

EXPLANATORY STATEMENT

Issued by Authority of the Minister for the Environment, the Hon. Sussan Ley MP

Recycling and Waste Reduction Act 2020

Recycling and Waste Reduction (Product Stewardship – Accreditation of Voluntary Arrangements) Rules 2020

Legislative Authority

The *Recycling and Waste Reduction (Product Stewardship – Accreditation of Voluntary Arrangements) Rules 2020* (the Rules) are made under subsection 188(1) of the *Recycling and Waste Reduction Act 2020* (the Act).

Subsection 188(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules.

Part 3 of Chapter 3 of the Act provides a framework for the accreditation of voluntary product stewardship arrangements in relation to a product. A number of provisions in Chapter 3 set the parameters of the Minister's rule making power. For example, subsection 70(2) of the Act provides that the rules may provide for matters concerning the accreditation of voluntary arrangements, and subsection 70(4) of the Act provides that the rules must require an accrediting authority to refuse to accredit a voluntary arrangement in certain circumstances. These provisions are identified in this explanatory statement.

Purpose

The purpose of the Rules is to provide for the accreditation of voluntary product stewardship arrangements and the ongoing regulation of such arrangements. The rules deal with matters such as who may apply for accreditation, the circumstances in which an application may be made, who makes accreditation decisions (as the accrediting authority), and ongoing conditions on the accreditation of a voluntary arrangement.

The purpose of the accreditation of voluntary arrangements is to encourage and recognise voluntary product stewardship schemes. Accreditation provides assurance to the community that a voluntary arrangement is operating to achieve environmental and other outcomes it has committed to achieve, including through authorised use the Australian Government product stewardship logo.

The Rules will replace the *Product Stewardship (Voluntary Arrangements) Instrument 2012*, which ceased to exist once the *Product Stewardship Act 2011* was repealed by operation of the *Recycling and Waste Reduction (Consequential and Transitional Provisions) Act 2020*.

Background

The Act establishes a legislative framework to enable Australia to more effectively manage the environmental and human health impacts of products, waste from products, and waste material by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products over the lifecycle of the product.

Part 3 of Chapter 3 of the Act provides for the accreditation of voluntary product stewardship arrangements. This involves parties voluntarily seeking accreditation by the Australian Government for a product stewardship arrangement designed to further the objects of the Act in relation to a product or material.

The Act authorises a person to use the Australian Government product stewardship logo in accordance with an accredited voluntary arrangement. There is often a lack of information available to help consumers and producers understand the impacts of certain products, and related issues around their reparability and reusability. Accreditation of voluntary product stewardship schemes and the authorised use of the Australian Government product stewardship logo can help Australian consumers make better choices when purchasing and disposing of products, and to have confidence that the products they are choosing meet government accreditation requirements.

The Act replaces the *Product Stewardship Act 2011* as the Government's framework legislation for product stewardship. In response to the Australian Government's support for all recommendations to the *Review of the Product Stewardship Act 2011*, the Rules, together with the Act, will improve the legislative framework for voluntary product stewardship arrangements. This includes a transition to a streamlined application and accreditation process that is always open and, together with the *Recycling and Waste Reduction (Fees) Rules 2020*, a reduction in the cost of accrediting voluntary arrangements. These changes are designed to increase the value proposition of accreditation and through increased uptake, improve Australia's recycling and waste management outcomes.

Impact and Effect

The Rules set out the processes for the accreditation of voluntary product stewardship arrangements, the period of accreditation, and the responsibilities of administrators of accredited voluntary arrangements. The Rules also specify the reporting requirements for administrators.

Regulatory costs associated with the accreditation of voluntary product stewardship arrangements already exist. However, the Rules will decrease these costs due to streamlined application requirements, and the removal of obligatory annual audits. The Rules, together with the *Recycling and Waste Reduction (Fees) Rules 2020*, will also reduce the fees associated with the accreditation of voluntary arrangements.

Consultation

The former Department of Environment and Energy undertook initial consultation on the *Review of the Product Stewardship Act 2011* in 2018 with industry, and state and territory governments, along with further targeted consultation in 2019. The Department of Agriculture, Water and the Environment (the Department) consulted with industry, peak bodies and state and territory governments between March and August 2020 on the design and implementation of the legislation and further consultation on the draft Rules in October 2020.

