

## EXPLANATORY STATEMENT

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

*Recycling and Waste Reduction Act 2020*

*Recycling and Waste Reduction (Export—Waste Tyres) Rules 2021*

### **Authority**

The *Recycling and Waste Reduction (Export—Waste Tyres) Rules 2021* (the 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. Where relevant, these provisions are identified in this Explanatory Statement.

### **Purpose**

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

### **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 Rules together implement the commitment of the Australian Governments (through the former Council of Australian Governments (COAG)) to phase out the export of whole baled tyres from 1 December 2021.

Following the phase out of exports of unprocessed waste glass from 1 January 2021, and mixed waste plastics from 1 July 2021, this is the third phase of the former COAG's broader commitment to regulate the export of waste paper, plastic, glass and tyres. COAG's commitment was to only allow those materials to be exported if they have been cleaned and processed into a value-added material that 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,<sup>1</sup> 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 Rules impose regulatory controls on waste tyres that are to be exported from Australia. In 2018-19, approximately 61,282 tonnes of tyres were exported from Australia at a value of \$7.83 million.<sup>2</sup> The exports were mostly to India, Malaysia and South Korea.

The intention of regulating the export of waste tyres is to stop the export of whole baled or densely packaged tyres, which are likely to be disposed of overseas in a manner detrimental to human and environmental health. Prohibiting such exports will also maximise the ability of the Australian waste management and recycling sectors to collect, recover, recycle, reuse, and convert waste tyres 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,<sup>3</sup> with 62 submissions received.

The Department of Agriculture, Water and the Environment consulted with industry, peak bodies and state and territory governments between July and October 2021 on the design and implementation of the Rules. Consultation on an exposure draft of the Rules was held open for submissions during a period of three weeks from 6 September to 24 September 2021. The Department also separately convened a Tyres Technical Working Group that met on a number of occasions between July and September 2021, and which included peak industry bodies and waste tyres exporters.

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

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<sup>1</sup>

[https://web.archive.org/awa/20210306190025mp\\_/https://www.coag.gov.au/sites/default/files/communique/phasing-out-waste-exports-response-strategy.pdf](https://web.archive.org/awa/20210306190025mp_/https://www.coag.gov.au/sites/default/files/communique/phasing-out-waste-exports-response-strategy.pdf)

<sup>2</sup> This data was obtained by the Australian Bureau of Statistics using Australian Harmonized Export Commodity Classification codes for the years 2018-2019.

<sup>3</sup> <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/phasing-out-exports-waste-plastic-paper-glass-and-tyres>

## **Details and Operation**

Details of the Rules are set out in Attachment A.

The Rules commence on 1 December 2021.

## **Other**

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

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

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

**Part 1 - Preliminary**

**Section 1 – Name**

1. Section 1 provides that the name of the instrument is the *Recycling and Waste Reduction (Export—Waste Tyres) Rules 2021* (the Rules).

**Section 2 – Commencement**

2. Section 2 provides that the Rules commence on 1 December 2021.
3. The note below the table provides that the table relates only to the provisions of the Rules as originally made. It will not be amended to deal with any later amendments of the Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments is not reflected in this table.
4. Subsection 2(2) clarifies that any information in column 3 of the table is not part of the Rules. Information may be inserted in this column, or edited in this column, in any published version of the Rules.

**Section 3 – Authority**

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

**Section 4 – Definitions**

6. Section 4 defines a number of key terms for the purposes of the Rules. These terms include *regulated waste tyres*, *regulated tyre derived fuel*, *waste tyres export licence*, *re-use*, *waste tyre specification* and *listed waste tyre specification*.
7. *Regulated waste tyres* and *regulated tyre derived fuel* mean, respectively, waste tyres and tyre derived fuel that are prescribed in section 5 of the Rules. These are key concepts in the Rules because they set the scope of what is being regulated under the Rules.
8. A *waste tyres export licence* is an export licence to carry out export operations in relation to regulated waste tyres. This is a key concept in the Rules which, in conjunction with the Act, regulate the application and assessment process for waste tyres export licences and impose conditions on such licences.
9. A *waste tyre specification* is a written industry specification or standard that relates to the processing or supply of waste tyres. A waste tyre specification may be a commercial or other written industry specification (for example, it may be a customer's specification), relating to the waste tyres. This is a key concept in the Rules as most applications for a waste tyres export licence will need to nominate a waste tyre specification with which the

tyres to be exported under that licence will comply, and the holder of the licence will be required to process the tyres in accordance with that specification before they are exported. This is intended to ensure that regulated waste tyres exported from Australia do not cause environmental harm in the importing country or other countries.

10. A *listed waste tyre specification* is a waste tyre specification, as existing from time to time, that is listed on the Department's website. It is intended that the listed waste tyre 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 tyres. However, a listed waste tyre specification will not automatically be appropriate for all exports of a kind of regulated waste tyres. The suitability of a listed waste tyre 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 tyres. It is intended that the listed waste tyre specifications will be publicly and freely available.
11. *Re-use*, in relation to a tyre, means re-use as a tyre without any further processing. This definition distinguishes between the export of tyres intended for re-use as a tyre overseas (referred to in this explanatory statement as 'tyres intended for re-use as a tyre') and tyres that are exported for retreading before they are re-used (referred to in this explanatory statement as 'tyres intended for retreading').
12. Section 4 of the Rules also includes a number of signpost definitions to terms that are defined in other sections of the Rules. These include *waste tyres* and *tyre derived fuel*.

## **Part 2 – Regulating waste tyres**

### **Section 5 – Waste tyres that are regulated waste material**

13. Subsection 17(1) of the Act provides that the rules may prescribe a kind of waste material for the purposes of the Act.
14. Subsection 5(1) of the Rules is made for the purposes of subsection 17(1) of the Act and prescribes waste tyres, other than the kinds of waste tyres referred to in subsection 5(4), as regulated waste material for the purposes of the Act. This is an important concept in the Act and the Rules as it sets the scope of the regulatory scheme created by the legislation. Only waste tyres that are prescribed under this section will be subject to the requirements of the Act and the Rules.
15. The note following subsection 5(1) explains that waste tyres prescribed under this section are referred to as 'regulated waste tyres' in the Rules.
16. Subsection 5(2) defines the concept of *waste tyres*, for the purposes of the Rules. *Waste tyres* are:
  - a) tyres that are designed for motorised vehicles and that are discarded, rejected or left over from an industrial, commercial, domestic or other activity;

- b) tyres that are designed for motorised vehicles and that are surplus to or a by-product of an industrial, commercial, domestic or other activity;
  - c) the rubber component of tyres covered by (a) or (b); or
  - d) tyre derived fuel.
17. Tyres that fall within the definition of waste tyres will be subject to the requirements of the Act and the Rules, unless they are excluded by subsection 5(4).
18. Subsection 5(3) defines the concept of *tyre derived fuel*. Tyre derived fuel falls within the definition of *waste tyres* in subsection 5(2), and therefore is regulated by the Act and the Rules. Tyre derived fuel is waste material that includes waste tyres (within the meaning of subsection 5(2)) whether alone or processed with any other waste material, that is intended for use as fuel.
19. However, waste material that meets the definition of *processed engineered fuel* in the *Recycling and Waste Reduction (Export—Waste Plastic) Rules 2021* (Plastic Rules) will not be tyre derived fuel. This means that waste tyres that are processed with waste plastics and are intended for use as fuel will be regulated by the Act and the Plastic Rules, rather than these Rules. This is intended to ensure consistency in the regulatory requirements applying to the export of waste plastics, including for use as fuel.
20. Subsection 5(4) sets out the kinds of waste tyres that are not prescribed as regulated waste tyres (and therefore not subject to the requirements of the Act and the Rules). These are:
- a) waste tyres that are exported for personal or domestic use;
  - b) waste tyres that are imported into Australia on a temporary basis and are re-exported in the same covering and with the same trade description (within the meaning of the *Commerce (Trade Descriptions) Act 1905*) with which they were imported;
  - c) waste tyres that are hazardous waste in relation to which an order or arrangement has been made by the Minister under Part 3 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (Hazardous Waste Act);
  - d) tyres designed for an electric single-person transport such as scooters, skateboards and bikes (other than electric motorbikes or similar road vehicles);
  - e) tyres designed for a wheelchair;
  - f) tyres designed for a remote control toy;
  - g) tyres with no rubber component.

21. An exporter of a kind of waste tyres listed at subsection 5(4) is not required to comply with the requirements of the Act and Rules, including the requirements to hold an export licence and make an export declaration (section 6).
22. Requiring waste tyres that are imported into Australia on a temporary basis to meet the requirements of the 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.
23. Under Part 3 of the Hazardous Waste Act, the Minister is empowered to order an importer or exporter who has imported or exported hazardous waste in contravention of that Act to deal with their hazardous 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 tyres because regulating the export of such waste tyres under the Rules would likely frustrate the compliance regime under the Hazardous Waste Act.

