

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 200**

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

#### *Product Stewardship Act 2011*

#### *Product Stewardship (Televisions and Computers) Regulations 2011*

The *Product Stewardship Act 2011* (the Act) provides a framework for mandatory, co-regulatory and voluntary product stewardship. The objects of the Act are drawn from the aims of the *National Waste Policy: Less Waste, More Resources* and seek to address the environmental, health and safety impacts of a product or material across its full lifecycle, from manufacture to disposal.

Section 111 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Details of the Regulations are outlined in the Attachment.

### **Background**

On 5 November 2009 all Australian governments, through the Environment Protection and Heritage Council (EPHC), agreed to a new national policy on waste and resource recovery. The *National Waste Policy: Less Waste, More Resources* sets the strategic agenda for reducing waste and managing waste as a resource to deliver economic, environmental and social benefits to 2020. The policy was endorsed by the Council of Australian Governments in August 2010. Under Strategy 1 of the National Waste Policy it was agreed that:

The Australian Government, with the support of state and territory governments, will establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at end of life.

The EPHC agreed that televisions and computers would be the first products to be regulated under the legislation using a co-regulatory approach. Co-regulatory approaches to product stewardship involve a combination of government regulation and industry action, whereby government sets the outcomes and requirements to be met, while industry has flexibility in determining how those outcomes and requirements are achieved. Following the EPHC's decision, the then Minister for the Environment, Heritage and the Arts announced that the National Television and Computer Recycling Scheme (the Scheme) is expected to achieve 80 per cent recycling by 2020-21.

The EPHC's endorsement for a national collection and recycling scheme for televisions and computers followed extensive consultation and consideration of a Decision RIS, which

demonstrated that there was a net community benefit to be achieved from establishing such a scheme.

The Decision RIS showed that television and computer waste amounted to approximately 106,000 tonnes (16.8 million units) in 2007-08. Approximately 10 per cent of this was recycled, with the rest being sent to landfill. These waste volumes are increasing and are expected to grow to 181,000 tonnes (44 million units) by 2027-28.

The Decision RIS highlighted a number of problems associated with the current low recycling rate for television and computer products:

- Failure to conserve non-renewable resources: these products contain embedded non-renewable resources such as glass, plastics and lead that can be recycled, but that are lost when disposed to landfill.
- Failure to take advantage of community willingness to recycle: An independent survey of Australians indicated that respondents would be willing to pay for a guaranteed increase in the recycling rate of non-renewable resources in televisions and computers. This suggests that community expectations are not being met in light of current disposal methods.
- Free-rider problem: Previous trials of television and computer recycling schemes in Australia have generally been successful because of the program and financial support provided by government, or because they are brand specific. While peak bodies and other key players have expressed interest in establishing recycling schemes, they are unprepared to implement a scheme without full industry participation, that is, to avoid a free-rider problem.
- Costs and risks associated with landfilling: Landfilling of television and computer products may also present risks and costs because of the hazardous substances they contain. Materials such as lead, bromine, mercury and zinc can be dangerous to humans and the environment. The projected growth in landfill volumes of televisions and computer products will also contribute to the direct costs of operating landfills and the opportunity costs of land.
- International obligations: As a signatory to the Basel Convention on the Control of the Transboundary Movement of Hazardous Waste and Their Disposal and the Stockholm Convention on Persistent Organic Pollutants, Australia is required, among other things, to ensure that the generation of hazardous and other wastes within Australia is reduced to a minimum and ensure that wastes are disposed of in a manner that protects human health and the environment against any adverse effects of such waste.

In line with the aims of the National Waste Policy and the objects of the Act, the objectives of the Scheme are to:

- reduce the amount of television and computer waste (particularly hazardous waste materials) for disposal to landfill;
- increase recovery of resources from end-of-life television and computer products in a safe, scientific and environmentally sound manner;

- ensure national coverage; and
- provide for fair and equitable industry participation in the Scheme.

### **Purpose and effect of the Regulations**

The Regulations give effect to the Scheme under the co-regulatory provisions of the Act.

The combined effect of the Regulations and the Act is to require above-threshold importers and domestic manufacturers of covered products to participate in industry-run efforts to achieve the outcomes in the regulations.

These outcomes include providing the community with reasonable access to collection services, and meeting annual recycling targets. By 2021, the Scheme will increase recycling rates to 80 percent of waste televisions, computers and computer products generated in that year (up from 10 per cent in 2007-2008).

The Scheme does not change the existing role of state, territory and local governments and there are no requirements that obligate these governments to take on a direct role in the Scheme.

### **Conditions for the making of the Regulations have been met**

For the purposes of subsection 19(3) of the Act, the Minister is satisfied that:

- making the regulations in relation to the classes of products specified will further the objects of the Act;
- the product stewardship criteria set out in section 5 are satisfied in relation to the classes of products specified; and
- there are special circumstances justifying the making of the regulations without the notification in accordance with subsection 19(3)(c)(i).

### **Statement setting out special circumstances for section 19(3) of the Act**

Before regulations can be made specifying a person (or class of persons) as a liable party in relation to a class of products, subsection 19(3) of the Act provides that the Minister must be satisfied the class of products has been notified in accordance with subsection 19(3A) no later than 12 months beforehand, or there are special circumstances that justify the making of the proposed Regulations without the notification.

The special circumstances for the making of the proposed Regulations without notification are:

- a Decision Regulatory Impact Statement (RIS) was completed in 2009, consistent with Australian Government policy, which demonstrated that there was a community benefit to be achieved from establishing a product stewardship scheme for televisions and computers;

- the Decision RIS formed the basis of the decision by the Environment Protection and Heritage Council for televisions and computers to be the first products regulated under the Act as part of the agreement to the *National Waste Policy: Less Waste, More Resources* in November 2009;
- further comprehensive and national consultation was conducted in the development of the Regulations, consistent with section 17 of the *Legislative Instruments Act 2003*, including:
  - the *National Television and Computer Product Stewardship Scheme Consultation Paper on the Proposed Regulations*;
  - the release of an exposure draft of the proposed Regulations and an accompanying commentary document; and
  - stakeholder engagement through the *National Television and Computer Product Stewardship Scheme Implementation Working Group*, the *National Television and Computer Product Stewardship Scheme Stakeholder Reference Group*, and public forums; and
- the recent commencement of the Act on 8 August 2011 means the requirement for a class of products to be notified 12 months beforehand in accordance with section 19(3)(c)(i) of the Act is impracticable to meet community and industry expectations for the commencement of the Scheme.

The special circumstances are considered to achieve the intent of section 19(3)(c)(i) to provide transparency for classes of products that are being considered by the Minister for regulation under the Act.

### **Documents incorporated by reference**

Four documents are incorporated by reference in the Regulations, as set out below:

- the *Statistical Geography Volume 1 – Australian Standard Geographical Classification*, published by the Australian Bureau of Statistics at [www.abs.gov.au](http://www.abs.gov.au); and
- the *2006 Census of Population and Housing*, published by the Australian Bureau of Statistics at [www.abs.gov.au](http://www.abs.gov.au); and
- the *Combined Australian Customs Tariff Nomenclature and Statistical Classification*, published by the Australian Customs and Border Protection Service at [www.customs.gov.au](http://www.customs.gov.au); and
- the *Gazetteer of Australia 2010 release*, published by Geoscience Australia at [www.ga.gov.au](http://www.ga.gov.au).