The Office of Best Practice Regulation was consulted in the preparation of the Act and the Rules and advised that a regulatory impact statement is not required (ID 42699).

Details/ Operation

Details of the Rules are set out in Attachment A.

Other

The Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Recycling and Waste Reduction (Product Stewardship—Accreditation of Voluntary Arrangements) Rules 2020*

PART 1—PRELIMINARY

Section 1 Name

Section 1 provides that the name of the instrument is the *Recycling and Waste Reduction (Product Stewardship—Accreditation of Voluntary Arrangements) Rules 2020*.

Section 2 Commencement

Section 2 provides that the Rules commence on the day after the Rules are registered on the Federal Register of Legislation, or the day that the Act commences, whichever is later.

Section 3 Authority

Section 3 provides that the Rules are made under the *Recycling and Waste Reduction Act 2020*.

Section 4 Simplified outline of this instrument

Section 4 provides a simplified outline of the Rules. The outline is not intended to be comprehensive and has been included to assist readers to understand the substantive provisions of the Rules, rather than to replace these provisions. It is intended that readers will rely on the substantive sections of the Rules.

Section 5 Definitions

Section 5 provides definitions for key terms used throughout the Rules.

A note to section 5 provides that several expressions used in the Rules are defined in the Act. These include accredited voluntary arrangement, administrator and product stewardship logo. These expressions will have the same meaning as the Act when used in the Rules.

The definitions provided in the Rules are set out below.

Act

This definition provides that ‘Act’ means the *Recycling and Waste Reduction Act 2020*.

Condition

This definition provides that ‘condition’ means a condition imposed under section 12 (including as varied under section 14 or 15) on the accreditation of the voluntary arrangement in relation to a product.

Outcome

This definition provides that ‘outcome’ means a measurable result relating to a product to be achieved by the voluntary arrangement, that furthers any of the objects of the Act.

PART 2—ACCREDITATION OF VOLUNTARY ARRANGEMENTS

Division 1—Introduction

Section 6 Introduction

Section 6 provides that Part 2 of the Rules determines matters relating to the accreditation of voluntary arrangements in relation to a product, for the purposes of section 70 of the Act. Section 70 of the Act enables the Minister to make rules relating to the accreditation of voluntary arrangements in relation to a product.

Division 2—Applications for accreditation of voluntary arrangements

Section 7 Application for accreditation of a voluntary arrangement

Subsection 7(1) provides that an administrator of a voluntary arrangement may apply to the Minister for accreditation of the arrangement in relation to a product.

A voluntary arrangement may or may not be operational at the time an administrator applies for accreditation. However, when deciding whether to accredit an arrangement, section 9 requires the Minister to have regard to whether the arrangement has been established and, if the arrangement has not started operating, whether it will be ready to start operating within a reasonable period. Obligations under the Act and Rules only apply to voluntary arrangements that are accredited.

Two notes are provided at the end of subsection 7(1). Note 1 directs the reader to paragraph 71(d) of the Act, which provides that the administrator of a voluntary arrangement must be a body corporate.

Note 2 directs the reader to the additional matters relating to applications under sections 172, 173 and 174 of the Act.

Subsection 7(2) provides that for the purposes of paragraph 172(1)(d) of the Act, the application must be accompanied by the following:

- a document setting out details of:
 - the name of the administrator;
 - the product in relation to which the arrangement is to be accredited;
 - the outcomes, or proposed outcomes, of the arrangement;
 - how the arrangement operates or will operate;
 - the proposed use of the product stewardship logo in relation to the arrangement; and
- the document referred to in paragraph 71(b) of the Act.

Two notes are provided at the end of subsection 7(2). Note 1 directs the reader to paragraph 71(b) of the Act, which requires a voluntary arrangement to have a written document setting out:

- the persons authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo for a product, and
- the circumstances in which those persons are authorised to exercise those rights.

The administrator of a voluntary arrangement will also be required to provide this written document as part of the administrator's application for accreditation under subsection 7(2).

