

## **EXPLANATORY STATEMENT**

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

*Recycling and Waste Reduction Act 2020*

*Recycling and Waste Reduction (Export—Waste Glass) Rules 2020*

### **Legislative Authority**

The *Recycling and Waste Reduction (Export—Waste Glass) Rules 2020* (the Glass 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.

Chapter 2 of the Act provides for the regulation of the export of waste material. A number of provisions in Chapter 2 set the parameters of the Minister's rule making power and either: provide examples of the kinds of things for which the Minister may make provision in the rules; or set out the default matters for the provision and allow the Minister to give further detail in the rules. These provisions are identified in this Explanatory Statement.

### **Purpose**

The purpose of the Glass Rules is to regulate the export of waste glass from Australia. It implements the commitment of all Australian Governments by setting out the requirements which must be met for the export of waste glass from Australia. These requirements are that the exporter has a waste glass export licence, and makes an export declaration for each consignment of regulated waste glass that is to be exported.

By setting out operational details for the export of waste glass in the Glass Rules, rather than in the Act, the regulatory framework can adapt to changes within the waste glass industry or foreign government decisions to limit the import of certain waste materials. The ability to make changes to the Glass Rules quickly is crucial to ensuring that Australian exporters do not experience disruption to market access and can continue to export waste material.

### **Background**

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

The Act and the Glass Rules together implement the commitment of the Australian Governments (through the former Council of Australian Governments (COAG)) to phase-out the export of waste glass from 1 January 2021, with the commencement date having been revised from 1 July 2020 due to the COVID-19 pandemic. This is the first phase of the former COAG's broader commitment to regulate the export of waste, paper, plastic, glass and tyres by only allowing those materials to be exported if they have been processed into a value-added material, which is likely to be reused or remanufactured overseas. The former COAG's

decision has the support of the Commonwealth, all state and territory jurisdictions, and local governments following extensive consultation since 2019.

The former COAG's commitment to regulate the export of certain waste materials featured as Target 1 within the National Waste Policy Action Plan 2019. The Action Plan includes actions aimed at driving change in the waste industry, businesses, governments and the community to turn waste into a reusable commodity. COAG's Response Strategy for Phasing Out Exports of Waste Plastic, Paper, Glass and Tyres, released in March 2020, sets out the system- level and material-specific challenges and opportunities that are central to the effective implementation of the waste export ban, and to the longer term transformation of Australia's waste and recycling sector.

### **Impact and Effect**

The Glass Rules impose regulatory controls on waste glass that is to be exported from Australia. In 2018-19, approximately 16,000 tonnes of unprocessed waste glass was exported from Australia, mostly to Malaysia, at a value of approximately \$716,000<sup>1</sup>.

The intention of regulating the export of waste glass is to stop the export of untreated and unprocessed waste glass, which is likely to have a negative impact on human or environmental health in the receiving country. This will also maximise the ability of the Australian waste management and recycling sector to collect, recover, recycle, reuse, and convert waste glass into new products.

### **Consultation**

Consultation with industry, local governments, non-government organisations and individuals on the waste export ban began in November 2019 and included a consultation paper with 103 submissions received and a series of industry roundtables around the country. A COAG Consultation Regulation Impact Statement was also released, with 62 submissions received.

The Department of Agriculture, Water and the Environment (the Department) undertook consultation with industry, peak bodies and state and territory governments between March and August 2020 on the design and implementation of the legislation. Since May 2020, the Department has also engaged with the Glass Technical Working Group on a number of occasions. This group includes peak recycling and industry bodies and waste glass exporters who have provided feedback on an exposure draft version of the Rules.

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

### **Details/ Operation**

Details of this instrument are set out in [Attachment A](#).

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<sup>1</sup> <https://www.coag.gov.au/sites/default/files/communique/phasing-out-waste-exports-response-strategy.pdf>

## **Other**

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

**Details of the *Recycling and Waste Reduction (Export—Waste Glass) Rules 2020***

**PART 1—PRELIMINARY**

**Section 1            Name**

Section 1 provides that the name of the instrument is the *Recycling and Waste Reduction (Export—Waste Glass) Rules 2020*.

**Section 2            Commencement**

Section 2 provides that the Glass Rules will commence on 1 January 2021.

From this date onwards, any export of regulated waste glass must comply with the requirements and conditions set out in the Act and Glass Rules.

While the Glass Rules will not commence until 1 January 2021, applications for a waste glass export licence will be able to be made and assessed, and export licences granted, prior to 1 January 2021. Export licences granted prior to 1 January 2021 will not commence until on or after 1 January 2021.

**Section 3            Authority**

Section 3 provides that the Glass Rules are made under the *Recycling and Waste Reduction Act 2020*.

**Section 4            Definitions**

Section 4 provides definitions for key terms used throughout the Glass Rules.

A note to section 4 provides that several expressions used in the Glass Rules are defined in the Act. These include export declaration, export licence, export operations, prescribed export conditions, and regulated waste material. These expressions will have the same meaning as the Act when used in the Glass Rules.

The definitions provided in the Glass Rules are set out below.

***Act***

This definition provides that ‘Act’ means the *Recycling and Waste Reduction Act 2020*.

***listed waste glass specification***

This definition provides that ‘listed waste glass specification’ means a waste glass specification, as existing from time to time, that is listed on the Department’s website.

This definition is relevant to an applicant making an application for a waste glass export licence, or an exemption in relation to a trade sample. When making an application for an

export licence, or exemption in relation to a trade sample, the applicant must nominate a waste glass specification, which may be a listed waste glass specification.

It is intended that the specifications included on the list will be specifications that meet the objects of the Act and are considered suitable for the processing of waste glass. It is also intended that these specifications will be publicly and freely available.