#### **Section 6 – Prescribed export conditions for regulated waste tyres**

24. Section 18 of the Act provides that the rules may prohibit the export of regulated waste material unless conditions prescribed by the rules are complied with. 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.
25. Section 6 of the Rules is made for the purposes of section 18 of the Act and sets out the prescribed export conditions that must be met when exporting regulated waste tyres.
26. There are two conditions that must be met before regulated waste tyres can be exported. The first is that the exporter must hold a waste tyres export licence that covers the tyres being exported. That licence must be in force and not suspended at the time of the export. The second condition is that the exporter must have given an export declaration to the Minister for each consignment that is being exported.
27. Section 6 is drafted as a prohibition. This means that exporters need to ensure that the prescribed export conditions are met prior to the regulated waste tyres being exported. Failure to do so may mean that the exporter has breached the offence and civil penalty provisions in section 20 of the Act. It will not be possible to obtain a licence, or to give an export declaration to the Minister, that covers a consignment of regulated waste tyres that has already been exported.

### **Part 3 – Waste tyres export licences**

#### **Section 7 – Application for waste tyres export licence - requirements**

28. Section 172 of the Act sets out the general requirements for all applications made under the Act. Relevantly, paragraphs 172(1)(c) and (d) require, respectively, that an application include the information (if any) prescribed by the rules and be accompanied by any documents prescribed by the rules.
29. Section 7 of the Rules is made for the purposes of paragraphs 172(1)(c) and (d) of the Act and prescribes the information that must be included in, and documents that must accompany, an application for a waste tyres export licence.
30. There are four categories of waste tyres export licences under the Rules. These are:
  - a) a licence for the export of tyres other than tyre derived fuel, tyres intended for retreading or tyres intended for re-use as a tyre;
  - b) a licence for the export of tyre derived fuel;
  - c) a licence for the export of tyres intended for retreading; and
  - d) a licence for the export of tyres intended for re-use as a tyre.
31. Subsections 7(2) to (4) apply to an application for a waste tyres export licence that covers regulated waste tyres (including tyre derived fuel) other than tyres intended for retreading, or tyres intended for re-use as a tyre.
32. Subsection 7(2) requires the application to nominate a waste tyre specification to which the tyres exported under the licence will comply.
33. The nominated waste tyre specification will be stated in the licence, if granted. The holder of the licence will be then required, by the conditions of that licence, to process the regulated waste tyres in accordance with the specification before they are exported. This is intended to ensure that regulated waste tyres are processed in Australia prior to being exported so as to minimise the risk of the waste tyres causing environmental harm in the importing country or other countries.
34. Subsection 7(3) has the effect that if the nominated waste tyre specification is not a listed waste tyre specification, the application must also include a copy of the specification. This is to ensure that the Minister is able to assess the appropriateness of the nominated specification for the intended use of the regulated waste tyres.



35. Subsection 7(4) requires the application to also include information demonstrating that each kind of regulated waste tyres will be processed before export to comply with the nominated specification for the kind of tyres. This information is intended to assist the Minister in assessing whether the applicant is likely to comply with the conditions of the licence, if granted.
36. Subsection 7(5) applies to an application for a waste tyres export licence that covers regulated waste tyres that are intended for retreading. The application is required to nominate each retreading facility in which the tyres will be retread and provide information as to how the exporter intends to meet any requirements set by the facility regarding the kind and quality of the tyres to be exported. This information is intended to assist the Minister in assessing whether the applicant should be granted a waste tyres export licence (including whether the nominated retreading facility or facilities are appropriate, and whether the applicant is likely to be able to comply with the requirements of the facility and the conditions of the licence, if granted).
37. Each nominated retreading facility will be stated in the licence, if granted. The holder of the licence will be then required, by the conditions of that licence, to ensure that the regulated waste tyres are retread at a retreading facility stated in their licence. This is intended to ensure that regulated waste tyres are only exported to be retread at a facility that has been assessed by the Minister as appropriate, so as to minimise the risk of the waste tyres causing environmental harm in the importing country or other countries.
38. Subsection 7(6) applies to an application for a waste tyres export licence that covers regulated waste tyres that are intended for re-use as a tyre. The application is required to nominate each person to whom the tyres covered by the licence will be imported (the importer or importers) and provide information as to how the exporter intends to meet any requirements set by the importer regarding the kind and quality of the tyres to be exported. This information is intended to assist the Minister in assessing whether the applicant should be granted a waste tyres export licence (including whether the nominated importer or importers are appropriate, and whether the applicant is likely to be able to comply with the requirements of the importer and the conditions of the licence, if granted).
39. Each nominated importer will be stated in the licence, if granted. The holder of the licence will be then required, by the conditions of that licence, to ensure that the regulated waste tyres are exported to an importer stated in their licence. This is intended to ensure that regulated waste tyres that are to be exported for re-use as a tyre are only exported to an importer that has been assessed by the Minister as appropriate, so as to minimise the risk of the waste tyres causing environmental harm in the importing country or other countries.

40. 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.

**Section 8 – Deciding whether to grant a waste tyres export licence – regulated waste tyres other than for retreading or re-use and tyre derived fuel**

41. Subsection 34(1) of the Act provides that, on receiving an application for an export licence, the Minister must decide to grant the export licence, or to refuse to grant the export licence. Subsection 34(2) of the Act has the effect that, in deciding whether to grant the export licence, the Minister must have regard to the matters set out in that subsection. These matters include the objects of the Act, whether the applicant is a fit and proper person, whether the applicant’s relevant Commonwealth liabilities have been paid, and whether the applicant is likely to comply with the conditions of the licence. Paragraph 34(2)(f) allows the rules to prescribe additional matters to which the Minister must have regard when deciding whether to grant an export licence.

42. Section 8 of the Rules is made for the purpose of paragraph 34(2)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to grant a waste tyres export licence that covers regulated waste tyres that are not:

- a) tyres intended for retreading; or
- b) tyres intended for re-use as a tyre; or
- c) tyre derived fuel.

43. Paragraphs 8(2)(a) and 8(2)(b) require the Minister to have regard to the intended use of the regulated waste tyres in the place to which the tyres are intended to be exported, as well as the appropriateness of the nominated waste tyre 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 tyres will result in appropriate human and environmental health outcomes, including through the reuse or remanufacture of the regulated waste tyres in the importing country, while avoiding the possibility of the regulated waste tyres ending up in landfill or inappropriately burned overseas.

44. Paragraph 8(2)(c) sets out additional matters to which the Minister must have regard if the waste tyre specification nominated is not a listed waste tyre specification. These matters are:

- a) the thresholds for contaminants in the specification;
- b) any packaging requirements in the specification;

- c) any size requirements in the specification, and whether processing the waste tyres in accordance with the specification will result in pieces with dimensions of 150 mm or less;
  - d) whether the tyres processed in accordance with the specification will be shred or processed into rubber crumb, granules or buffings.
45. Requiring the Minister to have regard to these matters ensures a proper assessment of the appropriateness of the non-listed waste tyre specification that is nominated. This is necessary because the Minister will generally not have previously considered the content of a waste tyre specification that is not a listed waste tyre specification.
46. Paragraph 8(2)(d) requires the Minister to also have regard to whether the applicant has applied for, is the holder of, or has been refused, an export permit under the Hazardous Waste Act in respect of regulated waste tyres covered by the licence. As set out above, the Hazardous Waste Act applies in tandem with the requirements of the Act and the Rules. Refusal of a hazardous waste export permit in relation to waste tyres that are also hazardous waste within the meaning of that legislation may indicate that an exporter is not suitable to hold an export licence. It also may not be appropriate to grant a waste tyres export licence to export regulated waste tyres to a particular importing country if a hazardous waste permit has already been refused. The matter in paragraph 8(2)(d) is intended to reduce inconsistency between the two schemes and streamline the regulatory requirements for exporting regulated waste tyres.
47. Paragraph 8(2)(e) requires the Minister to 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 an export licence may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
48. Paragraph 8(2)(f) requires the Minister to have regard to 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, contravened. Contravening a condition of an export permit may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
49. A note to subsection 8(2) directs the reader to other matters at paragraphs 34(2)(a) to (e) of the Act to which the Minister must have regard when deciding whether to grant an export 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.

**Section 9 – Deciding whether to grant a waste tyres export licence – tyres intended for retreading**

50. Section 9 of the Rules is also made for the purpose of paragraph 34(2)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to grant a waste tyres export licence that covers tyres intended for retreading.