Note 2 directs the reader to paragraph 172(1)(e) of the Act, which provides that if rules made for the purpose of section 155 of the Act specify a fee that must accompany an application and payment of the fee has not been waived, the application must be accompanied by the fee. Fees for the accreditation of voluntary arrangements are set out in the *Recycling and Waste Reduction (Fees) Rules 2020*.

The documents required under subsection 7(2) will provide specific details of the voluntary arrangement to be accredited, and how that arrangement proposes to operate once accredited. An administrator of an accredited voluntary arrangement may apply to the Minister under section 14 to vary any aspect of the accreditation, including to ensure that the accreditation covers any changes to details of the arrangement specified in these documents.

Subsection 7(3) provides that the administrator can withdraw the application they submitted at any time before the Minister makes a decision about the application under section 8.

Division 3—Accreditation of voluntary arrangements

Section 8 Decision to accredit or refuse to accredit a voluntary arrangement

Section 8 applies if the administrator of a voluntary arrangement applies for the arrangement to be accredited in relation to a product.

Subsection 8(2) provides that the Minister must decide to accredit, or refuse to accredit, the voluntary arrangement in relation to the product. If the Minister decides to accredit the arrangement, the Minister may, by written notice, specify the date the accreditation takes effect, and the date the accreditation ceases to have effect.

Three notes are provided at the end of subsection 8(2). Note 1 clarifies that for the purposes of paragraph 70(3)(c) of the Act, the Minister is the accrediting authority. Note 2 directs the reader to section 11, which sets out when an accreditation takes effect and ceases to have effect. Note 3 directs the reader to Part 6 of Chapter 4 of the Act, which provides that the administrator of a voluntary arrangement may seek review of the accrediting authority's decision to refuse to accredit a voluntary arrangement.

Subsection 8(3) provides that if the Minister specifies the day on which accreditation ends under subparagraph 8(2)(b)(ii), it must not be more than five years after the day the accreditation begins.

Section 9 Matters to which the Minister must or may have regard in deciding whether to accredit a voluntary arrangement

Section 9 sets out the matters to which the Minister must or may have regard when deciding whether to accredit a voluntary arrangement in relation to a product. The matters that the Minister must consider are:

- whether the arrangement has been established and, if the arrangement has not started operating, whether it will be ready to start operating within a reasonable period;
- whether the arrangement adequately deals with the following matters:
 - governance and organisational matters, including procedures for decision-making and dispute resolution;
 - financial arrangements and funding to achieve the outcomes of the arrangement;
 - assessing the adequacy of environmental, health and safety policies and practices in relation to the activities undertaken under the arrangement;
 - the use of a product stewardship logo in relation to the arrangement;
 - monitoring and evaluating the performance of the arrangement in achieving the outcomes of the arrangement;
 - managing risk in relation to the operation of the arrangement;
- whether, if requested to do so under section 174 of the Act, the administrator of the arrangement provided further information or documents to the Minister within the period specified in the request;
- whether the administrator has given the Minister false or misleading information or documents;
- whether the administrator is a fit and proper person.

Two notes are provided at the end of subsection 9(1). Note 1 clarifies that only certain kinds of voluntary arrangements can be accredited, and directs the reader to section 71 of the Act.

Note 2 refers the reader to section 175 of the Act, which is relevant to determining whether the administrator is a fit and proper person.

Subsection 9(2) provides that the Minister may also have regard to any other matter that the Minister considers relevant.

The purpose of section 9 is to ensure that the Minister considers relevant information in making a decision to accredit, or not to accredit, a voluntary arrangement. Having regard to the matters in section 9 reduces potential risks, including environmental and human health risk, and maintains the integrity of the voluntary product stewardship framework and the product stewardship logo.

Section 9 works in connection with section 71 of the Act, which provides that a voluntary arrangement must not be accredited unless certain conditions are met, and section 10, which sets out the circumstances in which the Minister must refuse to accredit a voluntary arrangement, as required by subsection 70(4) of the Act.

Section 10 Preconditions to deciding to accredit a voluntary arrangement

Subsection 10(1) provides that before accrediting a voluntary arrangement, the Minister must be satisfied that the arrangement will result in an overall benefit to the environment, or human health and safety, over the lifecycle of the product to which the arrangement relates.

