**EXPLANATORY STATEMENT**

Issued by Authority of Assistant Minister for Waste Reduction and Environmental Management, the Hon. Trevor Evans MP

*Recycling and Waste Reduction Act 2020*

*Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2021*

**Authority**

The *Recycling and Waste Reduction Act 2020* (RAWR Act) establishes a legislative framework to enable Australia to more effectively manage the environmental and human health and safety impacts of products and waste material. This includes, in particular, impacts associated with the disposal of waste materials and products.

Chapter 3 of the RAWR Act deals with product stewardship. It establishes a framework providing the basis for those who design, import, manufacture and distribute products to take greater responsibility for their impacts on the environment. Product stewardship involves the shared responsibility for reducing the environmental, health and safety footprint of manufactured goods and materials across the life cycle of a product stream (including material streams).

Part 4 of Chapter 3 of the RAWR Act provides a framework for the regulation of co-regulatory product stewardship arrangements in relation to a product. A number of provisions in Chapter 3 set the parameters of the Minister’s rule-making power, which include specifying which parties are liable for co-regulatory product stewardship in relation to a product, the kinds of outcomes to be achieved by an approved co-regulatory arrangement, the matters to be dealt with by a co-regulatory arrangement, and aspects of the administration of co‑regulatory arrangements.

Subsection 188(1) of the RAWR 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.

The *Recycling and Waste Reduction (Product Stewardship –Televisions and Computers) Amendment (Imported Products) Rules 2021* (the Amendment Rules) are made under subsection 188(1) of the RAWR Act.

Subsection 77(1) of the RAWR Act provides that a liable party, in relation to a product, is a person specified as a liable party in relation to that product in the rules. Subsection 79(1) provides that Rules made for the purposes of subsection 77(1) specifying liable parties in relation to a product must also specify one or more outcomes to be achieved by an approved co-regulatory arrangement that relates to that product. The Amendment Rules are made for the purposes of subsection 77(1) of the RAWR Act.

**Purpose**

The Amendment Rules amend the *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021* (NTCRS Rules) to remove uncertainty over targets and liability under the National Television and Computer Recycling Scheme (NTCRS) by correcting an error.

**Background**

The NTCRS Rules provide the regulatory basis for the approval of co‑regulatory product stewardship arrangements that give effect to the NTCRS.

The NTCRS Rules, in conjunction with the RAWR Act, set out how approved co-regulatory arrangements under the NTCRS are regulated. Companies who import or manufacture above the relevant threshold for televisions or computer products (including printers) in a financial year are regulated as liable parties for the next financial year and are required to be members of an approved co-regulatory arrangement that financial year. Approved co-regulatory arrangements under the RAWR Act and NTCRS Rules are managed by an administrator, who is responsible for achieving the recycling outcomes to be achieved by that arrangement (including the recycling targets that apply to that arrangement). Co-regulatory arrangements are approved by the Minister under the RAWR Act.

The NTCRS Rules set out the details of who will be a liable party for a financial year, and therefore required to join an approved co-regulatory arrangement in relation to television or computer products for the next financial year. This is based on the number of television or computer products the person has imported or manufactured in Australia in the previous financial year.

Whether a person is a liable party for a financial year, and the number of television and computer products that person has imported or manufactured, also affects the amount of the recycling targets and the import and manufacture share for each approved co-regulatory arrangement for that year. This is because these calculations are based on the amount of previous imports and manufacturing by persons who are liable parties for the relevant financial year.

Information on a person’s imports of television or computer products is derived from import declarations made by the importer under the *Customs Act 1901* (Customs Act). In some circumstances, these declarations can be altered after the good is imported into Australia consistent with the requirements of the Customs Act.

Until 30 June 2021, the NTCRS was implemented by the *Product Stewardship (Televisions and Computer) Regulations 2011* (old NTCRS Regulations), made under the (now repealed) *Product Stewardship Act 2011*. From 1 July 2021, the NTCRS was transferred to the NTCRS Rules, made under the RAWR Act. The policy intent and administration of the NTCRS remain unchanged.

The old NTCRS Regulations included a provision specifying a date (a settlement date) after which certain changes to import declarations will not be taken into account for the purposes of determining whether a person is a liable party or working out the outcomes for approved co-regulatory arrangements. This allowed the necessary calculations based on a person’s imports to be made with certainty after that date, rather than having to redo the calculations when import declarations were amended at a later date. This was important as changes to calculations would affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed.

The provisions specifying a settlement date were unintentionally left out of the NTCRS Rules. The Amendment Rules correct this error by re-inserting these provisions into the NTCRS Rules so that the NTCRS can continue operating as it has in previous financial years.