51. Paragraphs 9(2)(a) to (e) require the Minister to have regard to the intended use of the tyres in the place to which the tyres are intended to be exported (ie retreading), as well as the appropriateness of the kind of tyres intended for retreading, whether the applicant is likely to ensure that waste tyres exported under the licence are clean, dry and undamaged, the appropriateness of the nominated retreading facility for retreading the tyres, and whether the applicant is likely to meet the requirements of the nominated retreading facility in relation to the quality and kind of tyres to be exported. These matters provide scope for the Minister to consider, consistently with the objects of the Act, whether the export of the tyres intended for retreading will result in appropriate human and environmental health outcomes, which may include considering how the processes undertaken at, and the environmental history and relevant regulatory approvals of, the nominated retreading facility.
52. Paragraph 9(2)(f) requires the Minister to also have regard to whether the applicant has applied for, is the holder of, or has been refused, an export permit under the Hazardous Waste Act in respect of the kind of tyres that would be covered by the licence. As set out above, the Hazardous Waste Act applies in tandem with the requirements of the Act and the Rules. Refusal of a hazardous waste export permit in relation to the kind of tyres that would be covered by the licence (where those tyres are also hazardous waste within the meaning of that legislation) may indicate that an exporter is not suitable to hold an export licence. It also may not be appropriate to grant a waste tyres export licence to export such tyres to a particular importing country if a hazardous waste permit had already been refused. The matter in paragraph 9(2)(f) is intended to reduce inconsistency between the two schemes and streamline the regulatory requirements for exporting tyres intended for retreading.
53. Paragraph 9(2)(g) requires the Minister to 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 an export licence may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
54. Paragraph 9(2)(h) requires the Minister to have regard to 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, contravened. Contravening a condition of an export permit may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
55. A note to subsection 9(2) directs the reader to other matters at paragraphs 34(2)(a) to (e) of the Act to which the Minister must have regard when deciding whether to grant an export 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.

## **Section 10 - Deciding whether to grant a waste tyres export licence—tyres intended for re-use as a tyre**

56. Section 10 of the Rules is also made for the purpose of paragraph 34(2)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to grant a waste tyres export licence that covers tyres intended for re-use as a tyre.
57. Paragraphs 10(2)(a) to (e) require the Minister to have regard to the intended use of the tyres in the place to which the tyres are intended to be exported (ie re-use as a tyre), as well as the appropriateness of the kind of tyres intended for re-use (including whether the tyres have, or are likely to have, sufficient tread depth remaining), whether the applicant is likely to ensure that waste tyres exported under the licence are clean, dry and undamaged, the appropriateness of the nominated importer for ensuring that the tyres will be re-used as tyres, and whether the applicant is likely to meet the requirements of the nominated importers in relation to the quality and kind of tyres to be exported. These matters provide scope for the Minister to consider, consistently with the objects of the Act, whether the export of the tyres intended for re-use as a tyre will result in appropriate human and environmental health outcomes.
58. Paragraph 10(2)(f) requires the Minister to also have regard to whether the applicant has applied for, is the holder of, or has been refused, an export permit under the Hazardous Waste Act in respect of the kind of tyres that would be covered by the licence. As set out above, the Hazardous Waste Act applies in tandem with the requirements of the Act and the Rules. Refusal of a hazardous waste export permit in relation to the kind of tyres that would be covered by the licence (where those tyres are also hazardous waste within the meaning of that legislation) may indicate that an exporter is not suitable to hold an export licence. It also may not be appropriate to grant a waste tyres export licence to export such tyres to a particular importing country if a hazardous waste permit has already been refused. The matter in paragraph 9(2)(f) is intended to reduce inconsistency between the two schemes and streamline the regulatory requirements for exporting tyres intended for retreading.
59. Paragraph 10(2)(g) requires the Minister to 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 an export licence may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
60. Paragraph 10(2)(h) requires the Minister to have regard to 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, contravened. Contravening a condition of an export permit may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.

61. A note to subsection 10(2) directs the reader to other matters at paragraphs 34(2)(a) to (e) of the Act to which the Minister must have regard when deciding whether to grant an export 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.

**Section 11 – Deciding whether to grant a waste tyres export licence – regulated tyre derived fuel**

62. Section 11 of the Rules is also made for the purpose of paragraph 34(2)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to grant a waste tyres export licence that covers tyre derived fuel.

63. Paragraphs 11(2)(a) and 11(2)(b) require the Minister to have regard to the intended use of the tyre derived fuel in the place to which the fuel is intended to be exported, as well as the appropriateness of the nominated waste tyre 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 tyre derived fuel will result in appropriate human and environmental health outcomes, which may include considering how the tyre derived fuel will be burned.

64. Paragraph 11(2)(c) sets out additional matters to which the Minister must have regard if the waste tyre specification nominated is not a listed waste tyre specification. These matters are:

- a) any calorific value requirements in the specification;
- b) the thresholds for contaminants in the specification;
- c) any packaging requirements in the specification;
- d) any particle size or bulk density requirements in the specification, and whether processing the tyre derived fuel in accordance with the specification will result in pieces with dimensions of 150 mm or less;
- e) the threshold for moisture in the specification;
- f) any testing or sampling requirements in the specification.

65. Requiring the Minister to have regard to these matters ensures a proper assessment of the appropriateness of the non-listed waste tyre specification that is nominated. This is necessary because the Minister will generally not have previously considered the content of a waste tyre specification that is not a listed waste tyre specification.

66. Paragraph 11(2)(d) requires the Minister to also have regard to whether the applicant has applied for, is the holder of, or has been refused, an export permit under the Hazardous Waste Act in respect of tyre derived fuel. As set out above, the Hazardous Waste Act applies in tandem with the requirements of the Act and the Rules. Refusal of a hazardous waste export permit in relation to tyre derived fuel that is also hazardous waste within the meaning of that legislation may indicate that an exporter is not suitable to hold an export licence. It also may not be appropriate to grant a waste tyres export licence to export regulated tyre derived fuel to a particular importing country if a hazardous waste permit had already been refused. The matter in paragraph 11(2)(d) is intended to reduce inconsistency between the two schemes and streamline the regulation of exporting tyre derived fuel.
67. Paragraph 11(2)(e) requires the Minister to 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 an export licence may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
68. Paragraph 11(2)(f) requires the Minister to have regard to 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, contravened. Contravening a condition of an export permit may potentially indicate that an applicant may not comply with the conditions of a waste tyres export licence.
69. A note to subsection 11(2) directs the reader to other matters at paragraphs 34(2)(a) to (e) of the Act to which the Minister must have regard when deciding whether to grant an export 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.
70. The matters to which the Minister must have regard in relation to an application for an export licence for regulated waste tyres that is tyre derived fuel are similar to those the Minister must consider for regulated waste tyres that is neither tyre derived fuel nor tyres intended for retreading or re-use as a tyre (see section 8). The differences are in the technical matters that the Minister must consider for a nominated waste tyre specification that is not a listed waste tyre specification, which are tailored to tyre derived fuel.

## **Section 12 – Conditions of waste tyres export licence – regulated waste tyres other than for retreading or re-use and tyre derived fuel**

71. Section 35 of the Act provides that an export licence is subject to the conditions provided by the Act (paragraph 35(1)(a)), the conditions prescribed by the rules (other than any of those conditions that the Minister decides are not to be conditions of the licence (paragraph 35(1)(b)), and any additional conditions that the Minister considers appropriate and that are specified in the licence (paragraph 35(1)(c)).
72. Section 12 of the Rules is made for the purposes of paragraph 35(1)(b) of the Act and prescribes the conditions that apply to waste tyres export licences that cover regulated waste tyres other than:

- a) tyres intended for retreading;
- b) tyres intended for re-use as a tyre; or
- c) tyre derived fuel.

73. The conditions for licences covering the export of tyres intended for retreading are set out in section 13. The conditions for licence covering the export of tyres intended for re-use as a tyre are set out in section 14. The conditions for licences covering the export of tyre derived fuel are set out in section 15.

74. There are three notes to subsection 12(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. 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.

75. 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.

76. 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.

77. Subsection 12(2) of the Rules makes it a condition of the licence that, for each consignment of regulated waste tyres exported under the licence, the holder of the licence must:

- a) ensure that the regulated waste tyres comply, before export, with the waste tyre specification for the tyres stated in the licence; and
- b) have, at the time the tyres are exported, a commercial relationship with the importer of the tyres.

