



Product Stewardship (Oil) Amendment Bill 2007

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Contents

Purpose.	2
Background.	2
Basis of policy commitment.	4
Regulatory amendments to the product stewardship benefits during 2004 - 05	6
Government response to the two reviews of the Product Stewardship for Oil	
Programme conducted during 2004	6
Financial implications	6
Main provisions.	6
Schedule 1—Amendment of the Product of the Stewardship (Oil) Act 2000.	6
Concluding comments	9
Endnotes.	9

Product Stewardship (Oil) Amendment Bill 2007

Date introduced: 24 May 2007

House: House of Representatives

Portfolio: Environment and Water Resources

Commencement: Sections 1, 2 and 3 commence on date of Royal Assent. The operational provisions (Schedule 1) commence on proclamation, or six months after Royal Assent, whichever is earlier.

Purpose

The purpose of the Product Stewardship (Oil) Amendment Bill 2007 ('the Bill') is to amend the *Product Stewardship (Oil) Act 2000* (PSO Act). The PSO Act establishes the general framework and benefit entitlements of the Product Stewardship for Oil Program (PSO Program). The Bill seeks to

- replace the existing term **waste oil** throughout the PSO Act with the new term **used oil** so as to promote consistency with the object of the PSO Act
- permit necessary regulations to be made for the purposes of subsection 10(1) of the PSO Act, so as to ensure that the re-refined oil which attracts the product stewardship (oil) benefit is based on the most up to date quality criteria
- provide that members of the Oil Stewardship Advisory Council (other than members appointed to represent the Commonwealth and the Commissioner for Taxation) will be appointed on the basis of their knowledge of, or experience in, a range of prescribed subject areas relevant to product stewardship arrangements for oil
- provide that members of the Oil Stewardship Advisory Council appointed to represent the Commonwealth and the Commissioner for Taxation will not have voting rights so as to remove the potential conflict of interest between their two positions, and
- strengthen and make more demanding the procedures for the disclosure of direct or indirect pecuniary interests by member of the Oil Stewardship Advisory Council, and for ensuring that such interests held by members do not jeopardise the provision of quality advice by the Oil Stewardship Advisory Council.¹

Background

The PSO Act is the legislative basis for the Product Stewardship for Oil Program (the PSO Program). The *Product Stewardship (Oil) Act 2000* came into effect on 1 January 2001, as part of the Government's May 1999 commitment to *A New Tax System - Measures for a Better Environment* package.²

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‘The PSO Act is designed to ensure the environmentally sustainable management, recycling and reuse of Australia’s used oil. It provides for the payment of benefits to used oil recyclers as an incentive to increase the volume of used oil collected and recycled in Australia’.³

The Department of the Environment and Water Resources’ website offers the following information about the PSO program.⁴

Oil is a valuable and finite resource. Each year, more than 500 million litres of lubricating oil is sold in Australia. Of this amount, at least 250 million litres of used oil is generated by industry and the community and is available for recycling.

Supported by the Australian Government's Product Stewardship for Oil Program, Australians recycled approximately 194 million litres of their used oil in 2003. Even though this rate is high, between 60 and 100 million litres remains unaccounted for.

We don't know what happens to this 'missing oil'. However, anecdotal evidence suggests it could be:

- Sitting in temporary stockpiles (eg in the garage or shed);
- Retained in waste or scrap equipment (such as vehicles);
- Lost to the environment at collection points (eg leaking, spills etc).
- Put out for household rubbish collection; or
- Illegally dumped (in parks and reserves or in waterways, sewer systems and stormwater drains).

The improper use of used oil can pollute land, waterways, underground reservoirs and the marine environment. One litre of used oil can contaminate up to one million litres of water.

Used oil is hazardous - toxic, carcinogenic and harmful to the environment when irresponsibly discarded. It is also poisonous if swallowed or inhaled and can present a fire hazard if not properly stored.

The *Product Stewardship for Oil Program* has in place arrangements providing incentives to increase used oil recycling in the Australian community.

There are 3 parts to the Arrangements:

[Product Stewardship Levy](#)

[Product Stewardship Benefits](#)

[Transitional Assistance Funding](#)

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Basis of policy commitment

The PSO Act requires an independent review of the legislation be done at intervals of not longer than 4 years. Two reviews of the Product Stewardship for Oil Program were conducted during 2004. The first review was the [*Independent Review of the Transitional Assistance Element of the Product Stewardship for Oil \(PSO\) Program*](#). The second review was the [*Independent Review of the Product Stewardship \(Oil\) Act 2000*](#) ('the Independent Review') and was conducted by the Allen Consulting Group. The PSO Bill seeks to give effect to a few of the recommendations of the Independent Review relating to the constitution and operation of the Oil Stewardship Advisory Council (OSAC).⁵ The OSAC is joint industry/government advisory council established by the PSO Act and charged with the task of advising the Minister for the Environment and Water Resources on matters relating to the product stewardship arrangements for oil.

