

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 148

Issued by the Authority of the Parliamentary Secretary for Sustainability and Urban Water

Subject - *Product Stewardship Act 2011*

Product Stewardship (Televisions and Computers) Amendment (Single Product Class) Regulation 2013

The *Product Stewardship Act 2011* (the Act) provides a framework for mandatory, co-regulatory and voluntary product stewardship and seeks to address the environmental, health and safety impacts of products and material across their full lifecycles, from manufacture to disposal.

Section 111 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 19(1) of the Act provides for persons to be specified as liable parties in relation to a class of products in regulations.

The *Product Stewardship (Televisions and Computers) Regulations 2011* (the Principal Regulations) commenced on 8 November 2011 and gave effect to the National Television and Computer Recycling Scheme (the Scheme) under the co-regulatory provisions of the Act. The objectives of the Scheme are to minimise the amount of television and computer materials (particularly hazardous materials) that are disposed of to landfill and maximise the recovery of resources from televisions and computers.

Since its launch, on-the-ground experience and stakeholder feedback have identified four key areas of reform to improve the Scheme's operation and assure its continuing success:

- a) strengthening the capacity of the Scheme's co-regulatory arrangements to manage risk;
- b) simplifying administrative processes for e-waste collection and recycling;
- c) aligning Scheme waste collection more closely with community and business recycling requirements; and
- d) ensuring the Scheme's product codes and conversion factors reflect the covered products.

The *Product Stewardship (Televisions and Computers) Amendment (Single Product Class) Regulation 2013* (the Regulation) addresses these issues.

Regulation 3.04 of the Principal Regulations sets out the mechanisms for calculating co-regulatory arrangement's recycling targets, a key component of which is the import or manufacture share of members. A liable party's import or manufacture share cannot be split between co-regulatory arrangements, resulting in increased risk for co-regulatory arrangements and their members (for example, where a liable party is only a member for part of a financial year). The Regulation addresses this by allocating a liable party's import and manufacture share to a co-regulatory arrangement based on the proportion of the financial year that the liable party is a member or is taken to be a member of the co-regulatory arrangement.

Under regulation 3.03 of the Principal Regulations, co-regulatory arrangements are required to deliver reasonable access to collection services in metropolitan, regional and remote Australia

in accordance with stipulated requirements by 31 December 2013. This presents a significant risk and disincentive for prospective co-regulatory arrangements seeking approval in the lead up to and after 31 December 2013. The Regulation addresses this by including an alternative deadline of twelve months from the date of approval by which to provide reasonable access to collection services.

The Regulation replaces the separate computer product class and television product class with a single television or computer products class. This addresses the potential for misalignment between recycling targets and public demand for recycling, and allows co-regulatory arrangements to recycle products in the proportions in which the community delivers unwanted products, reducing the risk that recycling targets may not be met.

In determining whether a person is a liable party, the Principal Regulations rely on product codes applicable to the products that they import and manufacture. In addition, conversion factors are used to convert the number of products imported or manufactured to a total weight for those products.

The Regulation updates product codes and descriptions to align with those that are now in use by importers, and more accurately reflect the products covered by the Scheme. The Regulation also updates conversion factors for new and changed product codes, based on the results of a survey of industry stakeholders. This will improve the equity with which recycling targets are calculated and apportioned and more accurately reflects the products covered by the Scheme.

Subsection 19(3) of the Act provides that regulations cannot be made pursuant to subsection 19(1) of the Act unless the Minister is satisfied that the making of regulations will:

- (a) further the objects of the Act;
- (b) satisfy the product stewardship criteria in section 5 of the Act (these criteria assist in determining whether the Act should apply to particular classes of products and include whether the products are in a national market, contain hazardous substances, their potential for material conversion or resource recovery, and impacts on the environment, or on the health or safety of human beings); and
- (c) meet specified notice requirements (the Principal Regulations already apply to television and computer products, therefore this requirement is not applicable).

The Parliamentary Secretary for Sustainability and Urban Water is satisfied of the matters specified in paragraphs 19(3)(a) and (3)(b) of the Act.

Details of the Regulation are outlined in the Attachment.

A discussion paper on the amendments was released for public comment on 17 April 2013 and the consultation period closed on 7 May 2013. During this period, two public consultation forums and five bilateral meetings were held. These forums and meetings were attended by co-regulatory arrangements, State and Territory government representatives, liable parties, retailers, industry associations, recycling organisations, and consultants. 23 submissions were received, 19 of which supported all amendments. Given the high level of stakeholder support, no changes were made in response to the issues raised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Sections 1 to 4 and Schedule 1 of the Regulation commences on the day after the date they are registered on the Federal Register of Legislative Instruments. Schedule 2 commences on 1 July 2013.

Statement of Compatibility with Human Rights

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

Product Stewardship (Televisions and Computers) Amendment (Single Product Class) Regulation 2013

Overview of the Legislative Instrument

The Product Stewardship (Televisions and Computers) Amendment (Single Product Class) Regulation 2013 amends *the Product Stewardship (Televisions and Computers) Regulations 2011* to improve their effectiveness and efficiency. This is achieved through:

- (a) allocating a liable party's import and manufacture share to a co-regulatory arrangement for part of the financial year on a pro-rata basis;
- (b) allowing newly approved co-regulatory arrangements 12 months from the date of approval to provide reasonable access to collection services;
- (c) replacing the existing television class and the computer class with a single, combined product class that encompasses televisions, computers, printers, and computer parts and peripherals; and
- (d) updating the scheme's product codes and conversion factors.

