

EXPLANATORY STATEMENT

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

Recycling and Waste Reduction Act 2020

Recycling and Waste Reduction (Export—Waste Plastic) Rules 2021

Legislative Authority

The *Recycling and Waste Reduction (Export—Waste Plastic) Rules 2021* (the Plastic 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 Plastic Rules is to regulate the export of waste plastic from Australia. It implements the commitment of all Australian Governments by setting out the requirements which must be met for the export of waste plastic from Australia. These requirements are generally that the exporter has a waste plastic export licence and makes an export declaration for each consignment of regulated waste plastic that is to be exported.

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

Background

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

The Act and the Plastic Rules together implement the commitment of the Australian Governments (through the former Council of Australian Governments (COAG)) to phase out the export of mixed waste plastic from 1 July 2021 (stage one of the waste plastics phase out), and unprocessed single resin or single polymer waste plastics from 1 July 2022 (stage two of the waste plastic phase out).

Following the phase out of exports of unprocessed waste glass from 1 January 2021, this is the second 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 cleaned and 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 of the National Waste Policy Action Plan 2019 (the Action Plan). 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 Plastic Rules impose regulatory controls on waste plastic that is to be exported from Australia. In 2018-19, approximately 187,000 tonnes of waste plastic were exported from Australia at a value of approximately \$43.4 million. The exports were mostly to Indonesia, Malaysia, the Philippines, Thailand, Taiwan, and China. Higher grade plastics (PET, HDPE) comprised 19% of waste plastic exported, while low-grade mixed plastics (largely from municipal recycling) comprised 80% of waste plastic exported.¹

The intention of regulating the export of waste plastic is to stop the export of unsorted and unprocessed waste, 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 plastic 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 February and May 2021 on the design and implementation of the Plastic Rules. The Department also convened a Plastics Technical Working Group on a number of occasions. This group included peak recycling and industry bodies and waste plastic exporters who provided feedback on an exposure draft version of the Plastic Rules.

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

The Office of Best Practice Regulation was consulted in the preparation of the Act and the Plastic 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.

Other

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

Details of the Recycling and Waste Reduction (Export—Waste Plastic) Rules 2021

PART 1—PRELIMINARY

Section 1 – Name

This section provides that the name of the instrument is the *Recycling and Waste Reduction (Export—Waste Plastic) Rules 2021*.

Section 2 – Commencement

This section provides for the Plastic Rules to commence on 1 July 2021.

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

While the Plastic Rules commence on 1 July 2021, applications for a waste plastic export licence are able to be made, assessed, and granted from the time the Plastic Rules are made. Waste plastic export licences granted prior to 1 July 2021 will not commence until on or after 1 July 2021.

Section 3 – Authority

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

Section 4 – Definitions

This section provides definitions for key terms used throughout the Plastic Rules.

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

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

Act

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

export permit

This definition provides that an ‘export permit’ has the same meaning as in the *Hazardous Waste (Regulation of Export and Imports) Act 1989* (Hazardous Waste Act).

The Hazardous Waste Act implements Australia’s obligations under the *Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal* (Basel

Convention), an international treaty for the control of the transboundary movement of hazardous waste from one country to another and its disposal. Under the Hazardous Waste Act, an export permit authorises the export of hazardous waste in certain circumstances. The Act and Plastic Rules will operate in tandem with the Hazardous Waste Act.

This definition is relevant to sections 8 and 9 of the Plastic Rules, which requires the Minister to have regard to whether an applicant for a waste plastic export licence has applied for, is the holder of, or has been refused, an export permit, or has breached any conditions of an export permit under the Hazardous Waste Act.

hazardous waste

This definition provides that ‘hazardous waste’ has the same meaning as it does in the Hazardous Waste Act.

Certain kinds of regulated waste plastics under the Plastic Rules may also meet the definition of ‘hazardous waste’ under the Hazardous Waste Act.

listed waste plastic specification

This definition provides that ‘listed waste plastic specification’ means a waste plastic 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 plastic export licence or an exemption from one or more provisions of the Act or Plastic Rules 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 plastic specification, which may be a listed waste plastic specification.

This definition may also be relevant to an existing waste plastic export licence holder who wishes to change the nominated specification stated on their licence. A waste plastic export licence holder wishing to change a nominated specification needs to apply under section 42 of the Act to vary their existing licence. As a part of the application for variation, the applicant may nominate a listed waste plastic specification.

It is intended that the listed waste plastic specifications will be specifications that meet the objects of the Act and are generally considered suitable for the processing of a kind of regulated waste plastic. From 1 July 2021, matters such as the plastic polymer or resin type covered by the specification, whether the specification includes requirements that the plastic be almost free from contamination, packaging requirements and colour requirements may be relevant to whether a waste plastic specification is listed on the Department’s website as a listed waste plastic specification. From 1 July 2022, matters such as whether regulated waste plastic that is processed in accordance with a specification is capable of remanufacture without further processing may also be relevant. However, a listed specification will not automatically be appropriate for all exports of a kind of regulated waste plastic. The suitability of a listed waste plastic specification will be considered in the context of an individual application, including whether the specification is appropriate for the intended use of the regulated waste plastic.

It is intended that the listed waste plastic specifications will be publicly and freely available.

See also the definitions of ‘nominated specification’ and ‘waste plastic specification’ in this Explanatory Statement.

nominated specification

This definition provides the meaning of a ‘nominated specification’ in the context of either a waste plastic export licence (paragraph (a)), or an application for an exemption for a trade sample (paragraph (b)).

Paragraph (a) provides that, for regulated waste plastic for export under a waste plastic export licence, the nominated specification means either the waste plastic specification that is nominated by the applicant in the licence application, or the specification for the waste plastic that is stated on the licence when granted (if those two specifications are different). The specification nominated in the initial application for the waste plastic export licence may be different to the specification stated on the licence if the licence is varied while it is in force. A waste plastic export licence may be varied to add, remove, or change the nominated specification after the licence has been granted.

Paragraph (b) provides that, in the context of an application for an exemption in relation to the export of a trade sample, the nominated specification means the waste plastic specification that is nominated by the applicant in the exemption application.

A nominated specification must be a waste plastic specification; that is, a written industry specification that relates to the manufacture, processing, or supply of waste plastic, and may or may not be a listed waste plastic specification. A listed waste plastic specification is a subset of a waste plastic specification. A waste plastic specification is a listed waste plastic specification if it is listed on the Department’s website.

This means that an applicant for a waste plastic export licence or an exemption in relation to a trade sample can nominate either a listed waste plastic specification, or a different waste plastic specification that they consider better suits their particular circumstances.

See also the definitions of ‘listed waste plastic specification’ and ‘waste plastic specification’ in this Explanatory Statement.

processed engineered fuel

This definition provides that the term ‘processed engineered fuel’ has the meaning given by subsection 5(3) of the Plastic Rules.

Paragraph 5(2)(c) defines waste plastic to include processed engineered fuel. Subsection 5(3) provides that processed engineered fuel means a waste material that is waste plastic within the meaning of paragraphs 5(2)(a) or (b) that is processed with any other waste material and is intended for use as fuel.

Waste material is defined in subsection 15(1) of the Act to relevantly mean anything (including a substance or mixture of substances) that is either discarded, rejected or left over from an industrial, commercial, domestic or other activity, or is surplus to or a by- product of an industrial, commercial, domestic or other activity. Waste material that may be processed

with waste plastic to create processed engineered fuel includes cardboard, paper, and timber. Processed engineered fuel is primarily used as an alternative to fossil fuels in cement kilns.

See also section 5 of this Explanatory Statement.

regulated processed engineered fuel

This definition provides that ‘regulated processed engineered fuel’ means regulated waste plastic that is processed engineered fuel. This means that regulated processed engineered fuel is a subset of regulated waste plastic under the Plastic Rules.

regulated waste plastic

This definition provides that the term ‘regulated waste plastic’ means waste plastic that is prescribed under section 5 of the Plastic Rules.

If waste plastic is regulated waste plastic, the export of the waste plastic from Australia is prohibited unless the prescribed export conditions in paragraphs 6(2)(a) (the exporter holds an export licence and makes an export declaration for each consignment) or 6(2)(b) (the regulated waste plastic is listed on the Waste Plastic Export List and the exporter has provided a notification) are met.

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

trade sample

This definition provides that the term ‘trade sample’ has the meaning given by subsection 18(2) of the Plastic Rules.

