

Comments prepared by the Municipal Waste Advisory Council on the Consultation Draft of the *Independent Review of the Product Stewardship (Oil) Act 2000* by the Allen Consulting Group for the Minister for the Environment and Heritage in March 2004.

Note on Definitions: In this document, the terms Product Stewardship for Oil Program and PSO Program are used to collectively refer to the Transitional Assistance funding and the levy/benefit scheme. The terms levy/benefit scheme and Transitional Assistance are used where only one of these components is meant.

General Comments on Form

We are pleased to report that we found this Draft Review by The Allen Consulting Group (hereafter *The Draft Review*) to be a well structured and well written document. We note that the executive summary makes cursory inspection of *The Draft Review's* substantive approach and findings much easier. However we add that by not applying the same structure used in the main body of *The Draft Review*, the Executive Summary is made less useful as a section by section guide to *The Draft Review*.

Rationale for the Scheme

The PSO has the potential to achieve a variety of objectives, but for the purposes of reviewing the scheme, we consider it essential to identify its primary, legislative rationale. Our reading of the PSO is that it is designed to increase oil recovery because unrecovered used oil is a pollution hazard. We have formed the view that the resource efficiency gains associated with increased oil reuse are a bonus whereas reducing pollution risks by recovering more used oil is the main rationale for the PSO.

In support of this view, we note the following things:

- That *The Draft Review* asserts that the "problem of used oil is seen as a significant problem for human and environmental health"¹.
- That *The Draft Review* identifies externalities associated with unrecycled oil which becomes an environmental pollutant
- That impacts on resource efficiency and energy efficiency are not listed in *The Draft Review's* discussion of externalities
- That increased recovery is implicit in the second objective set out in section 3 of the Product Stewardship (oil) Act 2000, namely to "ensure the environmentally sustainable management, re-refining and reuse of waste oil".
- That while the promotion of re-refining and reuse of waste oil is an explicitly recognised objective of the Act, *The Draft Review* itself places this objective in the context of being necessary to avoid discharge of substantial quantities of used lubricants into the environment.²

¹ Review p10

² Review p11

On balance, we consider that these things support the interpretation that the PSO is largely driven by the imperative to reduce the amount of used oil which is not recovered. This in turn supports the interpretation that the promotion of reuse options is primarily a means of achieving greater used oil recovery. Finally, this suggests to us that the ultimate measure of program success must be the extent to which used oil is recovered and pollution risks mitigated. The fact that we consider the PSO to be based on a pollution prevention rationale is relevant in the comments which follow.

Collection Issues

It is acknowledged that the PSO Act (in particular Part 2) is directed primarily at boosting oil recycling and reprocessing. That *The Draft Review* declines to directly consider the issues of oil collection is, on the one hand, understandable given the legislative focus on reuse. However, it has been put to us that the objectives of increasing oil collection and increasing oil recycling and reprocessing cannot be independently achieved.³ This strikes us as a sensible perspective on the problem of how to reduce the amount of oil which remains unrecovered in the community. Therefore, we are disappointed to find that collection issues have been largely excluded from the analysis of the PSO scheme.

We suspect that collection of used oil may continue to be a problem for the numerous, smaller accumulations of used oil associated with the do-it-yourself market. The present system does not provide incentives for these oil consumers to seek out oil collection depots and dispose of their oil appropriately. Perhaps this segment of the market is too small to create a serious pollution risk or perhaps they can be shown to possess a fairly high level of environmental responsibility, making additional incentives unnecessary. The point we make by raising this is that we consider that some assessment of these matters is necessary to determine the overall effectiveness of the PSO scheme. It may be the case that the collection of used oil will be successfully facilitated by both the Transitional Assistance funding and by increased demand by oil reprocessors, but *The Draft Review* does not help us to determine whether this is true.

The Targets and Acceptable Performance

We note from the *Independent Review of the Transitional Assistance Element of the PSO Program* that collections have risen from 165 ML per year reported prior to the PSO Program to an estimated 220 ML in 2002-03.⁴ This compares to an estimated used oil generation figure for 2002 of around 298ML.⁵ Notwithstanding the likely success of the PSO Program in increasing the rate of recovery of used oil, the forgoing data clearly indicate to us that there remains a substantial amount of used oil which is generated but not collected in each year.

We are dismayed at the suggestion that specific recycling targets for used oil should be eschewed.⁶ *The Draft Review* appears to consider that the recovery rate for used oil has reached a level in Australia which is sufficiently high as to justify a shift of attention towards fine tuning the

³ Pers Comm: Adam Rush Assistant Director (Policy) Automotive Waste Resources, 6 April 2004.

