



Australian Government
**Department of Agriculture,
Water and the Environment**

**ANDREW METCALFE AO
SECRETARY**

IS20-000016

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Mr Stephen Palethorpe
Secretary
Environment and Communications Legislation Committee
Department of the Senate
PO Box 6100
Canberra ACT 2600

Dear Mr Palethorpe

Thank you for your letter of 15 June 2020 inviting my Department to make a submission to the Senate Inquiry into the Product Stewardship (Oil) Amendment Bill 2020 and the Excise Tariff Amendment Bill 2020.

This letter is a submission from the Department of Agriculture, Water and the Environment to the inquiry and addresses the purpose of these bills, as they support the Product Stewardship for Oil Scheme (PSO Scheme), which my department has policy responsibility for.

The purpose of the PSO Scheme is to encourage the recycling and re-refining of used lubricant base oils and greases. This is achieved through a levy-benefit arrangement where the original producers or importers of oils provide for the end of life management of contaminated used oil. Oil recyclers are paid a per-litre subsidy to incentivise the recycling and re-refining of these oils.

Duty collected from manufacturers and importers of lubricant base oils and greases, under the *Excise Tariff Act 1921* (the Excise Tariff Act) and the Customs Tariff Act, funds the benefits paid under the PSO Scheme.

The bills seek to amend provisions of the *Product Stewardship (Oil) Act 2000* (PSO Act) and the *Excise Tariff Act*. The amendments clarify the definition of oils in the PSO Act to definitively exclude diesel and other fuels. They also narrow the scope of petroleum-based oils and synthetic equivalents for which excise duty is paid under the Excise Tariff Act to exclude diesel and other fuels.

The proposed amendments are in response to the Federal Court's decision in *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2019] FCA 1849. The decision found that currently diesel fuel is captured under the definition of a petroleum based oil for the purposes of the PSO Act.

This decision allows PSO Scheme benefit payments to be claimed for recycling or re-refining of diesel fuel; for example, the re-refining of diesel fuel after it is used in connection with

refinery operations as a solvent to flush crude oil and petroleum products through shipping tanks and pipelines. The Federal Court's decision potentially makes the duty collected under the Excise Tariff Act, to fund the PSO Scheme, applicable to diesel fuel.

The PSO Scheme began operating in 2000. Since then, collection and recycling of oil has risen from essentially nil to over 320 megalitres of base lubricating oil, more than half of the total volume sold each year.

The Scheme has dramatically increased the recovery of used lubricant oils, recycling them into useful products and avoiding potential environmental harm from waste oils at a very low overall cost to the community. The inclusion of diesel fuel within the definition of petroleum based oils is outside the current policy intent of the legislation and would have significant and unintended implications for the PSO Scheme, its participants and potentially the petroleum industry. These amendments seek to provide certainty and to allow the scheme to continue to operate successfully.

In order to ensure the PSO Scheme remains viable and sustainable into the future, my department will shortly commence a review of the PSO Act.

Yours sincerely

Andrew Metcalfe AO