78. The requirement to ensure the tyres comply before export with the relevant waste tyre specification stated in the licence is intended to prevent licence holders from, after the licence has been granted, changing their business practices to use another specification that has not been assessed, or to not use any specification. This could result in environmental harm in the importing country. If the holder of a waste tyres export licence wished to change the waste tyre specification stated in their licence, they would need to apply to the Minister to vary their export licence.



79. Evidence of a commercial relationship with an overseas importer of regulated waste tyres is important to ensuring that regulated waste tyres are exported for a legitimate purpose, and to provide an assurance that the regulated waste tyres will be used or remanufactured in an environmentally sound way and are unlikely to end up as landfill in the importing country.
80. Subsection 12(3) makes it a condition of the licence that, if the holder of the licence is not the supplier of the regulated waste tyres covered by the licence, the holder must, at the time the tyres were supplied, have had a commercial relationship with the supplier. This condition ensures the holder of the waste tyres export licence has a connection to the sorting or processing of the regulated waste tyres covered by the licence, which will help ensure the tyres will meet the specification stated in the licence prior to export from Australia.
81. Subsection 12(4) makes it a condition of the licence that, if the waste tyres export licence states a place (or places) to which the regulated waste tyres covered by the licence may be exported, the licence holder must export the tyres only to place (or places). The purpose of this condition is to ensure that regulated waste tyres are only exported to places that have a demonstrated ability to process or remanufacture the waste tyres. This is intended to prevent any landfilling or dumping of the regulated waste tyres in the relevant country (or any other country) which could cause environmental harm. If the holder of the waste tyres export licence wishes to export to a different place to those stated on their licence, they will need to apply to vary their licence under section 42 of the Act.
82. Subsections 12(5) and (6) make it a condition of the licence that the waste tyres export licence must notify the Minister, as soon as practicable and in the form approved by the Minister, if any of the following changes occur:
- a) there is a change in the supplier of the regulated waste tyres covered by the licence;
  - b) there is a change in the freight forwarder or other agent used to export the regulated waste tyres covered by the licence (including using an agent where one was not previously used, or ceasing to use an agent); or
  - c) there is a change in the importer of the regulated waste tyres covered by the licence.
83. Requiring the holder of a waste tyres 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.
84. In addition to the offence and civil penalty in section 59 of the Act, if the holder of a waste tyres export licence contravenes the conditions of their export licence, the Minister may decide to vary, suspend, or revoke the licence.

### **Section 13 – Conditions of waste tyres export licence – tyres intended for retreading**

85. Section 13 of the Rules is also made for the purposes of paragraph 35(1)(b) of the Act and prescribes the conditions that apply to waste tyres export licences that cover tyres intended for retreading.
86. There are three notes to subsection 13(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. 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.
87. 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.
88. 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.
89. Subsection 13(2) of the Rules makes it a condition of the licence that, for each consignment of tyres intended for retreading that is exported under the licence, the licence holder must, at the time the tyres are exported, have a commercial relationship with either the retreading facility stated in the licence in which the tyres are to be retreaded or, if the facility is not the importer of the tyres, the importer. Evidence of a commercial relationship with an overseas facility or importer of regulated waste tyres is important for ensuring that regulated waste tyres are exported for a legitimate purpose, and to provide an assurance that the regulated waste tyres will be retread in an environmentally sound way and be unlikely to end up as landfill in the importing country.
90. Subsection 13(3) of the Rules makes it a condition of the licence that, for each consignment of tyres to be exported under the licence, the licence holder must ensure that the tyres are clean, dry and undamaged, and are not baled or subject to high-density packing (such as doubling or tripling). This provides an assurance that the regulated waste tyres will be transported and dealt with in an environmentally sound way.
91. Subsection 13(4) of the Rules makes it a condition of the licence that, for each consignment of tyres intended for retreading that is exported under the licence, the licence holder must ensure that the tyres are retread at a retreading facility stated in the licence. This prevents licence holders from changing their business practices after the licence has been granted to use another retreading facility that hasn't been assessed, which could cause environmental harm in the importing country. If the holder of a waste tyres export licence wishes to change the retreading facility (or facilities) stated in their licence, they will need to apply to the Minister under section 42 of the Act to vary their export licence.

92. Subsection 13(5) makes it a condition of the licence that, if the holder of the licence is not the supplier of the tyres intended for retreading, the holder must, at the time the tyres were supplied, have had a commercial relationship with the supplier.
93. Subsection 13(6) makes it a condition of the licence that, if the waste tyres export licence states a place (or places) to which the tyres intended for retreading may be exported, the licence holder must export the tyres only to that place (or places). The licence will state a retreading facility in which the tyres will be retread, but may also state a place (such as the country of a retreading facility) to which the tyres may be exported. The purpose of this condition is to ensure that tyres intended for retreading are only exported to places that have a demonstrated ability to retread the waste tyres. This is intended to prevent any landfilling or dumping of the tyres in the relevant country (or any other country) which could cause environmental harm. If the holder of the waste tyres export licence wishes to export to a different place to that stated on their licence, they will need to apply to vary their licence under section 42 of the Act.
94. Subsections 13(7) and (8) make it a condition of the licence that the licence holder must notify the Minister, as soon as practicable and in the form approved by the Minister, if any of the following changes occur:
- a) there is a change in the supplier of the tyres covered by the licence;
  - b) there is a change in the freight forwarder or other agent used to export the tyres covered by the licence (including using an agent where one was not previously used, or ceasing to use an agent);
  - c) there is a change in the importer of the tyres covered by the licence; or
  - d) if the retreading facility stated in the licence is a business – there is a change in the person operating the business .
95. Requiring the holder of a waste tyres 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.
96. In addition to the offence and civil penalty in section 59 of the Act, if the holder of a waste tyres export licence contravenes the conditions of their export licence, the Minister may decide to vary, suspend, or revoke the licence.

#### **Section 14 – Conditions of waste tyres export licence – tyres intended for re-use**

97. Section 14 of the Rules is also made for the purposes of paragraph 35(1)(b) of the Act and prescribes the conditions that apply to waste tyres export licences that cover tyres intended for re-use as a tyre.

98. There are three notes to subsection 14(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. 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.
99. 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.
100. 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.
101. Subsection 14(2) of the Rules makes it a condition of the licence that, for each consignment of tyres intended for re-use as a tyre that is exported under the licence, the licence holder must, at the time the tyres are exported, have a commercial relationship with the importer of the tyres. Evidence of a commercial relationship with an overseas importer of regulated waste tyres is important to ensuring that regulated waste tyres are exported for a legitimate purpose, and to provide an assurance that the regulated waste tyres will be re-used as a tyre in an environmentally sound way and be unlikely to end up as landfill in the importing country.
102. Subsection 14(3) of the Rules makes it a condition of the licence that, for each consignment of tyres to be exported for re-use as a tyre under the licence, the licence holder must ensure that the tyres are clean, dry and undamaged, and are not baled or subject to high-density packing (such as doubling or tripling). This provides an assurance that the regulated waste tyres will be transported and dealt with in an environmentally sound way.
103. Subsection 14(4) of the Rules makes it a condition of the licence that, for each consignment of tyres intended for re-use as a tyre that is exported under the licence, the licence holder must ensure that the tyres are exported to an importer stated in the licence. This prevents licence holders from changing their business practices after the licence has been granted to use another importer that has not been assessed, which could cause environmental harm in the importing country. If the holder of a waste tyres export licence wishes to change the importer (or importers) stated in their licence, they will need to apply to the Minister under section 42 of the Act to vary their export licence.
104. Subsection 14(5) makes it a condition of the licence that, if the holder of the licence is not the supplier of the tyres intended for re-use as a tyre, the holder must, at the time the tyres were supplied, have had a commercial relationship with the supplier.

105. Subsection 14(6) makes it a condition of the licence that, if the waste tyres export licence states a place (or places) to which the tyres intended for re-use as a tyre may be exported, the licence holder must export the tyres only to that place (or places). The licence will state an importer (or importers) to which the tyres must be exported, but may also state a place (such as the country of an importer) to which the tyres may be exported. The purpose of this condition is to ensure that tyres intended for re-use as a tyre are only exported to places that have a demonstrated ability to re-use the waste tyres as tyres. This is intended to prevent any landfilling or dumping of the tyres in the relevant country (or any other country) which could cause environmental harm. If the holder of the waste tyres export licence wishes to export to a different place to that stated on their licence, they will need to apply to vary their licence under section 42 of the Act.

106. Subsections 14(7) and (8) make it a condition of the licence that the licence holder must notify the Minister, as soon as practicable and in the form approved by the Minister, if any of the following changes occur:

- a) there is a change in the supplier of the tyres covered by the licence;
- b) there is a change in the freight forwarder or other agent used to export the tyres covered by the licence (including using an agent where one was not previously used, or ceasing to use an agent); or
- c) if the importer stated in the licence is a business – there is a change in the person operating the business.

