

EXPLANATORY STATEMENT

Issued by Authority of the Minister for the Environment

Product Stewardship (Oil) Act 2000

Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020

Legislative Authority

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, or necessary and convenient for carrying out or giving effect to the Act.

Purpose

The purpose of the *Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020* (the Amendment Regulations) is to create an additional 12 cents per litre of product stewardship (oil) benefit, in respect of re-refined base oil (item 1 of the table in subregulation 4(1) of the *Product Stewardship (Oil) Regulations 2000*) (the Regulations) where the entitlement to the benefit arose on or after 1 July 2020 and on or before 31 December 2020.

Background

The Act established the Product Stewardship for Oil Scheme (the PSO Scheme) which collects a levy from oil importers and domestic producers (through the *Customs Tariff Act 1995* and the *Excise Tariff Act 1921*) to fund the provision of a benefit to used oil recyclers.

Section 9 of the Act gives a person an entitlement to a product stewardship (oil) benefit for the sale or consumption of recycled oil that the person has recycled in Australia. Subsection 10(1) of the Act relevantly provides that if a person is entitled to a product stewardship (oil) benefit in respect of the sale or consumption of recycled oil during a claim period, the amount of the product stewardship (oil) benefit for the claim period is worked out in accordance with the regulations.

The amount of the product stewardship (oil) benefit for a particular claim period is set out in Part 2 of the Regulations, with relevant categories of oil set out in the table in regulation 4. Specifically, the amount of the product stewardship (oil) benefit for re-refined base oil (for use as a lubricant or a hydraulic or transformer oil) that meets the criteria mentioned in Schedule 1 of the Regulations is 50 cents per litre.

The Amendment Regulations provide for the additional amount of product stewardship (oil) benefit of 12 cents per litre for re-refined base oil where the entitlement to the benefit arises between 1 July 2020 and 31 December 2020.

This temporary additional amount of the product stewardship (oil) benefit is part of the COVID-19 Relief and Recovery Fund. Due to the impacts of COVID-19 it is, and has been, uneconomical for the oil recycling sector to continue recycling used oil even with the existing 50 cents per litre benefit. Currently 50 per cent of Australia's waste oil refineries have shut down for 'care and maintenance' and industry estimate at least 25 per cent of

waste oil is at risk of not being collected. It is important to the environment to keep the industry operating as improperly disposed of waste oil is a severe danger to the environment.

The additional amount of the benefit is designed to maintain the economic viability of waste oil collection and re-refining while the oil recycling sector is significantly impacted by the effects of COVID-19.

Impact and Effect

The Amendment Regulations will create an additional amount of the product stewardship (oil) benefit to be paid to oil re-refiners who re-refine base oil, and where an entitlement for doing so arose between 1 July 2020 and 31 December 2020. The additional amount of the benefit is designed to maintain the economic viability of the waste oil collection and re-refining industry while the industry is significantly impacted by the effects of COVID-19.

The entitlement commences with the commencement of the regulations, however, relates to eligible oil which is re-refined between 1 July 2020 and 31 December 2020. There is no entitlement prior to the regulations coming into effect, however, the application of the entitlement to an earlier date is required to provide assistance to industry based on their re-refining operations throughout the estimated peak impact of COVID19. It is necessary to ensure refiners that continued operations are not disadvantaged given the impacts on oil recycling due to COVID-19. The equity of this approach was agreed upon during consultation with industry peak bodies and the Department will ensure refiners understand the timing of the additional benefit.

Subsection 12(2) of the *Legislation Act 2003* 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 Proposed Regulations do not have a retrospective commencement but do increase benefits from 1 July 2020. Therefore, these provisions of the LA Act do not apply. In any case, no private liabilities are imposed, and no rights are infringed by the Proposed Regulation.

Consultation

The following consultation was undertaken before the Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020 was made:

- with the oil recycling sector, from April to May 2020, to agree on the need, amount, and duration of the additional benefit to be paid for re-refined base oils
- with the Australian Taxation Office, in June 2020, to confirm the capability to administer the payment of the additional benefit for re-refined base oils

- with the Treasury and Department of Finance, in June 2020, to confirm the financial implications of the additional benefit for re-refined base oils.

Regulation impact statement

The Office of Best Practice and Regulation was consulted, and an exemption granted in relation to undertaking a Regulation Impact Assessment (OBPR reference: 42529).

Details/ Operation

The Amendment Regulations ensure an additional amount of 12 cents per litre of product stewardship (oil) benefit is payable in respect of the recycling of re-refined base oil where the entitlement to the benefit arises between 1 July 2020 and 31 December 2020.

Other

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020.

Section 1 – Name

This section provides that the name of the Amendment Regulations is the Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020.

Section 2 – Commencement

This section provides for the Amendment Regulations to commence on the day after this instrument is registered.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that the Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 – After regulation 4

Item 1 inserts new regulation 4AA in the Regulations. The amendment provides for an additional amount of 12 cents per litre of product stewardship (oil) benefit to be payable for recycled re-refined base oil where the entitlement to the benefit arises between 1 July 2020 and 31 December 2020 (that is, in addition to the 50 cents of product stewardship benefit per litre that is usually payable in respect of such oil).

This item further clarifies that the additional amount of the product stewardship (oil) benefit is payable regardless of whether a claim for payment of the benefit was made before, on or after commencement of the Amendment Regulations, and regardless of whether any amount of the benefit was paid before that commencement.

Item 2 – Regulation 4A

This item amends the heading to regulation 4A of the Regulations to read:

4A Additional amount of benefit – industrial burning oils

Regulation 4A of the Regulations provides for an additional amount of product stewardship (oil) benefit for the industrial burning oils referred to in table items 5 and 6 of regulation 4 in the financial years between 2006 and 2009.

This amendment is consequential to the amendments made by item 1 above. It clarifies that the scheme that provides for an additional amount of product stewardship (oil) benefit in regulation 4A concerns industrial burning oils, while that in new regulation 4AA is for re-refined base oil.

Statement of Compatibility with Human Rights

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

Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020

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 Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020 will create an additional 12 cents of product stewardship (oil) benefit. This benefit is payable in respect for re-refined base oil (item 1 of the table in subregulation 4(1) of the *Product Stewardship (Oil) Regulations 2000*) where this entitlement arose on or after 1 July 2020 and on or before 31 December 2020.

This temporary additional benefit is part of the COVID-19 Relief and Recovery Fund. The additional amount of the benefit is designed to maintain the economic viability of waste oil collection and re-refining while the oil recycling sector is significantly impacted by the effects of COVID-19.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Sussan Ley MP
Minister for the Environment**