⁴ Independent Review of the Transitional Assistance Element of the Product Stewardship for Oil (PSO) Program, p2

⁵ Independent Review of the Transitional Assistance Element of the Product Stewardship for Oil (PSO) Program, p11

⁶ Review p 55

system in order to maximise administrative efficiency and fairness. That the Review Team holds this view is evidenced by the favourable comparisons to European jurisdictions⁷ and the justifications for not recommending a Used Oil Tradeable Certificate Scheme⁸.

It is our view that targets for used oil recovery are still important. The process of setting targets forces those involved to consider what represents an acceptable pollution risk. Imposing targets and reporting against them would allow us to more rigorously examine the assumption that supporting the recovery options will ultimately provide the impetus to maintain collection systems. Finally used oil recovery targets are consistent with the primary rationale for the PSO scheme. It appears to us that omitting targets for used oil recovery amounts to a downgrading of the central objective of the entire scheme – namely to ensure that the pollution from improperly disposed used oil is reduced to acceptable levels.

Whether 20% non-recovery corresponds to an acceptable level of pollution is very difficult to say. However, *The Draft Review* has not engaged with this question, rather it has simply sidestepped it with comparisons to other developed countries. We would suggest that evidence is required to show that an annual failure to recover some 50ML of used oil corresponds to an acceptable pollution risk from that oil.⁹

While acknowledging that the quantitative relationship between used oil recovery and pollution prevention remains unclear, we would suggest that used oil recovery is still the best measure of scheme success. In view of this and finding that a prima facie case exists for substantial further reductions, we submit that the absence of targets for reducing the quantity of unrecovered used oil has not been justified.

Description of the PSO Program as an Economic Instrument

The Draft Review explains in its executive summary that the “PSO Program seeks to provide economic incentives to increase the uptake and appropriate recycling and use of used oil”¹⁰. We read this as referring to the levy/benefit scheme in particular. *The Draft Review* identifies three specific incentives or disincentives contemplated by the program. It is not clear to us how the Review Team developed this list of incentives and disincentives since these are not specified in the PSO Act.

The source of the Review Team's list of incentives and disincentives seems important to us because we consider that an additional economic incentive was at least worthy of consideration. That is, an economic incentive to encourage the return of used oil by consumers for recycling or reuse. We would like to see a clear justification for why this particular incentive is not being considered at this time.

⁷ Review p35

⁸ Review p55

⁹ Calculation of annually unrecovered used oil is based on the figures cited above. Allowing for a recovery rate of around 83% (upper of the range proposed in *The Draft Review*) and an annual generation of used oil of around 300ML pa.

¹⁰ Review pvii

One of the items on the list identified by the Review Team is a “financial disincentive (i.e. through the levy) for consumers to use virgin oil”.¹¹ Setting aside the question of whether this is indeed contemplated by the PSO Program, we are disappointed that *The Draft Review* does provide any critical assessment of whether the program was actually generating this disincentive. It appears that the Review Team simply assumes that the levy of 5.499cL⁻¹ “provides a disincentive to use excessive virgin oil”.¹² We would like to see some justification for this view. In addition, we would be interested to see the Review Team reconcile its statement that “the cost imposition created by the levy has been slight” with its views about the levy’s efficacy as a disincentive to virgin oil consumption.¹³

Lube-to-Lube Versus High Grade Burning Oil

The Draft Review has devoted considerable attention to the question of the benefit levels associated with lube-to-lube recycling as opposed to using waste oil as high grade burning oil. It has made a case for an increase in the benefit applied to the latter use on the basis that the life-cycle assessment of both uses has tended to show only a marginal difference in the environmental impacts of each. We offer several perspectives on *The Draft Review*’s proposal to increase the benefit for high grade burning oil relative to lube-to-lube reuse.

Firstly we record our support for a rational assessment of the best end uses for recovered waste oil. We endorse the life-cycle assessment approach as a sound starting point in selecting the best option. We also recognise that the environmental impacts of a given oil recovery option is just one aspect of that option’s suitability as a means of recovering used oil. We note with approval that the Review Team has identified in section 6.2 a range of factors which need to be reflected in the level of benefit set for different type of end uses for used oil and we note that the environmental impact of the reuse of used oil is merely one of these factors.¹⁴

To the extent that the Review Team is correct in asserting that not all used oil can be recycled as lube-to-lube, we accept its proposition that a range of different end uses should be encouraged.¹⁵ We agree with approach taken in *The Draft Review* to not treat lube-to-lube reprocessing as a sacred cow, and neither to treat any other end uses as inherently inferior.