### ***regulated waste glass***

This definition provides that ‘regulated waste glass’ means waste glass that is prescribed under section 5 of the Glass Rules.

See also, the definition of ‘waste glass’ in this Explanatory Statement.

### ***trade sample***

This definition provides that the term ‘trade sample’ has the meaning given by subsection 15(3) of the Glass Rules.

Subsection 15(3) defines ‘trade sample’ as waste glass that is exported solely for the purpose of market testing.

### ***waste glass***

This definition provides that the term ‘waste glass’ has the meaning given by subsection 5(2) of the Glass Rules.

Subsection 5(2) provides that waste glass means glass that is discarded, rejected or left over from an industrial, commercial, domestic or other activity; or glass that is surplus to, or a by-product of, an industrial, commercial, domestic or other activity.

See also section 5 of this Explanatory Statement.

### ***waste glass export licence***

This definition provides that ‘waste glass export licence’ means an export licence to carry out export operations in relation to regulated waste glass. An export licence may not be limited to one waste material. It is anticipated that, in the future, an export licence may also cover other types of waste materials that are intended to be prescribed as regulated waste materials, for example, plastics, tyres, paper or cardboard.

### ***waste glass specification***

This definition provides that ‘waste glass specification’ means a written industry specification or standard, that relates to the manufacture, processing or supply of waste glass.

The definition is relevant to an applicant making an application for a waste glass export licence, or an exemption in relation to a trade sample. When making an application for an export licence, or exemption in relation to a trade sample, the applicant must nominate a waste glass specification. A waste glass specification may be a commercial or other written

industry specification (for example, it may be a customer's specification), relating to the waste glass with which the export of the regulated waste glass will comply. If the waste glass specification is not a 'listed waste glass specification' the applicant will need to provide a copy of the nominated specification, as well as, information demonstrating that the regulated waste glass intended for export will be processed to comply with that specification in Australia prior to export.

## **PART 2—EXPORTING WASTE GLASS**

### **Division 1—General**

Part 2 of Chapter 2 of the Act provides that waste material may be prescribed in the rules to be regulated waste material. The export of waste material that is regulated waste material must meet the requirements of the Act and the Glass Rules. Division 1 of Part 2 of the Glass Rules sets out when waste glass is considered to be a regulated waste material (regulated waste glass), and the specific requirements that must be met for the export of regulated waste glass.

#### **Section 5 Waste glass is regulated waste material**

Subsection 5(1) provides that waste glass is prescribed. Section 5 is made for the purposes of subsection 17(1) of the Act, which provides that the rules may prescribe a kind of waste material for the purposes of the Act.

This is an important concept in the Act and the Glass Rules as it sets the scope of the regulatory scheme created by the legislation. Only glass that is prescribed under this section will be subject to the requirements of the Act and the Glass Rules.

A note is provided at the end of subsection 5(1) that clarifies waste glass prescribed under this section is named ‘regulated waste glass’ when referred to in the Glass Rules.

Subsection 5(2) provides a definition of waste glass. This definition provides that ‘waste glass’ is glass that is discarded, rejected or left over from an industrial, commercial, domestic or other activity, or glass that is surplus to or a by-product of an industrial, commercial, domestic or other activity. The meaning of ‘waste glass’ is aligned with the meaning of waste material at section 15 of the Act.

Glass products that are not intended to fall within scope of the regulatory scheme, include:

- glass products made from virgin raw materials,
- glass products made from waste glass that are ready for a new use (e.g. jam jars made from recycled glass), and
- glass that is a sub-component contained within another product (e.g. glass face of a clock).

These products are not considered glass that has been discarded, rejected, left over, or surplus to or a by-product of an industrial, commercial, domestic or other activity. Additionally, products that include a component of glass that are not intended to be regulated under the Glass Rules include automobiles, microwaves (excluding the detachable interior plate), monitors, and televisions. Glass products that have been manufactured from reprocessed glass fines or cullet, such as drinking glasses, are also considered out of scope of the Glass Rules, until they are reused and discarded.

Subsection 5(3) outlines the kinds of waste glass that are not prescribed for the purposes of subsection 17(1) of the Act, and are therefore not regulated waste materials. As such, a person exporting the kinds of waste glass listed at subsection 5(3) does not need to comply with the

requirements of the Act and Glass Rules, including holding an export licence and making an export declaration. These kinds of waste glass are:

- waste glass that is exported for personal or domestic use. This may include antique stained-glass windows or collectable glass, such as collectable antique glass bottles, and
- waste glass that is imported into Australia on a temporary basis and is re-exported in the same covering and with the same trade description (within the meaning of the *Commerce (Trade Descriptions) Act 1905*). For example, a container of glass fines that is transiting through Australia and is not opened in Australia will not be regulated waste material and therefore will not be subject to the regulatory controls of the Act.

Requiring waste glass that is imported into Australia on a temporary basis to meet the requirements of the Glass Rules would be excessively burdensome as this waste is intended to be re-exported in the same condition, and in the same shipping container, within which it entered Australia. This allows for the transit of materials between shipping routes.

#### Example 1

Aisling's Looking Glass, a fictional organisation, sources rare and antique glass for clients all over the world. Aisling sources an antique glass bottle from a garage sale in Bathurst with the intent of exporting the glass bottle to her client in Norway, who intends to keep the bottle as an ornament. The glass bottle will not be regulated waste glass, as it is for personal or domestic use. Aisling does not need to comply with the requirements of the Act and Glass Rules, including the prescribed export conditions that she hold an export licence and make an export declaration when exporting the antique glass bottle from Australia.

