Australian Government

Department of Sustainability, Environment, Water, Population and Communities

COMMENTARY ON EXPOSURE DRAFT OF THE *PRODUCT STEWARDSHIP (TELEVISIONS AND COMPUTERS) REGULATIONS 2011*

September 2011

© Commonwealth of Australia
This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth.
Requests and inquiries concerning reproduction and rights should be addressed to the:

Commonwealth Copyright Administration
Attorney–General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600
Or posted at:
http://www.ag.gov.au/cca

Note
The commentary has been prepared to assist readers to understand and provide comment on the draft Product Stewardship (Televisions and Computers) Regulations to be made under the *Product Stewardship Act 2011.* An explanatory statement setting out the detail of the final regulations will be published once the regulations are made.

Table of Contents

1. Purpose of this document

The Australian Government intends to make regulations under the co-regulatory provisions of the *Product Stewardship Act 2011* (the Product Stewardship Act), to provide for a nationally-consistent and industry-run approach to the collection and recycling of waste televisions, computers and computer products. This combination of government regulation and industry action is collectively referred to as the National Television and Computer Recycling Scheme (the Scheme).

The purpose of this explanatory document and the exposure draft of the *Product Stewardship (Televisions and Computers) Regulations 2011* (the draft Regulations), is to provide the basis for consultation with industry, community and government stakeholders. This document provides background information on the development of the draft Regulations and explanatory information to help understand the objectives and operation of provisions in the draft Regulations. This document is intended to be read in conjunction with the draft Regulations and the Product Stewardship Act.

All persons wishing to comment on the draft Regulations are invited to make written comments to the Department of Sustainability, Environment, Water, Population and Communities (the department) before close of business on 10 October 2011.

Submissions or inquiries in relation to the draft Regulations should be directed to the following postal or email address:

Product Stewardship Legislation Team
Waste Policy Branch
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601
Email: wastepolicy@environment.gov.au

Copies of this paper and the exposure draft Regulations are available on the department's website at www.environment.gov.au/ewaste. All submissions must be accompanied by a confidentiality coversheet, which is also available on the department's website.

2. Background to the Regulations

On 5 November 2009 all Australian governments, through the Environment Protection and Heritage Council (EPHC), agreed to a new national policy on waste and resource recovery. The *National Waste Policy: Less Waste, More Resources* sets the strategic agenda for reducing waste and managing waste as a resource to deliver economic, environmental and social benefits to 2020. The policy was endorsed by the Council of Australian Governments in August 2010. Under Strategy 1 of the National Waste Policy it was agreed that:

> The Australian Government, with the support of state and territory governments, will establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at end of life.

The Product Stewardship Act was passed by the Australian Parliament on 22 June 2011 and came into effect on 8 August 2011.

The EPHC agreed that televisions and computers would be the first products to be regulated under the legislation using a co-regulatory approach. Co-regulatory approaches to product stewardship involve a combination of government regulation and industry action, whereby government sets the outcomes and requirements to be met, while industry has flexibility in determining how those outcomes and requirements are achieved. Following the EPHC's decision, the then Minister for the Environment, Heritage and the Arts announced that the Scheme is expected to achieve 80 per cent recycling by 2020-21.

The EPHC's endorsement for a national collection and recycling scheme for televisions and computers followed extensive consultation and consideration of a Decision Regulatory Impact Statement (RIS), which demonstrated that there was a net community benefit to be achieved from establishing such a scheme. The RIS was released in November 2009 and can be found online at www.ephc.gov.au/taxonomy/term/51.

The co-regulatory approach outlined in the RIS included the following Scheme design parameters:

- Importers and manufacturers of televisions, computers and computer products will be responsible for running and funding the Scheme, including collection infrastructure, recycling, awareness and education programs and governance activities;
- A threshold[1] will be applied to exclude corporations that import or manufacture less than 5000 units, to limit the impact of the Scheme on small business.
- The Scheme will collect all covered products (that is, including orphan and legacy waste);
- Import tariff codes will be used to identify those products to be covered by the Scheme;

[1] The threshold for importers and manufacturers of computer products has been lifted to 15,000 units.

- Enforceable recycling targets will be set – analysis in the Regulation Impact Statement showed that it would take approximately 8 years to reach a recycling rate of 70 per cent and approximately 10 years to reach a rate of 80 per cent; and
- Collection services will be provided in metropolitan, regional and remote areas.

Context for national action on television and computer waste

The RIS showed that television and computer waste amounted to approximately 106,000 tonnes (16.8 million units) in 2007-08. Approximately 10 per cent of this was recycled, with the rest being sent to landfill. These waste volumes are increasing and are expected to grow to 181,000 tonnes (44 million units) by 2027-28.

The RIS highlighted a number of problems associated with the current low recycling rate for television and computer products:

- **Failure to conserve non-renewable resources**: these products contain embedded non-renewable resources such as glass, plastics and lead that can be recycled, but that are lost when disposed to landfill.
- **Failure to take advantage of community willingness to recycle**: An independent survey of Australians indicated that respondents would be willing to pay for a guaranteed increase in the recycling rate of non-renewable resources in televisions and computers. This suggests that community expectations are not being met in light of current disposal methods.
- **Free-rider problem**: Previous trials of television and computer recycling schemes in Australia have generally been successful because of the program and financial support provided by government, or because they are brand specific. While peak bodies and other key players have expressed interest in establishing recycling schemes, they are unprepared to implement a scheme without full industry participation, that is, to avoid a free-rider problem.
- **Costs and risks associated with landfilling**: Landfilling of television and computer products may also present risks and costs because of the hazardous substances they contain. Materials such as lead, bromine, mercury and zinc can be dangerous to humans and the environment. The projected growth in landfill volumes of televisions and computer products will also contribute to the direct costs of operating landfills and the opportunity costs of land.
- **International obligations**: As a signatory to the Basel Convention on the Control of the Transboundary Movement of Hazardous Waste and Their Disposal and Stockholm Convention on Persistent Organic Pollutants, Australia is required, among other things, to ensure that the generation of hazardous and other wastes within Australia is reduced to a minimum and ensure that wastes are disposed of in a manner that protects human health and the environment against any adverse effects of such waste.

The above considerations highlight the national significance of television and computer waste for government and the community. A consistent national approach to product stewardship for televisions and computers offers cost savings and would prevent any adverse impacts that result from inconsistencies across borders. The National Waste Policy Regulation Impact Statement (available at www.environment.gov.au/settlements/waste/publications/pubs/nwp-ris.pdf) cited the potential for administrative savings to be gained ($29.4 million over 20 years) through a national approach to waste policy when compared to jurisdictional approaches.

Consultation to date

The draft Regulations have been developed following a comprehensive national consultation process, starting in 2009 with the consultation regulation impact statement undertaken by the Environment Protection and Heritage Council. The consultation process undertaken most recently included the release of the *National Television and Computer Product Stewardship Scheme Consultation Paper on the Proposed Regulations* (the consultation paper) on 8 March 2011 which sought feedback on the proposed design of the Regulations. It also involved officers from the department travelling to 11 locations across Australia, including all capital cities and three regional areas, to conduct public forums (attended by over 300 people) and bilateral discussions with stakeholders.

The public comment period on the consultation paper closed on 8 April 2011 and 62 submissions were received from a broad range of stakeholders, including from local, state and territory governments, recyclers, the television and computer industry, the collection and logistics industry, industry associations, non-government organisations and a university.

Of the 62 submissions received, 61 (98.5%) expressed support for the development of the scheme and only one submission (1.5%) from an individual opposed any scheme outright. Key design parameters in the consultation paper that received support from stakeholders included:

- 20% target starting point;
- Reporting and assessment/approval requirements;
- Methodology for estimating waste generation (based on past imports); and
- Point of liability.

Stakeholders also recommended changes or raised matters relating to some of the design parameters outlined in the consultation paper, including:

- Changing thresholds or differentiating the thresholds between product classes;
- Specifying a recycling target rather than a collection-for-recycling target;
- Including a target for the amount of resources recovered through the recycling process;
- How the scheme will be implemented and potential costs for Local Government; and
- Potential impact on small and/or charitable recyclers.

The department has published a copy of the independent analysis of the submissions at its website: www.environment.gov.au/ewaste. Matters raised by stakeholders in the March – April 2011 consultation process have informed the development of the draft Regulations.

Further analysis since the consultation paper

The draft Regulations have also been informed by further analysis that the department has undertaken or commissioned on a number of key issues, including:

- Alternative thresholds options;
- Methodologies for estimating waste generation and setting targets;
- Options for target trajectories;
- Conversion factors for converting units to weight;
- Mass balance of television and computer recycling in Australia and implications for setting a material recovery target; and
- Minimum requirements for access to collection services.

A summary of these analyses is at Attachment A.

The Product Stewardship Act and the Regulations

The Regulations will be made under Part 3 of the *Product Stewardship Act 2011* (the Act), and should be read alongside those provisions. The primary object of the Act is to reduce the impact:

(a) that products have on the environment, throughout their lives; and
(b) that substances contained in products have on the environment, and on the health and safety of human beings, throughout the lives of those products.

Part 3 (co-regulatory provisions) of the Act empowers the making of regulations to:

- identify a class of products to be regulated;
- specify outcomes, such as recycling outcomes, to be achieved for those products;
- identify classes of persons as "liable parties" who are required to be a member of a "co-regulatory arrangement" designed to achieve the outcomes specified in the Regulations; and
- put in place other requirements to facilitate effective implementation, including reporting and record-keeping requirements for administrators of co-regulatory arrangements.

In order to understand the draft Regulations, there are several key concepts used in the Product Stewardship Act that are important to note:

- A "liable party" (in this case importers and Australian manufacturers) specified in the Regulations, is required to be a member of an industry-run arrangement ("approved co-regulatory arrangement") designed to achieve the outcomes specified in the Regulations.
- An "approved co-regulatory arrangement" is a set of activities or measures designed to achieve the outcomes in the Regulations. Arrangements can have one 'liable party' member or multiple liable parties participating.

- An “arrangement administrator” is the body corporate responsible for administering an approved arrangement on behalf of member liable parties and must ensure all reasonable steps are taken to meet outcomes specified in the Regulations. An Administrator of an arrangement can apply to have an arrangement approved by the Minister.

Under the Act, substantial civil penalties apply to a liable party that fails to become a member of an approved co-regulatory arrangement. The Act also provides for assessment and approval of co-regulatory arrangements, and for the issuing of audit and improvement notices to administrators of non-performing co-regulatory arrangements. A co-regulatory arrangement that does not achieve its outcomes can also have its approval cancelled.

3. Overview of the Regulations

The purpose of the Regulations is to establish national, industry-run arrangements for the collection and recycling of televisions, computers and computer products. The Regulations will ensure that all liable parties in the industry meet a consistent set of product stewardship obligations across Australia while also assuring the community and industry that the delivery of those obligations are effectively monitored and enforced.

In line with the aims of the National Waste Policy and the objects of the Product Stewardship Act, the objectives of the Scheme are to:

- reduce the amount of television and computer waste (particularly hazardous waste materials) for disposal to landfill;
- increase recovery of resources from end-of-life television and computer products in a safe, scientific and environmentally sound manner;
- ensure national coverage; and
- fair and equitable industry participation in the Scheme.

