

EXPLANATORY STATEMENT

Issued by the Minister for the Environment and Water,
the Hon. Tanya Plibersek MP

Recycling and Waste Reduction Act 2020

Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024

Authority

The *Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024* (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.

Chapter 2 of the Act provides for the regulation of the export of waste material. A number of provisions in Chapter 2 set the parameters of the Minister's rule making power and either provide examples of the kinds of things for which the Minister may make provision in the rules, or set out the default matters for the provision and allow the Minister to give further detail in the rules. Where relevant, these provisions are identified in this explanatory statement.

Purpose

The purpose of the Rules is to regulate the export of mixed waste paper and cardboard from Australia. It implements the commitment of all Australian Governments by setting out the requirements which must be met for the export of waste paper and cardboard from Australia. These requirements are generally that, from 1 October 2024, the exporter holds a waste paper and cardboard export licence and makes an export declaration for each consignment of regulated waste paper and cardboard that is to be exported.

Background

The Act establishes a legislative framework to enable Australia to effectively manage the human and environmental health impacts of products and waste material, and in particular, the impacts associated with the disposal of waste materials and products.

The Act and the Rules together implement the commitment of the Australian Governments (through the former Council of Australian Governments (COAG)) to regulate the export of waste paper and cardboard from 1 July 2024.

This is the fourth waste stream to be regulated under the former COAG's commitment to regulate waste exports. It was preceded by waste glass (1 January 2021), sorted and unprocessed waste plastic (1 July 2021), waste tyres (1 December 2021) and processed waste plastic (1 July 2022). The former COAG's decision had the support of the Commonwealth, all States and Territories, and local governments following extensive consultation since 2019.

The former COAG's commitment to regulate the export of certain waste materials featured as Target 1 of the National Waste Policy Action Plan 2019 (the Action Plan). The Action Plan includes actions aimed at driving change in the waste industry, businesses, governments, and the community to turn waste into a reusable commodity. COAG's Response Strategy for Phasing Out Exports of Waste Plastic, Paper, Glass and Tyres, released in March 2020,¹ sets out the system-level and material-specific challenges and opportunities that are central to the effective implementation of the waste export legislation, and to the longer-term transformation of Australia's waste and recycling sector.

Impact and Effect

The Rules impose regulatory controls on mixed waste paper and cardboard that is exported from Australia. For the 4 years to 2022-23 an average of 400,000 tonnes of mixed waste paper and cardboard was exported from Australia per annum.

The intention of regulating the export of mixed waste paper and cardboard is to control the export of unsorted material, which can include high levels of non-paper and cardboard waste, from having a negative impact on human or environmental health in the receiving country. Managing Australia's waste in an environmentally sound way encourages reuse, remanufacture, recycling and recovery of discarded material.

Consultation

Consultation with industry, local governments, non-government organisations and individuals on the regulation of waste exports began in November 2019 and included a consultation paper with 103 submissions received and a series of industry roundtables around the country. A COAG Consultation Regulation Impact Statement was also released,² with 62 submissions received.

The Department of Climate Change, Energy, the Environment and Water (the Department) undertook consultation with industry, peak bodies and state and territory governments on regulating the export of waste paper and cardboard via a technical working group in late-2022. This was complemented by further consultation between September and November 2023 on the specific design and implementation of the Rules (including on an exposure draft version of the Rules). The Department received 38 submissions in response to the 2023 consultation. The Department also convened an industry roundtable as well as several one-on-one meetings to garner the views of stakeholders during 2023.

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

¹

https://web.archive.org/awa/20210306190025mp_/https://www.coag.gov.au/sites/default/files/communi que/phasing-out-waste-exports-response-strategy.pdf

² <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/phasing-out-exports-waste-plastic-paper-glass-and-tyres>

Details and Operation

Details of the Rules are set out in Attachment A.

The Rules commence on 1 July 2024.

Other

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

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.

Details of the Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024

Part 1 - Preliminary

Section 1 – Name

1. Section 1 provides that the name of the instrument is the *Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024* (the Rules).

Section 2 – Commencement

2. Subsection 2(1) provides that the Rules commence on 1 July 2024.
3. The note below the table provides that the table relates only to the provisions of the Rules as originally made. It will not be amended to deal with any later amendments of the Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments is not reflected in this table.
4. Subsection 2(2) clarifies that any information in column 3 of the table is not part of the Rules. Information may be inserted in this column, or edited in this column, in any published version of the Rules.

Section 3 – Authority

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

Section 4 – Definitions

6. Section 4 defines a number of key terms for the purposes of the Rules. These terms include *regulated waste paper and cardboard*, *waste paper and cardboard export licence*, *contaminants*, and *trade sample*.
7. *Regulated waste paper and cardboard* means waste paper and cardboard that is prescribed in section 5 of the Rules. This is a key concept in the Rules because it sets the scope of what is being regulated under the Rules.
8. A *waste paper and cardboard export licence* is an export licence to carry out export operations in relation to regulated waste paper and cardboard. A waste paper and cardboard export licence permits the holder of the licence to export regulated waste paper and cardboard in accordance with the Act and the Rules (including any conditions imposed on the licence under the Act or Rules).
9. In relation to regulated waste paper and cardboard, *contaminants* means: material that represents a hazard to health, safety and the environment, or non-paper components such

as metals, plastics, glass, textiles or wood. Water and non-paper components of liquid paperboard are not considered to be contaminants.

