



# **Recycling and Waste Reduction (Consequential and Transitional Provisions) Act 2020**

**No. 120, 2020**

**An Act to deal with consequential and transitional matters arising from the enactment of the *Recycling and Waste Reduction Act 2020*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	3
<b>Schedule 1—Repeals</b>		4
	<i>Product Stewardship Act 2011</i>	4
<b>Schedule 2—Application, saving and transitional provisions relating to product stewardship</b>		5
	Part 1—Introduction	5
	Part 2—Accredited voluntary arrangements	6
	Part 3—Co-regulatory arrangements	7
	Part 4—Minister’s priority list	11
	Part 5—Compliance and enforcement	12
	Part 6—Administration	14
<b>Schedule 3—Transitional rules</b>		15
<b>Schedule 4—Contingent consequential amendments</b>		16
	<i>Recycling and Waste Reduction Act 2020</i>	16





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**An Act to deal with consequential and transitional matters arising from the enactment of the *Recycling and Waste Reduction Act 2020*, and for related purposes**

*[Assented to 15 December 2020]*

The Parliament of Australia enacts:

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*No. 120, 2020*

*Recycling and Waste Reduction (Consequential and Transitional Provisions) Act 2020*

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## 1 Short title

This Act is the *Recycling and Waste Reduction (Consequential and Transitional Provisions) Act 2020*.

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 December 2020
2. Schedules 1 to 3	At the same time as Chapter 3 of the <i>Recycling and Waste Reduction Act 2020</i> commences. However, the provisions do not commence at all if that Chapter does not commence.	16 December 2020
3. Schedule 4	The later of: (a) the commencement of Chapter 4 of the <i>Recycling and Waste Reduction Act 2020</i> ; and (b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2020</i> . However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Repeals

### *Product Stewardship Act 2011*

#### **1 The whole of the Act**

Repeal the Act.



## Schedule 2—Application, saving and transitional provisions relating to product stewardship

### Part 1—Introduction

#### 1 Definitions

- (1) In this Schedule:
- new Act* means the *Recycling and Waste Reduction Act 2020*.
- old Act* means the *Product Stewardship Act 2011*, as in force immediately before its repeal.
- (2) Expressions used in this Schedule that are defined for the purposes of the new Act, and used in relation to that Act, have the same meaning as in that Act.
- (3) Expressions used in this Schedule that were defined for the purposes of the old Act, and used in relation to that Act, have the same meaning as in that Act.

#### 2 Section 7 of the *Acts Interpretation Act 1901*

This Schedule does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeals made by this Act.

## **Part 2—Accredited voluntary arrangements**

### **3 Continuation of accredited voluntary arrangements**

An arrangement that was an accredited voluntary arrangement in relation to a product under the old Act immediately before its repeal has effect as if:

- (a) it had been accredited under the new Act in relation to the product when it was accredited under the old Act; and
- (b) its accreditation under the new Act in relation to the product were subject to the conditions to which it was subject under the old Act; and
- (c) any reference in the arrangement to the old Act were a reference to the new Act; and
- (d) any reference in the arrangement to a legislative instrument made under the old Act were a reference to a substantially corresponding legislative instrument made under the new Act; and
- (e) any reference in the arrangement to a particular provision of the old Act or of a legislative instrument made under the old Act were a reference to the substantially corresponding provision (if any) of the new Act or rules.

### **4 Applications for accreditation of voluntary arrangements made but not finally dealt with before repeal of old Act**

An application, for accreditation of a voluntary arrangement, made but not finally dealt with before the repeal of the old Act has effect (and may be dealt with) under the new Act and the rules as if the application had been made under the new Act and the rules.

## Part 3—Co-regulatory arrangements

### 5 Notices requiring liable parties to be members of approved co-regulatory arrangements

- (1) A notice given under subsection 18(2) of the old Act has effect as if it had been given under subsection 76(4) of the new Act (when the notice was actually given).
- (2) However, if the notice specified a day before the commencement of section 76 of the new Act, the notice has effect as if it specified the day immediately before that section commences.
- (3) An application made under subsections 18(4) and (5) of the old Act on which the Minister had not made a decision under subsection 18(6) or (7) of the old Act before the repeal of the old Act has effect as if it had been made under subsections 76(6) and (7) of the new Act.

