EXPLANATORY STATEMENT

Issued by Authority of the Parliamentary Secretary for Sustainability and Urban Water

Product Stewardship Act 2011

Product Stewardship (Voluntary Arrangements) Instrument 2012

The Product Stewardship Act 2011 (the Act) provides a framework for voluntary, co-regulatory, and mandatory product stewardship. The Act aims to address the environmental, health and safety impacts of a product or material across its full lifecycle, from manufacture to disposal.

Part 2 of the Act relates to voluntary product stewardship. This involves parties voluntarily seeking accreditation by the Australian Government of a product stewardship arrangement designed to further the objects of the Act in relation to a class of products, and authorising the use of product stewardship logos in connection with such arrangements.

Voluntary product stewardship is designed to further the objects of the Act by:

- providing an avenue for recognising and encouraging product stewardship without the need to regulate; and
- providing assurance to the community that voluntary product stewardship arrangements are achieving real and effective outcomes.

Subsection 13(1) of the Act provides that the Minister may, by legislative instrument, determine matters relating to the accreditation of voluntary arrangements. Subsection 13(2) of the Act sets out matters that may be addressed in a determination.

The Product Stewardship (Voluntary Arrangements) Instrument 2012 (the Instrument) relates to the accreditation of voluntary arrangements for classes of products. The Instrument sets out the application procedure for accreditation and various grounds on which the Minister may or must refuse to accredit a voluntary arrangement. It allows the Minister to impose conditions on an accredited arrangement and cancel accreditation of an arrangement.

The Instrument provides that the period of accreditation is 5 years from the date accreditation takes effect [section 2.07] and sets out the responsibilities of administrators in relation to accreditation [section 2.09]. The Instrument also specifies reporting requirements for administrators [sections 2.11 and 2.12] and designates a product stewardship logo [Part 3].

Subsection 13(3) of the Act specifies preconditions to accreditation. The subsection provides that, the Instrument must require the Minister to refuse to accredit a voluntary arrangement if the Minister is satisfied that one of the matters enumerated in subsection 13(3) are not met.

Details of the Instrument are set out in the Attachment.
Voluntary product stewardship has been canvassed in various public consultation and discussion papers relating to the development of the National Waste Policy: Less Waste, More Resources (November 2009) and national product stewardship legislation in 2009 and 2010.¹ These papers were accompanied by public meetings. In February 2012, a consultation paper was also released on the proposed model for accreditation of voluntary product stewardship arrangements with accompanying public meetings.² The proposed model discussed in the consultation paper formed the basis for the Instrument.

The Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.  

The Instrument commences on the day after registration on the Federal Register of Legislative Instruments.

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² *Consultation Paper on the Proposed Model for Accreditation of Voluntary Product Stewardship Arrangements* (February 2012).
Statement of Compatibility with Human Rights

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

Product Stewardship (Voluntary Arrangements) Instrument 2012

Overview of the Legislative Instrument
The Product Stewardship (Voluntary Arrangements) Instrument 2012 (the Instrument) relates to the accreditation of voluntary arrangements for classes of products. The Instrument sets out the application procedure for accreditation and various grounds on which the Minister may or must refuse to accredit a voluntary arrangement. It allows the Minister to impose conditions on accreditation and cancel accreditation.

The Instrument provides that the period of accreditation is 5 years from the date accreditation takes effect and enumerates the responsibilities of administrators in relation to accreditation. The Instrument also specifies reporting requirements for administrators and designates a product stewardship logo.

Human rights implications
The Instrument has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. The Instrument does not engage any of the applicable rights or freedoms.

Conclusion
The Instrument is compatible with Australia’s human rights obligations.

Senator the Hon Don Farrell,
Parliamentary Secretary for Sustainability and Urban Water
Details of the *Product Stewardship (Voluntary Arrangements) Instrument 2012*

**Part 1 – Preliminary**

**Overview of Part 1**

Part 1 of the *Product Stewardship (Voluntary Arrangements) Instrument 2012* (the Instrument) covers the name of the Instrument, its commencement date and provides definitions of key terms. It also sets out definitions of terms used in the *Product Stewardship Act 2011* (the Act).

**Section 1.01 Name of Instrument**

This section provides that the title of the Instrument is the *Product Stewardship (Voluntary Arrangements) Instrument 2012*.

**Section 1.02 Commencement**

This section provides for the Instrument to commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 1.03 Definitions**

This section defines a number of terms used in the Instrument.

Note 1 to section 1.03 refers readers to section 4 of the Act. Section 4 sets out the objects of the Act which are drawn from the aims of the National Waste Policy: Less Waste, More Resources (November 2009).

