

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment and Water

Product Stewardship (Oil) Act 2000

Product Stewardship (Oil) Regulations 2022

Legislative Authority

The *Product Stewardship (Oil) Act 2000* (the PSO Act) establishes the Product Stewardship (Oil) Scheme (PSO Scheme) to encourage the environmentally sustainable management and re-refining of used oil and its reuse, by providing incentives to oil recyclers for the sale or consumption of oil that has been recycled in Australia.

Section 37 of the PSO Act provides that the Governor-General may make regulations prescribing matters required or permitted by the PSO Act, or necessary and convenient to be prescribed for carrying out or giving effect to the PSO Act.

Subsection 10(1) of the PSO Act provides that the amount of the benefit in respect of the sale or consumption of recycled oil, or the consumption of gazetted oil for a gazetted use, is to be worked out in accordance with the regulations made under the Act.

Purpose

The purpose of the *Product Stewardship (Oil) Regulations 2022* (the Regulations) is to provide the basis of calculating the amount of benefit for a claim for the sale or consumption of recycled oil, and the consumption of gazetted oil for a gazetted use.

The Regulations replace the *Product Stewardship (Oil) Regulations 2000* (the old Regulations) which sunset on 1 October 2022.

Background

The PSO Scheme is a levy-benefit scheme which offsets benefit payments to recyclers using revenue collected through the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* from oil refiners and oil importers. In order to claim a benefit, the person must be registered for an entitlement to a benefit under the *Product Grants and Benefits Administration Act 2000* (subsection 8(1) of the PSO Act) and must have an entitlement to a benefit (section 9 of the PSO Act). A person is entitled to a benefit for the sale or consumption of recycled oil that the person has recycled in Australia, or for the consumption in Australia of gazetted oil for a gazetted use.

The relevant gazetted oil and their gazetted uses in Australia are set out in the *Product Stewardship (Oil) Declaration 2022*.

Impact and effect

The Regulations set the basis for calculating the amount of benefit payable for a claim for the sale or consumption of certain kinds of recycled oil, and the consumption of gazetted oil for a gazetted use.

The Regulations make no substantive change to the existing operation of the PSO Scheme, as they are the same in substance as the old Regulations, which sunset on 1 October 2022.

Consultation

The Australian Taxation Office, the Treasury and the Office of Best Practice Regulation were consulted on the development of the Regulations. Public consultation on the specific instrument was not considered necessary as the Regulations simply allow for the continuation of the PSO Scheme in its current form with no substantive changes.

Details and Operation

Subsection 10(4) of the PSO Act provides that before the Governor-General makes a regulation under subsection 10(1), the Minister must take into consideration the total amount that is estimated will be collected under the relevant items in the *Customs Tariff Act 1995* and the *Excise Tariff Act 1921* in the relevant period, and any relevant environmental matters relating to the recycling of oils or to the use of gazetted oil. The Minister for the Environment and Water has considered these matters in accordance with subsection 10(4) of the PSO Act.

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

The Regulations commence on 1 October 2022.

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

The 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](#).

Details of the *Product Stewardship (Oil) Regulations 2022*

Part 1 – Preliminary

Section 1 – Name

1. This section provides that the name of the regulations is the *Product Stewardship (Oil) Regulations 2022* (the Regulations).

Section 2 – Commencement

2. This section provides that the Regulations commence on 1 October 2022.

Section 3 – Authority

3. This section provides that the Regulations are made under the *Product Stewardship (Oil) Act 2000* (the PSO Act).

Section 4 – Schedules

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

Section 5 – Definitions

5. This section provides the definitions of key terms used in the Regulations. The note under the section heading refer readers to the PSO Act, which defines a number of terms used in the Regulations.
6. One of the key terms that are defined by subsection 5(1) of the Regulations is *base oil*, which means an oil that is free from contaminants or additives and to which other substances may be added for a particular application. Whether an oil is *base oil* is one of the factors in determining which category that oil falls under, and therefore, the amount of benefit that oil is eligible for.
7. Another key term that is defined by subsection 5(1) is *independent laboratory*. This term is relevant for the testing process in determining whether a recycled oil falls under category 1 for the purpose of calculating the relevant benefit under section 6 of the Regulations. An *independent laboratory* means a laboratory that:
 - is independent of the person making the claim for product stewardship (oil) benefit; and
 - operates at arm's length from the person; and
 - has appropriate facilities, resources and expertise to conduct the tests necessary for the purposes of Schedule 1 of the Regulations.
8. Subsection 5(2) provides the substantive definition for *re-refined*. A used oil is *re-refined* if it has been restored to the condition of a base oil:
 - first by either thin film evaporation or vacuum distillation;
 - followed by either solvent extraction or hydrofinishing.