#### Example 2

Keiran is the director of a fictitious large shipping company that specialises in transshipment solutions for a range of Australian and international customers. His client, Jack Pine of Pine's Fines, intends to send glass fines between two countries without a direct shipping route. Keiran organises the consignment of glass fines to land in the Port of Melbourne, where it is placed on another vessel and re-exported in the same covering and with the same trade description in which it was imported.

The glass fines within the container will not be regulated waste glass, as the glass fines are only transshipped through Australia and remain in the same covering and under the same trade description in which it was imported. Keiran does not need to comply with the requirements of the Act and Glass Rules, including the prescribed export conditions. In particular, Keiran is not required to hold a waste glass export licence or make an export declaration for the consignment when re-exporting the glass fines from Australia.

### **Section 6 Prescribed export conditions for regulated waste glass**

Section 6 sets out the prescribed export conditions that must be met for the export of regulated waste glass from Australia. The purpose of the prescribed export conditions is to ensure that regulated waste material for export is only exported in accordance with the legislative requirements of this section. Compliance with these conditions is necessary to ensure the objects of the Act are met. Section 20 of the Act makes it an offence and the contravention of



a civil penalty provision for a person to not comply with the prescribed export conditions when exporting regulated waste material.

Subsection 6(1) provides that this section is made for the purposes of section 18 of the Act, which provides that the rules may prohibit the export of regulated waste material unless the waste material complies with the prescribed export conditions.

Subsection 6(2) provides that the export of regulated waste glass is prohibited unless the following conditions are met:

- the exporter holds a waste glass export licence that covers the regulated waste glass, and
- the waste glass export licence is valid and in force at the time the regulated waste glass is exported, and
- for each consignment of regulated waste glass that is exported, the exporter gives the Minister an export declaration for each consignment of the regulated waste glass, and exports the consignment within 30 days of providing the declaration.

A note is provided after subsection 6(2) which draws attention to the fact that a person may commit an offence or be liable to a civil penalty if they contravene one or more of the prescribed export conditions.

#### Example 1

Brewhaha Brewing Pty. Ltd., a fictitious corporation, brews and distributes beer. As part of their environmental and social governance, Brewhaha collects and recycles glass bottles. Recently, Brewhaha has discovered a market in the USA for reprocessed glass fines to be used for remaking beer bottles. Brewhaha wishes to enter this market by reprocessing the bottles they collect into glass fines and exporting them. Brewhaha signs a 12-month contract with Buddy's Bottles to ship ten tonnes of glass fines over five consignments to Buddy's Bottles place of business in the USA. In order to export the glass fines, Brewhaha must apply for, and be granted, an export licence that covers the waste glass before they send their first consignment. For each consignment they send, they must make an export declaration for the consignment of waste glass before it is exported.

#### Example 2

Sarah's Glass Merchants, a fictitious enterprise, manufactures various glass products for domestic interior use. As an alternative to landfilling the surplus waste glass, Sarah's Glass Merchants further process the waste glass into glass widgets for export to Japan, for which a waste glass export licence was granted. After 18 months of holding the export licence, Sarah's Glass Merchants send unprocessed waste glass to Japan, in place of the glass widgets, breaching a condition of the export licence. The Minister then decides to revoke the waste glass export licence in accordance with the Act. After the licence is revoked, and without being granted a new licence, Sarah's Glass Merchants send a further consignment of unprocessed waste glass to Japan. Because Sarah's Glass Merchants do not hold an export licence at the time of the export, the prescribed export conditions set out in section 6 of the Glass Rules have been contravened. Sarah's Glass Merchants may be liable for a criminal offence and contravention of a civil penalty provision under section 20 of the Act for exporting regulated waste material in contravention of the prescribed export conditions.

## **Division 2—Waste glass export licences**

Division 2 of Part 2 of the Glass Rules sets out the requirements in relation to waste glass export licences. The requirements in the Glass Rules apply to waste glass export licences and are in addition to the requirements specified in Chapter 2 of the Act that apply to all export licences.

### **Section 7           Application for waste glass export licence**

Subsection 7(1) provides that section 7 is made for the purposes of paragraphs 172(1)(c) and (d) of the Act, which provide that the rules may prescribe information or documents that must accompany an application made under the Act.

Subsections 7(2) and (3) provide that the applicant in their application must nominate a waste glass specification with which the regulated waste glass will comply. If the nominated specification is not a listed waste glass specification (for example, it could be a customer's specification), the application must be accompanied by a copy of the nominated specification and information demonstrating that the regulated waste glass will be processed to comply with the nominated specification. The nominated waste glass specification may be a commercial specification, or another written industry specification relevant to the waste glass.

The purpose of requiring an applicant to nominate a waste glass specification with which they intend to comply is to assist the Minister in determining whether the waste glass export licence should be granted, as the Minister must consider whether the specification meets the objects of the Act, including those relating to human and environmental health.

Holders of a waste glass export licence are only required to comply with the waste glass specifications that have been nominated in their application. This ensures that holders will only be required to comply with specifications that are available to them, and appropriate for their purposes, providing the flexibility required by the waste glass export industry. The applicant will not be required to comply with a processing specification that is not freely and publicly available, unless it is their own specification that is nominated in their application.

An applicant may nominate a waste glass specification, that is not a listed waste glass specification, and that is particular to an individual contract of sale (which may be commercial in confidence). This specification will not be incorporated from time to time, but as it exists at the time the application is assessed, nor will it be listed publicly.

Section 7 will operate in conjunction with section 8. This ensures that a broad range of matters are taken into account in deciding the application, including: that the nominated waste glass specification is appropriate for the intended use in the importing country; that the equipment and machinery used to process the waste glass can process the waste glass to the nominated standard; and that there is, or will be, appropriate contractual relationships in place for the export. Further, it provides an assurance that waste glass is processed in accordance with the most up to date information, specifications or standards that are relevant to the regulated waste glass.