### **Consultation**

The Regulations have been developed following a comprehensive national consultation process, starting in July 2009 with the Consultation RIS undertaken by the EPHC. This consultation process involved public meetings in four capital cities (attended by 163 people) and the opportunity to make written submissions, of which 130 were received. Feedback on the Consultation RIS was incorporated into the October 2009 Decision RIS, which formed

the basis for the decision by the EPHC to proceed with a national co-regulatory product stewardship scheme for televisions and computers.

A further consultation process was conducted in March and April 2011 on the *National Television and Computer Product Stewardship Scheme Consultation Paper on the Proposed Regulations* (the consultation paper). The consultation paper was released on 8 March 2011 for a four week consultation period and sought feedback on the proposed design of the Regulations. Public forums were held in 11 locations across Australia, including all capital cities and three regional areas, attended by over 300 people, and bilateral discussions were held with stakeholders that registered interest.

The public comment period closed on 8 April 2011 and 62 submissions were received from a broad range of stakeholders, including from local, state and territory Governments, recyclers, the television and computer industry, the collection and logistics industry, industry associations, non-government organisations and a university.

Matters raised by stakeholders on the consultation paper informed the preparation of the Exposure Draft of the Regulations (the exposure draft). The exposure draft and an accompanying commentary document were released on 12 September 2011 for a four week public consultation period and sought feedback to ensure the proposed Regulations are appropriate. Public forums were held in each capital city between 13 and 21 September 2011 and attended by 223 people, and bilateral discussions were held with stakeholders that registered interest.

The public comment period closed on 10 October 2011 and 29 submissions were received from local, state and territory governments, recyclers, the television and computer industry, other industry and business, non-government organisations and a member of the public. The consultation process sought to gather feedback to ensure the Regulations were appropriate and improve awareness among stakeholders of the Scheme, especially for those who will have obligations under the Regulations. Feedback from stakeholders was considered in finalising the Regulations.

In addition to these public consultation processes, an Implementation Working Group (IWG) and Stakeholder Reference Group (SRG) were established for regular contact and consultation on the development of the Regulations. The IWG was a joint government and industry group established to assist in the development of the on-ground operational aspects of the Scheme. The IWG was convened in March 2010 and formally closed following its eleventh and final formal meeting on 13 October 2011. The IWG also held six out of session meetings. The IWG had 14 members since it was established, from the peak television and computer industry bodies, Australian Government, and some state government agencies.

The SRG was established in May 2010, with an independent Chair. The SRG was established to engage with the Government on the development of the Regulations, engage with the IWG on the on-ground operational aspects of the Scheme, and facilitate consultation and information dissemination among their stakeholder groups. The SRG consists of 35 representatives from the recycling industry, environmental and community groups, Australian Government, and state and local governments. The SRG has had 3 formal meetings and 2 teleconferences since its commencement.

A Television and Computer Scheme E-Bulletin was also established to provide updates to interested stakeholders on the development of the Regulations and the Scheme, including details on consultation processes. There are 699 subscribers to the e-bulletin (as at 21 October 2011) and eight e-bulletins have been released since its establishment in May 2010.

### **Commencement**

The Regulations commenced the day after registration on the Federal Register of Legislative Instruments.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## ATTACHMENT

### *Product Stewardship (Televisions and Computers) Regulations 2011*

#### **Part 1 Preliminary**

##### Regulation 1.01 – Name of Regulations

This regulation provides that the title of these Regulations is the *Product Stewardship (Televisions and Computers) Regulations 2011*.

##### Regulation 1.02 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

##### Regulation 1.03 – Definitions

This regulation defines a number of terms used in the Regulations.

##### Regulation 1.04 – Application

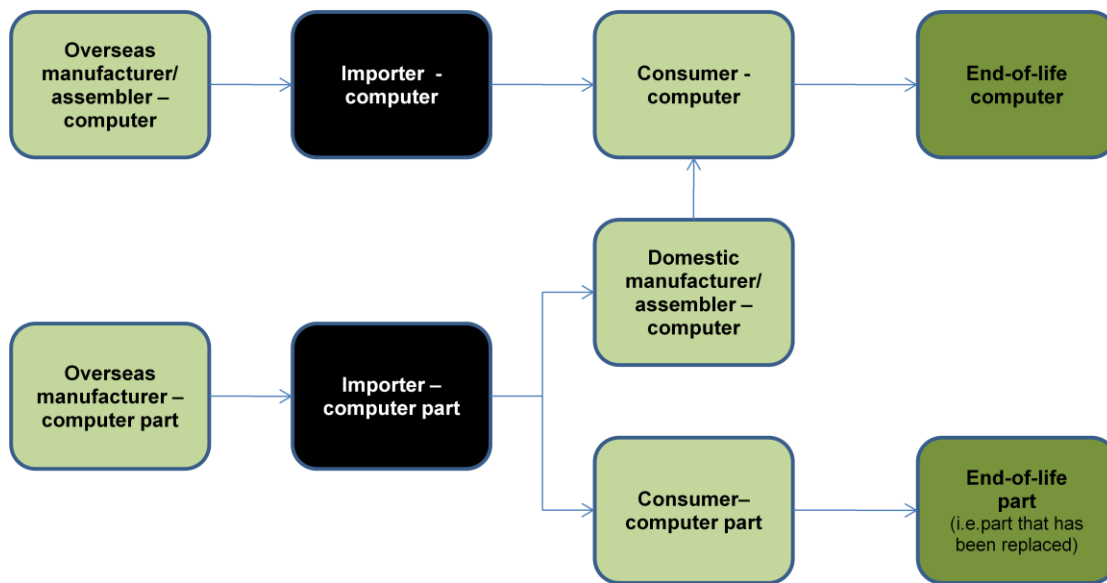
This regulation provides that the Regulations apply to two classes of products:

- televisions;
- computers, printers and computer products.

Provision is made for two classes of products (rather than one combined class of products applying to televisions, computers, printers and computer products) to allow flexibility to set different outcomes, such as separate recycling targets, for those classes of products.

Subregulation 1.04(2) has the effect that the Regulations do not apply in relation the manufacture (including assembly) of computers in Australia that are part of the computer class, because to do so would involve double counting. Importers of computer parts, and domestic manufacturers of computer parts (if there are any in the future), will be liable parties if they exceed relevant thresholds, and will therefore be required to contribute to industry collection and recycling efforts. This cost is likely to be passed on to domestic manufacturers of computers. If domestic manufacturers were separately required to contribute they would in effect be contributing twice. The following diagram illustrates the material flow of computers and computer parts.

## Material flow: computers and computer parts



Subregulation 1.04(3) provides that each of the classes of products contains the products set out in Schedule 1. These products, and the associated product descriptions and product codes, are drawn from the *Combined Australian Customs Tariff Nomenclature and Statistical Classification* (commonly referred to as the Harmonised Tariff) and are intended to have the same meaning as in the Harmonised Tariff. The Harmonised Tariff is published by the Australian Customs and Border Protection Service, available at [www.customs.gov.au](http://www.customs.gov.au).