Human rights implications

This legislative instrument has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Amanda Rishworth MP, Parliamentary Secretary for Sustainability and Urban Water

ATTACHMENT

Details of the *Product Stewardship (Televisions and Computers) Amendment (Single Product Class) Regulation 2013*

Section 1 – Name of Regulations

This section provides that the title of the regulation is the *Product Stewardship (Televisions and Computers) Amendment (Single Product Class) Regulation 2013* (the Regulation).

Section 2 – Commencement

This section provides for sections 1 to 4 and Schedule 1 of the Regulation to commence on the day after the Regulation is registered on the Federal Register of Legislative Instruments. This section also provides for Schedule 2 of the Regulations to commence on 1 July 2013.

Section 3 – Authority

This section provides that the Regulation is made under the *Product Stewardship Act 2011* (the Act).

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

Schedule 1 – Amendments commencing day after registration

Product Stewardship (Televisions and Computers) Regulations 2011

Item 1 – Subregulation 3.04(5) and (6)

This item repeals subregulations 3.04(5) and (6) of the *Product Stewardship (Televisions and Computers) Regulations 2011* (the Principal Regulations) as a consequence of item 2 below.

Item 2 – After regulation 3.04

This item inserts regulations 3.04A and 3.04B after regulation 3.04 of the Principal Regulations.

These regulations operate to allocate television or computer products imported or manufactured by a liable party in a previous financial year to a co-regulatory arrangement based on the proportion of the financial year that the liable party is, or is taken to be, a member of the co-regulatory arrangement. This enhances the capacity of co-regulatory arrangements to manage risk and supports the continuing success of the National Television and Computer Recycling Scheme (the Scheme) and the achievement of its environmental outcomes.

The Principal Regulations do not allow a liable party's import or manufacture share to be split where the liable party is a member of a co-regulatory arrangement for less than a full year, which increases the levels of risk for co-regulatory arrangements. This is due to the fact that a co-regulatory arrangement would be required to include towards its calculated target 100 percent of the import or manufacture share of a liable party that was a member, even if the

liable party was only a member for part of the financial year. This would pose a clear financial risk to the co-regulatory arrangement and its other members.

These amendments reduce this risk and promote more equitable outcomes by allocating a liable party's import and manufacture share to a co-regulatory arrangement based on the proportion of the financial year that the liable party is, or is taken to be, a member of the co-regulatory arrangement.

The amendments also ensure the integrity of the Scheme is maintained and risk incurred by co-regulatory arrangements is reduced in situations where a liable party is not a member of any co-regulatory arrangement for a period of time. This is achieved by ensuring that the next co-regulatory arrangement a liable party becomes a member of must take into account the products that correspond to the preceding period of non-membership.

Subregulation 3.04A(1) applies when a liable party (who is a liable party in a financial year because of television or computer products imported before the financial year) is not a member of a co-regulatory arrangement on 30 June of the financial year, and becomes a member of a co-regulatory arrangement at some point in time after the end of that financial year.

Where subregulation 3.04A(1) applies, subregulation 3.04A(2) operates so that a proportion of products that correspond to the period of non-membership in the financial year mentioned in paragraphs 3.04A(1)(a) and (b) are treated as though they were imported or manufactured in the financial year immediately before the financial year in which the liable party becomes a member of the co-regulatory arrangement mentioned in paragraph 3.04A(1)(c).

Subregulation 3.04A(2) sets out a formula for calculating the proportion of products that correspond to the non-membership period mentioned in paragraph 3.04A(1)(b). This would then be taken into account in calculating the recycling target of the co-regulatory arrangement of which the liable party is a member (see item 32 of Schedule 2).

Subregulations 3.04A(1) and 3.04A(2) are intended to capture two types of periods of non-membership of an approved co-regulatory arrangement (co-regulatory arrangement) by a liable party:

1. where the liable party has failed to be a member of a co-regulatory arrangement for an entire financial year; and
2. where the liable party has been a member of one or more co-regulatory arrangements earlier in the financial year, but has ceased being a member of any co-regulatory arrangement on or before 30 June of that financial year.

In the latter case, for the purposes of subregulation 3.04A(2), the non-membership days would include the day after the liable party ceased being a member of the last co-regulatory arrangement they were a member of in that financial year (up to and including 30 June of that financial year). In the former case (in which the liable party was not a member of a co-regulatory arrangement for the entire financial year), every day of that financial year would be treated as a non-membership day for the purposes of subregulation 3.04A(2).

Subregulation 3.04A(3) provides that regulation 3.04B does not apply to the products mentioned in subregulation 3.04A(2) (i.e. the proportion of products that corresponds to the period of non-membership of a co-regulatory arrangement). Regulation 3.04A applies so that the first co-regulatory arrangement that a liable party becomes a member of after the period of non-membership mentioned in paragraph 3.04A(1)(b) must take 100 percent of the products corresponding to the non-membership period into account for the purposes of calculating import or manufacture share under subregulation 3.04(4). This co-regulatory arrangement will be required to take all of the products corresponding to the non-membership period into account, regardless of whether the liable party ceases to be a member of that co-regulatory arrangement before the end of the financial year in which they became a member.