The starting point for the Scheme's parameters is the co-regulatory approach to product stewardship endorsed by the Environment Protection and Heritage Council (as outlined on p.5 of this document).

The primary goal of the Scheme is by 2021 to have lifted recycling rates to 80 percent of waste televisions, computers and computer products generated in that year (up from 10 per cent in 2007-2008). The goal of 80 percent is considered to be an ambitious but achievable target within the timeframe provided.

Consistent with the objectives of the Scheme, annual recycling targets that rise progressively and provisions in the Regulations to require reasonable access to collection services for metropolitan, regional and remote areas will drive increasing recycling of televisions, computers and computer products. A "quality assurance" target for the amount of materials recovered from the recycled products is proposed to come into effect in year three of the Scheme, aimed at ensuring the amount of material that ends up in landfill is limited. This proposal is subject to a regulation impact statement before a decision is made to include in the final Regulations.

The consultation paper suggested a 20 percent recycling target for year one of the Scheme. The results of consultation combined with an assessment of recycling capacity in Australia, suggest it is practical to set a recycling target of 30 percent for the first full year of the Scheme (2012-2013). As the starting year of the Scheme (2011-12) will only be a partial year it is proposed that no recycling target be set for that period, and to allow recycling undertaken in financial year 2011-12, following commencement of the Regulations, to be counted towards an arrangement's recycling target for 2012-13. Crediting action by the television and computer industry in 2011-2012 towards the target set for 2012-13 provides an incentive for recycling to start as soon as practical, and makes a higher recycling target than 20 percent achievable for 2012-13.

Consultation also suggests it is possible for industry to provide reasonable access to recycling services in metropolitan and regional areas by June 2013 (rather than the five years suggested in the consultation paper).

Products covered by the Regulations

The draft Regulations apply to televisions, computers, printers and computer products. “Computer products” include both internal parts of computers (e.g. motherboards) and computer products (e.g. keyboards). In order to precisely identify the products in question, Schedule 1 to the Regulations specifies 75 tariff/statistical codes of relevant products, and associated descriptions. These are the codes used by importers in Customs import declarations.

The starting point for defining the products covered by the draft Regulations are the definitions used in the RIS and the relevant Customs tariff codes used in the RIS modelling. This defined televisions, computers and computer products as follows:

- *Television*: a visual display device, such as a cathode ray tube (CRT), liquid crystal display (LCD), surface-conduction electron-emitter display (SED), organic light emitting diode (OLED) or plasma unit, with an internal or external broadcast tuner.
- *Computer*: computer displays, computer desktops and similar, computer mobile units (eg notebook or laptop computers).
- *Computer product*: includes items such as keyboards, mouse, hard drives, scanners, speakers, web cameras, personal or desktop laser and inkjet printers, and multi function devices. Computer products are also considered to include internal computer components, such as motherboards, graphics or network cards and DVD Drives.

It is not intended to capture other products which may contain television or computer-like components such as motor vehicles, whitegoods, and aeronautical or medical equipment under the Scheme. As a consequence some codes examined in the RIS have been excluded from Schedule 1 of the draft Regulations as these contain items that were never intended to be captured. The RIS did not include products related to televisions like video game consoles and DVD players and these codes are not included in the draft Regulations.

Companies that are required to participate

The draft Regulations define who is a “liable party”. As noted above, liable parties are required to be a member of an approved co-regulatory arrangement under the Act. The starting point of the draft Regulations is that a constitutional corporation that imported or manufactured products covered by the regulations in the previous financial year is a liable party for the current financial year, subject to a threshold outlined below. Australian Customs and Border Protection Service (Customs) data will be used to identify liable parties.

Thresholds for televisions, computers and computer products

The thresholds set out in the draft Regulations provide that a company that imports or manufactures less than 15,000 computer products or 5,000 televisions, computers or printers will not be covered by the Regulations.

Computers made in Australia appear to all be assembled from parts imported into Australia. Imported computer parts are covered at the point of import. Consequently to avoid double counting domestic whole computers are not covered by the regulations. Domestically manufactured computer parts are covered by the Regulations, so that computers assembled from either imported or domestic parts will capture whole computers made in Australia.

Basing the threshold on the previous financial year will provide certainty for industry on their obligations in the upcoming financial year and will ensure that compliance and enforcement by the Regulator is based on reliable data. Target calculation and verification by the Regulator will be based on the previous year's data obtained from Customs, thereby providing transparency, clarity and certainty for industry. The ability to cross-check the threshold with the previous year's Customs data will also allow the Regulator to monitor and enforce the obligations of the Scheme.

The aim of including a threshold is to significantly reduce the burden on small business, and reduce overall importer/manufacturer compliance costs while maintaining high levels of coverage of the units sold. The RIS estimated that a threshold of 5000 units of all television and computer products imported annually would decrease importer compliance costs from $69-$121 million to $3-$5 million (in present-value terms over the appraisal period in the RIS) and be expected to exclude 95.5 per cent of importers but maintain coverage of 95.3 per cent of total units sold in Australia in 2008.

The consultation paper on the design of the television and computer regulations noted that several industry associations had suggested differentiated thresholds for televisions, computers and computer products to better reflect the differences in the market characteristics of these industries, and to further reduce the risk of companies deliberately avoiding liability under the Scheme. This may occur where companies spread their imports across a number of related companies to come in below the threshold.

The department commissioned PricewaterhouseCoopers (PWC) to undertake an analysis of alternative threshold options taking into account the different markets for the covered products, the potential for "gaming" by companies to avoid liability, fairness, and potential cost impacts. The analysis looked at thresholds of between 200 and 5,000 units for televisions and computers, and between 5,000 and 30,000 units for computer products.

The report by PWC suggests that it would not be unreasonable to increase the threshold for computer products to 15,000 units, noting that applying the same thresholds to computer products (eg a mouse or a keyboard) as are applied to substantial items like televisions or computers may impose too onerous a burden on importers of computer products as their products typically have lower value. This

would reduce the number of importers of computer products liable under the Scheme from 326 to 174 (based on 2007-08 import data), while retaining coverage of 87.3 per cent of computer product imports. In the interests of reducing the impact of the Regulations on small business, the threshold for computer products has been raised to 15,000 units.

The report also indicated that it would not be unreasonable to reduce the threshold for televisions to 1,000 units and for computers to 3,000 units. However, such a change carries a high risk of capturing a proportionally high number of small businesses, with little other gain. The change would increase the number of television importers liable under the Scheme from 37 to 57 and for computers from 80 to 115, but with very little change in the import share of those covered by the Regulations. These additional importers are responsible for only a very small proportion of total imports - approximately 1.6 per cent of television imports and 1.3 per cent of computer imports. The revenue likely to be derived from imports at these levels suggest that companies caught by lowering the threshold are more likely to fall within the common definition of a small business (i.e. turnover of less than $2 million per year), given their small import volume and the average import price for televisions and computers.

While the report notes that reducing the threshold would help to reduce the incentive for gaming (i.e. companies that split their imports over multiple related companies so they sit under the threshold), the Regulations-include separate provisions to address this issue. Therefore the threshold of 5,000 units is being maintained for televisions and computers, in keeping with the primary objective of the threshold, which is to protect small business.

Outcomes to be achieved

The draft Regulations specify outcomes to be achieved by approved Arrangements on behalf of liable party “members”. The Product Stewardship Act obliges administrators of an approved arrangement to take all reasonable steps to achieve the enforceable outcomes specified in the Regulations.

The draft Regulations provide for three key enforceable outcomes:

- the provision of reasonable access to collection services in metropolitan, regional and remote areas;
- annual recycling targets; and
- a material recovery target (subject to a Regulation Impact Statement).

An illustration of the outcomes and key reporting requirements for the television and computer recycling scheme is presented at Attachment B. A draft application form for approval of co-regulatory arrangements is at Attachment D.

Reasonable access to collection services

The first outcome in the Regulations relates to ensuring that not only people in metropolitan areas, but also those in regional and remote areas have reasonable access to collection services. The Regulations require that reasonable access to collection services must be provided, and define what is meant by reasonable access for metropolitan, inner regional, outer regional and remote areas.

Reasonable access is defined in the Regulations by the following set of metrics:

- For metropolitan areas, at least one service each financial year for every 250,000 people, rounded up to the nearest whole number.
- For inner regional areas, at least one service within 100km of every town of 10,000 or more people in each financial year.
- For outer regional areas, at least one service within 150km of every town of 4,000 or more people in each financial year.
- For remote areas, at least one service within 200km of towns of 2,000 people or more (and with a frequency of once every two financial years).

Consistent with the co-regulatory nature of the regulatory scheme and to provide flexibility to suit different local circumstances, a collection service could take a number of forms, including a permanent collection site, temporary take-back events or mail-back services.

The department has undertaken analysis of the requirements in the draft regulations and has found that these are expected to provide approximately 98 percent of the population with reasonable access to collection services. Attachment A provides more discussion of the department's analysis of the requirements for reasonable access to collection services in the draft Regulations.

Recycling Targets

The second outcome relates to recycling, which is defined as the initial stage of processing a product for the purpose of recovering useable materials. The draft Regulations set out how recycling targets are to be calculated for co-regulatory arrangements. Recycling targets are expressed in weight. The application of targets to an approved Arrangement is proportionate to the import or manufacture share of its members.

The three key concepts for target setting are:

- Scheme recycling targets—the collective minimum goals for the Scheme as a whole, expressed as a percentage of waste generated in a year. The Scheme recycling target for each product class covered by the Scheme will rise as a percentage over time until it reaches 80 per cent by 2021. The pace at which the Scheme targets rise from year to year is known as the target pathway.
- Waste arising —recycling targets are based on the amount of television and computer waste generated in a year, determined using a methodology set out in the draft Regulations. This methodology works on the principle that a proportion of what is imported each year will replace existing products and that these then enter the waste streams.

- Allocating an recycling target to each co-regulatory Arrangement—responsibility for achieving the Scheme recycling targets is to be shared among approved Arrangements according to the amount of covered products their members import or manufacture in a defined year.

In setting the pathways for Scheme recycling targets, it has been necessary to keep in mind that:

- Co-regulatory Arrangements will need time to establish, test and adjust business systems, and to manage the increasing costs of meeting targets;
- It will be necessary to allow time for scaling up of recycling infrastructure, otherwise product that has been collected and cannot immediately be recycled may require stockpiling or export for processing overseas;
- Target starting points and pathways will need to achieve a balance between reducing the cost burden for collecting and managing waste televisions and computers in local communities, and the constraints on Arrangements to fund or manage collection and recycling requirements;

The recycling target pathway provided in the draft Regulations seeks to balance demand for recycling against existing capacity to recycle products in Australia and the practical limits of the time needed to roll-out the Scheme efficiently and safely. The chosen pathway assumes that with greater certainty about future recycling volumes, investment in Australian recycling infrastructure is likely to increase which allows for a steeper pathway around the fifth year of the Scheme. More information on the work commissioned on modelling target pathways is in Attachment A.

