

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 112**

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

#### *Product Stewardship Act 2011*

#### *Product Stewardship (Televisions and Computers) Amendment Regulation 2012 (No. 1)*

The *Product Stewardship Act 2011* (the Act) provides a framework for mandatory, co-regulatory and voluntary product stewardship. The Act seeks 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.

The *Product Stewardship (Televisions and Computers) Regulations 2011* (the Principal Regulations) commenced on 8 November 2011 and established the National Television and Computer Recycling Scheme (the Scheme) under the co-regulatory provisions of the Act. Co-regulatory product stewardship is a combination of industry action and supporting government regulation, requiring some manufacturers, importers, distributors and users of products to be a member of an approved 'co-regulatory arrangement' (defined in subsection 20(2) of the Act).

The objectives of the Scheme are to minimise the amount of television and computer materials (particularly hazardous materials) that are disposed of to landfill and maximise the recovery of resources from televisions and computers.

The Amendment Regulation amends the Principal Regulations to:

- align product codes and descriptions in the Principal Regulations with the updated *Combined Australian Customs Tariff Nomenclature and Statistical Classification* (Working Tariff);
- make some consequential changes, including to insert 'conversion factors' (average weights) for the new product codes; and
- make some minor, technical amendments to align the recycling target provisions of the Principal Regulations with the policy intent.

Details of the Amendment Regulation are outlined in the Attachment.

## Background

The Principal Regulations came into effect on 8 November 2011. In conjunction with the Act, they provide the basis for national, industry-run arrangements for the collection and recycling of televisions, computers and computer products.

The Principal Regulations specify three outcomes to be achieved by industry under the Scheme: to provide the community with reasonable access to collection services, to ensure that annual recycling targets are met and, from the financial year 2014-15, to ensure a material recovery target is met.

Under the Principal Regulations, companies that imported or manufactured more than a specified number of covered products in the previous financial year are 'liable parties'. Under section 18 of the Act, a liable party is obliged to contribute to industry collection and recycling efforts by becoming a member of an 'approved co-regulatory arrangement'.

Schedule 1 to the Principal Regulations sets out the products covered by the Regulations. For each product there is a product description and a product code. The product descriptions and product codes are drawn from the *Combined Australian Customs Tariff Nomenclature and Statistical Classification* (commonly known as the Working Tariff) published by the Australian Customs and Border Protection Service (Customs).

The use of Working Tariff product codes ensures that data from import declarations can be used to assess the number and type of covered products that are imported. This data is used to calculate annual recycling targets for industry-run co-regulatory arrangements. This is administratively efficient because it avoids two sets of reporting, but it does mean that the Principal Regulations need to be updated from time to time to maintain consistency with the Working Tariff.

In conjunction with the Customs, the Australian Bureau of Statistics (ABS) periodically updates the Working Tariff to keep it statistically relevant in the context of the changing composition of Australia's imports. Due to changes initiated by the ABS the Working Tariff has been amended, effective from 1 January 2012. The changes involve consolidation and removal of product codes that, due to changes in technology, now only represent a small number of imports. For example, the categories for cathode ray tube televisions have been consolidated from 20 to 6 because of the move to LCD and plasma televisions.

The Amendment Regulation updates the product codes and descriptions to align with the changes to the Working Tariff, and makes consequential changes to the Principal Regulations.

One of the consequential changes is to include 'conversion factors' for the new product codes. Conversion factors represent the average weight of a product within a product code, and are used to calculate recycling targets.

The changes to product codes in Schedule 1A of the Amendment Regulation commence from 1 January 2012 and apply to imports during the period 1 January 2012 to 30 June 2012 inclusive. This will not result in a retrospective alteration of any rights or liabilities contrary

to subsection 12(2) of the *Legislative Instruments Act 2003*. This is because there are no rights or liabilities in existence in relation to 2011-2012 imports. A person who imports products in the 2011-2012 financial year is only required to become a member of an arrangement in the 2012-2013 financial year.