Note 2 to section 1.03 alerts readers that certain terms used in the Instrument have the same meaning as in the Act. These terms include: administrator (see paragraph 12(2)(c)), product stewardship criteria (see section 5), product stewardship logo (section 14) and voluntary arrangement (subsection 12(2)), as defined in the Act.

**Part 2 – Accreditation of voluntary arrangements**

**Overview of Part 2**

Part 2 of the Instrument relates to the accreditation of voluntary arrangements. It sets out the application procedure i.e. who can apply for accreditation and when applications can be made and, sets out various matters that the Minister must be satisfied of before accrediting a voluntary arrangement. This Part also sets out the grounds on which the Minister may and must refuse to accredit a voluntary arrangement. It also allows the Minister to impose conditions on the accreditation of a voluntary arrangement.

The Part provides that the period of accreditation is 5 years from the date accreditation takes effect and sets out the responsibilities the administrator has in relation to accreditation. Under Part 2, the Minister may cancel the accreditation of a voluntary arrangement on certain grounds.

Part 2 specifies requirements relating to the reporting and giving of information by the administrator. This includes annual reports, audit reports and notifying the Minister of material
changes in the circumstances for the arrangement. It allows the Minister to request information relating to the arrangement, and requires the administrator to publish a summary of the accredited arrangement on the internet.

**Division 2.1 Purpose of Part**

**Section 2.01 Purpose of Part**

Section 2.01 provides that for the purposes of section 13 of the Act, Part 2 of the Instrument determines matters relating to the accreditation of voluntary arrangements in relation to classes of products.

Section 13 of the Act enables the Minister, by legislative instrument, to determine matters relating to the accreditation of voluntary arrangements in relation to classes of products. The section also sets out matters that may be addressed in a legislative instrument.

**Division 2.2 Application for accreditation of voluntary arrangement**

**Section 2.02 Application for accreditation of voluntary arrangement**

Subsection 2.02(1) provides that an administrator of a voluntary arrangement may apply to the Minister for accreditation of the arrangement in relation to a class of products.

This provision is consistent with the approach adopted in the co-regulatory provisions of the Act. Subsection 25(1) of the Act relevantly allows the administrator of a co-regulatory arrangement to apply to the Minister for approval of the arrangement. It is noted (see Note 1 under section 2.02) that the administrator must be a body corporate [paragraph 12(2)(d) of the Act]. The administrator is responsible for ensuring that the outcomes of the voluntary arrangement are achieved [Paragraph 12(2)(c) of the Act].

Note 2 of section 2.02 brings to the reader’s attention the additional requirements relating to applications under sections 102 and 103 of the Act. These sections apply in addition to those requirements specified in this Instrument. Section 102 of the Act specifies the requirements relating to applications. Applications must be made in the manner and form approved by the Minister, accompanied by specified documents and information and prescribed fees. After receiving an application it is intended that a summary of the arrangement will be made available on the Department’s website with an invitation for public comment. The Minister will only be able to take into account public comments relevant to the accreditation.

Subsection 2.02(2) provides that the administrator is able to make an application during an open application round. The meaning of open application round is defined in section 1.03 of the Instrument. It refers to the period between the opening day of the application round for voluntary product stewardship accreditation and the closing day of the application round, as specified by the Minister on the Department’s website.

Under subsection 2.02(3) the Minister must not accept an application outside the open application round. This is aimed at formalising the application process as opposed to allowing applicants to apply on an ad hoc basis. If an application is received outside the open application round it is invalid and must not be assessed. The applicant will have to re-apply in the next open application round.
Subsection 2.02(4) makes it clear that an administrator can withdraw the application they submitted during an open application round at any time before the Minister makes a decision about the application under section 2.03. Section 2.03 allows the Minister to either accredit or refuse to accredit a voluntary arrangement. The administrator will not be entitled to a refund of the application fee where an application is withdrawn pursuant to subsection 2.02(4). The Act does not provide for refunds of application fees.

**Division 2.3 Accreditation of voluntary arrangement**

**Section 2.03 Decision to accredit or refuse to accredit voluntary arrangement**

Subsection 2.03(1) allows the Minister to either accredit or refuse to accredit a voluntary arrangement on application by the administrator of the arrangement.