9. Alternatively, a used oil may also be *re-refined* if it has been restored to the condition of a base oil by another process if that process has been approved in writing by the Minister, is consistent with the objects of the PSO Act, and similar in purpose and effect to the processes mentioned above.
10. Whether an oil has been *re-refined* is an important factor in calculating the amount of benefit under section 6 of the Regulations. Generally, oils that have been re-refined are of higher quality with less contaminants, and therefore attract a higher rate of benefit.

Part 2 – Amounts of product stewardship (oil) benefit

Section 6 – Amounts of product stewardship (oil) benefit

11. The PSO Act establishes the Product Stewardship (Oil) Scheme (the PSO Scheme) to encourage the environmentally sustainable management and re-refining of used oil and its reuse, by providing incentives to oil recyclers for the sale or consumption of oil that has been recycled in Australia.
12. The PSO Scheme is a levy-benefit scheme which offsets benefit payments to recyclers using revenue collected through the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* from oil refiners and oil importers.
13. The Regulations provide the basis for calculating the amount of product stewardship (oil) benefit for a claim for the sale or consumption of different types of oil as specified. In addition to the sale or consumption of recycled oil that was recycled in Australia, benefits may also be claimed for the consumption of gazetted oil for gazetted use in Australia.
14. This section provides the basis of calculating the amounts of a product stewardship (oil) benefit.
15. Subsection 6(1) of the Regulations sets out the general principles for working out the appropriate amount of a product stewardship (oil) benefit.
16. The table under subsection 6(1) sets out the relevant amounts of benefit. Each item of the table corresponds to a category of oil (column 1), while column 2 of the table sets out the amount of benefit for that category of oil. The categories of oil are:
 - Re-refined base oil (for use as a lubricant or a hydraulic or transformer oil) that meets the criteria mentioned in Schedule 1 (category 1);
 - Other re-refined base oils (category 2);
 - Diesel fuels that comply with the *Fuel Quality Standards (Automotive Diesel) Determination 2019* (category 3);
 - Diesel extenders that are filtered, de-watered and de-mineralised; and that, if combined with diesel fuels, would produce a combined fuel that complies with the *Fuel Quality Standards (Automotive Diesel) Determination 2019* (category 4);

- High grade industrial burning oils (filtered, de-watered and de-mineralised) (category 5);
 - Low grade industrial burning oils (filtered, de-watered and de-mineralised) (category 6);
 - Industrial process oils and lubricants, including hydraulic and transformer oils (re-processed or filtered, but not re-refined) (category 7); and
 - Gazetted oil consumed in Australia for a gazetted use (category 8).
17. For the purposes of categories 1 and 2, the terms *re-refined* and *base oil* are defined in section 5 of the Regulations.
18. The note under the table at subsection 6(1) provides examples of category 2 oils, being chain bar oil and oil incorporated into a manufactured product.
19. The *Fuel Quality Standards (Automotive Diesel) Determination 2019* referred to in categories 3 and 4 is a legislative instrument made under the *Fuel Quality Standards Act 2000* and can be found on the Federal Register of Legislation (legislation.gov.au). The incorporation of this legislative instrument by reference is enabled by paragraph 14(1)(a) and subsection 14(3) of the *Legislation Act 2003*.
20. The terms *gazetted oil* and *gazetted use* used in category 8 are defined in section 6 of the PSO Act as oil of a kind that is declared by the Minister as such, and a use of gazetted oil that is declared by the Minister as such. Gazetted oil and the gazetted uses for those oils are detailed in the *Product Stewardship (Oil) Declaration 2022* for the purposes of this definition.
21. Paragraph 6(1)(a) provides that for a recycled oil that is not also a gazetted oil for a gazetted use, the amount mentioned in column 2 of the first category in the table under subsection 6(1) applies to that recycled oil. For example, if a recycled oil were both a category 1 and category 3 oil, then the category 1 benefit applies as category 1 is listed before category 3 in the table under subsection 6(1).
22. Subparagraph 6(1)(b)(i) provides that in the case of where the oil is both a gazetted oil for a gazetted use and a recycled oil to which any of items 3 to 7 in the table under subsection 6(1) apply, the amount mentioned in column 2 of the first category in items 3 to 7 applies to that oil. For example, if the relevant oil were covered by both category 5 and category 8 (being a gazetted oil for a gazetted use), then the category 5 benefit applies.
23. In any other case for gazetted oil for a gazetted use, the amount covered by column 2 of item 8 of the table under subsection 6(1) applies (subparagraph 6(1)(b)(ii)).
24. Subsection 6(2) sets out how the benefit for category 8 oils (gazetted oil consumed in Australia for a gazetted use) are to be worked out. If the consumption of gazetted oil for a gazetted use were during the period beginning on 30 March 2022 and ending on 28 September 2022, then the amount of benefit is 4.3 cents per litre. If the consumption were in any other period, the amount of benefit is 8.5 cents per litre.