It is proposed that the overall Scheme recycling target will start at 30 per cent of waste arising in 2012-13 and rise to 80 per cent of waste arising in 2021-22. To encourage early action, products recycled on behalf of a liable party from commencement of the Regulations in 2011-12 can be counted towards the 2012-13 recycling target. A similar incentive is provided in future years to encourage continuation of recycling once a recycling target is met. From 2012-13 any "excess recycling" can count towards future year recycling targets, although only 25 percent of any year's target can be met through excess carried over from any previous financial year(s). Any underachievement of the recycling targets will also be counted towards the target for the Arrangement in the next financial year.

Calculating waste arising in a year

The consultation paper noted that reliable data on the amount of waste televisions and waste computers/computer products generated each year is needed to calculate the Scheme recycling target. Australian jurisdictions do not measure and report on the actual generation of waste television and computer products. Therefore, this calculation needs to be based on data derived from another credible source or to rely on estimations. Customs import data is cost-effective and easily replicable and verifiable. It allows the Scheme recycling target to be projected for a number of years in advance, thereby providing greater certainty to Arrangement Administrators who may be looking to enter into longer term contracts for collection and recycling/reprocessing.

Meta Economics Consulting was commissioned to undertake an analysis of this approach as well as other options for estimating waste generation. The analysis modelled the estimated television and computer waste stream to 2030, taking into account Australian Bureau of Statistics household data and projections, Customs import and export data, and behavioural information presented in the RIS. The model was used as the basis for comparing the different options.

The analysis found that the approach that most accurately predicted the modelled waste stream was based on an average of the amount imported over the last three years, multiplied by a scaling factor of 0.9 to account for growth in the market (i.e. new televisions and computers that are being bought to replace older products) and exports. This approach is based on the concept that what is imported in recent years reflects the replacement of older products that will then enter the waste stream. This approach was much more likely to be able to take account of changes in tastes and technology, which could result in changes to the amount of waste being generated, than an approach that uses import data from further in the past. It also slightly under-estimates the modelled waste stream, which the report noted was desirable to try to avoid perverse environmental outcomes or excessive costs for industry. The findings of the report have been accepted and the recommended approach has been adopted in the draft Regulations.

Material Recovery Target

The third outcome relates to the quality of the recycling. From 1 July 2014, 75% of the material recovered from recycling must be sent for processing into useable materials. The time frame for commencement of this outcome will allow for the development of consistent measurement and reporting methodologies. The Material Recovery Target is subject to a regulation impact statement before a final decision is made to include it in the Regulations.

The consultation paper raised the question of whether the Scheme target should be expressed in terms of the amount of resources recovered following reprocessing. At that stage there was insufficient information available to be able to prescribe in regulations what a reasonable level of performance would be in relation to television, computer and computer product recycling or reprocessing facilities.

In the consultation paper it was proposed not to set an enforceable material recovery target under the Scheme. Instead, it was proposed that material recovery outcomes be monitored as a mandatory reporting requirement for each co-regulatory Arrangement, and that regulations would prohibit Arrangement Administrators from transferring collected products to landfill prior to recycling or reprocessing. This requirement was aimed at preventing attempts by approved Arrangements to reduce their compliance costs by sending collected products to landfill instead of sending them to recycling/reprocessing facilities.

There is a risk as volumes of recycling increase that recycling targets alone may not lead to an acceptable level of resources being recovered, as large amounts of residual material may still be sent to landfill. Such an outcome would be contrary to the objectives of the Scheme and is likely to result in much lower direct and indirect benefits than those identified in the RIS.

A number of submissions on the consultation paper strongly advocated for the inclusion of a material recovery target. This included submissions from Australian Industry Group, recyclers, the NSW Government, and the Total Environment Centre.

In late March 2011, the department commissioned a study (summarised in Attachment A) on material recovery levels achieved by Australian recyclers to better understand current recycling practices and to assist in determining an appropriate material recovery target if one could practically be set. This study found that recyclers are achieving rates ranging from 74%-99%, with an overall rate of 91%. The report recommended not setting a recovery rate at the commencement of the Scheme (i.e. in year 1), due to inconsistencies identified in current reporting and data quality standards.

In light of feedback and further research, and consistent with the clear intent of the Scheme as outlined in the RIS and Consultation Paper, a material recovery target has been included in the draft Regulations for consultation with stakeholders.

The material recovery target chosen is consistent with current business-as-usual performance levels and is therefore not expected to place additional requirements on business, but rather act to preserve the integrity of the recycling targets. However, a 75 per cent target is consistent with material recovery requirements set by the European Union under its Waste Electrical and Electronic Equipment Directive.

Governance and administration requirements

Consistent with the consultation paper, the draft Regulations set out a number of matters that must be adequately addressed on an ongoing basis by co-regulatory arrangements. This includes governance systems, financial arrangements, communications and assessment of the adequacy of environmental, health and safety policies and practices in relation to recycling and related activities.

Record keeping and reporting

As outlined in the consultation paper, the draft Regulations contain a range of requirements to assist in the effective implementation of the Scheme, such as requirements for administrators to submit audited annual reports identifying whether they have achieved the outcomes specified in the draft Regulations. From financial year 2014-15, this would include reporting on the proportion of products sent for processing into useable materials after recycling.

An illustration of the outcomes and key reporting requirements for the television and computer recycling scheme is presented at Attachment B.

Implementation of the Regulations

It is expected that the Regulations will be made in late 2011, and commence immediately. From this time, prospective arrangement administrators may apply to the Minister for approval of a co-regulatory arrangement. It is anticipated that one or more arrangements will be approved by early 2012. The proposed timeline for key

obligations in set out in Attachment C and a draft application form to apply for approval of a co-regulatory arrangement is presented at Attachment D.

Liable parties are required to become a member of an approved arrangement. An importer or manufacturer will know in late 2011 whether it is a liable party for financial year 2011-12 based on its imports in financial year 2010-11. While liable parties are immediately liable, before enforcement action can be taken, the Act provides that liable parties must be given notice that they are a liable party, and a specified period to join an approved arrangement. It is anticipated that notices will be sent to liable parties advising them that they are a liable party shortly after commencement of the Regulations, and follow up notices will be provided after one or more co-regulatory arrangements are approved under the Scheme.

Implications for stakeholders
Only the entities described in the draft regulations will have obligations under the regulations. There may be some commercial implications for service providers and other organisations in how they contract with and provide reports to co-regulatory arrangements, based on the requirements placed on a co-regulatory arrangement.

The existing role of state, territory and local governments is not changed by the regulations and there are no requirements in the draft regulations that obligate government to take on a direct role in the Scheme. It is important for co-regulatory arrangements to understand their obligations under state and local government law and to engage actively with government managers of waste to ensure the smooth implementation of the Scheme. The Scheme will increase the recycling rate of televisions, computers and computer products, reducing the impact on landfill of this waste and consequently government. In this context, there are potential opportunities for government waste managers, such as local governments, to work with co-regulatory arrangements to improve the implementation of the Scheme in their areas – but this is at the local government's discretion.

4. Detailed Commentary on the Regulations

Part 1 Preliminary

1.01 Name of Regulations

Regulation 1.01 provides that the name of the Regulations is the *Product Stewardship (Televisions and Computers) Regulations 2011*.

1.02 Commencement

Regulation 1.02 provides that the Regulations commence on the day after they are registered. Under the *Legislative Instruments Act 2003*, a legislative instrument (such as the Regulations) must be registered on the Federal Register of Legislative Instruments as soon as practicable after the making of the instrument.

The Regulations do not provide for a "grace period" before they come into effect because this is already catered for by subsection 18(2) of the Act. This subsection provides for written notice to be given to a liable party advising it of its obligation to become a member of an approved co-regulatory arrangement and giving a specified period to comply.

If a liable party believes that the period specified in this notice is not reasonable it may apply to have the notice varied or revoked (s 18(6)) and has a right to seek review of a refusal to do so, including by the Administrative Appeals Tribunal (s 93, item 4).

1.03 Definitions

Regulation 1.03 defines terms used in the Regulations. Explanation of these terms is included in this Commentary under the relevant regulation in which they are used.

1.04 Application

Subregulation 1.04(1) provides that the Regulations apply to two classes of products:

- televisions;
- computers, printers and computer products.

Provision is made for two classes of products (rather than one combined class of products applying to televisions, computers, printers and computer products) to allow flexibility to set different outcomes, such as separate recycling targets, for those classes of products.

Subregulation 1.04(2) provides that each of the classes of products contains the products set out in Schedule 1. These products, and the associated product descriptions and product codes, are drawn from the *Combined Australian Customs Tariff Nomenclature and Statistical Classification* (commonly referred to as the Harmonised Tariff) published by the Australian Customs Service and are intended to have the same meaning as in the Harmonised Tariff.

1.05 Constitutional connection

Subsection 34(1) of the *Product Stewardship Act 2011* requires that either or both of the following must apply to regulations made under Part 3:

- each liable party in relation to the class of products is a constitutional corporation;
- the regulations are appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

Regulation 1.05 specifies that the Regulations are made in accordance with paragraph 34(1)(a) of the Act.

Part 2 Liable parties and administrators of co-regulatory arrangements
Division 2.1 Liable Parties

2.01 Liable parties – classes of persons

Section 19 of the Act provides that regulations may identify liable parties in relation to a class of products. Under section 18 of the Act, these liable parties must be a member of an approved co-regulatory arrangement in relation to that class of products. Substantial civil penalties apply if this obligation is not met (see sections 18(1) and 43 of the Act).

2.02 Criterion – import or manufacture products in previous financial year

Subregulation 2.02(2) creates a threshold that seeks to filter out small importers or manufacturers from being identified as liable parties to limit the impact of the Regulations on small business. Subject to the grouping provision discussed further below, an importer or manufacturer who imports or manufactures less than 5,000 televisions, computers or printers, or 15,000 computer products, will not be a liable party.

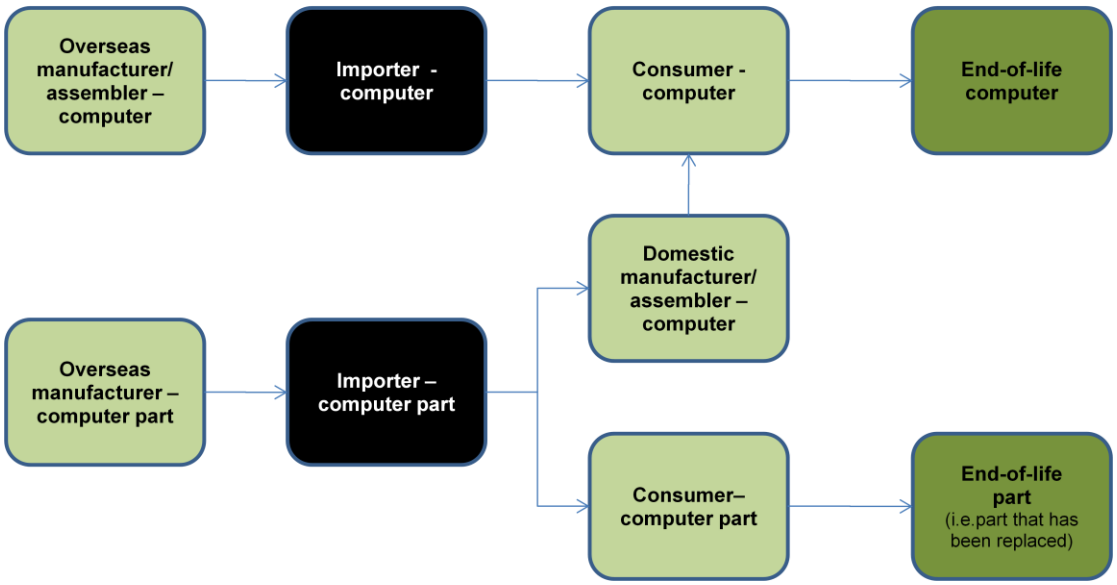
The definition of 'import' set out in subregulation 2.02(3) aligns with section 71A of the *Customs Act 1901*. An import declaration made under section 71A of the Act is a communication with the Australian Customs and Border Protection Services about goods to which section 68 of the *Customs Act 1901* applies, being goods imported into Australia by sea, air or post with a value that exceeds the import entry threshold of $A1000 that are intended for home consumption.