Subsection 18(2) defines trade sample as regulated waste plastic that is exported solely for the purpose of market testing and is not hazardous waste.

waste plastic

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

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

See also section 5 of this Explanatory Statement.

waste plastic export licence

This definition provides that ‘waste plastic export licence’ means an export licence to carry out export operations in relation to regulated waste plastic.

An export licence may not be limited to one regulated waste plastic, or waste material: it may cover multiple kinds of regulated waste plastic and other types of waste materials that are prescribed as regulated waste materials, for example, waste glass. Following the implementation of all phases of the COAG waste export ban, an export licence may also cover other intended prescribed waste materials including tyres, paper, or cardboard.

Waste Plastic Exports List

This definition provides that the ‘Waste Plastic Exports List’ means the List with that name, as existing from time to time, that is published on the Department’s website.

This definition is relevant to section 6, which prohibits the export of regulated waste plastic unless prescribed export conditions are met. There are two sets of prescribed export conditions, which operate as alternatives. Under the first set of prescribed export conditions, the export of regulated waste plastic is prohibited unless all of the following apply:

- the exporter holds a waste plastic export licence that covers the regulated waste plastic and is in force and not suspended at the time the plastic is exported; and
- the exporter makes an export declaration for each consignment of plastic exported under the licence.

Under the alternative set of prescribed export conditions, the export of regulated waste plastic is prohibited unless both of the following apply:

- the plastic is of a kind, and exported in the circumstances (if any), listed in the Waste Plastic Exports List;
- the exporter has given the Minister a notification under subsection 6(3) in relation to plastic of that kind and to be exported in those circumstances (if any).

It is intended that the first set of prescribed export conditions, requiring an exporter to hold a waste plastic export licence and make an export declaration for each consignment, will apply to most exports of regulated waste plastics. The alternative set of prescribed export conditions will, in effect, allow a kind of regulated waste plastic listed on the Waste Plastic Export List to be exported in the circumstances (if any) listed on the Waste Plastic Export List, without the exporter holding a waste plastic export licence or making an export declaration for each consignment, on the condition that the exporter notifies the Minister that they will export the listed plastic in the listed circumstances (if any). This may be appropriate in limited circumstances where minimal oversight of the export of a kind of regulated waste plastic is sufficient to achieve the objects of the Act.

The definition provides that the Waste Plastic Export List exists ‘from time to time’. This means that the Waste Plastic Export List is a document that is incorporated as existing from time to time, and so can be changed after the Plastic Rules have commenced. Incorporation of the Waste Plastic Exports List in the Plastic Rules is supported by subsection 188(3) of the Act. Subsection 188(3) of the Act provides that the rules may make provision in relation to any matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing existing from time to time.

The Waste Plastic Export List will be freely accessible and published on the Department’s website.

See also section 6 of this Explanatory Statement.

waste plastic specification

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

The definition is relevant to an applicant making an application for a waste plastic export licence, or an exemption in relation to a trade sample of a regulated waste plastic. When making an application for a waste plastic export licence or a trade sample exemption, the applicant must nominate a waste plastic specification. As set out above, the applicant can nominate either a listed waste plastic specification, or a different waste plastic specification that they consider better suits their individual needs.

This definition is also relevant for waste plastic export licence renewal applications and licence variation applications.

A waste plastic specification may be a commercial or other written industry specification (for example, it may be a customer’s specification), relating to the waste plastic.

See also the definitions of ‘listed waste plastic specification’ and ‘nominated specification’ in this Explanatory Statement.

PART 2—EXPORTING WASTE PLASTIC

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 Plastic Rules. Division 1 of Part 2 of the Plastic Rules sets out when waste plastic is considered to be a regulated waste material (called ‘regulated waste plastic’, which includes regulated processed engineered fuel), and the specific requirements that must be met for the export of regulated waste plastic.

Section 5 – Waste plastic is regulated waste material

Subsection 5(1) provides that waste plastic 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 Plastic Rules as it sets the scope of the regulatory scheme created by the legislation. Only waste plastic that is prescribed under this section will be subject to the requirements of the Act and the Plastic Rules.

A note to subsection 5(1) clarifies waste plastic prescribed under this section is named ‘regulated waste plastic’ when referred to in the Plastic Rules.

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

Subsection 5(3) provides a definition of processed engineered fuel, as a subset of waste plastic referred to in paragraph 5(2)(c). The definition provides that ‘processed engineered fuel’ is waste material that is waste plastic under paragraphs 5(2)(a) or (b) (that is, plastic that is discarded, rejected or leftover from an industrial, commercial, domestic or other activity; or plastic that is surplus to or a by-product of an industrial, commercial, domestic or other activity) that is processed with any other waste material and is intended for use as fuel.

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

- plastic products made from virgin raw materials;
- plastic products made from waste plastic that are ready for a new use (e.g. soft drink bottles made from recycled plastic, or oil produced from plastic);
- plastic that is a sub-component contained within another product (not including processed engineered fuel).

These products are not considered plastic that has been discarded, rejected, left over, or surplus to or a by-product of an industrial, commercial, domestic or other activity, and therefore will not fall within the definition of waste plastic in subsection 5(2).

Subsection 5(4) outlines the kinds of waste plastic, including processed engineered fuel, that are not prescribed for the purposes of subsection 17(1) of the Act, and are therefore not regulated waste material. An exporter of a kind of waste plastic listed at subsection 5(4) does not need to comply with the requirements of the Act and Plastic Rules, including holding an export licence and making an export declaration. These kinds of waste plastic (including waste plastic that is processed engineered fuel) are:

- waste plastic that is exported for personal or domestic use; and
- waste plastic 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 mixed plastics waste 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; and
- waste plastic that is hazardous waste in relation to which an order or arrangement has been made by the Minister under Part 3 of the Hazardous Waste Act.

Requiring waste plastic that is imported into Australia on a temporary basis to meet the requirements of the Plastic 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.

Under Part 3 of the Hazardous Waste Act, the Minister is empowered to order an importer or exporter of hazardous waste who has imported or exported hazardous waste in contravention of that Act to deal with their hazardous plastic waste in a specified way. In the case of imports without a permit, this may involve ordering the waste be exported from Australia back to the original country of export. If a person does not do a thing required by an order, the Minister may also make an arrangement for that thing to be done. Hazardous waste subject to such an order or arrangement is not regulated waste plastic as it is not intended for such waste to remain in Australia and meet the requirements of the Plastic Rules, such as licencing and processing requirements, before it is exported from Australia. This is because regulating the export of such waste plastics under the Plastic Rules would likely frustrate the compliance regime under the Hazardous Waste Act.

Example 1

James Jones is a Kindergarten teacher based in California, who is collecting waste plastic packaging for an art project for his students to help them realise the value of recycling. His sister Jenny Jones, who lives in Sydney, finds a couple of unique, colourful plastic bottles that she thinks James' students would like, and would like to send them to him. She wonders whether she needs to hold a waste plastic export licence to do this. Jenny refers to paragraph 5(4)(a) of the Plastic Rules and realises that her plastic bottles will not be regulated waste plastic, as they will be for James' personal use. This means that Jenny will not need to comply with the requirements of the Act and Plastic Rules, including holding an export licence and making an export declaration when exporting the plastic bottles from Australia.

Example 2

Erik is the director of a fictitious large shipping company that specialises in transshipment solutions for a range of Australian and international customers. His client, Jane Smith of Plastics Galore Pty. Ltd., intends to send a consignment of polyethylene terephthalate (PET) between two countries without a direct shipping route. Erik organises the consignment of PET 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 PET within the container will not be regulated waste plastic as the plastics are only transhipped through Australia and remain in the same covering and under the same trade description in which it was imported. This means the PET within the container will not be regulated waste plastics, due to the exclusion in paragraph 5(4)(b) of the Plastic Rules. Erik does not need to comply with the requirements of the Act and Plastic Rules, including the prescribed export conditions. Erik is not required to hold a waste plastic export licence or make an export declaration for the consignment when re-exporting the plastics from Australia.

Example 3

During a random inspection of containers at Port Botany, Australian Border Force officers discover that a container imported into Australia by Zoom Shipping Pty. Ltd., a fictitious company, contains mixed polyethylene (PE), polypropylene (PP) and/or polyethylene terephthalate (PET), with a large amount of contamination. Border Force alerts the Department of Agriculture, Water and the Environment who note that Zoom Shipping Pty. Ltd. should have applied for a hazardous waste import permit under the Hazardous Waste Act before shipping their waste to Australia. The Minister decides to issue an order under section 34 of the Hazardous Waste Act that requires Zoom Shipping Pty. Ltd. to export the containers from Australia within 30 days. Once this order is made, Zoom Shipping Pty Ltd's consignment of mixed waste plastic is no longer regulated waste plastic, due to the exclusion under paragraph 5(4)(c) of the Plastic Rules. This means that Zoom Shipping Pty. Ltd. do not need to apply for an export licence before they re-export the waste plastic that is the subject of the order. However, Zoom Shipping Pty. Ltd. may be liable for penalties under Hazardous Waste Act if they do not comply with the order.