### Regulation 1.05 – Constitutional connection

Subsection 34(1) of the *Product Stewardship Act 2011* (the Act) requires that either or both of the following must apply to regulations made under Part 3:

- each liable party in relation to the class of products is a constitutional corporation (paragraph 34(1)(a));
- the regulations are appropriate and adapted to give effect to Australia’s obligations under an agreement with one or more other countries (paragraph 34(1)(b)).

This regulation specifies that the Regulations are made in accordance with paragraph 34(1)(a) of the Act.

## **Part 2 Liable parties and administrators of co-regulatory arrangements**

### **Division 2.1 Liable Parties**

#### Regulation 2.01 – Liable parties – classes of persons

This regulation provides that the Regulations apply to two classes of liable parties, importers and domestic manufacturers of:



- televisions; and
- computers, printers and computer products (see subregulation 1.04(2)).

Section 19 of the Act provides that regulations may identify liable parties in relation to a class of products. Under section 18 of the Act, these liable parties must be a member of an approved co-regulatory arrangement in relation to that class of products. Substantial pecuniary penalties apply if this obligation is not met (see civil penalty provisions in sections 18(1) and 43 of the Act).

Subregulation 2.01(2) provides a person is in the class of persons who are liable parties in relation to the television class for a financial year if, in that financial year, the person is a constitutional corporation and satisfies the criterion in regulation 2.02 as it relates to the television class.

Subregulation 2.01(3) provides a person is in the class of persons who are liable parties in relation to the computer class for a financial year if, in that financial year, the person is a constitutional corporation and satisfies the criterion in regulation 2.02 as it relates to the computer class.

#### Regulation 2.02 – Criterion – import or manufacture products in previous financial year

Subregulation 2.02(1) provides that in order to satisfy this criterion for a financial year, the person must have imported into, or manufactured in, Australia in the previous financial year more than the number of products specified in subregulation (2) for the class of products.

Subregulation 2.02(2) creates a threshold that seeks to exclude small importers or manufacturers from being included as liable parties to limit the impact of the Regulations on small business. Subject to the grouping provision under subregulation 2.02(5), an importer or domestic manufacturer who imports or manufactures less than 5,000 televisions, computers or printers, or 15,000 computer products, will not be a liable party.

The definition of ‘import’ set out in subregulation 2.02(3) aligns with section 71A of the *Customs Act 1901*. An import declaration made under section 71A of the Act is a communication with the Australian Customs and Border Protection Service (Customs) about goods to which section 68 of the *Customs Act 1901* applies, being goods imported into Australia by sea, air or post with a value that exceeds the import entry threshold of \$A1000 that are intended for home consumption.

Home consumption in the *Customs Act 1901* relates to the entry of goods into Australia. Goods discharged at a port or airport in Australia should be entered for home consumption or for warehousing. Goods that are entered for warehousing are under Customs control until the goods are entered for home consumption or exported.

Entry of goods for home consumption is not limited to products intended for household use. All products entered for home consumption regardless of the intended use of that product, for example for business, government, or household uses, will count towards the number of products imported by a person in determining whether they are a liable party.

Information from import declarations, supplied by Customs to the Department of Sustainability, Environment, Water, Population and Communities, will be used to help identify whether a company is a liable party and to assist in calculating of recycling targets.

Subregulation 2.02(5) is a grouping provision. It applies to bodies corporate that have imported or manufactured more than 1,000 units of computers or printers in the previous financial year. For these bodies, units imported or manufactured by related bodies corporate are counted when determining whether the 5,000 unit threshold is exceeded. This provision has been included to reduce the incentive for import-splitting among prospective liable parties in respect of these products. The risk of such import-splitting is assessed as relatively low for computer products, and therefore subregulation 2.02(4) provides this regulation does not apply a grouping provision for those products.

Regulation 1.03 provides that the term “related bodies corporate” has the meaning given by section 50 of the *Corporations Act 2001*.

#### Regulation 2.03 – Ongoing liability to be a liable party

Regulation 2.03 ensures that a liable party will continue to be a liable party until such time as it becomes a member of an approved co-regulatory arrangement.

*Example: A company imports 100,000 televisions in financial year 2012-2013 but does not import anything in financial year 2013-2014. It fails to become a member of a co-regulatory arrangement in financial year 2013-2014, even though it is a liable party. The effect of regulation 2.03 is that the company is a liable party in financial year 2014-2015, even though it didn't import anything in financial year 2013-2014. If the company becomes a liable party in financial year 2014-2015 but doesn't import in that year, it will cease to be a liable party for financial year 2015-2016 having discharged its liability for financial year 2012-2013.*

Subregulation 2.03(1) provides this regulation applies if, for a financial year, a person is in a class of persons who are liable parties in relation to a class of products, and the person is not a member of a co-regulatory arrangement in relation to the class of products. Under section 18 of the Act, these liable parties must be a member of an approved co-regulatory arrangement in relation to that class of products.

Subregulation 2.03(2) provides that despite subregulations 2.01(2) and (3), the person is taken to be in the class of persons who are liable parties in relation to the class of products for the next financial year.

Subregulation 2.03(3) provides that subregulation 2.03(2) continues to apply to the person in each financial year until the person becomes a member of a co-regulatory arrangement in relation to the class of products for a financial year.

## **Division 2.2 Administrators of co-regulatory arrangements**

### **Regulation 2.04 –Administrator to be fit and proper person**

The Act provides that the Minister must refuse to approve a co-regulatory arrangement if satisfied that the administrator of the arrangement is not a fit and proper person (see paragraph 26(2)(d) of the Act). The Minister may also cancel an arrangement's approval if satisfied that the administrator is not a fit and proper person (see paragraph 28(1)(d) of the Act).

Regulation 2.04 specifies the matters to which the Minister must have regard in determining whether an administrator of a co-regulatory arrangement is a fit and proper person. These matters are:

- any conviction of the administrator, or an executive officer of the administrator, for an offence against the Act committed within the 10 years immediately before the determination;
- any conviction of the administrator, or an executive officer of the administrator, for an offence against another law of the Commonwealth, or a law of a State or Territory, if that offence was committed within 10 years immediately before the determination;
- any civil penalty order made against the administrator, or an executive officer of the administrator, for a contravention of a civil penalty provision in the Act or these Regulations, if that contravention occurred within the 10 years immediately before the determination;
- 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 co-regulatory arrangement and the Scheme, as 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 apply to both the administrator of a co-regulatory 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.

The time frames for disclosure of convictions in relation to the fit and proper person requirement are considered appropriate and aligned with the Spent Convictions Scheme under the *Crimes Act 1914*.

### **Part 3 Outcomes for co-regulatory arrangements**

The Act provides that regulations must specify one or more outcomes to be achieved by a co-regulatory arrangement (see section 21 of the Act). The Minister must refuse to approve a proposed co-regulatory arrangement if satisfied that the arrangement is unlikely to achieve one or more of these outcomes (see paragraph 26(2)(b) of the Act). If the administrator believes the reasons for the Minister's decision to refuse to approve a co-regulatory arrangement are not reasonable, the administrator has a right to seek review of the decision, including by the Administrative Appeals Tribunal (section 93, item 5 of the Act).