25. The difference between these two amounts reflects the cut in fuel excise that is in force across in Australia between 30 March 2022 and 28 September 2022.
26. Subsection 6(3) provides that despite the effect of subsection 6(1), no product stewardship (oil) benefit is payable in respect of oil (including gazetted oil obtained through recycling) that is to undergo further recycling before it is sold to the end user or consumed. This principle is intended to ensure that the same oil undergoing multiple recycling processes, and is sold multiple time, is only eligible for one benefit, rather than a benefit for each stage of the process and sale.
27. Subsections 6(4), 6(5) and 6(6) relate to the testing requirements of oil to ensure that oil meets the criteria mentioned in Schedule 1, for the purposes of ascertaining whether the recycled oil falls under category 1 (for the purposes of item 1 of the table in subsection 6(1)).
28. Paragraph 6(4)(a) requires an independent laboratory (within the meaning outlined in subsection 5(1) of the Regulations) to test the oil against the criteria mentioned in Schedule 1. A sample may only be tested if an employee of an independent laboratory certifies that:
- the sample is a representative of a production run of the product (paragraph 6(5)(a)); and
 - the employee is satisfied that the sample was not tampered with after it was collected and before it was dispatched to the laboratory (paragraph 6(5)(b)).
29. The independent laboratory undertaking the test must also certify that the sample tested was not tampered with after receipt by the laboratory and before using (subsection 6(6)).
30. Once the independent laboratory has undertaken the testing, the test results must be given to the Commissioner of Taxation with the first claim for a benefit and at intervals of not more than 6 months while the benefit is being claimed (paragraph 6(4)(b)).

Section 7 – Additional amount of benefit – re-refined base oil where entitlement to benefit arose 1 July 2020 to 31 December 2020

31. This section sets out an additional amount of benefit for category 1 oils where the entitlement to the benefit arose between 1 July 2020 and 31 December 2020.
32. Subsections 7(1) and (2) clarifies the circumstances in which section 7 applies. This section applies if:
- A product stewardship (oil) benefit is payable in respect of recycled oil for a claim period; and
 - apart from this section, the amount of the benefit is:
 - for claims for payment of the benefit made before 1 October 2022, the amount mentioned in item 1 of the table in subregulation 4(1) of the

Product Stewardship (Oil) Regulations 2000 (as in force immediately before that date); or

- for claims for payment of the benefit made on or after 1 October 2022, the amount mentioned in item 1 of the table in subsection 6(1) of the Regulations; and
- the entitlement to the benefit arose on or after 1 July 2020, and on or before 31 December 2020.

33. For the purposes of determining whether this section applies, it does not matter whether any amount of the benefit was paid before 1 October 2022.

34. Subsection 7(3) provides that if the circumstances described in subsections 7(1) and (2) apply, the benefit includes an amount of 12 cents per litre in addition to the amount that applies in relation to the claim.

35. This purpose of this section is to provide a temporary additional amount of product stewardship (oil) benefit to support the economic viability of waste oil collection and re-refining and alleviate the economic impacts of COVID-19.

