

EXPLANATORY STATEMENT

Select Legislative Instrument 2015 No. 112

Issued by the Minister for the Environment

Subject – *Product Stewardship Act 2011*

Product Stewardship (Televisions and Computers) Amendment (Operational Review) Regulation 2015

The *Product Stewardship Act 2011* (the Act) establishes a framework for product stewardship and seeks to address the environmental, human and safety impacts of products and materials 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.

The *Product Stewardship (Televisions and Computers) Regulations 2011* (the Principal Regulations) give effect to the National Television and Computer Recycling Scheme (the Scheme). The objectives of the Scheme include minimising the amount of television and computer materials (particularly hazardous materials) that are disposed of to landfill and maximising the recovery of resources from end-of-life television or computer products in a safe, scientific and environmentally sound manner. Thresholds setting out minimum numbers of products imported or manufactured by a person (or, in some cases, a related body corporate) in the previous financial year are used to determine whether a person is a liable party and is therefore subject to the Scheme.

An Operational Review of the Scheme (the Review) was announced on 22 September 2014. The Scheme has been highly successful in its first two years, with more than 93,000 tonnes of hazardous e-waste (end-of-life televisions and computers) being recycled, more than double the rate of recycling prior to its introduction. Nevertheless, the review identified a number of further adjustments that could be made to ensure that the Scheme continues to operate efficiently.

The purpose of the Regulation is to amend the Principal Regulations to implement the recommendations of the Review. In particular, the Regulation:

- (a) Inserts a ‘settlement date’ for each financial year, after which amendments to import declarations done under section 71A of the *Customs Act 1901* would not be taken into account for the purposes of determining whether a person is a liable party under the Scheme and the outcomes for a co-regulatory arrangement (the outcomes include the recycling targets of a co-regulatory arrangement worked out under regulation 3.04 of the Principal Regulations).
- (b) Amends the scaling factors used in the methodology to calculate waste arising to ensure that the scaling factors accurately reflect the amount of television or computer products entering the waste stream each year.

- (c) Requires the recycling of television or computer products undertaken in Australia on or after 1 July 2016 be done by recyclers and facilities certified to and in compliance with the Australian/New Zealand Standard *AS/NZS 5377:2013 Collection, storage, transport and treatment of end-of-life electrical and electronic equipment* (the Standard) and information regarding recycling done in accordance with the Standard or at a facility certified under the Standard be included in the annual reports of co-regulatory arrangements.
- (d) Updates the Scheme's product codes and conversion factors to be applied to television or computer products imported or manufactured during the period 1 July 2014 and 30 June 2015, and on or after 1 July 2015.
- (e) Adjusts the recycling target trajectory for the Scheme by amending the percentage targets set out in Schedule 2 to the Principal Regulations.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

Details of the Regulation are set out in the [Attachment](#).

The Department of the Environment (the Department) released a Review paper for public comment in November 2014, with submissions due on 6 February 2015. The development of the Review paper was informed by roundtable discussions held with state, territory and local governments, industry associations and other stakeholders involved in the consumer electronics, information technology and recycling industries. A total of 85 written submissions were received from state and local government, television and computer companies, the recycling industry, co-regulatory arrangements and members of the public.

During the consultation period, the Department also held additional roundtable meetings with industry associations and other stakeholders in the television and computer industries, undertook consultation with co-regulatory arrangements, scheme liable parties and television and computer industry associations to inform development of new product codes and conversion factors, and held public consultation sessions in Brisbane, Sydney, Melbourne, Adelaide and Perth on the Review paper.

The written submissions received and comments made were taken into account in finalising the Review and the drafting of the Regulation.

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

The Regulation commences on 1 July 2015.

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 (Operational Review) Regulation 2015

Overview of the Legislative Instrument

The *Product Stewardship (Televisions and Computers) Amendment (Operational Review) Regulation 2015* amends the *Product Stewardship (Televisions and Computers) Regulations 2011* (the Principal Regulations) to implement the recommendations of the Operational Review of the National Television and Computer Recycling Scheme.

