



Australian Government

Department of the Environment and Energy

Australian Government Response to the Third Independent Review of the *Product Stewardship (Oil) Act 2000*

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Preface

The *Product Stewardship (Oil) Act 2000* (the Act) and subordinate legislation, in conjunction with customs and excise tariff legislation, form the legislative framework for the Product Stewardship for Oil Scheme, a levy-benefit arrangement to support the collection and recycling of used oil.

Section 36 of the Act requires that an independent review be undertaken every four years to consider the operations of the Act, the relevant provisions of customs and excise legislation, and the extent to which the objects of the Act were achieved.

The *Third Independent Review of the Product Stewardship (Oil) Act 2000*¹ (the Review Report) was completed by Aither Consulting in 2013. The Review Report:

- examined the appropriateness, effectiveness and sustainability of the operation of the Product Stewardship for Oil Scheme (the PSO Scheme),
- identified opportunities for improvements and
- made recommendations where appropriate.

This Australian Government *Response to the Third Independent Review of the Product Stewardship (Oil) Act 2000* provides the Australian Government's assessment of the recommendations and conclusions contained in Chapter 8 of the Review Report.

Acknowledgements

The Government acknowledges the comprehensive assessment that was undertaken by the reviewers, Aither Consulting and Professor Neil Byron, and the expertise that they brought to the topic. The Government also thanks the many stakeholders who provided input to the review, sharing their valuable insights into the industry.

¹ Available at: <http://www.environment.gov.au/resource/third-independent-review-product-stewardship-oil-act-2000>

1. Introduction

The Product Stewardship for Oil Scheme (PSO Scheme) was introduced in 2001 to encourage the environmentally sustainable management of used oil. The *Product Stewardship (Oil) Act 2000* (the Act) establishes the framework for the operations of the PSO Scheme, which is based on a levy-benefit arrangement designed to increase the recovery and recycling of synthetic and petroleum-based used oil in Australia.

Three Australian Government agencies are responsible for the administration of the Act:

- the Department of the Environment and Energy – oversight of the Act and the PSO Scheme;
- the Australian Taxation Office – responsible for benefit payments made to recyclers of used oil, as well as the excise duty on domestically produced oils, greases and their synthetic equivalents; and
- the Department of Immigration and Border Protection – responsible for collecting the levy (Customs duty), on imported oils, greases and their synthetic equivalents.

The *Product Stewardship (Oil) Regulations 2000* (the Regulations) include the details of the benefits paid for different categories of oils and lubricants resulting from recycling of used oil, including re-refining, and the conditions that apply. Appendix A sets out the current amount of benefit paid for each oil product category.

Since its establishment, the PSO Scheme has been fundamental to: i) recovering a valuable resource from an otherwise hazardous waste, and ii) contributing to the development of a mature industry with advanced technology in re-refining oil and diversified end-use markets for this oil.

The third review examined the appropriateness, effectiveness and sustainability of the PSO Scheme. It found that the PSO Scheme has been effective in facilitating the recycling of used oil in Australia and should continue, with ongoing support from the Australian Government.

The Report had 13 recommendations, with many relating to the imbalance between the collected levy and the benefits paid out, which left the PSO Scheme in deficit by approximately \$5 million per year in the years prior to the review. The reviewers noted that this raised concerns about the long-term sustainability of the PSO Scheme's financial situation.

There are three possible approaches for addressing the Scheme's structural imbalance:

- increasing the levy;
- decreasing the benefits; or
- a combination of both.

The reviewers recommended a combination of increasing the levy collected and decreasing the benefits paid. Specifically, the reviewers recommended that the levy be increased from 5.449 cents per litre to 7 cents per litre, and that several changes be made to the benefits claimable, most notably that benefits for Category 1 products be decreased. In the 2014-15 budget, the Australian Government increased the levy from 5.449 cents per litre to 8.5 cents per litre.

Detailed responses to each of the thirteen recommendations are provided below.

2. Responses to recommendations

The Australian Government considered each of the 13 recommendations presented in Section 8 of the Review Report. Where a recommendation proposed a change to one or more aspects of the Scheme, it was assessed to determine whether the change:

- was associated with a clear, identifiable benefit, and/or
- was consistent with the objectives of the Scheme, and/or
- would contribute to the environmental or financial sustainability of the Scheme.