Section 6 – Prescribed export conditions for regulated waste plastic

Section 6 sets out the prescribed export conditions that must be met for the export of regulated waste plastic 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 prescribed export conditions are met.

Subsection 6(2) sets out the prescribed export conditions for the export of regulated waste plastic. There are two prescribed export conditions, which operate as alternatives.

Paragraph 6(2)(a) provides the first set of prescribed export conditions. Paragraph 6(2)(a) provides that the export of regulated waste plastic is prohibited unless all of the following apply:

- the exporter holds a waste plastic export licence that covers the regulated waste plastic; and
- the waste plastic export licence is valid and in force at the time the regulated waste plastic is exported; and
- for each consignment of regulated waste plastic that is exported, the exporter gives the Minister an export declaration for the consignment.

Paragraph 6(2)(b) provides an alternative set of prescribed export conditions to those under paragraph 6(2)(a). Paragraph 6(2)(b) provides that the export of regulated waste plastic is prohibited unless both of the following apply:

- the plastic is of a kind, and exported in the circumstances (if any), listed in the Waste Plastic Exports List;
- the exporter has given the Minister a notification under subsection 6(3) in relation to plastic of that kind and to be exported in those circumstances (if any).

It is intended that the first set of prescribed export conditions (set out in paragraph 6(2)(a)), that an exporter hold a waste plastic export licence and make an export declaration for each consignment, will apply to most exports of regulated waste plastics.

The alternative set of prescribed export conditions (set out in paragraph 6(2)(b)) will, in effect, allow a kind of regulated waste plastic listed on the Waste Plastic Export List to be exported in the circumstances (if any) listed on the Waste Plastic Export List, without the exporter holding a waste plastic export licence or making an export declaration for each consignment, on the condition that exporter notifies the Minister that they will export the listed plastic in the listed circumstances (if any). This may be appropriate in limited circumstances where minimal oversight of the export of a kind of regulated waste plastic is sufficient to achieve the objects of the Act.

The Waste Plastic Export List is a document published on the Department's website that exists from time to time, and so can be changed after the Plastic Rules have commenced. Incorporation of the Waste Plastic Exports List in the Plastic Rules is supported by subsection 188(3) of the Act. Subsection 188(3) of the Act provides that the rules may make provision in relation to any matter by applying, adopting, or incorporating, with or without modification, any matter contained in any other instrument or other writing existing from time to time.

The Waste Plastic Export List will be freely accessible and published on the Department's website.

There are two notes to subsection 6(1). The first note provides that for the purpose of subparagraph 6(2)(b)(ii), a separate notification is not required for each consignment. The second note directs the reader to section 20 of the Act, which provides 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.

Subsection 6(3) provides that the notification given for the purposes of subparagraph 6(2)(b)(ii) must:

- if the Minister has approved, in writing, a manner for giving the notification — be given in an approved manner; and
- if the Minister has approved a form for the notification: include the information required by the form and be accompanied by any documents required by the form; and
- be signed and dated by the exporter.

A note to subsection 6(3) provides that a person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents and references section 146 and 147 of the Act and section 137.1 and 137.2 of the Criminal Code.

Subsection 6(4) provides that the notification under paragraph 6(2)(b) is taken not to have been given if the notification does not comply with the requirements in subsection 6(3).

Subsection 6(5) clarifies that the Minister may approve:

- different forms for notifications in relation to different kinds of regulated waste plastic; or
- a single form for a notification for the export of consignments of more than one kind of regulated waste plastic.

Example 1

Fizzy Licious Pty Ltd, a fictitious company, has recently discovered a market in Canada for old PET bottles where they can be remanufactured into new soft drink bottles. Fizzy Licious Pty. Ltd. wishes to enter this market and signs a 12-month contract with Bobby's Bottles to ship five tonnes of used PET soft drink bottles over five consignments to Bobby's Bottles place of business in Canada. In order to export the PET bottles, Fizzy Licious Pty. Ltd. must apply for, and be granted, a waste plastic export licence that covers the waste plastic soft drink bottles before they send their first consignment. The waste plastic export licence must be in force and not suspended at the time each consignment is sent. Fizzy Licious Pty. Ltd., must also make an export declaration for each consignment of waste plastic soft drink bottles before it is exported.

Example 2

Mary's Drains Pty. Ltd., a fictitious company, is intending to export a particular kind of regulated waste plastic that is also a hazardous waste under the Hazardous Waste Act. Mary, as a director of Mary's Drains Pty. Ltd, wonders whether the company must apply for, and be granted, a waste plastic export licence under the Plastic Rules in addition to an export permit under the Hazardous Waste Act. She looks at the prescribed export conditions in section 6 of

the Plastic Rules and sees that Mary's Drains Pty. Ltd., as the exporter, will not need to apply for a waste plastic export licence or make an export declaration if the regulated waste plastic is of a kind, and to be exported in a circumstances, listed on the Waste Plastic Export List, and Mary's Drains Pty. Ltd. notifies the Minister. Mary looks at the Waste Plastic Export List and sees that the kind of regulated waste plastic she intends to export is listed if it is exported in circumstances where the Minister has granted an export permit under the Hazardous Waste Act for the plastic. This means that if Mary's Drains Pty. Ltd. is granted an export permit under the Hazardous Waste Act for the plastic waste, they do not also need to apply for an export licence or make an export declaration under the Plastic Rules. However, Mary's Drains Pty. Ltd. must still notify the Minister that they will export the regulated waste plastic under subparagraph 6(2)(b)(ii) and comply with their obligations under the Hazardous Waste Act.

Example 3

Betty's Surfboards, a fictitious company, sends a consignment of unprocessed mixed plastic to Thailand without applying for an export licence or making an export declaration. Because the waste mixed plastic is a regulated waste plastic that is not on the Waste Plastic Exports List, and Betty's Surfboards does not hold an exemption under section 26 of the Act from the requirement to comply with the prescribed export conditions, the prescribed export conditions set out in section 6 of the Plastic Rules have been contravened. Betty's Surfboards 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 plastic export licences

Division 2 of Part 2 of the Plastic Rules sets out the requirements in relation to waste plastic export licences. The requirements in the Plastic Rules operate in addition to the requirements specified in Chapter 2 of the Act that apply to all export licences specifically in relation to waste plastic export licences.

Section 7 – Application for waste plastic export licence – requirements

Paragraphs 172(1)(c) and (d) of the Act provide that the rules may prescribe information or documents that must accompany an application made under the Act. Subsection 7(1) of the Plastic Rules provides that section 7 prescribes information to be included in an application for a waste plastic export licence, and documents that must accompany such an application, for the purposes of paragraphs 172(1)(c) and (d) of the Act.

Paragraphs 172(1)(a) and (b) of the Act also allow the Minister to approve a manner and form for an application, including information required by the form and documents to accompany the form. It is intended that information and documents prescribed under section 7 will be required in addition to information and documents required by an approved form.

Subsection 7(2) provides that for each kind of regulated waste plastic intended for export under the waste plastic export licence, the applicant must nominate a waste plastic specification with which the regulated waste plastic will comply. As set out above, a waste plastic specification nominated for the purpose of this subsection is also defined as a 'nominated specification' under section 4.

Subsection 7(3) provides that if a kind of regulated waste plastic (other than processed engineered fuel) is intended to be exported under the waste plastic export licence both before 1 July 2022 as well as on or after 1 July 2022, then the applicant must nominate a waste plastic specification with which that kind of regulated waste plastic will comply before 1 July 2022, and on or after 1 July 2022.

A note to subsection 7(3) clarifies that the nominated specification for regulated waste plastic for export before 1 July 2022 and the nominated specification for regulated waste plastic for export on or after 1 July 2022 may or may not be the same. The note further directs the reader to section 8 and clarifies that in deciding whether to grant the waste plastic export licence, the Minister considers different matters in relation to the nominated specification depending on whether the regulated waste plastic is intended for export before, or on or after, 1 July 2022.

This is intended to provide the flexibility for an applicant to apply for a waste plastic export licence, with appropriate nominated specifications, that covers both stages of the phase out of waste plastic exports from when the Plastic Rules are made. The advantage of this approach is that the exporter will not need to apply for a variation of their waste plastic export licence to change the nominated specification for further processing of regulated waste plastic in time for the commencement of the second stage of the phase out, commencing 1 July 2022.

