

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Water

Recycling and Waste Reduction Act 2020

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

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.

The *Recycling and Waste Reduction Act 2020* (the RAWR 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.

Chapter 2 of the RAWR 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.

The purpose of the *Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024* (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 must hold a waste paper and cardboard export licence and make an export declaration for each consignment of regulated waste paper and cardboard that is to be exported. The Rules also contain conditions that are imposed on waste paper and export licences, as well as record keeping requirements and other regulatory controls.

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.

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 details of the Rules are set out in the initial Explanatory Statement.

The purpose of this Supplementary Explanatory Statement is to provide additional information relating to:

- the nature and scope of personal information that may be collected under the instrument and applicable privacy protections including the application of the *Privacy Act 1988* (Privacy Act); and
- examples of other relevant matters the Minister may consider in deciding whether to accept an undertaking by a person to pay a relevant Commonwealth liability.

Privacy

Section 19 of the Rules sets out record-keeping requirements that apply to the holder of a waste paper and cardboard export licence. These requirements include retaining export declarations and supporting evidence, copies of receipts for payment of consignments, photographs of waste paper and cardboard that has been packed for export, and other documents relevant to showing compliance with the RAWR Act.

Although it is not anticipated that personal information other than the licence holder's name and personal contact details would be required to be retained under this provision, it is possible that some other personal information may be inadvertently retained and subsequently audited or required to be provided to the Minister. It is also possible that a small amount of personal information could be contained in documents required to be retained under paragraph 19(1)(c), the intent of which is to ensure that all documents relevant to demonstrating compliance are retained.

It is anticipated that most licence holders would be bodies corporate. However, where a licence holder was an individual, the Australian Privacy Principles contained in Schedule 1 of the Privacy Act would apply to any personal information collected under section 19. Any information collected under the RAWR Act must also be managed consistently with the Department's Privacy Policy.

Matters relevant to accepting an undertaking to pay a relevant Commonwealth liability

The Rules provides for circumstances in which a relevant Commonwealth liability of a person is taken to have been paid. A relevant Commonwealth liability includes a fee or charge, or a penalty for a late payment of a fee or charge, that is payable under the RAWR Act.

Section 21 of the Rules has the practical effect that a fee charged for a waste paper and cardboard export licence, licence renewal, or licence variation, is taken to have been paid if the person liable to pay the fee has given an undertaking to pay the amount of the fee to the Minister, and the Minister has accepted (and not subsequently revoked) the undertaking.

This provision provides a mechanism to allow a person who has incurred a fee related to a waste paper and cardboard export licence application to be provided with the service associated with the application before that fee has been fully paid. This provision does not impose any additional obligations, rights, liberties or interests on a person, rather, it allows a person to discharge their existing Commonwealth liability in accordance with an undertaking. The intention of this provision is to benefit a person who is subject to a Commonwealth liability. The explanatory statement to the Rules outlines that although a person generally should not be able to obtain a benefit under the RAWR Act without first discharging their liabilities, it is recognised that there may be some circumstances in which it may be

appropriate for allowing payment to be made in accordance with an undertaking, such as where the ability to pay is outside the control of the person who is subject to the liability.

Allowing a person to obtain a benefit under the RAWR Act without first discharging a relevant fee creates a risk that services provided by the Commonwealth may not be paid for. To reduce this risk, section 21 requires the person to provide an undertaking to the Minister that they will discharge their liability.

Subsection 21(3) of the Rules sets out matters that the Minister must consider before accepting an undertaking from a person. These criteria go to the financial position of the person and whether they will be able to pay the liability in accordance with the undertaking. These criteria must be considered by the Minister in all cases.

In addition, subsection 21(3) provides that the Minister may also consider any other matter that the Minister considers relevant before accepting an undertaking. This allows the Minister to consider other factors that may be unique to an individual case and so are not easily identifiable or appropriate to expressly set out in the Rules.

Examples of relevant matters may include:

- the amount of the outstanding liability;
- the reason the liability has not been paid by the person;
- the person's financial history under the RAWR Act (including whether the person has previously had outstanding liabilities, or has made (or complied with) a payment undertaking);
- the purpose of the export operations to which the application relates and whether those operations could be considered to be in the public or national interest;
- any written policy of the Australian Government in relation to the treatment of outstanding liabilities;
- Australia's international obligations;
- Australia's relations with the relevant importing country.