The Independent Review in 2004 noted that:

There are concerns, about potential conflicts of interest on OSAC. While perceptions of conflicts of interest will almost always exist for industry-focused bodies, the actual risk of there being a clear financial gain is harder to point to given that OSAC only has an advisory role. This was certainly a point made by the OSAC Steering Committee. However, a significant number of stakeholders (including current and former members of OSAC), both verbally and in submissions, suggested that preferential access to industry information does at times raise potential conflict of interest issues.⁶

[...]

The Review Team considers that OSAC has a higher accountability and transparency obligation than most advisory bodies because of its legislative imprimatur. That is, because OSAC is established under the *Product Stewardship (Oil) Act 2000* there is a need to hold it to a higher standard of transparency and accountability than for an advisory body that is otherwise constituted.

Other government bodies facing similar conflict of interest issues have adopted best-practice meeting procedures in order to minimise conflicts of interest.⁷

The review also made other recommendations, some of which would require either legislative or regulatory changes. These changes are listed below.

Recommendation 1

Greater efforts by Commonwealth departments and agencies need to be made to ensure that statistics on the volumes of oil produced, imported and sold are consistent and are universally accepted as accurate.

Recommendation 2

The benefit rate for high grade burning oil should be increased relative to the benefit rate for lube-to-lube oil.

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Recommendation 3

The PSO Act should be amended to clearly provide that it does not apply to vegetable oils.

Recommendation 4

The PSO legislation should be amended to require that the processes used by claimants of Category 1 benefits must include either thin film evaporation or vacuum distillation, followed by either solvent extraction or hydrofinishing. There should also be a provision to allow the Minister to approve the substitution of other processes that are able to produce comparable outcomes.

Recommendation 5

Subsection 14(2) of the PSO Act should be amended to provide the Minister with greater flexibility as to the size and representative mix of the Oil Stewardship Advisory Council.

Recommendation 6

The PSO Act should provide a formal mechanism for an alternative representative, at a member's request, to temporarily deputise for that member.

Recommendation 7

The Oil Stewardship Advisory Council should adopt clearer and more stringent conflict of interest procedures.

Recommendation 8

The Department of the Environment and Heritage, the Department of Industry, Tourism and Resources and the Oil Stewardship Advisory Council should work with the oil companies to identify cost-effective ways in which they can become more involved in the product stewardship of oil in Australia.

Recommendation 9

There is a continuing need for the Department of the Environment and Heritage and the Oil Stewardship Advisory Council to raise the community awareness of the problem of used oil and the PSO Program in order to further increase recycling.

Recommendation 10

The Department of the Environment and Heritage and the Oil Stewardship Advisory Council should work better engage State and Territory environment agencies as part of the PSO Program. Progress in enhancing this engagement should be reported through the Environment Protection and Heritage Council.

Recommendation 11

Given the need for the PSO Program to move away from reliance on the excise system, unless a comprehensive self-regulatory product stewardship model for used oil develops over the next four years, the next independent review should include a further examination of the use of a tradeable certificate scheme for used oil.

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Regulatory amendments to the product stewardship benefits during 2004 - 05

In response to an issue raised during the (first) review of the PSO Act, the Government implemented a change to the Regulations in the reporting period. This change clarifies the meaning of 're-refined base oil' under categories 1 and 2 by providing a clear definition for 'base oil' and specifying the eligible processes for 're-refined oil'. The amendment also includes flexibility provisions, enabling the Minister for the Environment and Heritage to recognise equivalent technologies as re-refining processes. This change, which came into effect on 14 February 2005, reinforces the hierarchy of benefits, simplifies the administration of the Regulations and provides clarity for industry beneficiaries.⁸

Government response to the two reviews of the Product Stewardship for Oil Programme conducted during 2004

In its [2005-06 Legislation Annual Reports](#), the then Department of the Environment and Heritage stated that:

The government response to the recommendations from the two independent reviews of the programme is ongoing. The government has responded to some of the recommendations and expects to address others during the coming year.

The next review will be conducted in 2008.

Financial implications

The Explanatory Memorandum states that there is no financial impact.

Main provisions

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

Definitions

The amendments proposed in **items 1, 2, 4 and 6** substitute the term **waste oil** with the term **used oil**, the stated purpose being to provide greater clarity and be more consistent with promoting the object of the Act. **Used oil** was also the preferred term adopted by the Independent Review.

Proposed subsection 6(1) defines a **voting member** of the Oil Stewardship Advisory Council to be one who is appointed on the basis of their knowledge of, or experience in, one or more of the areas referred to in **proposed subsection 14(2)**. This means that members of the OSAC who are appointed pursuant to **proposed subsection 14(2B)** representing the Commissioner for Taxation and the Commonwealth will not be voting members. This is designed to remove the potential conflict of interest for OSAC members who are also Commonwealth employees.