Proposed changes to the PSO Scheme were also considered in the context of the Australian Government's deregulation agenda, which aims to reduce the costs of unnecessary red tape on individuals, businesses and community organisations. The Australian Government recognises the substantial investment industry has made in infrastructure and processes for the collection and recycling of used oil, and accordingly, will consult with stakeholders before making any reforms to the PSO Scheme.

2.1 Defining success and redefining objectives

Recommendation 1:

A definition of success for used oil in Australia should be determined and articulated, and objectives for the PSO Scheme redefined in light of that. Such vision and objectives should guide future operation of the Scheme, and provide guidance in consideration of any possible future transition to the *Product Stewardship Act 2011*.

Response

The Australian Government has decided not to implement Recommendation 1 at this time. The Government defers any amendments to the objectives until more substantive changes to the Act are required.

The Scheme is successfully meeting the objects of the Act, namely in ensuring the environmentally sustainable management, re-refining and reuse of used oils and supporting economic recycling options for used oils. Levies collected and benefits paid under the Scheme for collecting, recycling and re-refining of used oil ensure that this important resource continues to contribute to the supply of a range of fuels in the Australian market and reduces the amount of used oil entering the environment. Diverse markets for the products derived from used oil have resulted in a strong Australian market for feedstock and this is supported by a wide collection network and competition for used oil.

The matter of the PSO Scheme being transferred to the *Product Stewardship Act 2011* is considered separately in the response to Recommendation 13.

2.2 Levy and benefit modifications

Recommendation 2:

The PSO Scheme levy on oil sold should be increased to 7 cents per litre immediately.

Response

The reviewers found that the success of the PSO Scheme lead to an average operational deficit of approximately \$5 million per year, in the years prior to the review. In driving increased recycling and re-refining of used oil, the total amount of benefits claimed per year for the products of re-refining exceeded the total levy collected. This deficit was projected to continue to increase as the result of growth in Australia's re-refining capacity and increasing claims for Category 1 benefits.

The Australian Government implemented the recommendation to increase the levy through the 2014-15 Federal Budget, with the aim of restoring the scheme to a budget neutral position over the forward estimates period. The levy was increased from 5.449 to 8.5 cents per litre of new oil, an increase of 35.9 percent, effective from 1 July 2014.

The decision to increase the levy reflected feedback from industry, and the Australian Government's intention, stated in the Explanatory Memorandum to the Act, that the benefits paid under the PSO Scheme would be fully offset by the levy.

The increase was 1.5 cents per litre higher than the increase specified in Recommendation 2 and could therefore be expected to go further towards addressing the Scheme's structural imbalance than the level of adjustment proposed by the reviewers.

Recommendation 3:

The Category 1 benefit for base oils must be reduced to 45 cents per litre immediately and incrementally phased down at 5 cents per litre increments every two years thereafter, until it reaches 25 cents per litre.

Response

This recommendation aims to address the benefit side of the Scheme's structural imbalance. As the levy side of the imbalance was addressed to a greater degree than that recommended by the reviewers, the Australian Government considers that it is important to allow sufficient time (e.g. the four year review period) to monitor the impact of the increased levy on the scheme's effectiveness before amending benefits.

Accordingly, the Australian Government has decided not to implement changes to benefits at this stage.

Recommendation 4:

Category 6 benefit payments for low grade fuel oils should be discontinued immediately, regardless of whether they are produced from a re-refinery or from a simple filtering and de-watering process.

Response

The Australian Government supports Recommendation 4. Category 6 is now redundant and will be deleted when amendments to the Regulations next occur.

In 2013, the Administrative Appeals Tribunal (AAT) upheld an appeal by an oil recycler and found that Category 6 recycled oil was not subject to excise because it had not been 'manufactured or produced' according to its ordinary meaning for the purposes of the *Excise Tariff Act 1921*.

The AAT found that the used oil in question was subjected to filtering and de-watering only, and so could not be deemed to be a manufactured or produced product. Their decision implied that the same quantity of used oil that undergoes a filtering and de-watering process only cannot meet the requirement of goods 'produced' from used oil as defined in the PSO Act. This decision meant that oil in Category 6, i.e. 'Low grade industrial burning oils (filtered and de-watered)', was not subject to excise and by implication, ineligible for benefit payments under the scheme. The Australian Tax Office ceased the payment of benefit for all Category 6 products following the AAT decision in 2013.

2.3 Definitions and compliance

Recommendation 5:

PSO Scheme benefit categories should be rationalised where they are redundant, all categories should be modified such that they are based on objective output standards or specifications, and audits, independent spot checks and testing should be applied to all benefit claimants.

