

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 28**

ISSUED BY AUTHORITY OF THE MINISTER FOR THE ENVIRONMENT,  
HERITAGE AND THE ARTS

*Product Stewardship (Oil) Act 2000*

*Product Stewardship (Oil) Amendment Regulations 2008 (No. 1)*

Section 37 of the *Product Stewardship (Oil) Act 2000* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act aims to reduce adverse environmental impacts of used oil by encouraging increased collection and recycling of used oil. This aim is achieved by providing for payment of product stewardship benefits to eligible recyclers of used oil. The cost of benefits is offset by the imposition of a levy, currently 5.449 cents per litre, on new or re-refined oils and lubricants produced in, or imported into, Australia.

The *Product Stewardship (Oil) Regulations 2000* (the Principal Regulations) specify benefit payments for nine items. The highest level benefit is provided for Category 1 're-refined base oil' under item 1 of the benefit table in regulation 4.

The Regulations modify the testing and accreditation requirements under the Principal Regulations to ensure that the testing regime is one with which the claimants of benefits can reasonably comply. In particular, the Regulations remove the requirements for testing laboratories to be accredited by the National Association of Testing Authorities and to use prescribed test methods. Further information regarding the Regulations is included at Attachment A.

Consultation was undertaken with businesses which claim Category 1 benefits under the Act and with the Australian Taxation Office, which administers the payment of benefits under the Act.

Details of the Regulations are set out in Attachment B.

Regulations 1 to 3 and Schedule 1 of the Regulations commence immediately after the commencement of section 10 of the Act (1 January 2001). Regulation 4 and Schedule 2 of the Regulations commence immediately after the *Product Stewardship (Oil) Amendment Regulations 2003 (No. 1)* are taken to have commenced (1 July 2002). Regulation 5 and Schedule 3 of the Regulations commence immediately after the commencement of the *Product Stewardship (Oil) Amendment Regulations 2005 (No. 1)* (15 February 2005).

This retrospective commencement is required because Category 1 benefits have already been paid for re-refined base oil which met the prescribed criteria, but which did not strictly meet all the requirements of the Principal Regulations with regard to laboratory accreditation and test methods. Retrospective amendment of the testing and accreditation requirements would allow claimants to fully comply with the Principal Regulations with respect to past claims.

The retrospective commencement of the regulations does not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because the amendments effected by the Regulations are beneficial in nature and do not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration so as to disadvantage that person. Nor do the amendments impose any liabilities on any person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

Regulation 6 and Schedule 4 of the Regulations commence on the day after the Regulations are registered on the Federal Register of Legislative Instruments.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**ATTACHMENT A**

To be eligible for Category 1 benefits, re-refined base oil must meet the criteria prescribed in Schedule 1 to the Principal Regulations. The purpose of these criteria is to ensure the health and safety of workers and users of the oil. Schedule 1 also prescribed the test methods to be used to determine compliance with the criteria. Paragraph 4(3)(a) required laboratories conducting the tests to be accredited by the National Association of Testing Authorities to perform the specified tests.

The requirements relating to test methods and laboratory accreditation proved to be impractical. There are no laboratories in Australia or the region accredited to perform some of the prescribed tests. In other cases, laboratories perform accredited modified versions of the prescribed tests which was not allowed for in the Principal Regulations. The Regulations modify the above mentioned testing and accreditation requirements to provide a regime with which claimants of benefits can reasonably comply.

Specifically, the Regulations remove the requirements for testing laboratories to be accredited by the National Association of Testing Authorities and to use prescribed test methods. Instead, testing laboratories are required to have appropriate facilities, resources and expertise to conduct the tests necessary to assess compliance with the Schedule 1 criteria, and to be independent of and operate at arms length from the claimant.

Further, the Regulations provide that a laboratory which certifies the authenticity of an oil sample taken for testing must be independent of the claimant and operate at arms length from the claimant. This provision increases the rigour and transparency of the sampling and testing regime.

The Principal Regulations required that a person who certifies the authenticity of an oil sample must certify that the sample was not tampered with before testing. This requirement has proved impractical because this person witnesses the taking of the sample which is then dispatched to a testing laboratory. The person cannot reasonably certify that the sample was not tampered with after dispatch.

The Regulations amend this provision to provide that the laboratory which certifies the authenticity of an oil sample must certify that it was not tampered with before dispatch, and that the testing laboratory must certify that the sample was not tampered with after receipt and before testing.

**ATTACHMENT B****Details of the *Product Stewardship (Oil) Amendment Regulations 2008 (No. 1)***

Regulation 1 provides that the Regulations are the *Product Stewardship (Oil) Amendment Regulations 2008 (No. 1)*.

Regulation 2 provides for the commencement of the Regulations.

Regulations 1 to 5 and Schedules 1 to 3 commence retrospectively as described.

The need for three Schedules with different retrospective commencement provisions is a mechanical requirement necessary because relevant provisions of the *Product Stewardship (Oil) Regulations 2000* were amended previously on several occasions.

Regulation 6 and Schedule 4 commence on the day after the Regulations are registered on the Federal Register of Legislative Instruments.

Regulations 3 to 6 provide that Schedules 1 to 4 amend the *Product Stewardship (Oil) Regulations 2000* (the Principal Regulations).

**Schedule 1 – Amendments taken to have commenced immediately after the commencement of section 10 of the *Product Stewardship (Oil) Act 2000***

Item 1 removes definitions of *EPA* and *EPA test* and inserts a definition of *independent laboratory* to give effect to the new testing regime.

Item 2 amends paragraphs 4(3)(a) and (b) to provide that, in order to be eligible for benefits under Item 1 of the benefit table in regulation 4 of the Principal Regulations, re-refined base oil must be tested against the criteria specified in Schedule 1 to the Principal Regulations by an independent laboratory, and the times within which the test results must be provided to the Commissioner for Taxation.

Item 3 removes subregulations 4(4) and 4 (5) as a consequence of item 2 above as there is no longer a need to prescribe requirements relating to laboratory accreditation under the new testing regime.

Items 4 to 8 removes the prescription of specified test methods to be used for testing re-refined base oil against the criteria in Schedule 1 to the Principal Regulations, to give effect to the new testing regime.

**Schedule 2 – Amendments taken to have commenced immediately after the commencement of the *Product Stewardship (Oil) Amendment Regulations 2003 (No.1)***

Items 1 to 7 removes the prescription of specified test methods to be used for testing re-refined base oil against the criteria in Schedule 1 to the Principal Regulations.

Item 8 removes clause 8 of Schedule 1 to the Principal Regulations, which relates to tests and methods, as a consequence of the removal of the prescription of specified test methods in Schedule 1 to the Principal Regulations.

**Schedule 3 – Amendments taken to have commenced immediately after the commencement of the *Product Stewardship (Oil) Amendment Regulations 2005 (No.1)***

Item 1 removes definitions of *EPA method* and *EPA test* and inserts a definition of *independent laboratory*. This amendment, to give effect to the new testing regime, is necessary because the Principal Regulations were amended in 2005.

**Schedule 4 – Amendments commencing on the day after registration**

Item 1 inserts new subregulations 4(4) and 4(5) which provide for independent certification that samples of re-refined base oil, to be tested against the criteria in Schedule 1 to the Principal Regulations, are representative of the product and have not been tampered with.