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 Greg Hunt MP, Minister for the Environment

Details of the *Product Stewardship (Televisions and Computers) Amendment (Operational Review) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Product Stewardship (Televisions and Computers) Amendment (Operational Review) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides for the Regulation to commence on 1 July 2015.

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

Schedule 1 – Amendments

Item [1] – Regulation 1.03, Item [14] – Paragraphs 3.05(1)(a) and (b)

The Australian and New Zealand Standard *AS/NZS 5377:2013 Collection, storage, transport and treatment of end-of-life electrical and electronic equipment* (the Standard) provides guidance and specifies requirements for the safe and environmentally sound collection, storage, transport and treatment of used electrical and electronic equipment in order to maximise reuse and material recovery, reduce or eliminate waste, safeguard worker health, and minimise harm to the environment.

Each approved co-regulatory arrangement under the Scheme is required to achieve a portion of the total scheme recycling target. In order to achieve this, recyclers and other service providers are contracted by co-regulatory arrangements. Subregulation 3.05(1) sets out the circumstances in which a television or computer product will be taken to have been recycled for the purposes of the Scheme, including if the television or computer product is recycled under a co-regulatory arrangement, or if it is recycled by a liable party who subsequently becomes a member of a co-regulatory arrangement.

Item 14 amends paragraphs 3.05(1)(a) and (b) to also require that any recycling done in Australia on or after 1 July 2016 be done by a person certified to the Standard at a facility covered by that certification. Applying this requirement to recycling done on or after 1 July 2016 will provide time for recyclers and their facilities to obtain certification under the Standard.

Item 1 inserts a definition of *AS/NZS 5377:2013* into regulation 1.03 of the Principal Regulations.

Item [2] – Regulation 1.03 (definition of *computer*), Item [3] – Regulation 1.03 (definition of *computer part or peripheral*), Item [5] – Regulation 1.03 (definition of *printer*), Item [7] – Regulation 1.03 (definition of *television*)

Regulation 1.03 defines key terms used in the Principal Regulations, including *computer*, *computer part or peripheral*, *printer*, and *television*. These products are defined as being a product with a product code listed in the corresponding Part of Schedules 1, 1A, or 1B.

As a consequence of Item 17 (which inserts Schedules 1C and 1D into the Principal Regulations), Items 2, 3, 5 and 7 amend the definitions of *computer*, *computer part or peripheral*, *printer* and *television* to replace the reference to the specific Schedules with a reference to the relevant Schedule. The term *relevant Schedule* is defined to mean the Schedule to the Principal Regulations that applies to a television or computer product and is determined based on the period during which the television or computer product is manufactured or imported (see the definition in regulation 1.03 of the Principal Regulations).

Item [4] – Regulation 1.03 (example at the end of the definition of *kind of television or computer product*)

Item 4 updates the example at the end of the definition of *kind of television or computer product* with a revised example.

Item [6] – Regulation 1.03 (paragraph (c) of the definition of *relevant Schedule*)

Item 6 is required as a consequence of Item 17 (which inserts Schedules 1C and 1D into the Principal Regulations) and substitutes paragraph (c) of the definition of *relevant Schedule* with new paragraphs (c), (d) and (e). These new paragraphs clarify what the relevant Schedule is for a unit of television or computer product imported or manufactured on or after 1 July 2012 and before 1 July 2014 (see Schedule 1B), for a unit of a television or computer product imported or manufactured on or after 1 July 2014 and before 1 July 2015 (see Schedule 1C), and on or after 1 July 2015 (see Schedule 1D).

Item [8] – Regulation 1.03 (definition of *whole unit*), Item [10] – Subregulation 2.01(1) and Item [13] – Subparagraph 3.04C(2)(a)(ii)

These Items correct drafting errors in the Principal Regulations.

