

EXPLANATORY STATEMENT

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

Recycling and Waste Reduction Act 2020

Recycling and Waste Reduction (Fees) Amendment (Export of Regulated Waste Material Fees and Other Measures) Rules 2024

Legislative Authority

The *Recycling and Waste Reduction (Fees) Amendment (Export of Regulated Waste Material Fees and Other Measures) Rules 2024* (the Fee Amendment 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. Subsection 155(1) of the Act provides that the rules may make provision for, and in relation to, the charging of fees relating to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under the Act. Subsection 155(2) relevantly provides that the rules may specify the amount of a fee, the persons liable to pay a fee, and when a fee must be paid.

Section 17 of the Act provides that the rules may prescribe a kind of waste material for the purposes of the Act, and section 18 of the Act provides that the rules may prohibit the export of regulated waste material unless certain conditions are complied with. The following rules, made under the Act, regulate the export of waste glass, plastic, tyres, and paper and cardboard:

- *Recycling and Waste Reduction (Export – Waste Glass) Rules 2020* (Glass Rules);
- *Recycling and Waste Reduction (Export – Waste Plastic) Rules 2021* (Plastic Rules);
- *Recycling and Waste Reduction (Export – Waste Tyres) Rules 2021* (Tyres Rules);
- *Recycling and Waste Reduction (Export – Waste Paper and Cardboard) Rules 2024* (Paper and Cardboard Rules).

Section 172 of the Act relevantly provides that applications made under the Act must be accompanied by the fee specified by the rules made for the purposes of section 155 of the Act.

Purpose

The purpose of the Fee Amendment Rules is to amend the *Recycling and Waste Reduction (Fees) Rules 2020* (Fee Rules) to implement cost recovery related to the export of regulated waste material. Currently, this relates to the export of regulated waste glass, plastic, tyres, and paper and cardboard.

The Fee Amendment Rules set the amount of fees for export licence applications, export licence renewal applications, export licence variation applications, and exemption applications relating to the export of regulated waste material. The Fee Amendment Rules also prescribe the persons liable to pay fees and when fees must be paid.

The fees set by the Fee Amendment Rules are intended to recover the costs of the Commonwealth in assessing applications related to the export of regulated waste material, consistent with the Australian Government Charging Framework.

Background

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

The Act, together with the Glass Rules, Plastic Rules, Tyres Rules, and Paper and Cardboard Rules, implement the commitment of the Australian Governments (through the former Council of Australian Governments (COAG)) to regulate the export of waste glass, plastic, tyres, and paper and cardboard. 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, 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.

The Fee Amendment Rules will implement cost recovery fees for export licence applications, export licence renewal applications, export licence variation applications, and exemption applications relating to the export of regulated waste material regulated under the Glass Rules, Plastic Rules, Tyres Rules, and Paper and Cardboard Rules.

Impact and Effect

The Fee Amendment Rules will assist the Commonwealth to appropriately recover the costs of assessing applications relating to the export of regulated waste materials. The Fee Amendment Rules will prescribe fees, persons liable to pay fees, and when fees must be paid.

Consultation

The Department of Climate Change, Energy, the Environment and Water (the Department) consulted with industry, local governments, non-government organisations and individuals during the development of the cost recovery arrangements. The consultation process included a call for submissions in response to a consultation paper; *the Regulation of Waste Exports: Cost Recovery* which sought feedback on a cost recovery levy and two options for proposed application fees. The consultation paper and survey were published on the department's

website on 4 November 2022. 38 stakeholder submissions were received in response to the consultation paper. The Department also received feedback on cost recovery arrangements during the consultation on an exposure draft of the Recycling and Waste Reduction (Export – Waste Paper and Cardboard) Rules 2023 and through a series of meetings with peak industry bodies.

Stakeholder feedback was taken into account and the final Cost Recovery Implementation Statement (CRIS) was certified by the Secretary of the Department and approved by the Minister for the Environment and Water. The Department of Finance was consulted and agreed that the CRIS complied with *Australian Government Charging Framework*, which is reflected in the Fee Amendment Rules. The Department has published the CRIS, which is available on the Department’s website.

The Office of Impact Analysis was consulted in the preparation of the Fee Amendment Rules and advised that a regulatory impact statement was not required (Ref 01A24-06961).

Details/Operation

Details of the Fee Amendment Rules are set out in Attachment A.

The Fee Amendment Rules commence on 1 July 2024.

