



Product Stewardship (Oil) Act 2000

Act No. 102 of 2000 as amended

This compilation was prepared on 21 December 2010
taking into account amendments up to Act No. 145 of 2010

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to provide for grants for the recycling of oils, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Product Stewardship (Oil) Act 2000.

2 Commencement [see Note 1]

- (1) Parts 1, 3 and 4 commence on the day on which this Act receives the Royal Assent.
- (2) Part 2 commences on the later of:
 - (a) 1 January 2001; and
 - (b) the day on which this Act receives the Royal Assent.

3 Objects

The objects of this Act are:

- (a) to develop a product stewardship arrangement for used oils; and
- (b) to ensure the environmentally sustainable management, re-refining and reuse of used oil; and
- (c) to support economic recycling options for used oil.

4 Extension to external Territories

This Act extends to all the external Territories.

5 States and Territories are bound

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island. However, it does not make the Crown liable to be prosecuted for an offence.

6 Definitions

(1) In this Act, unless the contrary intention appears:

Advisory Council means the Oil Stewardship Advisory Council established by section 11.

Australia includes all the Territories.

Department means the Department responsible for the administration of the *Environment Protection and Biodiversity Conservation Act 1999*.

gazetted oil means oil of a kind that is declared by the Minister, by notice published in the *Gazette*, to be gazetted oil.

gazetted use, in relation to gazetted oil, means a use of the oil that is declared by the Minister, by notice published in the *Gazette*, to be a gazetted use, being:

- (a) a use in the manufacture of a product:
 - (i) that will not permit the oil to be recycled; and
 - (ii) that constitutes only a low risk to the environment; or
- (b) a use in a process:
 - (i) that will not permit the oil to be recycled; and
 - (ii) that constitutes only a low risk to the environment.

Minister means the Minister responsible for the administration of the *Environment Protection and Biodiversity Conservation Act 1999*.

oils: the following are oils:

- (a) petroleum based oils (including lubricant base oils; prepared lubricant additives containing carrier oils; lubricants for engines, gear sets, pumps and bearings; greases; hydraulic fluids; brake fluids; transmission oils; and transformer and heat transfer oils);
- (b) synthetic equivalents of goods covered by paragraph (a);
- (c) any other goods prescribed for the purposes of this definition.

product stewardship (oil) benefit means a grant payable under this Act.

recycled oil means:

- (a) goods produced from used oil; or
- (b) used oil that has been restored to its former state.

recycling of oils means:

- (a) the production of goods from used oils; or
- (b) the restoring of used oils to their former state.

used oil means any oil that has been used and that, as a result of such use, is contaminated by physical or chemical impurities.

voting member means a member who is appointed on the basis of their knowledge of, or experience in, one or more of the areas referred to in subsection 14(2).

- (2) An expression used in this Act that is also used in the *Product Grants and Benefits Administration Act 2000* has the same meaning as in that Act, unless the contrary intention appears.

7 Commissioner has general administration of this Act

The Commissioner has the general administration of this Act.

Note: An effect of this provision is that the *Taxation Administration Act 1953* applies to this Act as a taxation law. This means, for example, that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

Part 2—Entitlement to product stewardship (oil) benefits

8 Registration must precede a claim for product stewardship (oil) benefit

- (1) Despite the other provisions of this Part, you are not entitled to a product stewardship (oil) benefit unless you were registered for entitlement to product stewardship (oil) benefits when you made a claim for payment of the product stewardship (oil) benefit.

Note: You register for product stewardship (oil) benefits under the *Product Grants and Benefits Administration Act 2000*.

- (2) For the purposes of subsection (1), if you make a claim in respect of an entitlement that is referred to in subsection 9(1):

- (a) after, or at the same time as, you apply for registration; but
(b) before you are registered;

the claim is taken to have been made immediately after you are registered.

- (3) For the purposes of subsection (1), if you make a claim in respect of an entitlement referred to in subsection 9(3):

- (a) after the introduction into the Parliament of the Bill for the *Product Stewardship (Oil) Legislation Amendment Act (No. 1) 2003*; but

- (b) before you are registered;

the claim is taken to have been made immediately after you are registered.

9 Entitlement to product stewardship (oil) benefits

- (1) You are entitled to a product stewardship (oil) benefit for the sale or consumption of recycled oil that you have recycled in Australia.
- (2) However, you are not entitled to a product stewardship (oil) benefit for the sale or consumption of recycled oil referred to in subsection (1) before the later of:
- (a) the commencement of this section; and

- (b) the date on which you applied for registration, in relation to product stewardship (oil) benefit, under the *Product Grants and Benefits Administration Act 2000*.
- (3) You are entitled to a product stewardship (oil) benefit for the consumption in Australia of gazetted oil for a gazetted use.
- (4) However, you are not entitled to a product stewardship (oil) benefit for the consumption of gazetted oil for a gazetted use before the introduction into the Parliament of the Bill for the *Product Stewardship (Oil) Legislation Amendment Act (No. 1) 2003*.