10. A *trade sample* of regulated waste paper and cardboard means regulated waste paper and cardboard that is exported solely for the purpose of either providing a sample under a commercial arrangement, or providing a sample for technical or safety analysis.
11. Section 4 also includes a signpost definition of *waste paper and cardboard* which is defined in subsection 5(2) of the Rules.
12. The note at the start of section 4 directs readers to the Act, where a number of terms used in the Rules are defined.

Part 2 – Regulating waste paper and cardboard

Section 5 – Waste paper and cardboard is regulated waste material

13. Subsection 17(1) of the Act provides that the rules may prescribe a kind of waste material for the purposes of the Act.
14. Subsection 5(1) of the Rules is made for the purposes of subsection 17(1) of the Act and prescribes waste paper and cardboard, other than the kinds of waste paper and cardboard referred to in subsection 5(3), as regulated waste material for the purposes of the Act. This is an important concept in the Act and the Rules as it sets the scope of the regulatory scheme created by the legislation. Only waste paper and cardboard that is prescribed under this section will be subject to the requirements of the Act and the Rules.
15. The note following subsection 5(1) explains that waste paper and cardboard prescribed under this section is referred to as ‘regulated waste paper and cardboard’ in the Rules.
16. Subsection 5(2) defines the concept of *waste paper and cardboard*, for the purposes of the Rules. *Waste paper and cardboard* is:
 - a) mixed or unsorted paper and cardboard that is discarded, rejected or left over from an industrial, commercial, domestic or other activity; or
 - b) mixed or unsorted paper and cardboard that is surplus to or a by-product of an industrial, commercial, domestic or other activity.
17. Paper and cardboard that falls within the definition of *waste paper and cardboard* will be subject to the requirements of the Act and the Rules, unless it is excluded by subsection 5(3).
18. Subsection 5(3) sets out the kinds of waste paper and cardboard that are not prescribed as regulated waste paper and cardboard (and therefore not subject to the requirements of the Act and the Rules). These are:
 - a) waste paper and cardboard that is exported for personal or domestic use;

- b) waste paper and cardboard that is imported into Australia on a temporary basis and is re-exported in the same covering and with the same trade description (within the meaning of the *Commerce (Trade Descriptions) Act 1905*) with which it was imported;
 - c) waste paper and cardboard that is hazardous waste (within the meaning of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (Hazardous Waste Act));
 - d) the pulp of fibres that have been derived from waste paper and cardboard;
 - e) sorted liquid paperboard.
19. An exporter of a kind of waste paper and cardboard listed at subsection 5(3) is not required to comply with the requirements of the Act and Rules, including (on and after 1 October 2024) the requirements to hold an export licence and make an export declaration (section 6).
20. Requiring waste paper and cardboard that is imported into Australia on a temporary basis to meet the requirements of the Rules would be excessively burdensome as this waste is intended to be re-exported in the same condition, and in the same shipping container, within which it entered Australia. This allows for the transit of materials between shipping routes.
21. Waste paper and cardboard that is hazardous waste within the meaning of the Hazardous Waste Act will not be subject to the requirements of the Act and Rules. This is because exports of waste paper and cardboard that is hazardous waste is already regulated under the Hazardous Waste Act. The Hazardous Waste Act implements Australia's obligations under the *Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal*, an international treaty for the control of the movement of hazardous waste from one country to another and its disposal. The Hazardous Waste Act regulates the export, import and transit of hazardous waste to ensure it is managed in an environmentally sound manner to minimise harmful effects of hazardous waste on humans and the environment.

Section 6 – Prescribed export conditions for regulated waste paper and cardboard

22. Section 18 of the Act provides that the rules may prohibit the export of regulated waste material unless conditions prescribed by the rules are complied with. Section 20 of the Act makes it an offence and the contravention of a civil penalty provision for a person to not comply with the prescribed export conditions when exporting regulated waste material.
23. Section 6 of the Rules is made for the purposes of section 18 of the Act and sets out the prescribed export conditions that must be met when exporting regulated waste paper and cardboard.

24. These conditions only apply to exports of regulated waste paper and cardboard that occur on or after 1 October 2024.
25. Paragraph 6(2)(a) sets out the two conditions that must be met before regulated waste paper and cardboard can be exported. The first condition is that the exporter must hold a waste paper and cardboard export licence that is in force and not suspended at the time of the export. The second condition is that the exporter must have given an export declaration to the Minister for each consignment that is being exported. The export declaration must include the information prescribed by section 7 of the Rules (see below).
26. Paragraph 6(2)(b) sets out the two conditions that must be met for a person to be able to export a trade sample of regulated waste paper and cardboard without a licence and without making an export declaration. The first is that each consignment of regulated waste paper and cardboard is less than 100kg. The second is that the consignment to be exported is a *trade sample* within the meaning of section 4 of the Rules (see paragraph 10 above).
27. Section 6 is drafted as a prohibition. This means that for exports on and after 1 October 2024 exporters need to ensure that the prescribed export conditions are met prior to regulated waste paper and cardboard being exported. Failure to do so may mean that the exporter has breached the offence and civil penalty provisions in section 20 of the Act. It will not be possible, for example, to obtain a licence or to give an export declaration to the Minister for a consignment of regulated waste paper and cardboard that has already been exported.