Subsection 2.03(2) sets out the notice requirements if the Minister accredits a voluntary arrangement and when the accreditation takes effect. Paragraph 2.03(2)(a) requires the Minister to give written notice of a decision to accredit or a decision to refuse to accredit a voluntary arrangement to the administrator of the arrangement. Paragraph 2.03(2)(b) provides that accreditation takes effect either on the day the Minister makes the decision or a day specified by the Minister in the written notice. The period of accreditation specified in section 2.07 provides for the arrangement to be accredited for a period of 5 years starting the day the accreditation takes effect. As such, the period of accreditation would commence from the day the Minister makes the decision, or the day the Minister specifies in the written notice under this subsection.

Note 1 to section 2.03 alerts readers that the Minister is the **accrediting authority**. Paragraph 13(2)(c) of the Act states that the Instrument may provide for who may make decisions about applications for accreditation (the **accrediting authority**). Subsection 110(1) of the Act provides that the Minister may delegate his or her functions or powers under the Act to the Secretary of the Department or a Senior Executive Service (SES) employee (or acting SES employee) in the Department.

The extended definition of ‘this Act’ in section 6 of the Act to include legislative instruments made under the Act, means the Minister may delegate his or her functions or powers under this Instrument.

Note 2 to section 2.03 refers readers to Part 7 of the Act. Part 7 relates to reviewable decisions made under the Act. The administrator of a voluntary arrangement may seek review of:

- the accrediting authority’s decision to refuse to accredit a voluntary arrangement;
- the decision to impose conditions on the voluntary arrangement’s accreditation;
- the decision to cancel, or refuse to cancel, the accreditation of the voluntary arrangement.

Further, section 94 of the Act sets out the notification requirement in relation to a reviewable decision. The affected person must be notified in writing about the terms of the decision, the reasons for the decision and information regarding review rights. However, a failure to comply with the notice requirements does not affect the validity of the accrediting authority’s decision.

If a delegate of the Minister has made the decision to refuse accreditation, a person affected by the decision may, under section 95 of the Act, apply for internal review of the decision, and following that may also seek review of the internal review decision to the Administrative Appeals Tribunal (AAT).
If the Minister has personally made a decision to refuse accreditation, a person affected by the decision may, under section 96 of the Act, apply to the AAT for review of the Minister’s decision. A person cannot seek an internal review under section 95 of the Act, if the Minister has made the reviewable decision personally.

Section 2.04 Matters about which Minister must be satisfied

Section 2.04 sets out the matters about which the Minister must be satisfied before accrediting a voluntary arrangement. This includes that:

- the arrangement is a voluntary arrangement [Paragraph 2.04(a)]. The term voluntary arrangement is defined in subsection 12(2) of the Act. The definition incorporates a number of conditions which in practice the accrediting authority will need to be satisfied are met, as threshold requirements, before accreditation can be considered; and

- the administrator of the arrangement is a body corporate [Paragraph 2.04(b)]. This requirement is intended to promote continuity and good governance of arrangements that will be granted accreditation. Documentation to support this claim will need to be attached to applications; and

- the arrangement will take action that relates to one or more matters mentioned in paragraphs 4(2)(a) to (e) of the Act [paragraph 2.04(c)]. Paragraphs 4(2)(a) to (e) of the Act state that it is Parliament’s intention that the object of the Act in subsection 4(1) be achieved by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for products having the impacts described in subsection 4(1). This is consistent with the notion that product stewardship involves participants in the product supply and consumption chain, rather than the general community, bearing responsibility for the costs of resource recovery and waste management. Subsection 4(2) of the Act then goes on, in paragraphs (a) to (e), to refer to more specific actions that are largely confined to impacts associated with the disposal of products. The one exception is the reference in paragraph 4(2)(c) to ‘reducing or eliminating hazardous substances in products’ - this is relevant to impacts that hazardous substances in a product may have during the whole of the product’s life, not just following disposal of the product.

In broad terms, this means that a voluntary arrangement will generally relate to waste avoidance, resource recovery or reducing hazardous content in products; and

- the outcomes of the arrangement are having, or will have, an effect in more than one State or Territory [paragraph 2.04(d)]. An application for accreditation will include outcomes for the arrangement. In addition, the Minister may impose conditions on the accreditation which relate to an outcome of the arrangement (see section 2.08). The administrator must demonstrate that the outcomes of the arrangement will have effect in more than one State or Territory. This requirement is intended to ensure a national focus for arrangements coming forward for accreditation. In determining the effect of the outcomes of the arrangement, it is possible to consider the indirect effect. For example, as acknowledged in the note to paragraph 2.04(d) an arrangement may make improvements to the manufacture of a product in one State, but due to the national market for the product, other States and Territories are affected; and
• the arrangement has been established and, if the arrangement has not started operating, it is ready to start operating [paragraph 2.04(e)]. This requirement has been included to reduce any potential risks to the integrity of the voluntary product stewardship framework and the product stewardship logo that could arise as a result of accrediting voluntary arrangements that may subsequently fail before commencing operations; and

