

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Environment and Water

Product Stewardship (Oil) Act 2000

Product Stewardship (Oil) Declaration 2022

Legislative Authority

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

Subsection 6(1) of the PSO Act defines gazetted oil to mean oil of a kind that is declared by the Minister to be gazetted oil. Subsection 6(1) of the PSO Act also defines gazetted use, in relation to gazetted oil, to mean a use of the oil that is declared by the Minister to be a gazetted use, being a use in the manufacture of a product that will not permit the oil to be recycled and that constitutes only a low risk to the environment; or a use in a process that will not permit the oil to be recycled and that constitutes only a low risk to the environment.

Purpose

The purpose of the *Product Stewardship (Oil) Declaration 2022* (the Declaration) is to declare, for the purposes of subsection 6(1) of the PSO Act, certain kinds of oils to be a *gazetted oil* and certain uses for those oils to be a *gazetted use*.

The Declaration replaces the *Product Stewardship (Oil) Declaration 2003* which is due to sunset on 1 October 2022.

Background

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 be entitled to a benefit (section 9 of the PSO Act). A person is generally 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.

Regulations made under the PSO Act provide the basis for calculating the amount of the benefit for a claim for the sale or consumption of different types of oil as specified, and the amount of benefit for the consumption of gazetted oil for a gazetted use in Australia.

The relevant gazetted oils and their gazetted uses in Australia are set out in the Declaration.

Consultation

The Australian Taxation Office, the Treasury and the Office of Best Practice Regulation were consulted on the development of the Declaration. Public consultation on the Declaration was

not considered necessary as the Declaration would simply allow for the continuation of the PSO Scheme in its current form with no substantive changes.

Details and Operation

The PSO Act specifies no conditions that need to be satisfied before the power to make the Declaration may be exercised.

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Declaration commences on 1 October 2022.

Details of the Declaration are set out in Attachment A.

The Declaration is 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) Declaration 2022*

Part 1 – Preliminary

Section 1 – Name

1. This section provides that the name of the instrument is the *Product Stewardship (Oil) Declaration 2022* (the Declaration).

Section 2 – Commencement

2. This section provides that the Declaration commences on 1 October 2022.

Section 3 – Authority

3. This section provides that the Declaration is made under the definitions of *gazetted oil* and *gazetted use* in section 6 of the *Product Stewardship (Oil) Act 2000* (the PSO Act).

Section 4 – Schedules

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

Part 2 – Declaration of gazetted oils and gazetted uses

Section 5 – Declaration of gazetted oils and gazetted uses

5. The PSO Act establishes the Product Stewardship (Oil) Scheme (the 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.
6. 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.
7. Regulations made under the PSO Act provide the basis for calculating the amount of the benefit for a claim for the sale or consumption of different types of oil as specified. In addition to the sale or consumption of recycled oil that was recycled in Australia, benefits may also be claimed for the consumption of gazetted oil for gazetted use in Australia.
8. Subsection 6(1) of the PSO Act defines *gazetted oil* to mean oil of a kind that is declared by the Minister to be gazetted oil. Subsection 6(1) of the PSO Act also defines *gazetted use*, in relation to gazetted oil, to mean a use of the oil that is declared by the Minister to be a gazetted use, being a use in the manufacture of a product that will not permit the oil to be recycled and that constitutes only a low risk

to the environment; or a use in a process that will not permit the oil to be recycled and that constitutes only a low risk to the environment.

9. Section 5 of the Declaration declares certain kinds of oils to be *gazetted oil* and certain uses for those oils to be a *gazetted use* for the purposes of the definition of those terms under the PSO Act.
10. Subsection 5(1) of the Declaration provides that each kind of oil specified in column 1 of an item in the table under subsection 5(2) is declared to be gazetted oil. The gazetted oils are:
 - naphthenic process oil (item 1 of the table)
 - paraffinic process oil (item 2 of the table)
 - paraffinic (C14-17) process oil (item 3 of the table)
 - petroleum jelly (item 4 of the table)
 - polyisobutylene succinic anhydride (PIBSA) (item 5 of the table)
 - vegetable-derived polyethers (item 6 of the table)
 - white mineral oil (item 7 of the table)
11. Subsection 5(2) of the Declaration provides that each use specified in column 2 of an item in the table under subsection 5(2) is declared to be a gazetted use in relation to the oil specified in column 1 of that item.
12. Under subsection 9(3) of the PSO Act, a person is entitled to a product stewardship (oil) benefit for the consumption in Australia of these gazetted oils for a gazetted use. The amount of this benefit is set out in the regulations made under the PSO Act.
13. However, if incorporation of a gazetted oil into a particular product is declared to be a gazetted use, a claim for a benefit in relation to that use may only be made by a person who incorporates the oil into the product and not by a person who uses the product after the oil has been incorporated into it.

Schedule 1 – Repeals

Item 1

14. Item 1 of Schedule 1 to the Declaration would repeal the *Product Stewardship (Oil) Declaration 2003* (the old Declaration). One of the purposes of the Declaration is to replace the old Declaration, which is due to sunset on 1 October 2022. The old Declaration would be repealed in reliance on subsection 33(3) of the *Acts Interpretation Act 1901*.

Statement of Compatibility with Human Rights

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

Product Stewardship (Oil) Declaration 2022

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) establishes the Product Stewardship (Oil) Scheme (the 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, a 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).

Regulations made under the PSO Act provide the basis for calculating the amount of the benefit for a claim for the sale or consumption of different types of oil as specified. In addition to the sale or consumption of recycled oil that was recycled in Australia, benefits may also be claimed for the consumption of gazetted oil for a gazetted use in Australia.

The purpose of the *Product Stewardship (Oil) Declaration 2022* (the Declaration) is to declare certain kinds of oils to be a gazetted oil and certain uses for those oils to be a gazetted use.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Tanya Plibersek MP
Minister for the Environment and Water