### **Conditions for the making of the Amendment Regulation have been met**

For the purposes of subsection 19(3) of the Act, and further to certification of the Principal Regulations, the Minister is satisfied that:

- making the Amendment Regulation in relation to the classes of products specified will further the objects of the Act; and
- the product stewardship criteria set out in section 5 are satisfied in relation to the classes of products specified.

### **Documents incorporated by reference**

There are two documents incorporated by reference in the Amendment Regulation, as set out below:

- the *Combined Australian Customs Tariff Nomenclature and Statistical Classification*, as it existed on 8 November 2011, published by the Australian Customs and Border Protection Service at <http://www.customs.gov.au/tariff/tariff.asp>; and
- the *Combined Australian Customs Tariff Nomenclature and Statistical Classification*, as it existed on 1 January 2012, published by the Australian Customs and Border Protection Service at <http://www.customs.gov.au/tariff/tariff2012.asp>.

### **Consultation**

The *Exposure Draft of the Product Stewardship (Televisions and Computers) Amendment Regulation 2012 (No. 1)* (the exposure draft) and an accompanying commentary document were released on 26 April 2012 for a three week public consultation period. These documents were published on the Department's website. In addition, an email announcing the consultation process was sent directly to Commonwealth, state and territory government contacts, administrators of approved and potential co-regulatory arrangements, subscribers of the Department's National Waste Policy and E-waste email alerts and, where possible, liable parties expected to be impacted by the proposed regulatory changes. No submissions were received on the exposure draft and commentary document.

### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at the end of the explanatory statement.

## **Commencement**

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

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

## **Statement of Compatibility with Human Rights**

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

### **Product Stewardship (Televisions and Computers) Amendment Regulation 2012**

**(No. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Legislative Instrument makes amendments to the *Product Stewardship (Televisions and Computers) Regulations 2011* to align with the updated *Combined Australian Customs Tariff Nomenclature and Statistical Classification*, and to align the recycling target provisions of the Regulations with the policy intent.

The Legislative Instrument updates the product codes and descriptions to align with the changes to the *Combined Australian Customs Tariff Nomenclature and Statistical Classification*, and makes some consequential changes to the Regulations, including to insert ‘conversion factors’ for the new product codes.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Don Farrell,**  
**Parliamentary Secretary for Sustainability and Urban Water**

## **ATTACHMENT**

### ***Product Stewardship (Televisions and Computers) Amendment Regulation 2012 (No. 1)***

#### **Section 1 – Name of regulation**

This section provides that the regulation is the *Product Stewardship (Televisions and Computers) Amendment Regulation 2012 (No. 1)*.

#### **Section 2 – Commencement**

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

#### **Section 3 – Amendment of the *Product Stewardship (Televisions and Computers) Regulations 2011***

This section provides that the Principal Regulations are amended as set out in Schedule 1.

#### **Schedule 1 – Amendments**

##### **Item 1 – Subregulation 1.03(1), definition of *product***

Item 1 is a minor, technical change. The definition of ‘product’ is unnecessary given that regulation 1.04 sets out the products to which the Principal Regulations apply. The amendment removes the definition.

##### **Item 2 – Subregulation 1.03(1), definition of *product code***

Item 2 amends the definition of ‘product code’ to acknowledge the change in the Working Tariff from 1 January 2012. It provides that the product codes referred to in Schedule 1 are the codes in the Working Tariff as at the date the Principal Regulations came into effect (8 November 2011), and that the product codes in Schedule 1A are the codes in the updated Working Tariff as at 1 January 2012.

##### **Item 3 – Subregulation 1.03(2)**

Item 3 is a consequential amendment from the changes to the Schedules. Conversion factors, which were previously separately set out in Schedule 3, are now included alongside the product descriptions in Schedules 1 and 1A for ease of reference. Item 3 updates the definition of ‘converted weight’ to refer to Schedules 1 and 1A rather than Schedule 3.

