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Product Stewardship (Oil) Legislation Amendment Bill (No.1) 2003

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Product Stewardship (Oil) Legislation Amendment Bill
(No.1) 2003

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29 May 2003

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Product Stewardship (Oil) Legislation Amendment Bill (No.1) 2003

Date Introduced: 27 March 2003

House: House of Representatives

Portfolio: Environment and Heritage

Commencement: The Act itself commences on Royal Assent. However, the operative provisions (Schedules 1 and 2) commence on a day to be fixed by proclamation, or failing that, six months after Royal Assent.

Purpose

To effectively exempt some uses of multi-purpose oils from incurring the environmental levy under the Product Stewardship for Waste Oil Scheme. This will be done by 'refunding' the cost of the levy.

Background

The Product Stewardship for Waste Oil (PSO) scheme

The Product Stewardship for Waste Oil (PSO) scheme has its origins in the Government's decision in the late 1990s to reduce the excise on diesel fuel. Concern was expressed in the Senate Committee [report](#), *Inquiry into the GST and A New Tax System*, that a potential negative effect of the excise changes would be to reduce the incentive to recycle oil. For example, the reduction in the excise would make diesel extender (a major product created from recycled oil) less competitive with ordinary diesel fuel.

The Government subsequently introduced what was to become the *Product Stewardship (Oil) Act 2000* (the Act) and related customs and excise legislation.¹ The PSO scheme actually consists of three main components, of which only the first two are relevant to the amendments proposed by this Bill. These two are:

- the imposition of a set levy on oil producers, and
- the payment of a variable rebate ('stewardship benefit') to oil recyclers.

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Under the levy component, certain petroleum based oils and greases and their synthetic equivalents (hereafter simply called oils) that are produced in Australia or imported for domestic consumption are subject to a 5.45 cent a litre (or a kilo) excise or customs duty.

Under the stewardship benefit component, once the oil is used and subsequently recycled, recyclers may claim to be rebated a stewardship benefit according to the type of product the oil is recycled into. There are seven levels of benefit (called categories 1-7).² At the high end, recycling waste oil to such a standard that it could re-used as hydraulic oil attracts a benefit of 50c a litre. Towards the lower end, if the recycled product is suitable only to be reused as a low grade industrial burning oil, the benefit would only be 3 cents a litre.

According to figures given in the *Explanatory Memorandum* to the Bill, the levy raised \$25 million in 2001-2002, with \$8.2 million being paid out to oil recyclers through the stewardship benefit.³ The *Explanatory Memorandum* comments that 'benefit payments are expected to increase as claims against category 1 (re-refined base oils) come on line'.⁴

The Government is advised in the implementation of the PSO scheme by the [Oil Stewardship Advisory Council](#), (OSAC) a mainly non-government body established by the Act.

The proposed changes

According to the second reading speech, the operation of the PSO scheme over the last two years has shown that some single use and multi-use (multi-purpose) oils that 'do not create a recyclable waste oil stream'⁵ and represent only a low risk to the environment' are being captured by the scheme.⁶ To address this unintended consequence, single use oils of this type (such as food grade white oil, polyglycol brake fluids and aromatic process oils) were exempted from the scheme by amendments to the relevant customs and excise legislation in November 2002.⁷

Multi-use oils have been more difficult to deal with in this regard. It would appear that multi-use oils were not included in the November amendments because whether an exemption should be granted to a particular product depends on its specific use – only some uses create a recyclable waste product that represents a risk to the environment and so should continue to be covered by the scheme, whilst other recyclable waste products pose only a low risk to the environment and thus not covered.