Section 7 – Export declaration

28. Section 19 of the Act sets out the general requirements for export declarations given under the Act. Relevantly, paragraph 19(1)(c) requires that an export declaration include the information (if any) prescribed by the rules.
29. Section 7 of the Rules is made for the purposes of paragraph 19(1)(c) of the Act and prescribes the information that must be included in an export declaration that is given for the purposes of satisfying the prescribed export condition at paragraph 6(2)(a) (above).
30. The combined effect of subsections 7(1) and (2) is that an export declaration for the export of regulated waste paper or cardboard on or after 1 October 2024, include the total weight of contaminants in the consignment as a percentage of the total weight of the consignment.

Part 3 – Waste paper and cardboard export licences

Section 8 – Application for waste paper and cardboard export licence – requirements

31. Section 172 of the Act sets out the general requirements for all applications made under the Act. Relevantly, paragraph 172(1)(c) requires that an application include the information (if any) prescribed by the rules.

32. Section 8 of the Rules is made for the purposes of paragraph 172(1)(c) of the Act and prescribes the information that must be included in an application for a waste paper and cardboard export licence.
33. Subsection 8(2) requires a person who is applying for a licence to carry out the export of regulated waste paper and cardboard on or after 1 July 2026 to provide in their application information that demonstrates that the applicant is, and is likely to continue to be, able to ensure that the total weight of contaminants in each consignment of waste paper exported on or after 1 July 2026 under the licence will not exceed 5% of the total weight of the consignment.
34. This means, for example, that a person applying for a waste paper and cardboard export licence covering a three year period from 1 July 2024 until 1 July 2027 must provide the information set out in subsection 8(2) in their application – because the licence is intended to cover exports before, on and after 1 July 2026.
35. A person may apply for a waste paper and cardboard export licence to carry out the export of regulated waste paper and cardboard only during the period 1 July 2024 until 30 June 2026 without providing the information set out in subsection 8(2). In these circumstances, the person’s licence (if granted) would expire on or before 30 June 2026.
36. From 1 July 2026, the information set out at subsection 8(2) must be provided with all applications for a waste paper and cardboard export licence.
37. Paragraphs 172(1)(a) and (b) of the Act also allow the Minister to approve a manner and form for an application, including information required by the form, and documents to accompany the form. It is intended that information prescribed under section 8 will be required in addition to information and documents required by an approved form.

Section 9 – Deciding whether to grant a waste paper and cardboard export licence

38. Subsection 34(1) of the Act provides that, on receiving an application for an export licence, the Minister must decide to grant the export licence, or to refuse to grant the export licence.
39. Subsection 34(2) of the Act has the effect that, in deciding whether to grant the export licence, the Minister must have regard to the matters set out in that subsection. These matters include the objects of the Act, whether the applicant is a fit and proper person, whether the applicant’s relevant Commonwealth liabilities have been paid, and whether the applicant is likely to comply with the conditions of the licence. Paragraph 34(2)(f) allows the rules to prescribe additional matters to which the Minister must have regard when deciding whether to grant an export licence.
40. Section 9 of the Rules is made for the purpose of paragraph 34(2)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to grant a waste paper and cardboard export licence.

41. Paragraph 9(2)(a) requires the Minister to have regard to whether the applicant has been the holder of an export licence for any regulated waste material that has been revoked by the Minister. Revocation of an export licence could indicate that an applicant may not comply with the conditions of a waste paper and cardboard export licence.
42. Paragraph 9(2)(b) requires the Minister to have regard to whether the applicant has the capacity to ensure that the total weight of contaminants in each consignment of waste paper and cardboard does not exceed 5% of the total weight of the consignment for consignments that are exported under licence on or after 1 July 2026.
43. A note to subsection 9(2) directs the reader to other matters at paragraphs 34(2)(a) to (e) of the Act to which the Minister must have regard when deciding whether to grant an export licence. The note further explains that under subsection 34(3) of the Act, the Minister may have regard to any other matter that the Minister considers relevant.