An exporter of regulated waste plastic that will be processed into a form ready for remanufacture (for example, granules, flakes, or pellets) prior to export before 1 July 2022 must still apply for a waste plastic export licence under stage one of the phase out of waste plastics. The applicant will need to nominate a waste plastic specification that details how the regulated waste plastic will, for example, be sorted into single polymer or resin to meet stage one requirements. It is not intended that exporters will be prevented from processing regulated waste plastic to meet stage two requirements (including into flakes and pellets) during stage one of the phase out, so long as stage one requirements are met.

Under the Plastic Rules, exporters must nominate a waste plastic specification, which may or may not be a listed waste plastic specification. Examples of types of waste plastic specifications that may not be listed include industry or commercial specifications or customised specifications needed by customers such as foreign remanufacturers. Subsections 7(4) and (5) provide that if the nominated specification is not a listed waste plastic specification, the application for a waste plastic export licence must be accompanied by a copy of the nominated specification and information demonstrating that the regulated waste plastic will be processed to comply with the nominated specification.

The purpose of requiring an applicant to nominate a waste plastic specification with which they intend to comply is to assist the Minister in determining whether the waste plastic export licence should be granted. The nominated specification is an important source of information for the Minister when they are considering whether proposed regulated waste plastic exports would be processed to meet the objectives of the relevant stage of the waste plastic phase out, and the objects of the Act, including those relating to human and environmental health. Specifications also give exporters the flexibility to sort and process their regulated waste plastic in a way that suits their commercial needs and activities, while ensuring that the minimum standards under the Act are maintained.

Holders of a waste plastic export licence are only required to comply with the nominated specification stated on their licence. This ensures that waste plastic export licence holders will only be required to comply with specifications that are available to them, and appropriate for

their purposes. The applicant will not be required to comply with a 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 plastic specification, which is not a listed waste plastic specification, that is particular to an individual contract of sale and may be commercial in confidence. Updates to the specification will not be incorporated from time to time and the specification listed on the waste plastic export licence will exist as it did at the time the application is assessed. Should an exporter want to change their specification, they will need to apply under section 42 of the Act to vary their waste plastic export licence. Nominated specifications will not be listed publicly unless they are a listed waste plastic specification.

Section 7 will operate in conjunction with sections 8 and 9, which detail the matters to which the Minister must have regard when determining whether to grant a waste plastic export licence for regulated waste plastic other than processed engineered fuel, and for regulated waste plastic that is processed engineered fuel respectively. A broad range of matters must be considered in deciding whether to grant the waste plastic export licence, including the intended use of the regulated waste plastic in the place to which the plastic is intended to be exported, whether the nominated waste plastic specification is appropriate for the intended use of the plastic in the importing country, and technical considerations relating to nominated specifications that are not listed waste plastic specifications.

Example

Trash is Treasure Inc., a fictitious corporation, owns a materials recovery facility that sorts kerbside post-consumer waste into separated waste streams, including into separate PET, polypropylene (PP) and high-density polyethylene (HDPE) waste streams. Trash is Treasure Inc. is aware of the two phases of the waste plastic export ban and has purchased processing equipment to expand their business and further process their sorted waste streams from 1 July 2022. Trash is Treasure Inc. is already in contractual negotiations to provide an overseas client with flaked PET starting 1 July 2022. Tim Goodes, a director of Trash is Treasure Inc., applies for a waste plastic export licence for Trash is Treasure Inc. Tim nominates two specifications for PET: one is a listed waste plastic specification for the export of sorted single polymer PET bales intended for export prior to 1 July 2022, the other is a listed waste plastic specification for flaked single polymer PET intended for export on or after 1 July 2022. Tim provides all other required information and documents, including information about existing commercial relationships for baled PET bottles, as well as the intended future commercial relationship for flaked PET. The Minister considers the two listed nominated specifications, the intended use of the regulated waste plastic and the other matters the Minister is required to consider under the Act and the Plastic Rules and decides to grant Trash is Treasure Inc. the waste plastic export licence for the export of baled PET prior to 1 July 2022 and flaked PET on or after 1 July 2022.

Section 8 – Deciding whether to grant a waste plastic export licence – waste plastic other than processed engineered fuel

Subsection 34(2) of the Act sets out the matters to which the Minister must have regard when deciding whether to grant an export licence under subsection 34(1). 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. Section 8 is made for the purposes of paragraph 34(2)(f) of the Act.

The effect of section 8 is that the Minister must have regard to the following matters when deciding whether to grant a waste plastic export licence for regulated waste plastic other than processed engineered fuel.

Paragraphs 8(2)(a) and 8(2)(b) require the Minister to have regard to the intended use of the regulated waste plastic in the place to which the regulated waste plastic is intended to be exported, as well as the appropriateness of the nominated specification for that intended use. These matters provide scope for the Minister to consider, consistently with the objects of the Act, whether the export of the regulated waste plastic will result in appropriate human and environmental health outcomes, including through the reuse or remanufacture of the regulated waste plastic in the importing country, while avoiding the possibility of the regulated waste plastic ending up in landfill overseas.

Paragraph 8(2)(c) sets out the additional matters to which the Minister must have regard if the nominated specification is not a listed waste plastic specification on the Department's website. These are:

- the plastic polymer or resin type covered by the specification; and
- the thresholds of contaminants in the nominated specification, including whether the specification includes any requirements for the plastic to be almost free from contamination and other types of wastes; and
- any packaging requirements in the specification; and
- any colour requirements in the specification.

These matters are relevant to the consideration of nominated specifications for both stages of the waste plastic export phase out. This means these matters will be considered both before 1 July 2022 and on or after 1 July 2022. The use of the word 'any' in relation to packaging and colour requirements means that this matter will only be relevant if colour and packaging requirements are relevant to the nominated specification.

Paragraph 8(2)(d) sets out further matters to which the Minister must have regard if the nominated specification is not a listed waste plastic specification on the Department's website, and the regulated waste plastic is intended for export on or after July 2022. These matters are:

- the physical form of the processed plastic required by the specification; and
- whether that physical form is appropriate for the intended use of the plastic in the place to which the plastic is intended to be exported; and
- whether the plastic processed in accordance with the specification is capable of remanufacture without further processing.

The matters in paragraph 8(2)(d) are only relevant to the second stage of the waste export ban phase out, which commences on 1 July 2022, and will require regulated waste plastic to be both sorted into single polymer or resin, and further processed for remanufacture. As of 1 July 2022, the matters in paragraph 8(2)(d) apply in addition to the matters set out at paragraph 8(2)(c).

Paragraph 8(2)(e) provides that the Minister must have regard to whether the applicant has applied for, is the holder of, or has been refused, an export permit relating to any hazardous waste. The Hazardous Waste Act applies in tandem with the requirements of the Act and

Plastic Rules. Refusal of a hazardous waste export permit in relation to any hazardous waste may indicate that an exporter is not suitable to hold an export licence. It would also not be appropriate to grant a waste plastic export licence to export a kind of regulated waste plastic to a particular importing country if a hazardous waste permit had already been refused. The matter in paragraph 8(2)(e) is intended to reduce inconsistency between the two schemes and streamline the regulation of waste plastic that falls within the remit of both the Recycling and Waste Reduction Act and the Hazardous Waste Act.

Paragraph 8(2)(f) provides that the Minister must have regard to whether the applicant has been the holder of an export licence for any regulated waste material that has been revoked by the Minister. Revocation of a former export licence may indicate that an applicant is unable to comply with the conditions of a waste plastic export licence if that licence were to be granted.

Paragraph 8(2)(g) provides that the Minister must consider whether the Minister is reasonably satisfied that a condition of an export permit held at any time by the applicant in relation to any hazardous waste has been, or is being, breached. Breaching a condition of an export permit may indicate that an applicant is unable to comply with the conditions of a waste plastic export licence if that licence were to be granted.

A note to subsection 8(2) 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 an 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 explains that under subsection 34(3) of the Act, the Minister may have regard to any other matter that the Minister considers relevant.

Subsection 8(3) provides that the phrase ‘almost free from contamination and other types of wastes’ under subparagraph 8(2)(c)(ii) has the same meaning as in Annex II to the Basel Convention, as amended and in force for Australia from time to time. This matter relates to the Plastics Amendment to the Basel Convention that introduced category Y48 into Annex II and provides scope for the Minister to consider whether the regulated waste plastic intended for export falls within or outside of the Annex II ‘other wastes’ under the Basel Convention. This is intended to reduce inconsistency between the two schemes and streamline the regulation of regulated waste plastic that falls within the remit of both the Recycling and Waste Reduction Act and the Hazardous Waste Act.

