability, including:

- resistance to change and consumer ignorance and myths²⁸⁷
- misleading advice from car retailers and mechanics²⁸⁸ (the Institute of Automotive and Mechanical Engineers (IAME) has identified a significant knowledge gap with mechanics providing inaccurate advice to their customers)²⁸⁹
- deliberate misinformation to consumers by vehicle sellers and at the point of sale including applying 'no ethanol' and no bio-diesel stickers on point of sale vehicles that are clearly compliant against manufacturing warranties with the use of biofuels (including for vehicles specifically sold as eco-vehicles.²⁹⁰

DEWs provides some insight into this issue at the public briefing:

Through our consultation, it did indicate that people would be more willing to take up or use ethanol—E10—at the pump if they knew, for example, whether their car would use it or not. Most people do not know, for example, whether or not their car does. Because your car has a little thing in the flap saying, 'Use only premium unleaded petrol,' that is the automatic thing that most people do—and I have to say that I do as well. So a constructive part of that is education. We have been working with the RACQ around that, because what information is out there is scattered; it is not based in one place and it is not necessarily based on fact, either. There is not necessarily one true place that you can go to to find out whether or not your car is able to use an ethanol blend in its petrol consumption. They are the things that we have to have a think about in terms of the actual education campaign.

The other side of the equation was that, in 2010 in Queensland, we reached a high point of 2.68 per cent use of E10, which was the highest point that we have ever done in Queensland. I think it was successful because at the time the government had been talking about implementing a mandate from 2011. So there had been discussion in the community and during that period of leading up to 2010 there was an education campaign that was developed and worked with fuel retailers and the Biofuels Association.

The third aspect of that, too, was that the government at that time provided subsidies to retailers to be able to expand their facilities, particularly in South-East Queensland, to upgrade things like tanks and signage and other things like that as well. So I think it is a three-pronged approach.²⁹¹

²⁸⁷ See, for example, ASMC, submission 15 (attachment 1:7); Mackay Sugar, public hearing transcript (Mackay), 22 Oct 2015:3

²⁸⁸ Wilmar BioEthanol, submission 7:2, BAA submission 4:2 and Attach 1:8

²⁸⁹ BAA submission 4:2 and Attach 1:8

²⁹⁰ ASMC, submission 15:4 and CANEGROWERS, submission 5:1

²⁹¹ DEWS, public briefing transcript, 14 Oct 2015:5

Manildra Group submits that the campaign needs to highlight the following benefits of ethanol-enhanced fuel:

1. compatibility: the compatibility of an E10 fuel ethanol blend with post-1986 vehicles
2. farmers: support and diversify our largest agricultural commodities whilst increasing on-farm investment
3. environment and health: reducing emission particulates and having cleaner healthy air in the major cities
4. fuel security: reduce our dependence on fuel supplies in Middle Eastern countries of potential instability
5. price: reduce fuel prices at the bowser
6. economy: creating jobs and investment in regional Queensland
7. automotive Industry: increase the quality of our base fuel stock
8. Queensland supporting Australian farmers and buying Australian products
9. research and development: the development of the biofuel industry will facilitate ongoing research and development into second-generation technologies.²⁹²

DEWS' advice at the public briefing was that the department is currently working with industry in developing a consumer education campaign around the benefits of biofuels and to help provide information on which vehicles are compatible with ethanol blended fuels.²⁹³

Wilmar BioEthanol suggests that the Queensland Government has a large part to play in leading an education campaign:

I think there are very strong and credible members of the community who are very pro ethanol and who have had very intimate relations with it. They could be leveraged by government to be spokespeople for the product and for the industry and Queenslanders would take on board what they have to say. I am thinking about people like Craig Lowndes, for example. V8 Supercars have been racing on E85 for seven years now. I think that would be a fantastic showcase for the industry and for the product, yet still many people who are now involved in motor sport do not know that. As soon as they become aware of that, often their attitudes towards the fuel changes.²⁹⁴

Further advice from DEWS, in response to a question from the Committee about the proposed campaign, is that:

Yes, the education campaign, through the consultation processes, was overwhelmingly supported. That was one aspect of the discussion paper that nearly every person who provided feedback supported, and that it be government led. My team is currently working on an education campaign. I think the minister in his introduction speech indicated that the timing of the education campaign would be to coincide with the commencement of the mandate. So we hope that will be starting early next year, just depending on the passage of the bill and other things like that. .. The government is still to consider the scope, the scale and the costings for it. So we cannot give you those figures yet.