Section 10 – Conditions of waste paper and cardboard export licence

44. Section 35 of the Act provides that an export licence is subject to the conditions provided by the Act (paragraph 35(1)(a)), the conditions prescribed by the rules (other than any of those conditions that the Minister decides are not to be conditions of the licence (paragraph 35(1)(b)), and any additional conditions that the Minister considers appropriate and that are specified in the licence (paragraph 35(1)(c)).
45. Section 10 of the Rules is made for the purposes of paragraph 35(1)(b) of the Act and prescribes the additional conditions that apply to waste paper and cardboard export licences.
46. The note to subsection 10(1) directs the reader to paragraph 35(1)(c) of the Act, which allows the Minister to impose additional conditions on individual export licences. The note further directs the reader to section 64 of the Act, which provides that it is a condition of an export licence that the holder comply with any directions given to them by the Minister.
47. Subsection 10(2) of the Rules makes it a condition of a licence that the licence holder must have a commercial relationship with the importer or the end user of the regulated waste paper and cardboard at the time each consignment of regulated waste paper and cardboard is exported. This condition ensures that regulated waste paper and cardboard is exported for a legitimate purpose, and provides assurance that the regulated waste paper and cardboard will be used or recycled in an environmentally sound way and is unlikely to end up as landfill in the importing country.
48. Subsection 10(3) makes it a condition of a licence that, if the holder of the licence is not the supplier of the regulated waste paper and cardboard, the holder must, at the time the regulated waste paper and cardboard was supplied, have had a commercial relationship with the supplier. This condition ensures the holder of the waste paper and cardboard export licence has a connection to the sorting of the regulated waste paper and cardboard,

which will help ensure the regulated waste paper and cardboard will meet the 5% contamination limit that will be in effect from 1 July 2026.

49. Subsection 10(4) makes it a condition of a licence that the licence holder will ensure that each consignment of regulated waste paper and cardboard exported under the licence on or after 1 July 2026 will not contain contaminants exceeding 5% of the total weight of the consignment. The purpose of this condition is to ensure that regulated waste paper and cardboard exported from Australia comprises a relatively clean waste stream that is fit for reuse or recycling at overseas facilities. This is intended to ensure responsible management of Australia's waste and prevent any landfilling or dumping of the regulated waste paper and cardboard in the relevant country (or any other country) which could cause environmental harm.
50. In addition to the offence and civil penalty in section 59 of the Act, if the holder of a waste paper and cardboard export licence contravenes the conditions of their export licence, the Minister may, under the Act, decide to vary, suspend, or revoke the licence.

Section 11 – Renewal of waste paper and cardboard export licence

51. Sections 38 to 40 of the Act deal with applications to renew an export licence.
52. Subsection 38(2) provides that the holder of an export licence may apply to the Minister to renew their licence. Subsection 38(4) requires an application for renewal of an export licence to be made within the period prescribed by the rules (paragraph 38(4)(a)) or, if the Minister allows a longer period, within that period (paragraph 38(4)(b)).
53. Subsection 11(1) of the Rules is made for the purpose of paragraph 38(4)(a) of the Act and prescribes the period within which an application to renew a waste paper and cardboard export licence must be made.
54. Paragraph 11(1)(a) provides that if the expiry date of the licence is on or before 1 July 2026, an application for renewal of a waste paper and cardboard export licence must be made no later than 90 days before the expiry date for the licence.
55. Paragraph 11(1)(b) has the effect that if a licence is set to expire after 1 July 2026, an application for a renewal of a waste paper and cardboard export licence must be made no later than 30 days before the expiry of the licence.
56. The purpose of providing a minimum timeframe for allowing an application for renewal of a waste paper and cardboard export licence to be made is to give the Minister sufficient time to consider the application and to make a decision prior to the expiry date of the licence.
57. The renewal application process is more streamlined than the initial waste paper and cardboard export licence application process and involves a simplified form that provides for the reconsideration of information previously provided. This approach reduces the

regulatory burden on exporters who renew their waste paper and cardboard export licences.

58. The longer 90-day timeframe for renewal applications for licences that are set to expire on or before 1 July 2026 is intended to allow sufficient time for the Minister to assess the ability of these existing licence holders to meet the 5% by weight contamination limit that takes effect from 1 July 2026 in circumstances where that information was not provided with the initial waste paper and cardboard export licence application made under section 8 of the Rules.
59. The note following subsection 11(1) explains that consistent with subsection 38(1) of the Act an application for renewal of a waste paper and cardboard export licence may only be made under the Act if there is an expiry date for the licence. It further explains that some licences remain in force until a specified event occurs and directs the reader to paragraph 34(4)(a) of the Act.
60. As noted above, paragraph 172(1)(c) requires that an application include the information (if any) prescribed by the rules. Subsection 11(2) of the Rules is made for the purposes of paragraph 172(1)(c) of the Act and prescribes that an application for the renewal of a waste paper and cardboard export licence must include the information specified at subsection 8(2) (being information that demonstrates that the applicant is, and is likely to continue to be, able to ensure that the total weight of contaminants in each consignment of waste paper exported on or after 1 July 2026 under the licence will not exceed 5% of the total weight of the consignment).
61. However, this requirement will only apply to renewal applications where the information was not previously provided to the Minister in an earlier licence application (either the original application or an earlier application for renewal). For instance, if a licence was only intended to cover exports of regulated waste paper and cardboard prior to 1 July 2026, that exporter would not have been required to provide, in their original licence application, the information specified at subsection 8(2). However, if that exporter wished to renew their licence so that it covered the export of regulated waste paper and cardboard on or after 1 July 2026, the exporter would be required to provide the information specified at subsection 8(2) as part of their renewal application.
62. Subsection 39(1) of the Act provides that, on receiving an application to renew an export licence, the Minister must decide to renew the licence or to refuse to renew the licence. Subsection 39(3) of the Act sets out the matters to which the Minister must have regard when deciding whether to renew an export licence under subsection 39(1). These matters include the objects of the Act, whether the applicant is a fit and proper person, whether the applicant has paid all relevant Commonwealth liabilities and whether the applicant would be likely to comply with the conditions of the renewed licence.
63. Paragraph 39(3)(f) of the Act allows the rules to prescribe additional matters to which the Minister must have regard when deciding whether to renew an export licence.