A note to subsection 8(3) provides the citation for the Basel Convention as part of the Australian Treaty Series 1992 and provides a link to the Australian Treaties Library to locate the text of the Basel Convention.

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 the Minister makes a decision to grant, or to refuse to grant, a waste plastic export licence. These matters address the potential human and environmental health impacts of exporting the regulated waste plastic and are necessary to ensure the objects of the Act are met.

Example 1

Elmer's Exports Pty. Ltd., a fictitious company, applies to the Minister for a waste plastic export licence for baled PET bottles intended for export prior to 1 July 2022. In their application, Elmer's Exports Pty. Ltd. nominates a HDPE specification with which the PET will comply. Given that the other information that Elmer's Exports Pty. Ltd. provides in support of the application, including the contract with the offshore processor of the PET bales, shows that the regulated waste plastic for export is for baled PET bottles, the Minister suspects that a mistake has been made when uploading the nominating specification. The Minister communicates with Elmer's Exports Pty. Ltd. questioning the HDPE nominated specification, advising that the HDPE nominated specification is not suitable for the intended use and that they are intending to refuse the waste plastic export licence. Elmer's Exports Pty. Ltd. rectifies the mistake by providing the Minister with the correct nominated specification, which relates to baled PET. The Minister considers the application and is satisfied that the nominated specification is appropriate for the intended use of the regulated waste plastic in the overseas country.

Example 2

Really Great Recycling Co., a fictitious company, runs a container deposit recycling facility. Really Great Recycling Co. collects a variety of waste, including PET and high-density polyethylene (HDPE) bottles, as well as aluminium cans and glass bottles. Really Great Recycling Co. wishes to export a mixture of PET and HDPE packaging to a processor in Malaysia. Really Great Recycling Co. applies for an export licence for the regulated waste plastic and nominates a specification for mixed PET and HDPE that would meet the requirements of their processor's needs in Malaysia. The Minister considers the application for the waste plastic export licence, and under paragraph 34(2)(e) of the Act, must consider whether an applicant can comply with conditions to which an export licence, if granted, would be subject. The Minister considers that Really Great Recycling Co. would not be able to comply with the condition of the export licence under section 10 of the Plastic Rules, that the regulated waste plastic be sorted into single polymers before export. The Minister therefore decides to refuse the application because the applicant is applying to export mixed plastic. Really Great Recycling Co. may need to further sort the HDPE and PET packaging within Australia to be granted a waste plastic export licence.

Example 3

Better PVC Windows Pty. Ltd., a fictitious corporation, discloses in their licence application that they have previously held a hazardous waste export permit and that they have not been found to have breached any condition of that export permit. The Minister considers this matter, amongst the other required matters under the Act and Plastic Rules, when deciding whether to grant the waste plastic export licence. The Minister decides to grant the waste plastic export licence.

Example 4

Anneka dabbles in various business ventures, including the export of sorted regulated waste plastic on the spot market. Anneka applies for a waste plastic export licence and nominates a waste plastic specification that relates to the regulated waste plastic she intends to export. Due to the nature of the spot market, Anneka cannot provide specific information about her commercial relationships with importers or the intended use of the regulated waste plastic by those importers for the regulated waste plastic she intends to export under her waste plastic

export licence. Instead, Anneka supplies contracts that detail her business activities over the previous two years which shows that Anneka is a common participant on the spot market and only exports to three countries. However, Anneka intends to expand her business operations and wishes to export to a further two countries. She provides correspondence showing the intention to enter into a commercial relationship with importers in those countries. Based on the provided information, and after having considered all the matters required under the Act and the Plastic Rules, the Minister grants the waste plastic export licence with an additional condition that, for destinations where the intended use of the regulated waste plastic has not been demonstrated in the application, Anneka provides this information as soon as it becomes known.

Section 9 – Matters to which the Minister must have regard in deciding whether to grant a waste plastic export licence – processed engineered fuel

Section 9 is also made for the purpose of section 34 of the Act. 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 9 is that the Minister must have regard to the following matters when deciding whether to grant a waste plastic export licence for regulated waste plastic that is processed engineered fuel.

Paragraphs 9(2)(a) and 9(2)(b) require the Minister to have regard to the intended use of the regulated waste plastic that is processed engineered fuel in the place to which it is intended to be exported, as well as the appropriateness of the nominated specification for that intended use. These matters provide scope for the Minister to consider, consistently with the objects of the Act, whether the export of the regulated processed engineered fuel will result in appropriate human and environmental health outcomes, which may include considering how the regulated waste plastic that is processed engineered fuel will be burned.

Paragraph 9(2)(c) sets out additional matters to which the Minister must have regard if the nominated specification for the regulated waste plastic that is processed engineered fuel is not a listed waste plastic specification on the Department's website. These matters are:

- any calorific value requirements in the specification; and
- the thresholds for contaminants in the specification; and
- any packaging requirements in the specification; and
- any particle size or bulk density requirements in the specification; and
- the thresholds for moisture in the specification; and
- any testing or sampling requirements in the specification.

Paragraph 9(2)(d) provides that the Minister must have regard to whether the applicant has applied for, is the holder of, or has been refused, an export permit relating to any hazardous waste. As set out above, the Hazardous Waste Act applies in tandem with the requirements of the Act and Plastic Rules. Refusal of a hazardous waste export permit in relation to any hazardous waste may indicate that an exporter is not suitable to hold an export licence. It would also not be appropriate to grant a waste plastic export licence to export regulated processed engineered fuel to a particular importing country if a hazardous waste permit had already been refused. The matter in paragraph 9(2)(d) is intended to reduce inconsistency between the two schemes and streamline the regulation of regulated processed engineered fuel, which may fall within the remit of both the Recycling and Waste Reduction Act and the Hazardous Waste Act.

Paragraph 9(2)(e) provides that the Minister must have regard to whether the applicant has been the holder of an export licence for any regulated waste material that has been revoked by the Minister. Revocation of a former export licence may indicate that an applicant is unable to comply with the conditions of a waste plastic export licence if that licence were to be granted.

Paragraph 9(2)(f) provides that the Minister must consider whether the Minister is reasonably satisfied that a condition of an export permit held at any time by the applicant in relation to any hazardous waste has been, or is being, breached. Breaching a condition of an export permit may indicate that an applicant is unable to comply with the conditions of a waste plastic export licence if that licence were to be granted.

A note to subsection 9(2) 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 an 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 explains that under subsection 34(3) of the Act, the Minister may have regard to any other matter that the Minister considers relevant.

The matters to which the Minister must have regard in relation to an application for an export licence for regulated waste plastic that is processed engineered fuel are similar to those the Minister must consider for regulated waste plastic that is not processed engineered fuel under section 8. The differences are in the technical matters that the Minister must consider for a nominated specification that is not listed, which are tailored to processed engineered fuel. For example, the Minister must consider any calorific value requirements in the specification; that is, the heat that would be produced by the complete combustion of one unit of processed engineered fuel, if it was processed in accordance with the specification.

See also section 8 of this Explanatory Statement.

Example

PERfect Fuels Pty. Ltd. specialises in processing mixed industrial waste into processed engineered fuel. PERfect Fuels Pty. Ltd. intends to export the processed engineered fuel that they generate to a company with a facility in the Philippines that uses processed engineered fuel in their cement kilns. The processed engineered fuel that PERfect Fuels Pty. Ltd. generates contains waste plastic as a component. This means that the processed engineered fuel that PERfect Fuels Pty. Ltd. generates will be regulated under the Plastic Rules because it is a regulated waste plastic under section 5. PERfect Fuels Pty. Ltd. applies for a waste plastic export licence under the Plastic Rules and nominates a specification. The Minister considers the nominated specification and the intended use, along with the other matters required by the Act and Plastic Rules and decides to grant the waste plastic export licence.

PERfect Fuels Pty. Ltd. may also need to consider whether the processed engineered fuel may be hazardous waste and whether an export permit under the Hazardous Waste Act is required.

Section 10 – Conditions of waste plastic export licence – waste plastic other than processed engineered fuel

Subsection 35(1) of the Act provides that an export licence is subject to the conditions provided by the Act (paragraph 35(1)(a) of the Act), the conditions prescribed by the rules (other than any of those conditions the Minister decides are not to be conditions of the licence) (paragraph 35(1)(b) of the Act), and any additional conditions the Minister considers appropriate and that are specified in the licence (paragraph 35(1)(c) of the Act).