Other

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

Details of the *Recycling and Waste Reduction (Fees) Amendment (Export of Regulated Waste Material Fees and Other Measures) Rules 2024*

Section 1 Name

1. This section provides that the name of the instrument is the *Recycling and Waste Reduction (Fees) Amendment (Export of Regulated Waste Material Fees and Other Measures) Rules 2024* (Fee Amendment Rules).

Section 2 Commencement

2. Subsection 2(1) provides that the Fee Amendment Rules commence on 1 July 2024.
3. The note below the table provides that the table relates only to the provisions of the Fee Amendment Rules as originally made. It will not be amended to deal with any later amendments of the instrument. 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 Fee Amendment Rules. Information may be inserted in this column, or edited in this column, in any published version of the instrument.

Section 3 Authority

5. This section provides that the Fee Amendment Rules are made under the *Recycling and Waste Reduction Act 2020* (the Act).

Section 4 Schedules

6. This section has the effect of providing that the *Recycling and Waste Reduction (Fees) Rules 2020* (Fee Rules) will be amended as per the items set out in Schedule 1 of the Fee Amendment Rules.

SCHEDULE 1—AMENDMENTS

Recycling and Waste Reduction (Fees) Rules 2020

Item 1 After Part 1

7. Item 1 of Schedule 1 to the Fee Amendment Rules would amend the Fee Rules to insert new Part 1A.
8. New Part 1A would be titled ‘Fees relating to the export of regulated waste material’ and would comprise new section 4A, which would provide for fees relating to the export of regulated waste material.

Section 4A Fees relating to the export of regulated waste material

9. New subsection 4A(1) would provide that section 4A of the Fee Rules is made for the purposes of section 155 of the Act. Section 155 relevantly provides that the rules may prescribe fees, the persons liable to pay fees, and the time when specified fees are due and payable.
10. New subsection 4A(2) prescribes fees relating to the export of regulated waste material. The table immediately following paragraph 4A(2)(c) sets out the function for which the fee is prescribed in column 1, the amount of the fee in column 2, when the fee is due and payable in column 3, and the person liable to pay the fee in column 4. The table contains four items, which provides for fees relating to exemption applications, export licence applications, export licence renewal applications, and export licence variation applications.

Exemption applications

11. Item 1 of the table prescribes fees in relation to the consideration of an exemption application made under section 25 of the Act.
12. Section 25 of the Act provides that an application may be made to the Minister for an exemption from one or more provisions of Chapter 2 of the Act or of rules made for the purposes of Chapter 2 of the Act. This would include applications for an exemption from one or more provisions of the Act, the *Recycling and Waste Reduction (Export – Waste Glass) Rules 2020* (Glass Rules), the *Recycling and Waste Reduction (Export – Waste Plastic) Rules 2021* (Plastic Rules), the *Recycling and Waste Reduction (Export – Waste Tyres) Rules 2021* (Tyres Rules), and the *Recycling and Waste Reduction (Export – Waste Paper and Cardboard) Rules 2024* (Paper and Cardboard Rules).
13. Column 2 of item 1 provides that the prescribed fee for an exemption application is \$13,960.
14. Column 3 of item 1 provides that the fee is due and payable at the time the application is made. Consistent with new subsection 4A(4) (see below), this means that the fee must accompany the application (unless the whole of the fee has been waived under section 8 of the Fee Rules as amended by this Schedule). An application for an exemption will not be considered if the fee that is due and payable has not accompanied the application.
15. Column 4 of item 1 provides that the person liable to pay the fee is the person who makes the exemption application.

Export licence applications

16. Item 2 of the table prescribes a fee in relation to the consideration of an application for a licence to export regulated waste material.
17. Section 33 of the Act provides that a person may apply to the Minister for an export licence in relation to a kind of regulated waste material. Section 6 of each of the Glass Rules, Plastic Rules, Tyres Rules, and Paper and Cardboard Rules prohibits the export of regulated waste glass, plastic, tyres, and paper and cardboard, respectively, unless the exporter holds an export licence and makes an export declaration for each consignment of regulated waste exported.

18. Column 2 of item 2 provides that the prescribed fee for an export licence application is \$19,090.
19. Column 3 of item 2 provides that the fee is due and payable at the time the application is made. Consistent with new subsection 4A(4) (see below), this means that the fee must accompany the application (unless the whole of the fee has been waived under section 8 of the Fee Rules as amended by this Schedule). An application for an export licence will not be considered if the fee that is due and payable has not accompanied the application.
20. Column 4 of item 2 provides that the person liable to pay the fee is the person who makes the export licence application.

