

## **EXPLANATORY STATEMENT**

Select Legislative Instrument No. 111, 2014

Issued by Authority of the Minister for the Environment

Subject – *Product Stewardship (Oil) Act 2000*

*Product Stewardship (Oil) Amendment Regulation 2014*

The *Product Stewardship (Oil) Act 2000* (the PSO Act) establishes the Product Stewardship for Oil Scheme (the PSO Scheme) to encourage greater recycling and reuse of used oil, and to support economic recycling of oil.

Section 37 of the PSO Act allows the Governor-General to 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 PSO Scheme operates by offering a product stewardship benefit (benefit) for the proper recycling of used oils. Recycled oils that may qualify for a benefit under the PSO Scheme include re-refined base oils for use as a lubricant, hydraulic or transformer oil and, other re-refined base oils such as chain bar oil.

Oil recyclers are provided with benefits for collecting and recycling used oils in Australia. The *Product Stewardship (Oil) Regulations 2000* (the Principal Regulations) prescribe benefit rates (subsection 10(1) of the PSO Act provides that the amount of the benefit for a claim is worked out in accordance with the regulations). The benefits are designed to increase the collection and reprocessing of used oil. There are eight different categories specified in the Principal Regulations that may receive benefits. Category 8 is different to the other benefit categories because it is a payment to an oil user rather than an oil recycler.

Category 8 oil (that is gazetted oil consumed in Australia for a gazetted use) provides benefits for uses of oil specially declared by the Minister for the Environment (the Minister). This includes a use in the manufacture of a product; or a use in a process that will not permit the oil to be recycled and is of low environmental risk. An example of this is naphthenic process oil incorporated into inks for printing newspapers. Such specific uses of oil were never intended to be caught by the PSO Scheme. Gazetted oil and gazetted use are both defined in subsection 6(1) of the PSO Act.

Benefits under the PSO Scheme are funded by a levy on new oil and grease sales under the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* (the Acts) which were both amended in 2000 to establish the product stewardship for waste oil levy (the levy). The levy is payable by oil producers and importers on petroleum-based oils and their synthetic equivalents.

The *Product Stewardship (Oil) Amendment Regulation 2014* (the Regulation) amends the Principal Regulations to increase the rate of benefit paid for Category 8 oil consumed on or after 1 July 2014 from 5.449 cents per litre to 8.5 cents per litre.

The amendments are a consequence of recent amendments to the Acts which increase the levy payable by oil producers and importers for petroleum-based oils and their synthetic equivalents from 5.449 cents per litre to 8.5 cents per litre of oil. The benefit paid for Category 8 oil is amended to ensure it continues to match the rate of the levy.

Subsection 10(4) of the PSO Act provides that before the Governor-General makes a regulation under subsection 10(1) (subsection 10(1) of the PSO Act provides that the amount of the benefit for a claim is worked out in accordance with the regulations), the Minister must take into consideration:

- (a) the total amount that it is estimated will be collected under relevant items in the *Customs Tariff Act 1995* and the *Excise Tariff Act 1921* in the relevant period; and
- (b) any relevant environmental matters relating to the recycling of oils or to the use of gazetted oil.

The Minister has taken these matters into consideration, including the fact that category 8 benefits, which are the subject of the Regulation, are only paid where the gazetted use of a gazetted oil presents a low risk to the environment.

Consultation with affected stakeholders on the need to increase the rate of the PSO levy took place during the Third Independent Review of the PSO Act. A consultation paper on the operation of the PSO Scheme was released in March 2013, with subsequent public forums held in select capital cities across Australia in April 2014. Views of stakeholders were taken into account in the development of the Regulations.

Details of the Regulation are set out in the [Attachment](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LI Act).

The Regulation is taken to have commenced on 1 July 2014.

Subsection 12(2) of the LI Act provides that a legislative instrument, or a provision of a legislative instrument, has no effect if, apart from this subsection, it would take effect before the date it is registered and as a result:

- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage that person; or
- (b) liabilities would be imposed on a 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.