Section 10(1) provides that section 10 is made for the purposes of paragraph 35(1)(b) of the Act. It prescribes conditions of a waste plastic export licence in relation to regulated waste plastic, other than processed engineered fuel that is covered by the licence. Attaching conditions to a waste plastic export licence ensures that licence holders effectively manage the human and environmental health impacts of exporting regulated waste material.

There are three notes to subsection 10(1). The first note directs the reader to paragraph 35(1)(c) of the Act, which allows the Minister to impose additional conditions on individual export licences that the Minister considers appropriate and that are specified in the licence. The note further directs the reader to section 64 of the Act, which provides that it is a condition of an export licence that the holder comply with any directions given to them by the Minister. The second note directs the reader to section 59 of the Act, which provides that if a licence holder contravenes a condition of their export licence, they may commit an offence or be liable to a civil penalty. The third note directs the reader to Part 6 of Chapter 2 of the Act, which allows conditions, and any other aspect of an export licence, to be varied either by the licence holder through making an application, or by the Minister on their own initiative.

Paragraph 10(2)(a) provides that the holder of a waste plastic export licence must ensure that the regulated waste plastic is sorted, prior to export, into a single polymer plastic or single resin plastic. This is intended to ensure that the Plastic Rules implement the commitment of the Australian Governments (through the former Council of Australian Governments (COAG)) to phase out the export of mixed waste plastic from 1 July 2021.

Paragraph 10(2)(b) provides that the holder of the waste plastic export licence must ensure that the regulated waste plastic complies, prior to export, with the nominated specification for the plastic. This is intended to ensure that holders of a waste plastic export licence comply with the nominated specification stated on the licence while it is in force. It prevents waste plastic export licence holders from changing their business practices to use another specification after the licence has been granted. If a waste plastic export licence holder wishes to change their nominated waste plastic specification, they would need to apply to the Minister to vary their export licence.

Paragraph 10(2)(c) provides that the holder of the waste plastic export licence must have, or have had, at the time the plastic is exported, a commercial relationship with the importer of the regulated waste plastic. As conditions must be considered by the Minister when determining whether to grant an export licence under paragraph 34(2)(e) of the Act, this is intended to allow an applicant to apply for a waste plastic export licence while still negotiating their contracts with overseas importers, although ensures that a commercial relationship exists or has existed at the time the regulated waste plastic is exported from Australia. Evidence of a commercial relationship with an overseas importer of regulated waste plastic is important to ensuring that regulated waste plastic is exported for a legitimate purpose, and to provide an assurance that the regulated waste plastic will be used or remanufactured in an environmentally sound way and is unlikely to end as landfill in the importing country.

A note to subsection 10(2) clarifies that, for paragraph 10(2)(b), the nominated specification for a kind of plastic intended for export before 1 July 2022 may be a different nominated specification to that for the same kind of plastic intended for export on or after 1 July 2022. This accounts for the two stages of the phase out of waste plastic exports.

Subsection 10(3) provides that if the holder of the waste plastic export licence is not the supplier of the regulated waste plastic intended for export, the holder must, at the time the plastic is exported, have or have had, a commercial relationship with the supplier. This condition ensures the waste plastic export licence holder has a connection to the sorting or processing of the regulated waste plastic, which will help ensure it will meet the nominated specification prior to export from Australia.

Subsection 10(4) provides that if the waste plastic export licence states a place to which the regulated waste plastic may be exported, the licence holder must export the plastic only to that place. The purpose of this condition is to ensure that regulated waste plastic is only exported to places or countries that have a demonstrated ability to process or remanufacture the waste plastic. This is intended to prevent any landfilling or dumping of the regulated waste plastic in that or any other country, which could threaten the environmental health of that country. If the holder of the waste plastic export licence wishes to export to a different country to those stated on their licence, they will need to apply to vary their licence under section 42 of the Act.

Subsections 10(5) and (6) provide an obligation on the holder of the waste plastic export licence to notify the Minister, as soon as practicable, if any of the following changes occur:

- if the holder of the licence is not the supplier of the plastic—a change in the supplier;
- if the licence holder uses a freight forwarder or other agent to export the plastic—a change in freight forwarder or agent used;
- a change in the importer of the plastic.

Requiring the holder of a waste plastic export 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.

The requirement to notify of change to a freight forwarder or other agent is intended to include the scenario where a waste plastic export licence holder commences using a freight forwarder or agent after the licence is granted.

A note to paragraph 10(6) directs the reader to section 143 of the Act, which allows the Minister to require the holder of a waste plastic export licence to produce information or documents containing evidence of the matters in section 10.

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

Example 1

Stephanie is the holder of a waste plastic export licence that has a licence condition permitting the export of regulated waste plastic to a remanufacturer in the Philippines, with whom she

has a commercial relationship. Stephanie has a falling out with the remanufacturer based in the Philippines and finds a new importer for the regulated waste plastic based in Pakistan.

Stephanie fails to notify the Minister of the new importer, breaching a condition of her waste plastic export licence. Furthermore, Stephanie cannot export to Pakistan under her current waste plastic export licence conditions and would need to have her licence varied to do so. Fortunately, an administrator notices the change of importer when Stephanie submits an export declaration for her first consignment and brings this to her attention. Stephanie then notifies the Minister of the change, successfully applies to vary her waste plastic export licence conditions and can now export to the new importer in Pakistan.

Example 2

Jeremy is the holder of a waste plastic export licence with a specification that requires HDPE to be washed, cleaned, and pelletised prior to export. It is a condition of Jeremy's waste plastic export licence that each consignment of regulated waste plastic he exports must meet the nominated specification stated on his export licence. Instead of pelletising the HDPE plastic waste in accordance with the nominated specification on his export licence, Jeremy exports consignments of unsorted, shredded waste plastic. Jeremy has breached a condition of his waste plastic export licence. Jeremy may have committed an offence or be liable to a civil penalty, and may have his waste plastic export licence varied, suspended, or revoked by the Minister.

Section 11 – Conditions of waste plastic export licence – processed engineered fuel

Section 11(1) provides that section 11 is made for the purposes of paragraph 35(1)(b) of the Act. It prescribes conditions of a waste plastic export licences in relation to regulated waste plastic covered by the licence that is processed engineered fuel.

There are three notes to subsection 11(1). The first note directs the reader to paragraph 35(1)(c) of the Act, which allows the Minister to impose additional conditions on individual export licences that the Minister considers appropriate and that are specified in the licence. The note further directs the reader to section 64 of the Act, which provides that it is a condition of an export licence that the holder comply with any directions given to them by the Minister.

The second note directs the reader to section 59 of the Act, which provides that if a licence holder contravenes a condition of their export licence, they may commit an offence or be liable to a civil penalty.

The third note directs the reader to Part 6 of Chapter 2 of the Act, which allows conditions, and any other aspect of an export licence, to be varied either by the licence holder through making an application, or by the Minister on their own initiative.

Subsection 11(2) provides that the holder of the waste plastic export licence must, for each consignment of regulated waste plastic that is processed engineered fuel that is intended to be exported under the waste plastic licence:

- ensure that the plastic complies, prior to export, with the nominated specification for the plastic; and
- ensure that the plastic is securely packaged prior to export; and

- take all reasonable steps to ensure that the plastic will be combusted in a way that minimises the risk of harm to the environment or human health; and
- have or have had, at the time the plastic is exported, a commercial relationship with the importer of the plastic.

A note to paragraph 11(2) directs the reader to section 143 of the Act, which allows the Minister to require the holder of a waste plastic export licence to produce information or documents containing evidence of the matters in section 11.

Subsection 11(3) provides that if the holder of the waste plastic export licence is not the supplier of the regulated waste plastic intended for export, the holder must, at the time the plastic is exported, have or have had, a commercial relationship with the supplier. This condition ensures the waste plastic export licence holder has a connection to the sorting or processing of the regulated waste plastic that is processed engineered fuel, which will help ensure it will meet the nominated specification prior to export from Australia.

Subsection 11(4) provides that if the waste plastic export licence states a place to which the regulated waste plastic may be exported, the licence holder must export the plastic only to that place. The purpose of this condition is to ensure that regulated waste plastic that is processed engineered fuel is only exported to places or countries that have a demonstrated ability to process or remanufacture the waste plastic. This is intended to prevent any landfilling or dumping of the regulated waste plastic in that or any other country, which could threaten the environmental health of that country. If the holder of the waste plastic export licence wishes to export to a different country to those stated on their licence, they will need to apply to vary their licence under section 42 of the Act.