Secondly, we recognise the key importance of recovering used oil before it is discharged into the environment. We further recognise that an important precondition for this recovery is the existence of viable disposal/recycling/reuse options. There may currently be technical, political and economic limitations which preclude recovery of the bulk of used oil through lube-to-lube reuse.¹⁶ This lends support to the idea of increasing the benefit for high grade burning oil on the following bases:

- Burning oil is the only presently viable end use for the bulk of used oil in Australia; AND
- High grade burning oil is a more desirable end use than low grade burning oil

¹¹ Review pvii

¹² Review p41

¹³ Review p41

¹⁴ Review p57

¹⁵ Review p69

¹⁶ See, for example the comments from the *Independent Review of the Transitional Assistance Element of the Product Stewardship for Oil (PSO) Program* p35.

Thirdly, we suggest that the Review Team has committed an error of logic by claiming that the 5c vs 50c differentiated benefit for high grade burning oil vs lube-to-lube reuse implies a 10-fold greater environmental benefit for lube-to-lube reuse. The marginal environmental benefit associated with lube-to-lube over high grade burning oil has been calculated using life-cycle assessment techniques. It is our understanding that these quantitative techniques do not convert environmental benefits and costs into a dollar value. Given that the reuse benefits are simply monetary values, we dispute the validity of comparing the values in the way the Review Team has done. Indeed it may be the case that even a marginally greater environmental benefit for lube-to-lube corresponds to a significant monetary advantage.¹⁷

Finally, in relation to this issue, we would note that in the longer term the PSO Program will need to harmonise with broader policy imperatives. It is apparent that the waste hierarchy is a well established principle in waste management both in Australian states and overseas. It is also apparent that energy and greenhouse policy is will continue to develop stronger linkages with all areas of the economy and that this is likely to have implications in the longer term for both small scale furnaces and large scale power generation. Lube-to-lube may be able to claim additional advantages over other options in terms of political response, public education and policy harmonisation. To the extent that these other parameters can be assessed, we submit that they should be included along with the LCA data to determine the merit of the different options.

Please note that in making these observations we wish only to encourage a more robust assessment of the scheme and would be happy to be persuaded that the benefit for lube-to-lube was too high or conversely that the benefit for high grade burning oil is too low.

The Assessment of Alternative Schemes

The Draft Review considers "a number of different economic instruments that could be used to achieve the product stewardship goals of the Act".¹⁸ However, we found that Section 5.2 of *The Draft Review* provided only a very limited analysis of the different options under consideration and fails to provide a compelling case demonstrating "the merit in maintaining the continuation of the broad framework currently embodied in the PSO Program arrangements".¹⁹

The Draft Review begins Section 5.2 with an outline of four "best practice characteristics" which should be used to assess the suitability of different schemes.²⁰ *The Draft Review* doesn't identify how this list of characteristics has been derived and omits an obvious characteristic – namely *incentives for consumers to return their used oil for reprocessing*. Setting aside our concern that the list is incomplete, we are also disappointed that the alternatives have not been thoroughly discussed with reference to each of these criteria. The simple YES or NO response in table 5.1 is, to our thinking, too simplistic to allow a meaningful comparison of the alternatives.

¹⁷ For example, imagine if lube-to-lube results in slightly less air pollution and slightly fewer greenhouse emissions than high grade burning oil. It is conceivable that the avoided cost of cleaning up the marginal increase in air pollution and the value of those greenhouse emissions within an emissions trading scheme could amount to more than 45c per litre of used oil ie the difference between a 5c and 50cL⁻¹ benefit

¹⁸ Review p50

¹⁹ Review p57

²⁰ Review pvi

We have some specific comments in respect of the assessment of the option for a deposit refund scheme. The Review Team rejects this option simply on the basis of the limited practical ability of such schemes to provide incentives for product redesign. Yet we find no suggestion that the present PSO Program arrangements are well aimed at affecting oil producer decision making. Hence, we are perplexed as to why, on the basis of this one point of comparison, the deposit refund scheme option is rejected compared to the existing system. Furthermore we would suggest that a deposit refund scheme has the potential to substantially enhance the collection of the many small accumulations of oil associated with private (DIY) oil uses. Since collection enhancement is not one of *The Draft Review's* best-practice characteristics, this strength of a deposit refund scheme is not even noted, a fact which we find disappointing.

We found that the treatment of other alternatives invites the tentative conclusion that *The Draft Review* was not sincerely directed at establishing the relative strengths and weaknesses of each option as compared to the status quo. It is apparent that an alternative scheme to achieve the objects of the PSO Act would be politically unattractive. Consequently it appears that a finding in favour of a refined status quo was more or less inevitable.