The retrospective commencement of the Regulation does not infringe subsection 12(2) of the LI Act as no private liabilities are imposed and no rights are infringed by the Regulation. The retrospective commencement of the Regulation is required to ensure that the Regulation commences at the same time as the amendments to the Acts to increase the levy payable by oil producers and importers for petroleum-based oils and their synthetic equivalents.

**Details of the *Product Stewardship (Oil) Amendment Regulation 2014***

**Section 1- Name of Regulation**

This section provides that the name of the regulation is the *Product Stewardship (Oil) Amendment Regulation 2014* (the Regulation).

**Section 2 – Commencement**

This section provides that the Regulation is taken to have commenced on 1 July 2014.

**Section 3 - Authority**

This section provides that the Regulation is made under the *Product Stewardship (Oil) Act 2000* (the PSO Act).

**Section 4 – Schedule(s)**

This section provides that each instrument specified in a Schedule to the Regulation is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1 – Before regulation 1**

This item inserts the heading ‘Part 1- Preliminary’ before regulation 1 of the *Product Stewardship (Oil) Regulations 2000* (the Principal Regulations).

**Item 2 – After regulation 3**

This item inserts the heading ‘Part 2 – Entitlement to product stewardship (oil) benefits’ after regulation 3 of the Principal Regulations.

**Item 3 – Subregulation 4(1) (cell at table item 8, column headed “Amount (cents/l)”)**

This item repeals the current product stewardship benefit (benefit) paid of 5.449 cents per litre (cents/l) for Category 8 oil under the Principal Regulation and substitutes in its place 8.5 cents/l.

Category 8 oil (Gazetted oil consumed in Australia for a gazetted use) provides benefits for users of oil specially declared by the Minister for the Environment (the Minister). Gazetted oil is defined in subsection 6(1) of the PSO Act as oil of a kind declared by the Minister, by notice published in the *Gazette*, to be gazetted oil. Gazetted use in relation to gazetted oil means a use of the oil declared by the Minister, by notice published in the *Gazette*, to be a gazetted use. This includes: a use in the manufacture of a product; or a use in a process that will not permit the oil to be recycled and is a low environmental risk. An example of this is naphthenic process oil incorporated into inks for printing newspapers. Such specific uses of oil were never intended to be caught by the Product Stewardship for Oil Scheme (the PSO Scheme).

Benefits under the PSO Scheme are funded by a levy on new oil and grease sales under the *Excise Tariff Act 1921* and *Customs Tariff Act 1995* (the Acts) which were both amended in 2000 to establish the product stewardship for waste oil levy (the levy). The levy is payable by oil producers and importers on petroleum-based oils and their synthetic equivalents.

The amendments are a consequence of recent amendments to the Acts which increase the levy payable by oil producers and importers for petroleum based oils and their synthetic equivalents from 5.449 cents per litre to 8.5 cents per litre of oil. The benefit paid for Category 8 oil is amended to ensure it continues to match the rate of the levy.

#### **Item 4 – After regulation 5**

This item inserts the heading ‘Part 3 – Application and transitional provisions’ after regulation 5 of the Principal Regulations and proposed regulation 6.

Regulation 6 provides that the amendments to the Principal Regulations made by Item 3 apply in relation to gazetted oil consumed on or after 1 July 2014. This would mean the increased Category 8 benefit would only apply to consumption occurring after the levy has increased. Further, it would also avoid claims that are lodged after 1 July 2014 but relate to consumption before 1 July 2014 then receiving the increased Category 8 benefit.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Product Stewardship (Oil) Amendment Regulation 2014**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Legislative Instrument makes amendments to the *Product Stewardship (Oil) Regulation 2000* to increase the rate of benefit paid for Category 8 oil consumed on or after 1 July 2014 from 5.449 cents per litre to 8.5 cents per litre. The amendments are a consequence of recent amendments to the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* which increase the levy payable by oil producers and importers for petroleum-based oils and their synthetic equivalents from 5.449 cents per litre to 8.5 cents per litre of oil. The benefit paid for Category 8 oil is amended to ensure it continues to match the rate of the levy.

#### **Human rights implications**

The Legislative Instrument has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Regulation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Legislative Instrument is compatible with Australia's human rights obligations.

**The Hon Greg Hunt MP, Minister for the Environment**