Once a co-regulatory arrangement has been approved, the administrator of the co-regulatory arrangement must take all reasonable steps to ensure that the arrangement achieves the outcomes specified in the regulations in relation to that class of products (see section 23 of the Act). If this does not occur, then the Minister may issue an improvement notice (section 29 of the Act), an audit notice (section 30 of the Act) or cancel the arrangement (section 28 of the Act).

If the administrator believes the reasons for the Minister's decision to cancel the approval of a co-regulatory arrangement are not reasonable, the administrator has a right to seek review of the decision, including by the Administrative Appeals Tribunal (section 93, item 6 of the Act).

#### **Regulation 3.01 – Outcomes**

Subregulation 3.01(1) provides that there are two outcomes to be achieved by a co-regulatory arrangement in relation to a class of products:

- to provide reasonable access to collection services (as further defined in regulation 3.03); and
- to meet recycling targets (as further defined in regulation 3.04).

Paragraph 3.01(1)(a) provides the reasonable access outcome is to be met by 31 December 2013 in the financial year 2013-2014. This is intended to allow approximately 2 years from when the Regulations commence for the reasonable access outcome to be achieved. The reasonable access outcome is an ongoing outcome and will need to be met in every financial year after this time.

Paragraph 3.01(2)(a) provides that in meeting the reasonable access and recycling outcomes, a person must not be charged for the collection of a product for recycling if that person has used the product for personal, domestic, or household purposes, or for small business purposes. This is intended to ensure that householders, and small business users of products, have free access to recycling, while retaining flexibility for an administrator of a co-

regulatory arrangement to charge or not charge other users of products that wish to have end-of-life products collected for recycling.

The requirement to provide free collection services in accordance with paragraph 3.01(2)(a) does not apply to the collection of products prior to commencement of the Regulations. This means if a product was collected before the commencement of the Regulations, for example by a local government, from a person who used the product for personal, domestic, or household purposes, or for small business purposes, and the person was charged a fee for collection of that product, a co-regulatory arrangement may accept these stockpiles of products.

Paragraph 3.01(2)(b) provides that a product within a class of products must not be refused for collection. This is intended to ensure that an administrator of a co-regulatory arrangement cannot refuse to accept products within a class of products for which that arrangement has a recycling target on the grounds of the type of product or brand of product within that class.

## **Division 3.2 Collection**

### **Regulation 3.02 – Collection services**

This regulation provides a non-exhaustive list of types of collection services. Consistent with the co-regulation philosophy, it makes clear that administrators of co-regulatory arrangements have flexibility in the type of collection services they can provide. In addition to fixed collection sites, collection services can include, among other examples, take-back events and mail-back programs.

### **Regulation 3.03 – Reasonable access – general requirements**

Regulation 3.03 provides that access to a collection service is reasonable if access is provided in accordance with the regulation. The regulation sets out metrics that seek to provide a consistent, measurable basis for determining whether reasonable access has been provided, without being prescriptive as to the exact locations or types of collection services.

Regulation 3.03 refers to “metropolitan areas”, “inner regional”, “outer regional” and “remote areas”. Regulation 1.03 provides that these terms have the meaning given by the document *Statistical Geography Volume 1 - Australian Standard Geographical Classification (AGSC)* (ABS catalogue number 1216.0) published by the Australian Bureau of Statistics in July 2006, available at [www.abs.gov.au](http://www.abs.gov.au).

A reference in regulation 3.03 to:

- a distance is a distance by road;
- the population of an area or town is the population of the area or town as determined in the 2006 Census of Population and Housing, published by the Australian Bureau of Statistics, available at [www.abs.gov.au](http://www.abs.gov.au); and
- the centre point of a town is the point of intersection of the latitude and longitude identified as the location of the town in the *Gazetteer of Australia 2010 Release* published by Geoscience Australia in February 2011, available at [www.ga.gov.au](http://www.ga.gov.au).

Subregulation 3.03(3) sets out the metric for metropolitan areas. The number of services to be provided in each financial year is calculated by dividing the population of the metropolitan area by 250,000 and rounding up to the nearest whole number.

*Example: Melbourne's metropolitan area population (using the 2006 Census data and with reference to the Australian Standard Geographical Classification on major cities) was 3,519,601. This number, divided by 250,000 and rounded up to the nearest whole number, is 15. This means that by 31 December 2013 each approved arrangement must take all reasonable steps to ensure that at least 15 collection services are available in Melbourne.*

Subregulations 3.03(4) and (5) set out the metric for inner regional areas. At least one service must be provided for every town of 10,000 people or more in a financial year. This requirement will be met if a service is available within 100km of the centre point of the town.

*Example: Dubbo is in an inner regional area and had a population of 30,575 in the 2006 Census. This means that by 31 December 2013 each approved arrangement must take all reasonable steps to ensure that at least one collection service is provided within 100km of the town.*

Subregulations 3.03(6) and (7) set out the metric for outer regional areas. At least one service must be provided for every town of 4,000 people or more in a financial year. This requirement will be met if a service is available within 150km of the centre point of the town. The greater distance for outer regional areas recognises that it tends to be more costly to provide services in outer regional areas as well as the longer distances that residents are likely to travel on average in order to access goods and services.

Subregulations 3.03(8) and (9) set out the metric for remote areas. At least one service must be provided for every town of 2,000 people or more, once every 2 financial years. Unlike the other metrics, which refer to services being provided within a financial year, the remote metric provides that a service must be provided every two financial years. This provides flexibility for registration services or occasional take-back events to be used to service remote areas.

## **Division 3.3 Recycling**

### **Regulation 3.04 – Working out recycling targets**

Regulation 3.04 sets out how recycling targets are to be calculated for co-regulatory arrangements.

Recycling targets start in financial year 2012-2013 and are expressed in weight.

*Example: In financial year 2012-2013, a co-regulatory arrangement's recycling target may be 10,000 tonnes of end-of-life televisions.*

Subregulation 3.04(1) describes, at the highest level, how a recycling target is calculated. If it were expressed as a formula, subregulation 3.04(1) would look like this:

$$\text{Recycling target for Co-regulatory Arrangement} = \text{Scheme Target} \times \text{Import/Manufacture Share of Members}$$

### Scheme Target

Subregulation 3.04(2) describes how the first element, the scheme target, is calculated. The scheme target is the overall target for the National Television and Computer Recycling Scheme as a whole. The Minister will publish the scheme target each year on the Department's website. In practice the publication functions of these Regulations may be performed by a delegate of the Minister provided for under section 110 of the Act.

If it were expressed as a formula, subregulation 3.04(2) would look like this:

$$\text{Scheme Target} = \text{Percentage target for the year (set out in Schedule 2)} \times \text{Waste arising (calculated under subregulation 3.04(3))}$$

The percentage targets in Schedule 2 start at 30% in financial year 2012-2013 and increase to 80% in financial year 2021-2022. There is no target for financial year 2011-2012, but recycling in 2011-2012 may be counted towards the financial year 2012-2013 recycling target (see regulation 3.05).