Response

The Australian Government supports in principle the rationalisation of benefit categories where they are redundant, as well as the concept of output standards or specifications. A detailed technical analysis and extensive consultation will be required in order to determine optimal settings prior to any changes, particularly given the potential for re-categorisation of some recycled oil products.

The Review Report identified shortcomings in the definitions of the Categories for benefits and stated that a number of submissions to the review had called for more auditing. The Report noted that the absence of technical standards and the lack of steps to ensure compliance are seen to threaten the credibility and integrity of the PSO Scheme.

With regard to independent spot checks and testing, the Australian Taxation Office undertakes audits and independent testing of Category 1 oil on a risk basis. This approach has proved to be effective and efficient. The Australian Government does not support a change to this aspect of the Scheme at this time.

2.4 Imports and exports

Recommendation 6:

The Department of the Environment and Energy should clarify how the PSO Scheme levy-benefit arrangements apply to imported used oil, based on the principle that there should be no benefit payable if there is no environmental benefit to Australia.

Response

As used oil is a hazardous waste, its importation into Australia requires an import permit under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*. Used oil has been imported sporadically and only in small volumes. In 2015, no used oil was imported into Australia under permit but in the previous few years oil was imported, primarily from Papua New Guinea. Used oil has also been imported under permit from other countries in the past and it is likely that the importation of used oil under permit will occur into the future.

The Australian Government has decided not to implement Recommendation 6 at this time. Were this matter to be considered in future, in addition to considering economic and environmental implications within Australia, it would be appropriate to consider the international context, including Australia's obligations under international trade agreements.

Recommendation 7:

PSO Scheme benefit payments should be payable against used oil derived products regardless of whether they are destined for domestic or foreign consumption, and regardless of what the end use is.

Response

The Australian Government supports Recommendation 7. At present, benefits are claimable for products derived from used oil, whether they are sold within Australia or exported, consistent with the aim of the PSO Scheme to protect the environment and human health, regardless of where the products are ultimately used. As recognised in the Report, any limitation on end-use markets could have a negative impact on the collection of used oil and result in an adverse environmental outcome.

2.5 Policy and co-ordination

Recommendation 8:

An intergovernmental committee under the Council of Australian Governments structure (e.g. the current Waste Thematic Oversight Group or similar) should be formed, or if it exists, tasked with oversight of the PSO Scheme. It should be responsible for ensuring other policies or programs do not unduly impact on the Scheme's performance and should coordinate collection of data and information relevant to Scheme performance.

Recommendation 9:

The Oil Stewardship Advisory Council should be tasked with playing a more active role in advising government on the PSO Scheme's operation and issues relating to used oil aggregation and collection, including collecting and providing relevant data and information.

Response

The Australian Government does not support Recommendations 8 and 9.

In the past, the Oil Stewardship Advisory Council (OSAC) met at least once every 12 months and provided input into the reviews of the Act, which occur on a four year basis. The Australian Government considers that the frequency of the OSAC meetings and the review process is not sufficient to justify the ongoing maintenance of a permanent statutory advisory body, particularly as the PSO Scheme is now well established.

Instead, the Australian Government considers that the Department of the Environment and Energy engage with industry experts as required to obtain advice for the purposes of a review or to exchange views on the administration of the Act. Similarly, the Department of the Environment and Energy consults with government agencies in relation to the PSO Scheme, as required.

2.6 Information and reporting

Recommendation 10:

Monitoring and data availability must be improved to enable more effective fine-tuning of the PSO Scheme over time. Effort should be focused on ensuring comprehensive and consistent collection of data and information on used oil collections both under and external to the Scheme. Both the Waste Thematic Oversight Group and Oil Stewardship Advisory Council (or similar bodies) have an important role to play in this regard.

Response

At this stage, the Australian Government does not support Recommendation 10.

The Government considers that existing mechanism for collecting data and other information about the scheme are adequate for the purpose of monitoring the Scheme in its current state. If it proves necessary to collect more information from industry on a compulsory basis, the Australian Government would balance such requirements against the associated impost on industry. Until such a need arises, the Australian Government will continue to use the information already available and work with industry to collect additional information where required and justifiable.

The recommendation relating to the need for the 'comprehensive and consistent collection of data and information' from sources outside the PSO Scheme would be problematic. As set out in the response to Recommendations 8 and 9, rather than external bodies undertaking a role in this function, the Department of the Environment and Energy would seek advice from relevant parties.