##### **Item 4 – Subregulation 1.04(3)**

Item 4 is consequential to the insertion of Schedule 1A. It provides that each class of products contains products which are set out, along with each product’s product code, in Schedules 1 and 1A.

## **Item 5 – Subregulations 3.04(5) and (6)**

Item 5 is a technical amendment that seeks to ensure the operation of the Principal Regulations has conformed with its original policy intent. It substitutes new subregulations 3.04(5) and (6) in place of the current subregulations.

Subregulations 3.04(5) and (6) relate to circumstances in which a liable party fails to join an approved co-regulatory arrangement.

The original intent was that where a liable party fails to join an approved co-regulatory arrangement in a recycling target year (i.e. in financial year 2012-2013 or subsequent financial years), then the products imported, manufactured or exported by the liable party are taken into account when it does become a member of an approved co-regulatory arrangement. This ensures that a liable party is not able to benefit from their failure to join a co-regulatory arrangement in one year, as those products imported or manufactured by the liable party will be taken into account in the recycling target for the co-regulatory arrangement to which the liable party becomes a member in a later year. This also ensures that if the Scheme target is not met in one year because of non-compliance by a liable party, that shortfall will be made up in a later year when the liable party does meet its obligations. The problem with the current wording of the Regulations is that it applies to the 2011-2012 financial year, which does not have a recycling target. Paragraph 3.04(5)(a) addresses this by making clear that subregulations 3.04(5) and (6) do not apply to the 2011-2012 financial year.

The original intent was also that where a liable party fails to become a member of an approved co-regulatory arrangement in a financial year the units imported, manufactured or exported in the previous financial year (rather than the same financial year in which the liable party failed to become a member) should be taken into account when the liable party does join a co-regulatory arrangement. The new subregulations make this clear.

## **Item 6 – After subregulation 3.04(7)**

Item 6 is consequential upon the introduction of new product codes. The amendment relates to subregulation 3.04(7) of the Regulations, which deals with how exports should be taken into account in calculating a co-regulatory arrangement's recycling target.

Under the Regulations, this target will be reduced by exports by its members, where certain conditions are met – including that each exported product was imported or manufactured within one year before the date of export. This is intended to ensure that where products are imported to Australia for a short period, but then exported as a new product for sale elsewhere, they should not be taken into account in calculating recycling targets. This is appropriate because these products are not adding to the waste stream in Australia.

The amendment would clarify that the same product code and conversion factor that applies when the product is imported or manufactured should be used when the product is exported. This ensures that where relevant products are imported or manufactured then exported they will have no net impact on recycling targets.

## Item 7 – Schedule 1

Item 7 substitutes a new Schedule 1 and inserts a new Schedule 1A. The changes to product codes in Schedule 1A of the Amendment Regulation commence from 1 January 2012 and apply to imports during the period 1 January 2012 to 30 June 2012 inclusive. This will not result in a retrospective alteration of any rights or liabilities contrary to subsection 12(2) of the *Legislative Instruments Act 2003*. This is because there are no rights or liabilities in existence in relation to 2011-2012 imports. A person who imports products in the 2011-2012 financial year is only required to become a member of an arrangement in the 2012-2013 financial year.

The new Schedule 1 incorporates the conversion factors for products alongside product descriptions for ease of reference. The conversion factor is the weight of each product in kilograms listed in Schedules 1 and 1A and is used to calculate the ‘converted weight’ of a product, defined in regulation 1.03(2). Item 7 also amends the title of the new Schedule 1 to make clear that the products, product codes and converted weights apply until 31 December 2011.

The product descriptions in Schedule 1 remain unchanged, apart from two minor changes to correct minor drafting errors in the Principal Regulations.

The converted weights in Schedule 1 remain the same, apart from two minor changes to correct errors in conversion factors to items 1.1(b) and 1.3(a)(ii).