This requirement aims to ensure that arrangements will not cause greater harm overall across the lifecycle of the product, by requiring the Minister to consider any foreseeable adverse or unintended impacts arising from the arrangement. The requirement will not require a full lifecycle analysis to be undertaken but rather a general assessment of foreseeable impacts and benefits resulting from the product stewardship activities of the arrangement.

Subsection 10(2) provides that the Minister must refuse to accredit a voluntary arrangement in relation to a product in specified circumstances. These circumstances are where the Minister is satisfied that:

- an outcome of the arrangement in relation to the product will not further the objects of the Act; or
- the arrangement is unlikely to achieve one or more outcomes of the arrangement in relation to a product; or
- the product stewardship criteria are not satisfied in relation to the product; or
- the persons licensed or authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo in connection with products in that class, or the circumstances in which those persons are licensed or authorised, are not appropriate; or
- it is not in the public interest to accredit the arrangement.

Two notes are provided at the end of section 10. Note 1 refers readers to section 14 of the Act, which sets out the product stewardship criteria.

Note 2 directs readers to subsection 70(5) of the Act, which is relevant to determining whether the Minister, as the accrediting authority, is satisfied about matters referred to in paragraphs 10(2)(d) and (e).

To further the objects of the Act, outcomes should be measurable and include key performance indicators. For example, an outcome may include a reduction in the quantity of hazardous materials used in manufacture per product by 80% over five years. The adoption of performance targets will contribute to the setting of quality standards that can apply consistently and comparably across different arrangements and different products.

Division 4—Accredited voluntary arrangements

Section 11 Period of accreditation

Paragraph 11(a) provides that if a voluntary arrangement is accredited, the accreditation takes effect on:

- the day the Minister decides to accredit the arrangement, or

- if the Minister specifies another day in the notice given to the applicant under paragraph 8(2)(b), that day.

Paragraph 11(b) provides that the accreditation ceases at the earliest of:

- the date specified in the notice given to the applicant under paragraph 8(2)(b);
- the start of the day on which cancellation takes effect;
- the end of five years starting on the day the accreditation takes effect.

A note is provided at the end of section 11 that provides that the administrator of a voluntary arrangement that ceases to be accredited may reapply for accreditation under Division 2.

Imposing a maximum period in which an arrangement may remain in force provides an assurance that the arrangement is meeting contemporary product stewardship outcomes. Where an administrator of a voluntary arrangement wishes to be re-accredited after the accreditation has ceased, a new application for accreditation is required. An administrator may also apply for re-accreditation before the initial accreditation of the voluntary arrangement ceases.

Section 12 Conditions imposed on accreditation

Subsection 12(1) provides that the Minister may, by written notice, impose conditions on the accreditation of a voluntary arrangement.

A decision of the Minister to impose conditions on accreditation is a reviewable decision, for which the administrator can seek internal review and, in some circumstances, external review, in accordance with the Act.

Two notes are provided at the end of subsection 12(1). Note 1 refers the reader to Part 6 of Chapter 4 of the Act for information about reviewable decisions, and notification requirements.

Note 2 directs the reader to sections 14 and 15 for information on varying conditions of accreditation.

Subsection 12(2) provides that the conditions imposed by the Minister under subsection 12(1) may relate to certain matters. This list is not exhaustive, and the Minister may impose conditions other than those listed in subsection 12(2). Examples of what conditions may relate to are:

- the operation of the arrangement; or
- the use of a product stewardship logo in relation to the arrangement; or
- the obligations of the administrator of the arrangement; or
- an outcome of the arrangement.

The purpose of imposing conditions on the accreditation of a voluntary arrangement is to ensure the arrangement is suitable to be accredited on an ongoing basis. For example, a condition may require compliance with a proposal for accreditation stated in documents

required under subsection 7(2) on an ongoing basis once a voluntary arrangement is accredited, or these documents as varied.