A key to the education campaign is also ensuring that our partners are involved in that. So we are working, initially, with a number of our stakeholders, including the RACQ, ACAPMA, which

²⁹² Manildra Group, submission 18:3

²⁹³ DEWS, public briefing transcript, 14 Oct 2015:2

²⁹⁴ Wilmar BioEthanol, public hearing transcript (Mackay), 22 Oct 2015:6

represents a number of the retailers, and also the Biofuels Association to get their feedback on what they think can work in the marketplace for consumers.²⁹⁵

DEWS is currently working on a campaign with RACQ, ACAPMA and BAA which is likely to start early in 2016.²⁹⁶ BAA points out that there are now 64 different countries around the world that have ethanol and biodiesel mandates in place and that education and awareness campaigns have been a key factor in the success of those programs in each of those jurisdictions.²⁹⁷

At the public hearing in Brisbane DEWS details the type of campaign that is likely to be developed:

We are providing some information to government or pulling together some information for government's consideration at the moment about what the structure of a campaign would be. What I think today has highlighted again is the need to ensure that we have proper market research done to develop a campaign. We need to understand what the consumers' view is on biofuels, particularly around ethanol. We need to get that right in the first instance and have that understanding from the get-go to be able to develop an education campaign that is targeted at specific consumers and targeted at specific issues that consumers have. That is the approach we are taking at this point in time. We hope to be going out to market to get tenderers to provide that advice to us and then provide those options to government as soon as possible.....

Government did invest in an education campaign last time around when there was discussion about introducing the mandate in 2010. We found that sponsorship of events worked quite well—sponsorship of things like North Queensland Cowboys, motor racing events and other things like that. The other thing that we found worked well last time was point-of-sale information not so much in a brochure sitting there but actually having people there in person talking about the fuel types for people at the forecourt, having people in a red T-shirt saying, 'What fuel choice would you like to make today?' or helping to support those choices. Having that direct interaction with people at that level is probably one of the more successful things that we did back then.

The other thing that we need to consider is that the campaign was designed eight or nine years ago, and we have moved on significantly in terms of technology and other things like that since that time. While those things worked at that point in time, we need to understand whether or not that would work again. That is the importance of market research but also using different interactive technologies that people use now and understanding that people drive from the age of 16 up to potentially the age of 80, so different people are going to want different information given to them around their fuel choices and the education they need. Again, market research is really important to understand the different market segments but also understanding how we would be best communicating with people in different age groups and from different socioeconomic backgrounds. Innovation is key to be able to get this done successfully.²⁹⁸

In response to question from the Committee about the timeframe for the campaign and whether there is sufficient time to develop and start the campaign prior to the commencement of the mandate, DEWS states:

We do think it is realistic because there is a long-term approach to it. We are not just talking about needing to run and do an education for six months or three months leading up to the start of the mandate. It will actually have to go for many years to ensure the mandate's

²⁹⁵ DEWS, public briefing transcript, 14 Oct 2015:4

²⁹⁶ DEWS, public briefing transcript, 14 Oct 2015:4

²⁹⁷ BAA, public hearing transcript (Brisbane), 28 Oct 2015:5

²⁹⁸ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:24-25

*success into the future as well....At the moment we are working towards providing government with some options in terms of what they want. We hope to be able to start that in the new year.*²⁹⁹

The Explanatory Notes state that “further work will be undertaken to determine the role that government, industry and peak bodies will play in a consumer education and awareness campaign” however there is no mention of funding in the section “Estimated cost for government implementation”.³⁰⁰

DEWS provides the following advice about the work it is undertaking with the Institute of Automotive and Mechanical Engineers (IAME):

*We worked with the mechanical engineers association who represent a lot of the mechanics themselves. They have been doing some market research around their own members to see what members’ attitude was and it does reflect your comments around, ‘No, we don’t do it,’ particularly among older mechanics who have not necessarily been privy to or experienced the more recent kind of developments in the biofuels space. The younger mechanics, a lot of them at TAFE and at other training facilities, do modules that look specifically at the use of biofuels in cars and the benefits of it, too. So I think you have to go to the sources of where you get your information from. Are you going to go to government to work out what you should be putting in your car, or are you going to go to your mechanic? Most people would go to their mechanic rather than ringing the Department of Energy and Water Supply. So it is about education again, but it is a different side of education; it is about directing it at the source of information.*³⁰¹

DEWS provided further clarification at the public hearing held in Brisbane:

*We do know that there are TAFE modules or training modules that TAFE and other training providers currently roll out for apprentice mechanics and junior mechanics. That is working quite effectively in terms of education at that level. But as to whether or not we have a problem more with experienced mechanics who have had previous detrimental experiences with ethanol 10 or 20 years ago that we should be aiming it at, we do need to incorporate that in any of the education we do.*³⁰²