64. Subsection 11(3) of the Rules is made for the purpose of paragraph 39(3)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to renew a waste paper and cardboard export licence. These additional matters are set out in subsection 9(2) of the Rules, which are the matters the Minister must consider in relation to the initial licence application.

Section 12 – Deciding whether to vary a waste paper and cardboard export licence

65. Subsection 42(1) of the Act allows the holder of an export licence to apply to the Minister to vary their licence. Subsection 42(3) has the effect that if the Minister receives an application under subsection 42(1) to vary an export licence, the Minister must decide to make the variation or to refuse to make the variation.
66. Subsection 42(4) of the Act sets out the matters to which the Minister must have regard when deciding whether to vary an export licence under subsection 42(3). These matters include the objects of the Act, whether the applicant has paid all relevant Commonwealth liabilities and whether the applicant would be likely to comply with the conditions of the varied licence. Paragraph 42(4)(e) of the Act allows the rules to prescribe additional matters to which the Minister must have regard when deciding whether to vary an export licence.
67. Section 12 of the Rules is made for the purpose of paragraph 42(4)(e) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to vary a waste paper and cardboard export licence. These matters are the matters set out in subsection 9(2) of the Rules, which are the matters the Minister must consider in relation to the initial licence application.
68. The note after subsection 12(1) alerts the reader that the other matters to which the Minister must have regard are specified in paragraphs 42(4)(a) to (d) of the Act, and that the Minister may also have regard to any other matter that the Minister considers relevant (subsection 42(6) of the Act).

Section 13 – Grounds for suspension of waste paper and cardboard export licence

69. Subsection 46(1) of the Act allows the Minister to suspend an export licence if the Minister reasonably believes that one or more of the specified grounds are met. The specified grounds include, among others, where a condition of the licence has been, or is being, contravened, where the holder of the licence is not a fit and proper person, where it is necessary to do so to prevent or lessen a threat to human or environmental health, and where the holder of the licence failed to comply with a direction or contravened a requirement of the Act.
70. Paragraph 46(1)(i) of the Act allows the rules to prescribe additional grounds for the suspension of an export licence. Section 13 of the Rules is made for the purposes of paragraph 46(1)(i) and prescribes an additional ground on which the Minister may suspend a waste paper and cardboard export licence.

71. The additional ground is where the holder of the licence was required to provide additional or corrected information in accordance with subsection 60(2) of the Act and failed to do so. Section 60 of the Act provides that the holder of an export licence must provide additional or corrected information or documents as soon as practicable after becoming aware that information or documents previously provided in relation to an application were incomplete or incorrect.
72. The ability to suspend a waste paper and cardboard export licence in circumstances where the original decision to grant the licence (or to renew or vary the licence) was based on incorrect or incomplete information or documents, and where the licence holder has failed to provide additional or corrected information, is important for mitigating the human and environmental health risks that may arise when exporting regulated waste paper and cardboard. It ensures that appropriate regulatory action can be taken.
73. The note after section 13 alerts the reader that paragraphs 46(1)(a) to (h) of the Act set out other grounds for the suspension of an export licence. These grounds apply to a waste paper and cardboard export licence in addition to the ground prescribed by section 13 of the Rules.

Section 14 – Grounds for revocation of waste paper and cardboard export licence

74. Subsection 54(1) of the Act allows the Minister to revoke an export licence if the Minister reasonably believes that one or more of the specified grounds are met. The specified grounds include, among others, where a condition of the licence has been, or is being, contravened, where the holder of the licence is not a fit and proper person, where it is necessary to do so to prevent or lessen a threat to human or environmental health, and where the holder of the licence failed to comply with a direction or contravened a requirement of the Act.
75. Paragraph 54(1)(i) of the Act allows the rules to prescribe additional grounds for the revocation of an export licence. Section 14 of the Rules is made for the purposes of paragraph 54(1)(i) and prescribes an additional ground on which the Minister may revoke a waste paper and cardboard export licence.
76. The additional ground is that the holder of the licence was required to provide additional or corrected information in accordance with subsection 60(2) of the Act and failed to do so. Section 60 of the Act provides that the holder of an export licence must provide additional or corrected information or documents as soon as practicable after becoming aware that information or documents previously provided in relation to an application were incomplete or incorrect.
77. The ability to revoke a waste paper and cardboard export licence in circumstances where the original decision to grant the licence (or renew or vary the licence) was based on incorrect or incomplete information or documents, and where the licence holder has failed to provide additional or corrected information, is important for mitigating the human and environmental health risks that arise when exporting regulated waste paper and cardboard and ensures that appropriate regulatory action can be taken.