Section 13 Responsibilities of administrator in relation to accreditation

Subsection 13(1) sets out the responsibilities of the administrator of an accredited voluntary arrangement in relation to a product. The administrator must:

- take all reasonable steps to ensure that the outcomes of the arrangement are achieved; and
- ensure that the use of a product stewardship logo in relation to the arrangement complies with
 - any conditions imposed in relation to the use of the logo; and
 - the written document mentioned in paragraph 71(b) of the Act;
- comply with the reporting and information requirements set out in Division 7 of the Act; and
- ensure that any conditions are complied with.

A note to subsection 13(1) refers the reader to paragraph 71(b) of the Act, which requires a voluntary arrangement to have a written document setting out:

- the persons authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo for a product, and
- the circumstances in which those persons are authorised to exercise those rights.

The administrator of a voluntary arrangement will also be required to provide this written document as part of the administrator's application for accreditation under subsection 7(2).

The terms of use of the logo may be subject to conditions of accreditation imposed under section 12. Ensuring the product stewardship logo is used correctly, and by those authorised to use it, is important as the logo communicates to the community the Australian Government's tick of approval for the accredited arrangement's voluntary product stewardship efforts.

Subsection 13(2) provides that the responsibilities of the administrator as listed in subsection 13(1) apply until the Minister is notified of the change of the body corporate that is the administrator of the arrangement.

A note at the end of subsection 13(2) explains that section 23 requires the Minister to be notified of changes to the administrator.

Section 13 does not limit the scope of the administrator's responsibilities, and the administrator may have other obligations that must be met, for example, notification requirements.

Division 5—Varying the accreditation of voluntary arrangements

Section 14 Variation of the accreditation of a voluntary arrangement on application

Subsection 14(1) provides that the administrator of an accredited voluntary arrangement may apply to the Minister to vary any aspect of the accreditation of the arrangement.

A note at the end of subsection 14(1) refers the reader to sections 172, 173 and 174 of the Act, which set out matters relating to applications, including applications for variation.

Subsection 14(2) provides that an application cannot be made for a variation that would extend the period for accreditation beyond 5 years from the day the accreditation took effect.

Subsection 14(3) provides that the Minister must decide to vary, or to refuse to vary, the accreditation of a voluntary arrangement.

A note at the end of subsection 14(3) provides that a decision to refuse to vary the accreditation of a voluntary arrangement on application is a reviewable decision and directs the reader to section 17. The note further specifies that the Minister must give the applicant written notice of a refused decision in accordance with section 152 of the Act.

Subsection 14(4) sets out the considerations that the Minister must have regard to when deciding to vary, or refuse to vary, the accreditation of a voluntary arrangement. These are:

- whether the variation will result in an overall benefit to the environment, or human health and safety, over the life cycle of the product to which the arrangement relates;
- whether the arrangement is likely to achieve its outcomes;
- whether the product stewardship criteria will continue to be satisfied.

Subsection 14(5) provides that the Minister is not required to have regard to the mandatory considerations at subsection 14(4) if the application is for a variation to specify an earlier day for the cessation of the accreditation or to make a minor change to the accreditation of the arrangement, for example, to correct a minor or technical error. This is considered appropriate because these types of variations are minor and administrative in nature.

Subsection 14(6) provides that in deciding whether to vary the accreditation, the Minister may have regard to any other matter that the Minister considers relevant.

Providing the mechanism for the administrator to request a variation allows for a flexible approach to regulation and will allow the Minister to respond to the changing needs of the administrator.

Section 15 Variation of the accreditation of a voluntary arrangement on Minister's own initiative

Subsection 15(1) provides that the Minister may vary any aspect of the accreditation of a voluntary arrangement on the Minister's own initiative (that is, without receiving an application from the administrator).

A note at the end of subsection 15(1) advises the reader that a decision to vary the accreditation of a voluntary arrangement on the Minister's own initiative is a reviewable

decision and directs the reader to section 17. It further provides that the Minister must give the administrator of the arrangement written notice of the decision to vary the arrangement in accordance with section 152 of the Act.

Subsection 15(2) provides that a variation that would extend the period of accreditation beyond five years from the day the accreditation took effect cannot be made.