Information from import declarations, supplied by the Australian Customs and Border Protection Services to the Department of Sustainability, Environment, Water, Population and Communities, will be used to determine whether a company is a liable party and to assist in calculating of recycling targets. The *Customs Act 1901* provides for amendment of import declarations such as where goods have been misclassified.

Subregulation 2.02(4) has the effect that the manufacture of computers in Australia is to be disregarded for the purpose of the Regulations. Domestic manufacture (including assembly) of computers is not covered by the Regulations because to do so would involve double counting. Importers of computer parts, and domestic manufacturers of computer parts if there are any in the future, will be liable parties if they exceed relevant thresholds, and will therefore be required to contribute to industry collection and recycling efforts.

This cost is likely to be passed on to domestic manufacturers of computers. If domestic manufacturers were separately required to contribute they would in effect be contributing twice.

Material flow: computers and computer parts



Subregulation 2.02(6) is a grouping provision. It has the effect that imports or manufacture of products in a class of products by related bodies corporate of more than 1,000 units are to be counted together for the purpose of determining whether an importer exceeds the threshold for televisions, computers or printers. This provision has been included to reduce the incentive for import-splitting among prospective liable parties in respect of these products. The risk of such import-splitting is assessed as relatively low for computer products, and therefore subregulation 2.02(5) provides this regulation does not apply a grouping provision for those products.

Regulation 1.03 provides that the term “related bodies corporate” has the meaning given by section 50 of the *Corporations Act 2001*.

2.03 Ongoing liability to be a liable party

Regulation 2.03 ensures that a liable party will continue to be a liable party until such time as it becomes a member of an approved co-regulatory arrangement.

Example: A company imports 100,000 televisions in 2012-13 but does not import anything in 2013-14. It fails to become a member of a co-regulatory arrangement in 2013-14, even though it is a liable party. The effect of regulation 2.03 is that the company is a liable party in 2014-15, even though it didn't import anything in 2013-14.

Division 2.2 Administrators of co-regulatory arrangements

2.04 Administrator to be fit and proper person

The Act provides that the Minister must refuse to approve a co-regulatory arrangement if satisfied that the administrator of the arrangement is not a fit and proper person (s 26(2)(d)). The Minister may also cancel an arrangement's approval if satisfied that the administrator is not a fit and proper person (s 28(1)(d)). Regulation 2.04 specifies the matters to which the Minister must have regard in determining whether an administrator of a co-regulatory arrangement is a fit and proper person. These matters are:

- any conviction of the administrator, or an executive officer of the administrator, for an offence against the Act committed within the 10 years immediately before the determination;
- any conviction of the administrator, or an executive officer of the administrator, for an offence against another law of the Commonwealth, or a law of a State or Territory, if that offence was committed within 10 years immediately before the determination;
- any civil penalty order made against the administrator, or an executive officer of the administrator, for a contravention of a civil penalty provision in the Act or these Regulations, if that contravention occurred within the 10 years immediately before the determination;
- whether an executive officer of the administrator is bankrupt, or has applied for bankruptcy;
- whether any statement by the administrator, or an executive officer of the administrator, in an application under the Act was false or misleading in a material particular, and whether the administrator or executive officer knew the statement was false or misleading;
- whether an executive officer of the administrator has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001;*
- whether the administrator is an externally-administered body corporate within the meaning given by section 9 of the *Corporations Act 2001.*

An administrator's character and conduct is considered relevant to the successful administration of an arrangement and the Scheme, as the viability of an arrangement may be put at risk where the responsible administrator does not operate in an appropriate and competent manner.

The matters relevant to a determination apply to both the administrator of a co-regulatory arrangement as a body corporate having legal personality, and to any executive officer of the administrator as a person in a position of authority or influence in the administration of the arrangement, recognising the need for adequate assessment and accountability of all relevant persons.

The time frames for disclosure of convictions in relation to the fit and proper person requirement are considered appropriate and aligned with the Spent Convictions Scheme under the *Crimes Act 1914.*

Part 3 Outcomes for co-regulatory arrangements

The Act provides that regulations must specify one or more outcomes to be achieved by a co-regulatory arrangement (s 21). The Minister must refuse to approve a proposed co-regulatory arrangement if satisfied that the arrangement is unlikely to achieve one or more of these outcomes (s 26(2)(b)). If the administrator believes the reasons for the Minister's decision to refuse to approve a co-regulatory arrangement are not reasonable, the administrator has a right to seek review of the decision, including by the Administrative Appeals Tribunal (s 93, item 5).

Once a co-regulatory arrangement has been approved, the administrator of the arrangement must take all reasonable steps to ensure that the arrangement achieves the outcomes specified in the regulations in relation to that class of products (s 23). If this does not occur, then the Minister may issue an improvement notice (s 29), an audit notice (s 30) or cancel the arrangement (s 28).

If the administrator believes the reasons for the Minister's decision to cancel the approval of a co-regulatory arrangement are not reasonable, the administrator has a right to seek review of the decision, including by the Administrative Appeals Tribunal (s 93, item 6).

3.01 Outcomes

Subregulation 3.01(1) provides that there are three outcomes to be achieved by a co-regulatory arrangement in relation to a class of products:

- to provide reasonable access to collection services (as further defined in reg 3.03);
- to meet recycling targets (as further defined in reg 3.04); and
- to meet a material recovery target in relation to that recycling (as further defined in reg 3.06).

Paragraph 3.01(1)(a) provides the reasonable access outcome is to be met from the financial year 2012-2013. This is intended to allow approximately 18 months from when the Regulations commence for the reasonable access outcome to be achieved.

Paragraph 3.01(1)(c) provides that the material recovery outcome must be met from the financial year 2014-2015 to allow time for consistent measurement and reporting methods on material recovery rates to be developed.

Paragraph 3.01(2)(a) provides that in meeting the reasonable access and recycling outcomes, a person must not be charged for the collection of a product for recycling if the product was used only for household purposes. This is intended to ensure that householders have free access to recycling, while retaining flexibility for administrators to charge businesses that wish to have end-of-life products recycled.

Paragraph 3.01(2)(b) provides that collection of a product in the class of products for recycling must not be refused. This is intended to ensure that an administrator cannot refuse to accept products on the grounds, for example, of the brand or age of the product.

Division 3.2 Collection

3.02 Collection services

This regulation provides a non-exhaustive list of types of collection services. Consistent with the co-regulation philosophy, it makes clear that administrators have flexibility in the type of collection services they can provide. In addition to fixed collection sites, collection services can include, among other examples, take-back events and mail-back programs.

3.03 Reasonable access – general requirements

Regulation 3.03 provides that access to a collection service is reasonable if access is provided in accordance with the regulation. The regulation sets out metrics that seek to provide a consistent, measurable basis for determining whether reasonable access has been provided, without being prescriptive as to the exact locations of collection services.

Regulation 3.03 refers to "metropolitan areas", "inner regional", "outer regional" and "remote areas". Regulation 1.03 provides that these terms have the meaning given by the document *Statistical Geography Volume 1 - Australian Standard Geographical Classification (AGSC)* (ABS catalogue number 1216.0) published by the Australian Statistician in July 2006.

For metropolitan areas, the number of services to be made available is calculated by dividing the population of the metropolitan area by 250,000 and rounding up to the nearest whole number.

For this metric, as with others, population is to be determined by reference to the 2006 Census of Population and Housing (see reg 3.03(2)(b)).

> *Example: Sydney's population in the 2006 Census was 3,725,640. This number, divided by 250,000 and rounded up to the nearest whole number, is 15. This means that in 2012-13 each approved arrangement must take all reasonable steps to ensure that at least 15 collection services are available in Sydney.*

For inner regional areas, at least one service must be provided for every town of 10,000 people or more in a financial year. This requirement will be met if a service is available within 100km of the centre point of the town.

> *Example: Dubbo is in an inner regional area and had a population of 30,575 in the 2006 Census. This means that in 2012-13 each approved arrangement must take all reasonable steps to ensure that at least one collection service is provided within 100km of the town.*

For this metric, as with others in the regulation:

- the population of a town is determined by reference to the 2006 Census of Population and Housing (reg 3.03(2)(b));
- distance means the distance by road (reg 3.03(2)(a)); and
- the centre point of a town is to be determined by reference to the location of a town in the *GeoScience Gazetteer of Australia 2010 Release* (reg 3.03(2)(c)).

The metric for outer regional areas is similar to that for inner regional areas, but the town size is lower (4,000 people) and the distance within which services must be provided is greater (150km). The greater distance recognises that it tends to be more costly to provide services in outer regional areas as well as the longer distances that residents are likely to travel on average in order to access goods and services.

For remote areas, the town size is again lower (2,000 people) and the distance is greater (200km). Unlike the other metrics, which refer to services being provided within a financial year, the remote metric provides that a service must be provided every two financial years. This provides flexibility for registration services or occasional take-back events to be used to service remote areas.

Division 3.3 Recycling

3.04 Working out recycling targets

Regulation 3.04 sets out how recycling targets are to be calculated for co-regulatory arrangements.

Recycling targets start in financial year 2012-2013 and are expressed in weight.

> *Example: In 2012-13, a co-regulatory arrangement's recycling target may be 10,000 tonnes of end-of-life televisions.*

Subregulation 3.04(1) describes, at the highest level, how a recycling target is calculated. If it were expressed as a formula, subregulation 3.04(1) would look like this:

Recycling target for Co-regulatory Arrangement **=** ***Scheme Target*** ***x*** ***Import/Manufacture Share of Members***

Subregulation 3.04(2) describes how the first element, the scheme target, is calculated. The scheme target is the overall target for the National Television and Computer Product Stewardship Scheme as a whole. The Minister will publish the scheme target each year. In practice the publication functions of these Regulations may be performed by a delegate of the Minister provided for under section 110 of the Act.

If it were expressed as a formula, subregulation 3.04(2) would look like this:

Scheme Target	**=**	***Percentage target for the year*** **(set out in Schedule 2)**	***x***	***Waste arising*** **(calculated under subregulation 3.04(3))**

The percentage targets in Schedule 2 start at 30% in financial year 2012-2013 and increase to 80% in financial year 2021-2022. There is no target for 2011-2012, but recycling in 2011-2012 may be counted towards the 2012-2013 recycling target (see regulation 3.05).