107. Requiring the holder of a waste tyres 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.

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

### **Section 15 – Conditions of waste tyres export licence – regulated tyre derived fuel**

109. Section 15 of the Rules is also made for the purposes of paragraph 35(1)(b) of the Act and prescribes the conditions that apply to waste tyres export licences that cover tyre derived fuel.

110. There are three notes to subsection 15(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. 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.

111. 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.
112. 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.
113. Subsection 15(2) of the Rules makes it a condition of the licence that, for every consignment of tyre derived fuel exported under the licence, the holder of the licence must:
- a) ensure that the fuel complies, before export, with the waste tyre specification for the fuel stated in the licence;
  - b) ensure that the fuel is securely packaged before export;
  - c) take all reasonable steps to ensure that the fuel will be combusted in a way that minimises the risk of harm to the environment or human health; and
  - d) have, at the time the fuel is exported, a commercial relationship with the importer of the fuel.
114. Subsection 15(3) makes it a condition of the licence that, if the holder of the licence is not the supplier of the tyre derived fuel, the holder must, at the time the fuel was supplied, have had a commercial relationship with the supplier. This condition ensures the holder of the waste tyres export licence has a connection to the sorting or processing of the regulated waste tyres that is tyre derived fuel, which will help ensure it will meet the specification stated in the licence prior to export from Australia.
115. Subsection 15(4) makes it a condition of the licence that, if the waste tyres export licence states a place (or places) to which the tyre derived fuel may be exported, the licence holder must export the tyre derived fuel only to that place (or places). The purpose of this condition is to ensure that tyre derived fuel is only exported to places that have a demonstrated ability to process or remanufacture the waste tyres. This is intended to prevent any landfilling or dumping of the tyre derived fuel in the relevant country (or any other country) which could cause environmental harm. If the holder of the waste tyres export licence wishes to export to a different place to that stated on their licence, they will need to apply to vary their licence under section 42 of the Act.
116. Subsections 15(5) and (6) make it a condition of the licence that the licence holder must notify the Minister, as soon as practicable and in the form approved by the Minister, if any of the following changes occur:
- a) there is a change in the supplier of the tyre derived fuel covered by the licence;

- b) there is a change in the freight forwarder or other agent used to export the tyre derived fuel covered by the licence (including using an agent where one was not previously used, or ceasing to use an agent); or
- c) there is a change in the importer of the tyre derived fuel covered by the licence.

117. Requiring the holder of a waste tyres 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.

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

### **Section 16 – Information to be stated in waste tyres export licence**

119. Section 36 of the Act sets out the particulars of an export licence, including the matters that must be stated in the licence. Paragraph 36(2)(k) allows the rules to specify additional matters that must be stated in an export licence.

120. Section 16 of the Rules is made for the purpose of paragraph 36(2)(k) of the Act and prescribes the additional matters that must be stated in a waste tyres export licence. These matters are:

- a) for licences covering the export of tyre derived fuel or regulated waste tyres other than tyres intended for retreading or re-use as a tyre – the waste tyre specification with which the regulated waste tyres covered by the licence will comply. At the grant of the licence this will be the waste tyre specification nominated by the applicant in their application for a waste tyres export licence. However, the holder of the licence will be able to apply to the Minister under section 42 of the Act to vary the specification stated on their licence;
- b) for licences covering the export of regulated waste tyres that are tyres intended for retreading – the retreading facility (or facilities) in which tyres exported under the licence will be retreaded. At the grant of the licence this will be the retreading facility (or facilities) nominated by the applicant in their application for a waste tyres export licence. However, the holder of the licence will be able to apply to the Minister under section 42 of the Act to vary the retreading facilities stated on their licence;
- c) for licences covering the export of regulated waste tyres that are tyres intended for re-use as a tyre – the importer (or importers) to which the tyres covered by the licence will be exported. At the grant of the licence this will be the importer (or importers) nominated by the applicant in their application for a waste tyres export licence. However, the holder of the licence will be able to apply to the Minister under section 42 of the Act to vary the importers stated on their licence.

121. The notes after subsections 16(2), (3) and (4) alert the reader that the licence can be varied under the Act.

122. The licence conditions in sections 12 and 15 of the Rules require the holder of a waste tyres export licence covering tyre derived fuel and regulated waste tyres other than tyres intended for retreading or intended for re-use as a tyre to comply with the specification stated in their licence.

123. Similarly:

- a) the licence conditions in section 13 of the Rules require the holder of a waste tyres export licence covering regulated waste tyres that are tyres intended for retreading to ensure that the tyres are retreaded at a retreading facility stated in the licence; and
- b) the licence conditions in section 14 of the Rules require the holder of a waste tyres export licence covering regulated waste tyres that are tyres intended for re-use as a tyre to ensure that the tyres are exported to an importer stated in the licence.

### **Section 17 – Renewal of waste tyres export licence**

124. Sections 38 to 40 of the Act deal with applications to renew an export licence.

125. Subsection 38(2) provides that the holder of an export licence may apply to the Minister to renew their licence. Subsection 38(4) requires an application for renewal of an export licence to be made within the period prescribed by the rules (paragraph 38(4)(a)) or, if the Minister allows a longer period, within that period (paragraph 38(4)(b)).

126. Subsection 17(1) of the Rules is made for the purpose of paragraph 38(4)(a) of the Act and prescribes the period within which an application to renew a waste tyres export licence must be made.

127. An application for renewal of a waste tyres export licence must be made no later than 30 days before the expiry date for the licence.

128. The purpose of providing a minimum timeframe for allowing an application for renewal of a waste tyres 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 tyres export licence application process and involves a simplified form that provides for the reconsideration of information previously provided. This approach reduces the regulatory burden on exporters who renew their waste tyres export licences.

129. The note following subsection 17(1) explains that an application for renewal of a waste tyres export licence may only be made under the Act if there is an expiry date for the licence. It further explains that some waste tyres export licences remain in force until a specified event occurs.



130. Subsection 39(1) of the Act provides that, on receiving an application to renew an export licence, the Minister must decide to renew the licence or to refuse to renew the licence. Subsection 39(3) of the Act sets out the matters to which the Minister must have regard when deciding whether to renew an export licence under subsection 39(1). These matters include the objects of the Act, whether the applicant is a fit and proper person, whether the applicant has paid all relevant Commonwealth liabilities and whether the applicant would be likely to comply with the conditions of the renewed licence.

131. Paragraph 39(3)(f) allows the rules to prescribe additional matters to which the Minister must have regard when deciding whether to renew an export licence.

132. Subsection 17(2) of the Rules is made for the purpose of paragraph 39(3)(f) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to renew a waste tyres export licence. These additional matters are:

- a) for a licence that covers regulated waste tyres other than waste tyres that are tyre derived fuel, tyres intended for retreading or tyres intended for re-use as a tyre – the matters set out in subsection 8(2);
- b) for a licence that covers regulated waste tyres that are tyres intended for retreading – the matters set out in subsection 9(2);
- c) for a licence that covers regulated waste tyres that are tyres intended for re-use as a tyre – the matters set out in subsection 10(2);
- d) for a licence that covers regulated tyre derived fuel – the matters set out in subsection 11(2).

133. Subsection 17(3) has the effect that, for the purposes of the application of subsection 17(2), a reference in subsection 8(2) or 11(2) to a waste tyre specification nominated in an application is taken, if the licence holder has not nominated a different specification in the application for renewal of the licence, to be a reference to the waste tyre specification currently stated in the licence.

134. In contrast, a reference in subsection 9(2) to a retreading facility is taken, for the purposes of the application of subsection 17(2), to be a retreading facility currently stated in the licence. This means the holder of a waste tyres export licence will not be able to nominate a new retreading facility in an application to renew their licence. If the holder of a waste tyres export licence wishes to change the retreading facility stated in their licence, they will be able to apply to the Minister to vary their licence under subsection 42(1) of the Act.

135. Similarly, a reference in subsection 10(2) to an importer is taken, for the purposes of the application of subsection 17(2), to be an importer currently stated in the licence. This means the holder of a waste tyres export licence will not be able to nominate a new importer in an application to renew their licence. If the holder of a waste tyres export licence wishes to change the importer (or importers) stated in their licence, they will be able to apply to the Minister to vary their licence under subsection 42(1) of the Act.
136. The note after subsection 17(2) alerts the reader that the other matters to which the Minister must have regard are specified in paragraphs 39(3)(a) to (e) of the Act, and that the Minister may also have regard to any other matter that the Minister considers relevant (subsection 39(4)).