78. It is anticipated that a decision to revoke the licence, rather than to suspend the licence, could potentially be made where the incomplete or incorrect information or documents relate to fundamental aspects of the decision to grant the licence. An example might be where, had the correct information been provided at the appropriate time, the Minister may have formed a view that the applicant was not a fit and proper person, or that the holder of the licence was no longer a fit and proper person.
79. The note after section 14 alerts the reader that paragraphs 54(1)(a) to (h) of the Act set out other grounds for the revocation of an export licence. These grounds apply to a waste paper and cardboard export licence in addition to the ground prescribed by section 14 of the Rules.

Section 15 – Holder of waste paper and cardboard export licence to notify Minister of certain events

80. Subsection 61(1) of the Act requires the holder of an export licence to notify the Minister of certain events. Failure to comply with this requirement will be an offence and breach of a civil penalty provision (subsections 61(3) and (4) of the Act). Paragraph 61(1)(e) provides that the rules may prescribe additional events of which the Minister must be notified.
81. Section 15 of the Rules is made for the purpose of paragraph 61(1)(e) of the Act and prescribes that the holder of a waste paper and cardboard export licence must notify the Minister of the following:
- a) if the holder of the licence ceases to operate the export business that carries out the operations covered by the licence; and
 - b) if a person who participates in the management or control of the export business that carries out export operations covered by the licence ceases to be in that role; and
 - c) if the licence holder becomes aware of a discrepancy between a contaminants level reported in an export declaration for a consignment of waste paper and cardboard exported under the licence and the contaminants level of the consignment determined by the importer or end user.
82. The purpose of requiring the licence holder to notify the Minister of such changes to their operation is to allow the Minister to decide whether any action needs to be taken to uphold the regulatory framework, such as variation of the conditions of the licence.

Section 16 – Directions to holders of waste paper and cardboard export licences

83. Section 64 of the Act allows the Minister to give written directions to the holder of an export licence. In considering whether to give a direction under section 64, the Minister is required to have regard to the objects of the Act (paragraph 64(3)(a)) and any other matters prescribed by the rules (paragraph 64(3)(b)).

84. Section 16 of the Rules is made for the purpose of paragraph 64(3)(b) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to give a direction to the holder of an export licence under section 64. These matters are whether the holder has contravened (or is likely to contravene) a condition of the licence, whether the holder has not complied (or is likely not to comply) with a requirement of the Act, and whether the regulated waste paper and cardboard does not comply (or is likely not to comply) with a requirement under the Act that applies in relation to the regulated waste paper and cardboard.
85. The purpose of section 16 is to require the Minister, before giving a direction and in addition to having regard to the objects of the Act, to also have regard to whether certain non-compliant behaviour has occurred, or is likely to occur.

Part 4 – Exemptions

Section 17 – Revocation of exemption

86. Subsection 31(1) of the Act allows the Minister to revoke an exemption that was granted under section 26 of the Act and is in force. Subsection 31(2) of the Act provides that, in considering whether to revoke an exemption, the Minister must have regard to the objects of the Act (paragraph 31(2)(a)), and any matter prescribed by the rules (paragraph 31(2)(b)).
87. Section 17 of the Rules is made for the purposes of paragraph 31(2)(b) of the Act and prescribes the additional matters to which the Minister must have regard when considering whether to revoke an exemption that relates to the export of regulated waste paper and cardboard. These additional matters are whether the holder of the exemption has contravened, or is contravening, a condition of the exemption.
88. The purpose of this section is to make it clear that an exemption may potentially be revoked if the exporter does not comply with the conditions of that exemption.

Part 5 – Record-keeping

Section 18 – Purpose of Part

89. Subsection 142(1) of the Act relevantly provides that the rules may make provision for and in relation to requiring records to be made and retained by holders of export licences.
90. Section 18 of the Rules provides that Part 5 (sections 18 to 20) is made for the purposes of subsection 142(1) of the Act. Sections 19 and 20 prescribe record-keeping requirements for the holders of a waste paper and cardboard export licence.