Subsections 11(5) and (6) provide an obligation on the holder of the waste plastic export licence to notify the Minister, as soon as practicable, if any of the following changes occur:

- if the holder of the licence is not the supplier of the plastic—a change in the supplier;
- if the licence holder uses a freight forwarder or other agent to export the plastic—a change in freight forwarder or agent used;
- a change in the importer of the plastic.

Requiring the holder of a waste plastic export 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.

The requirement to notify of change to a freight forwarder or other agent is intended to include the scenario where a waste plastic export licence holder commences using a freight forwarder or agent after the licence is granted.

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

Section 12 – Information to be stated in export licence – nominated specification

Section 12(1) provides that section 12 is made for the purposes of paragraph 36(2)(k) of the Act. Section 36 of the Act sets out the matters that are required to be stated in an export licence. Paragraph 36(2)(k) of the Act allows the rules to prescribe additional information that

must be stated in an export licence. Section 12 prescribes additional information that must be stated in a waste plastic export licence.

Subsection 12(2) provides that if a waste plastic specification with which a kind of plastic covered by the waste plastic export licence will comply, the licence must state that specification for the plastic.

There are two notes to section 12. Note 1 directs the reader to the definition of ‘nominated specification’ in section 4, which provides that the stated specification is the nominated specification for the plastic. An exporter will be able to change the nominated specification stated in their waste plastic export licence by applying to vary their licence under section 42 of the Act. The licence conditions at sections 10 and 11 of the Plastic Rules require a holder of a waste plastic export licence to comply with the nominated specification stated in their licence.

Note 2 directs the reader to Part 6 of Chapter 2 of the Act, which allows information to be varied either on application by the export licence holder, or by the Minister on the Minister’s own initiative.

Section 13 – Renewal of waste plastic export licence

Section 13 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. This section provides that an application for renewal of a waste plastic export licence must be made no later than 30 days before the expiry date for the licence.

A note to section 13 clarifies an application for renewal of a waste plastic export licence may only be made if there is an expiry date for the licence. It further clarifies that some waste plastic export licences remain in force until a specified event occurs.

Notwithstanding the general rule that applications for the renewal of a waste plastic export licence must be made at least 30 days prior to licence expiration, 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. This will be on a case-by-case basis only.

Under section 34 of the Act, if the Minister grants a waste plastic 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 plastic export licence will remain in force for a maximum period of three years. A waste plastic export 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 plastic 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. The renewal application process is more streamlined than the initial waste plastic export licence

application process and involves a simplified form that provides for the consideration of information previously provided. This approach reduces the regulatory burden on exporters who renew their waste plastic export licence.

Example 1

Adam was granted an export licence to export regulated waste plastic to Recycle Co Pty. Ltd., a fictitious business in New Zealand, for a period of two years. The expiry date on Adam's licence is 30 June 2024. On 15 May 2024, Adam decides he wants to continue to export to Recycle Co Pty. Ltd. Adam may apply to renew his waste plastic export licence any time up until midnight on 31 May 2024, which is 30 days before the licence will expire. A later application would not be accepted as the Minister has not allowed Adam a longer period than the 30-day cut-off period prescribed by the Plastic Rules. After this date, Adam will be required to apply for a new waste plastic export licence.

Example 2

Nikki, the owner operator of Pretty Cool Plastic Pty. Ltd., a fictitious corporation, has been granted a waste plastic export licence to export a one-off shipment of cleaned and pelletised polystyrene to Poly Co., a fictitious company in Malaysia. The waste plastic export licence is specified to expire in the event that one consignment has been exported to Poly Co. If Nikki wishes to export another consignment to Poly Co., she will need to apply for another waste plastic export licence.

Sections 14 and 15 – Suspension and revocation of waste plastic export licence

Sections 14 and 15 are made under paragraphs 46(1)(i) and 54(1)(i) of the Act respectively, which allow the rules to prescribe additional grounds for the suspension or revocation of an export licence.

Notes at the end of subsections 14(1) and 15(1) direct the reader to other grounds for suspension and revocation provided by paragraphs 46(1)(a) to (h) (for suspension of an export licence) and 54(1)(a) to (h) of the Act (for revocation of an export licence). The grounds in the Act include if a condition of the export 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 14(2) and 15(2) provide that it is a ground for suspension or revocation of a waste plastic export licence respectively 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 plastic export licence, in circumstances where the original decision to grant the licence was based on incorrect or incomplete information or documents and the licence holder has failed to provide additional or corrected information, is important for mitigating the human and environmental health risks that arise when exporting regulated waste plastic and ensures that appropriate action can be taken.

It is expected that a decision to revoke the waste plastic export 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 waste plastic export licence was a fit and proper person and they were not.

Example

Smith's Plastic Parts Ltd., a fictitious company, is granted a waste plastic export licence to export regulated waste plastic for a period of three years. Shortly after being granted the waste plastic export licence, Smith's Plastic Parts Ltd. realises that information given to the Minister in their application was incorrect. Smith's Plastic Parts Ltd. does not provide corrected information to the Minister. Upon doing a scheduled audit of Smith's Plastic Parts Ltd., the Minister is made aware of the provision of incorrect information. The Minister then issues Smith's Plastic Parts Ltd. with a written notice requiring Smith's Plastic Parts Ltd. to show cause as to why the waste plastic export licence should not be suspended. Smith's Plastic Parts Ltd. does not respond to the show cause notice, and the Minister decides to suspend their waste plastic export licence in accordance with the Act. If Smith's Plastic Parts Ltd. had informed the Minister of the correct information, it is likely that their waste plastic export licence would not have been suspended.

Section 16 – Holder of waste plastic export licence to notify the Minister of certain events

Section 16 is made for the purposes of paragraph 61(1)(e) of the Act. Subsection 61(1) of the Act requires the holder of an export licence to notify the Minister of certain events. Failure to comply with this requirement will be an offence and breach of a civil penalty provision under subsections 61(3) and (4) of the Act. Paragraph 61(1)(e) provides that the rules may prescribe an event of which the Minister must be notified.

Section 16 provides that the holder of a waste plastic 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.

It is necessary for the Minister to be notified of such changes to the waste plastic export 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.

Section 17 – Directions to holders of waste plastic export licences

Section 17 is made for the purposes of paragraph 64(3)(b) of the Act. Section 64 of the Act allows the Minister to give written directions to the holder of an export licence. The Minister must have regard to the objects of the Act (paragraph 64(3)(a)) and any other matters prescribed by the rules (paragraph 64(3)(b)) when considering whether to give a direction under subsection 64(1) of the Act to the holder of an export licence.

Section 17 provides that a matter to which the Minister must have regard when considering whether to give a direction to the holder of a waste plastic export licence holder, is whether the Minister is satisfied of one or more of the following:

- a condition of the waste plastic export licence has been contravened, or it is likely that such a condition will be contravened;

- the holder of the waste plastic export licence has not complied, or is not likely to comply, with a requirement of the Act;
- the regulated waste plastic covered by the licence does not comply, or is not likely to comply, with a requirement under the Act that applies in relation to the waste plastic.

The purpose of section 17 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.

Section 18 – Application for exemption – requirements

Under subsection 26(2) of the Act, the Minister may grant an exemption to an exporter who has submitted an application under section 25 of the Act if the Minister is satisfied that any requirements prescribed in the rules are met, and that it is appropriate to grant the relevant exemption.

Paragraphs 172(1)(c) and (d) of the Act provide that the rules may prescribe information or documents that must accompany an application made under the Act. Subsection 18(1) provides that section 18 prescribes information to be included in an application under section 25 of the Act for an exemption in relation to the export of a trade sample of regulated waste plastic, and documents that must accompany such an application, for the purposes of paragraphs 172(1)(c) and (d) of the Act.

Paragraphs 172(1)(a) and (b) of the Act also allow the Minister to approve a manner and form for an application, including information required by the form, and documents to accompany the form. The information and documents prescribed under section 18 are required in addition to the information and documents required by an approved form. Section 18 only applies to an application for an exemption in relation to the export of a trade sample of regulated waste plastic. Information and documents required for other exemption applications will be dictated by the approved form.

Subsection 18(2) defines a ‘trade sample’ of regulated waste plastic as waste plastic that is exported solely for the purposes of market testing and is not hazardous waste.

Subsection 18(3) provides that an applicant who makes an application for an exemption in relation to a trade sample of regulated waste plastic must nominate a waste plastic specification with which the plastic will comply.

Subsection 18(4) provides that if an applicant’s nominated specification is not a listed waste plastic specification, the application must be accompanied by a copy of the specification.