Subregulation 3.04A(4) applies to ensure that the application of subregulation 3.04A(2) does not affect the import or manufacture share of co-regulatory arrangements in the financial year mentioned in paragraph 3.04A(1)(a). That is, the import or manufacture share of all co-regulatory arrangements in the financial year in which the liable party is not a member of the co-regulatory arrangement on 30 June will not be affected by the products that correspond to the period of non-membership being treated as though they were imported or manufactured in a subsequent financial year under subregulation 3.04A(2). For the purposes of the co-regulatory arrangements calculating their import or manufacture share in the financial year mentioned in paragraph 3.04A(1)(a), they will do so as though the proportion of products that are subject to subregulation 3.04A(2) were not subject to that subregulation. Therefore, the co-regulatory arrangements should treat the products captured by subregulation 3.04A(2) as though they were still imported or manufactured in the financial year immediately before the financial year mentioned in paragraph 3.04A(1)(a).

Subregulation 3.04B operates to ensure that a co-regulatory arrangement is only required to take into account products that correspond to periods during which a liable party either was a member of the co-regulatory arrangement or was taken to be a member of the co-regulatory arrangement for the purposes of calculating import or manufacture share under subregulation 3.04(4) (see item 32 of Schedule 2).

Subregulation 3.04B(1) clarifies that regulation 3.04B applies when a co-regulatory arrangement is working out their import or manufacture share for a financial year under subregulation 3.04(4) (see item 32 of Schedule 2) and a liable party was a member of that co-regulatory arrangement for only part of the financial year in question.

Subregulation 3.04B(2) provides that for the purposes of calculating import or manufacture share under subregulation 3.04(4) (see item 32 of Schedule 2), the co-regulatory arrangement is only required to take into account a proportion of products imported or manufactured by the liable party mentioned in subregulation 3.04B(1) (i.e. the liable party who was only a member of the co-regulatory arrangement for part of the financial year in question). This proportion is to be calculated using the formula set out in subregulation 3.04B(2).

Subregulation 3.04A(3) operates to prevent subregulation 3.04B(2) from applying to any products that have only been taken to have been imported or manufactured in the year immediately before the current financial year because of the application of subregulation 3.04A(2). This would mean that if a proportion of products a liable party had

imported or manufactured in a previous financial year were subject to subregulation 3.04A(2), the first co-regulatory arrangement (co-regulatory arrangement ABC) that the liable party joined in the current financial year would have to account for all of these products when calculating their import or manufacture share under subregulation 3.04(4) (see item 32 of Schedule 2). If the liable party then left co-regulatory arrangement ABC and joined a second co-regulatory arrangement (co-regulatory arrangement XYZ) in that financial year, co-regulatory arrangement XYZ would not have to take any of the products that were subject to subregulation 3.04A(2) into account when calculating their import or manufacture share. However, subregulation 3.04B(2) would apply to any products imported or manufactured in the previous financial year that were not subject to subregulation 3.04A(2) (that is, products that were actually imported in the previous financial year), and both co-regulatory arrangement ABC and co-regulatory arrangement XYZ would have to take a proportion of these products into account for the purposes of calculating import or manufacture share, calculated in accordance with the formula set out in subregulation 3.04B(2).

Subregulation 3.04B(3) provides that, where a liable party is not a member of a co-regulatory arrangement for a period including 1 July in that financial year, the liable party will be taken to have been a member of the first co-regulatory arrangement that they join in that financial year from 1 July of that financial year. That is, for the purposes of subregulation 3.04B(2), the liable party will be taken to have been a member of the first co-regulatory arrangement they join that financial year for both the period from 1 July up to and including the day before they became a member of the co-regulatory arrangement and for the period that they actually were a member of the co-regulatory arrangement.

Subregulation 3.04B(4) provides that if a liable party is a member two or more co-regulatory arrangements simultaneously, then, for the purposes of subregulation 3.04B(2), the liable party will be taken to only be a member of the co-regulatory arrangement that they joined first in that financial year (the previous co-regulatory arrangement) until they cease to be a member of that co-regulatory arrangement. Once they cease to be a member of that co-regulatory arrangement, for the purposes of subregulation 3.04B(2) they are taken to have become a member of the next co-regulatory arrangement that they joined in that financial year from the day after the liable party stopped being a member of the previous co-regulatory arrangement (regardless of when they actually became a member of the next co-regulatory arrangement).

Schedule 2 – Amendments commencing 1 July 2013

Product Stewardship (Televisions and Computers) Regulations 2011

Item 1 – Subregulation 1.03(1)

This item makes a consequential amendment to subregulation 1.03(1) which is required as a consequence of item 22 below (item 22 deletes subregulation 1.03(2) of the Principal Regulations).

Item 2 – Subregulation 1.03(1) (definition of *class of products*)

Subregulation 1.03(1) of the Principal Regulations defined *class of products* as a class of products mentioned in subregulation 1.04(1). This item repeals the definition of *class of products* in subregulation 1.03(1). This item reflects that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 3 – Subregulation 1.03(1)

This item amends subregulation 1.03(1) to insert a definition of the term *computer*. The definition of *computer* refers to the parts of the Schedules in which products that are computers are listed.

