

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Environment, the Hon. Sussan Ley MP

Recycling and Waste Reduction Act 2020

Recycling and Waste Reduction (Fees) Rules 2020

Legislative Authority

The *Recycling and Waste Reduction (Fees) Rules 2020* (the Fees Rules) are made under subsection 188(1) of the *Recycling and Waste Reduction Act 2020* (the Act).

Subsection 188(1) of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules.

Section 155 of the Act provides that the Minister may make rules for, and in relation to, the charging of fees relating to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under the Act. Section 70 of the Act and the *Recycling and Waste Reduction (Product Stewardship – Accreditation of Voluntary Arrangements) Rules 2020* (Voluntary Arrangements Rules) provide for the accreditation of voluntary arrangements. Section 172 of the Act provides that applications made under the Act must be accompanied by a fee, if rules made for the purpose of section 155 of the Act specify this, and payment of the fee has not been waived.

Purpose

The purpose of the Fees Rules is to prescribe fees, persons liable to pay fees or late payment penalties, the time for payment of fees, and the remit and refund of fees.

The Fees Rules set the cost recovery fees developed by the Department of Agriculture, Water and the Environment (the Department) for applications to accredit, re-accredit and vary voluntary product stewardship arrangements. These fees are intended to recover the part of the costs of the Commonwealth in considering such applications.

The Fees Rules will replace the *Product Stewardship Regulation 2012*, the instrument that previously set fees in relation to the accreditation of a voluntary arrangement. This instrument ceased to exist once the *Product Stewardship Act 2011* was repealed by operation of the *Recycling and Waste Reduction (Consequential and Transitional Provisions) Act 2020*.

Background

The Act establishes a legislative framework to enable Australia to more effectively manage the environmental and human health impacts of products, waste from products, and waste material by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products over the lifecycle of the product.

The Act replaces the *Product Stewardship Act 2011* as the Government's framework legislation for product stewardship. In response to the Australian Government's support for all recommendations to the *Review of the Product Stewardship Act 2011*, the Fees Rules,

together with the Act and Voluntary Arrangements Rules, will improve the legislative framework for voluntary product stewardship arrangements.

The Fees Rules will also implement reduced cost recovery fees for voluntary product stewardship accreditation, consistent with the Government's response to Recommendation 13 of the *Review of the Product Stewardship Act 2011*, tabled in Parliament on 8 July 2020, to both simplify and reduce fees relating to the accreditation of voluntary arrangements. This includes a reduction in the cost of applications relating to the accreditation of voluntary arrangements. This is designed to increase the value proposition of accreditation and through increased uptake, improve Australia's recycling and waste management outcomes.

The Fees Rules reduce the application fee for the accreditation of voluntary arrangements from \$20,600-\$26,600 under the *Product Stewardship Regulation 2012*, to \$3,900-\$5,900.

Impact and Effect

The Fees Rules will assist the Commonwealth to appropriately recover some of the costs of services provided for the accreditation of voluntary arrangements. The Fees Rule will prescribe fees, persons liable to pay fees, the time for payment, and the remit and refund of fees..

Regulatory costs associated with the accreditation of product stewardship already exist. However, the Voluntary Arrangements Rules will decrease these costs due to streamlined application requirements, and the removal of obligatory annual audits. These Rules, together with the Fees Rules, will reduce the regulatory costs and fees associated with the accreditation of voluntary arrangements.

Consultation

The Department consulted with stakeholders during the development of the revised cost recovery fees. This included working with product stewardship stakeholders through public engagement forums and releasing a draft CRIS for targeted stakeholder comment in early October 2020.

Stakeholder feedback was taken into account and the final CRIS was certified by the Secretary of the Department and endorsed by the Minister for the Environment. The Department of Finance was consulted and agreed to the cost recovery model, on the basis that it complied with *Australian Government Charging Framework*, which is reflected in the Fees Rules. The Department of Finance agreed that the Minister for the Environment could release the final CRIS. The Department has published the CRIS, which is available on the Department's website.

The Office of Best Practice Regulation was consulted in the preparation of the Act and the Fees Rules and advised that a regulatory impact statement was not required (ID 42699).

Details/Operation

Details of the Fees Rules are set out in [Attachment A](#).

Other

The Fees Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

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

Details of the *Recycling and Waste Reduction (Fees) Rules 2020*

PART 1—PRELIMINARY

Section 1 Name

This section provides that the name of the instrument is the *Recycling and Waste Reduction (Fees) Rules 2020*.

Section 2 Commencement

This section provides that the Fees Rules commence on the day after the Fees Rules are registered on the Federal Register of Legislation, or the day that the Act commences, whichever is later.

Section 3 Authority

This section provides that the Fees Rules are made under the *Recycling and Waste Reduction Act 2020*.

Section 4 Definitions

This section provides that the term ‘Act’, when used in the Fees Rules, means the *Recycling and Waste Reduction Act 2020*.

PART 2—FEES RELATING TO PRODUCT STEWARDSHIP

Section 5 Fees relating to the accreditation of voluntary arrangements

Subsection 5(1) provides that this section is made for the purposes of paragraphs 155(2)(a), (d) and (e) of the Act. These paragraphs provide that rules may prescribe fees, the persons liable to pay fees, and the time when specified fees are due and payable respectively.

Subsection 5(2) prescribes fees relating to accreditation of voluntary arrangements. The table immediately following paragraph 5(2)(c) sets out the function for which the fee is prescribed in column 1, the amounts of the fee in column 2, when the fee is due and payable in column 3, and the person liable to pay the fee in column 4.

Application for accreditation of a voluntary arrangement

Item 1 of the table prescribes fees in relation to the consideration of an application for accreditation of a voluntary arrangement. Section 7 of the Voluntary Arrangement Rules allows the administrator of a voluntary arrangement to apply to the Minister for accreditation of the arrangement in relation to a product.