Subsection 15(3) provides for when the Minister may vary the accreditation of a voluntary arrangement. These grounds are if:

- the Minister is no longer satisfied of a matter in subsection 10(1); or
- the Minister is satisfied of a matter mentioned in subsection 10(2); or
- the Minister is no longer satisfied that the administrator of the arrangement is a fit and proper person; or
- the Minister is satisfied that the administrator of the arrangement has not complied with a request made by an auditor under section 113 of the Act; or
- the Minister reasonably believes that one or more of the following grounds exist:
 - a condition imposed on the accreditation will not be, or is not being complied with;
 - the administrator has not complied with the administrator's obligations under section 13;
 - to take account of an event notified under section 72 of the Act;
 - to correct a minor or technical error.

A note to subsection 15(3) refers the reader to section 175 of the Act, which is relevant to determining whether a person is a fit and proper person.

Subsections 15(4) and (5) provide that the Minister must not vary the accreditation of a voluntary arrangement unless the Minister has given a written notice of the proposed variation to the administrator of the arrangement. The written notice must:

- specify each proposed variation; and
- specify the grounds for each proposed variation; and
- request the administrator to provide a written statement within 14 days showing cause why the accreditation should not be varied; and
- include a statement setting out the administrator's right to seek review of the decision.

Subsection 15(6) provides that the written notice required by subsection 15(4) is not required to include the request for the administrator to provide a written statement if the Minister reasonably believes the proposed variation is necessary to prevent or lessen a serious and imminent threat to human or environmental health. While this provision is intended to have the effect of excluding natural justice in such circumstances, it is considered appropriate as it will only apply in exceptional circumstances where there is credible and relevant evidence of a threat to human or environmental health that is both serious and imminent.

Subsection 15(7) provides that a notice is not required to be given if the variation is made to correct a minor or technical error under subparagraph 15(3)(e)(iv).

Section 15 is an important compliance related tool, and safeguard. For example, a matter may be brought to the attention of the Minister in relation to the administrator of the voluntary arrangement, necessitating a variation. Section 15 also reduces regulatory burden, by allowing the Minister to correct minor or technical errors.

Section 16 Notice of variation

Subsection 16(1) provides that if the Minister varies the accreditation of a voluntary arrangement under sections 14 or 15, the Minister must give the administrator written notice of the variation.

Subsection 16(2) sets out the requirements for the notice. The notice must include:

- the details of the variation;
- if the variation relates to a condition, the varied conditions and any new conditions imposed under section 12;
- the date the variation takes effect.

Providing the administrator with notice of the decision is an important aspect of procedural fairness and assists the administrator with understanding why the decision was made.

Section 17 Review of decisions relating to variations

Subsection 17(1) provides that this section is made for the purposes of subsection 151(2) of the Act. Subsection 151(2) of the Act enables the rules to provide that a decision is a reviewable decision, and to specify the person affected by the reviewable decision.

Subsection 17(2) provides that a decision made under subsection 14(3) to refuse to vary the accreditation of an accredited voluntary arrangement on application is a reviewable decision and the administrator is the person affected by the decision.

Subsection 17(3) sets out that a decision made under subsection 15(1) to vary an aspect of the accreditation of an accredited voluntary arrangement on the Minister's initiative is a reviewable decision and the administrator is the person affected by the decision.

Division 6—Cancelling the accreditation of voluntary arrangements

Section 18 When accreditation must be cancelled

Section 18 provides that the Minister must cancel the accreditation of a voluntary arrangement in relation to a product if the product is no longer sold in more than one State or Territory.

The requirement that the product is sold in more than one State or Territory is consistent with the product stewardship criteria under section 14 of the Act. The requirement recognises that it may be more appropriate for the Commonwealth Government to regulate a product with wider reach, rather than in one State or Territory.

A note at the end of section 18 refers the reader to Part 6 of Chapter 4 of the Act, which sets out matters in relation to the review of decisions, including that a decision to cancel accreditation is a reviewable decision, and the requirement to give notice of the decision.

Section 19 When accreditation may be cancelled

Subsection 19(1) provides that the Minister may cancel the accreditation of a voluntary arrangement on application by the administrator or on the Minister's own initiative.

Two notes are provided at the end of subsection 19(1). Note 1 refers readers to sections 172, 173 and 174 of the Act, which set out matters in relation to applications.