Item 7 also inserts a new Schedule 1A, which sets out products, product codes and conversion factors to apply from 1 January 2012. The products and product codes are drawn from the Working Tariff as amended from 1 January 2012.

The Appendix summarises how conversion factors change as a result of the Amendment Regulation. The conversion factors in the Amendment Regulation were developed based on an assessment of products imported under the relevant product codes. The supporting research for this assessment is contained in the report *Import Conversion Factors for the National Television and Computer Recycling Scheme*.

The new Schedule 1A does not, with one minor exception, change the products that the Regulations apply to. The one exception relates to products that previously fell within product code 8443.32.00.95. This code is an ‘other’ category that covers copying machines that are capable of connecting to an automatic data processing machine or to a network. In practice, a small number of products are imported under the code - approximately 2,000 in 2010-2011. From 1 January 2012 the Working Tariff has combined this code with ‘plotters’. Plotters, which include machines used to produce architectural blueprints, are not presently covered by the Scheme, and it is proposed that they should remain outside the Scheme. As a consequence, the new code in the Working Tariff that covers both plotters and the ‘other’ category mentioned above has not been included in Schedule 1A.



**Item 8 – Schedule 3**

Item 8 removes Schedule 3, which is no longer necessary as conversion factors have been incorporated into Schedules 1 and 1A.

## **APPENDIX**

### **Summary of amendments to product codes and conversion factors**

<b>Schedule 1A (Amendment Regulation)</b>			<b>Schedule 1 (Principal Regulations)</b>			<b>Explanation</b>
<b>Item</b>	<b>New product codes</b>	<b>Conversion factor (kg)</b>	<b>Item</b>	<b>Former product codes</b>	<b>Conversion factor (kg)</b>	
1.1	8528.72.00.41	30.1	1.1(a) 1.1(b)	8528.72.00.10 8528.72.00.11	8.9 30.2	From 1 January 2012 products previously imported under product codes 8528.72.00.10 and 8528.72.00.11 will now be captured under the new product code 8528.72.00.41.  In relation to product code 8528.72.00.11, the conversion factor for this product code is being reduced from 30.2 kg to 30.1 kg in Schedule 1 of the Amendment Regulation to correct an error in Schedule 3 of the Principal Regulations.
1.2	8528.72.00.42	30.1	1.2(a)(i) 1.2(a)(ii) 1.2(b)	8528.72.00.15 8528.72.00.16 8528.72.00.17	8.9 30.1 30.1	From 1 January 2012 products previously imported under product codes 8528.72.00.15, 8528.72.00.16, and 8528.72.00.17 will now be captured under the new product code 8528.72.00.42.
1.3(a)(ii)	8528.72.00.21	18.4	1.3(a)(ii)	8528.72.00.21	18.5	The conversion factor for this product code is being reduced from 18.5 kg to 18.4 kg to correct an error in Schedule 3 of the Principal Regulations.

Schedule 1A (Amendment Regulation)			Schedule 1 (Principal Regulations)			Explanation
Item	New product codes	Conversion factor (kg)	Item	Former product codes	Conversion factor (kg)	
1.4(a)	8528.72.00.43	26.2	1.4(a)(i)	8528.72.00.30	4.0	From 1 January 2012 products previously imported under product codes 8528.72.00.30, 8528.72.00.31, 8528.72.00.32, 8528.72.00.33 and 8528.72.00.34 will now be captured under the new product code 8528.72.00.43.
			1.4(a)(ii)	8528.72.00.31	8.2	
			1.4(a)(iii)	8528.72.00.32	20.8	
			1.4(a)(iv)	8528.72.00.33	39.9	
			1.4(a)(v)	8528.72.00.34	58.0	
1.4(b)(i)	8528.72.00.44	6.1	1.4(b)(i)	8528.72.00.35	4.0	From 1 January 2012 products previously imported under product codes 8528.72.00.35 and 8528.72.00.36 will now be captured under the new product code 8528.72.00.44.
			1.4(b)(ii)	8528.72.00.36	8.2	
1.4(b)(ii)	8528.72.00.45	39.6	1.4(b)(iii)	8528.72.00.37	20.8	From 1 January 2012 products previously imported under product codes 8528.72.00.37, 8528.72.00.38, and 8528.72.00.39 will now be captured under the new product code 8528.72.00.45.
			1.4(b)(iv)	8528.72.00.38	39.9	
			1.4(b)(v)	8528.72.00.39	58.0	
2.1	8528.72.00.46	30.1	2.1(a)	8528.72.00.50	8.9	From 1 January 2012 products previously imported under product codes 8528.72.00.50 and 8528.72.00.51 will now be captured under the new product code 8528.72.00.46.
			2.1(b)	8528.72.00.51	30.1	