### **Section 18 – Application by holder to vary waste tyres export licence – requirements**

137. Section 172 of the Act sets out the general requirements for all applications made under the Act. Relevantly, paragraphs 172(1)(c) and (d) require, respectively, that an application include the information (if any) prescribed by the rules and be accompanied by any documents prescribed by the rules.
138. Subsection 42(1) of the Act allows the holder of an export licence to apply to the Minister to vary their licence. The variation may be to the conditions of the licence, the kinds of regulated waste material or export operations covered by the licence, the places to which regulated waste material may be exported, the expiry date for the licence or any other aspect of the licence.
139. For waste tyres export licences, subsection 42(1) would allow the holder to apply to the Minister to vary, among other things, the waste tyre specification, retreading facility or importer (as the case may be) stated in the licence.
140. Section 18 of the Rules is made for the purposes of paragraphs 172(1)(c) and (d) of the Act and prescribes the information and documents required to be provided with an application under subsection 42(1) of the Act for a variation of a waste tyres export licence.
141. The requirements in subsection 18(2) are only relevant to applications to vary a waste tyres export licence to change the waste tyre specification stated in their licence (whether to add another specification, or to substitute a new waste tyre specification for a waste tyre specification currently stated in the licence). In these circumstances, the application must include information demonstrating that the regulated waste tyres to be exported under the varied licence will be processed in accordance with the new specification. If the new specification is not a listed waste tyre specification, the application must also include a copy of the new specification. This will allow the Minister, when deciding whether to make the requested variation, to assess the appropriateness of the new waste tyre specification for the intended use of the waste tyres.

142. The requirements in subsection 18(3) are only relevant to applications to vary a waste tyres export licence to change the retreading facility (or facilities) specified in the licence. In these circumstances, the application must nominate a new retreading facility to which tyres to be exported under the licence will be retread. This will allow the Minister, when deciding whether to make the requested variation, to assess the appropriateness of the new retreading facility.

143. The requirements in subsection 18(4) are only relevant to applications to vary a waste tyres export licence to change the importer (or importers) specified in the licence (for licences to export regulated waste tyres intended for re-use as a tyre). In these circumstances, the application must nominate a new importer to which tyres covered by the licence will be exported. This will allow the Minister, when deciding whether to make the requested variation, to assess the appropriateness of the new importer.

### **Section 19 – Deciding whether to vary a waste tyres export licence**

144. Subsection 42(1) of the Act allows the holder of an export licence to apply to the Minister to vary their licence. Subsection 42(3) has the effect that if the Minister receives an application under subsection 42(1) to vary an export licence, the Minister must decide to make the variation or to refuse to make the variation.

145. Subsection 42(4) of the Act sets out the matters to which the Minister must have regard when deciding whether to vary an export licence under subsection 42(3). These matters include the objects of the Act, whether the applicant has paid all relevant Commonwealth liabilities and whether the applicant would be likely to comply with the conditions of the varied licence. Paragraph 42(4)(e) allows the rules to prescribe additional matters to which the Minister must have regard when deciding whether to vary an export licence.

146. Section 19 of the Rules is made for the purpose of paragraph 42(4)(e) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to vary a waste tyres export licence. These matters are:

- a) for a licence that covers regulated waste tyres other than tyre derived fuel, tyres intended for retreading or tyres intended for re-use as a tyre – the matters set out in subsection 8(2);
- b) for a licence that covers regulated waste tyres that are tyres intended for retreading – the matters set out in subsection 9(2);
- c) for a licence that covers regulated waste tyres that are tyres intended for re-use as a tyre – the matters set out in subsection 10(2);
- d) for a licence that covers regulated tyre derived fuel – the matters set out in subsection 11(2).

147. The note after subsection 19(1) alerts the reader that the other matters to which the Minister must have regard are specified in paragraphs 42(3)(a) to (d) of the Act, and that the Minister may also have regard to any other matter that the Minister considers relevant (subsection 42(6) of the Act).
148. Subsection 19(2) has the effect that, for the purposes of the application of subsection 19(1), a reference in subsection 8(2), 9(2), 10(2) or 11(2) to a thing nominated in an application is taken, if the licence holder has not nominated something different in the variation application, to be a reference to the thing currently stated in the licence. This may relate, for example, to a waste tyre specification, retreading facility or importer (as the case may be).

## **Section 20 – Reasons for variation of waste tyres export licence**

149. Subsections 44(1) and (2) of the Act have the combined effect of allowing the Minister to unilaterally vary an export licence if the Minister reasonably believes that one or more of the specified reasons are met. The specified reasons include, among others, where a condition of the licence has been, or is being, contravened, where the holder of the licence is not a fit and proper person, where it is necessary to do so to prevent or lessen a threat to human or environmental health, and where the holder of the licence failed to comply with a direction or contravened a requirement of the Act.
150. Paragraph 44(2)(i) of the Act allows the rules to prescribe additional reasons for the unilateral variation of an export licence. Section 20 of the Rules is made for the purposes of paragraph 44(2)(i) and prescribes additional reasons on which the Minister may unilaterally vary a waste tyres export licence.
151. For a waste tyres export licence that covers tyres intended for retreading, the additional reason is that it is no longer appropriate to export the tyres to a retreading facility stated in the licence. In the circumstances where there are multiple facilities stated on the licence, it may be appropriate to vary the export licence to remove the particular retreading facility to which it is no longer appropriate to export.
152. For a waste tyres export licence that covers tyres intended for re-use as a tyre, the additional ground is that it is no longer appropriate to export the tyres to an importer stated in the licence. In the circumstances where there are multiple importers stated on the licence, it may be appropriate to vary the export licence to remove the particular importer to which it is no longer appropriate to export.
153. The note after section 20 alerts the reader that paragraphs 44(2)(a) to (h) of the Act set out other reasons for the variation of an export licence. These reasons apply to a waste tyres export licence in addition to the grounds prescribed by section 20 of the Rules.

## **Section 21 – Grounds for suspension of waste tyres export licence**

154. Subsection 46(1) of the Act allows the Minister to suspend an export licence if the Minister reasonably believes that one or more of the specified grounds are met. The specified grounds include, among others, where a condition of the licence has been, or is being, contravened, where the holder of the licence is not a fit and proper person, where it is necessary to do so to prevent or lessen a threat to human or environmental health, and where the holder of the licence failed to comply with a direction or contravened a requirement of the Act.
155. Paragraph 46(1)(i) of the Act allows the rules to prescribe additional grounds for the suspension of an export licence. Section 21 of the Rules is made for the purposes of paragraph 46(1)(i) and prescribes additional grounds on which the Minister may suspend a waste tyres export licence.
156. The first additional ground is that 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.
157. The ability to suspend a waste tyres export licence in circumstances where the original decision to grant the licence (or to renew or vary 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 waste tyres. It ensures that appropriate regulatory action can be taken.
158. The second additional ground applies to a waste tyres export licence that covers tyres intended for retreading. The ground is that it is no longer appropriate to export the tyres to a retreading facility stated in the licence. In the circumstances where there is only one retreading facility stated on the licence, it may be appropriate to suspend the export licence if the Minister reasonably believes it is no longer appropriate to export to that retreading facility.
159. The third additional ground applies to a waste tyres export licence that covers tyres intended for re-use as a tyre. The ground is that it is no longer appropriate to export the tyres to an importer stated in the licence. In the circumstances where there is only one importer stated on the licence, it may be appropriate to suspend the export licence if the Minister reasonably believes it is no longer appropriate to export to that importer.
160. The note after section 21 alerts the reader that paragraphs 46(1)(a) to (h) of the Act set out other grounds for the suspension of an export licence. These grounds apply to a waste tyres export licence in addition to the grounds prescribed by section 21 of the Rules.

## **Section 22 – Grounds for revocation of waste tyres export licence**

161. Subsection 54(1) of the Act allows the Minister to revoke an export licence if the Minister reasonably believes that one or more of the specified grounds are met. The specified grounds include, among others, where a condition of the licence has been, or is being, contravened, where the holder of the licence is not a fit and proper person, where it is necessary to do so to prevent or lessen a threat to human or environmental health, and where the holder of the licence failed to comply with a direction or contravened a requirement of the Act.
162. Paragraph 54(1)(i) of the Act allows the rules to prescribe additional grounds for the revocation of an export licence. Section 22 of the Rules is made for the purposes of paragraph 54(1)(i) and prescribes additional grounds on which the Minister may revoke a waste tyres export licence.
163. The first additional ground is that 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.
164. The ability to revoke a waste tyres export licence in circumstances where the original decision to grant the licence (or renew or vary 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 waste tyres and ensures that appropriate regulatory action can be taken.
165. It is anticipated that a decision to revoke the licence, rather than to suspend the licence, could potentially be made where the incomplete or incorrect information or documents relate to fundamental aspects of the decision to grant the licence. An example might be where, had the correct information been provided at the appropriate time, the Minister may have formed a view that the applicant was not a fit and proper person, or that the holder of the licence was no longer a fit and proper person.
166. The second additional ground applies to a waste tyres export licence that covers tyres intended for retreading. The ground is that it is no longer appropriate to export the tyres to a retreading facility stated in the licence. In the circumstances where there is only one retreading facility stated on the licence, it may be appropriate to revoke the export licence if the Minister reasonably believes it is no longer appropriate to export to that retreading facility.