### Example 1

Loki Industries Pty. Ltd., a fictitious company, applies to the Minister for a waste glass export licence. In their application Loki Industries nominates Road Runner Pty. Ltd.'s asphalt specification (recycled glass) as the specification which the regulated waste glass will comply. The specification is listed on the Department's website as a listed waste glass specification and is publicly and freely available. Loki Industries intend to export regulated waste glass to be used for remanufacturing into glass containers, which is not a suitable end use for the nominated specification. The Minister refuses the application for the waste glass export licence, advising Loki Industries that the nominated specification is not suitable for the intended use.

### Example 2

Fleur is the Chief Executive Officer of Felix & Marlow Partners (FMP), a fictitious partnership, that manufactures bicycle lights. FMP is at the forefront of bicycle light technology and reprocesses waste glass into bicycle light parts for export. FMP has a commercial arrangement with a Slovakian processor to combine the FMP light parts into new devices. Fleur applies on behalf of FMP for a waste glass export licence and provides FMP's internal processing specification as the nominated waste glass specification, along with further information on how the waste glass is processed to meet that specification. The Minister considers the nominated specification and the intended use, along with the other matters required by the Act and Glass Rules, and decides to grant the waste glass export licence.

## **Section 8           Matters to which the Minister must have regard in deciding whether to grant a waste glass export licence**

Paragraph 34(2)(f) of the Act provides that the rules may prescribe additional matters that the Minister must have regard to when deciding whether to grant an export licence.

The effect of section 8 is that the Minister must have regard to the following matters when deciding whether to grant a waste glass export licence:

- evidence of any commercial relationship between the applicant and potential importers of the regulated waste glass,
- the equipment or machinery that will be used to process the regulated waste glass,
- the intended use of the regulated waste glass in the place to which it is intended to be exported,
- if the applicant is not the supplier of the regulated waste glass, or does not produce, or prepare, the regulated waste glass for export, the commercial relationship between:
  - the applicant and the supplier, and
  - the applicant and the persons who will conduct operations to produce, or prepare, the regulated waste glass.
- if the application nominates a waste glass specification other than a listed waste glass specification, whether the nominated specification meets the objects of the Act,
- whether the applicant is capable of complying with the nominated specification,

- whether the regulated waste glass will be processed to comply with the nominated specification in Australia before it is exported, and
- whether the nominated specification is appropriate for the intended use of the waste glass in the place to which it is intended to be exported.

A note provided after subsection 8(1) directs the reader to other matters at paragraphs 34(2)(a) to (e) of the Act that the Minister must have regard to when deciding whether to grant a waste glass export licence. These matters include the objects of the Act, whether the applicant is a fit and proper person, whether all relevant Commonwealth liabilities of the applicant have been paid, and whether the applicant is, and is likely to continue to be, able to comply with the conditions of the licence. The note further provides that under subsection 34(3) of the Act, the Minister may have regard to any other matter that the Minister considers relevant.

Requiring the Minister to have regard to the above matters, in addition to those provided by the Act, ensures that all relevant information is considered when making a decision to grant, or to refuse to grant, a waste glass export licence. These matters address the potential human and environmental health impacts of exporting the waste glass and are necessary to ensure the objects of the Act are met.

### *Example*

Rachel dabbles in various business ventures, including the export of glass fines and cullet on the spot market. Rachel applies for a waste glass export licence and nominates a waste glass specification that relates to the waste glass. However, Rachel does not have any information on the importer, the places she will export to, or the intended use of the waste glass. Instead, Rachel supplies contracts that detail her business activities over the previous two years which shows that Rachel is a common participant on the spot market and only exports to three places.

Rachel, however, intends to expand her business operations and wishes to export to a further two places. She provides correspondence showing the intention to enter a commercial relationship with those importers.

Based on the provided information, the Minister grants the export licence with an additional condition that, for destinations where the intended use of the waste glass has not been demonstrated in the application, Rachel provides information on this as soon as it becomes known.

## **Section 9            Conditions of waste glass export licence**

Section 9 is made for the purposes of paragraph 35(1)(b) of the Act. It prescribes conditions of a waste glass export licence. Attaching conditions to a waste glass export licence ensures that holders continue to effectively manage the human and environmental health impacts of exporting waste material.

The licence conditions in section 9 apply to all waste glass export licences. The Minister may, under the Act, impose additional conditions on individual waste glass export licences.

There are three notes at the end of subsection 9(1). The first note directs the reader to the conditions provided by paragraph 35(1)(c) of the Act and clarifies that the holder must comply with any directions given to them under section 64 of the Act. The second note alerts the reader to the fact that if a licence holder contravenes a condition of their export licence, they may commit an offence or be liable to a civil penalty under section 59 of the Act. The third note indicates that conditions, and any other aspect of an export licence, may be varied under the Act either by the licence holder through making an application, or by the Minister on their own initiative.

Subsection 9(2) provides that the holder of the waste glass export licence must, for each consignment of regulated waste glass that is intended to be exported under their licence, ensure that the regulated waste glass complies with the waste glass specification (which may be a commercial or other written industry specification) that was nominated for the purposes of subsection 7(2) prior to export (paragraph 9(2)(a)) and have a commercial relationship with the supplier of the regulated waste glass (paragraph 9(2)(b)). The waste glass specification may either be a listed waste glass specification, or a specification nominated by the applicant that is a written industry specification or standard, that relates to the manufacture, processing or supply of waste glass.

A note at the end of subsection 9(2) indicates that the holder of a waste glass export licence may be required under section 143 of the Act to produce to the Minister evidence of the matters mentioned in subsection 9(2) for each consignment.