There are two separate fee amounts specified in relation to this function in column 2. Where the application relates to a voluntary arrangement that currently does not have accreditation, column 2 provides that the fee is \$5,900.

Where the application relates to a voluntary arrangement that currently has accreditation, such as an arrangement seeking what is effectively renewal of its accreditation or re-accreditation, column 2 provides that the fee is \$3,900.

This difference in fees reflects that there is less work associated with considering an application for accreditation where the voluntary arrangement has an existing accreditation and has therefore been considered by the Minister previously.

Column 3 of item 1 provides that the fee is due and payable at the time the application is made. Consistent with section 6, this means that the fee must accompany the application, unless the whole fee has been remitted under section 8. An application for accreditation, or re-accreditation, will not be considered if the fee that is due and payable has not accompanied the application.

Column 4 provides that the person liable to pay the fee is the administrator of the voluntary arrangement. The administrator is the person responsible for ensuring the outcomes of voluntary arrangements are achieved.

Variation of an accredited voluntary arrangement

Item 2 of the table prescribes a fee in relation to the consideration of an application to vary the accreditation of a voluntary arrangement. Section 14 of the Voluntary Arrangements Rules provides that the administrator of an accredited voluntary arrangement may apply to the Minister to vary any aspect of the accreditation of the arrangement.

Column 2 of item 2 provides that the fee in relation to the function is \$26.60 for each quarter hour or part of a quarter hour assessing the variation application, for each person performing the function.

Column 3 of item 2 provides that a fee is due and payable when a demand for payment of the fee is made. This provides the flexibility to demand that the fee is due and payable after the function has been completed, which is when the total fee will be calculable using the per quarter hour formula. This approach has been taken to reflect that the amount of work required to assess applications for variations is likely to differ depending on the type of variation and the voluntary arrangement involved.

Column 4 provides that the person liable to pay the fee is the administrator of the voluntary arrangement. The administrator is the person responsible for ensuring the outcomes of voluntary arrangements are achieved.

Section 6 Fees must accompany applications for the accreditation of voluntary arrangements

Section 6 provides that, the purposes of paragraph 172(1)(e) of the Act, a fee (as prescribed by item 1 of the table in subsection 5(2)) must accompany an application for accreditation of a voluntary arrangement.

This has the effect that an application in relation to accreditation, or re-accreditation, of a voluntary arrangement will only be considered if the fee that is due and payable accompanied the application. This applies unless the entire fee has been remitted under section 8.

Section 7 Penalties for late payment of fees

Section 7 prescribes penalties for the late payment of fees for the purposes of paragraph 155(2)(f) of the Act. The effect of section 7 is that if a fee is not paid by the time it is due and payable, the person liable to pay the fee is also liable to pay a penalty of the amount worked out using the following formula.

$$\frac{0.2 \times \text{Original fee} \times \text{Days overdue}}{365}$$

This is intended to ensure that persons who are liable for fees have an incentive to pay those fees when they become due and payable, so as to appropriately recover the Commonwealth's costs in performing the relevant functions.

PART 3— MISCELLANEOUS

Section 8 Remitting and refunding fees and penalties

Section 8 provides that, for the purposes of paragraph 155(2)(g) of the Act, the Minister may remit or refund the whole or a part of a fee or penalty imposed under this instrument if the Minister considers it appropriate to do so.

This means that the Minister may decide the whole or part of a fee or penalty that is due and payable under this instrument, is no longer due and payable. The Minister may also decide that a fee or penalty that has been paid under this instrument will be refunded.

A decision to remit, for the purposes of this section, is intended to include a decision to waive the relevant fee or penalty (or part thereof).

Subsection 8(3) provides that the Minister may remit or refund the fees and penalties on the Minister's own initiative or on written application by a person.

Section 9 Review of decisions

Section 9 provides that, for the purposes of subsection 151(2) of the Act, decisions by the Minister to refuse to remit or refund fees under section 8, on written application by a person, are reviewable decisions.

A person affected by a reviewable decision will have the review rights set out in sections 152 to 154 of the Act. Specifically, the person can apply to the Minister for an internal review of the decision and, in some circumstances, can apply to have the decision externally reviewed by the Administrative Appeals Tribunal.

Subsection 9(2) provides that the person affected by each reviewable decision set out in column 2 of the table is the person provided in column 1 of the table corresponding to that decision. The effect is that it the person who applies under section 8 to have a fee remitted or refunded will be the affected person by the decision to refuse to remit or refund that fee.

Statement of Compatibility with Human Rights

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

Recycling and Waste Reduction (Fees) Rules 2020

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Recycling and Waste Reduction (Fees) Rules 2020* (the Fees Rules) are made under the *Recycling and Waste Reduction Act 2020* (the Act).

The Act will establish a framework to:

- regulate the export of waste material as agreed to by the Council of Australian Governments in 2019, and
- improve the management of environmental, health and safety impacts of products, in particular those impacts associated with the disposal of products.

The Fees Rules set out matters for, and in relation to, the payment of fees in relation to the administration of the Act. In particular, the Fees Rules:

- prescribe the fee for consideration of an application for an accreditation, re-accreditation, or variation of accreditation of a voluntary product stewardship arrangement (for the purposes of section 155 of the Act); and
- provide that the Minister may, if he or she considers it appropriate to do so, remit or refund the whole or part of a fee or penalty, including late payment penalties, that are payable under the instrument, on the Minister's own initiative or on written application by a person (for the purposes of paragraph 155(2)(g) of the Act).

Human rights implications

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

Conclusion

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

**The Hon. Sussan Ley MP
Minister for the Environment**