• the arrangement adequately deals with the following matters [paragraph 2.04(f)]:
  o governance and organisational matters, including procedures for decision-making and dispute resolution [subparagraph 2.04(f)(i)];
  o financial arrangements and funding to achieve the outcomes of the arrangement [subparagraph 2.04(f)(ii)]. This includes how the arrangement will be financed to achieve the stated outcomes e.g. whether any levy or fees that are to be paid by members of the arrangement to the administrator, and a statement of financial viability;
  o assessing the adequacy of environmental, health and safety policies and practices in relation to the activities undertaken under the arrangement [subparagraph 2.04(f)(iii)];
  o the use of the product stewardship logo in relation to the arrangement [subparagraph 2.04(f)(iv)]. Information on who will use the logo and in what form the communication will occur will need to be included in the application for the accreditation of a voluntary arrangement. This will help ascertain how the administrator intends to use the Commonwealth’s intellectual property rights associated with the product stewardship logo and whether this is appropriate use. The terms of use of the logo may be set out in an agreement between the Commonwealth and administrator, and may be subject to conditions of accreditation
  o information on how the arrangement will be monitored and evaluated to achieve the outcomes of the arrangement [subparagraph 2.04(f)(v)];
  o managing risk in relation to the operation of the arrangement [subparagraph 2.04(f)(vi)]. The application must include a risk management plan containing information on key and potential risks associated with the arrangement’s implementation and how these will be managed.

Governance and administration requirements are important to the viability of a voluntary arrangement. The matters listed in the Instrument complement governance requirements that apply to corporate bodies under other legislation such as, the Corporations Act 2001 (Cth).

Section 2.05 When Minister may refuse to accredit voluntary arrangement

Subsection 2.05(1) sets out the grounds on which the Minister may refuse to accredit a voluntary arrangement. The list in subsection 2.05(1) is not intended to limit the grounds on which the Minister may refuse accreditation. The grounds include:

• the administrator has not provided further information or documentation requested by the Minister, pursuant to section 103 of the Act, before the day specified in the Minister’s written notice [paragraph 2.05(1)(a)]. Section 103 of the Act enables the Minister to request, by written notice, additional information for the purposes of determining an application. The notice would specify the additional documentation or information required and the timeframe for providing them.
- the administrator has given the Minister false or misleading information or documents [paragraph 2.05(1)(b)].

- the Minister is not satisfied that the outcomes of the arrangements are, or will be, equivalent to or better than the outcomes of comparable arrangements or activities in Australia and internationally [paragraph 2.05(1)(c)]. This places an obligation on the administrator to demonstrate that the arrangement is currently achieving and will maintain outcomes in relation to a class of products, or will achieve outcomes relating to product stewardship within the period of accreditation, that further the objects of the Act to an extent at least equivalent to comparable arrangements operating in Australia or internationally. For brevity, these are referred to below as ‘best outcomes’.

In order to demonstrate ‘best outcomes’ the administrator will be required to show that the product stewardship outcomes of their arrangement (identified as measurable targets and annual reporting milestones) are equivalent to or better than outcomes of similar product stewardship activities for comparable classes of products in Australia and internationally (where applicable). This will require the administrator to undertake, and provide the results of research in Australia and overseas. Supporting documentation including links to any reports or information cited in the research will need to be supplied as part of the application to assist with verification of the claims made.

Where a comparison (internationally and/or within Australia) is not appropriate or meaningful, or no other arrangement exists in which to compare, the administrator is able to make a case as to why the outcomes represent a step change or significant improvement in the Australian context.

The outcomes of the arrangement will serve as performance targets for the arrangement. Arrangements that are working towards best outcomes should identify annual reporting milestones for each of the five years of accreditation, with the best outcome being achieved by the end of the fifth year (if not earlier). In cases where an arrangement is already achieving best outcomes, applicants should show how the arrangement will maintain this level of achievement for a period of five years.

- the Minister is not satisfied that it is reasonably foreseeable that the arrangement will result in an overall benefit to the environment, or human health and safety, over the lifecycle of the product [paragraph 2.05(1)(d)]. The administrator will be required to demonstrate in their application that the voluntary arrangement will result in an overall benefit to the environment or human health and safety over the lifecycle of the product. This requirement aims to ensure that arrangements will not cause greater harm overall across the lifecycle of the product, by considering any foreseeable adverse or unintended impacts arising from the arrangement.