Item 4 – Subregulation 1.03(1) (definition of *computer class*)

This item repeals the definition of *computer class*. This item would be required to reflect the fact that the existing television product class and the existing computer product class are being replaced by a single combined television or computer product class.

Item 5 – Subregulation 1.03(1)

This item amends subregulation 1.03(1) to insert a definition of the term *computer part or peripheral*. The definition of *computer part or peripheral* refers to the parts of the Schedules in which products that are computer parts or peripherals are listed.

Item 6 – Subregulation 1.03(1) (definition of *converted weight*)

This item repeals the definition of *converted weight* and inserts a new definition of the term. This amendment would be required as a consequence of item 22 below (which repeals subregulation 1.03(2)). In addition, the definition of *converted weight* reflects that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 7 – Subregulation 1.03(1) (definition of *import or manufacture share of a co-regulatory arrangement*)

This item repeals the definition of *import or manufacture share of a co-regulatory arrangement* and is required as a consequence of item 8 below.

Item 8 – Subregulation 1.03(1)

This item inserts a definition of the term *import or manufacture share* into the Principal Regulations. The definition of *import or manufacture share* reflects that item 32 repeals and replaces regulation 3.04, under which import or manufacture share is calculated.

This item also inserts a new definition of the term *kind of television or computer product*. The definition of *kind of television or computer product* reflects that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products. Each product described in Schedules 1, 1A or 1B with a distinct product code is a kind of television or computer product.

Item 9 – Subregulation 1.03(1) (definition of *material recovery target*)

This item makes a consequential amendment to the definition of *material recovery target* in subregulation 1.03(1) of the Principal Regulations. In particular, this item deletes the reference to “products in a class of products” and replaces that reference with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 10 – Subregulation 1.03(1) (definition of *percentage target*)

This item repeals the existing definition of *percentage target* and inserts a new definition for this term. The definition of *percentage target* reflects that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 11 - Subregulation 1.03(1)

This item inserts a definition for the term *printer*. The definition of *printer* refers to the parts of the Schedules in which products that are printers are listed. This item is required as a consequence of item 23 which defines a printer as a kind of television or computer product.

Item 12 – Subregulation 1.03(1) (definition of *product code*)

This item repeals the existing definition of *product code* and inserts a new definition for this term. The definition of *product code* reflects that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 13 – Subregulation 1.03(1) (definition of *recycle*)

This item makes a consequential amendment to the definition of *recycle* in subregulation 1.03(1) of the Principal Regulations. In particular, this item deletes the reference to “a product” in that term and replaces that reference with “a television or computer product”. This amendment would be required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 14 – Subregulation 1.03(1) (definition of *recycling target*)

This item repeals the existing definition of *recycling target* and inserts a new definition for this term. The definition of *recycling target* reflects that item 32 repeals and replaces regulation 3.04, under which recycling targets are calculated.

Item 15 – Subregulation 1.03(1)

This item inserts a definition of the term *relevant Schedule* into subregulation 1.03(1) of the Principal Regulations. The definition of *relevant Schedule* clarifies which is the relevant Schedule of the Principal Regulations that would apply to a unit of a television or computer product. This would depend on the date the unit is imported or manufactured.

Item 16 – Subregulation 1.03(1) (definition of *scheme target*)

This item repeals the existing definition of *scheme target* and inserts a new definition for this term. The definition of *scheme target* reflects that item 32 repeals and replaces regulation 3.04, which sets out the process for calculating scheme targets.

Item 17 – Subregulation 1.03(1)

This item inserts a definition for the term *television* into subregulation 1.03(1) of the Principal Regulations. The definition of *television* refers to the parts of the Schedules in which products that are televisions are listed. This item would be required to reflect the fact that the existing television product class and the existing computer product class would be replaced by a single combined television or computer product class.

Item 18 – Subregulation 1.03(1) (definition of *television class*)

This item repeals the definition of *television class* and would be required as a consequence of item 17 above.

Item 19 – Subregulation 1.03(1)

This item inserts a definition for the term *television or computer product*. It reflects that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 20 – Subregulation 1.03(1) (definition of *waste arising*)

This item repeals the existing definition of *waste arising* and inserts a new definition for this term. The definition of *waste arising* reflects that item 32 repeals and replaces regulation 3.04, which sets out the method for calculating waste arising.

Item 21 – Subregulation 1.03(1) (definition of *whole unit*)

This item makes a consequential amendment to the definition of *whole unit* in subregulation 1.03(1) of the Principal Regulations. In particular, this item deletes the reference to “a product” in that term and replaces that reference with “a television or computer product”. This amendment would be required to reflect that item 23 repeals regulation 1.04 of the

Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single class of products.

Item 22 – Subregulation 1.03(2)

This item repeals subregulation 1.03(2) and is required as a consequence of item 6 which repeals the definition of *converted weight* in the Principal Regulations (which referred to subregulation 1.03(2)) and inserts a new definition of that term.