Export licence renewal applications

21. Item 3 of the table prescribes a fee in relation to the consideration of an application for the renewal of a licence to export regulated waste material.
22. Section 38 of the Act provides that the holder of an export licence may apply to the Minister to renew the licence.
23. Column 2 of item 3 provides that the prescribed fee for an export licence renewal application is \$13,540.
24. Column 3 of item 3 provides that the fee is due and payable at the time the application is made. Consistent with new subsection 4A(4) (see below), this means that the fee must accompany the application (unless either the whole of the fee has been waived under section 8 of the Fee Rules as amended by this Schedule, or new subsection 4A(3) applies to the application (see below)). An application for a renewal of an export licence will not be considered if the fee that is due and payable has not accompanied the application.
25. Column 4 of item 3 provides that the person liable to pay the fee is the person who makes the export licence renewal application.

Export licence variation applications

26. Item 4 of the table prescribes a fee in relation to the consideration of an application for the variation of an export licence.
27. Section 42 of the Act provides that the holder of an export licence may apply to the Minister to vary their export licence.
28. Column 2 of item 4 provides that the prescribed fee for an export licence variation application is \$13,540.

29. Column 3 of item 4 provides that the fee is due and payable at the time the application is made. Consistent with new subsection 4A(4) (see below), this means that the fee must accompany the application (unless the whole of the fee has been waived under section 8 of the Fee Rules as amended by this Schedule). An application for an export licence variation will not be considered if the fee that is due and payable has not accompanied the application.
30. Column 4 of item 4 provides that the person liable to pay the fee is the person who makes the export licence variation application.

Renewal fee not payable for certain regulated waste paper and cardboard export licences

31. New subsection 4A(3) provides that the renewal fee for a waste paper and cardboard export licence (within the meaning of the Paper and Cardboard Rules) is not payable if each of the following criteria are met:
- the licence renewal application relates to a waste paper and cardboard export licence that was granted before 1 July 2026;
 - the licence renewal application is for the first renewal of the waste paper and cardboard export licence; and
 - the information set out in subsection 8(2) of the Paper and Cardboard Rules was not included in the application made for the initial grant of the licence.
32. Subsection 8(2) of the Paper and Cardboard Rules requires a person who is applying for a licence to export 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.
33. This is necessary because from 1 July 2026 it will be a condition of a waste paper and cardboard export licence that the total weight of contaminants in each consignment of waste paper exported under the licence will not exceed 5% of the total weight of the consignment.
34. In some limited circumstances, a person may apply for a waste paper and cardboard export licence to carry out the export of regulated waste paper and cardboard until 30 June 2026 without providing the information set out in subsection 8(2). In these circumstances, the intention is that the person's licence (if granted) would be stated to expire on or before 30 June 2026, and the licence holder would have to apply for a renewal if they want to keep exporting waste paper and cardboard on or after 1 July 2026.
35. Subsection 11(2) of the Paper and Cardboard Rules provides that an application for the renewal of a waste paper and cardboard export licence must include the information specified at subsection 8(2) if the information was not previously provided to the Minister and the licence is being renewed for the purpose of carrying out export of regulated waste paper and cardboard on or after 1 July 2026.

36. The practical effect of subsection 4A(3) is to provide a free licence renewal for the holder of a waste paper and cardboard export licence that is set to expire before 1 July 2026 because they did not provide information relevant to an assessment of their ability to meet the 5% contamination threshold that commences on 1 July 2026 with their initial licence application. The intention is that the renewed licence would generally be stated to expire on the date that is three years after the initial licence was granted. This means that the renewed licence holder would have paid the same amount of fees for a three-year licence as those licence holders that provided the information set out in subsection 8(2) of the Paper and Cardboard Rules with their initial licence application.
37. New subsection 4A(4) provides that, for the purposes of paragraph 172(1)(e) of the Act, a fee prescribed by an item of the table in subsection 4A(2) must accompany an application being considered.
38. This has the effect that an application for an exemption, export licence, export licence renewal or export licence variation will only be considered if the fee that is due and payable accompanied the application. This applies unless the entire fee has been waived under section 8 of the Fee Rules, as amended by this Schedule, or unless subsection 4A(3) (above) applies to the renewal application.
39. The note following subsection 4A(4) explains to the reader that paragraph 172(1)(e) of the Act makes it clear that fee is not required to accompany the application if the fee is waived.

Item 2 Section 8 (heading)

40. Item 2 of Schedule 1 to the Fee Amendment Rules repeals the heading of existing section 8 of the Fee Rules and substitutes a new heading. This amendment is consequential to the amendments to section 8 of the Fee Rules made by item 3 of this Schedule.