Section 19 – Making and retaining records

91. Subsection 19(1) of the Rules sets out the records that must be made and retained by a person who holds a waste paper and cardboard export licence. These records are:

- a) for each consignment of regulated waste paper and cardboard that is exported under the licence – the export declaration made for the consignment, evidence supporting the matters stated in the export declaration, and a photograph or photographs of the paper and cardboard in the consignment, and of the consignment once packed for export, that have sufficient resolution, brightness and contrast to show the consignment clearly and that are time and date stamped;
 - b) a copy of the receipt for payment for the consignment issued by the licence holder to the importer or end user; and
 - c) all documents made by the holder or that come into the licence holder’s possession that are relevant to showing whether the holder has complied or is complying with the applicable requirements of the Act.
92. Subsection 19(2) has the effect that the holder of a waste paper and cardboard export licence must retain the documents mentioned in subsection 19(1) for at least 5 years beginning on the day the record is made by the holder or comes into the holder’s possession (as the case may be).
93. Subsection 19(3) makes it clear that records required to be retained under subsection 19(1) must be in English and must be able to be audited. They also must be dated with either the date the record was created (for records created by the holder) or the date the record comes into the holder’s possession. The holder of a waste paper and cardboard export licence is also required to ensure that all documents created by them are accurate and legible.
94. Subsection 19(4) provides that if a record required to be retained under subsection 19(1) is not in English, the licence holder must obtain and retain a translation of the record into English as soon as reasonably practicable after the record is made by the holder or comes into the holder’s possession.
95. The requirement to make and retain records provides assurances that holders of waste paper and cardboard export licences are complying with their obligations under the Act. This helps to ensure that the export of the regulated waste paper and cardboard is managed in an environmentally responsible way.

Section 20 – Records must not be altered or defaced during retention period

96. Subsection 20(1) provides that a record that is retained as required by section 19 must not be altered or defaced during the 5 year period in which it is required to be retained (the retention period).
97. Subsection 20(2) clarifies that, despite subsection 20(1), notations or markings may be made on the record in accordance with ordinary practice. An example might be initialing the document.

98. Subsection 20(3) provides that if notations or markings are made on an original record in accordance with ordinary practice during the retention period, the person must also retain a copy of the original document (without markings or notations) where reasonably practicable, and copies of the record that show how the record has changed over time.
99. The purpose of section 20 is to provide flexibility for the licence holder to make any necessary amendments to documents that are required to be retained, in accordance with ordinary commercial practice, while still being able to meet the record keeping requirements of section 19.

Part 6 – Other matters

Section 21 – Circumstances in which relevant Commonwealth liability of a person is taken to be paid

100. Section 181 of the Act allows the rules to prescribe circumstances where a relevant Commonwealth liability is taken to have been paid for the purposes of complying with the following provisions:
- a) paragraph 34(2)(c) – grant of export licence;
 - b) paragraph 39(3)(c) – renewal of export licence;
 - c) paragraph 42(4)(b) – variation of export licence.
101. The Act defines *relevant Commonwealth liability* as including a fee payable under the Act, a charge payable under the associated charges legislation (the *Recycling and Waste Reduction Charges (General) Act 2020*; the *Recycling and Waste Reduction Charges (Customs) Act 2020*; and the *Recycling and Waste Reduction Charges (Excise) Act 2020*); any penalties for late payment of such a fee or charge, or pecuniary penalty or liability for another amount imposed by or under a prescribed law.
102. Section 21 of the Rules is made for the purposes of section 181 of the Act. Subsections 21(1) and (2) have the combined effect that, for the purposes of granting, renewing, or varying a waste paper and cardboard export licence, a relevant Commonwealth liability of a person is taken to have been paid if:
- a) the person, or another person, has given a written undertaking to the Minister to pay the amount of the relevant Commonwealth liability; and
 - b) the payment undertaking includes a term that the relevant Commonwealth liability is to be reduced by each amount paid in accordance with the undertaking; and
 - c) the Minister has accepted the payment undertaking and has not revoked the acceptance of the undertaking.
103. Subsection 21(3) has the effect that the Minister can only accept an undertaking after having considered the financial position of the person who gave the undertaking,

the nature and likely cost of the relevant export operations, and whether the person who gave the payment undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the relevant export operations.

104. Subsection 21(3) also makes it clear that the Minister can also consider any other matter the Minister considers relevant when deciding whether to accept a payment undertaking.

105. It is generally considered appropriate that a person should not be able to obtain or continue to enjoy the benefits of the Act, without meeting their liabilities. However, it is recognised that there may be some circumstances where it may be considered appropriate for the relevant Commonwealth liability to be taken to have been paid, such as where payment of the relevant Commonwealth liability is no longer within the applicant's control. Section 21 provides the Minister with flexibility to accept a payment undertaking in lieu of payment in certain circumstances, noting that a payment undertaking does not waive the liability, which will still need to be paid in accordance with the undertaking given.

Statement of Compatibility with Human Rights

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

Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024

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* (Cth).

Overview of the instrument

The *Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024* (the Rules) is made under the *Recycling and Waste Reduction Act 2020* (the Act).

The Act establishes a framework to regulate the export of waste material, as agreed to by the then Council of Australian Governments in 2019, and improve the management of environmental, health and safety impacts of products, in particular those impacts associated with the disposal of products.