### Waste arising

Waste arising represents the weight of additional waste products that are expected to be generated in any financial year. Subregulation 3.04(3) describes how waste arising is to be calculated. If it were expressed as a formula, subregulation 3.04(3) would look like this:

$$\text{Waste arising} = \frac{\text{Total converted weight of products in the product class over the last 3 financial years}}{3} \times 0.9$$

“Converted weight” is defined in regulation 1.03(2). It is the weight of a product arrived at by multiplying the number of units of the product by the conversion factor for the product listed in Schedule 3. Using these conversion factors, which have been developed with the benefit of sampling the weight of imported products under each product definition and related code, data on the number of units imported can be converted into weight.

The logic of the waste arising formula is that when a product is imported it usually replaces another product, which then becomes waste. Because imports are volatile, the formula averages imports over the past 3 years. The scaling factor of 0.9 takes into account that some products that are imported are subsequently exported, and that not all imported products replace existing products. Modelling indicates that this formula is a good proxy of the amount of waste products entering the waste stream each year.

The Minister will annually publish the total converted weight of each product in a class of products imported or manufactured in each of the last 3 financial years on the Department's website. The figure published for each product is final in order to provide certainty to administrators for the operation of a co-regulatory arrangement.

The Minister will determine these figures using reported and available sources of information including:

- Import data provided by the Australian Customs and Border Protection Service;
- Manufacturing data reported under regulation 5.09;
- Conversion factors for each product code in Schedule 3.

*Import or manufacture share of a co-regulatory arrangement*

Subregulation 3.04(4) describes how the import or manufacture share of a co-regulatory arrangement is calculated. If it were expressed as a formula, subregulation 3.04(4) would look like this:

$$\begin{array}{c} \textit{Import or} \\ \textit{Manufacture Share} \\ \textit{of Members} \end{array} = \frac{\begin{array}{c} \textit{Converted weight of units imported/manufactured} \\ \textit{by members of the arrangement (less exports) in} \\ \textit{the previous financial year} \end{array}}{\begin{array}{c} \textit{Converted weight of units imported/manufactured} \\ \textit{by all liable parties (less exports) in the previous} \\ \textit{financial year} \end{array}}$$

The Minister will annually publish the total converted weight of products in each class of products imported or manufactured by liable parties, less products exported, during a financial year on the Department's website, so that administrators of co-regulatory arrangements can work out their share of the scheme target. The figure published for each class of products is final in order to provide certainty to administrators for the operation of a co-regulatory arrangement.

The Minister will determine these figures using reported and available sources of information including:

- Import data provided by the Australian Customs and Border Protection Service;
- Export data reported under regulation 3.04(7);
- Manufacturing data reported under regulation 5.09;
- Conversion factors for each product code in Schedule 3.

Subregulations 3.04(5) and (6) anticipate the possibility that a non-compliant liable party may fail to be a member of an approved co-regulatory arrangement in a financial year. The effect of these subregulations is that the units imported, manufactured or exported by that liable party should be taken into account in the first subsequent financial year when the liable party



is a member of a co-regulatory arrangement in calculating the recycling target for the arrangement that it joins, notwithstanding the fact that the relevant activity did not take place in the previous financial year.

Subregulation 3.04(7) is an accountability measure. It ensures that exports can only be taken into account where they are units that were imported or manufactured by a member of the arrangement within the last year. This provides that export of new products in accordance with this subregulation may be taken into account in calculating the import or manufacture share of a co-regulatory arrangement. The subregulation also provides for an audit report to confirm that these conditions have been met. The requirements related to an audit report seek to ensure that an audit is conducted, and an accurate audit report is prepared, in a proper and independent way by an appropriately qualified auditor.

The export and audit reports are required by 15 September of the financial year for which the recycling target is being worked out in order for exports to be taken into account under subregulation 3.04(4) by an arrangement in working out the converted weight of products exported by members of the co-regulatory arrangement in the previous financial year at Step 2, and by the Minister in publishing the annual total converted weight of products in each class of products imported or manufactured by liable parties during that financial year at Step 5.

#### Regulation 3.05 – How recycling targets may be met

Paragraph 3.05(1)(a) provides that a product in a class of products will be taken to be recycled if it is recycled under a co-regulatory arrangement. This will ordinarily be done by an administrator of a co-regulatory arrangement entering into a contract with a recycler to recycle relevant products.

Recycling undertaken by a member of a co-regulatory arrangement is considered to be recycled under that co-regulatory arrangement, where the arrangement takes this recycling into account to meet the recycling target. This means where a member of an arrangement has a commercial agreement with a third party that requires the member to recycle products within a class of products, an arrangement may take this recycling into account as recycling under paragraph 3.05(1)(a). Recycling undertaken by a member that is taken into account by an arrangement to meet the recycling target is considered part of the operation of the co-regulatory arrangement and must meet the reporting requirements under regulation 5.13.

Paragraph 3.05(1)(b) provides that a product is also taken to be recycled if it is recycled after the Regulations commence by a liable party who subsequently becomes a member of a co-regulatory arrangement. This is intended to encourage early action by importers of relevant products. Without this provision, there would be an incentive for companies that currently undertake recycling take-back events on a voluntary basis to stop those events.

Subregulations 3.05(2) and (3) relate to the situation in which a co-regulatory arrangement exceeds its recycling target. In this situation the overachievement can be counted towards targets in future years. However, from financial year 2013-2014 only 25% of the target in a financial year can be met from overachievement in previous years. This is intended to ensure that overachievement does not lead to an arrangement being able to shut its operations down in future years.

Subregulation 3.05(4) ensures that any recycling undertaken in financial year 2011-2012 after the Regulations commence can be counted towards meeting the target for financial year 2012-2013. This is intended to provide an incentive for early recycling action as there is no target for financial year 2011-2012.

Paragraph 3.05(5)(a) provides that where a recycling target is not achieved in a particular year, the co-regulatory arrangement is taken not to have achieved its target in that year. This provides the basis for an improvement notice, audit notice or even cancellation of the arrangement's approval (see sections 28-30 of the Act). In addition, paragraph 3.05(5)(b) makes clear that the underachievement is added on to the arrangement's target for the following financial year.

#### **Part 4 Matters to be dealt with by co-regulatory arrangements**

##### Regulation 4.01 – Matters to be dealt with in co-regulatory arrangements

Subsection 22(1) of the Act provides that the regulations may specify matters to be dealt with by a co-regulatory arrangement. The Minister must refuse to approve a co-regulatory arrangement if the Minister is satisfied that the arrangement does not adequately deal with any of these matters (see paragraph 26(2)(c) of the Act) and may cancel an arrangement's approval on the same grounds (see paragraph 28(1)(c) of the Act).