The condition provided by paragraph 9(2)(a) ensures holders of a waste glass export licence continue with the specification that was nominated at the time the application for the export licence was made. It prevents holders from merely satisfying the application requirement at subsection 7(2) or (3) in order to obtain an export licence and then changing their business practices to use another specification. If a licence holder wished to change their nominated waste glass specification, they would need to apply to the Minister to vary the conditions of their export licence.

The purpose of the condition at paragraph 9(2)(b) is to ensure that the regulated waste glass is exported for a legitimate purpose, and to provide an assurance that it is unlikely to end as landfill in the importing country.

Subsection 9(3) provides that if the holder of the waste glass export licence is not the supplier of the regulated waste glass intended for export, the holder must have a commercial relationship with the supplier of the regulated waste glass. This condition ensures the licence holder has a connection to the processing of the waste glass, which will help ensure the waste glass will be processed to the nominated specification prior to export from Australia.

Subsection 9(4) provides that the holder of the waste glass export licence must, for each consignment of regulated waste glass intended for export under the licence, take a photograph of the regulated waste glass in the consignment. The photograph must have sufficient resolution, brightness, and contrast to show the regulated waste glass clearly and be time and date stamped. It is intended that the exporter will be required to provide the photograph on request, including during an audit required by the Minister under section 108 of the Act. This requirement helps provide assurance that, prior to export, the consignment met the requirements of the Act.

Subsection 9(5) provides that if the waste glass export licence specifies a place to which the regulated waste material may be exported, the holder must only export the regulated waste glass to that place. The purpose of this condition is to ensure that only appropriate places are export destinations to prevent any landfilling or dumping of the regulated waste glass in the importing country, which could threaten the environmental health of that country. If the holder of the export licence wishes to export to a different place, they will need to apply to vary their licence conditions under section 42 of the Act.

Subsections 9(6) and (7) provide an obligation on the holder of the waste glass export licence to notify the Minister, as soon as practicable, if any of the following changes occur:

- a change in the supplier of the regulated waste glass covered by the licence,
- a change in the importer of the regulated waste glass covered by the licence, or
- a change in the agent or freight forwarder, if used to export the regulated waste glass covered by the licence.

Requiring the holder of a licence to notify the Minister of such matters provides an assurance that holders of a licence can continue to meet the conditions of the licence.

In addition to the offence and civil penalty in section 59 of the Act, if the holder of a waste glass export licence contravenes the conditions of their export licence, the Minister may decide to vary, suspend, or revoke the licence.

### Example

Madeline is the holder of a waste glass export licence that has a licence condition that only permits the export of regulated waste glass to Zikri, a processor in Malaysia. Madeline has a commercial relationship with Zikri to send consignments of regulated waste glass. Madeline has a falling out with Zikri and finds a new importer for the regulated waste glass, Tan.

Madeline fails to notify the Minister of the new importer, breaching a condition of her export licence. Furthermore, Madeline cannot export to Tan under her current licence conditions and would need to have her export licence varied in order to do so. Fortunately, an administrator notices the change of importer when Madeline submits an export declaration for her first consignment to Tan and brings this to her attention.

Madeline then notifies the Minister of the change, successfully applies to vary her licence conditions, and can now export to Tan.

## **Section 10      Renewal of waste glass export licence**

Section 10 provides that an application for renewal of a waste glass export licence must be made no later than 30 days before the expiry date for the licence. This section is made for the purposes of paragraph 38(4)(a) of the Act, which provides that an application for renewal of an export licence must be made in the period prescribed by the rules.

A note is provided at the end of section 10 that clarifies that an application for renewal of a waste glass export licence may only be made if there is an expiry date for the licence. It further clarifies that some licences remain in force until the specified event occurs.

Notwithstanding the minimum timeframe of 30 days, paragraph 38(4)(b) of the Act provides that the Minister may allow an application for renewal to be made closer to the date the export licence is due to expire.

Under section 34 of the Act, if the Minister grants a waste glass export licence, they must specify an expiry date for the licence or decide that the licence remains in force until a specified event occurs. The period specified under either option must not be more than three years.

Under subsection 37(4) of the Act, a waste glass export licence will remain in force for a maximum period of three years. A licence will not be able to be renewed if:

- the licence is in force until a specified event occurs (for example, a one-off export), or
- the licence is suspended.

The purpose of providing a minimum timeframe for allowing an application for renewal of a waste glass export licence to be made is to give the Minister sufficient time to consider the application and to make a decision prior to the expiry date of the licence. A renewal application is intended to involve a more streamlined application form than the initial application process, which takes account of information previously provided. This approach reduces the regulatory burden on exporters who renew their licence.

#### Example 1

Vikram was granted an export licence to export glass fines to Pete's Pools, a fictitious business in New Zealand, for a period of two years. The expiry date on Vikram's licence is 30 June 2023. On 15 May 2023, Vikram decides he wants to continue to export to Pete's Pools. Vikram may apply to renew his licence any time up until midnight on 31 May 2023, which is 30 days before the licence will expire. A later application would not be accepted as the Minister has not allowed for a longer period than the 30 day cut-off period prescribed by the Glass Rules.

#### Example 2

Kirsty, the owner operator of Krumples Pty. Ltd., a fictitious corporation, has been granted a waste glass export licence to export a one-off shipment of glass cullet to Construction Co., a fictitious company in the Philippines. If Kirsty wishes to export another shipment to Construction Co., she will need to apply for another waste glass export licence.

### **Sections 11-12 Suspension and revocation of waste glass export licence**

Sections 11 and 12 are made for the purposes of paragraph 46(1)(i) and 54(1)(i) of the Act respectively, which provide that the rules may prescribe additional grounds for the suspension or revocation of an export licence.