The DEWS’ response to submissions adds “.... the Department will work with the Australian Government following the outcomes of the Fuel Quality Standards Act 2000 Review and as part of the future work to deliver a National Energy Productivity Plan which is expected to include measures to encourage biofuel use”.³⁰³

The overwhelming support for an extensive public education campaign from stakeholders is confirmed in submissions received by the Committee with RACQ going as far as saying this should be mandated in the Bill.³⁰⁴ Submitters make the following suggestions about how an education and awareness campaign should be implemented and about possible strategies that could be used:

- the Queensland Government should take a lead role in a targeted consumer education campaign, including providing funding³⁰⁵

²⁹⁹ DEWS, public hearing transcript (Brisbane), 28 Oct 2015:25

³⁰⁰ Explanatory Notes:9 and 5

³⁰¹ DEWS, public briefing transcript (Brisbane), 14 Oct 2015:6

³⁰² DEWS, public hearing transcript (Brisbane), 28 Oct 2015:27

³⁰³ DEWS response to issues raised in submissions, 23 Oct 2015:5

³⁰⁴ RACQ, submission 12:2

³⁰⁵ See for example, Wilmar, submission 7:2, ACAPMA, submission 8:5

- compulsory labelling of vehicle fuel caps by motor traders and service agents with respect to fuel compatibility to ensure consumers are not misled³⁰⁶
- educate motor mechanics and automotive sellers about the validity of EBP fuels - use IAME educational materials for use in TAFE type colleges and for ongoing education to maintain their knowledge in a technological changing world³⁰⁷
- require fuel stations to provide educational material above pumps, prepared by a neutral organisation (such as the Government)³⁰⁸
- introduce penalty amendments for legislation such as the *Motor Dealers and Chattel Auctioneers Act 2014* (and regulation), which penalises misinformation in relation to biofuels.³⁰⁹

Wilmar BioEthanol provides the following evidence on the role that fuel retailers can play in an education campaign if they are obliged to meet a mandate:

I think the fuel retailers can help with that. If they know they need to get there and there is an obligation on them getting there, they can play a very large part in making sure that over time consumers have a positive view on that. In the lead-up towards the mandate here in 2010, the major retailers had brochures on their floors. They had people talking to them about ethanol blends and how good they were. They all disappeared when the mandate disappeared. We need to make it in their interests to make it work. Not to not make it work.

These issues have been faced elsewhere. They were faced in the US. There were a lot of people in the US saying people do not want to buy it. Do you know where they are now? They are at 10 per cent in every drop of fuel and they want to go to 15 per cent. They got there. In Brazil over 50 per cent of their fuel mix is ethanol. Other people can do it. We can do it. We just need to work out whether we want to do it or not.³¹⁰

Viva Energy offers to provide assistance with the education campaign on the basis that it has:

.. years of customer research into fuels generally and biofuels specifically and obviously lived with the experience of the biofuels mandate in New South Wales. So we understand customers' perception and purchasing behaviour in relation to biofuels and we believe this insight could be invaluable to the government. Whilst we firmly believe that any marketing campaign needs to be delivered to Queensland motorists by what we would call trusted advisers, by which we would mean government, mechanics and the RACQ, we believe that our research and experience could help identify the best messages, channels and target audiences for the campaign which would enhance its likely success.³¹¹

Ecotech Biodiesel recommends that the State Government use its procurement policy to encourage the purchase of biobased fuel and that the Committee:

.....seriously thinks about the how the Government uses its procurement system to purchase its fuel because through that process you have the ability to ensure that biofuels, and biodiesel specifically, are scattered throughout the state. ... a procurement system that runs through your state government and also through your councils will allow that process whereby biofuel and biodiesel facilities can be regionally located.³¹²

³⁰⁶ BAA, submission 4:2 and attachment 1:8

³⁰⁷ BAA 4:2 and Attach 1:8

³⁰⁸ ASMC, submission 15:4

³⁰⁹ ASMC, submission 15:4

³¹⁰ Wilmar BioEthanol, public hearing transcript (Mackay), 22 Oct 2015:10

³¹¹ Viva Energy, public hearing transcript (Brisbane), 28 Oct 2015:20

³¹² Ecotech Biodiesel, public hearing transcript (Brisbane), 28 Oct 2015:5

*... there are several triggers that can work for the biofuels industry to move forward. One of the aspects that a lot of people overlook is the procurement aspect associated with biofuels. Quite often governments are saying, "we cannot really do a great deal". However, if government had a genuine policy of procurement for biofuels through their own systems, whether it be at a state level or a local level through the councils, that would create quite a drive in the system alone.... There is no question that one of the best ways to actually sell your product is to have someone tell you that they use it.*³¹³

3.6.2 Price differential between biobased petrol and regular unleaded petrol

A number of submitters point out that it will be difficult to encourage sufficient consumer demand for the mandate policy to succeed without a price differential at the point of sale between biofuel prices and RULP.

