

# **Sustainable Biofuel Bill**

Member's Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to ensure that biofuels that are supplied or sold in New Zealand from 1 May 2010 are sustainable biofuels.

As petroleum based fuels become expensive and the production of many oil fields declines, and as the world seeks to reduce emissions of carbon dioxide in order to limit climate change, there is a need to find fuels that are renewable. Fuels such as ethanol, biodiesel and biogas (methane) can be made renewably from a range of plant and animal materials. However, not all such fuels are environmentally benign. The cultivation and processing of some crops can use so much petroleum energy that total life cycle carbon emissions are higher than for petroleum fuels. This can be true of some production of ethanol from corn in the United States. Use of food grains to make biofuels may drive up world grain prices and deprive low income countries of the food they need for their people. Other biofuels are made at the expense of natural and even threatened ecosystems. An example is biodiesel from palm oil grown after clear felling of indigenous forests in Southeast Asia, thus destroying the habitat of many threatened species.

Biofuels can be made in New Zealand from crop and animal wastes, and as a by-product of food production. A standard for sustainable

biofuels will prevent unfair competition from fuels that are not sustainable.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill is to come into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Energy (Fuels, Levies, and References) Act 1989 (the **principal Act**).

## **Part 1**

### **Preliminary provisions**

*Clause 4* states the purpose of the Bill, which is to ensure that biofuels that are supplied or sold in New Zealand from 1 May 2010 are sustainable biofuels.

## **Part 2**

### **Amendments to principal Act**

*Clause 5* inserts a new Part 3A into the principal Act, which provides—

- a definition of sustainable biofuels to be made by Order in Council by 1 February 2010
- principles for assessing whether particular biofuels are sustainable biofuels
- only biofuels approved as sustainable biofuels may be supplied or sold in New Zealand after 1 May 2010
- for regulations to be made on the recommendation of the Minister approving any particular biofuel as a sustainable biofuel
- an offence to supply or sell any biofuel after 1 May 2010 that has not been approved as a sustainable biofuel
- an offence to submit an application for a biofuel to be approved as a sustainable biofuel that contains false information.

*Clause 6* amends the regulation-making provision in section 35 of the principal Act by—

- stating that any standards or specifications that are made by way of regulation must be consistent with any relevant principles in the Act
- inserting a provision for regulations to be made relating to information that may be required to be supplied with an application for a biofuel to be approved as a sustainable biofuel.

*Clause 7* restores provisions previously contained in the principal Act that allow the Minister to require information—

- demonstrating the compliance of the person's biofuel with any Order in Council made under section 34C
- about the extent to which the person's biofuel is consistent with the principles of sustainable biofuels set out in section 34B.

*Clause 8* amends the offences provision in section 37(2) of the principal Act by including references to the new sections 34D and 34E and thereby providing that the offences of—

- supplying or selling any biofuel that has not been approved as a sustainable biofuel under section 34C; or
- submitting an application for a biofuel to be approved as a sustainable biofuel that contains false information—

are punishable on summary conviction,—

- (a) in the case of a person other than a body corporate, to a fine not exceeding \$20,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$200,000.
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*Jeanette Fitzsimons*

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**The Parliament of New Zealand enacts as follows:**

<b>1</b>	<b>Title</b> This Act is the Sustainable Biofuel Act <b>2009</b> .	
<b>2</b>	<b>Commencement</b> This Act comes into force on the day after the date on which it receives the Royal assent.	5
<b>3</b>	<b>Principal Act amended</b> This Act amends the Energy (Fuels, Levies, and References) Act 1989.	
	<b>Part 1</b> <b>Preliminary provisions</b>	10
<b>4</b>	<b>Purpose</b> The purpose of this Act is to ensure that biofuels that are supplied or sold in New Zealand after 1 May 2010 are sustainable biofuels.	
	<b>Part 2</b> <b>Amendments to principal Act</b>	15
<b>5</b>	<b>New Part 3A inserted</b> The principal Act is amended by inserting new <b>Part 3A</b> :	
	<b>“Part 3A</b> <b>“Sustainable biofuels</b>	20
<b>“34A</b>	<b>Purpose of this Part</b> The purpose of this Part is to ensure that biofuels that are supplied or sold in New Zealand after 1 May 2010 are sustainable biofuels.	