10 Amounts of product stewardship (oil) benefit

- (1) If you are entitled to a product stewardship (oil) benefit in respect of the sale or consumption of recycled oil, or the consumption of gazetted oil for a gazetted use, during a claim period, the amount of the product stewardship (oil) benefit for the claim period is worked out in accordance with the regulations.
- (2) Without limiting the matters that may be taken into account under regulations made for the purposes of subsection (1) in respect of the sale or consumption of recycled oil, the matters may include:
 - (a) the volume of the recycled oil that you sold or consumed;
and
 - (b) the quality of the recycled oil that you sold or consumed; and
 - (c) the use of, or intended use for, the recycled oil.
- (2A) Without limiting the matters that may be taken into account under regulations made for the purposes of subsection (1) in relation to the consumption of gazetted oil for a gazetted use, the matters may include:
 - (a) the volume of the gazetted oil that you consumed for that use; and
 - (b) the quality of the gazetted oil that you consumed for that use; and
 - (c) particulars of the gazetted use to which you put the gazetted oil.
- (3) To avoid doubt:
 - (a) the regulations may provide that no benefit is payable in respect of recycled oil (including gazetted oil obtained

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through recycling) that is to undergo further recycling before it is to be sold to the end user or consumed; and

- (b) the amount of a benefit in respect of the sale or consumption of recycled oil, or of gazetted oil for a gazetted use, may be a nil amount.
- (4) Before the Governor-General makes a regulation under subsection (1), the Minister must take into consideration:
- (a) the total amount that it is estimated will be collected under relevant items in the *Customs Tariff Act 1995* and the *Excise Tariff Act 1921* in the relevant period; and
 - (b) any relevant environmental matters relating to the recycling of oils or to the use of gazetted oil.

The Minister may also take into consideration any relevant recommendation made to the Minister by the Advisory Council.

- (5) Despite section 14 of the *Legislative Instruments Act 2003*, regulations made for the purposes of subsection (1) may apply, adopt or incorporate any matter contained in a written instrument specifying:
- (a) oil testing methods; or
 - (b) standards for the accreditation of laboratories undertaking oil testing;
- as in force or existing from time to time.

Part 3—The Oil Stewardship Advisory Council

Division 1—Establishment and functions of the Oil Stewardship Advisory Council

11 Establishment

The Oil Stewardship Advisory Council is established by this section.

12 Functions

The functions of the Advisory Council are:

- (a) to advise the Minister on the product stewardship arrangements for oils; and
- (b) to advise the Minister in relation to the recovery and recycling of used oil; and
- (c) to advise the Minister in relation to regulations under section 10 (working out the amount of product stewardship benefits); and
- (d) to advise the Minister on the state of the oil production and oil recycling industries; and
- (e) to give the Minister advice on such other matters as are specified by the Minister; and
- (f) to perform such other functions as are conferred on the Advisory Council by this Act or any other Act.

Division 2—Membership of the Advisory Council

13 Constitution

- (1) The Advisory Council consists of such number of members, not being fewer than 10, as the Minister from time to time determines.
- (2) Subject to section 24, the performance of a function of the Advisory Council is not affected by a vacancy or vacancies in the Advisory Council's membership.
- (3) The performance of a function of the Advisory Council is not affected by the fact that the Advisory Council's membership does not include any members who are appointed:
 - (a) on the basis of their knowledge of, or experience in, a particular area referred to in subsection 14(2); or
 - (b) to represent the Commissioner or the Commonwealth in accordance with subsection 14(2B).

14 Appointment of members

- (1) Members are to be appointed by the Minister by written instrument.
- (2) The Minister must not appoint a person as a member of the Advisory Council (other than as a member mentioned in subsection (2B)) unless the Minister is satisfied that the person has knowledge of, or experience in, one or more of the following areas:
 - (a) broad waste management issues from a business perspective;
 - (b) research and development relevant to the product stewardship arrangements for oil;
 - (c) State or Territory government;
 - (d) local government;
 - (e) the non-government sector;
 - (f) national consumer issues;
 - (g) remote, including remote Indigenous, issues;
 - (h) oil production;
 - (i) used oil recycling;
 - (j) used oil collection.