Item 23 – Regulation 1.04

This item repeals regulation 1.04 and replaces it with a new regulation 1.04. This regulation would state that the Principal Regulations apply to television or computer products. It would also define television or computer products as a television, a computer that was manufactured outside Australia, a printer, or a computer part or peripheral.

This amendment replaces the computer product class and the television product class with a single product class, television or computer products, in order to promote the environmental outcomes of the Scheme and reduce risks borne by liable parties and co-regulatory arrangements.

The existence of the two separate product classes necessitates the setting of separate recycling targets for these products. This has created the potential for a disjuncture to develop between recycling targets and the proportions in which the public provides products to co-regulatory arrangements for recycling. This creates risk for co-regulatory arrangements and potentially undermines the objectives of the Scheme, as it increases the risk that recycling targets may not be met.

Maintaining separate product classes also increases the risks borne by liable parties. This is because co-regulatory arrangement recycling targets are based on the composition of its membership and the proportions of members who import or manufacture products in each product class. This has the potential to create an incentive for co-regulatory arrangements to seek to match their targets to anticipated ratios of public demand for recycling by refusing to provide membership to liable parties of product classes that represent less community need for recycling. This would create a compliance risk for these parties and could undermine the ongoing effectiveness of the Scheme.

The amendment addresses these risks by replacing the existing television product class and computer product class with the television or computer product class, allowing all of these products to be counted towards a single target.

There is no discernible difference in the environmental benefits of recycling different ratios of televisions and computers. The materials included in televisions and computers are largely the same, and the most hazardous materials in electronic waste (such as lead, mercury and brominated flame retardants) are found in both televisions and computers.

Item 24 – Regulation 1.05 (note)

This item repeals the note to regulation 1.05 to reflect current drafting practices.

Item 25 – Regulations 2.01 to 2.03

This item repeals regulations 2.01, 2.02 and 2.03 of the Principal Regulations and inserts new regulations 2.01 and 2.02.

Regulation 2.01 clarifies that Division 2.1 (Liable parties) specifies the class of persons who are liable parties in relation to television or computer products and that the Division is made for subsection 19(1) of the Act. Subsection 19(1) of the Act states that regulations may identify liable parties in relation to a class of products. If a person is a liable party, then subsection 18(1) of the Act requires that they be a member of an approved co-regulatory arrangement in relation to that class of products.

Regulation 2.02 sets out criteria which, if satisfied, would mean that a person is a liable party.

Subregulation 2.02(1) provides that a person is a liable party for a financial year with respect to televisions if two criteria are met:

- (a) the person is a constitutional corporation in that financial year (see paragraph 2.02(1)(a)); and
- (b) in the previous financial year, the person either imported or manufactured more than 5,000 televisions; or the person, and a related body corporate, imported or manufactured more than 5,000 televisions, of which more than 1,000 were imported or manufactured by the person (see paragraph 2.02(1)(b)). Regulation 1.03 of the Principal Regulations provides that the term “related bodies corporate” has the meaning given by section 50 of the *Corporations Act 2001*.

Subregulation 2.02(2) similarly provides that a person is a liable party for a financial year with respect to computers or printers if two criteria are met:

- (a) the person is a constitutional corporation in that financial year (see paragraph 2.02(2)(a)); and
- (b) in the previous financial year, the person either imported or manufactured more than 5,000 computers or printers; or that the person and a related body corporate imported or manufactured more than 5,000 computers or printers, of which more than 1,000 were imported or manufactured by the person (see paragraph 2.02(2)(b)). This criterion may be satisfied where a person has imported or manufactured a combination of computers or printers that total more than 5,000 when counted together.

Subregulation 2.02(3) also provides that a person is a liable party for a financial year with respect to computer parts or peripherals if two criteria are met:

- (a) the person is a constitutional corporation in that financial year (see paragraph 2.02(3)(a)); and
- (b) in the previous financial year, the person imported or manufactured more than 15, 000 computer parts or peripherals (see paragraph 2.02(3)(b)).

Paragraphs 2.02(1)(b), 2.02(2)(b), and 2.02(3)(b) establish minimum thresholds in order to exclude small importers or manufacturers from being included in the Scheme as liable parties so as to limit the impact of the Principal Regulations on small business.

Paragraphs 2.02(1)(b)(ii) and 2.02(2)(b)(ii) are grouping provisions and are included to reduce the risk of bodies corporate from engaging in import-splitting with other related bodies corporate in order to avoid meeting the thresholds specified in these provisions. Such a practice would allow them to avoid being liable parties and would undermine the effectiveness of the Scheme. The risk of import-splitting is considered to be relatively low for computer parts or peripherals. Therefore, paragraph 2.02(3)(b) does not include a grouping provision.

Subregulations 2.02(1), 2.02(2), and 2.02(3) respectively provide separate minimum thresholds in relation to televisions, computers or printers, and computer parts or peripherals. These thresholds were developed through wide-ranging consultation with stakeholders and assessments of the overall environmental and industry impacts of the Principal Regulations. Maintaining these distinctions will be least disruptive to business, whilst still allowing the single product class for television or computer products to be created and ensuring that the original policy intention of subregulation 2.02 of the Principal Regulations remains unchanged.