**“34B Minister must recommend Order in Council providing definition of sustainable biofuels for purpose of section 34C**

- “(1) The Minister must recommend the making of an Order in Council providing a definition of sustainable biofuels for the purposes of this Part as soon as practicable after this section comes into force, but no later than 1 February 2010. 5
- “(2) The Minister must be satisfied, before making the recommendation, that the Order in Council will—
- “(a) be consistent with the principles of sustainable biofuels in **subsection (3)**; and 10
- “(b) appropriately consider the indirect effects of biofuel production.
- “(3) The principles of sustainable biofuels are—
- “*Principle 1: Less greenhouse* 15
- “(a) sustainable biofuels emit significantly less greenhouse gas over their life cycle than other engine fuel. In relation to this principle, the Order in Council must—
- “(i) specify a methodology for life cycle assessment of greenhouse gas emissions from engine fuels which are not biofuels; and 20
- “(ii) specify a methodology for life cycle assessment of greenhouse gas emissions from biofuels; and
- “(iii) specify minimum levels of no less than 35% greenhouse gas emission reductions for sustainable biofuels in comparison to other engine fuels. 25
- “*Principle 2: Food production*
- “(b) sustainable biofuels do not compete with food production and are not grown on land of high value for food production. Without limitation, the following biofuels do not contravene this principle: 30
- “(i) by-products of food production described in the Order in Council:
- “(ii) ethanol from sugarcane grown in circumstances and in areas described in the Order in Council: 35
- “(iii) rotational oilseed crops grown not more than 12 months in any 24-month period on the same land or as otherwise specified in the Order in Council.

- “(c) in relation to this principle, the Order in Council must—
- “(i) specify a methodology for assessing the effects of the production of a biofuel on food production and for assessing whether those effects amount to competition; and 5
- “(ii) specify a mechanism for recognising particular land (including land outside New Zealand) as being land of high value for food production.
- “*Principle 3: Biodiversity and land with high conservation value* 10
- “(d) the production of sustainable biofuels does not reduce indigenous biodiversity or adversely affect land with high conservation value. In relation to this principle, the Order in Council must—
- “(i) specify a mechanism for recognising particular land (including land outside New Zealand) as having high conservation value; and 15
- “(ii) specify a methodology for assessing the effects of the production of a biofuel on indigenous biodiversity and land of high conservation value. 20
- “**34C Supply or sale of approved sustainable biofuels**
- “(1) No one shall supply or sell any biofuel after 1 May 2010 unless it has been approved as a sustainable biofuel by the Governor-General by Order in Council.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve a biofuel as a sustainable biofuel. 25
- “(3) The Minister must be satisfied before making a recommendation under this section that the biofuel complies with the principles in, and regulations made under, **section 34B**. 30
- “(4) Any person supplying a biofuel in New Zealand prior to 1 May 2010 must notify the Minister in writing as to the composition and origin of the fuel and how it complies with the principles in **section 34(B)**.

**“34D Offence to supply or sell biofuel in contravention of section 34C**

- “(1) Every person commits an offence who, after 1 May 2010, supplies or sells biofuel that has not been approved as a sustainable biofuel under **section 34C(2)**. 5
- “(2) Any offence against this section committed by any employee or agent in the course of employment or agency shall be deemed to have been also committed by the employee’s or agent’s employer or principal if it is proved that the act or omission constituting the offence occurred with the employer’s or principal’s authority, permission, or consent. 10

**“34E Offence to submit application for biofuel to be approved as sustainable biofuel that contains false information**

- “(1) Every person commits an offence who submits an application for a biofuel to be approved as a sustainable biofuel that contains false information. 15
- “(2) Any offence against this section committed by any employee or agent in the course of employment or agency shall be deemed to have been also committed by the employee’s or agent’s employer or principal if it is proved that the act or omission constituting the offence occurred with the employer’s or principal’s authority, permission, or consent.” 20

**6 Regulations**

- (1) Section 35(1)(c) is amended by inserting “New Zealand” after “consistent with any relevant principles in this Act”. 25
- (2) Section 35(1) is amended by inserting the following subparagraph:
- “(eb) prescribing the information that is required to be supplied with an application for a biofuel to be approved as a sustainable biofuel under **section 34C(2)**, including the following: 30
- “(i) information about the extent to which the biofuel is consistent with the principles of sustainable biofuels set out in **section 34B(3)**:
- “(ii) information including research, analysis, and methodologies used to assess and measure the 35

extent to which the biofuel is consistent with the principles of sustainable biofuels set out in **section 34B(3)**:

- “(iii) the type, nature, or class of the biofuel:
- “(iv) the qualities of the biofuel: 5
- “(v) the particular type or source of biomass from which the biofuel was produced:
- “(vi) the particular process the biofuel was produced from or refined through
- “(vii) the country of origin of the biofuel: 10
- “(viii) if the biofuel that is the subject of the application will be blended with other fuel for the purpose of supply or sale, information about how this will be done and the type, nature, class, or qualities of the resulting fuel product:” 15

## 7 Power of Minister to require information

**Section 36(1)** is amended by inserting the following subparagraphs:

- “(d) demonstrating the compliance of the person’s biofuel with any Order in Council made under **section 34C**: 20
- “(e) the extent to which the person’s biofuel is consistent with the principles of sustainable biofuels set out in **section 34B**:”.

## 8 Offences

Section 37(2) is amended by inserting “section 32” after “**section 34D, section 34E**,”. 25