Item [9] – At the end of Part 1

Determining whether a person is a liable party under the Scheme, and the recycling targets of the co-regulatory arrangements and the import or manufacture share of their members depend on import data provided to the Department of the Environment by the Australian Customs and Border Protection Service (Customs). Customs import data is derived from import declarations made under section 71A of the *Customs Act 1901* completed by importers when the goods arrive in Australia.

Reliance on this data has meant that the recycling target for the Scheme, and the recycling targets and the import and manufacture share for each co-regulatory arrangement fluctuates during a target year due to corrections made by liable parties to their import declarations. While

individual changes may be small, the cumulative impact of these changes has resulted in increased administrative costs for administrators of co-regulatory arrangements and uncertainty over targets and liability under the Scheme.

This Item inserts a new regulation 1.06 into the Principal Regulations which specifies a date after which changes to import declarations that reduce either the number of television or computer products specified in the declaration or the converted weight of television or computer products specified in the declaration will not be taken into account for the purposes of determining whether a person is a liable party under the Scheme and the outcomes for a co-regulatory arrangement (the outcomes include the recycling targets of a co-regulatory arrangement worked out under regulation 3.04 of the Principal Regulations). It is necessary to include changes that reduce the converted weight of televisions or computer products as the wrong product code being used on the import data effects the converted weight of the television or computer products being imported or manufactured.

The settlement date is 31 October next following the financial year in which the import declaration was made. This will allow the recycling targets and the import or manufacture share of a co-regulatory arrangement to be confirmed by late October of each financial year, rather than being subject to change throughout the financial year.

Item [11] – Subregulation 3.04(3)

Under the Scheme, the term ‘waste arising’ represents the amount of waste television or computer products that are expected to be generated in Australia in any financial year.

The methodology used to calculate waste arising is set out in subregulation 3.04(3) of the Principal Regulations and is based on the average weight of imports over the past three years and a scaling factor of 0.9. The waste arising methodology is based on the assumption that when a product is imported, it usually replaces another product, which then becomes waste. Taking the average converted weight over the past three years reduces the impact of annual fluctuations in imports. The scaling factor of 0.9 was originally included to reflect the reality that some imported products are subsequently exported, and that not all imported products replace existing products.

The Operational Review of the Scheme (the Review) has identified that while the 0.9 scaling factor remains appropriate for televisions, the scaling factor for computers, printers and computer parts and peripherals require amendment. The amendment is necessary to reflect the fact that a higher number of televisions enter the waste stream each year than computers, printers and computer parts and peripherals. As such, a high scaling factor for televisions is warranted.

Item 11 repeals subregulation 3.04(3) of the Principal Regulations and replaces it with a subregulation which sets out the revised methodology to be used to calculate waste arising for the purposes of the Scheme. The revised methodology uses different scaling factors for computers (which will have a scaling factor of 0.8) and printers and computer parts and peripherals (both of which will have a scaling factor of 0.88). The scaling factor for televisions will remain the same at 0.9.

Item [12] – Subregulation 3.04(4) (method statement, steps 4 – 6)

Calculation of the import or manufacture share of a co-regulatory arrangement ensures that each co-regulatory arrangement's recycling target is proportional to the relative contribution of its members to the waste stream over time.

Regulation 3.04(4) of the Principal Regulations sets out the methodology used for calculating the import or manufacturing share of a co-regulatory arrangement. As a result of the amendment to subregulation 3.04(3) to differentiate between the scaling factors for televisions, computer, printers and computer parts and peripherals (see Item 11 above), a consequential amendment is required to the methodology used to calculate the import or manufacture share of a co-regulatory arrangement.

Item 12 amends steps 4 to 6 of the method statement in subregulation 3.04(4) to require the import or manufacture share of a co-regulatory arrangement to be calculated separately for televisions, computers, printers, and computer parts and peripherals, before the results of each calculation are added together to determine the import or manufacture share of the co-regulatory arrangement in relation to all television or computer products.

Item [15] – Subregulation 5.14(6)

Administrators of co-regulatory arrangements must, for each financial year, provide to the Minister for the Environment, a report in relation to the operation of the co-regulatory arrangement in the financial year. Regulation 5.14 sets out the matters that must be included in the annual report, including details about contracted service providers.