- (2A) In appointing members of the Advisory Council, the Minister must endeavour to constitute the Advisory Council so that it, as a whole, has knowledge and experience in as many areas mentioned in subsection (2) as is practicable.
- (2B) The Minister must ensure that the membership of the Advisory Council includes:
 - (a) a person representing the Commissioner; and
 - (b) a person representing the Commonwealth.
- (2C) If a person mentioned in subsection (2B) is unable to attend a meeting, the person may authorise a substitute to attend the meeting. The substitute must be an APS employee.
- (3) The Minister must ensure that a majority of the members are not persons employed by the Commonwealth or Commonwealth agencies.

15 Chair

- (1) Subject to subsections (1A) and (2), the Minister must appoint as the Chair of the Advisory Council one of the members who possesses commercial or business experience that the Minister thinks relevant to the performance of the Advisory Council's functions.
 - (1A) The Minister must not appoint as the Chair 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.
 - (1B) The Chair must notify the Minister of any direct or indirect pecuniary interest that he or she acquires in the product stewardship arrangements for oil.
 - (1C) The notice must be in writing given to the Minister as soon as practicable after the Chair acquires the interest.
- (2) The Minister must not appoint as the Chair a member who is employed by the Commonwealth or a Commonwealth agency.

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- (3) Subject to subsection (4), the member appointed as the Chair holds the office of Chair until the end of his or her term of office as a member that is current at the time of his or her appointment.
- (4) The member so appointed ceases to be the Chair if he or she:
 - (a) ceases to be a member; or
 - (aa) has his or her appointment as Chair terminated by the Minister under subsection (6); or
 - (b) resigns the office of Chair by written notice delivered to the Minister.
- (5) A person is eligible to be re-appointed as the Chair.
- (6) The Minister may terminate the Chair's appointment if:
 - (a) the Minister becomes aware, whether because of a notification under subsection (1B) or otherwise, that the Chair has a direct or indirect pecuniary interest in the product stewardship arrangements for oil; and
 - (b) 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.

16 Terms of office

A member:

- (a) is to be appointed on a part-time basis; and
- (b) holds office for such period (not exceeding 3 years) as is specified in the instrument of appointment.

17 Terms and conditions of appointment

A member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Minister in writing.

18 Remuneration and allowances

- (1) Members are to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, are to be paid such remuneration as is prescribed.

- (2) A member is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

19 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on such terms and conditions as to remuneration or otherwise as the Minister considers appropriate.
- (2) The Chair may grant leave of absence to another member on such terms and conditions as to remuneration or otherwise as the Chair considers appropriate.

20 Resignation

A member may resign by written notice delivered to the Minister.

21 Termination of appointment

- (1) The Minister may terminate a member's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate a member's appointment if the member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with an obligation imposed by subsection 27(3) or section 29; or
 - (c) is absent, except on leave of absence granted under section 19, from 3 consecutive meetings of the Advisory Council; or
 - (d) if the member was appointed to represent the Commissioner or the Commonwealth in accordance with subsection 14(2B)—ceases, because of a change in employment, residence or other circumstances, to be, in the Minister's opinion, an appropriate representative of the Commissioner or the Commonwealth, as the case may be.

Division 3—Meetings of the Advisory Council

22 Convening meetings

- (1) Subject to subsection (2), the Advisory Council must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Advisory Council must hold at least one meeting every 12 months.
- (3) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting on receipt of a written request from at least 5 other voting members.
- (4) The Minister may convene a meeting at any time.

23 Presiding at meetings

- (1) The Chair is to preside at all meetings at which he or she is present.
- (2) If the Chair is not present, the voting members present must elect one of their number to preside.

24 Quorum

At a meeting, a majority of voting members, or 6 voting members, whichever is the greater, form a quorum.

25 Voting at meetings

- (1) Questions arising at a meeting are to be decided by a majority of votes of the voting members present and voting.
- (2) The member presiding has a deliberative vote, and, if necessary, also has a casting vote.

26 Conduct of meetings

The Advisory Council may, subject to this Division, determine the procedure at meetings.

27 Resolutions without meetings

- (1) If a majority of the voting members sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a duly constituted meeting held:
 - (a) on the day the document was signed; or
 - (b) if the members sign the document on different days—on the last of those days.
- (2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more voting members are together taken to be one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.
- (3) If the resolution is about a matter in which a voting member would, for the purposes of section 29, be taken to have an interest, the member:
 - (a) must not sign a document containing a statement in favour of the resolution; and
 - (b) must disclose the nature of the interest to the Chair.
- (4) Any member to whom subsection (3) applies in connection with the resolution is taken not to be a member for the purposes of calculating the number of members that would constitute a majority under subsection (1) in connection with the resolution.

28 Records relating to meetings

The Advisory Council must keep minutes of its meetings and records of resolutions passed in accordance with section 27.

29 Disclosure of interests

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting.
- (2) The disclosure is to be recorded in the minutes of the meeting.