CANEGROWERS submits that, as the Bill does not provide for a pass through of a minimum percentage difference between ethanol and petrol prices to consumers, there will not be a price signal (cheaper E10) seen by the consumer and that this in turn will reduce demand.³¹⁴

While the price differential should be assisted by fuel excise reductions at the Federal Government level as well as other factors, this is not always be reflected in the price at the bowser. BAA points out:

*This differential as a result of the federal policy is only one aspect of pricing however, currently producers are providing discounts to petrol wholesalers which exceed the excise value, as it is the desire for the biofuel industry to pass through this saving to the consumer. Interestingly as the discount to the wholesaler has increased, the discount at the pump has reduced from 4cpl to 2cpl.*³¹⁵

BAA also points out that service stations need to be provided time to enable transition of sites not currently capable of selling alcohol based fuels so as to ensure costs incurred do not translate to higher fuel costs at the pump.³¹⁶

ASMC explains that fuel distribution is not a free market and there is no mechanism to ensure pass-through of ethanol price differential when there is movement in the international oil price. It provides the following example:

... when unleaded petrol (ULP) is priced at \$1.20 per litre, ethanol provides a price advantage of 4c/litre. However, fuel wholesalers currently pass on only 2c/litre. As the price of ULP increases, the actual price difference between E10 and ULP increases, yet E10 continues to be sold at 2c/litre less than ULP, with no pass through to the customer or retailer.

*This is particularly likely to be an issue in fuel stations that are in communities less supportive of using ethanol blended fuels. Two factors typically encourage the average consumer to consider using ethanol – either price sensitivity or green purchasing choice. A price sensitive customer is less likely to be attracted to a price differential of 2c/litre when ULP is at \$1.60, compared with \$1.20. Fuel stations regularly use fuel discounting to attract customers – but in the case of E10, wholesalers fail to pass this opportunity through.*³¹⁷

³¹³ Ecotech Biodiesel, public hearing transcript (Brisbane), 28 Oct 2015:8

³¹⁴ CANEGROWERS, submission 5:1

³¹⁵ BAA, submission 4 (attachment 1:2)

³¹⁶ BAA, submission 4 (attachment 1:3)

³¹⁷ ASMC, submission 15:3

ASMC points out that this concern is particularly relevant to section 35J(1)(a)(ii) of the Bill which allows the Minister to make a suspension declaration if there is not enough demand for sustainable biofuel blend.³¹⁸

RACQ submits that increasing the volume of ethanol to be sold furthers the need for clear and transparent pricing practices. *“As roadside price boards remain the dominant source of fuel price information for many motorists regulation is required to end misleading and deceptive practices, such as advertising discounted prices.”*³¹⁹

In response to a Committee question about whether there would be a price differential to encourage consumers to purchase ethanol blended petrol, DEWS advises:

The Commonwealth government did have their Ethanol Production Grants Program. That will cease from 1 July 2017, but essentially going forward they will set ethanol at an excise rate of zero cents and then each year it will increase by 2.5 cents per litre up until 2020, when they will set it at 1.25 cents per litre. So it will essentially take away some of the competitive price advantages that ethanol or E10 petrol actually experience now. So the Commonwealth have excise arrangements that were in place and continue to be in place. That would essentially exclude cheap imports from overseas, particularly from South American countries—it does not exclude them but makes them price prohibitive. So it makes it more expensive because they would still have to pay that excise duty...

*In Queensland, we do not know what the major fuel retailers will do, particularly in South-East Queensland. But we assume that a number of the retailers would be looking at meeting their mandates in South-East Queensland rather than where they have larger sales. So we would hope that there could potentially be some price wars around E10 petrol so that the retailers can meet that mandate.*³²⁰

Committee comment and recommendations

Committee comment

The Committee is keenly aware that without adequate consumer demand for biofuels, petrol retailers will not be able to sell the amount of biofuel required by the mandates and the legislation will not succeed in achieving its objectives.

Education and awareness

The Committee notes that, while between 85 and 95 per cent of the State’s car fleet is compatible with biobased fuels; many consumers are still under the mistaken belief that these fuels may damage their cars. Evidence presented to the Committee suggests the low uptake of biobased fuel by consumers may be due to a number of factors other than availability, including resistance to change, consumer ignorance and myths, misleading advice from car retailers and mechanics and misinformation provided to consumers by vehicle sellers and at the point of sale including the application of ‘no ethanol’ and ‘no-bio-diesel’ stickers on vehicle fuel caps that are clearly compliant with the use of biofuels.