Part 3 – Application, transitional and saving provisions

Section 8 – Application of this instrument

36. This section is an application provision. It has the effect that the Regulations apply to claims for product stewardship (oil) benefits that are made:
- on or after the commencement of the Regulations, or
 - before that commencement, if the amount of the benefit for the claim was not assessed under section 17 of the *Product Grants and Benefits Administration Act 2000* before that commencement.

Section 9 – Process approved by Minister

37. This section is a saving provision. It provides that a process approved by the Minister for the purposes of subregulation 3(2) of the *Product Stewardship (Oil) Regulations 2000* that was in force immediately before the commencement of the Regulations is taken, after that commencement, to be a process approved by the Minister for the purposes of paragraph 5(2)(b) of the Regulations.

38. Paragraph 5(2)(b) of the Regulations would relate to an approved process of restoring used oil to the condition of a base oil so that it has been re-refined (within the meaning in subsection 5(2) of the Regulations). The effect of this saving provision is that an already approved process under the *Product Stewardship (Oil) Regulations 2000* is considered approved under the Proposed Regulations, and there is no need for the Minister to re-approve those same processes.

Schedule 1 – Re-refined base oil criteria

39. Schedule 1 sets out the criteria that re-refined base oil must meet in order to be eligible for a category 1 benefit under item 1 of the table in subsection 6(1) of the Regulations (which is referred to in the note under the Schedule heading).

40. The criteria cover the following scientific and technical matters:

- mutagenicity (item 1)
- poly-aromatic hydrocarbons (item 2)
- polychlorinated biphenyls (item 3)
- polychlorinated dibenzo-p-dioxins (item 4)
- total acid number (item 5)
- heavy metals (including arsenic, cadmium, chromium and lead) (item 6)
- appearance (item 7)

The purpose of Schedule 1 is to ensure that re-refined base oil, for which a product stewardship (oil) benefit is payable, is of a quality that is not damaging to the health and safety of workers and users of the oil.

Schedule 2 – Repeals

Item 1

Item 1 of Schedule 2 repeals the *Product Stewardship (Oil) Regulations 2000* (the old Regulations). One of the purposes of these Regulations is to replace those Regulations, which are due to sunset on 1 October 2022. The old Regulations would be repealed in reliance on subsection 33(3) of the *Acts Interpretation Act 1901*.

Statement of Compatibility with Human Rights

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

Product Stewardship (Oil) Regulations 2022

This Legislative Instrument is compatible with human rights and freedom 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) Act 2000* (the PSO Act) establishes the Product Stewardship (Oil) Scheme (PSO Scheme) to encourage the environmentally sustainable management and re-refining of used oil and its reuse, by providing incentives to oil recyclers for the sale or consumption of oil that has been recycled in Australia.

The PSO Scheme is a levy-benefit scheme which offsets benefit payments to recyclers using revenue collected through the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* from oil refineries and oil importers. In order to claim a benefit, the person must be registered for an entitlement to a benefit under the *Product Grants and Benefits Administration Act 2000* (subsection 8(1) of the PSO Act) and must have an entitlement to a benefit (section 9 of the PSO Act). A person is entitled to a benefit for the sale or consumption of recycled oil that the person has recycled in Australia, or for the consumption in Australia of gazetted oil for a gazetted use.

The purpose of the *Product Stewardship (Oil) Regulations 2022* (the Regulations) is to provide the basis of calculating the amount of benefit for a claim for the sale or consumption of recycled oil, and the consumption of gazetted oil for a gazetted use.

Human Rights Implications

The Regulations engage the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14 (August 2000)*, the United Nations Committee on Economic, Social and Cultural Rights stated that this encompasses the prevention and reduction of human exposure to harmful substances such as harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health (at [15]).

The Regulations seek to promote the right to health (including by promoting a healthy environment) by reducing the impact on human and environmental health of used oil. The Regulations achieve this aim by encouraging and incentivising the environmentally

sustainable management and re-refining of used oils and its reuse, by providing for an amount of benefit to be paid.

Conclusion

The Regulations are compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR.

The Hon. Tanya Plibersek MP
Minister for the Environment and Water