Note 2 refers the reader to Part 6 of Chapter 4 of the Act, which provides for review of the decision to cancel the accreditation and information about notification requirements.

Subsection 19(2) sets out the grounds on which the Minister may cancel the accreditation on the Minister's own initiative. The Minister may cancel accreditation if:

- a condition of the accreditation is not complied with;
- the administrator has not complied with the obligations specified in section 13;
- the Minister is no longer satisfied of a matter mentioned in subsection 10(1);
- the Minister is satisfied of a matter mentioned in subsection 10(2);
- the Minister is not satisfied that the administrator is a fit and proper person;
- the Minister is satisfied that the administrator of the arrangement has not complied with a request made by an auditor under section 113 of the Act.

A note at the end of subsection 19(2) refers readers to section 175 of the Act in relation to the matters that determine whether the administrator is a fit and proper person.

Subsections 19(3) and (4) provide that the Minister must not cancel the accreditation of a voluntary arrangement unless the Minister has given a written notice of the proposed cancellation to the administrator of the arrangement. The written notice must:

- specify the ground on which the Minister proposes to cancel the accreditation; and
- request the administrator to provide a written statement within 14 days showing cause why the accreditation should not be cancelled; and
- include a statement setting out the administrator's right to seek review of the decision.

Subsection 19(5) provides that the written notice required by paragraph 19(4)(b) is not required to include the request for the administrator to provide a written statement if the Minister reasonably believes the cancellation is necessary to prevent or lessen a serious and imminent threat to human or environmental health.

While this provision is intended to have the effect of excluding natural justice in such circumstances, it is considered appropriate as it will only apply in exceptional circumstances where there is credible and relevant evidence of a threat to human or environmental health that is both serious and imminent.

Section 20 When cancellation takes effect

Subsection 20(1) provides that section 20 applies if the Minister cancels the accreditation of a voluntary arrangement.

Subsection 20(2) provides that the cancellation takes effect on the day the Minister makes the decision, unless another day is specified in the notice given to the administrator.

Providing the administrator with the timeframe for the end of the accreditation provides clarity and ensures the administrator continues to comply with any obligations until that day.

Division 7—Reporting and giving information

Section 21 Annual report

Subsection 21(1) provides that the administrator of an accredited voluntary arrangement must, in accordance with any conditions, provide the Minister with an annual report about the performance of the arrangement in relation to the outcomes of the arrangement.

A note at the end of subsection 21(1) informs readers that the Minister may impose conditions on the accreditation of the arrangement in relation to the annual report. This includes obligations about when the report must be given to the Minister and the information that must be contained in the report.

Subsection 21(2) sets out the information that must be contained in the annual report. The annual report must:

- identify the product in relation to which the arrangement is accredited; and
- describe the performance of the arrangement in relation to each outcome of the arrangement; and
- describe any activities undertaken in relation to matters specified in paragraph 9(1)(b); and
- if an outcome was not achieved, explain why the outcome was not achieved and the proposed measures to be implemented to rectify the failure to achieve the outcome; and
- include a financial statement setting out the income and expenses of the arrangement for the year which the report relates; and
- include evidence to support any claims made in the report.

Annual reports are a key tool used to determine whether it is appropriate for a voluntary arrangement to remain accredited, and to assess the performance of the arrangement, including how environmental outcomes are being met and whether the arrangement still has adequate financial and governance systems in place. The Minister is likely to require at least one audit over the five-year accreditation period to ensure outcomes are being met. Section 109 of the Act deals with auditing of product stewardship arrangements.

Section 22 Published summary of arrangement

Subsection 22(1) provides that the administrator of an accredited voluntary arrangement must publish on the internet a document describing the arrangement. The matters that must be stated in the document include:

- the name of the administrator; and

- the product in relation to which the arrangement is accredited; and
- the outcomes of the arrangement; and
- how the arrangement operates; and
- the use of the product stewardship logo in relation to the arrangement.

A note at the end of subsection 22(1) refers readers to paragraph 71(b) of the Act, which sets out the requirement for the arrangement to have a written document setting out the persons who are authorised to exercise the Commonwealth's intellectual property rights in a product stewardship logo and the circumstances in which those persons would be authorised by the arrangement to exercise those rights.