As a consequence of Item 14 above, Item 15 amends subregulation 5.15(6) of the Principal Regulations to require administrators of co-regulatory arrangements to also include in their annual reports information about whether each facility in Australia used by a contracted service provider to recycle television or computer products is certified to the Standard, and the total weight of products recycled by the service provider in Australia in accordance with the Standard. These additional annual reporting requirements only apply for the financial year starting on 1 July 2016, and for each subsequent financial year, consistent with Item 14.

Item 15 also requires information regarding the location of facilities being used by contracted service providers to recycle television or computer products, and the total weight of products recycled at those facilities to be included in a co-regulatory arrangement's annual report. These requirements apply for the financial year starting on 1 July 2015, and subsequent financial years.

Item [16] – Schedule 1B (heading)

This Item is required as a consequence of Item 17 and amends the heading to Schedule 1B to clarify that the product codes and conversion factors listed in Schedule 1B only apply to television or computer products imported or manufactured during the period 1 July 2012 to 30 June 2014.

Item [17] – After Schedule 1B

The liability of importers and manufacturers for a financial year is determined by the number of television or computer products they imported or manufactured in the previous financial year.

A *television or computer product* is defined in subregulation 1.04(2) of the Principal Regulations as either a television, a computer that was manufactured outside Australia, a printer or a computer part or peripheral. The terms *television*, *computer*, *printer* and *computer part or peripheral* are each defined in regulation 1.03 of the Principal Regulations as a product with a product code mentioned in the relevant Part of Schedules 1, 1A and 1B.

The Scheme's product codes align with the tariff and statistical codes in the *Combined Australian Customs Tariff Nomenclature and Statistical Classification*, commonly known as the Working Tariff, which is used by Customs and the Australian Bureau of Statistics to identify imported products.

Each product code has an associated conversion factor, which is an estimated weighted average of products imported under that product code. The purpose of the conversion factor is to enable the data collected by Customs, which records the number of units imported in each shipment, to be converted into an estimated weight of these products. This is necessary because waste management and recycling processes necessarily work in weights rather than units of products.

Item 17 amends the Principal Regulations to update the product codes and conversion factors applying to television or computer products imported or manufactured during the period 1 July 2014 and 30 June 2015 (see new Schedule 1C) and the product codes and conversion factors applying to television or computer products imported or manufactured on or after 1 July 2015 (see new Schedule 1D).

Item [18] – Schedule 2 (table items 5 to 11)

The objectives of the Scheme include minimising the amount of television and computer materials (particularly hazardous materials) that are disposed of to landfill and maximising the recovery of resources from end-of-life television or computer products in a safe, scientific and environmentally sound manner. The Scheme does this by setting targets for each financial year, which co-regulatory arrangements must meet through the recycling of television or computer products (see regulation 3.01 and 3.04 of the Principal Regulations).

The annual recycling targets are expressed as a percentage of the available television and computer waste arising in Australia each year. The percentage targets, which are set out in Schedule 2 to the Principal Regulations, commenced at 30 per cent of waste in 2012-13 and will increase each year until they reach 80 per cent in 2021-22.

The current recycling target trajectory provides for a gradual increase in recycling over the first five years of the Scheme, reaching 40 per cent in 2016-17, with a rapid increase over the subsequent five years, reaching 80 per cent of available waste in 2021-22. The slow rate of increase in the Scheme's target trajectory to 2017-18 was deliberately conservative due to a level of uncertainty regarding public demand for recycling services and the e-waste recycling industry's capacity to manage increasing volumes of material.

The Review has highlighted evidence of high consumer demand and sufficient capacity in the e-waste recycling sector and recommends a more steady increase in the target trajectory. This will provide greater certainty for business and will ensure that the Scheme is achieving its objectives in a more efficient and effective manner.

Item 18 amends Schedule 2 of the Principal Regulations to adjust the recycling target trajectory for the Scheme.