**Impact and Effect**

The Amendment Rules amend the NTCRS Rules to set a settlement date of 31 October of a financial year. After that date, changes to import declarations that reduce either the number of television or computer products specified in the declaration, or the converted weight of television or computer products specified in the declaration, will not be taken into account for the purposes of determining whether a person has imported the a product during a particular financial year.

This allows the liable parties for the financial year, and the outcomes for co-regulatory arrangements (such as the recycling targets and the import or manufacture share that apply to each approved co-regulatory arrangement), to be confirmed by late October of each financial year, rather than being subject to change throughout the financial year.

**Pre-conditions to making the Amendment Rules**

The Assistant Minister for Waste Reduction and Environmental Management is satisfied that the requirements in subsection 77(3) of the RAWR Act are met.

As required by subsection 77(4) of the RAWR Act, the special circumstances that justify the making of the Amendment Rules despite television and computer products not having been included in a Minister’s priority list at least 12 months beforehand are that television and computer products have been regulated as part of the NTCRS since 2011 and in the NTCRS Rules since 1 July 2021. The Amendment Rules correct an error in the NTCRS Rules and do not add any new products to those Rules, or change the way the NTCRS operates.

**Consultation**

The Amendment Rules are minor and machinery to correct an error that was identified in the NTCRS Rules. On this basis, no specific consultation was conducted.

**Details and Operation**

Details of the Amendment Rules are set out in Attachment A.

The Amendment Rules commence on the day after they are registered.

**Other**

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

The Amendment 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.

**ATTACHMENT A**

***Details of the Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2021***

**PART 1 - Preliminary**

**Section 1 – Name**

1. Section 1 provides that the name of the instrument is the *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2021* (the Amendment Rules).

**Section 2 – Commencement**

1. Section 2 provides that the Amendment Rules commence on the day after they are registered.

 **Section 3 – Authority**

1. Section 3 provides that the Amendment Rules are made under the *Recycling and Waste Reduction Act 2020* (the RAWR Act).

**Schedule 1 – Amendments**

***Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021***

**Item 1**

1. Item 1 of Schedule 1 to the Amendment Rules amends section 4 of the *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021* (NTCRS Rules) to insert a definition of *import declaration*. The term import declaration, when used in the NTCRS Rules, has the same meaning as in the *Customs Act 1901* (Customs Act). This is relevant to both the new definition of imported (see item 2) and new section 4A (see item 3).

**Item 2**

1. Item 2 of Schedule 1 to the Amendment Rules amends section 4 of the NTCRS Rules to inserts a definition of *imported*. The effect of the definition is that, for the purposes of the NTCRS Rules, a television or computer product is imported at a time if, at that time, the product is the subject of an import declaration under section 71A of the Customs Act, and the product has been entered into home consumption under subsection 68(3A) of that Act in respect of that import declaration.
2. Including this definition allows for certainty as to whether a particular product was imported during a particular financial year. The test for whether a person is a liable party for a financial year under section 6 of the NTCRS Rules (and is therefore required to join an approved co-regulatory arrangement) is based on, relevantly, the number of television or computer products the person imported into Australia in the previous financial year. This information is derived from import declarations made by the importer under section 71A of the Customs Act. Import declarations under the Customs Act are made when, or before, the relevant goods arrive in Australia, however they can be altered later in accordance with the requirements of that Act.
3. Similarly, the number of television or computer products a liable party has imported in a financial year will also affect the outcomes to be achieved, for each financial year, by the co-regulatory arrangement of which the person is a member (including the amount of the recycling targets and the import and manufacture share that apply to the relevant co-regulatory arrangement).

**Item 3**

1. Item 3 of Schedule 1 to the Amendment Rules inserts new section 4A into the NTCRS Rules.
2. New section 4A has the effect of specifying a date (a settlement date) after which changes to import declarations that reduce either the number of television or computer products specified in the declaration or the converted weight of television or computer products specified in the declaration will not be taken into account for the purposes of determining whether a person has imported a television or computer product during a financial year.
3. This purpose of this provision is to allow the necessary calculations based on a person’s imports to be made with certainty after that date, rather than having to redo the calculations if import declarations were amended at a later date. This is important as changes to calculations would affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed. Having to redo the calculations when a change (such as a correction) is made to a relevant import declaration would result in increased administrative costs for administrators of co-regulatory arrangements and uncertainty over targets and liabilities under the National Televisions and Computers Recycling Scheme (NTCRS).
4. It is necessary to include changes that reduce the converted weight of televisions or computer products, as the wrong product code being used on the import data affects the converted weight of the television or computer products being imported or manufactured.
5. The settlement date is 31 October following the financial year in which the import declaration was made. This will allow the liable parties for the financial year, and therefore outcomes (including recycling targets and the import or manufacture share) to be achieved by each approved co-regulatory arrangement, to be confirmed by late October of each financial year, rather than being subject to change throughout the financial year.
6. An equivalent provision to new section 4A was previously included in the (now repealed) *Product Stewardship (Televisions and Computers) Regulations 2011*, which implemented the NTCRS prior to 30 June 2021. The policy was not intended to change when the NTCRS moved to the NTCRS Rules on 1 July 2021, however the relevant provisions were unintentionally left out of the NTCRS Rules. Including new section 4A, and the related definitions, in the NTCRS Rules therefore corrects an error. There will be no change to how the NTCRS Scheme is administered for the 2021-2022 financial year from previous financial years.