The requirement will not require a full lifecycle analysis to be undertaken but rather a general assessment by the applicant of foreseeable impacts and benefits resulting from the product stewardship activities of the arrangement. This is acknowledged in the Note for paragraph 2.01(1)(d) at the end of subsection 2.05(1).

- the Minister is not satisfied that the administrator is a fit and proper person [paragraph 2.05(1)(e)] (see below as to what matters the Minister must have regard to in determining whether an administrator is a fit and proper person).
Subsection 2.05(2) specifies the matters to which the Minister must have regard in determining whether an administrator of a voluntary arrangement is a fit and proper person. These matters are:

- any conviction of the administrator, or an executive officer of the administrator, during the 10 years immediately before the administrator made the application for accreditation, for an offence against a law of the Commonwealth (including the Act) or law of a State or Territory;

- any civil penalty order against the administrator, or an executive officer of the administrator, during the 10 years immediately before the administrator made the application for accreditation, for a contravention of a civil penalty provision in the Act or a legislative instrument made under the Act;

- whether an executive officer of the administrator is bankrupt, or has applied for bankruptcy;

- whether any statement by the administrator, or an executive officer of the administrator, in an application under the Act was false or misleading in a material particular, and whether the administrator or executive officer knew the statement was false or misleading;

- whether an executive officer of the administrator has been disqualified from managing corporations under Part 2D.6 of the Corporations Act 2001;

- whether the administrator is an externally-administered body corporate within the meaning given by section 9 of the Corporations Act 2001.

An administrator’s character and conduct is considered relevant to the successful administration of a voluntary arrangement. The viability of an arrangement may be put at risk where the responsible administrator does not operate in an appropriate and competent manner.

The matters relevant to a determination of fitness and propriety apply to both the administrator of a voluntary arrangement as a body corporate having legal personality, and to any executive officer of the administrator as a person in a position of authority or influence in the administration of the arrangement, recognising the need for adequate assessment and accountability of all relevant persons.

**Section 2.06 When Minister must refuse to accredit voluntary arrangement**

Section 2.06 specifies when the Minister must refuse to accredit a voluntary arrangement. These are preconditions of accreditation set out in subsection 13(3) of the Act. This includes when the Minister is satisfied that:

- an outcome of the arrangement in relation to the class of products will not further the objects of the Act [paragraph 2.06(a)]. Section 4 of the Act sets out the objects of the Act. The objects of the Act are to reduce the impact that products have on the environment, throughout their lives and to reduce the impact that substances contained in products have on the environment, and on the health and safety of human beings, throughout the lives of those products. Subsection 4(2) of the Act provides that it is Parliament’s intention that the object in subsection 4(1) be achieved by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for the products having the...
impacts described in subsection 4(1). Other objects are specified in subsection 4(3) of the Act.

- the arrangement is unlikely to achieve an outcome of the arrangement in relation to the class of products [paragraph 2.06(b)]. The outcomes of the arrangement serve as performance targets for the arrangement. It is important for the purposes of setting a quality standard that can apply equitably across different arrangements and classes of product that only arrangements likely to achieve best outcomes are accredited.

- the product stewardship criteria are not satisfied in relation to the class of products [paragraph 2.06(c)]. The class of products proposed to be covered by the voluntary arrangement must demonstrate that the product(s) in the class are in a national market. The national market criterion directs the Minister’s attention to whether relevant products are sold throughout Australia. This criterion was included in the Act because, where products are in a national market, a national approach avoids inefficiencies and inconsistencies associated with different approaches being adopted by State and Territory governments. At least one other of the following criteria must also be satisfied:
  o the product contains hazardous substances;
  o there is the potential to significantly increase the conservation of materials used in the products, or the recovery of resources (including materials and energy) from waste from the products.
  o there is the potential to significantly reduce the impact that the products have on the environment, or that substances in the products have on the environment, or on the health and safety of human beings.

Information to support the above claim will need to be included in the application.

- the persons licensed or authorised by the arrangement to exercise the Commonwealth’s intellectual property rights in a product stewardship logo in connection with products in that class, or the circumstances in which those persons are licensed or authorised, are not appropriate [paragraph 2.06(d)]. Protecting the product stewardship logo is important as it communicates to the community the Australian Government’s accreditation of each arrangement’s voluntary product stewardship efforts. It also serves as the primary incentive for interested parties to seek accreditation and therefore, must be credible and adequately protected.