The Committee believes an education and awareness campaign will help address these issues and will assist in convincing consumers that ethanol blended fuels are safe to use in the majority of cars.

The Committee has noted the overwhelming support from stakeholders for an extensive education and awareness campaign that is led by Government in conjunction with industry and consumer representatives. The Committee has also noted the offers of assistance from industry representatives and consumer groups.

³¹⁸ ASMC, submission 15:3

³¹⁹ RACQ, submission 11:2-3

³²⁰ DEWS, public briefing transcript, 14 Oct 2015:7

The Committee notes that the Explanatory Notes do not refer to any Government funds being provided for an education and awareness campaign, however it also notes the advice from DEWS that the Government is yet to consider the scope, scale and costing of a campaign and therefore figures could not be provided.

The Committee is recommending that the Minister make a public statement that he is committed to leading, and providing funds towards, a comprehensive consumer education and awareness campaign in conjunction with industry and consumer groups which will be designed to dispel the myths and negative perceptions on the use of fuel ethanol in vehicles as well as promote its benefits.

The Committee is also making recommendations in relation to the education of mechanics and automotive apprentices and proposing that the Government “lead by example” by including a requirement for drivers of QFleet cars to refuel using ethanol blend (E10) where practicable in the QFleet Efficiency and Utilisation Policy for the Queensland Government motor vehicle fleet.

Price differential between ethanol blended and regular unleaded petrol

The Committee has noted the observation made by stakeholders that without a price differential between ethanol blended fuel and regular unleaded petrol it will be difficult to attract consumers in sufficient numbers to ensure the success of the mandate policy.

While, the Committee is somewhat reassured by the advice from DEWS that retailers will be motivated to ensure there is a sufficient price differential in order to achieve enough sales to meet the mandated target, the Committee is making a recommendation which it believes, may encourage wholesalers to pass through the full price differential to retailers and consequently consumers.

Section 35B(3) of the Bill provides a mechanism for applying the biobased petrol requirement to wholesalers by making a regulation that prescribes a percentage for the definition ‘*wholesale percentage*’ (this percentage may be different to that set for fuel retailers).

The Explanatory Notes state this mechanism should only need to be triggered if sufficient supplies of ethanol blended petrol are not being made available to retailers. However, the Committee is of the view that this mechanism should also be triggered if the full price differential between biobased petrol and regular unleaded petrol is not passed through to retailers by wholesalers on the basis that this will encourage wholesalers to pass through the price differential to retailers in order to avoid being subjected to the biobased petrol mandate.

Recommendation 10

The Committee recommends that the Minister, in his second reading speech, commit to the Government providing funds toward, and leading, a comprehensive consumer education and awareness campaign in conjunction with industry and consumer groups, to dispel myths and negative perceptions on the use of fuel ethanol in vehicles and to promote its benefits.

Recommendation 11

The Committee recommends that the Department of Energy and Water Supply work with organisations such as the Automotive Trades Institute of Technology and the Institute of Automotive and Mechanical Engineers to ensure educational materials around the validity of ethanol blended fuels are used to educate mechanics and automotive trainees and also for ongoing education purposes, to ensure mechanics and automotive tradespeople are aware of the latest information about ethanol blended fuel compatibility of vehicles.

Recommendation 12

The Committee recommends that the Government “lead by example” by including a requirement in the *QFleet Efficiency and Utilisation Policy for the Queensland Government motor vehicle fleet* that drivers of QFleet cars refuel using ethanol blend (E10) where practicable.

Recommendation 13

The Committee recommends that the Minister, in his second reading speech, make a statement that the mechanism for applying the biobased petrol requirement to wholesalers (prescribed in section 35B(3) of the Bill) may be triggered if the full price differential between biobased petrol and regular unleaded petrol is not passed through by the wholesalers to the retailers to ensure an adequate price differential to encourage consumers to buy biobased petrol.

4. Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The Committee has examined the application of FLPs to the Bill. The Committee brings the following to the attention of the House.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 6 – section 35R

Clause 6 of the Bill proposes a new section 35R which provides that the chief executive may publish, on the department’s website, the following information about sustainable biofuel sold in a calendar quarter:

- 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 regular 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.

The disclosure of private or confidential information was identified by the former Scrutiny of Legislation Committee as a relevant consideration as to whether legislation has sufficient regard to an individual’s rights and liberties.³²¹ In this instance proposed section 35R provides that a fuel seller’s quarterly returns may be published on the department’s website.

The disclosure of commercial in-confidence information arguably does not take into account the rights and liberties of fuel sellers pursuant to section 4(2)(a) of the LSA.

The Explanatory Notes address this issue, advising that only certain information will be published.

