Product Stewardship (Voluntary Arrangements) Instrument 2012

Product Stewardship Act 2011

I, Don Farrell, Parliamentary Secretary for Sustainability and Urban Water, make the following instrument under sections 13 and 14 of the Product Stewardship Act 2011.

Dated 14 November 2012

Don Farrell
Parliamentary Secretary for Sustainability and Urban Water
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Part 1 Preliminary

1.01 Name of instrument
This instrument is the Product Stewardship (Voluntary Arrangements) Instrument 2012.

1.02 Commencement
This instrument commences on the day after it is registered.

1.03 Definitions
In this instrument:

*Act* means the *Product Stewardship Act 2011*.

*condition* means a condition imposed on the accreditation of a voluntary arrangement in relation to a class of products under section 2.08.

*open application round* means the period between the opening day of the application round and the closing day of the application round, as specified by the Minister on the Department’s website.

*outcome*, of a voluntary arrangement, means a measurable performance target in relation to a class of products, to be achieved by the arrangement, that furthers an object of the Act.

*Note 1* See section 4 of the Act for the objects of the Act.

*Note 2* The following terms have the same meaning as in the Act:
- administrator
- product stewardship criteria
- product stewardship logo
- voluntary arrangement.
Part 2 Accreditation of voluntary arrangements

Division 2.1 Purpose of Part

2.01 Purpose of Part

For section 13 of the Act, this Part determines matters relating to the accreditation of voluntary arrangements in relation to classes of products.

Division 2.2 Application for accreditation of voluntary arrangement

2.02 Application for accreditation of voluntary arrangement

(1) The administrator of a voluntary arrangement may apply to the Minister for accreditation of the arrangement in relation to a class of products.

(2) The administrator may make the application during an open application round.

(3) The Minister must not accept an application that is received at a time that is not during an open application round.

(4) The administrator may withdraw the application before the Minister makes a decision about the application under section 2.03.

Note 1 The administrator of a voluntary arrangement must be a body corporate: see paragraph 12 (2) (d) of the Act.

Note 2 See sections 102 and 103 of the Act for additional matters relating to applications.

Division 2.3 Accreditation of voluntary arrangement

2.03 Decision to accredit or refuse to accredit voluntary arrangement

(1) The Minister may accredit, or refuse to accredit, a voluntary arrangement in relation to a class of products on application by the administrator of the arrangement.

(2) If the Minister accredits a voluntary arrangement:

(a) the Minister must give written notice of the decision to the administrator of the arrangement; and

(b) the accreditation takes effect on:

(i) the day the Minister makes the decision; or

(ii) if the Minister specifies another day in the notice—that day.

Note 1 The Minister is the accrediting authority: see paragraph 13 (2) (c) of the Act.
Note 2 See Part 7 of the Act for review of a decision to refuse to accredit a voluntary arrangement, and for information about notification requirements.

2.04 Matters about which Minister must be satisfied

Before accrediting a voluntary arrangement in relation to a class of products, the Minister must be satisfied that:
(a) the arrangement is a voluntary arrangement; and
(b) the administrator of the arrangement is a body corporate; and
(c) the arrangement will take action that relates to one or more of the matters mentioned in paragraphs 4 (2) (a) to (e) of the Act; and
(d) the outcomes of the arrangement are having, or will have, an effect in more than one State or Territory; and
(e) the arrangement has been established and, if the arrangement has not started operating, it is ready to start operating; and
(f) the arrangement adequately deals with the following:
   (i) governance and organisational matters, including procedures for decision-making and dispute resolution;
   (ii) financial arrangements and funding to achieve the outcomes of the arrangement;
   (iii) assessing the adequacy of the environmental, health and safety policies and practices in relation to the activities undertaken under the arrangement;
   (iv) the use of the product stewardship logo in relation to the arrangement;
   (v) monitoring and evaluating the performance of the arrangement in achieving the outcomes of the arrangement;
   (vi) managing risk in relation to the operation of the arrangement.

Note for paragraph (d) The effect in a State or Territory may be indirect. For example, an arrangement may make improvements to the design or manufacture of a product in one State but, due to the national market for the product, other States and Territories are affected.