Under the Product Stewardship (Oil) Legislation Amendment Bill (No.1) 2003 (the Bill), those multi-use oils that the Government feels should effectively be outside of the PSO scheme will be eligible for a new category of product stewardship benefit, to be known as the category 8 benefit. According to the second reading speech, the benefit will be same rate as the levy (5.45c per litre), payable for specific uses of oil as approved by the Minister for the Environment and Heritage.⁸ Ministerial approval of the oils and uses will be via Gazette notice, hence the term 'gazetted oil' and 'gazetted use' in the Bill. The idea

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of effectively ‘refunding’ the cost of the levy in the case of multi-use oils, as opposed to exempting them from the levy, seems to have been the preferred option of the Australian Taxation Office.⁹

According to the *Explanatory Memorandum*,¹⁰ the cost of providing levy relief for uses of oil likely to qualify for exemptions created under the Bill will be around \$1.25 million per year.

Main Provisions

Schedule 1 – Amendment of the Product Stewardship (Oil) Act 2000.

Items 1 and 2 insert definitions of ‘gazetted oil’ and ‘gazetted use’ into existing subsection 6(1) of the Act. Under these definitions, a product stewardship benefit will only become potentially payable if the use of the oil will not permit it to be recycled and the end (waste) oil product ‘constitutes only a low risk to the environment’. Low risk is not defined in the Act or Bill.

Item 5 amends existing subsection 10(1) to provide that the amount of the benefit payable to an eligible claimant is to be calculated in accordance with the regulations. As mentioned in endnote 2 of this digest, the amount of benefit for all categories of recycled oils covered by the PSO scheme is set out in regulation 4 of the Product Stewardship (Oil) Regulations 2000.

Item 12 amends existing subsection 10(4). Subsection 10(4) requires that before a regulation is made in relation to an entitlement to a product stewardship benefit, the Minister must consider:

- the total amount that will likely be raised by the levy; and
- any relevant environmental matters related to the recycling of oils.

Item 12 simply extends the requirement to consider ‘any relevant environmental matters’ to those relating to the use of ‘gazetted oil’.

Schedule 2 – Amendment of the Product Grants and Benefits Administration Act 2000

The *Product Grants and Benefits Administration Act 2000* provides the legislative basis for the payment of benefits under the PSO scheme. It was originally established primarily to administer the fuel grants scheme designed to counteract the effect of the GST on petrol prices in regional and remote areas, but has since served a wider role. The proposed amendments in Schedule 2 relate to registration requirements for persons wishing to claim stewardship benefits for gazetted oil.

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Item 1 amends existing paragraph 9(3A)(a) which currently provides that a person wishing to register for a potential claim under existing categories 1-7 must be licensed under the *Excise Act 1901*. Under **item 1**, this requirement will not apply if a person only wishes to be registered for benefits under the new gazetted oil category, category 8. While no explanation is given for why a less rigorous registration hurdle applies for category 8, presumably it is because category 8 oils are supposed to be effectively exempted from the PSO scheme.

Item 2 makes a similar change, but in relation to existing paragraph 9(3A)(b). This paragraph requires that a person wishing to register for a potential claim under existing categories 1-7 must demonstrate compliance with relevant Commonwealth, State or Territory recycling legislation, or Codes of Practice. **Item 2** provides this will not be required for category 8 registration.

Item 3 provides that a registration for any category 1-7 benefit existing at the time Schedules 1 and 2 come into force will automatically be extended to apply to category 8.

Endnotes

- 1 The *Customs Tariff Amendment (Product Stewardship for Waste Oil) Act 2000* and the *Excise Tariff Amendment (Product Stewardship for Waste Oil) Act 2000*.
- 2 The categories are actually contained in regulation 4 of the Product Stewardship (Oil) Regulations 2000.
- 3 At p. 3.
- 4 *ibid.*
- 5 That is, are not readily recyclable.
- 6 House of Representatives, *Debates*, 27 March 2003 p. 13756.
- 7 These exemptions actually came into effect on 15 April 2002 through the Excise Tariff Proposal No. 2 (2002) and Customs Tariff Proposal No. 1 (2002). The proposals were Gazetted on 12 April and tabled in Parliament on 29 May 2002.
- 8 *Op. cit.*
- 9 Discussion of item 8, minutes of OSAC meeting, 11 June 2002.
<http://www.ea.gov.au/industry/waste/oilrecycling/meeting5.html>
- 10 *op. cit.*

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