For the purpose of subsection 22(1) of the Act, regulation 4.01 specifies the matters that must be dealt with by a co-regulatory arrangement, including:

- Governance systems, including systems for:
  - Achieving the outcomes and meeting the requirements in these Regulations; and
  - Managing risk; and
  - Resolving disputes; and
  - Replacing the administrator;
- Financial arrangements and funding to achieve the outcomes and requirements in these Regulations;
- Procedures in relation to membership of the arrangement, including:
  - Requirements related to becoming or ceasing to be a member; and
  - Maintenance of confidential information about members;
- Communicating information to the public about the arrangement, including the activities of the arrangement and how its services can be accessed;
- Assessing the adequacy of environmental, health and safety policies and practices in relation to the collection, storage, transportation, or recycling of products undertaken under the co-regulatory arrangement.

The matters to be dealt with are governance and administration requirements that are important to the viability of a co-regulatory arrangement. These matters complement governance requirements that apply to corporate bodies under other legislation such as the *Corporations Act 2001 (Cth)*.

## **Part 5 Record keeping, giving information and reporting**

This Part outlines the requirements for record keeping, giving information and reporting by liable parties and administrators of co-regulatory arrangements in accordance with section 24 of the Act. The first division relates to requirements for administrators of co-regulatory arrangements and liable parties to give information. The second division relates to the requirements for administrators and liable parties to give information to the Minister. The third division relates to the requirements and matters for inclusion for an annual report, and for an audit report to accompany an annual report.

### **Division 5.1 Record keeping**

#### **Regulation 5.01 – Administrator to keep records**

Regulation 5.01 is concerned with an administrator of a co-regulatory arrangement maintaining accurate records relevant to the administration and operation of activities undertaken by that arrangement. These records will assist in enabling verification of the accuracy of information and reports given under Divisions 5.2 and 5.3 of the Regulations.

Subregulation 5.01(1) requires an administrator of a co-regulatory arrangement to make records relating to the administration or operation of the co-regulatory arrangement. A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.01(2) requires an administrator of a co-regulatory arrangement to keep each record for 5 years from the day of creation of that record. A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.01(3) provides some guidance on the types of records contemplated to be maintained in relation to the administration or operation of an arrangement, including technical data, certifications and inspection records relating to:

- the outcomes to be achieved by the co-regulatory arrangement specified in Part 3 ;
- the matters to be dealt with by the co-regulatory arrangement specified under Part 4 ;
- reporting requirements under Division 5.3.

### **Division 5.2 Giving Information**

#### **Subdivision 5.2.1 Information to be given by administrator**

#### **Regulation 5.02 – Administrator to give information**

Regulation 5.02(1) imposes an obligation on the administrator of a co-regulatory arrangement to provide information to the Minister, or notify the Minister of, information set out in this subdivision relating to:

- a material change of circumstances for a co-regulatory arrangement pursuant to regulation 5.03;

- yearly information about the membership of a co-regulatory arrangement pursuant to regulation 5.04;
- a change in membership of a co-regulatory arrangement pursuant to regulation 5.05;
- the fitness and propriety of the administrator pursuant to regulation 5.06;
- a written request by the Minister for provision of information by an administrator pursuant to regulation 5.07.

Failure to provide this information is a contravention of a civil penalty provision which attracts a maximum penalty of 250 penalty units.

Subregulation 5.02(2) requires the administrator of a co-regulatory arrangement to provide the information within the time frame specified for the giving or notifying of the information. Failure to provide the information within the time frame specified is a contravention of a civil penalty provision which attracts a maximum penalty of 250 penalty units.

Subregulation 5.02(3) provides that the administrator of a co-regulatory arrangement must give the Minister, or notify the Minister of, information:

- in a manner approved by the Minister for information set out in regulations 5.03 to 5.06; and
- in the specified format for information requested under regulation 5.07.

A maximum pecuniary penalty of 250 penalty units applies to a contravention of these requirements.

#### Regulation 5.03 – Material change of circumstances for co-regulatory arrangement

Regulation 5.03 requires an administrator of a co-regulatory arrangement to notify the Minister of any material change of circumstance for the co-regulatory arrangement.

This regulation specifies that notification of a material change of circumstance must be given to the Minister by 28 days after the material change.

The regulation provides that a change of circumstance will be ‘material’ if it hinders:

- the ability of the co-regulatory arrangement to achieve the outcomes specified in Part 3; or
- the ability of the co-regulatory arrangement to adequately deal with the matters specified under Part 4; or
- the ability of the administrator to comply with the requirements specified in these Regulations.

#### Regulation 5.04 – Yearly information about membership of co-regulatory arrangement

Subregulation 5.04(1) requires an administrator of a co-regulatory arrangement to give the Minister information about the membership of the co-regulatory arrangement each year, as at 1 September of that year. This information will provide an overview of membership to co-regulatory arrangements at that date and assist the Minister in ensuring compliance with the obligation for a liable party to be a member of an approved co-regulatory arrangement, articulated in section 18 of the Act.

Subregulation 5.04(1) requires the administrator of a co-regulatory arrangement must give the information to the Minister by 8 September each year.

Subregulation 5.04(2) sets out the information about the membership of a co-regulatory arrangement that must be provided to the Minister, including:

- the number of members of the co-regulatory arrangement; and
- the name, and trading name (if any), of each member; and
- the Australian Business Number or Australian Company Number of the liable party; and
- the date each member became a member; and
- the date of cessation where that liable party has ceased to be a member.

Subregulation 5.04(3) requires an administrator of a co-regulatory arrangement to also give the Minister the information specified in subregulation 5.04(2) as at 1 April 2012. An administrator is required to provide this information to the Minister by 8 April 2012.

#### Regulation 5.05 – Changes in membership of co-regulatory arrangement

Regulation 5.05 outlines the notification requirements for the administrator of a co-regulatory arrangement relating to changes in membership of the co-regulatory arrangement. The regulation will assist the Minister in ensuring compliance with the obligation for a liable party to be a member of an approved co-regulatory arrangement, articulated in section 18 of the Act.

Subregulation 5.05(1) requires an administrator of a co-regulatory arrangement to notify the Minister in writing if a liable party becomes, or ceases to be, a member of the co-regulatory arrangement. This regulation also specifies that notification of a change in membership of a co-regulatory arrangement must be given to the Minister by 28 days after the change occurs.

Subregulation 5.05(2) specifies the information that must be included in a notice to the Minister for a change in membership, including:

- the Australian Business Number or Australian Company Number of the liable party; and
- the date the liable party became a member; and
- the date of cessation where that liable party has ceased to be a member.

### Regulation 5.06 – Whether administrator is fit and proper person

Regulation 5.06 sets out reporting requirements for events relevant to the fitness and propriety of an administrator of a co-regulatory arrangement. Subregulation 5.06(1) requires an administrator to notify the Minister of any event listed in subregulation 5.06(2). This regulation specifies that notification of the event must be given to the Minister by 28 days after an executive officer of the administrator becoming aware of the event.

Subregulation 5.06(2) identifies the following events:

- the administrator, or an executive officer of the administrator, is convicted of an offence against the Act, or another law of the Commonwealth or a law of a State or Territory;
- a civil penalty order is made against the administrator, or an executive officer of the administrator, for a contravention of a civil penalty provision in the Act or the Regulations;
- an executive officer of the administrator becomes bankrupt or applies for bankruptcy;
- the administrator, or an executive officer of the administrator, makes a false or misleading statement in relation to a material particular in an application under the Act;
- an executive officer is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;
- the administrator becomes an externally-administered body corporate.