Administrative & Compliance Costs

The Draft Review considers the performance of the PSO Program in terms of administrative and compliance costs. *The Draft Review* cites evidence that the administrative costs are reasonable and are 'incremental'²¹. *The Draft Review* goes on to reflect on the general dissatisfaction among Australian businesses about the high cost and uncertainty created by regulation in Australia. Presumably the final version of *The Draft Review* will have the benefit of more feedback from firms on business compliance costs and so a clearer picture of the specific compliance burden on business caused by the PSO Program will emerge. We defer to the expertise of others who assert that there would be increased compliance costs if the PSO Program were to switch to an alternative economic instrument.²²

We acknowledge that the federal government, oil producers and oil recyclers all have a legitimate interest in trying to minimise the complexity and cost of the PSO Program. However *The Draft Review* has not, in our view, justified its assertion that it is appropriate to focus on controlling compliance costs rather than on controlling quantities of unrecovered used oil.²³ In particular, we do not accept the logic, relied on by the Review Team, that the latter objective should be subordinated because Australia already has a high recovery rate relative to other countries. The material fact which this logic overlooks is that very large quantities of used oil are not recovered each year. To accept the Review Team's logic would require some evidence to indicate that a rolling loss of something in the order of 50ML of used oil per year was an acceptable environmental risk.²⁴

²¹ We interpret 'incremental' to mean able to be increased as participation in the scheme increases. In practice this might imply that the administration costs of the scheme are roughly proportional to the environmental benefits which accrue.

²² Review p54

²³ Review p55

²⁴ Loss is used in this sense to mean 'not recovered'. Calculation of annually unrecovered used oil is based on the figures cited above under the section *Targets and Acceptable Performance*. Allowing for a recovery rate of around 83% (upper of the range proposed in *The Draft Review*) and an annual generation of used oil of around 300ML pa.

Summary

In summary, we found that *The Draft Review* was a well presented and clearly structured review of the Product Stewardship (Oil) Act 2000. We were pleased with the treatment applied in Chapter 2 which showed that preventing pollution from used oil was a key component of the justification for regulatory intervention under the PSO Act. However we were disappointed that the Review Team didn't devote more attention to the question of how well the scheme was adapted to achieving this goal. We considered that *The Draft Review* failed to provide justifications for a number of its key assertions or findings. In particular we would wish to see *The Draft Review* provide:

- more rigorous justification of the activities requiring economic incentives;
- more critical consideration of which incentives were being effectively generated
- increased rigour in the assessment of the advantages of different reuse options and transparent communication of the criteria used.
- expansion of the best-practice criteria for alternative schemes.
- assessment of the alternative schemes against the best-practice criteria specifically referred to in *The Draft Review*
- some substantive evidence for the claim that adequate control of quantities of used oil recovered is currently being achieved

Data issue

- Reuse and the Waste Hierarchy
- The Collection Issue
- The Targets issue
 - Rationale for PSO included illegal dumping, stockpiles etc → ultimate loss to the env.
 - Need to reduce the amount of used oil which is NOT recovered.
 - Evidence is unclear as to just how much the quantum of recoverable used oil left unrecovered has decreased
 - But maybe in the order of about 1/3 of what it was.
 - Qu – is this a satisfactory performance?
- Reasoning
 - The 10x argument
- Rationale for the scheme and the choices
- The assessment of alternative schemes
- The distinction between the PSO and the TA
 - Compare pvii and pviii
 - Suggest that from Local Government POV the benefits have accrued through the Clth TA funding.
 - Suggest that this has nothing to do with the core of the scheme – namely levy – reuse benefit. (“two interrelated mechanisms” pvii) p1
 - We would be pleased to receive infrastructure and/or education and promotion assistance for waste management operations under any program.
 - The TA has undoubtedly been enthusiastically endorsed by many in Local Government but this says essentially nothing about the view of the PSO model core.

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Objectives of the PSO

- Develop a product stewardship arrangement for waste oils;
- Ensure the environmentally sustainable management, re-refining and reuse of waste oil; and
- Support economic recycling options for waste oil.

The PSO Program seeks to provide economic incentives to increase the uptake and appropriate recycling and use of used oil by:

- making it more financially attractive for firms to invest in recycling facilities and activities — this is done directly through the benefit payment and indirectly through the facilitation of central used oil collection facilities with transitional assistance funding so as to reduce collection costs;
- providing a financial disincentive (i.e. through the levy) for consumers to use virgin oil; and
- correcting information asymmetries through targeted information programs funded through the transitional assistance arrangements.

The Draft Review does not clearly address the extent to which

The assessment of alternative schemes