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(2A) If:

- (a) the member is not the Chair; and
- (b) the Chair is present at the meeting; and
- (c) the Chair so determines;

the member must not:

- (d) be present during any deliberation of the Advisory Council with respect to the matter; or
- (e) take part in any decision of the Advisory Council with respect to the matter.

(2B) If:

- (a) the member is not the Chair; and
- (b) the Chair is not present at the meeting; and
- (c) the Advisory Council so determines;

the member must not:

- (d) be present during any deliberation of the Advisory Council with respect to the matter; or
- (e) take part in any decision of the Advisory Council with respect to the matter.

(2C) If:

- (a) the member is the Chair; and
- (b) the Advisory Council so determines;

the member must not:

- (c) be present during any deliberation of the Advisory Council with respect to the matter; or
- (d) take part in any decision of the Advisory Council with respect to the matter.

(3) For the purposes of the Advisory Council making a determination under subsection (2B) or (2C), any member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Advisory Council for the purposes of making the determination; or
- (b) take part in the making of the determination.

(3A) The Minister may direct the Chair not to make, or to rescind, a determination under subsection (2A).

- (4) The Minister may direct the Advisory Council not to make, or to rescind, a determination under subsection (2B) or (2C).

30 Persons may be invited to attend meetings

The Advisory Council may invite a person to attend a meeting:

- (a) as an observer; or
- (b) to advise or inform the Advisory Council on any matter.

Division 4—Miscellaneous

31 Protection from civil actions

A member is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power, of the Advisory Council.

32 Assistance for the Council

- (1) Administrative assistance required for the purposes of the Advisory Council is to be provided by staff members of the Department.
- (2) The Department is to provide such money as is necessary for the performance of the functions of the Advisory Council.

Part 4—Miscellaneous

33 Delegation by Secretary

- (1) The Secretary of the Department may, by writing, delegate to an SES employee or acting SES employee all or any of the functions and powers conferred on the Secretary by this Act.
- (2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Secretary.

34 Delegation by Minister

- (1) The Minister may, by writing, delegate to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee or acting SES employee;all or any of the functions and powers conferred on the Minister by this Act.
- (2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Minister.

35 Annual report by Minister

As soon as practicable after the end of each financial year, the Minister must cause to be laid before each House of the Parliament a report relating to:

- (a) the operation of the product stewardship arrangements for oil (including this Act); and
- (b) any other matters that the Minister thinks relevant.

36 Review of operation of Act

- (1) The Minister must cause an independent review of:
 - (a) the operation of this Act; and
 - (b) relevant provisions of customs and excise legislation; and
 - (c) the extent to which the objects set out in section 3 have been achieved;

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to be undertaken within 4 years after the commencement of this Act and thereafter at intervals of not longer than 4 years.

- (2) The persons who undertake such a review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of each report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (4) In this section:

independent review means a review undertaken by 2 or more persons who:

- (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
- (b) include one or more persons who are not APS employees.

37 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Product Stewardship (Oil) Act 2000*****Note 1**

The *Product Stewardship (Oil) Act 2000* as shown in this compilation comprises Act No. 102, 2000 amended as indicated in the Tables below.

Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|--|-----------------|----------------|---|--|
| <i>Product Stewardship (Oil) Act 2000</i> | 102, 2000 | 6 July 2000 | Ss. 8–10: 1 Jan 2001 Remainder: Royal Assent | — |
| <i>Product Stewardship (Oil) Legislation Amendment Act (No. 1) 2003</i> | 79, 2003 | 14 Aug 2003 | Ss. 1–3: Royal Assent Remainder: 1 Dec 2003 (<i>see Gazette</i> 2003, No. GN47) | — |
| <i>Product Stewardship (Oil) Amendment Act 2007</i> | 155, 2007 | 24 Sept 2007 | Schedule 1: 24 Mar 2008 Remainder: Royal Assent | — |
| <i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i> | 145, 2010 | 16 Dec 2010 | Schedule 2 (item 66): 17 Dec 2010 | — |

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|--------------------|---------------------------------|
| Part 1 | |
| S. 3 | am. No. 155, 2007 |
| S. 6 | am. No. 79, 2003; No. 155, 2007 |
| Note to s. 7..... | am. No. 145, 2010 |
| Part 2 | |
| Ss. 8, 9..... | am. No. 79, 2003 |
| S. 10 | am. No. 79, 2003; No. 155, 2007 |
| Part 3 | |
| Division 1 | |
| S. 12 | am. No. 155, 2007 |
| Division 2 | |
| Ss. 13–15..... | am. No. 155, 2007 |
| S. 21 | am. No. 155, 2007 |
| Division 3 | |
| Ss. 22–25..... | am. No. 155, 2007 |
| S. 27 | am. No. 155, 2007 |
| S. 29 | am. No. 155, 2007 |