167. The third additional ground applies to a waste tyres export licence that covers tyres intended for re-use as a tyre. The ground is that it is no longer appropriate to export the tyres to an importer stated in the licence. In the circumstances where there is only one importer stated on the licence, it may be appropriate to revoke the export licence if the Minister reasonably believes it is no longer appropriate to export to that importer.

168. The note after section 22 alerts the reader that paragraphs 54(1)(a) to (h) of the Act set out other grounds for the revocation of an export licence. These grounds apply to a waste tyres export licence in addition to the grounds prescribed by section 22 of the Rules.

### **Section 23 – Holder of waste tyres export licence to notify Minister of certain events**

169. 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 (subsections 61(3) and (4) of the Act). Paragraph 61(1)(e) provides that the rules may prescribe additional events of which the Minister must be notified.

170. Section 23 is made for the purpose of paragraph 61(1)(e) of the Act and prescribes that the holder of a waste tyres export licence must notify the Minister of the following:

- a) if the holder of the licence ceases to operate the export business that carries out the operations covered by the licence; and
- b) if a person who participates in the management or control of the export business that carries out export operations covered by the licence ceases to be in that role.

171. The purpose of requiring the licence holder to notify the Minister of such changes to their operation is to allow the Minister to decide whether any action needs to be taken to uphold the regulatory framework, such as variation of the conditions of the licence.

### **Section 24 – Directions to holders of waste tyres export licences**

172. Section 64 of the Act allows the Minister to give written directions to the holder of an export licence. In considering whether to give a direction under subsection 64, the Minister is required to have regard to the objects of the Act (paragraph 64(3)(a)) and any other matters prescribed by the rules (paragraph 64(3)(b)).

173. Section 24 of the Rules is made for the purpose of paragraph 64(3)(b) of the Act and prescribes additional matters to which the Minister must have regard when deciding whether to give a direction to the holder of an export licence under section 64. These matters are whether the holder has contravened (or is likely to contravene) a condition of the licence, whether the holder has not complied (or is likely not to comply) with a requirement of the Act, and whether the regulated waste tyres covered by the licence do not comply (or are likely not to comply) with a requirement under the Act that applies in relation to the tyres.

174. The purpose of section 24 is to require the Minister, in addition to having regard to the objects of the Act, to also have regard to whether certain non-compliant behaviour has occurred, or is likely to occur, before giving a direction.

## **Part 4 – Exemptions**

### **Section 25 – Application for exemptions – requirements**

175. Section 25 of the Act provides that a person may apply to the Minister for an exemption from one or more provisions of Chapter 2 of the Act. This may include an exemption from having to comply with prescribed export conditions in section 6 of the Rules (the requirement to hold a waste tyres export licence and give the Minister an export declaration for each consignment of regulated waste tyres to be exported).

176. Section 172 of the Act sets out the general requirements for all applications made under the Act. Relevantly, paragraphs 172(1)(c) and (d) require, respectively, that an application include the information (if any) prescribed by the rules and be accompanied by any documents prescribed by the rules.

177. Section 25 of the Rules is made for the purposes of paragraphs 172(1)(c) and (d) of the Act and prescribes the information and documents required to be provided with an application under section 25 of the Act for an exemption relating to the export of a trade sample of regulated waste tyres. The requirements in section 25 of the Rules do not apply in relation to applications for exemptions that are not related to the export of a trade sample. Information and documents required for other exemption applications will be prescribed by the approved form.

178. Section 4 of the Rules defines a *trade sample*, in relation to regulated waste tyres, as tyres that are exported solely for the purposes of market testing, and that are not hazardous waste (within the meaning of the *Hazardous Waste (Regulation of Exports or Imports) Act 1989*), tyres intended for retreading, or tyres intended for re-use as a tyre.

179. Subsection 25(2) requires that an application for an exemption relating to the export of a trade sample of regulated waste tyres must nominate a waste tyre specification with which the trade sample will comply.

180. If the nominated waste specification is not a listed waste tyre specification, the application must be accompanied by a copy of the specification. This will allow the Minister to assess the appropriateness of the specification, when deciding whether it is appropriate to grant the exemption.

181. Subsection 25(3) requires an application for an exemption relating to the export of a trade sample of regulated waste tyres to also include information demonstrating that the tyres will be processed prior to export to comply with the nominated specification.



182. 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 25 are required in addition to the information and documents required by an approved form.

183. If the exemption application does not relate to a trade sample of regulated waste tyres, an applicant will not be required to nominate a waste tyre specification. However, the Minister must still be satisfied that it is appropriate to grant the exemption before they can do so. In deciding whether it is appropriate to grant the exemption, the Minister must have regard to the objects of the Act (paragraph 26(3)(a)), and may, in accordance with paragraph 26(3)(b) of the Act, have regard to any other matter that is relevant. This could potentially include whether the waste tyres have been, or will be, processed in accordance with a waste tyre specification.

184. The purpose of section 25 is to facilitate the export of trade samples whilst ensuring that the waste tyres are processed in accordance with an appropriate specification to minimise risks to environmental and human health.

### **Section 26 – Deciding whether to grant exemption**

185. Subsection 26(1) of the Act provides that, on receiving an application for an exemption, the Minister must decide to grant the exemption, or to refuse to grant the exemption. Subsection 26(2) of the Act has the effect that the Minister may only grant the exemption if satisfied, having regard to any matter prescribed by the rules and any other matter the Minister considers relevant, that any requirements prescribed by the rules are met (paragraph 26(2)(a)), and that it is appropriate to grant the exemption (paragraph 26(2)(b)).

186. Section 26 of the Rules is made for the purposes of subsection 26(2) of the Act and prescribes matters to which the Minister must have regard when deciding whether it is appropriate to grant an exemption relating to the export of a trade sample of regulated waste tyres (for the purposes of paragraph 26(2)(b)). There are no requirements prescribed for the purposes of paragraph 26(2)(a) for exemptions relating to the export of a trade sample of regulated waste tyres.

187. The matters to which the Minister must have regard when deciding whether it is appropriate to grant an exemption relating to the export of a trade sample of regulated waste tyres are set out in subsection 26(2) of the Rules. There is one matter, which is whether the applicant is capable of complying with the waste tyre specification the applicant nominated in their application (see section 25).

188. Subsection 26(3) sets out additional matters to which the Minister must have regard where the applicant nominated a waste tyre specification that is not a listed waste tyre specification. These additional matters are:

- a) for an exemption in relation to the export of a trade sample of regulated waste tyres other than tyre derived fuel – the matters specified in paragraph 8(2)(c).

These matters are the thresholds for contaminants in the specification, any packaging requirements in the specification, any size requirements in the specification (including whether processing in accordance with the specification will result in pieces of not more than 150mm), whether tyres processed in accordance with the specification will be shred or processed into rubber crumb, granules or buffing, and whether tyres processed in accordance with the specification are appropriate for the intended use of the tyres in the place to which the tyres are intended to be exported;

- b) for an exemption in relation to the export of a trade sample of tyre derived fuel – the matters specified in paragraph 11(2)(c).

These matters are any calorific 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 (including whether processing in accordance with the specification will result in pieces of not more than 150mm) and the threshold for moisture in the specification, and any sampling or testing in the specification.

189. The purpose of this section is to help to ensure each consignment of regulated waste tyres (other than hazardous waste or tyres intended for retreading or re-use) that are exported as a trade sample are processed to an acceptable level to minimise risk to human and environmental health prior to export.

190. If an exemption application does not relate to a trade sample of regulated waste tyres, the requirements in section 26 of the Rules will not apply. However, the Minister must still be satisfied that it is appropriate to grant the exemption before they can do so. In deciding whether it is appropriate to grant the exemption, the Minister may, in accordance with paragraph 26(2)(b) of the Act, have regard to any other matter that the Minister considers relevant. This could include if the regulated waste tyres have been, or will be, processed in accordance with a waste tyre specification.