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.³²²

³²¹ Office of the Queensland Parliamentary Counsel (OQPC), Fundamental Legislative Principles: *The OQPC Notebook*:113

³²² Explanatory Notes:6-7

Committee comment

Committee comment

The Committee notes that the information to be published on the DEWS' website will be from the fuel seller's quarterly returns and relates to their compliance in selling biofuels. The Explanatory Notes advise only percentages of biofuel in the fuel sold by sellers will be published to protect commercial in confidence information. The Committee is of the view that given that the information published will be limited to the percentage of biofuels sold, proposed new section 35R has the appropriate regard to fundamental legislative principles.

Clause 6 – section 35S

Section 50 (Compensation for loss occasioned by compliance with directions) of the Act provides that a person or association of persons are entitled to compensation in the following circumstances:

- as a result of complying with any provision of this Act or with any direction, prohibition or requisition directed to the person or association of persons under this Act; or
- while complying with or engaging in giving effect to any such provision, direction, prohibition or requisition.

Clause 6, proposed new section 35S provides that current section 50 of the Act does not apply to a fuel seller complying with, or giving effect to:

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

Pursuant to section 35S(2), subsection (1)(b) applies only if the person giving or making the direction, prohibition or requisition acted in good faith and without negligence. Part 5A imposes the conditions that fuel sellers will be required to adhere to in relation to bio-fuels should the Bill be passed.

In restricting the ability of fuel sellers to compensation under part 5A, it is arguable that section 35S is potentially in breach of section 4(2)(a) of the LSA and is inconsistent with current section 50 of the *Liquid Fuel Supply Act 1984*.

The Explanatory Notes address these issues as follows:

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.³²³

Committee comment

Committee Comment

The Committee is aware that the introduction of new mandatory bio-fuel targets for the petroleum industry in Queensland, as provided for in Part 5A of the Bill, may see fuel sellers having to invest in their operations to meet the mandatory targets.

The Committee notes that this can be the by-product of any policy decision enshrined in legislation and that a claim is not prevented if a person giving a direction, prohibition or requisition to a fuel seller for part 5A did not act in good faith or acted with negligence.

³²³ Explanatory Notes:7

4.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Clause 6 – sections 35G and 35J

Clause 6 proposes to insert new section 35G which provides that the Minister may, on application by a fuel seller, exempt the 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 to comply with the requirement because of a shortage in the supply of the biofuel or blend; or
- complying with the requirement would threaten the viability of the fuel seller's business; or
- there are other extraordinary circumstances justifying the granting of the exemption.

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.

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.

There is no power of review in proposed new section 35G and proposed new section 35J also provides the Minister with the power to suspend the operation of biofuel requirements. Both sections provide the Minister with significant power to vary the Act (if passed).

In providing this power to the Minister the Committee notes section 4(4)(a) of the LSA which provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the OQPC FLP Notebook, this matter is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

In relation to section 35G the Explanatory Notes acknowledge that it may not have sufficient regard to the institution of Parliament and address the issue as follows:

*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.*³²⁴

³²⁴ Explanatory Notes:6

The Explanatory Notes also acknowledge that section 35J may also not have sufficient regard to the institution of Parliament and provide the following justification for the section:

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.³²⁵

Committee comment

Committee comment

The Committee notes that the power provided to the Minister in proposed new sections 35G and 35J is necessary to respond to the needs of fuel sellers if market conditions change or if unexpected events arise such as natural disasters or risks to public safety.

The Committee is therefore of the view that, on balance, and in light of the justifications provided in the Explanatory Notes, proposed new sections 35G and 35J have sufficient regard to the institution of Parliament.

The Committee has made a recommendation regarding providing some assurance to fuel sellers in relation to approval times for exemptions in the “Examination of the Bill” section of this Report.

4.1.3 Scrutiny of the Legislative Assembly

Clause 6 – proposed new Part 5A, Division 1, 35B and 35C

Summary of provisions

Clause 6 of the Bill proposes to insert a new part 5A, Division 1 (Sale of sustainable biofuel) into the Act.

Pursuant to section 35A(1) the division applies to the sale of petrol or a petrol bio-based petrol blend (petrol fuel), and the sale of diesel or a diesel bio-based 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.

The Explanatory Notes provide further information about who is obliged to sell biobased petrol and biobased diesel:

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 bio-based diesel requirement and the bio-based 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 bio-based diesel requirement and will only be liable to meet the bio-based petrol requirement, if –

³²⁵ Explanatory Notes:6

- 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.*³²⁶

Proposed new sections 35B (Sustainable bio-based petrol requirement) and section 35C (Sustainable bio-based diesel requirement) require certain fuel sellers to comply with the minimum mandated targets that may be prescribed by regulation. Section 35B(c) provides for an initial mandate of 2 per cent for bio-based petrol and 0.5 per cent for bio-based diesel. These amounts may also be amended by regulation.