Relevantly, the Act provides for the making of rules regulating the export of regulated waste material. The Rules operate to:

- prescribe waste paper and cardboard as a regulated waste material (regulated waste paper and cardboard);
- prohibit, on and after 1 October 2024, the export of regulated waste paper and cardboard unless prescribed export conditions are complied with. The prescribed export conditions are that the exporter is required to obtain an export licence and make an export declaration for each consignment of regulated waste paper and cardboard exported under the licence;
- prescribe information that must be included in an export declaration for exports occurring on and after 1 October 2024;
- prescribe information that must be included in, and documents that must accompany, an application for a waste paper and cardboard export licence or for a renewal of a waste paper and cardboard export licence;
- prescribe additional matters to which the Minister must have regard when deciding whether to grant, renew, or vary, a waste paper and cardboard export licence;
- prescribe conditions for waste paper and cardboard export licences;
- prescribe the period within which an application for renewal of a waste paper and cardboard export licence must be made;

- prescribe additional grounds for suspending or revoking a waste paper and cardboard export licence;
- prescribe record keeping requirements relating to the export of regulated waste paper and cardboard; and
- prescribe circumstances in which a relevant Commonwealth liability is taken to have been paid for the purposes of granting, renewing, or varying a waste paper and cardboard export licence.

Human rights implications

This legislative instrument engages the following rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR); and
- the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (the ICCPR).

Right to Health

This legislative instrument engages the right to health under Article 12(1) of the ICESCR. 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. 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 (August 2000)*, the United Nations Committee on Economic Social and Cultural Rights 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]).

A key objective of the Act and the Rules is to promote the right to health (including by promoting a healthy environment) by reducing the impact on human and environmental health of products, waste from products and waste material, including by reducing the amount of greenhouse gases emitted, energy and resources used, water consumed and contamination in connection with waste material. The Act and Rules achieve this by regulating the export of waste paper and cardboard to promote its management in an environmentally sound way.

In particular:

- section 6 of the Rules prohibits, on and after 1 October 2024, the export of regulated waste paper and cardboard unless certain export conditions are met, such as that the exporter holds a waste paper and cardboard export licence;
- section 7 of the Rules prescribes that an export declaration for exports occurring on and after 1 October 2024 must include the total weight of contaminants in the consignment as a percentage of the total weight of the consignment;

- section 8 of the Rules prescribes information that must be provided in an application for a waste paper and cardboard export licence, including information that demonstrates that regulated waste paper and cardboard consignments intended for export under licence on or after 1 July 2026 will not exceed a limit of 5% contamination by weight;
- section 9 of the Rules requires the Minister to have regard to whether the applicant has the capacity to ensure that the total weight of contaminants in each consignment of waste paper and cardboard exported on or after 1 July 2026 under the licence does not exceed the 5% contamination limit;
- section 10 of the Rules imposes conditions on a waste paper and cardboard export licence, including requiring the licence holder to have a commercial relationship with the supplier and the importer or end user of the regulated waste paper or cardboard, and for consignments of regulated waste paper and cardboard exported from 1 July 2026 to not exceed the 5% contamination limit;
- sections 13 and 14 of the Rules allow for the suspension or revocation of a waste paper and cardboard export licence if the holder of the licence fails, where required, to provide additional or corrected information in relation to an application relating to their licence; and
- sections 19 and 20 of the Rules prescribes record keeping requirements for holders of waste paper and cardboard export licences, which will assist in monitoring compliance with the requirements of the Act.

By regulating these matters, the Rules aims to ensure that the export of regulated waste paper and cardboard does not adversely impact on human or environmental health in the importing country or other countries.

For these reasons, the Rules are consistent with the right to health in Article 12(1) of the ICESCR.

Right to privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home, or correspondence. The United Nations Human Rights Committee has given a liberal interpretation to the term 'home', which includes a person's workplace. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR, and be reasonable in the circumstances.

The objects of the Act include to reduce the impact on human and environmental health of waste material, to contribute to Australia meeting its international obligations concerning this impact, and to realise the community and economic benefits of taking responsibility for products.

Section 19 of the Rules requires the holder of a waste paper and cardboard export licence to make and retain specified records for five years. Under the Act, these records can be audited, or required to be produced to the Minister in certain circumstances.

It is expected that most holders of waste paper and cardboard export licences will be bodies corporate. However, if an individual holds a waste paper and cardboard export licence, section 19 of the Rules may, in some cases, require the retention of a small amount of personal information, which may then be audited or required to be provided to the Minister. This personal information may include the applicant's name and contact details. Section 19 therefore operates to limit the right to privacy.

Section 19 requires holders of waste paper and cardboard export licences to keep only those records that are necessary for achieving the legitimate objective of ensuring compliance with the Act. A person who keeps such records will do so as someone who has 'opted in' to the regulatory system and should expect that some personal information may need to be provided in order to gain the benefits of that system. The information retained will also not be made publicly available under the Act or Rules.

The limitation to the right to privacy imposed by section 19 of the Rules is therefore considered reasonable, necessary, and proportionate.

The Rules do not engage any other human rights.

Conclusion

This legislative instrument is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR and, to the extent that it limits the right to privacy in Article 17 of the ICCPR, those limitations are reasonable, necessary, and proportionate.

The Hon. Tanya Plibersek MP

Minister for the Environment and Water