### 6 Continuation of approved co-regulatory arrangements

An arrangement that was an approved co-regulatory arrangement in relation to a product under the old Act immediately before its repeal has effect as if:

- (a) it had been approved under the new Act in relation to the product when it was approved under the old Act; and
- (b) any reference in the arrangement to the old Act were a reference to the new Act; and
- (c) any reference in the arrangement to a legislative instrument made under the old Act were a reference to a substantially corresponding legislative instrument made under the new Act; and
- (d) any reference in the arrangement to a particular provision of the old Act or of a legislative instrument made under the old Act were a reference to the substantially corresponding provision (if any) of the new Act or rules.

## **7 Applications for approval of co-regulatory arrangements made but not finally dealt with before repeal of old Act**

An application for approval of a co-regulatory arrangement made, but not finally dealt with, before the repeal of the old Act has effect (and may be dealt with) under the new Act as if the application had been made under the new Act.

## **8 Continuation of improvement notices**

- (1) This item applies to an improvement notice given under the old Act if, immediately before the repeal of that Act:
  - (a) the period specified in the notice (as affected by any variation) had not ended; and
  - (b) the notice had not been revoked.
- (2) The notice has effect as if it had been given under section 88 of the new Act.

## **9 Audits of approved co-regulatory arrangements**

- (1) This item applies if:
  - (a) under section 30 of the old Act, the Minister required an administrator of an approved co-regulatory arrangement to carry out an audit of the arrangement; and
  - (b) the report of the audit was not given to the Minister before the repeal of that Act.
- (2) The requirement has effect as if it were made under paragraph 109(1)(b) of the new Act.
- (3) If, for the purposes of subsection 31(3) of the old Act, the Minister approved a person for appointment as an auditor for the audit, the approval has effect as if it were an approval, under section 116 of the new Act, of the person to conduct audits of approved co-regulatory arrangements.

## **10 Consents to appointment of replacement administrators of approved co-regulatory arrangements**

- (1) This item applies if, before the repeal of the old Act:
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- (a) the Minister consented under section 33 of that Act to the appointment of a person to replace the administrator of an approved co-regulatory arrangement; and
  - (b) the appointment did not occur.
- (2) The consent has effect as an approval of the appointment of the person under section 91 of the new Act.

### **11 Continued effect of the *Product Stewardship (Televisions and Computers) Regulations 2011* for 2020-21 financial year**

- (1) The *Product Stewardship (Televisions and Computers) Regulations 2011*, as in force immediately before the repeal of the old Act, continue to have effect in relation to the financial year ending on 30 June 2021 as if they were rules made for the purposes of Part 4 of Chapter 3 of the new Act.
- (2) However, the *Product Stewardship (Televisions and Computers) Regulations 2011* continue to have effect under subitem (1) as if:
- (a) regulations 1.05 and 2.04 and Part 6 were omitted; and
  - (b) regulations 5.01, 5.02, 5.08, 5.13 and 5.15 did not set out civil penalties; and
  - (c) a reference to a provision of the old Act mentioned in column 1 of an item of the following table were a reference to the provision of the new Act mentioned in column 2 of that item.

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#### **References to provisions**

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<b>Item</b>	<b>Column 1 Provision of the old Act</b>	<b>Column 2 Provision of the new Act</b>
1	Subsection 19(1)	Subsection 77(1)
2	Section 21	Section 79
3	Subsection 22(1)	Subsection 80(1)
4	Paragraph 24(1)(a)	Section 142
5	Paragraph 24(1)(b)	Section 83
6	Subsection 24(4)	Section 83

Note: Regulations 5.01, 5.02, 5.08, 5.13 and 5.15 of the *Product Stewardship (Televisions and Computers) Regulations 2011* set out requirements contravention of which will be

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**Schedule 2** Application, saving and transitional provisions relating to product stewardship

**Part 3** Co-regulatory arrangements

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punishable as an offence or by a civil penalty because of section 83 or 142 of the new Act.

- (3) To avoid doubt, the annual report required by regulation 5.13 of the *Product Stewardship (Televisions and Computers) Regulations 2011* for the financial year ending on 30 June 2021 must be given to the Minister by 30 October 2021.

Note: Regulation 5.15 of the *Product Stewardship (Televisions and Computers) Regulations 2011* requires the audit report for that financial year to be given at the same time as the annual report.