Waste arising represents the weight of additional waste products that are expected to be generated in any financial year. Subregulation 3.04(3) describes how waste arising is to be calculated. If it were expressed as a formula, subregulation 3.04(3) would look like this:

$$\textbf{\textit{Waste arising}} = \frac{\textbf{\textit{Total converted weight of products in the product class over the last 3 financial years}}}{\textbf{\textit{3}}} \quad \textbf{\textit{x}} \quad \textbf{0.9}$$

“Converted weight” is defined in regulation 1.03(2). It is the weight of a product arrived at by multiplying the number of units of the product by the conversion factor for the product listed in Schedule 3. Using these conversion factors, which have been developed with the benefit of sampling the weight of imported products under each product definition and related code, data on the number of units imported can be converted into weight. The Minister will annually publish the total converted weight of each product in a class of products imported or manufactured in each of the last 3 financial years.

The logic of the waste arising formula is that when a product is imported it usually replaces another product, which then becomes waste. Because imports are volatile, the formula averages imports over the past 3 years. The scaling factor of 0.9 takes into account that some products that are imported are subsequently exported, and that not all imported products replace existing products. Modelling indicates that this formula is a good proxy of the amount of waste products entering the waste stream each year.

Subregulation 3.04(4) describes how the import or manufacture share of a co-regulatory arrangement is calculated. If it were expressed as a formula, subregulation 3.04(4) would look like this:

$$\textbf{Import or Manufacture Share of Members} = \frac{\textbf{Converted weight of units imported/manufactured by members of the arrangement (less exports) in the previous financial year}}{\textbf{Converted weight of units imported/manufactured by all liable parties (less exports) in the previous financial year}}$$

The Minister will publish the figure related to all liable parties each year, so that administrators of approved co-regulatory arrangements can work out their share of the scheme target.

Subregulations 3.04(5) and 3.04(6) anticipate the possibility that a non-compliant liable party may fail to be a member of an approved co-regulatory arrangement in a financial year. The effect of these subregulations is that the units imported, manufactured or exported by that liable party should be taken into account in the first subsequent financial year when the liable party is a member of a co-regulatory arrangement in calculating the recycling target for the arrangement that it joins, notwithstanding the fact that the relevant activity did not take place in the previous financial year.

Subregulation 3.04(7) is an accountability measure. It ensures that exports can only be taken into account where they are units that were imported or manufactured by a member of the arrangement within the last year. This ensures that waste or re-used products cannot be used to reduce a recycling target. The subregulation also provides for an audit report to confirm that these conditions have been met. The requirements related to an audit report seek to ensure that an audit is conducted, and an accurate audit report is prepared, in a proper and independent way by an appropriately qualified auditor.

Subregulation 3.04(8) has the effect that manufacture of computers is to be disregarded for subregulations 3.04(3), (4), and (5) for the purpose of working out recycling targets.

This regulation relates to subregulation 2.02(4) which provides the domestic manufacture of computers is to be disregarded for the purpose of the Regulations because this would otherwise involve double counting.

3.05 How recycling targets may be met

Paragraph 3.05(1)(a) provides that a product in a class of products will be taken to be recycled if it is recycled under a co-regulatory arrangement. This will ordinarily be done by an arrangement administrator entering into a contract with a recycler to recycle relevant products.

Paragraph 3.05(1)(b) provides that a product is also taken to be recycled if it is recycled after the Regulations commence by a liable party who subsequently becomes a member of a co-regulatory arrangement. This is intended to encourage early action by importers of relevant products. Without this provision, there would be

an incentive for companies that currently undertake recycling take-back events on a voluntary basis to stop those events.

Subregulation 3.05(2) relates to the situation in which a co-regulatory arrangement exceeds its recycling target. In this situation the overachievement can be counted towards targets in future years. However, from financial year 2013-2014 only 25% of the target in a financial year can be met from overachievement in previous years. This is intended to ensure that overachievement does not lead to an arrangement being able to shut its operations down in future years.

Subregulation 3.05(4) ensures that any recycling undertaken in financial year 2011-2012 after the Regulations commence can be counted towards meeting the target for financial year 2012-2013. This is intended to provide an incentive for early recycling action as there is no target for financial year 2011-2012.

Paragraph 3.05(5)(a) provides that where a recycling target is not achieved in a particular year, the co-regulatory arrangement is taken not to have achieved its target in that year. This provides the basis for an improvement notice, audit notice or even cancellation of the arrangement's approval (see sections 28-30 of the Act). In addition, paragraph 3.05(5)(b) makes clear that the underachievement is added on to the arrangement's target for the following financial year.

Division 3.4 Material recovery from recycling

Regulation 3.06 Material recovery targets

A material recovery target is included in the draft regulations to provide a basis for consultation with industry, community and government stakeholders, and will be subject to the completion of a regulation impact statement prior to any final approval for its adoption in finalised regulations. A number of submissions received on the consultation paper for the proposed design of the regulations commented in support of the inclusion of a material recovery target. The department has also undertaken further analysis on the mass balance of television and computer recycling in Australia and implications for setting a material recovery target, as summarised in Attachment A.

Regulation 3.06 relates to the quality of recycling that is undertaken under a co-regulatory arrangement. From financial year 2014-2015, co-regulatory arrangements must achieve, as a minimum requirement, a 75% material recovery target. The commencement date of this requirement will allow time for the development of consistent measurement and reporting methods on material recovery rates.

This regulation needs to be read with the definition of "material recovery" in regulation 1.03. This term captures the proportion, by weight, of end-of-life products that are recovered following recycling and sent for processing into useable materials.

Example: An arrangement delivers 10,000 tonnes of end-of-life computers, printers and computer products to a recycler, which disassembles the

products. 2,000 tonnes is sent to landfill because it is contaminated or broken, and the remainder is sent for further processing into metals, plastics and other useable products. The arrangement will have achieved an 80% material recovery rate and will have met the material recovery target.

Part 4 Matters to be dealt with by co-regulatory arrangements

4.01 Matters to be dealt with in co-regulatory arrangements

Subsection 21(1) of the Act provides that the regulations may specify matters to be dealt with by a co-regulatory arrangement. The Minister must refuse to approve a co-regulatory arrangement if the Minister is satisfied that the arrangement does not adequately deal with any of these matters (s 26(2)(c)) and may cancel an arrangement's approval on the same grounds (s 28(1)(c)).

Pursuant to subsection 21(1) of the Act, regulation 4.01 provides that the following matters must be dealt with by a co-regulatory arrangement:

- Governance systems, including systems for:
  - Achieving the outcomes and meeting the requirements in these Regulations; and
  - Managing risk; and
  - Resolving disputes; and
  - Replacing the administrator;
- Financial arrangements and funding to achieve the outcomes and requirements in these Regulations;
- Procedures in relation to membership of the arrangement, including
  - Requirements related to becoming or ceasing to be a member; and
  - Maintenance of confidential information about members;
- Communicating information to the public about the arrangement, including the activities of the arrangement and how its services can be accessed;
- Assessing the adequacy of environmental, health and safety policies and practices in relation to the collection, storage, transportation, or recycling of products undertaken under the co-regulatory arrangement.

The matters to be dealt with are governance and administration requirements that are important to the viability of a co-regulatory arrangement. These matters complement governance requirements that apply to corporate bodies under other legislation such as the *Corporations Act 2001 (Cth).*

Part 5 Record keeping, giving information and reporting

This Part outlines the requirements for record keeping, giving information and reporting by liable parties and administrators of approved co-regulatory arrangements in accordance with section 24 of the Act. The first division relates to requirements for administrators and liable parties to give information. The second division related to the requirements for administrators and liable parties to give information to the Minister. The third division relates to the requirements and matters for inclusion for an annual report, and for an audit report accompanying an annual report.

Division 5.1 Record keeping

5.01 Administrator to keep records

Regulation 5.01 is concerned with an arrangement administrator making and maintaining accurate records relevant to the administration and operation of activities undertaken by that arrangement. These records will assist in enabling verification of the accuracy of information and reports given under Divisions 5.2 and 5.3 of the Regulations.

Subregulation 5.01(1) requires the administrator of a co-regulatory arrangement to make records relating to the administration or operation of the arrangement. A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.01(2) requires the administrator to keep the records made under this provision for a period of 5 years from the day of creation of that record. A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.01(3) provides some guidance on the types of records contemplated to be made and kept in relation to the administration or operation of an arrangement, including technical data, certifications and inspection records relating to:

- the outcomes to be achieved under Part 3 ;
- the matters to be dealt with by the arrangement specified under Part 4 ;
- reporting requirements under Division 5.3.

Division 5.2 Giving Information

Subdivision 5.2.1 Information to be given by administrator

5.02 Administrator to give information

Regulation 5.02 applies civil penalties to the requirements set out for this subdivision. The regulation is concerned with the administrator of a co-regulatory arrangement providing timely notification to the Minister of certain information considered relevant to the administration and operation of an arrangement.

Subregulation 5.02(1) provides the administrator of a co-regulatory arrangement must provide the Minister, with information set out in subdivision 5.2.1 relating to:

- a material change of circumstances pursuant to regulation 5.03;
- yearly information about the membership of a co-regulatory arrangement pursuant to regulation 5.04;
- a change in membership pursuant to regulation 5.05;
- the fitness and propriety of the administrator pursuant to regulation 5.05;
- a written request by the Minister for provision of information by an administrator pursuit to regulation 5.07.

A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.02(2) provides that where the administrator of a co-regulatory arrangement is required to give the Minister, or notify the Minister of information, this information must be given or notified within the specified time frame. A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.03(3) provides that the administrator must give the Minister, or notify the Minister of, information:

- in the specified format for information set out in regulation 5.07; and
- in a manner approved by the Minister for information not set out in regulation 5.07.

A civil penalty of 250 penalty units applies to a contravention of this requirement.

5.03 Material change of circumstances for co-regulatory arrangement

Regulation 5.03 requires an administrator to notify the Minister of any material change of circumstance for the co-regulatory arrangement, and a pecuniary penalty under subregulation 5.02(1) applies to a contravention of this requirement.

This regulation specifies that notification of a material change of circumstance must be given to the Minister within 28 days from the date of the material change, and a pecuniary penalty under subregulation 5.02(2) applies to a contravention of this requirement.

The regulation provides that a change of circumstance will be ‘material’ if it hinders:

- the ability of the co-regulatory arrangement to achieve the outcomes specified in Part 3; or
- the ability of the co-regulatory arrangement to adequately deal with the matters specified under Part 4; or
- the ability of the administrator to comply with the requirements specified in the Regulations.

5.04 Yearly information about membership of co-regulatory arrangement

Regulation 5.04 requires an administrator of a co-regulatory arrangement must give the Minister information about the membership of the co-regulatory arrangement each year, as at 1 September of that year, and a pecuniary penalty under subregulation 5.02(1) applies to a contravention of this requirement. This will provide an overview of membership to approved co-regulatory arrangements at that date and assist the Minister in ensuring compliance with the obligation for a liable party to be a member of an approved co-regulatory arrangement, articulated in section 18 of the Act.