### **Section 27 – Revocation of exemption**

191. Subsection 31(1) of the Act allows the Minister to revoke an exemption that was granted under section 26 of the Act and is in force. Subsection 31(2) of the Act provides that, in considering whether to revoke an exemption, the Minister must have regard to the objects of the Act (paragraph 31(2)(a)), and any matter prescribed by the rules (paragraph 31(2)(b)).

192. Section 27 of the Rules is made for the purposes of paragraph 31(2)(b) of the Act and prescribes the additional matters to which the Minister must have regard when considering whether to revoke an exemption that relates to the export of regulated waste tyres. These additional matters are whether the holder of the exemption has contravened, or is contravening, a condition of the exemption.

193. The purpose of this section is to make it clear that an exemption may potentially be revoked if the exporter does not comply with the conditions of that exemption.

194. Section 27 applies to all exemptions relating to the export of regulated waste tyres, not just exports of trade samples.

## **Part 5 – Record-keeping**

### **Section 28 – Purpose of Part**

195. Subsection 142(1) of the Act relevantly provides that the rules may make provision for and in relation to requiring records to be made and retained by holders of export licences.

196. Section 28 of the Rules provides that Part 5 (sections 28 to 30) is made for the purposes of subsection 142(1) of the Act. Sections 29 and 30 prescribe record-keeping requirements for the holders of a waste tyres export licence.

### **Section 29 – Making and retaining records**

197. Subsection 29(1) of the Rules sets out the records that must be retained by a person who holds a waste tyres export licence. These records are:

- a) for each consignment of regulated waste tyres 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 tyres in the consignment, and of the consignment once packed for export, that have sufficient resolution, brightness and contrast to show the tyres and consignment clearly and that are time and date stamped;
- b) for each consignment of regulated waste tyres exported under the licence that are intended for re-use as a tyre – a copy of the receipt for payment for the consignment issued by the licence holder to the importer; and
- c) all documents made by the holder or that come into the licence holder's possession that are relevant to showing whether the holder has complied or is complying with the applicable requirements of the Act.

198. Subsection 29(2) has the effect that the holder of a waste tyres export licence must retain the documents mentioned in subsection 29(1) for at least 5 years beginning on the day the record is made by the holder or comes into the holder's possession (as the case may be).

199. Subsection 29(3) makes it clear that records required to be retained under subsection 29(1) must be in English and must be able to be audited. They also must be dated with either the date the record was created (for records created by the holder) or the date the record comes into the holder's possession. The holder of a waste tyres export licence is also required to ensure that all documents created by them are accurate and legible.

200. Subsection 29(4) provides that if a record required to be retained under subsection 29(1) is not in English, the licence holder must obtain and retain a translation of the record into English as soon as reasonably practicable after the record is made by the holder or comes into the holder's possession.

201. The requirement to make and retain records provides assurances that holders of waste tyres export licences are complying with their obligations under the Act. This helps to ensure that the export of the regulated waste tyres 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 tyres were processed to the standard required by the Rules).

### **Section 30 – Records must not be altered or defaced during retention period**

202. Subsection 30(1) provides that a record that is retained as required by section 29 must not be altered or defaced during the 5 year period in which it is required to be retained (the retention period).

203. Subsection 30(2) clarifies that, despite subsection 30(1), notations or markings may be made on the record in accordance with ordinary practice. An example might be initialing the document.

204. Subsection 30(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 a copy of the original document (without markings or notations) where reasonably practicable, and copies of the record that show how the record has changed over time.

205. The purpose of section 30 is to provide flexibility for the licence holder 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 29.

### **Part 6 – Other matters**

#### **Section 31 – Circumstances in which relevant Commonwealth liability of a person is taken to be paid**

206. Section 181 of the Act allows the rules to prescribe circumstances where a relevant Commonwealth liability is taken to have been paid for the purposes of complying with the following provisions:

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

207. 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.
208. Section 31 of the Rules is made for the purposes of section 181 of the Act. Subsections 31(1) and (2) have the combined effect that, for the purposes of granting, renewing, or varying a waste tyres export licence, a relevant Commonwealth liability of a person is taken to have been paid if:
- a) the person, or another person, has given a written undertaking to the Minister to pay the amount of the relevant Commonwealth liability; and
  - b) 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
  - c) the Minister has accepted the payment undertaking and has not revoked the acceptance of the undertaking.
209. Subsection 31(3) has the effect that the Minister can only accept an undertaking after having considered the financial position of the person who gave the undertaking, the nature and likely cost of the relevant export operations, and whether the person who gave the payment undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the relevant export operations.
210. Subsection 31(4) makes it clear that the Minister can also consider any other matter the Minister considers relevant when deciding whether to accept a payment undertaking.
211. It is generally considered appropriate that a person should not be able to obtain or continue to enjoy the benefits of the Act, without meeting their liabilities. However, it is recognised that there may be some circumstances where it may be considered appropriate for the relevant Commonwealth liability to be taken to have been paid, such as where payment of the relevant Commonwealth liability is no longer within the applicant's control. Section 31 provides the Minister with flexibility to accept a payment undertaking in lieu of payment in certain circumstances, noting that a payment undertaking does not waive the liability, which will still need to be paid in accordance with the undertaking given.

## 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 (Export—Waste Tyres) 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 (Export—Waste Tyres) Rules 2021* (the Rules) is 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 Rules operate to:

- prescribe waste tyres as a regulated waste material (regulated waste tyres);
- prohibit the export of regulated waste tyres unless prescribed export conditions are complied with. The prescribed export conditions are that the exporter is required to obtain an export licence and make an export declaration for each consignment of regulated waste tyres exported under the licence;
- prescribe information that must be included in, and documents that must accompany, an application for a waste tyres export licence, or a variation of a waste tyres export licence;
- prescribe additional matters to which the Minister must have regard when deciding whether to grant, renew, or vary, a waste tyres export licence;
- prescribe conditions for waste tyres export licences;
- prescribe additional matters that must be stated on a waste tyres export licence;
- prescribe the period within which an application for renewal of a waste tyres export licence must be made;
- prescribe additional grounds for varying, suspending or revoking a waste tyres export licence;

- prescribe record keeping requirements relating to the export of regulated waste tyres; 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 tyres export licence.

### **Human rights implications**

This legislative 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

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]).

A key objective of the Act and the 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 Rules achieve this by regulating the export of waste tyres to promote its management in an environmentally sound way.

In particular:

- section 6 of the Rules prohibits the export of regulated waste tyres unless certain export conditions are met, such as that the exporter holds a waste tyres export licence;
- section 7 of the Rules prescribes information and documents that must be provided in an application for a waste tyres export licence, including a waste tyre specification with which the tyres exported under the licence will comply;
- sections 8-11 of the Rules require the Minister to have regard to the appropriateness of the intended use of the waste tyres before granting a waste tyres export licence;

- sections 12-15 of the Rules impose conditions on a waste tyres export licence which include requiring the holder of the licence to process their waste tyres in accordance with a waste tyre specification that has been assessed by the Minister, or to ensure that their waste tyres are retread at a retreading facility (for tyres intended for retreading) or exported to an importer (for tyres intended for re-use as a tyre) that has been assessed by the Minister;
- sections 21 and 22 of the Rules allow for the, suspension or revocation of a waste tyres 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, or if it is no longer considered appropriate to export the tyres to a retreading facility or importer stated on the licence; and
- sections 29 and 30 of the Rules prescribes record keeping requirements for holders of waste tyres export licences, which will assist in monitoring compliance with the requirements of the Act.

By regulating these matters, the Rules aims to ensure that the export of regulated waste tyres does not adversely impact on human or environmental health in the importing country or other countries.

For these reasons, the Rules are consistent with the right to health in Article 12(1) of the ICESCR.

### 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 products.

Section 29 of the Rules requires the holder of a waste tyres export licence to make and retain specified records for five years. Under the Act, these records can be audited, or required to be produced to the Minister in certain circumstances.

It is expected that most holders of waste tyres export licences will be bodies corporates. However, if an individual holds a waste tyres export licence, section 29 of the Rules may, in some cases, require the retention of a small amount of personal information, which may then be audited or required to be provided to the Minister. This personal information may include the applicant's name and contact details. Section 29 therefore operates to limit the right to privacy.



Section 29 requires holders of waste tyres 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 Rules.

The limitation to the right to privacy imposed by section 29 of the Rules is therefore considered reasonable, necessary, and proportionate.

The 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 and, to the extent that it limits the right to privacy in Article 17 of the ICCPR, those limitations are reasonable, necessary, and proportionate.

**The Hon Trevor Evans MP**

**Assistant Minister for Waste Reduction and Environmental Management  
Parliamentary Secretary to the Minister for the Environment**