Subsection 22(2) provides that the administrator must maintain an up to date version of the document on the internet throughout the period of accreditation. Links to these documents will be provided on the Department's website.

The requirement for an administrator to publish a summary describing the accredited voluntary arrangement provides the community with information about the arrangement, and together with the annual report required under section 21, transparency around how the arrangement is meeting environmental outcomes. The information included in such documents would not need to include any commercial-in-confidence material. It also ensures correct use of the product stewardship logo, including permitted use by members of the arrangement.

PART 3 – OTHER MATTERS

Section 23 Notifying the Minister of certain events

Subsection 23(1) is made for the purpose of subsection 72(1) of the Act, which provides that the administrator of an accredited voluntary arrangement must notify the Minister of certain events.

Subsection 23(2) will require the administrator of an accredited voluntary arrangement to notify the Minister of an event that hinders the ability of an accredited voluntary arrangement to adequately deal with the matters mentioned in paragraph 9(1)(b).

It is necessary for the Minister to be notified of such events so the Minister can determine whether any action needs to be taken to uphold the accreditation framework. A notification under section 23 may lead the Minister to initiate a variation to the accreditation to manage a change in circumstance. The Minister may also decide to cancel the accreditation. Failure to comply with this requirement is subject to:

- a strict liability offence of up to 60 penalty units for individuals and up to 300 penalty units for a body corporate under subsection 72(3) of the Act, and
- a civil penalty of up to 250 penalty units for an individual and 1250 penalty units for a body corporate under subsection 72(4) the Act.

Statement of Compatibility with Human Rights

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

Recycling and Waste Reduction (Product Stewardship—Accreditation of Voluntary Arrangements) Rules 2020

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 *Recycling and Waste Reduction (Product Stewardship—Accreditation of Voluntary Arrangements) Rules 2020* (Rules) are made under the *Recycling and Waste Reduction Act 2020* (Act).

The Act will establish a framework to:

- regulate the export of waste materials, in line with the agreement to ban the export of waste plastic, paper, glass and tyres by the Council of Australian Governments in 2020, and
- improve the management of environmental, health and safety impacts of products, in particular those impacts associated with the disposal of products.

The Act will facilitate this by providing for the accreditation of voluntary product stewardship arrangements that further the objects of the Act by making arrangements for the reuse, recovery and recycling of particular products, and take action to manage products throughout their lifecycle. The Act allows accredited voluntary arrangements to exercise the Commonwealth's intellectual property rights in a product stewardship logo.

The Rules will provide for various matters relating to the accreditation of voluntary arrangements in relation to a product. In particular they will:

- permit the administrator of a voluntary arrangement to apply to the Minister for accreditation of the arrangement in relation to a product
- permit accreditation of an arrangement by the Minister (as the accrediting authority), if the Minister is satisfied of certain matters, and has regard to certain matters, and require the Minister to refuse to accredit it on specified grounds
- provide for the period of accreditation
- set out obligations that are imposed on the administrator of an accredited voluntary arrangement, and conditions on accreditation of the arrangement
- specify circumstances in which the accreditation of a voluntary arrangement may be cancelled or varied.

Human rights implications

The Rules may engage the following human rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR).

Right to health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Committee on Economic Social and Cultural Rights (the UNCESCR), in its *General Comment No 14 (August 2000)*, has stated that the right to health extends to the underlying determinants of health such as healthy environmental conditions (at [11]).

Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14*, the UNCESCR states that this encompasses the prevention and reduction of the population's exposure to harmful substances such as harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health (at [15]).

Together with Chapter 3 of the Act, the Rules will promote the right to health (including by promoting a healthy environment) by reducing the impact on human and environmental health of products and waste from products, including by:

- encouraging the reuse, recycling and recovery of products in an environmentally sound way, and
- encouraging those responsible for using, designing, manufacturing and distributing products to take greater responsibility for those products.

The Rules are compatible with the right to health under Article 12 of the ICESCR because they positively engage and promote that right.

Conclusion

The Rules are compatible with human rights because they promote the right to health under Article 12(1) of the ICESCR and do not engage any other human rights.

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