An ‘executive officer’ of a body corporate is defined in subsection 51(4) of the Act as a person (by whatever name called and whether or not a director of the body) who is concerned in, or takes part in, the management of the body.

### Regulation 5.07 – Requested information

Subregulation 5.07(1) requires an administrator of a co-regulatory arrangement to give the Minister any information requested by the Minister. For this obligation to apply the Minister must make a written request for information and information requested must relate to the administration or operation of the co-regulatory arrangement.

Subregulation 5.07(2) requires the administrator of a co-regulatory arrangement to give the information to the Minister:

- within the period, or by the day, specified in the written request; and
- in the specified format where this has been specified in the written request.

## **Subdivision 5.2.2 Information to be given by liable parties**

### **Regulation 5.08 – Liable parties to give information**

This regulation is concerned with liable parties in relation to a class of products providing timely information or notification to the Minister for specified matters in relation to that class of products.

Subregulation 5.08(1) provides that a liable party in relation to a class of products must provide the Minister with information set out in the subdivision, including:

- the number of products manufactured by a liable party pursuant to regulation 5.09;
- the number of products imported or manufactured by related bodies corporate pursuant to regulation 5.10;
- a written request by the Minister for provision of information by a liable party under regulation 5.11.

A failure to provide this information is a contravention of a civil penalty provision which attracts a maximum pecuniary penalty of 250 penalty units.

Subregulation 5.08(2) provides that where a liable party in relation to a class of products is required to give the Minister, or notify the Minister of information, this information must be given or notified within the specified time frame. A failure to provide the information within the time frame specified is a contravention of a civil penalty which attracts a maximum pecuniary penalty of 250 penalty units.

Subregulation 5.08(3) provides that a liable party must give the Minister, or notify the Minister of, the information:

- in a manner approved by the Minister for information set out in regulations 5.09 and 5.10; and
- in the specified format for information requested under regulation 5.11.

A maximum pecuniary penalty of 250 penalty units applies to a contravention of this requirement.

### **Regulation 5.09 – Number of products manufactured**

If a liable party in relation to a class of products manufactured products in the previous financial year, subregulation 5.09(1) requires the liable party to notify the Minister of how many of each product the liable party manufactured (identified by product code).

A liable party is required to provide this notification to the Minister by 1 September each year.

If a liable party in relation to a class of products manufactured products in the 2010-2011 financial year, subregulation 5.09(2) requires the liable party to notify the Minister of how many of each product the liable party manufactured (identified by product code).

A liable party is required to provide this notification to the Minister by 1 March 2012.

#### Regulation 5.10 – Products imported or manufactured by related bodies corporate

Subregulation 5.10(1) requires a liable party in relation to a class of products, other than computer products, to give the Minister the following information about each related body corporate of the liable party that manufactured or imported products in the class of products.

The information that must be provided includes:

- the name of the related body corporate;
- the Australian Business Number or Australian Company Number of the related body corporate;
- the date or dates the related body corporate became a related body corporate of the liable party;
- the date or dates the related body corporate ceased to be a related body corporate of the liable party, if applicable.

A liable party is required to provide this information to the Minister each year by 1 September.

Subregulation 5.10(2) requires the liable party to give the Minister the information mentioned in subregulation 5.10(1) about each related body corporate of the liable party that manufactured or imported products in the class of products (other than computer products) in the financial year starting on 1 July 2010.

A liable party is required to provide this information to the Minister by 1 March 2012.

The term ‘related body corporate’ is defined in regulation 1.03 of these regulations.

#### Regulation 5.11 – Requested information

Subregulation 5.11(1) requires a liable party in relation to a class of products to give the Minister any information relating to products in that class of products requested by the Minister in writing.

Subregulation 5.11(2) requires the liable party to give the information to the Minister:

- within the period, or by the day, specified in the written request; and
- in the specified format where this has been specified in the written request.



## **Division 5.3 Reporting**

### **Subdivision 5.3.1 Annual reports**

#### Regulation 5.12 – Application

Subregulation 5.12(1) outlines the time frame to which the subregulations in this subdivision apply. With the exception of subregulation 5.14(10), the subdivision applies in relation to the financial year starting on 1 July 2012, and each subsequent financial year.

Subregulation 5.12(2) outlines the time frame to which subregulation 5.14(10) applies, in relation to the financial year starting on 1 July 2014, and each subsequent financial year.

#### Regulation 5.13 – Annual Report

Regulation 5.13 sets out the requirement for an annual report to be provided to the Minister by the administrator of a co-regulatory arrangement. Annual reports will allow the Minister to monitor the effectiveness of co-regulatory arrangements and assess the overall performance of the National Television and Computer Recycling Scheme, and provide transparency to the public.

Subparagraph 108(1)(d)(ii) of the Act, which provides for publication by the Minister of reports on the operation of an approved co-regulatory arrangement on the Department's website, would apply to annual reports.

Subregulation 5.13(1) requires the administrator of a co-regulatory arrangement to give the Minister a report for each financial year in relation to the operation of the co-regulatory arrangement in the financial year in accordance with this regulation. A failure to provide an annual report in accordance with regulation 5.13 is a contravention of a civil penalty provision which attracts a maximum penalty of 250 penalty units.

Subregulations 5.13(2) and (3) require the annual report must be given to the Minister in a manner approved by the Minister by 30 October in the next financial year, and must include the matters set out in regulation 5.14.

Subregulation 5.13(4) clarifies that the annual report for the financial year 2012-2013 must also include the matters set out in regulation 5.14 in relation to the operation of the co-regulatory arrangement in the financial year 2011-2012.

Subregulation 5.13(5) clarifies that the operation of the co-regulatory arrangement includes any recycling undertaken in the financial year 2011-2012, after the commencement of the regulations, by a liable party who subsequently became a member of the co-regulatory arrangement under paragraph 3.05(1)(b). This provision ensures that any recycling undertaken in the financial year 2011-2012 by a liable party, that is taken into account by a co-regulatory arrangement in meeting the recycling target in financial year 2012-2013 under subregulation 3.05(4), is reported under subregulation 5.13(4).

### Regulation 5.14 – Matters to be included in annual report

Regulation 5.14 specifies the matters that must be included in an annual report. A failure to address these matters in the annual report is a contravention of the civil penalty provision specified in regulation 5.13, and attracts a maximum penalty of 250 penalty units.

In particular, subregulation 5.14(1) provides that the annual report must:

- identify the class or classes of products covered by the co-regulatory arrangement; and
- describe the performance of the co-regulatory arrangement in relation to each outcome to be achieved under Part 3; and
- describe any activities undertaken in relation to the matters required to be dealt with by the co-regulatory arrangement under Part 4; and
- include an explanation for why any outcome was not achieved, and the measures proposed to be implemented to rectify the failure to achieve the outcome; and
- include financial statements setting out the expenditure and revenue of the co-regulatory arrangement.