Notes at the end of subsections 11(1) and 12(1) direct the reader to other grounds for suspension and revocation provided by paragraphs 46(1)(a) to (h) and 54(1)(a) to (h) of the Act. These grounds include if a condition of the licence has been contravened, if the holder of the licence is not a fit and proper person, and if it necessary to suspend or revoke the licence to prevent or lessen a threat to human or environmental health.

Subsections 11(2) and 12(2) provide that it is a ground for suspension or revocation of the waste glass export licence if the holder of the licence was required to provide additional or corrected information in accordance with subsection 60(2) of the Act and failed to do so. Section 60 of the Act provides that the holder of an export licence must provide additional or corrected information or documents as soon as practicable after becoming aware that information or documents previously provided in relation to an application were incomplete or incorrect.

The ability to suspend or revoke a waste glass export licence, where a decision to grant the licence was based on false information or documents, is an important safeguard for the human and environmental health risks of exporting waste glass and ensures that appropriate action can be taken. A decision to revoke the licence, rather than to suspend the licence, may be taken where the incomplete or incorrect information or documents address fundamental aspects in the decision to grant the licence. For example, where the information provided in the application indicated that the holder of the licence was a fit and proper person and they were not.

#### Example

Vidrio Limited, a fictitious company, is granted a waste glass export licence to export regulated waste glass for a period of three years. Shortly after being granted the licence, Vidrio Limited realises that information given to the Minister in their application was incorrect. Vidrio Limited does not provide corrected information to the Minister. Upon doing a scheduled audit of Vidrio Limited, the Minister is made aware of the provision of incorrect information. The Minister then issues Vidrio Limited a written notice requiring Vidrio Limited to show cause as to why the licence should not be suspended. Vidrio Limited does not respond to the show cause notice, and the Minister makes a decision to suspend Vidrio Limited's licence in accordance with the Act.

### **Section 13      Holder of export licence to notify the Minister of certain events**

Section 13 provides that the holder of a waste glass export licence must notify the Minister if the holder of the licence ceases to operate the export business that carries out the operations covered by the licence. Section 13 is made for the purposes of paragraph 61(1)(e) of the Act, which provides that the rules may prescribe an event which the Minister must be notified of.

It is necessary for the Minister to be notified of such changes to the licence holder's operations so the Minister can determine whether any action needs to be taken to uphold the regulatory framework, such as variation of the conditions of the licence.

#### Example

Josie and Willis operate Pet's Plus Pty Ltd, a fictitious organisation, which makes glass based accessories for pets. Josie and Willis are environmentally conscious and export the surplus glass from their dog bowls to be further processed into other products in Ecuador. Josie and Willis wish to sell their business and retire to the seaside. Josie and Willis find a new owner for Pet's Plus Pty Ltd, Stacie, and notify the Minister that they have ceased to operate the export business.



## **Section 14      Directions to holders of waste glass export licences**

Section 14 is made for the purposes of paragraph 64(3)(b) of the Act, which allows the rules to prescribe matters to which the Minister must have regard in considering whether to give a direction to the holder of an export licence.

Section 14 provides that a matter to which the Minister must have regard, before giving a direction, is whether the Minister is satisfied of one or more of the following:

- a condition of the waste glass export licence has been contravened, or it is likely that such a condition will be contravened,
- the holder of the waste glass export licence has not complied, or is not likely to comply, with a requirement of the Act, or
- the regulated waste glass covered by the licence does not comply, or is not likely to comply, with a requirement of the Act that applies in relation to the waste glass.

The purpose of section 14 is to provide that, in addition to having regard to the objects of the Act, the Minister must also have regard to whether they are satisfied that certain non-compliant behaviour has occurred, or is likely to occur, before giving a direction.

## **Division 3—Exemptions**

### **Section 15      Requirements for granting an exemption**

Section 15 is made for the purposes of paragraph 26(2)(a) of the Act, which provides that the Minister may grant an exemption if satisfied that any requirements prescribed by the rules are met.

Subsection 15(2) provides that an applicant who makes an application for an exemption in relation to a trade sample must nominate a waste glass specification with which the trade sample will comply.

If an exemption application does not relate to a trade sample, a waste glass specification will not be required to be nominated. However, the Minister must be satisfied that its appropriate to grant the exemption, and may, in accordance with paragraph 26(3)(b) of the Act, have regard to any other matter that is relevant, which could include if the waste glass has been processed in accordance with a waste glass specification.

Subsection 15(3) defines a ‘trade sample’ of regulated waste glass as waste glass that is exported solely for the purposes of market testing.

The purpose of section 15 is to facilitate the export of trade samples whilst ensuring that the waste glass is processed in accordance with an appropriate specification to minimise risk to environmental and human health.

## **Section 16      Matters to which the Minister must have regard in deciding whether the Minister is satisfied it is appropriate to grant the exemption**

Section 16 is made for the purposes of subsection 26(2) of the Act, which provides that the Minister may grant an exemption if satisfied, having regard to any matters prescribed by the rules, that any requirements are met and that it is appropriate to grant the exemption.

Subsection 16(2) sets out the matters that the Minister must have regard to when deciding whether the requirements at section 15 are met and that it is appropriate to grant the exemption. The matters are:

- whether the waste glass specification nominated in the application is a listed waste glass specification, or another waste glass specification,
- if the nominated specification is not a listed waste glass specification, whether the nominated specification meets the objects of the Act,
- whether the applicant is capable of complying with the nominated specification,
- whether the waste glass will be processed to comply with the nominated specification before the trade sample is exported, and
- whether the nominated specification is appropriate for the intended use of the waste glass in the place to which the glass is intended to be exported.