- it is not in the public interest to accredit the arrangement [paragraph 2.06(e)].

The Note to section 2.06 refers readers to subsection 13(4) of the Act for information about determining whether the Minister, as the accrediting authority, is satisfied about matters referred to in paragraphs 2.06 (d) and (e).

**Division 2.4 Accredited voluntary arrangements**

**Section 2.07 Period of accreditation**

Subsection 2.07(1) provides that if a voluntary arrangement is accredited, the accreditation ceases at the end of 5 years from the day the accreditation takes effect, unless the accreditation is cancelled earlier. Under subsection 2.10(1) the Minister may cancel accreditation of a
voluntary arrangement if the administrator of the arrangement applies to the Minister to do so or on the Minister’s own initiative.

Subsection 2.07(2) allows the administrator of a voluntary accredited arrangement to reapply for accreditation again at the end of the 5 year accreditation period. The administrator will need to comply with the requirements of section 2.02 when reapplying for accreditation, including paying any prescribed application fee.

**Section 2.08 Conditions imposed on accreditation**

Subsection 2.08(1) allows the Minister to impose conditions, in writing, on the accreditation of a voluntary arrangement.

Subsection 2.08(2) sets out the matters about which the Minister may impose conditions. The list in subsection 2.08(2) is not intended to be an exhaustive list. The Minister may impose conditions other than those listed in subsection 2.08(2). Subsection 2.08(2) includes conditions that relate to:

- the operation of the arrangement [paragraph 2.08(2)(a)].
- the use of the product stewardship logo in relation to the arrangement [paragraph 2.08(2)(b)]. Further information regarding conditions of use for the product stewardship logo will be provided in guidance material prepared by the Department.
- the obligations of the administrator of the arrangement [paragraph 2.08(2)(c)]. The administrator will have a variety of responsibilities. The responsibilities of administrators are set out in section 2.09.
- an outcome of the arrangement [paragraph 2.08(2)(d)]. However, this is subject to subsection 2.08(3).

Subsection 2.08(3) provides that the Minister must not impose a condition requiring a particular outcome to be achieved by the arrangement unless the administrator agrees to the outcome. The administrator will agree (before a condition is imposed) which may be before accreditation or during the accreditation period. This would also apply to varied conditions in relation to an outcome of the arrangement.

Subsection 2.08(4) allows the Minister to vary conditions imposed on the arrangement by written notice to the administrator. Conditions could be varied for example, following the Minister’s receipt of a notice of a material change in circumstance under section 2.13 of the Instrument.

The Note to section 2.08 refers readers to Part 7 of the Act for review of the decision to impose conditions, and information about notification requirements. Notification requirements are enumerated in section 94 of the Act.

If the Minister has not personally made the decision to impose conditions, the administrator may under section 95 of the Act apply for internal review of the decision, and following that, under section 96 of the Act, may also seek review of the internal review decision to the AAT.

If the Minister has personally made a decision to impose conditions, the administrator may under section 96 of the Act apply to the AAT for review of the Minister’s decision.
Section 2.09 Responsibilities of administrator in relation to accreditation

Section 2.09 sets out the responsibilities of the administrator. The administrator must:

- take all reasonable steps to ensure that the outcomes of the arrangement are achieved [paragraph 2.09(a)]; and

- ensure that the use of the product stewardship logo in relation to the arrangement complies with any conditions and any other requirements agreed to between the Commonwealth and the administrator in relation to the use of the logo for example, a licensing agreement [paragraph 2.09(b)]. The terms of use of the logo may be set out in an agreement between the Commonwealth and administrator, and may be subject to conditions of accreditation. Protecting the product stewardship logo is important as it communicates to the community the Australian Government’s accreditation of each arrangement’s voluntary product stewardship efforts; and

- comply with the reporting and information requirements set out in Division 2.6 [paragraph 2.09(c)]; and

- ensure that any conditions are complied with [paragraph 2.09(d)].

The list in section 2.09 is not intended to limit the scope of the administrator’s responsibilities.

Division 2.5 Cancelling accreditation of voluntary arrangement

Section 2.10 Cancelling accreditation

Subsection 2.10(1) allows the Minister to cancel the accreditation of a voluntary arrangement if the administrator applies to the Minister to do so [paragraph 2.10(1)(a)]; or on the Minister’s own initiative [paragraph 2.10(1)(b)].

Subsection 2.10(2) sets out the grounds on which the Minister may cancel accreditation on the Minister’s own initiative. The Minister may cancel accreditation if:

- a condition of the accreditation is not complied with [paragraph 2.10(2)(a)].