Schedule 1A (Amendment Regulation)			Schedule 1 (Principal Regulations)			Explanation
Item	New product codes	Conversion factor (kg)	Item	Former product codes	Conversion factor (kg)	
2.2	8528.72.00.47	30.1	2.2(a)(i)	8528.72.00.55	8.9	From 1 January 2012 products previously imported under product codes 8528.72.00.55, 8528.72.00.56, and 8528.72.00.57 will now be captured under the new product code 8528.72.00.47.
			2.2(a)(ii)	8528.72.00.56	30.1	
			2.1(b)	8528.72.00.57	30.1	
2.4(a)(i)	8528.72.00.48	6.1	2.4(a)(i)	8528.72.00.70	4.0	From 1 January 2012 products previously imported under product codes 8528.72.00.70 and 8528.72.00.71 will now be captured under the new product code 8528.72.00.48.
			2.4(a)(ii)	8528.72.00.71	8.2	
2.4(a)(ii)	8528.72.00.49	39.6	2.4(a)(iii)	8528.72.00.72	20.8	From 1 January 2012 products previously imported under product codes 8528.72.00.72, 8528.72.00.73, and 8528.72.00.74 will now be captured under the new product code 8528.72.00.49.
			2.4(a)(iv)	8528.72.00.73	39.9	
			2.4(a)(v)	8528.72.00.74	58.0	
2.4(b)	8528.72.00.59	26.2	2.4(b)(i)	8528.72.00.75	4.0	From 1 January 2012 products previously imported under product codes 8528.72.00.75, 8528.72.00.76, 8528.72.00.77, 8528.72.00.78 and 8528.72.00.79 will now be captured under the new product code 8528.72.00.59.
			2.4(b)(ii)	8528.72.00.76	8.2	
			2.4(b)(iii)	8528.72.00.77	20.8	
			2.4(b)(iv)	8528.72.00.78	39.9	

Schedule 1A (Amendment Regulation)			Schedule 1 (Principal Regulations)			Explanation
Item	New product codes	Conversion factor (kg)	Item	Former product codes	Conversion factor (kg)	
			2.4(b)(v)	8528.72.00.79	58.0	
5.1(a)(iii)	8443.31.00.65	8.8	5.1(a)(ii)	8443.31.00.62	8.8	From 1 January 2012 products previously imported under product codes 8443.31.00.62 and 8443.31.00.69 will now be captured under the new product code 8443.31.00.65. The conversion factors for the product codes currently listed in the Regulations are the same as for the new product code.
			5.1(a)(iv)	8443.31.00.69	8.8	
6.1(b)(iv)	8471.70.00.44	0.04	6.1(b)(iv)	8471.70.00.75	1.0	From 1 January 2012 products previously imported under product codes 8471.70.00.43 and 8471.70.00.75 will now be captured under the new product code 8471.70.00.44. The conversion factor has been set at 0.04 kg as imports under product code 8471.70.00.75 are negligible in comparison to imports under product code 8471.70.00.43. The existing conversion factor of 0.04 has therefore been retained for the new product code.
			6.1(b)(v)	8471.70.00.43	0.04	