Subsection 18(5) provides that the application must include information demonstrating that the plastic will be processed prior to export to comply with the nominated specification. The purpose of section 18 is to facilitate the export of trade samples whilst ensuring that the regulated waste plastic is processed in accordance with an appropriate specification to minimise risks to environmental and human health.

Section 19 – Matters to which the Minister must have regard in deciding whether the Minister is satisfied it is appropriate to grant the exemption

Section 19 is made for the purposes of subsection 26(2) of the Act. Section 26 of the Act deals with the decision to grant or refuse an exemption. Subsection 26(2) provides that the Minister may grant an exemption if satisfied, having regard to any matters prescribed by the rules and other matters that the Minister considers relevant that any requirements prescribed by the rules are met and that it is appropriate to grant the exemption.

Section 19 specifically prescribes matters that must be considered in relation to trade samples of regulated waste plastic, as defined in section 18.

Subsection 19(2) sets out general matters to which the Minister must have regard when considering whether it is appropriate to grant an exemption for a trade sample of regulated waste plastic. These matters apply to all regulated waste plastic, including regulated processed engineered fuel. These matters are:

- whether the applicant is capable of complying with the nominated specification;
- whether the plastic will be processed to comply, prior to export, with the nominated specification;
- whether the specification is appropriate for the intended use of the plastic in the place to which the plastic is intended to be exported.

Subsection 19(3) requires the Minister to also have regard to the matters set out in subsection 8(2) when considering whether it is appropriate to grant an exemption that relates to a trade sample of regulated waste plastic other than processed engineered fuel, if the nominated specification is not a listed waste plastic specification.

Subsection 19(4) requires the Minister to have regard to additional matters when considering whether it is appropriate to grant an exemption for a trade sample of regulated processed engineered fuel in circumstances where the nominated waste plastic specification is not a listed specification. These are:

- any caloric value requirements in the specification;
- the thresholds for contaminants in the specification;
- any packaging requirements in the specification;
- any particle size or bulk density requirements in the specification;
- the thresholds for moisture in the specification; and
- any testing and sampling requirements in the specification.

The purpose of this section is to provide matters that must be considered when assessing whether it is appropriate to grant an exemption in relation to a trade sample of regulated waste plastic. 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 of regulated waste plastic, the Minister must still 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 regulated waste plastic has been processed in accordance with a waste plastic specification.

Example

Plastic Pellets Ltd., a fictitious company, processes expanded polystyrene into pellets. To test whether there is a market for their product overseas, Plastic Pellets wishes to send trade samples of their plastic pellets, which are regulated waste plastic, to potential clients.

To send their trade samples, Plastic Pellets Ltd. makes an application for an exemption from holding a waste plastic export licence and notes in their application that the export will be for a trade sample only. Plastic Pellets Ltd. will be required to nominate a waste plastic specification with which the trade sample will comply. The nominated specification may be a listed waste plastic specification, or another written industry specification or standard.

Section 20 – Revocation of exemption

Subsection 20(1) provides that section 20 is made for the purposes of paragraph 31(2)(b) of the Act. Section 31 of the Act provides for the revocation of exemptions. Subsection 31(2) of the Act sets out the matters to which the Minister must have regard when deciding whether to revoke an exemption. Paragraph 31(2)(a) of the Act requires the Minister to have regard to the objects of the Act, and paragraph 31(2)(b) of the Act requires the Minister to have regard to any additional matters prescribed in the rules when deciding whether to revoke an exemption.

Subsection 20(2) has the effect that, when considering whether to revoke an exemption, the Minister must have regard to the additional matter of whether the holder of the exemption has contravened, or is contravening, a condition of the exemption.

The purpose of section 20 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 21 – Making and retaining records

Subsection 21(1) provides that section 21 is made for the purposes of subsection 142(1) of the Act. Subsection 142(1) 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 21(2) provides that the holder of a waste plastic export licence must make and retain the following records:

- for each consignment of regulated waste plastic that is exported under the licence:
 - the export declaration made for the consignment;
 - evidence supporting the matters stated in the export declaration; and
 - a photograph or photographs of the plastic in the consignment, and of the consignment once packed for export, that have sufficient resolution, brightness and contrast to show the plastic and consignment clearly and that are time and date stamped;
- each other document that is made by the waste plastic export licence holder, or that comes into the licence holder's possession and that is relevant to showing whether the licence holder has complied, or is complying with, the applicable requirements of the Act.

Subsection 21(3) provides that the holder of the waste plastic export licence must retain each of the records for at least five years starting on the day the record is made by the licence holder or the record comes into the licence holder's possession. Subsection 21(4) requires the record to be in English (unless subsection 21(5) applies), dated, accurate, legible, and able to be audited.

Subsection 21(5) provides that, if a record required to be retained is not in English, the holder of the waste plastic 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 plastic export licences are complying with their obligations under the Act. This helps to ensure that the export of the regulated waste plastic 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 regulated waste plastic was processed to the standard required by the Plastic Rules).

Section 22 – Records must not be altered or defaced during retention period

Subsection 22(1) provides that a record that is retained as required by section 21 must not be altered or defaced during the period in which it is required to be retained (the retention period). The retention period is five years starting on the day the record is made by the holder or it comes into the holder's possession period under subsection 21(3).

Subsection 22(2) provides that, despite subsection 22(1), notations or markings may be made on the record in accordance with ordinary practice, for example by initialling the notation.

Subsection 22(3) provides that if notations or markings are made on an original record in accordance with ordinary practice during the retention period, 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 22(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 commercial practice, while still being able to meet the record keeping requirements of section 21.

Division 5 – Other Matters

Section 23 – Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

Section 23 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 for the purpose of complying with the following provisions:

- paragraph 34(2)(c) – grant of export licence;
- paragraph 39(3)(c) – renewal of export licence;
- paragraph 42(4)(b) – variation of export licence.

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 23(1) and (2) have the combined effect that, for the purposes of granting, renewing, or varying a waste plastic 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; and
- 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 applicable whether the person who gave the payment undertaking will be able to meet the cost of the relevant export operations;
 - any other relevant considerations.

Subsection 23(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 23(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 23(5) provides that the variation under subsection 23(4) must not reduce the amount of any relevant Commonwealth liability covered by the undertaking that has not been paid.

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 Plastic) Rules 2021

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

The Act establishes 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.

Relevantly, the Act provides for the making of rules regulating the export of regulated waste material. The Plastic Rules operate to:

- prescribe waste plastic as a regulated waste material (regulated waste plastic);
- prohibit the export of regulated waste plastic unless prescribed export conditions are complied with;
- prescribe information that must be included in, and documents that must accompany, an application for a waste plastic export licence;
- prescribe additional matters to which the Minister must have regard when deciding whether to grant a waste plastic export licence or an exemption;
- prescribe conditions for waste plastic export licences;
- prescribe the period within which an application for renewal of a waste plastic export licence must be made;
- prescribe additional grounds for suspending or revoking a waste plastic export licence;
- prescribe record keeping requirements relating to the export of regulated waste plastic; 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 plastic export licence.

Human rights implications

The Plastic Rules instrument engages the following 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).

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 Plastic 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 Plastic 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 Plastic Rules prohibits the export of regulated waste plastic unless certain export conditions are met, such as that the exporter holds a waste plastic export licence;
- section 7 prescribes information and documents that must be provided in an application for a waste plastic export licence, including a nominated waste plastic specification;
- sections 10 and 11 impose conditions of a waste plastic export licence which will include that the holder of the waste plastic export licence must comply with the nominated waste plastic specification and must have, or have had, at the time the plastic is exported, a commercial relationship with the importer of the regulated waste plastic;
- sections 14 and 15 allow for the suspension or revocation of a waste plastic export licence if the holder of the licence fails, where required, to provide additional or corrected information in relation to an application relating to their licence; and
- sections 21 and 22 prescribes record keeping requirements for holders of waste plastic export licences, which will assist in monitoring compliance with the requirements of the Act.

By regulating these matters, the Plastic Rules aims to ensure that the export of regulated waste plastic does not adversely impact on human or environmental health.

In summary, the Plastic 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 21 of the Plastic Rules requires the holder of a waste plastic 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 plastic export licences will be bodies corporate. However, if an individual holds a waste plastic export licence, section 21 of the Plastic 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 21 therefore operates to limit the right to privacy.

Section 21 requires holders of waste plastic 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 Plastic Rules.

The limitation to the right to privacy imposed by section 21 of the Plastic Rules is therefore considered reasonable, necessary, and proportionate.

Conclusion

The Plastic 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**