2.05 When Minister may refuse to accredit voluntary arrangement

(1) The grounds on which the Minister may refuse to accredit the arrangement include the following:
   (a) if the Minister requested, by written notice, that the administrator of the arrangement give further documentation or information under section 103 of the Act—the documentation or information was not given to the Minister before the day specified in the notice;
   (b) the administrator of the arrangement has given the Minister false or misleading information or documents;
   (c) the Minister is satisfied that the outcomes of the arrangement are not, or will not be, equivalent to or better than the outcomes of comparable arrangements or activities in Australia and internationally;
(d) the Minister is satisfied that it is reasonably foreseeable that the arrangement will not result in an overall benefit to the environment, or human health and safety, over the lifecycle of the product;
(e) the Minister is satisfied that the administrator of the arrangement is not a fit and proper person.

Note for paragraph (d) A full lifecycle analysis of the product is not required, only a general assessment of the foreseeable affects resulting from the activities undertaken by the arrangement in relation to the product.

2.06 When Minister must refuse to accredit voluntary arrangement

The Minister must refuse to accredit a voluntary arrangement in relation to a class of products if the Minister is satisfied that:
(a) an outcome of the arrangement in relation to the class of products will not further the objects of the Act; or
(b) the arrangement is unlikely to achieve an outcome of the arrangement in relation to the class of products; or
(c) the product stewardship criteria are not satisfied in relation to the class of products; or
(d) 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; or
Accreditation of voluntary arrangements

Part 2

Accredited voluntary arrangements

Division 2.4

Section 2.09

(e) it is not in the public interest to accredit the arrangement.

Note: See subsection 13 (4) of the Act for information about determining whether the Minister, as the accrediting authority, is satisfied in relation to the matters mentioned in paragraphs (d) and (e).

Division 2.4 Accredited voluntary arrangements

2.07 Period of accreditation

(1) If a voluntary arrangement is accredited in relation to a class of products, the accreditation ceases at the end of 5 years starting on the day the accreditation takes effect, unless the accreditation is cancelled earlier.

(2) The administrator of a voluntary arrangement that has been accredited in relation to a class of products may reapply for accreditation of the arrangement in relation to the class of products under Division 2.2.

2.08 Conditions imposed on accreditation

(1) The Minister may, in writing, impose conditions on the accreditation of a voluntary arrangement in relation to a class of products.

(2) The conditions may relate to any of the following:
   (a) the operation of the arrangement;
   (b) the use of the product stewardship logo in relation to the arrangement;
   (c) the obligations of the administrator of the arrangement;
   (d) an outcome of the arrangement.

(3) The Minister must not impose a condition requiring a particular outcome to be achieved by an arrangement unless the administrator of the arrangement has agreed to the outcome.

(4) The Minister may vary the conditions by written notice given to the administrator.

Note: See Part 7 of the Act for review of the decision to impose conditions, and information about notification requirements.

2.09 Responsibilities of administrator in relation to accreditation

The administrator of an accredited voluntary arrangement in relation to a class of products must:

(a) take all reasonable steps to ensure that the outcomes of the arrangement are achieved; and

(b) 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; and
(c) comply with the reporting and giving information requirements set out in Division 2.6; and
(d) ensure that any other conditions are complied with.

## Division 2.5 Cancelling accreditation of voluntary arrangement

### 2.10 Cancelling accreditation

1. The Minister may cancel the accreditation of a voluntary arrangement in relation to a class of products:
   - if the administrator of the arrangement applies for the Minister to do so; or
   - on the Minister’s own initiative.

2. The Minister may cancel the accreditation on the Minister’s own initiative if:
   - a condition of the accreditation is not complied with; or
   - the Minister is satisfied that the administrator of the arrangement has not complied with the administrator’s responsibilities mentioned in section 2.09; or
   - the Minister is satisfied that the arrangement has not achieved, or is unlikely to achieve, an outcome imposed on the accreditation in a condition; or
   - the Minister is no longer satisfied of one of the matters mentioned in section 2.04; or
   - the Minister is not satisfied that the administrator of the arrangement is a fit and proper person having regard to the matters in subsection 2.05 (2).

*Note 1* See sections 102 and 103 of the Act for additional matters relating to applications.

*Note 2* See Part 7 of the Act for review of the decision to cancel, or to refuse to cancel, the accreditation of a voluntary arrangement, and information about notification requirements.