**ATTACHMENT B**

# Statement of Compatibility with Human Rights

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

***Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) 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* (Cth).

### Overview of the instrument

The *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Amendment (Imported Products) Rules 2021* (the Amendment Rules) are made under the *Recycling and Waste Reduction Act 2020* (the RAWR Act).

The *Recycling and Waste Reduction (Product Stewardship – Televisions and Computers) Rules 2021*, in conjunction with the RAWR Act, set out how approved co-regulatory arrangements under the NTCRS are regulated. Companies who import or manufacture above the threshold of televisions or computer products (including printers) are regulated as ‘liable parties’ who are required to be members of an approved co-regulatory arrangement each financial year. Approved co-regulatory arrangements under the RAWR Act and NTCRS Rules are managed by an administrator, who is responsible for achieving the recycling outcomes to be achieved by that arrangement (including the recycling targets that apply to that arrangement).

The NTCRS Rules set out the details of who will be a liable party for a financial year, and therefore required to join an approved co-regulatory arrangement in relation to television or computer products for the next financial year. This is based on the number of television or computer products the person has imported or manufactured in Australia in the previous financial year.

Whether a person is a liable party for a financial year, and the number of television and computer products that person has imported or manufactured, also affects the amount of the recycling targets and the import and manufacture share for each approved co-regulatory arrangement for that year. This is because these calculations are based on the amount of previous imports and manufacturing by persons who are liable parties for the relevant financial year.

The Amendment Rules amend the NTCRS Rules to set a settlement date of 31 October of a financial year. After that date, changes to import declarations that reduce either the number of television or computer products specified in the declaration or the converted weight of television or computer products specified in the declaration will not be taken into account for the purposes of determining whether a person imported a television or computer product in a financial year.

This will allow the liable parties, and outcomes to be achieved by approved co-regulatory arrangements (including the recycling targets and the import or manufacture share that apply to a co-regulatory arrangement), to be confirmed by late October of each financial year, rather than being subject to change throughout the financial year.

**Background**

Under the NTCRS, information on a person’s imports of television or computer products is derived from import declarations made by the importer under the *Customs Act 1901* (Customs Act). In some circumstances, these declarations can be altered after the good is imported into Australia, consistent with the requirements of the Customs Act.

Until 30 June 2021, the NTCRS was implemented by the *Product Stewardship (Televisions and Computers) Regulations 2011* (old NTCRS Regulations), made under the (now repealed) *Product Stewardship Act 2011*. From 1 July 2021, the NTCRS was transferred to the NTCRS Rules, made under the RAWR Act. The policy intent and administration of the NTCRS scheme remain unchanged.

The old NTCRS Regulations included a provision specifying a date (a settlement date) after which certain changes to import declarations will not be taken into account for the purposes of determining whether a person is a liable party. This allowed the necessary calculations based on a person’s imports to be made with certainty after that date, rather than having to redo the calculations when import declarations were amended at a later date. This was important as changes to calculations would affect all liable parties and co-regulatory arrangements, not just the person whose import declaration was changed.

The provisions specifying a settlement date were unintentionally left out of the NTCRS Rules. The Amendment Rules correct this error by re-inserting the 31 October settlement date into the NTCRS Rules, so that the NTCRS can continue operating as it has in previous financial years.

### Human rights implications

This legislative instrument engages the right to health under Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR). 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. 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 (August 2000),*the United Nations Committee on Economic Social and Cultural Rights 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]).

Together with Chapter 3 of the Act and the NTCRS Rules, the Amendment Rules promote the right to health (including by promoting a healthy environment) by reducing the impact on human and environmental health of products and waste from products, including by encouraging the recycling of televisions and computers under the Scheme in an environmentally sound way.

For these reasons, the Amendment Rules are consistent with the right to health in Article 12(1) of the ICESCR. The Amendment Rules do not engage any other human rights.

### Conclusion

This legislative instrument is compatible with human rights because it promotes the right to health under Article 12(1) of the ICESCR.

**The Hon Trevor Evans MP**

**Assistant Minister for Waste Reduction and Environmental Management**