- the administrator has not complied with their responsibilities specified in section 2.09 [paragraph 2.10(2)(b)].

- the arrangement has not achieved, or is unlikely to achieve, an outcome imposed on accreditation in a condition [paragraph 2.10(2)(c)].

- one of the matters enumerated in section 2.04 are not met [paragraph 2.10(2)(d)]. Section 2.04 specifies the matters about which the Minister must be satisfied before accrediting a voluntary arrangement.

- the administrator is not a fit and proper person having regard to the matters enumerated in subsection 2.05(2) [paragraph 2.10(2)(e)]. Subsection 2.05(2) specifies the matters to which the Minister must have regard in determining whether an administrator of a voluntary arrangement is a fit and proper person. As such, it is a continuing requirement for the administrator to remain a fit and proper person during the period of accreditation.
Note 1 to section 2.10 refers readers to sections 102 and 103 of the Act for additional matters relating to applications. Section 102 specifies the requirements relating to applications made under the Act and section 103 enables the Minister to request (by written notice) additional information for the purposes of determining an application.

Note 2 to section 2.10 refers readers to Part 7 of the Act for review of a decision to cancel, to refuse to cancel the accreditation of a voluntary arrangement, and information about notification requirements. Notification requirements are addressed in section 94 of the Act.

If a delegate of the Minister has made the decision to refuse accreditation, a person affected by the decision may, under section 95 of the Act, apply for internal review of the decision, and following that may also seek review of the internal review decision to the Administrative Appeals Tribunal (AAT).

If the Minister has personally made a decision to refuse accreditation, a person affected by the decision may, under section 96 of the Act, apply to the AAT for review of the Minister’s decision. A person cannot seek an internal review under section 95 of the Act, if the Minister has made the reviewable decision personally.

**Division 2.6 Reporting and giving information**

**Section 2.11 Annual report**

Subsection 2.11(1) requires the administrator of an accredited voluntary arrangement, in accordance with any conditions, to provide the Minister with an annual report about the performance of the arrangement in relation to the outcomes of the arrangement.

The Note to subsection 2.11(1) informs readers that a condition the Minister may impose on the accreditation of the arrangement relates to the annual report. This includes obligations about when the report must be given to the Minister and the information that must be contained in the report.

Subsection 2.11(2) sets out the information that must be contained in the annual report. The annual report must:

- identify the class of the products to which the arrangement is accredited [paragraph 2.11(2)(a)]; and

- describe the performance of the arrangement in relation to each outcome of the arrangement [paragraph 2.11(2)(b)]; and

- describe any activities undertaken in relation to matters specified in paragraph 2.04 (f) [paragraph 2.11(2)(c)]; and

- if an outcome was not achieved – explain why the outcome was not achieved and proposed measures to rectify the failure to achieve the outcome [paragraph 2.11(2)(d)]; and

- include financial statements setting out the arrangement’s revenue and expenditure [paragraph 2.11(2)(e)]; and

- include evidence to support any claims made in the report [paragraph 2.11(2)(f)].
Section 2.12 Audit report

Subsection 2.12(1) requires an administrator of an accredited voluntary arrangement to provide a report to the Minister about an audit of the operation of the voluntary arrangement (the audit report). The administrator must provide the audit report to the Minister at the same time when the administrator provides an annual report under section 2.11.

Subsection 2.12(2) provides the audit report must be prepared by:

- a person that is a registered company auditor under section 1280 of the Corporations Act 2001 [paragraph 2.12(2)(a)]; or

- a company that is an authorised audit company under section 1299C of the Corporations Act 2001 [paragraph 2.12(2)(b)].

Subsection 2.12(3) provides that the audit report must include:

- an audit of the financial statements setting out the revenue and expenditure of the arrangement [paragraph 2.12(3)(a)]; and

- an audit of the performance of the arrangement in relation to each outcome of the arrangement [paragraph 2.12(3)(b)]; and

- a statement from the person or company preparing the report that the audit was conducted in accordance with any standard issued by the Auditing and Assurance Standards Board that applies to the audit, as in force from time to time [paragraph 2.12(3)(c)]. The Note to subsection 2.12(3) informs readers that for the purposes of paragraph 2.12(3)(c) the Auditing and Assurance Standards Board publishes auditing and assurance standards and they are available at www.commlaw.gov.au. The Board also publishes related guidance for undertaking and reporting on audits, assurance engagements and review engagements; and

- a statement from the person or company preparing the report as to whether the annual report for the financial year is accurate and complies with section 2.11 and any conditions [paragraph 2.12(3)(d)].