## Division 2.6 Reporting and giving information

### 2.11 Annual report

1. The administrator of an accredited voluntary arrangement in relation to a class of products must, in accordance with any conditions, give the Minister an annual report about the performance of the arrangement in relation to the outcomes of the arrangement.

*Note* A condition on the accreditation of the arrangement may impose obligations on the administrator in relation to the annual report, including obligations about when the report must be given to the Minister and what information must be given in the report.
The annual report must:
(a) identify the class of products in relation to which the arrangement is accredited; and
(b) describe the performance of the arrangement in relation to each outcome of the arrangement; and
(c) describe any activities undertaken in relation to the matters mentioned in paragraph 2.04 (f); and
(d) if an outcome was not achieved—explain why the outcome was not achieved and the measures proposed to be implemented to rectify the failure to achieve the outcome; and
(e) include financial statements setting out the revenue and expenditure of the arrangement; and
(f) include evidence to support any claims made in the report.

2.12 Audit report
(1) The administrator of an accredited voluntary arrangement in relation to a class of products must, when the administrator gives the Minister an annual report under section 2.11, give the Minister a report (the audit report) about an audit of the operation of the arrangement.
(2) The audit report must be prepared by:
(a) a person that is a registered company auditor under section 1280 of the Corporations Act 2001; or
(b) a company that is an authorised audit company under section 1299C of that Act.
(3) The audit report must include:
(a) an audit of the financial statements setting out the revenue and expenditure of the arrangement; and
(b) an audit of the performance of the arrangement in relation to each outcome of the arrangement; and
(c) 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; and
(d) a statement from the person or company preparing the report as to whether the annual report is accurate and complies with section 2.11 and any conditions.

Note for paragraph (c) The standards issued by the Auditing and Assurance Standards Board are available at www.comlaw.gov.au.

2.13 Material change of circumstances
(1) The administrator of an accredited voluntary arrangement in relation to a class of products must notify the Minister, in writing, of any material change of circumstance for the arrangement within 28 days after the change.
(2) For subsection (1), a change of circumstance is *material* if:
   (a) it is a change to who is the administrator of the arrangement; or
   (b) it may affect whether the administrator is a fit and proper person having regard to the matters in subsection 2.05 (2); or
   (c) it hinders the ability of the arrangement to achieve the outcomes of the arrangement; or
   (d) it hinders the ability of the administrator to comply with any requirements set out in this instrument or in a condition; or
   (e) it hinders the ability of the arrangement to adequately deal with the matters mentioned in paragraph 2.04 (f).

(3) An administrator of an arrangement continues to be responsible under section 2.09 until the Minister is notified that there has been a change to who is the administrator of the arrangement.

2.14 Requested information

(1) The administrator of an accredited voluntary arrangement in relation to a class of products must give the Minister any information relating to the arrangement if the Minister requests, in writing, that it be given.

(2) Without limiting subsection (1), the information may relate to:
   (a) the performance of the arrangement; or
   (b) the operation of the arrangement; or
   (c) the use of the product stewardship logo in relation to the arrangement.

(3) The administrator must give the information to the Minister:
   (a) within the period, or by the day, specified in the written request; and
   (b) if the written request specifies a format in which the information must be given—in the format specified in the request.

2.15 Published summary of arrangement

(1) The administrator of an accredited voluntary arrangement in relation to a class of products must publish on the internet a document describing the arrangement, including:
   (a) the name of the administrator; and
   (b) the class of products in relation to which the arrangement is accredited; and
   (c) the outcomes of the arrangement; and
   (d) how the arrangement operates; and
   (e) the use of the product stewardship logo in relation to the arrangement.

  *Note* See paragraph 12 (2) (b) of the Act in relation to the requirement to have a written document about the use of the product stewardship logo.

(2) The administrator must maintain an up-to-date version of the document on the internet throughout the period of accreditation.
Part 3  Product stewardship logo

3.01  Purpose of Part
For paragraph 14 (4) (a) of the Act, this Part designates artistic works as a product stewardship logo.

3.02  Artistic works
(1) The following artistic work is a product stewardship logo.

(2) The following artistic work is a product stewardship logo.

Note
1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the Legislative Instruments Act 2003. See www.comlaw.gov.au.