Subregulation 2.02(4) provides that if a person is a liable party in a financial year and they are not a member of a co-regulatory arrangement on 30 June, they will continue to be a liable party in respect of those products until the end of the financial year in which they become a member of a co-regulatory arrangement. Subregulation 2.02(4) would apply whether or not the person would have been a liable party in that financial year were it not for this provision. For example, where a liable party was a member of a co-regulatory arrangement from 1 July 2013 until 5 June 2014 and then were not a member of a co-regulatory arrangement for the remainder of the financial year, this provision would apply. However, because of the application of subregulation 3.04B(2) (meaning that the co-regulatory arrangement would have to account for the products proportionate to the liable party's period of membership when calculating import or manufacture share), the amount of products proportionate to this period could be less than the thresholds for liability specified in paragraphs 2.02(1)(b), 2.02(2)(b) or 2.02(3)(b). Despite this, the liable party would still be liable under subregulation 2.02(4). The person would also still be liable party under this subregulation in instances where they did not import or manufacture any products in the financial year before the financial year in which they became a member of a co-regulatory arrangement.

Subregulation 2.02(5) defines the terms ***imported*** and ***manufactured*** for the purposes of Regulation 2.02.

The term ***imported***, in relation to a product, would be defined as meaning that the product is the subject of an import declaration under section 71A of the *Customs Act 1901* and the product has been entered for home consumption under paragraph 68(3A) of that Act. An import declaration made under section 71A of the *Customs Act 1901* is a communication with the Australian Customs and Border Protection Service about goods to which section 68 of the *Customs Act 1901* applies.

The term ***manufactured*** would be defined as meaning manufactured in Australia.

Item 26 – Subregulation 3.01(1)

This item makes a consequential amendment, deleting the reference to “a class of products” in subregulation 3.01 of the Principal Regulations and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 27 – Paragraph 3.01(1)(a)

This item amends paragraph 3.01(1)(a) of the Principal Regulations to include an alternative deadline of twelve months from the date on which the co-regulatory arrangement was approved by which it would be required to provide reasonable access to collection services. This will remove the disincentive posed to prospective co-regulatory arrangements by the sole deadline of 31 December 2013 currently set out in paragraph 3.01(1)(a) of the Principal Regulations.

Item 28 – Subregulation 3.01(2)

This item makes a consequential amendment, deleting the reference to “a class of products” in subregulation 3.01(2) and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 29 – Paragraph 3.01(2)(a)

This item makes a consequential amendment, deleting the reference to “a product” in paragraph 3.01(2)(a) and replacing it with “a television or computer product”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 30 – Paragraph 3.01(2)(b)

This item makes a consequential amendment, deleting the reference to “a product in the class of products” in paragraph 3.01(2)(b) and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 31 – Paragraphs 3.02(a) to (e)

This item makes consequential amendments, deleting the references to “products” in paragraphs 3.02(a) to (e) and replacing them with “television or computer products”. These amendments are required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 32 – Regulation 3.04

This item repeals regulation 3.04 and inserts a new regulation 3.04.

Subregulation 3.04(1) defines the term ***recycling target*** of a co-regulatory arrangement for a financial year. This is to be calculated by multiplying the scheme target for that year by the co-regulatory arrangement's import or manufacture share for that year.

Subregulation 3.04(2) defines the term ***scheme target*** for a financial year. This is calculated by multiplying the percentage target for that year (which is specified in Schedule 2) by the waste arising.

Subregulation 3.04(3) sets out how the waste arising is to be worked out. Waste arising represents the weight of additional waste products that are expected to be generated in any financial year. It is to be worked out by identifying the total converted weight of all television or computer products imported or manufactured in the last 3 financial years. This figure is divided by 3 to calculate the annual average converted weight. The resulting figure is then multiplied by 0.9 and the result is the waste arising.

The scaling factor of 0.9 used in Step 3 of subregulation 3.04(3) is included to take account for the fact that a percentage of products that are imported are subsequently exported and do not displace existing products, meaning that these products do not enter the waste stream.

The total converted weight is made available on the Department of Sustainability, Environment, Water, Population and Communities' Internet site each year (<http://www.environment.gov.au/>).

Subregulation 3.04(4) sets out the process for calculating the import or manufacture share of a co-regulatory arrangement for a financial year. Step 1A requires the total number of units imported or manufactured, in the previous financial year, by all liable parties who are members of the co-regulatory arrangement during the current financial year to be identified for each kind of television or computer product. The term ***kind of television or computer product*** is defined as a television or computer product with a distinct product code (see item 8).

Step 1B requires the result of Step 1A to be multiplied by the conversion factor for that kind of product. Conversion factors are set out in column 3 of the Schedules to the Principal Regulations.

Step 2A requires the total number of units exported, in the previous financial year, by all liable parties who are members of the co-regulatory arrangement on 15 September of the current financial year to be identified for each kind of television or computer product. A co-regulatory arrangement cannot count units exported by liable parties who were members of the co-regulatory arrangement during the financial year in question, but were not members on 15 September. Both Step 2A of subregulation 3.04(4) and subregulation 3.04C use the date of 15 September in order to minimise complexity in relation to deadlines co-regulatory arrangements are required to meet in respect of exports and to ensure that each liable party is only required to provide input into a maximum of one export report each financial year.

Step 2B requires the result of Step 2A to be multiplied by the conversion factor for that kind of television or computer product.