Further, pursuant to clause 4 the sustainability criteria for bio-based diesel and the sustainability criteria for bio-based petrol, may be prescribed by regulation.

Appropriate delegation of legislation

Clause 6, proposed new sections 35A and 35B, allow for mandated amounts to be amended by regulation. Clause 4 also allows for sustainability criteria to be prescribed by regulation. The Committee notes that this potentially is a breach of section 4(4)(b) of the LSA which provides that a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. Further, section 4(5)(c) of the LSA provides that subordinate legislation should contain only matters appropriate to that level of legislation.

The OQPC Notebook states *“For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation”*.³²⁷ The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

“The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny”.³²⁸ In considering the appropriateness of delegated matters being dealt with through an alternative process, the former Scrutiny of Legislation Committee considered:

- the importance of the subject dealt with
- the practicality or otherwise of including those matters entirely in subordinate legislation
- the commercial or technical nature of the subject matter
- whether the provisions were mandatory rules or merely to be had regard to.³²⁹

The Explanatory Notes address the use of regulations in relation to section 35A as follows:

*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.*³³⁰

³²⁶ Explanatory Notes:13

³²⁷ OQPC, FLPs: *The OQPC Notebook*:154

³²⁸ OQPC, FLPs: *The OQPC Notebook*:155

³²⁹ OQPC, FLPs: *The OQPC Notebook*:155

³³⁰ Explanatory Notes:6

The Explanatory Notes address the use of regulations in relation to section 35B as follows:

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.³³¹

The Explanatory Notes address the use of regulations in relation to sustainability criteria as follows:

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.³³²

Committee comment

Committee comment

The Committee considers that given the nature of the changes to be made by regulation pursuant to clauses 4 and 6 of the Bill, and that the subordinate legislation is subject to review and disallowance powers, sufficient regard to the institution of Parliament has been achieved in these instances.

However, the Committee has made recommendations to amend proposed new sections 35B(3) and 35C(3) to ensure that a biofuel mandate percentage cannot be lowered by regulation. See the "Examination of the Bill" section of this report for further details about these recommendation.

4.2 Proposed new and amended offence provisions

Part 5A of the Bill includes a number of new offence provisions with maximum penalties of either 100 or 200 penalty units (see table below).

The Explanatory Notes advise that these new penalties are higher than those currently contained in the Act and provide the following rationale for the inconsistency:

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 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.³³³

A penalty should be proportionate to the offence. The OQPC Notebook states, "Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other".³³⁴

³³¹ Explanatory Notes:6

³³² Explanatory Notes:6

³³³ Explanatory Notes:7-8

³³⁴ OQPC, FLPs: *The OQPC Notebook*:120

Several of the offences namely, sections 35E, 35F, 35M, 35N, 35O, 35P, 35Q and section 60, allow for a defence of 'reasonable excuse' while section 35B provides that a court may have regard to the 'reasonable steps' taken by a fuel seller to comply with the provisions of the section.

Committee comment

Committee comment

The Committee has considered the justification provided in the Explanatory Notes to the Bill and considers the penalties contained in Part 5A of the Bill are appropriate and justified in the circumstances.

Clause	Offence	Proposed maximum penalty
6	Replacement 35B(2) A fuel seller must sell at least the minimum amount of sustainable bio-based petrol in each calendar quarter.	(a) for a first offence—200 penalty units; or (b) for a second or later offence—2,000 penalty units.
	Replacement 35C(2) A fuel seller must sell at least the minimum amount of sustainable bio-based diesel in each calendar quarter.	(a) for a first offence—200 penalty units; or (b) for a second or later offence—2,000 penalty units.
	Replacement 35C(1) A fuel seller must give a return, in the approved form, to the chief executive within 1 month after the end of each calendar quarter, unless the fuel seller has a reasonable excuse.	100 penalty units
	Replacement 35F(2) A fuel seller must keep a record of each sale for at least 2 years after the end of the calendar quarter in which the sale happened, unless the fuel seller has a reasonable excuse.	100 penalty units
	Replacement 35H A person who is granted an exemption must comply with the conditions of the exemption.	200 penalty units
	Replacement 35M A fuel seller must give the fuel seller's registration information, in the approved form, to the chief executive within 1 month after becoming a fuel seller, unless the fuel seller has a reasonable excuse.	100 penalty units
	Replacement 35N(1) A fuel seller must notify the chief executive of any change to the fuel seller's registration	100 penalty units