Subregulation 5.14(2) provides further detail for information required in the annual report relating to membership of the co-regulatory arrangement. The annual report must include:

- the number of members of the co-regulatory arrangement; and
- information about each member for:
  - the name, and where applicable the trading name, of the member;
  - the class of products to which the member is a liable party where the co-regulatory arrangement covers more than one class of products;
  - the Australian Business Number or Australian Company Number of the member;
  - the date the member became a member;
  - the date of cessation where a liable party has ceased to be a member.

Subregulation 5.14(3) provides further detail for information required in the annual report relating to collection and storage of products under the co-regulatory arrangement. The annual report must include:

- details about each collection service, including:
  - the type of collection service;
  - the location of the collection service;
  - the frequency of the collection service; and
- the total weight of products in a class of products collected in each State and Territory in each of the following areas:
  - metropolitan areas;
  - inner regional areas;
  - outer regional areas;
  - remote areas; and

- the total weight of products in a class of products stored other than at a recycling facility.

Subregulation 5.14(4) provides further detail for information required in the annual report relating to recycling of products under the co-regulatory arrangement. The annual report must include:

- the total weight of products in a class of products delivered to a recycling facility;
- the total weight of products in a class of products recycled;
- the types of materials recovered from the recycling of products in a class of products;
- the total weight of materials recovered from the recycling of products in a class of products;
- the types of materials sent for disposal from the recycling of products in a class of products;
- the total weight of materials sent for disposal from the recycling of products in a class of products.

This information will indicate the performance of a co-regulatory arrangement against the recycling target.

Subregulation 5.14(5) provides further detail for information required in the annual report relating to the export of products. The annual report must include:

- the total weight of products in a class of products that are exported as whole units for recycling;
- the country to which the products were exported.

Export of whole units for recycling is likely to require a permit under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Hazardous Waste Act). This Act implements Australia's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention). For the purposes of the Hazardous Waste Act, waste defined as hazardous in the Basel Convention or the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* cannot be exported without a permit.

Subregulation 5.14(6) provides further detail for information required in the annual report relating to service providers contracted to provide collection, transportation, storage or recycling services in relation to the co-regulatory arrangement for each class of products. The annual report must include:

- the name of the service provider;
- the service provided by the service provider;

- the total weight of products recycled by the service provider.

Subregulation 5.14(7) provides guidance on the term ‘service provider’ for the purposes of subregulation 5.14(6) and includes:

- an overseas facility that receives whole units of products exported from Australia under the co-regulatory arrangement; and
- the administrator in its capacity of providing services, if the administrator is providing services in relation to the co-regulatory arrangement beyond the role of being administrator.

Subregulation 5.14(8) provides further detail for information required in the annual report relating to incidents or breaches under occupational health and safety and environmental laws in the course of the collection, transportation, storage or recycling of products in a class of products under the co-regulatory arrangement. The annual report must include details about:

- any incident that occurs if an environmental law or an occupational health and safety law requires a person to notify a public office holder or public authority if a particular incident occurs;
- a breach of an environmental law or an occupational health and safety law.

Subregulation 5.14(9) makes clear that the reference to a law for the purposes of subregulation 5.14(8) is to a law of the Commonwealth, or of a State or Territory.

For the purposes of subregulation 5.14(8), ‘environmental laws’ includes the following Acts, and legislative instruments made under those Acts:

- *Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth)*;
- *Protection of the Environment Operations Act 1997 (NSW)*;
- *Environmental Protection Act 1994 (Qld)*;
- *Environmental Protection Act 1986 (WA)*;
- *Environmental Management and Pollution Control Act 1994(Tas)*;
- *Land Use Planning and Approvals Act 1993(Tas)*;
- *Environment Protection Act 1970(Vic)*;
- *Environment Protection Act 1993 (SA)*;
- *Waste Management and Pollution Control Act 2009 (NT)*;
- *Environment Protection Act 1997 (ACT)*.

For the purposes of subregulation 5.14(8), ‘occupational health and safety laws’ includes the following Acts, and legislative instruments made under those Acts:

- *Occupational Health and Safety Act 1991 (Cth)*;
- *Occupational Health and Safety Act 2000 (NSW)*;
- *Workplace Health and Safety Act 1995 (Qld)*;
- *Occupational Safety and Health Act 1984 (WA)*;
- *Workplace Health and Safety Act 1995(Tas)*;
- *Occupational Health and Safety Act 2004(Vic)*;
- *Occupational Health, Safety and Welfare Act 1986(SA)*;
- *Workplace Health and Safety Act 2011 (NT)*;
- *Work Safety Act 2008 (ACT)*.

Occupational health and safety laws will change as jurisdictions enact laws to give effect to the national harmonisation of work health and safety laws.

Subregulation 5.14(10) provides detail on the information required in an annual report commencing from the 2014-2015 financial year. From the financial year 2014-2015, and for each subsequent financial year, the annual report must also include information on the materials sent for processing after recycling, including :

- the weight of the components exported by the service provider for processing if a service provider identified in subregulation 5.14(6) exports components that have been recycled from products in a class of products, and the country to which the components were exported;
- the total weight of useable materials recovered from products in a class of products;
- the total weight of non-useable materials sent to landfill from products in a class of products by each of the following classes of facilities:
  - domestic processing facilities;
  - overseas processing facilities.

### **Subdivision 5.3.2 Audit reports**

#### **Regulation 5.15 – Audit report given at same time as annual report**

Regulation 5.15 sets out the requirement for an ‘audit report’. The regulation is concerned with independent verification of the information set out in this regulation that is contained in a co-regulatory arrangement’s annual report.

Subregulation 5.15(1) requires an administrator of a co-regulatory arrangement to provide a report to the Minister about an audit of the operation of the co-regulatory arrangement for the financial year in accordance with this regulation, by virtue of subsection 24(4) of the Act. A civil penalty of 250 penalty units applies to this requirement.

An audit report must accompany the annual report required under subregulation 5.13(1).

Subregulation 5.15(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*; or
- a company that is an authorised audit company under section 1299C of the *Corporations Act 2001*.

Subregulation 5.15(3) provides the audit report must include:

- an audit of the financial statements setting out the revenue and expenditure of the co-regulatory arrangement; and
- an audit of the performance of the co-regulatory arrangement in relation to each outcome to be achieved under Part 3; 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 the standard exists at the time these Regulations commence; 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 regulation 5.13.

The Auditing and Assurance Standards Board publishes auditing and assurance standards and related guidance for undertaking and reporting on audits, assurance engagements and review engagements.

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.

## **Schedule 1    Products and product codes**

This Schedule sets out the products contained for the television product class under Part 1, and the computers, printers and computer products product class under Part 2 for subregulation 1.04(3) and lists each product with the associated product description and product code.

**Schedule 2    Percentage targets**

This Schedule sets out the percentage targets for the television product class under Part 1 and the computers, printers and computer products product class under Part 2 for subregulation 3.04(2).

**Schedule 3    Converted weights**

This Schedule sets out the converted weight as defined in subregulation 1.03(2) for each product contained in the television product class under Part 1 and the computers, printers and computer products product class under Part 2 for subregulation 3.04(3).