

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

Product Stewardship (Oil) Act 2000

Product Stewardship (Oil) Amendment Regulations 2023

Legislative Authority

The *Product Stewardship (Oil) Act 2000* (the PSO Act) established 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 PSO Act.

Purpose

The purpose of the *Product Stewardship (Oil) Regulations 2022* (PSO 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 purpose of the *Product Stewardship (Oil) Amendment Regulations 2023* (Amendment Regulations) is to amend the PSO Regulations to increase the amount of benefit payable in relation to the consumption of gazetted oil for a gazetted use on or after 1 July 2023 to 14.2 cents per litre.

Background

The PSO Scheme is intended to be self-funding by offsetting the benefit payments to recyclers using revenue collected through the *Excise Tariff Act 1921* (Excise Tariff Act) and the *Customs Tariff Act 1995* (Customs Tariff Act) from refineries and oil importers. To achieve this intention, items in the Schedules to both the Excise Tariff Act and Customs Tariff Act impose duty on the manufacture and import of petroleum-based oils and their synthetic equivalents, intended to be the same types of oil as those defined in the PSO Act.

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.

Different grades of recycled oil output create entitlements for different rates of benefit payments. This is to encourage the oil recyclers to produce higher quality products.

The relevant gazetted oil and their gazetted uses in Australia are set out in the *Product Stewardship (Oil) Declaration 2022*, a legislative instrument made under the PSO Act.

The PSO Scheme has been running at a deficit for a number of years with benefit payments exceeding the amount of duty collected by a significant amount. This is primarily due to investments across the oil recycling sector facilitating an increase in production of products that attract a higher benefit rate.

The proposed Excise Tariff Amendment (Product Stewardship for Oil) Bill 2023 and Customs Tariff Amendment (Product Stewardship for Oil) Bill 2023 are intended to increase the rate of excise duty and customs duty imposed on the relevant goods listed in, respectively, the Excise Tariff Act and Customs Tariff Act that are covered by the PSO Scheme from 8.5 cents per litre or kilogram to 14.2 cents per litre or kilogram. This is intended to return the PSO Scheme to fiscal neutrality.

The consumption of gazetted oil for a gazetted use attracts a benefit that equals the levy rate, as this particular benefit represents a refund of the levy already paid. This is because the levy is intended to offset the cost of paying a product stewardship benefit under the scheme. As gazetted oil used for a gazetted use results in a terminal use of the oil, this oil cannot be collected and recycled and thus no other benefit is payable. A benefit is used as a mechanism for refunding the levy.

Impact and effect

The Amendment Regulations increase the benefit payable for the consumption of a gazetted oil for a gazetted use from 8.5 cents per litre to 14.2 cents per litre where the consumption occurs on or after 1 July 2023.

Consultation

In 2020 Deloitte Access Economics conducted an independent review into the operation of the PSO Act. One of the three recommendations of this review was to increase the scheme levy to address the deficit between levy collections and benefit payments.

In conducting their review, Deloitte consulted with oil re-refiners, peak bodies for oil vendors and re-refiners, local government associations and state environmental protection agencies.

This recommendation was endorsed by the Product Stewardship for Oil Reference Group, comprising representatives from peak bodies involved in the oil lifecycle, oil re-refiners and government agencies.

The Australian Taxation Office, the Treasury and the Office of Impact Analysis were consulted on the development of the proposed Regulations.

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

The Amendment Regulations commence on 1 July 2023.

Details of the proposed Regulations are set out in Attachment A.

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.

Details of the *Product Stewardship (Oil) Amendment Regulations 2023*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Product Stewardship (Oil) Amendment Regulations 2023* (Amendment Regulations).

Section 2 – Commencement

This section has the effect that the Amendment Regulations commence on 1 July 2023.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment 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.

This enables the Amendment Regulations to amend the *Product Stewardship (Oil) Regulations 2022* (PSO Regulations), as set out in Schedule 1.

Schedule 1 – Amendments

Product Stewardship (Oil) Regulations 2022

Item [1] - After paragraph 6(2)(a)

Section 6 of the PSO Regulations provides the basis of calculating the amounts of a product stewardship (oil) benefit.

Subsection 6(1) of the PSO Regulations sets out the general principles for working out the appropriate amount of a product stewardship (oil) benefit.

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).

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.

Subparagraph 6(1)(b)(i) of the PSO Regulations has the effect that, 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 would apply.

Subparagraph 6(1)(b)(ii) and column 2 of item 8 of the table under subsection 6(1) have the combined effect that, in any other case for gazetted oil for a gazetted use, the benefit payable is the amount worked out in accordance with subsection 6(2).

Subsection 6(2) of the PSO Regulations set 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 occurred during the period beginning on 30 March 2022 and ending on 28 September 2022 (inclusive), then the amount of benefit is 4.3 cents per litre. Prior to the Amendment Regulations commencing, if the consumption were in any other period, the amount of benefit is 8.5 cents per litre.

The difference between these two amounts reflects the temporary reduction of Excise duties on fuel and similar petroleum-based products, including oils and greases, that was in force across in Australia between 30 March 2022 and 28 September 2022 (inclusive).

Item 1 of Schedule 1 to the Amendment Regulations amends existing subsection 6(2) of the PSO Regulations to insert a new paragraph (aa). New paragraph 6(2)(aa) has the effect that, in relation to the consumption of gazetted oil for a gazetted use that occurs on or after 1 July 2023, the benefit payable is 14.2 cents per litre.

The purpose of this amendment is to increase the benefit payable for the consumption of a gazetted oil for a gazetted use from 8.5 cents per litre to 14.2 cents per litre from 1 July 2023. The consumption of gazetted oil for a gazetted use attracts a benefit that equals the levy rate, as this particular benefit represents a refund of the levy already paid. This is because the levy is intended to offset the cost of paying a product stewardship (oil) benefit under the scheme. As gazetted oil used for a gazetted use results in a terminal use of the oil, this oil cannot be collected and recycled and thus no other benefit is payable. A benefit is used as a mechanism for refunding the levy.

Statement of Compatibility with Human Rights

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

Product Stewardship (Oil) Amendment Regulations 2023

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) established 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 *Product Stewardship (Oil) Regulations 2022* (the PSO Regulations) provides 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 purpose of the *Product Stewardship (Oil) Amendment Regulations 2023* (the Amendment Regulations) is to amend the PSO Regulations to increase the benefit payable for the consumption of a gazetted oil for a gazetted use from 8.5 cents per litre to 14.2 cents per litre from 1 July 2023.

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 and industrial 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 Amendment 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 increased amount of benefit to be paid for the consumption of gazetted oil for a gazetted use.

Conclusion

The Amendment 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