- (4) The *Product Stewardship (Televisions and Computers) Regulations 2011*, as they have effect under subitem (1), are repealed at the start of 31 October 2021.

## Part 4—Minister's priority list

### 12 Products listed under section 108A of the old Act

- (1) Subparagraphs 77(3)(c)(i) and 93(1)(d)(i) of the new Act have effect as if a product included in the list (the *old list*) most recently published under section 108A of the old Act before the repeal of the old Act had been notified by being included in a Minister's priority list when the old list was published.
- (2) Despite paragraphs 67(1)(c) and (d) of the new Act, the first Minister's priority list published before the end of the first financial year to end after the commencement of those paragraphs need not include recommendations for actions and times relating to products that were included in the old list.

## Part 5—Compliance and enforcement

### 13 Inspectors continue as authorised officer

- (1) This item applies to a person who:
  - (a) was an inspector under the old Act immediately before its repeal; and
  - (b) at the time of the repeal is an officer or employee of the Commonwealth or a Commonwealth authority.
- (2) The new Act applies as if the person had been authorised to be an authorised officer under subsection 125(1) of that Act immediately after that repeal.

### 14 Publicising offences, contraventions and decisions relating to old Act

Section 122 of the new Act applies as if it permitted the Minister to publicise anything connected with the old Act that section 60 of the old Act permitted the Minister administering the old Act to publicise.

### 15 Review of reviewable decisions made under old Act

- (1) Part 6 of Chapter 4 of the new Act applies to:
    - (a) a decision (the *original decision*) that, immediately before the repeal of the old Act, was a reviewable decision under that Act made under a particular provision (the *original provision*) of that Act; and
    - (b) a person who, immediately before that repeal, was a person affected by the decision under that Act.
  - (2) That Part applies to the original decision and the person as if they were respectively a reviewable decision made (when the original decision was made) under a provision of the new Act that corresponds to the original provision and a person affected by the reviewable decision under that Act.
  - (3) If, before the repeal of the old Act, an application was made under section 95 of the old Act for internal review of the original decision, and a decision was not made on that internal review, subsections 153(3) and
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- (4) of the new Act apply to the application as if it had been made under section 153 of the new Act.
- (4) Section 154 of the new Act applies to an internal review decision made by the Minister under subsection 95(4) of the old Act as if it were an internal review decision made by the Minister under subsection 153(4) of the new Act when the Minister made the decision under subsection 95(4) of the old Act.
- (5) This item does not apply Part 6 of Chapter 4 of the new Act so as to:
- (a) extend the time within which an application may be made for review of a decision; or
  - (b) provide for internal review, under section 153 of that Act, of a decision that has been the subject of:
    - (i) an internal review decision made under section 95 of the old Act; or
    - (ii) an application to the Administrative Appeals Tribunal; or
  - (c) provide for an application to the Administrative Appeals Tribunal for review of a decision that has previously been the subject of such an application.

## **Part 6—Administration**

### **16 Protection, use and disclosure of information obtained under the old Act**

Part 5 of Chapter 4 of the new Act applies as if in that Part the expression “this Act” included a reference to the old Act and regulations made for the purposes of the old Act.

### **17 Annual report for 2020-21 financial year**

The report under section 184 of the new Act for the financial year ending on 30 June 2021 must also report on the operation of the old Act and regulations made for the purposes of the old Act (as those regulations apply because of the old Act or this Act) during the financial year.

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## Schedule 3—Transitional rules

### 1 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
  - (a) the amendments or repeals made by this Act; or
  - (b) the enactment of this Act or the *Recycling and Waste Reduction Act 2020* (the ***new Act***).
- (2) Without limiting subitem (1), rules made under this item before 1 January 2023 may provide that provisions of this Act, the new Act, or an instrument made under that Act, have effect with any modifications prescribed by the rules. Those provisions then have effect (but not after 30 June 2023) as if they were so modified.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act or the new Act.
- (4) This Act (other than subitem (3)) does not limit the rules that may be made.

## **Schedule 4—Contingent consequential amendments**

### ***Recycling and Waste Reduction Act 2020***

#### **1 Section 10 (paragraph (b) of the definition of *relevant court*)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2); or

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*[Minister's second reading speech made in—  
House of Representatives on 27 August 2020  
Senate on 9 November 2020]*

(94/20)

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