The requirements related to audit reports seek to ensure that an audit is conducted, and an audit report is prepared, in a proper and independent way by an appropriately qualified auditor.

Section 2.13 Material change of circumstances

Subsection 2.13(1) requires an administrator of an accredited arrangement to notify the Minister, in writing, of any material change of circumstance for the arrangement within 28 days after the material change.

Subsection 2.13(2) provides that a change of circumstance will be ‘material’ if:

- it is a change to who is the administrator of the arrangement [paragraph 2.13(2)(a)];

- it may affect whether the administrator is a fit and proper person having regard to the matters enumerated in subsection 2.05(2) [paragraph 2.13(2)(b)];
• it hinders the ability of the arrangement to achieve the outcomes of the arrangement [paragraph 2.13(2)(c)];

• it hinders the ability of the administrator to comply with the requirements set out in the Instrument or in a condition [paragraph 2.13(2)(d)];

• it hinders the ability of the arrangement to adequately deal with matters specified in paragraph 2.04(f) [paragraph 2.13(2)(e)]. Paragraph 2.04(f) provides for matters in which the arrangement adequately deals with, including governance, financial arrangement, monitoring and evaluation and risk management.

Following the Minister’s receipt of notice of a material change it is intended that, the Minister may vary the conditions imposed on the accreditation to deal with the change in circumstance, or that the Minister may cancel the accreditation under section 2.10.

Subsection 2.13(3) makes it clear that an administrator of an arrangement continues to responsible under section 2.09 until the Minister is notified that there has been a change to who is the administrator of the arrangement. Section 2.09 sets out the responsibilities of administrators in relation to accreditation.

Section 2.14 Requested information

Subsection 2.14(1) provides the Minister with a general power to request any information relating to the arrangement. For this obligation to apply the Minister must make a written request for information to the administrator.

The information requested can relate to the matters listed in subsection 2.14(2) or other matters relating to the arrangement. Subsection 2.14(2) is not intended to limit the information requested under subsection 2.14(1).

Subsection 2.14(3) requires the administrator to give the information to the Minister:

• within the period, or by the day, specified in the written request [paragraph 2.14(2)(a)]; and

• in the specified format where this has been specified in the written request [paragraph 2.12(2)(b)].

If this request is not complied with the Minister may cancel the arrangement’s accreditation [paragraph 2.10(2)(b)].

Section 2.14 enables the Minister to request information once the arrangement is accredited. Prior to accreditation the Minister may request information relating to the accreditation under section 103 of the Act.

Section 2.15 Published summary of arrangement

Subsection 2.15(1) requires the administrator of an accredited voluntary arrangement to publish on the internet a document describing the arrangement. This is aimed at providing the community with information about accredited arrangements. It is not intended that the information would require any commercial-in-confidence material to be published.
Subsection 2.15(1) sets out the matters that need to be described including:

- the name of the administrator [paragraph 2.15(1)(a)]; and
- the class of products in relation to which the arrangement is accredited [paragraph 2.15(1)(b)]; and
- the outcomes of the arrangement [paragraph 2.15(1)(c)]; and
- how the arrangement operates [paragraph 2.15(1)(d)]; and
- the use of the product stewardship logo in relation to the arrangement [paragraph 2.15(1)(e)]. This is aimed at ensuring correct use of the product stewardship logo, including permitted use by members of the arrangements.

Subsection 2.15(2) requires the administrator to maintain an up to date version of the document describing the arrangement on the internet throughout the period of accreditation.

**Part 3 - Product stewardship logo**

**Overview of Part 3**

Part 3 designates the product artistic works as a product stewardship logo.

**Section 3.01 Purpose of Part**

Section 3.01 provides that for the purposes of paragraph 14(4)(a) of the Act, Part 3 of the Instrument designates artistic works as a product stewardship logo. Paragraph 14(4)(a) of the Act relevantly provides that the Minister may, by legislative instrument, designate an artistic work for the purposes of paragraph (2)(c). Under subsection 14(2), an artistic work is a product stewardship logo if copyright subsists in the artistic work, the Commonwealth is the owner of the copyright, and the artistic work is designated by the Minister under subsection 14(4).

**Section 3.02 Artistic works**

Subsections 3.02(1) and (2) designate two artistic works as product stewardship logos. Various provisions in the Instrument deal with use of these logos, including subparagraph 2.04(f)(iv), paragraphs 2.06(d), 2.08(2)(b) and 2.15(2)(e). Further information regarding the logos will be contained in departmental guidance materials.