The purpose of this section is to provide matters that must be considered when assessing an application for an exemption in relation to a trade sample. It helps to ensure each consignment is processed to an acceptable level to minimise risk to human and environmental health prior to export.

If an exemption application does not relate to a trade sample, a waste glass specification will not be required to be nominated. However, the Minister must be satisfied that it is appropriate to grant the exemption, and may, in accordance with paragraph 26(3)(b) of the Act, have regard to any other matter that is relevant, which could include if the waste glass has been processed in accordance with a waste glass specification.

### Example

Banksia Glass Limited, a fictitious company, manufactures glass products including pool crystals, wall and floor render and decorative aggregates. Banksia Glass currently conducts their business within Australia however they wish to enter overseas markets. In order to test whether there is a market for their product overseas, Banksia Glass wishes to send trade samples of waste glass to potential clients.

In order to send their trade samples, Banksia Glass makes an application for an exemption from holding a waste glass export licence and notes in their application that the export will be for a trade sample only. Banksia Glass will be required to nominate a waste glass specification with which the trade sample will comply. The nominated specification may be a listed waste glass specification, or another written industry specification or standard that relates to the manufacture, processing or supply of the waste glass.

## **Section 17      Revocation of exemption**

Subsection 17(1) provides that section 17 is made for the purposes of paragraph 31(2)(b) of the Act. It requires the Minister to have regard to the objects of the Act and any matters prescribed in the rules when deciding whether to revoke an exemption.

Subsection 17(2) provides that when considering whether to revoke an exemption, the Minister must have regard to whether the holder of the exemption has contravened, or is contravening, a condition of the exemption.

The purpose of section 17 is to require the Minister to consider if conditions of the exemption are being complied with when considering whether to revoke the exemption.

## **Division 4—Record-keeping**

### **Section 18      Making and retaining records**

Subsection 18(1) provides that section 18 is made for the purposes of section 142 of the Act. Section 142 of the Act provides that the rules may make provision for, and in relation to, requiring records to be made and retained by people involved in export operations. This includes holders of export licences and persons who carry out export operations.

Subsection 18(2) provides that the holder of a waste glass export licence must make and retain the following records:

- for each consignment of regulated waste glass that is exported under the licence:
  - the export declaration made for the consignment,
  - evidence supporting the matters stated in the export declaration, and
  - the photographs taken in accordance with the conditions of the licence, and
- any document that is made by the holder, or that comes into the holder's possession and that is relevant to showing whether the holder has complied, or is complying with, the requirements of the Act.

Subsections 18(3) and (4) provide that the holder of the waste export licence must retain each of the records for at least five years. The record must be in English, dated, accurate, legible and able to be audited.

Subsection 18(5) provides that if a record to be retained is not in English, the holder of the waste glass export licence must obtain and retain a translation of the record into English.

The requirement to make and retain records provides assurances that the holders of waste glass export licences are complying with their obligations under the Act, so as to ensure that the export of the waste glass is managed in an environmentally responsible way. Record keeping is also necessary to ensure compliance with the Act can be monitored (for example, in order to ascertain whether the waste material was processed to the standard required by the Glass Rules.

### **Section 19      Records must not be altered or defaced during retention period**

Subsection 19(1) provides that a record that is retained as required by section 18 must not be altered or defaced during the retention period.

Subsection 19(2) provides that, despite subsection 19(1), notations or markings may be made on the record in accordance with ordinary practice, for example by initialling the notation.

Subsection 19(3) provides that if notations or markings are made on an original record during the five year retention period under subsection 18(3), the person must also retain each document that:

- the person creates or that comes into the person's possession, and
- shows how the original record was changed.

The purpose of subsections 19(2) and (3) is to provide flexibility for the exporter to make any necessary amendments to documents that are required to be retained, in accordance with ordinary practice, while still being able to meet the record keeping requirements of section 18.

### **Division 5—Other matters**

#### **Section 20      Circumstances in which relevant Commonwealth liability of a person is taken to have been paid**

Section 20 is made for the purposes of section 181 of the Act, which allows the rules to prescribe circumstances where a relevant Commonwealth liability is taken to have been paid.

The Act defines relevant Commonwealth liability as including a fee payable under the Act, a charge payable under the associated charges legislation (the *Recycling and Waste Reduction Charges (General) Act 2020*, the *Recycling and Waste Reduction Charges (Customs) Act 2020*, and the *Recycling and Waste Reduction Charges (Excise) Act 2020*), any penalties for late payment of such a fee or charge, or pecuniary penalty or liability for another amount imposed by or under a prescribed law.

Subsections 20(1) and (2) have the combined effect that, for the purposes of granting, renewing, or varying an export licence, a relevant Commonwealth liability of a person is taken to have been paid if:

- the person, or another person, has given a written undertaking to the Minister to pay the amount of the relevant Commonwealth liability,
- the payment undertaking includes a term that the relevant Commonwealth liability is to be reduced by each amount paid in accordance with the undertaking, and
- the Minister has accepted the payment undertaking, after having considered:

- the financial position of the person who gave the payment undertaking,
- the nature and likely cost of the export operations to which a decision under the relevant provision relates,
- whether the person who gave the payment undertaking will be able to comply with the undertaking,
- if relevant, whether the person who gave the payment undertaking will be able to meet the cost of the export operations,
- any other relevant considerations.

Subsection 20(3) provides that if a payment undertaking relates to two or more relevant Commonwealth liabilities, or a person has given two or more payment undertakings in relation to different relevant Commonwealth liabilities, the Minister may determine the order in which the payments are to be applied to reduce the outstanding relevant Commonwealth liability.

Subsection 20(4) provides that a payment undertaking may be varied at any time by agreement between the Minister and the person who gave the undertaking.