Item 3 At the end of subsection 8(2)

41. Existing section 8 of the Fee Rules is made for the purposes of paragraph 155(2)(g) of the Act. Paragraph 155(2)(g) of the Act relevantly provides that the rules may make provision in relation to the refund, remission or waiver of specified fees or penalties for late payment of specified fees.
42. Existing paragraphs 8(2)(a) and (b) of the Fee Rules provides that the Minister may remit or refund the whole or part of a fee or penalty imposed for late payment if the Minister considers it appropriate to do so.
43. Item 3 of Schedule 1 to the Fee Amendment Rules amends existing section 8 of the Fee Rules to add a new paragraph 8(2)(c). New paragraph 8(2)(c) provides that the Minister may, if they consider it appropriate to do so, waive the whole or part of a fee, or a late payment of a fee, that is payable under the Fee Rules.

Item 4 Subsection 9(2) (at the end of the table)

44. Existing section 9 of the Fee Rules is made for the purposes of subsection 151(2) of the Act. It provides that decisions by the Minister to refuse to remit or refund fees under existing section 8, on written application by a person, are reviewable decisions.
45. A person affected by a reviewable decision will have the review rights set out in sections 152 to 154 of the Act. Specifically, the person can apply to the Minister for an internal review of the decision and, in some circumstances, can apply to have the decision externally reviewed by the Administrative Appeals Tribunal.
46. The table below existing subsection 9(2) provides that the person affected by each reviewable decision set out in column 2 of the table is the person provided in column 1 of the table corresponding to that decision. The existing table provides that it is the person who applies under section 8 of the Fee Rules to have a fee remitted or refunded who will be the person affected by the decision to refuse to remit or refund that fee.
47. Item 4 of Schedule 1 to the Fee Amendment Rules amends the table below existing subsection 9(2) of the Fee Rules to add a new item 3 to the table. The new item 3 in the table provides that the person affected by a decision of the Minister to refuse to waive the whole or part of the fee, or penalty for late payment of a fee, is the person who makes the application under section 8 of the Fees Rules to have the relevant fee or payment waived.
48. This amendment is consequential to the amendments made to section 8 of the Fees Rules by items 2 and 3 of this Schedule.

Item 5 At the end of the instrument

49. Item 5 of Schedule 1 to the Fee Amendment Rules amends the Fee Rules to insert new Part 4 (new section 10) at the end of the Fee Rules.
50. New section 10 is an application provision that deals with the amendments made by Schedule 1 to the Fee Amendment Rules. The effect of new section 10 is that the amendments made by Schedule 1 of the Fee Amendment Rules apply in relation to applications for the granting, renewal or variation of an export licence, or an application for an exemption made on or after 1 July 2024. This means that applications made prior to 1 July 2024 will not be subject to a fee.

Statement of Compatibility with Human Rights

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

Recycling and Waste Reduction (Fees) Amendment (Export of Regulated Waste Material Fees and Other Measures) 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*.

Overview of the Legislative Instrument

The *Recycling and Waste Reduction (Fees) Amendment (Export of Regulated Waste Material Fees and Other Measures) Rules 2024* (the Fee Amendment Rules) are 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 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 waste materials and products.

The Fee Amendment Rules are made for the purposes of section 155 of the Act. The purpose of the Fee Amendment Rules is to amend the *Recycling and Waste Reduction (Fees) Rules 2020* (Fee Rules) to implement cost recovery related to the export of regulated waste material. Currently, this relates to the export of regulated waste glass, plastic, tyres, and paper and cardboard under the *Recycling and Waste Reduction (Export – Waste Glass) Rules 2020*, *Recycling and Waste Reduction (Export – Waste Plastic) Rules 2021*, *Recycling and Waste Reduction (Export – Waste Tyres) Rules 2021*, and *Recycling and Waste Reduction (Export – Waste Paper and Cardboard) Rules 2024* respectively.

In particular, the Fee Amendment Rules:

- set the amount of fees for export licence applications, export licence renewal applications, export licence variation applications, and exemption applications relating to the export of regulated waste material; and
- prescribe the persons liable to pay fees and when fees must be paid.

The Fee Amendment Rules also amend the Fee Rules to expressly provide that the Minister may waive the whole or part of a fee or penalty imposed for late payment under the instrument if the Minister considers it appropriate to do so.

Human rights implications

The Fee Amendment Rules do not engage any of the applicable rights or freedoms.

Conclusion

The Fee Amendment Rules are compatible with human rights as they do not raise any human rights issues.

The Hon. Tanya Plibersek MP
Minister for the Environment and Water