Step 3 requires the result of Step 2B to be subtracted from the result of Step 1B for each kind of television or computer product.

Step 4 requires all the results of Step 3 to be added together.

Step 5A requires the total converted weight of all television or computer products imported or manufactured by all liable parties in the previous financial year to be identified.

Step 5B requires the total converted weight of the exported products reported under regulation 3.04D to be subtracted from the result of Step 5A. Regulation 3.04D sets out reporting requirements in relation to television or computer products that must be complied with in order to take products into account for the purposes of subregulation 3.04(4).

Step 6 requires the result of Step 4 to be divided by the result of Step 5B.

Subregulation 3.04(5) provides that the same conversion factors must be used for Steps 1B and 2B in subregulation 3.04(4). It also provides that a co-regulatory arrangement can only count products of a kind for which the criteria in subregulations 2.02(1), 2.02(2) or 2.02(3) have been satisfied. For example, if a liable party member of a co-regulatory arrangement met the criteria in subregulation 2.02(1) in respect of televisions, but did not meet the criteria in subregulation 2.02(2) in respect of computers or printers, the co-regulatory arrangement could not count any computers or printers that that member had imported, manufactured or exported in the previous financial year under subregulation 3.04(4).

Item 33 – After regulation 3.04B

This item inserts subregulation 3.04C after regulation 3.04B. Subregulation 3.04C sets out a number of reporting and accountability requirements that a co-regulatory arrangement has to comply with in order to take exported television or computer products into account when calculating its import or manufacture share. It is intended to ensure that exports can only be taken into account where the television or computer products were imported or manufactured by a member of the arrangement within the last financial year. As an accountability measure, the subregulation would also require an audit report to confirm that the specified conditions have been met. Further requirements are imposed in order to ensure that an accurate audit report is prepared by an appropriately qualified auditor.

Item 34 – Subregulation 3.05(1)

This item makes a consequential amendment, deleting the reference to “a product in a class of products” in subregulation 3.05(1) and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 35 – Regulation 3.06

This item makes a consequential amendment, deleting the reference to “the product in a class of products” in regulation 3.06 and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal

Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 36 – Paragraph 4.01(e)

This item makes a consequential amendment, deleting the reference to “products” in paragraph 4.01(e) and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 37 – Subregulation 5.08(1)

This item makes a consequential amendment, deleting the reference to “a class of products” in subregulation 5.08(1) and replacing it with “television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 38 – Subregulation 5.09(1)

This item makes a consequential amendment to subregulation 5.09(1). The amendment is required as a consequence of item 39 which repeals subregulation 5.09(2), and to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 39 – Subregulation 5.09(2)

This item repeals the subregulation. This amendment is required because the date by which liable parties were required to provide the information specified in this subregulation, 1 March 2012, has passed and the subregulation is no longer required.

Item 40 – Subregulation 5.10(1)

This item makes a consequential amendment to subregulation 5.10(1) to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class. It does so by deleting references to a class of products from this provision and replacing them with references to television or computer products. This amendment would not change the requirement on a liable party to provide specified information to the Minister.

Item 41 – Subregulation 5.10(2)

This item repeals the subregulation. This amendment reflects that the subregulation is no longer required, as the date by which liable parties were required to provide the information specified in this subregulation, 1 March 2012, has passed.

Item 42 – Subregulation 5.11(1)

This item makes a consequential amendment, deleting “a class of products must give the Minister any information relating to products in that class” in subregulation 5.11(1), and replacing it with “television or computer products must give the Minister any information relating to those products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 43 – Paragraph 5.14(1)(a)

This item repeals the paragraph. This amendment is required because item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class. As there is only one product class to which the Principal Regulations applied, it is not necessary to specify in the annual report which class or classes of products are covered by the co-regulatory arrangement.

Item 44 – Paragraph 5.14(2)(b)

This item makes a consequential amendment, deleting “if the co-regulatory arrangement covers more than one class of products—the class of” in paragraph 5.14(2)(b), and replacing it with “the kinds of television or computer”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 45 – Subregulation 5.14(3)

This item makes a consequential amendment, deleting the reference to “storage of products” in subregulation 5.14(3) and replacing it with “storage of television or computer products”. This amendment is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 46 – Paragraphs 5.14(3)(b) and (c)

This item makes consequential amendments, deleting the references to “products in a class of products” in paragraphs 5.14(3)(b) and (c) and replacing them with “television or computer products”. These amendments are required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 47 – Subregulation 5.14(4)

This item makes consequential amendments, deleting the reference to “recycling products under” in subregulation 5.14(4) and replacing it with “recycling television or computer products under”. This amendment is required to reflect that item 23 repeals regulation 1.04 of

the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 48 – Paragraphs 5.14(4)(a) to (f)

This item makes consequential amendments, deleting the references to “products in a class of products” in paragraphs 5.14(a) to (f) and replacing them with “television or computer products”. These amendments is required to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 49 – Subregulation 5.14(5), Item 50 – Paragraph 5.14(5)(a), Item 51 – Subregulation 5.14(6), Item 52 – Paragraphs 5.14(6)(c) and (7)(a), Item 53 – Subregulation 5.14(8) and Item 54 – Paragraphs 5.14(10)(a), (c) and (d)

These items makes consequential amendments to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 55 – After Part 5

This item inserts a new part (Part 6 – Transitional Provisions) after Part 5 of the Principal Regulations. Part 6 provides that if a co-regulatory arrangement were approved under section 26 of the Act in relation to both the television and computer product classes, they will be taken to be approved for television or computer products from the commencement of the Regulation. This is a transitional provision that has been included to ensure that co-regulatory arrangements that already hold an approval under section 26 of the Act in respect of the television product class and the computer product class are not be required to seek a new approval in relation to the television or computer product class when the amendments come into effect.