Subsection 20(5) provides that the variation under subsection 20(4) must not reduce the amount of any relevant Commonwealth liability covered by the undertaking that has not been paid.

Whether all relevant Commonwealth liabilities have been paid is a mandatory consideration for the Minister when deciding, among other things, whether to grant, renew or vary an export licence. This is considered appropriate as a person should not be able to obtain or continue to engage with the regulatory scheme, without having met their liabilities. However, it is recognised that there may be some circumstances where it is appropriate for the relevant Commonwealth liability to be taken to have been paid, after considering matters including the person's financial position, their ability to meet export operation costs, and their ability to comply with the related payment undertaking.

The relevant Commonwealth liability will only be taken to be paid for the purpose of the criteria for granting, renewing or varying an export licence. In addition, the holder will not be relieved of the liability to pay the relevant amount.

**Statement of Compatibility with Human Rights**

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

**Recycling and Waste Reduction (Export—Waste Glass) 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 (Export — Waste Glass Rules) 2020* (the Glass 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.

In particular, the Act provides for the making of rules regulating the export of regulated waste material. The Glass Rules will:

- prescribe waste glass as a regulated waste material (regulated waste glass),
- prohibit the export of regulated waste glass unless specified conditions are complied with,
- prescribe information that must be included in, and documents that must accompany an application for an export licence,
- prescribe additional matters to which the Minister must have regard when deciding whether to grant a waste glass export licence or an exemption,
- prescribe additional conditions for waste glass export licences,
- prescribe the period within which an application for renewal of a waste glass export licence must be made,
- prescribe additional grounds for suspending or revoking a waste glass export licence,
- prescribe record keeping requirements relating to the export of regulated waste glass, and
- prescribe circumstances in which a relevant Commonwealth liability is taken to have been paid for the purposes of granting, renewing or varying a waste glass export licence.

## Human rights implications

The Glass Rules engages the following human rights:

- the right to health in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (the ICESCR), and
- the right to privacy in Article 17 of the International Covenant on Civil and Political Rights (the ICCPR).

The promotion or limitation of each of these rights is considered in more detail below.

### Right to health

Article 12(1) of the ICESCR makes provision in relation to the right to health, specifically the right to the enjoyment of the highest attainable standard of physical and mental health. The United Nations Committee on Economic Social and Cultural Rights (the UNCESCR), in its *General Comment No 14 (August 2000)*, has stated that the right to health extends to the underlying determinants of health such as healthy environmental conditions (at [11]).

Article 12(2)(b) includes the improvement of all aspects of environmental hygiene as a step to be taken to achieve the full realisation of the right to health. In its *General Comment No 14*, the UNCESCR states that this encompasses the prevention and reduction of the population's exposure to harmful substances such as harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health (at [15]).

A key objective of the Act and the Glass Rules is to promote the right to health (including by promoting a healthy environment) by reducing the impact on human and environmental health of products, waste from products and waste material, including by reducing the amount of greenhouse gasses emitted, energy and resources used, water consumed and contamination in connection with waste material. The Act and Glass Rules achieve this by regulating the export of waste material to promote its management in an environmentally sound way. In particular:

- section 6 of the Glass Rules will prohibit the export of regulated waste glass unless certain conditions are met, such as the exporter holds an export licence,
- section 7 will prescribe information that must be included in an application for a waste glass export licence which will include that the application must nominate a waste glass specification,
- section 9 will impose conditions of a waste glass export licence which will include that the holder of the waste glass export licence must comply with the nominated waste glass specification and must have a commercial relationship with the importer of the regulated waste glass,
- section 11 and 12 will allow for the suspension or revocation of an export licence if the holder of the export licence fails, where required, to provide additional or corrected information in relation to an application relating to their licence, and
- sections 18 and 19 will prescribe record keeping requirements for holders of waste glass export licences, which will assist in monitoring compliance with the requirements of the Act.

By regulating these matters, the Glass Rules will ensure that the export of regulated waste glass does not adversely impact on human or environmental health.

In summary, the Glass Rules are compatible with the right to health under Article 12 of the ICESCR because they positively engage and promote that right.

### **Right to privacy**

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home, or correspondence. The United Nations Human Rights Committee has given a liberal interpretation to the term 'home', which includes a person's workplace. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR, and be reasonable in the circumstances.

The objects of the Act include to reduce the impact on human and environmental health of waste material, to contribute to Australia meeting its international obligations concerning this impact, and to realise the community and economic benefits of taking responsibility for it.

Section 18 of the Glass Rules requires the holder of a waste glass export licence to make and retain specified records for five years. Under section 64 of the Act the Minister may require the licence holder to provide such records to the extent they relate to 'a kind of export operations carried out in relation to a kind of regulated waste material covered by the licence'.

It is expected that most holders of waste glass export licences will be body corporates. However, if an individual holds a waste glass export licence, section 18 of the Glass Rules may, in some cases, require the retention of a small amount of personal information, which may then be subject to collection by the Minister under section 64 of the Act. This personal information may include the applicant's name and contact details. Section 18 therefore operates to limit the right to privacy.

Section 18 requires holders of export licences to keep only those records that are necessary for achieving the legitimate objective of ensuring compliance with the Act. A person who keeps such records will do so as someone who has 'opted in' to the regulatory system, and should expect that some personal information may need to be provided in order to gain the benefits of that system. The information retained will also not be made publicly available under the Act or Glass Rules.

The limitation to the right to privacy imposed by section 18 of the Glass Rules is therefore considered reasonable, necessary, and proportionate.

### **Conclusion**

The Glass Rules are compatible with human rights because they promote the right to health under Article 12 of the ICESCR, and to the extent that they limit the right to privacy in Article 17 of the ICCPR, those limitations are reasonable, necessary and proportionate.

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