Clause	Offence	Proposed maximum penalty
	information within 1 month after the change happens, unless the fuel seller has a reasonable excuse.	
	Replacement 35N(2) If a person stops being a fuel seller, the person must notify the chief executive of that fact within 1 month after the person stops being a fuel seller, unless the fuel seller has a reasonable excuse.	100 penalty units
	Replacement 35O(3) The fuel seller must comply with the notice unless the fuel seller has a reasonable excuse.	100 penalty units
	Replacement 35P(1) A fuel seller must give a report, in the approved form, to the chief executive before 31 July each year, unless the fuel seller has a reasonable excuse.	100 penalty units
	Replacement 35Q(1) A person must not give the chief executive information under this part the person knows is false or misleading in a material particular.	100 penalty units
9	New 59(2) The fuel seller must give the fuel seller's registration information, in the approved form, to the chief executive within 1 month after the commencement day, unless the fuel seller has a reasonable excuse.	100 penalty units
	New 60(1) A fuel seller must give a report, in the approved form, to the chief executive within 1 month after the day (the commencement day) this section commences, unless the fuel seller has a reasonable excuse.	100 penalty units

4.3 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee comment

Committee comment

Explanatory Notes were tabled with the introduction of the Bill. The Committee notes that the Explanatory Notes are fairly detailed and contain the information required by Part 4 of the LSA and have a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of Submissions

Sub #	Submitter
001	Mackay Sugar
002	BIO Processing Australia
003	TfA Project Group
004	Biofuels Association of Australia
005	Canegrowers
006	Ecotech Biodiesel
007	Wilmar BioEthanol Australia Pty Ltd
008	Australasian Convenience and Petroleum Marketers Association
009	Energreen Nutrition Pty Ltd
010	Viva Energy Australia Pty Ltd
011	RACQ
012	AgForce Grains
013	Australian Institute of Petroleum
014	Motor Trades Association of Queensland
015	Australian Sugar Milling Council
016	Caltex Australia
017	Exxon Mobil
018	Manildra Group

Appendix B – List of witnesses at public hearings

Witnesses at public hearing held in Mackay, 22 October 2015
Mackay Sugar Mr John Hodgson, Business Development Manager Mr Terry Doolan, General Manager, Milling Operations
Wilmar Bioethanol Mr Gary Mulvay, Executive General Manager Mr Carl Morton, National Operations Manager
Bio Processing Australia Mr John Lockhart, Chief Executive Officer
Aurecon, Gladstone/Mackay Mr Stephen Cutting, Office Manager
AgForce, Mackay Branch Mr Graham Townsend, Secretary
CANEGROWERS Mackay Mr Kerry Latter, Chief Executive Officer
Mr Les Durnsford, Mackay canegrower

Witnesses at public hearing held in Brisbane, 28 October 2015
Australian Sugar Milling Council Mr Dominic Nolan, Chief Executive Officer Ms Sharon Denny, Senior Executive Officer
CANEGROWERS Mr Warren Males, Head Economics
AgForce Grains Mr Wayne Newton, President
Biofuels Association of Australia Mr Gavin Hughes, Chief Executive Officer
Ecotech Biodiesel Dr Doug Stuart, Technical Development Manager Mr Paul Hetherington, Plant Manager
Energreen Nutrition Australia Mr Gary Seaton, Director Mr John Wedgewood, Manager, Renewable Energy

Bio Processing Australia

Mr Stuart King, Executive Director

Australian Convenience and Petroleum Marketers Association

Mr Mark McKenzie, CEO

Mr Philip Skinner, Policy and Programs Officer

Mr Paul Wessel, Director Wessel Petroleum

Motor Trades Association of Queensland

Mr Tim Kane, Chairman, Service Station and Convenience Store Division

Ms Kellie Dewar, General Manager

RACQ

Mr Michael Roth, Executive Manager Public Policy

Australian Institute of Petroleum

Mr Paul Barrett, Chief Executive Officer

Viva Energy Australia

Ms Catherine Ellis, Biofuels and Low Aromatic Fuels Manager

Dr Mark Tabone, Senior Fuels PQ Excellence Lead

Caltex Australia

Mr Grant Perris, Fuels Marketing Manager

Mr Nathan Owens, Biofuels Trader

BP

Mr Charles Perrottet, Government Affairs Officer

Department of Energy and Water Supply

Mr Benn Barr, Deputy Director-General, Energy

Ms Kathie Standen, General Manager, Energy Regulation & Governance

Mr Paul Walsh, General Manager, Projects

Mr David Wright, Manager, Governance and Engagement, Energy Division

Department of Environment and Heritage Protection

Mr Scott Robinson, Director, Reef Water Quality

Mr Geoff Robson, Executive Director, Strategic Environment & Waste Policy, Environmental Policy and Planning