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Regulations for determining eligibility for product stewardship (oil) benefits

Item 5 proposes the insertion of a **new subsection 10(5)** to allow regulations to be made for the purpose of determining eligibility for the product stewardship (oil) benefits. Such regulations may adopt or incorporate oil testing methods or standards for the accreditation of laboratories undertaking oil testing, as in force or existing from time to time. This is despite section 14 of the *Legislative Instruments Act 2003* (LI Act). Subsection 14(2) of the LI Act provides that unless the enabling legislation permits instruments to be incorporated from time to time, an instrument may only be incorporated in the form in which it exists at the date of incorporation.

The current regulation stipulate the test methods for analysing re-refined oil so as to determine eligibility for benefits under the PSO Act, and they obligate testing laboratories to be accredited to a specified standard. Both the testing methods and accreditation standards are revised from time to time. Thus, in order to ensure that the benefits under the program are being effectively targeted to re-refined oil, it is essential that regulations that are used to determine eligibility incorporate test methods and accreditation standards as are in force or existing from time to time.

Operation of OSAC

Item 7 inserts proposed subsection 13(3) which provides that the performance of a function of the OSAC is not affected by the fact that the Council does not include any members appointed on the basis of their knowledge of, or experience in, a particular area listed in subsection 14(2) or does not include a representative of the Commissioner or the Commonwealth appointed under subsection 14(2B).

Constitution of the OSAC

Proposed subsection 14(2) prevents the Minister from appointing a person as a member of the OSAC (other than as a member under proposed subsection 14(2B)) unless the Minister is satisfied that the person has knowledge of, or experience in one or more of the areas listed below.

- broad waste management issues from a business perspective
- research and development relevant to the product stewardship arrangements for oil
- State or Territory government
- local government
- the non-government sector
- national consumer issues
- remote, including remote Indigenous, issues
- oil production
- used oil recycling

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- used oil collection.

This is obviously designed to broaden and secure a broad range of relevant expertise of the OSAC so as to improve the quality of their advice. Indeed, in appointing OSAC members, the Minister must endeavour to ensure that the constitution of the OSAC reflects breadth of that range of expertise (**proposed subsection 14(2A)**).

Proposed subsection 14(2B) provides that the Minister must also ensure that the membership of the OSAC includes a representative of the Commissioner and the Commonwealth.

Disclosure of pecuniary interests

Proposed subsection 15(1A) forbids the Minister from appointing as Chair to the OSAC, a ‘member who has a direct or indirect pecuniary interest in the product stewardship arrangements for oil if, in the Minister's opinion, that interest could conflict, to a significant extent, with the proper performance of the duties of the Chair’. **Proposed subsection 15(1B)** mandates that ‘the Chair must notify the Minister of any direct or indirect interest that he or she acquires in the product stewardship arrangements for oil’.

Proposed subsection 15(6) enables the Minister to terminate the appointment of the Chair of the OSAC if the Minister becomes aware that ‘the Chair has a direct or indirect pecuniary interest in the product stewardship arrangements for oil; and in the Minister's opinion, the interest conflicts, or could conflict, to a significant extent, with the proper performance of the duties of the Chair’.

Proposed paragraph 21(2)(d) enables the Minister to terminate the appointment of a member of the OSAC appointed to represent the Commissioner or the Commonwealth, if in the Minister’s opinion, that member is no longer an appropriate representative either because of a change in employment, residence or other circumstances.

Meetings of the OSAC

Proposed paragraph 22(3)(b) provides that a Chair must convene a meeting of the OSAC on receipt of a written request from at least five other voting members.

Proposed section 24 provides that ‘a majority of voting members, or 6 voting members, whichever is greater, form a quorum at a meeting of the OSAC’.

Proposed subsection 25(1) provides that questions arising at an OSAC meeting are to be decided by a majority of votes of the voting members who are present and voting.

Proposed subsections 29(2) - 29(2C) provide for how disclosures of pecuniary interests at OSAC meetings are to be handled and the requirement that such disclosures be recorded in the minutes.

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Concluding comments

The amendments contained in this Bill are designed to strengthen the OSAC's role as a source of independent expert advice so as to maintain its relevance and better equip it in meeting the objects of the PSO Act.

Endnotes

1. Explanatory Memorandum, p. 2.
2. The Commonwealth Budget 2000-2001, [The Commonwealth's Environmental Expenditure](#), Chapter 2: Strategic Directions and Budget Overview.
3. Mr John Cobb, MP, Assistant Minister for the Environment and Water Resources, Second reading speech: House of Representatives, Product Stewardship (Oil) Amendment Bill *Debates*, 24 May 2007.
4. <http://www.oilrecycling.gov.au/program/index.html> Accessed 1 June 2007.
5. Second Reading Speech.
6. [Independent Review of the Product Stewardship \(Oil\) Act 2000](#) p. 41.
7. *ibid*, p. 65.
8. [Department of the Environment and Heritage annual report 2004-05](#), 'Legislation Annual Reports'.

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