2.7 Investment in collection infrastructure and incentivising collection

Recommendation 11:

Mechanisms to deal with very high collection costs and poor access to end use markets are required in some regional and remote areas. Additional investigations should be undertaken into the most appropriate mechanisms as soon as possible. The Oil Stewardship Advisory Council and Waste Thematic Oversight Group should be consulted and provide advice on these matters.

Recommendation 12:

Surpluses generated by changes to the levy-benefit arrangement should be directed towards investment in existing or new public or shared collection infrastructure, through a competitive grants Scheme, and towards direct incentives for collection in areas where collection is currently insufficient. Further analysis should be undertaken to identify areas of need and priority infrastructure.

Response

The Australian Government recognises that the effective collection of used oil is essential to the success of the PSO Scheme and supports those aspects of Recommendations 11 and 12 relating to this issue. Accordingly, the Australian Government has decided to refer the matter to the next review when information on the collection infrastructure will be sought from relevant parties, allowing an assessment of collection capability to be undertaken.

The PSO Scheme aims to address the environmental and health risks from the inappropriate disposal of used oil. As noted in the Report, most of the environmental benefits arising from the PSO Scheme are attributable to the sound management of used oil that the PSO Scheme provides.

In response to Recommendation 11, it should be noted that, as stated above, rather than external bodies undertaking a role in this function, the Department of the Environment and Energy would seek advice from relevant parties. In this case, the relevant parties would be collectors and recyclers of used oil as well as local, state and territory governments.

In relation to Recommendation 12, it should be noted that there is no hypothecation between the funds raised through the levy and the benefits paid on the products of recycling.

2.8 *Product Stewardship Act 2011*

Recommendation 13:

The Department of the Environment and Energy should undertake further investigations into the feasibility and possible design options for used oil arrangements under the *Product Stewardship Act 2011*, prior to the next PSO Scheme review.

Response

The Australian Government has decided that, as the PSO Scheme continues to be effective in achieving its objects and is already supported by sound legislation, it is not necessary to consider a new arrangement for the management of used oil under the *Product Stewardship Act 2011* at this time.

The Review Report stated a preference 'to modify the existing PSO Scheme using available policy levers, correct its major problems and set out a long term pathway to greater environmental effectiveness, efficiency and sustainability at low costs to consumers and taxpayers'.

As recommended in the Report, the Department of the Environment and Energy undertook an assessment of the feasibility and design options for the product stewardship of oil to be based on an arrangement under the *Product Stewardship Act 2011*. The assessment concluded that the PSO Scheme should continue to be implemented through the legislation that currently applies, noting that amendments to that legislation may be required to enhance the effectiveness of the PSO Scheme and ensure its financial sustainability.

3. Conclusion

Given its essential role in the management of used oil and protection of the environment, the Australian Government continues to support the PSO Scheme.

The Australian Government has concluded that it is not necessary to pursue any substantive restructure of the PSO Scheme at this time. The outcomes and financial viability of the PSO Scheme will continue to be monitored and reviewed over time, and this will inform consideration of any future actions that may be necessary to ensure its ongoing success.

Amount of product stewardship benefits as at 1 July 2014

Part 2 of the *Product Stewardship (Oil) Regulations 2000* specifies the conditions that apply to the entitlement to product stewardship (oil) benefits and provides the following table of current benefits.

Item	Category	Amount (cents/l)
1	Re-refined base oil (for use as a lubricant or a hydraulic or transformer oil) that meets the criteria mentioned in Schedule 1	50
2	Other re-refined base oils	10
3	Diesel fuels that comply with the <i>Fuel Standard (Automotive Diesel) Determination 2001</i> , as in force from time to time	7
4	Diesel extenders: (a) that are filtered, de-watered and de-mineralised; and (b) that, if combined with diesel fuels, would produce a combined fuel that complies with the Determination mentioned in item 3	5
5	High grade industrial burning oils (filtered, de-watered and de-mineralised)	5
6	Low grade industrial burning oils (filtered and de-watered)	3 ²
7	Industrial process oils and lubricants, including hydraulic and transformer oils (re-processed or filtered, but not re-refined)	0
8	Gazetted oil consumed in Australia for a gazetted use	8.5
9	recycled oil mentioned in item 5 or 6 that has been blended with a petroleum product that meets the criteria mentioned in Schedule 2	9.557

² The Australian Taxation Office no longer pays benefits for Category 6 products.