Item 56 – Schedule 1 (heading)

This item makes a consequential amendment to the heading to Schedule 1 to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class.

Item 57 – Part 2 of Schedule 1 (heading)

This item amends the heading to Part 2 of Schedule 1 to refer to “Computers” and is required as a consequence of item 3. Item 3 defines *computer* as a product with a product code mentioned in Part 2 of Schedule 1, 1A or 1B.

Item 58 – Division 1 of Part 2 of Schedule 1 (heading)

This item repeals the heading to Division 1 of Part 2 of Schedule 1 and is required as a consequence of item 57.

Item 59 – Division 2 of Part 2 of Schedule 1 (heading)

This item repeals the heading to Division 2 of Part 2 of Schedule 1 and replaces it with a new heading “Part 3 – Printers”. This amendment is required as a consequence of item 11. Item 11 defines *printer* as a product with a product code mentioned in Part 3 of Schedule 1, 1A or 1B.

Item 60 – Division 3 of Part 2 of Schedule 1 (heading)

This item repeals the heading to Division 3 of Part 2 of Schedule 1 and replaces it with a new heading “Part 4 – Computer parts and peripherals”. This amendment is required as a consequence of item 5. Item 5 defines *computer part or peripheral* as a product with a product code mentioned in Part 4 of Schedule 1, 1A or 1B.

Item 61 – Division 3 of Part 2 of Schedule 1 (table item 6.2)

This item is required as a consequence of item 60 above to replace the reference to “item 6.1” in table item 6.2 with a reference to “item 4.1”.

Item 62 – Schedule 1A (heading)

This item makes a consequential amendment to the heading to Schedule 1A to reflect that item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class. The item also amends the heading to Schedule 1A to clarify that the product codes and conversion factors listed in the Schedule apply for the period 1 January 2012 to 30 June 2012. These reflect updates made on 1 January 2012 to some Australian tariffs following a scheduled international review of import classifications.

Item 63 – Part 2 of Schedule 1A (heading)

This item amends the heading to Part 2 of Schedule 1A to refer to “Computers” and is required as a consequence of item 3. Item 3 defines *computer* as a product with a product code mentioned in Part 2 of Schedule 1, 1A or 1B.

Item 64 – Division 1 of Part 2 of Schedule 1A (heading)

This item repeals the heading to Division 1 of Part 2 of Schedule 1A and is required as a consequence of item 63.

Item 65 – Division 2 of Part 2 of Schedule 1A (heading)

This item repeals the heading to Division 2 of Part 2 of Schedule 1A and would replace it with a new heading “Part 3 – Printers”. This amendment is required as a consequence of item 11. Item 11 defines *printer* as a product with a product code mentioned in Part 3 of Schedule 1, 1A or 1B.

Item 66 – Division 3 of Part 2 of Schedule 1A (heading)

This item repeals the heading to Division 3 of Part 2 of Schedule 1A and replaces it with a new heading “Part 4 – Computer parts and peripherals”. This amendment is required as a

consequence of item 5. Item 5 defines *computer part or peripheral* as a product with a product code mentioned in Part 4 of Schedule 1, 1A or 1B.

Item 67 – Division 3 of Part 2 of Schedule 1A (table item 6.2)

This item is required as a consequence of item 66 above to replace the reference to “item 6.1” in table item 6.2 with a reference to “item 4.1”.

Item 68 – After Schedule 1A

This item inserts Schedule 1B into the Principal Regulations. Schedule 1B sets out the product codes and conversion factors that apply to televisions, computers, printers and computer parts and peripherals from 1 July 2012.

Item 69 – Schedule 2 (heading)

This item repeals the heading to Schedule 2 and replace it with a new heading. The note to the new heading refers readers to the definition of percentage target in regulation 1.03 (inserted by item 10). This amendment is required to reflect that item 71 repeals Part 2 of Schedule 2, creating a single set of percentage targets that apply to the television or computer product class.

Item 70 – Part 1 of Schedule 2 (heading)

This item repeals the heading to Part 1 of Schedule 2. This amendment is required because item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class and item 71 repeals Part 2 of Schedule 2, creating a single set of percentage targets that apply to the television or computer product class, meaning that the heading to Part 1 of Schedule 2 would no longer be necessary. Item 69 inserts a heading for Schedule 2 that reads “Schedule 2 – Percentage targets” that reflects these changes.

Item 71 – Part 2 of Schedule 2

This item repeals Part 2 of Schedule 2. This amendment is required because item 23 repeals regulation 1.04 of the Principal Regulations and inserts a new regulation 1.04 that provides that the Principal Regulations apply to television or computer products as a single product class. This means that only a single set of percentage targets for television or computer products class are required.