Subregulation 5.04(2) requires the administrator must give the information to the Minister as soon as practicable after that date.

Subregulation 5.04(3) sets out the information to be provided to the Minister about the membership of a co-regulatory arrangement, and must include:

- the number of members of the co-regulatory arrangement; and
- the name, and trading name (if any), of each member; and
- the Australian Business Number or Australian Company Number of the liable party; and
- the date each liable party became a member; and
- the date of cessation where that liable party has ceased to be a member.

5.05 Changes in membership of co-regulatory arrangement

Regulation 5.05 outlines the notification requirements for the administrator relating to changes in membership of a co-regulatory arrangement. The regulation will assist the Minister in ensuring compliance with the obligation for a liable party to be a member of an approved co-regulatory arrangement, articulated in section 18 of the Act.

Subregulation 5.05(1) requires an administrator to notify the Minister in writing if a liable party becomes, or ceases to be, a member of the co-regulatory arrangement. A pecuniary penalty under subregulation 5.02(1) applies to a contravention of this requirement. This regulation also specifies that notification of a change in membership of a co-regulatory arrangement must be given to the Minister within 28 days from the date of the change. A pecuniary penalty under subregulation 5.02(2) applies to a contravention of this requirement.

Subregulation 5.05(2) sets out the information that must be included in a notice to the Minister for a change in membership. The notice must include:

- the Australian Business Number or Australian Company Number of the liable party; and
- the date the liable party became a member; and
- the date of cessation where that liable party has ceased to be a member.

5.06 Whether administrator is fit and proper person

Regulation 5.06 sets out reporting requirements for events relevant to the fitness and propriety of an administrator. Subregulation 5.06(1) requires an administrator to notify the Minister of any event listed in subregulation 5.06(2), and a pecuniary penalty under subregulation 5.02(1) applies to a contravention of this requirement. This regulation specifies that notification of the event must be given to the Minister within 28 days from the date of an executive officer of the administrator becoming aware of the event, and a pecuniary penalty under subregulation 5.02(2) applies to a contravention of this requirement.

The regulation identifies the following events:

- the administrator, or an executive officer of the administrator, is convicted of an offence against the Act, or another law of the Commonwealth or a law of a State or Territory;

- a civil penalty order is made against the administrator, or an executive officer of the administrator, for a contravention of a civil penalty provision in the Act or the Regulations;
- an executive officer of the administrator becomes bankrupt or applies for bankruptcy;
- the administrator, or an executive officer of the administrator, makes a false or misleading statement in relation to a material particular in an application under the Act;
- an executive officer is disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001;*
- the administrator becomes an externally-administered body corporate.

An 'executive officer' of a body corporate is defined in subsection 51(4) of the Act as a person (by whatever name called and whether or not a director of the body) who is concerned in, or takes part in, the management of the body.

5.07 Requested information

Regulation 5.07 provides for the Minister to request information.

Subregulation 5.07(1) requires an administrator to give the Minister any information requested by the Minister, and a pecuniary penalty under subregulation 5.02(1) applies to a contravention of this requirement. For this obligation to apply the Minister must make a written request for information and information requested must relate to the administration or operation of the co-regulatory arrangement.

Subregulation 5.07(2) requires the administrator to give the information to the Minister:

- within the period, or by the day, specified in the written request; and
- in the specified format where this has been specified in the written request.

A pecuniary penalty under subregulation 5.02(2) applies to the requirement to provide information to the Minister within a specified time frame in regulation 5.07(2)(a). A pecuniary penalty under subregulation 5.02(3) applies to the requirement to provide information to the Minister in a specified format in subregulation 5.07(2)(b).

Subdivision 5.2.2 Information to be given by liable parties

5.08 Liable parties to give information

Regulation 5.08 applies civil penalties to the requirements set out for this subdivision. The regulation is concerned with liable parties in relation to a class of products providing timely information or notification to the Minister for specified matters in relation to that class of products.

Subregulation 5.08(1) provides that a liable party in relation to a class of products must provide the Minister with information relating to:

- the number of products manufactured by a liable party pursuant to regulation 5.09;
- the number of products imported or manufactured by a related body corporate pursuant to regulation 5.10.

A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.08(2) provides that where a liable party in relation to a class of products is required to give the Minister, or notify the Minister of information, this information must be given or notified within the specified time frame. A civil penalty of 250 penalty units applies to a contravention of this requirement.

Subregulation 5.08(3) provides that a liable party must give the Minister, or notify the Minister of, the information in a manner approved by the Minister. A civil penalty of 250 penalty units applies to a contravention of this requirement.

5.09 Number of products manufactured

Subregulation 5.09(1) does not apply in relation to computers manufactured in Australia. This regulation relates to subregulation 2.02(4) which provides the domestic manufacture of computers is to be disregarded for the purpose of the Regulations.

The regulation requires that if a liable party in relation to a class of products manufactured products in the previous financial year, the liable party must notify the Minister of how many of each product the liable party manufactured by product code, and a pecuniary penalty under subregulation 5.08(1) applies to a contravention of this requirement.

A liable party is required to provide this notification to the Minister each year by 1 September, and a pecuniary penalty under subregulation 5.08(2) applies to a contravention of this requirement.

5.10 Products imported or manufactured by related bodies corporate

Subregulation 5.10(1) requires a liable party in relation to a class of products other than computer products must give the Minister information about each related body corporate of the liable party that manufactured or imported products in the class of products for:

- the name of the related body corporate;
- the Australian Business Number or Australian Company Number of that related body corporate;
- the date or dates the related body corporate became a related body corporate of the liable party;
- the date or dates the related body corporate ceased to be a related body corporate of the liable party, if applicable.

This requirement is subject to a pecuniary penalty under subregulation 5.08(1).

A liable party is required to provide this information to the Minister each year by 1 September, and a pecuniary penalty under subregulation 5.08(2) applies to a contravention of this requirement.

Subregulation 5.10(2) requires the liable party must also give the Minister the information mentioned in subregulation 5.10(1) about each related body corporate of the liable party that manufactured or imported products in a class of products (other than computer products) in the financial year starting on 1 July 2010.

A liable party is required to provide this information to the Minister by 1 May 2012, and a pecuniary penalty under subregulation 5.08(2) applies to a contravention of this requirement.

The term 'related body corporate' is defined in regulation 1.03 of these regulations.

Division 5.3 Reporting

Subdivision 5.3.1 Annual reports

5.11 Application

Subregulation 5.11(1) outlines the time frame to which the subregulations in this subdivision apply. With the exception of subregulation 5.13(10), the subdivision applies in relation to the financial year starting on 1 July 2012, and each subsequent financial year.

Subregulation 5.11(2) outlines the time frame to which subregulation 5.13(10) applies, in relation to the financial year starting on 1 July 2014, and each subsequent financial year.

5.12 Annual Report

Regulation 5.12 sets out the requirement for an annual report to be provided by the administrator of an approved co-regulatory arrangement. Annual reports will allow the Minister to monitor the effectiveness of co-regulatory arrangements and assess the overall performance of the National Television and Computer Product Stewardship Scheme, and provide transparency to the public.

Section 108(1)(d)(ii) of the Act, which provides for publication by the Minister of reports on the operation of an approved arrangement on the Department's website, would apply to annual reports.

Subregulation 5.12(1) requires the administrator of a co-regulatory arrangement to give the Minister a report each financial year in relation to the operation of the co-regulatory arrangement in the financial year in accordance with the regulation. A civil penalty of 250 penalty units applies to this requirement.

Subregulations 5.12(2) and 5.12(3) require the annual report must be given to the Minister in a manner approved by the Minister by 30 October in the next financial year, and must include the matters set out in regulation 5.13.

Subregulation 5.12(4) makes clear that the annual report for the financial year 2012-2013 must also include the matters set out in regulation 5.13 in relation to the operation of the co-regulatory arrangement in the financial year 2011-2012.

5.13 Matters to be included in annual report

Regulation 5.13 outlines the matters to be included in an annual report. A contravention of these requirements is subject to a pecuniary penalty under subregulation 5.12(1).

Subregulation 5.13(1) provides the annual report must:

- identify the class or classes of products covered by the co-regulatory arrangement; and
- describe any activities undertaken in relation to the matters required to be dealt with by the co-regulatory arrangement under Part 4; and
- describe the performance of the co-regulatory arrangement in relation to each outcome to be achieved under Part 3; and
- include an explanation for why any outcome was not achieved, and the measures proposed to be implemented to rectify the failure to achieve the outcome.

Subregulation 5.13(2) provides further detail for information required in the annual report relating to membership of the co-regulatory arrangement. The annual report must include:

- the number of members of the co-regulatory arrangement; and
- information about each member for:
  - the name, and where applicable the trading name, of the member;
  - the class of products to which the member is a liable party where the co-regulatory arrangement covers more than one class of products;
  - the Australian Business Number or Australian Company Number of the member;
  - the date the member became a member;
  - the date of cessation where that liable party has ceased to be a member.

Subregulation 5.13(3) provides further detail for information required in the annual report relating to collection and storage of products. The annual report must include:

- details about each collection service, including:
  - the type of collection service;
  - the location of the collection service; and
  - the frequency of the collection service; and
- the total weight of products in a class of products collected by each State and Territory in each of the following areas:
  - metropolitan areas;
  - inner regional areas;
  - outer regional areas;
  - remote areas; and

- the total weight of products in a class of products stored other than at a recycling facility.

Subregulation 5.13(4) provides further detail for information required in the annual report relating to recycling of products. The annual report must include:

- the total weight of products in a class of products delivered to a recycling facility;
- the total weight of products in a class of products recycled;
- the types of materials recovered from the disassembly of products in a class of products;
- the total weight of materials recovered from the disassembly of products in a class of products;
- the types of materials sent for disposal from the disassembly of products in a class of products;
- the total weight of materials sent for disposal from the disassembly of products in a class of products.

This information will indicate the performance of a co-regulatory arrangement against the recycling target and material recovery target.

Subregulation 5.13(5) provides further detail for information required in the annual report relating to the export of products. The annual report must include:

- the total weight of products in a class of products that are exported as whole units for recycling;
- the country to which the products were exported.

Export of whole units for recycling is likely to require a permit under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Hazardous Waste Act). This Act implements Australia's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention). For the purposes of the Hazardous Waste Act, waste defined as hazardous in the Basel Convention or the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* cannot be exported without a permit.

Subregulation 5.13(6) provides further detail for information required in the annual report relating to service providers contracted to provide collection, transportation, storage or recycling services in relation to the co-regulatory arrangement for each class of products. The annual report must include:

- the name of the service provider;
- the service provided by the service provider;
- the total weight of products recycled by the service provider.

Subregulation 5.13(7) provides guidance on the term 'service provider' for the purposes of subregulation 5.13(6) and includes:

- an overseas facility that receives whole units of products exported from Australia under the co-regulatory arrangement; and
- the administrator in its capacity of providing services where the administrator is providing services in relation to the co-regulatory arrangement beyond the role of being administrator.

Subregulation 5.13(8) provides further detail for information required in the annual report relating to incidents or breaches under occupational health and safety and environmental laws. The annual report must include:

- the occurrence of a particular incident under an environmental law or an occupational health and safety law that requires notification to a public office holder or public authority;
- a breach of an environmental law or an occupational health and safety law.

Subregulation 5.13(9) makes clear that the reference to a law for the purposes of subregulation 5.12(8) is to a law of the Commonwealth, or of a State or Territory.

As at the time of writing of this Commentary, 'environmental laws' relevant to regulation 5.13(8) include the following Acts, and relevant legislative instruments made under those Acts:

- *Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth)*
- *Protection of the Environment Operations Act 1997 (NSW)*
- *Environmental Protection Act 1994 (Qld)*
- *Environmental Protection Act 1986 (WA)*
- *Environmental Management and Pollution Control Act 1994(Tas)*
- *Land Use Planning and Approvals Act 1993(Tas)*
- *Environment Protection Act 1970(Vic)*
- *Environment Protection Act 1993 (SA)*
- *Waste Management and Pollution Control Act 2009 (NT)*
- *Environment Protection Act 1997 (ACT)*

As at the time of writing of this Commentary 'Occupational health and safety laws' relevant to regulation 5.13(8) include the following Acts, and relevant legislative instruments made under those Acts:

- *Occupational Health and Safety Act 1991 (Cth)*
- *Occupational Health and Safety Act 2000 (NSW)*
- *Workplace Health and Safety Act 1995 (Qld)*
- *Occupational Safety and Health Act 1984 (WA)*
- *Workplace Health and Safety Act 1995(Tas)*
- *Occupational Health and Safety Act 2004(Vic)*
- *Occupational Health, Safety and Welfare Act 1986(SA)*
- *Workplace Health and Safety Act 2011 (NT)*
- *Work Safety Act 2008 (ACT)*

Occupational health and safety laws will change as jurisdictions enact laws to give effect to the national harmonisation of work health and safety laws.

Subregulation 5.13(10) provides detail on the information required in an annual report commencing from the 2014-2015 financial year. From the financial year 2014-2015, and for each subsequent financial year, the annual report must also include information on the materials sent for processing after recycling, including :

- the weight of the components exported by the service provider for processing where a service provider identified in subregulation 5.12(6) exports components that have been recycled from products in a class of products, and the country to which the components were exported;
- the total weight of useable materials recovered from products in a class of products;
- the total weight of non-useable materials sent to landfill from products in a class of products by each of the following classes of facilities:
  - domestic processing facilities;
  - overseas processing facilities.

Subdivision 5.3.2 Audit reports

5.14 Audit report given at same time as annual report

Regulation 5.14 sets out the requirement for an 'audit report'. The regulation is concerned with independent verification of the information contained in a co-regulatory arrangement's annual report

Subregulation 5.14(1) requires an administrator of a co-regulatory arrangement to provide a report to the Minister about an audit of the operation of the co-regulatory arrangement for the financial year in accordance with this regulation, by virtue of subsection 24(4) of the Act. A civil penalty of 250 penalty units applies to this requirement.

An audit report must accompany the annual report required under subregulation 5.11(1) by 30 October in the next financial year.

Subregulation 5.14(2) provides the audit report must be prepared by:

- a person that is a registered company auditor under section 1280 of the *Corporations Act 2001;* or
- a company that is an authorised audit company under section 1299C of the *Corporations Act 2001.*

Subregulation 5.14(3) provides the audit report must include:

- an audit of the financial statements setting out the revenue and expenditure of the co-regulatory arrangement; and
- an audit of the performance of the co-regulatory arrangement in relation to each outcome to be achieved under Part 3; and
- a statement from the person or company preparing the report that the audit was conducted in accordance with:

- the Standard on Assurance Engagement ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information,* issued by the Auditing and Assurance Standards Board in July 2007, as it exists at the time these Regulations commence; and
- any other auditing standard issued by the Auditing and Assurance Standards Board that applies to the audit, as the standard exists at the time these Regulations commence; and

- a statement from the person or company preparing the report as to whether the annual report for the financial year is accurate and complies with regulation 5.12.

The Standard on Assurance Engagement ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* applies to assurance practitioners and others involved in performing assurance engagements. It establishes mandatory requirements and provides explanatory guidance for undertaking and reporting on assurance engagements other than audits or reviews of historical financial information.

The requirements related to audit reports seek to ensure that an audit is conducted, and an audit report is prepared, in a proper and independent way by an appropriately qualified auditor.

Schedule 1 Products and product codes

This Schedule sets out the products contained for the television product class under Part 1, and the computers, printers and computer products product class under Part 2 for subregulation 1.04(1) and lists each product with the associated product description and product code.

Schedule 2 Percentage targets

This Schedule sets out the percentage targets for the television product class under Part 1 and the computers, printers and computer products product class under Part 2 for subregulation 3.04(2).

Schedule 3 Converted weights

This Schedule sets out the converted weight as defined in regulation 1.03(2) for each product contained in the television product class under Part 1 and the computers, printers and computer products product class under Part 2 for subregulation 3.04(3).

5. Attachments

Attachment A: Summary of analysis undertaken to inform the draft Regulations

Attachment B: Product and Material Flow: Outcomes and Reporting Requirements for the Television and Computer Scheme

Attachment C: Proposed timeline for the National Television and Computer Product Stewardship Scheme

Attachment D: Application for an Approved Arrangement under the *Product Stewardship Act 2011* (the Act) and the *Product Stewardship (Televisions and Computers) Regulations 2011* (the Regulations)

Attachment A

Summary of analysis undertaken to inform the draft Regulations

Thresholds

The Regulations specify thresholds for liability under the Scheme in order to limit the impact of small businesses. The consultation paper on the design of the television and computer regulations noted that several industry associations had raised the feasibility of adjusting the previously proposed 5000 unit threshold. The department commissioned PricewaterhouseCoopers to undertake an analysis of alternative threshold options taking into account the different markets for the covered products, the potential for "gaming" by companies to avoid liability, fairness, and potential cost impacts. The analysis looked at thresholds of between 200 and 5,000 units for televisions and computers, and between 5,000 and 30,000 units for computer products.

The report recommends that it would not be unreasonable to increase the threshold for computer products to 15,000 units, noting that applying the same thresholds to products and substantial items may impose too onerous a burden on importers of computer products as their products typically have lower value. This would reduce the number of importers of computer products liable under the Scheme from 326 to 174 (based on 2007-08 import data), while retaining coverage of 87.3 per cent of computer product imports. Adjusting this threshold does not have any impact on the level of recycling under the Scheme, because liable parties are responsible for meeting recycling targets that are based on an estimate of the total waste stream, including products imported by those parties that are under the threshold. In the interests of reducing the impact of the Regulations on small business, this recommendation has been accepted.

The report also recommends that it would not be unreasonable to reduce the threshold for televisions to 1,000 units and for computers to 3,000 units. However, the case for this change was not as strong as for increasing the threshold for computer products. The change would increase the number of television importers liable under the Scheme from 37 to 57 and for computers from 80 to 115, but these additional importers are responsible for only a very small proportion of total imports (approximately 1.6 per cent of television imports and 1.3 per cent of computer imports). These companies are also more likely to fall within the common definition of a small business (i.e. turnover of less than $2 million per year), given their small import volume and the average import price for televisions and computers. While the report notes that reducing the threshold would help to reduce the incentive for gaming (i.e. companies that split their imports over multiple related companies so they sit under the threshold), the Regulations are including separate provisions to address this issue. Therefore the threshold of 5,000 units is being maintained for televisions and computers.

Estimating waste generation and setting targets

The recycling targets for the Scheme will be set as a percentage of the estimated amount of waste generated each year. The consultation paper suggested that the estimated waste stream would be calculated on the basis of past import data,

accounting for average product life (e.g. imports from seven years ago may provide an indication of the likely waste stream today).

The department engaged Meta Economics Consulting to undertake an analysis of the approach outlined in the consultation paper and also to look at other possible options for estimating waste generation. The analysis modelled the estimated television and computer waste stream to 2030, taking into account ABS household data and projections, Customs import and export data, and behavioural information presented in the RIS. The model was used as the basis for comparing the different options.

The analysis found that the approach that most accurately predicted the modelled waste stream was based on an average of the amount imported over the last three years, multiplied by a scaling factor of 0.9 to account for growth in the market (i.e. new televisions and computers that are being bought to replace older products). This approach was much more likely to be able to take account of changes in tastes and technology that could result in changes to the amount of waste being generated than an approach that used import data from further in the past. It also slightly under-estimates the modelled waste stream, which the report noted was desirable to try to avoid perverse environmental outcomes or excessive costs for industry. The findings of the report have been accepted and the recommended approach has been adopted in the draft Regulations.

The report also recommended an approach for setting the recycling target pathway for the Scheme, taking into account current recycling levels and recycling infrastructure capacity. Further analysis of target pathways was undertaken in an additional study, as outlined below.

Target pathways

The department commissioned Meta Economics to expand on its analysis of target pathways in an additional study that looked at four potential target pathway options (including the one recommended in the original report).

The study looked at the performance of the four pathways in relation to the total amount that would be recycled, recycling infrastructure capacity constraints and the potential impact of unexpected increases in waste generation. The report concludes that all pathways are likely to be robust in the face of recycling capacity constraints and potential unexpected increases in waste generation.

While the report does not recommend a preferred option, it found that the approach that would achieve the highest total amount of recycling over the 10-year period started with a target of 27 per cent (10 percentage points higher than current recycling levels), and then increased steadily to 80 per cent by 2021-22.

However, the report notes that there is insufficient information on the capacity of Co-regulatory Arrangements to establish their operations and expand to meet the demands of ambitious target trajectories and this represents a potential caveat in the strong performance of this approach.

Taking this into account, the Regulations adopt an approach that commences with a high starting target (30 per cent), but has a slower rate of increase in the first five years to provide time for Approved Arrangements to establish their operations. The report found that this approach delivers the second highest total recycling over the 10 year period. The higher starting target recognises that Approved Arrangements will have up to 18 months to achieve the first year target, as any early action undertaken following commencement of the Regulations in 2011-12 will be able to count towards achievement of this target.

Conversion factors

The consultation paper outlined two options for how the scheme target could be allocated to an approved arrangement: in units, or converted from units into weight. The department engaged MS2 and Perchards to undertake a study on conversion factors (based on average weights) that could be applied to products that are imported under each of the different Customs tariff codes within the scope of the Scheme.

The report concludes that conversion factors present a reasonable and consistent proxy for actual weight that can effectively be applied to import data to determine scheme targets and allocate targets to arrangements. The suggested conversion factors in the report have been adopted in the draft Regulations.

Mass Balance and material recovery target

Equilibrium consulting was engaged to undertake an analysis of the current levels of material recovery being achieved by recyclers of televisions and computers in Australia. The analysis also sought to determine whether calculations being used by recyclers are consistent and robust, and whether it would be appropriate to set an enforceable material recovery target in the Regulations.

The report found that Australian processors are currently achieving material recovery rates of approximately 74 to 99 per cent, with an average rate of 91 per cent. However, it also found that there is little consistency in calculations being used by different processors and evidence that some calculations are not robust.

Equilibrium concluded that it is not appropriate for the scheme to have an enforceable material recovery rate at commencement, given the range of recovery rates being reported and the uncertainty around what the current material recovery rate is because of data consistency issues. The report notes that as the Scheme develops and reporting and data quality improve, it may be possible to set an enforceable material rate in the Regulations.

Given the findings of the mass balance study, the draft Regulations include a material recovery target of 75 per cent, but it is not proposed to come into effect until 2014-15 (year 3 of the Scheme) to provide time to resolve the reporting and data quality issues that were identified in the report. The 75 per cent target is at the lower end of the range of current reported recovery rates, given there is uncertainty around the current overall material recovery rate being achieved by Australian processors due to data consistency issues. However, a 75 per cent target is consistent with material recovery requirements set by the European Union under its Waste Electrical and Electronic Equipment Directive. The target will act as a safeguard against the

use of poor recycling practices that could result in substantial amounts of material being sent to landfill, which was raised as an issue by stakeholders in the March-April 2011 consultation process. The Material Recovery Target is subject to a regulation impact statement before a decision is made to include it in the final Regulations.

Requirements for access to collection services

The department has analysed a range of options to identify metrics which will ensure that industry progressively provides reasonable access to collection services in metropolitan, regional and remote Australia. Options considered included a minimum level of service per head of population, per defined zone or within a certain distance of every town of a particular population size. Where there is more than one Approved Arrangement the metrics will apply consistently for all Arrangements.

The analysis found that a metric of at least one service per 250,000 people will provide a reasonable level of service in metropolitan areas and this has been included in the draft Regulations. This will, at a minimum, require each Arrangement to provide 55 collection services across metropolitan Australia. In general, it is expected that waste collection in metropolitan areas will be more cost effective than in regional and remote Australia. Accordingly, access to services in metropolitan areas is expected to increase as scheme targets rise.

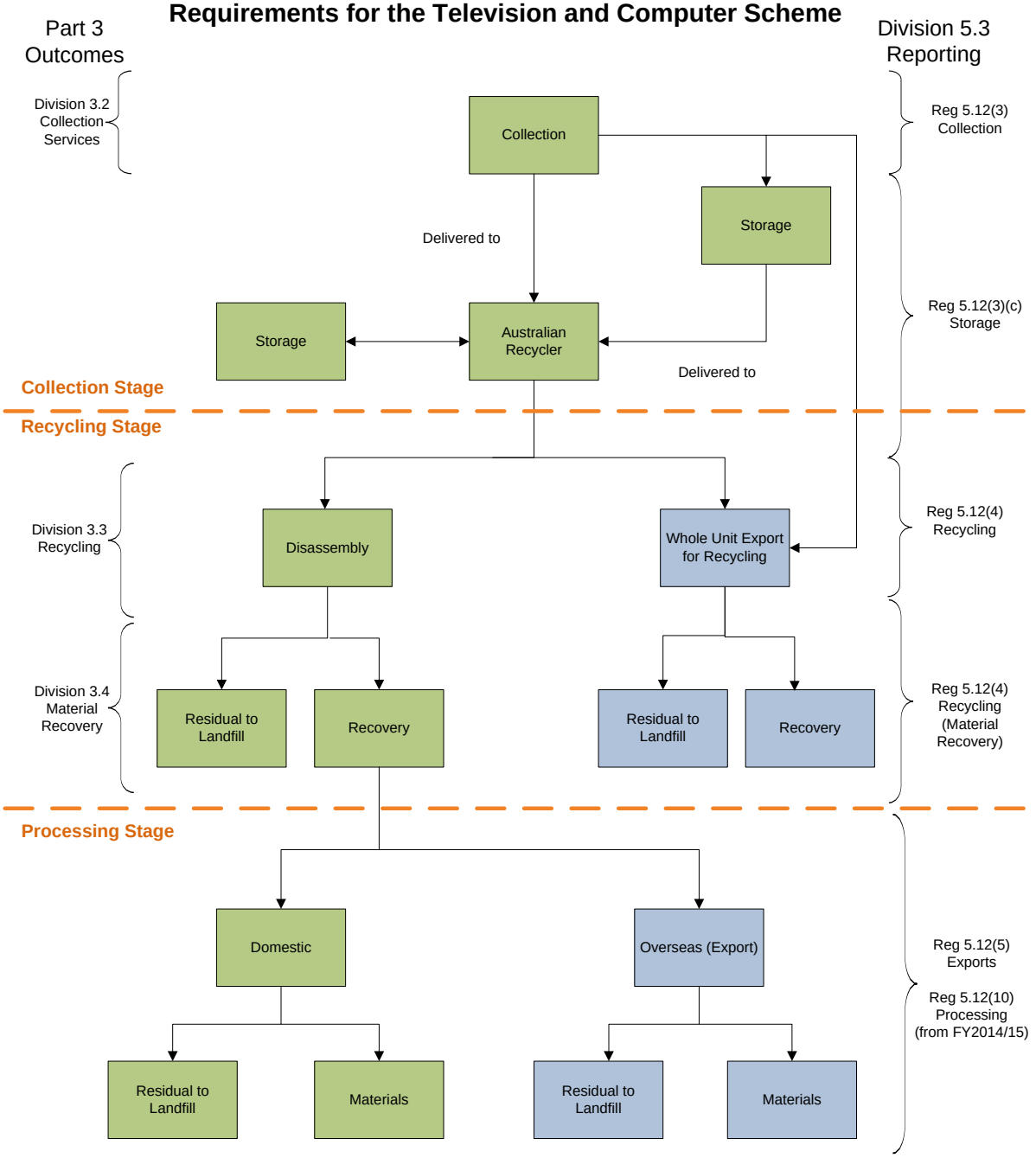
In setting the metrics for inner regional, outer regional and remote areas, the analysis took into account that people in regional and remote Australia often travel to larger service centres to gain access to a wider variety of services. The department found that the following metrics, which have been adopted in the draft Regulations, will ensure industry provides a reasonable level of collection services in these areas:

- For inner regional areas, a metric of at least one service within 100km of every town of 10,000 or more people. This will at a minimum require 24 services every year by each Arrangement, with an estimated 94 per cent of the inner regional population having access to a service within approximately 100 km;
- For outer regional areas, a metric of at least one service within 150km of every town of 4,000 or more people. This will at a minimum require 21 services every year by each Arrangement, with an estimated 94 per cent of the outer regional population having access to a service within approximately 150 km;
- For remote areas, a metric of at least one service within 200km of towns of 2,000 people or more (and with a frequency of once every two years). This will at a minimum require 24 services every two years by each Arrangement, with an estimated 77 per cent of the population in remote Australia having access to a service within approximately 200 km.

Overall, the proposed requirements for access to collection services in metropolitan, inner regional, outer regional and remote Australia are expected to provide 98% of the population with reasonable access to collection services.

Attachment B

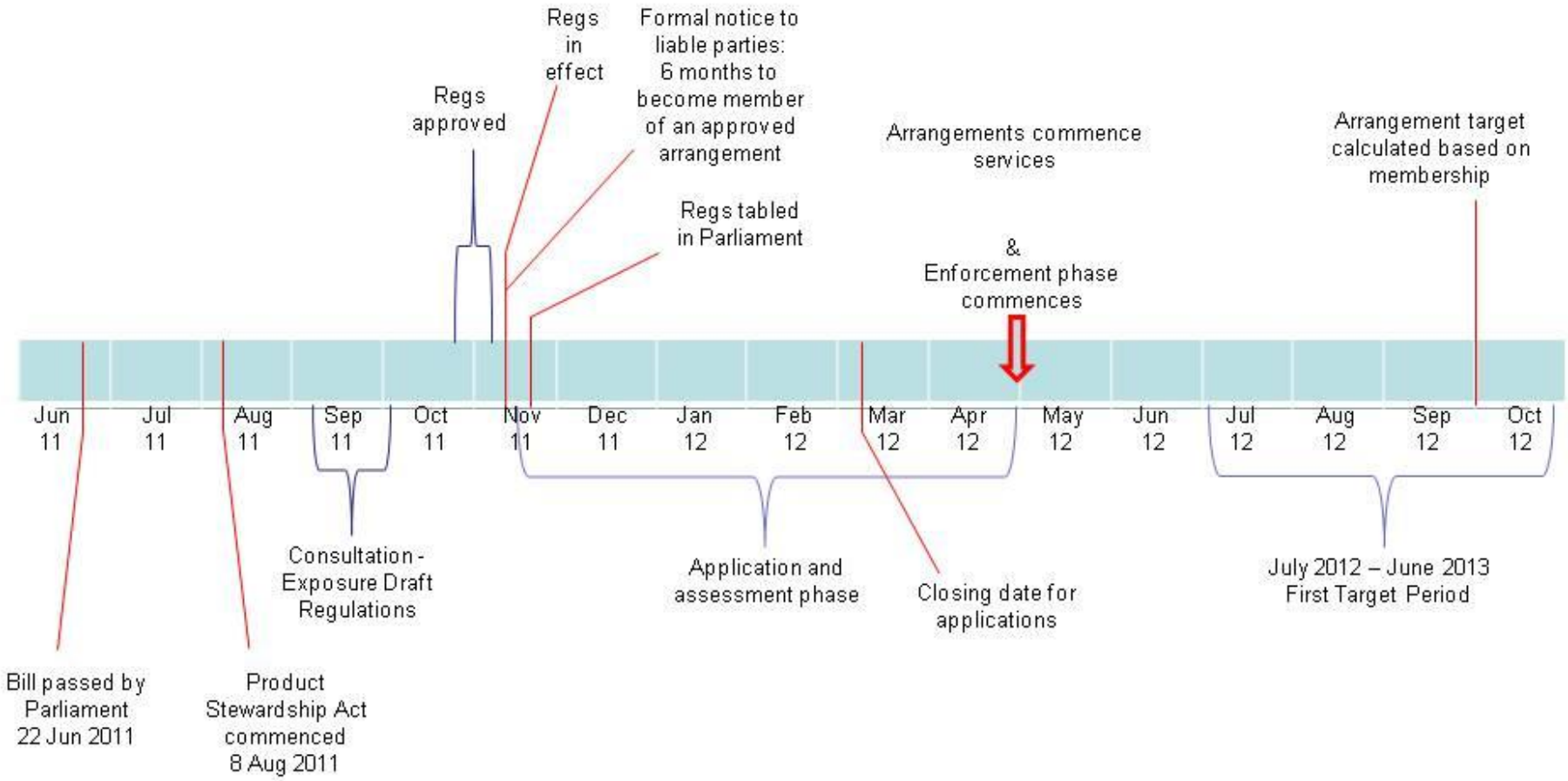
Product and Material Flow: Outcomes and Reporting Requirements for the Television and Computer Scheme



Note: The Hazardous Waste Act requires the issuance of a permit for the export of products or units containing hazardous substances. This may include export of products covered under the scheme.

Version 4.0 31/08/2011

Timeline for the National Television and Computer Product Stewardship Scheme



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Attachment D

Application for an Approved Arrangement under the *Product Stewardship Act 2011* (the Act) and the *Product Stewardship (Televisions and Computers) Regulations 2011* (the Regulations)

Part 1 Administrator and Arrangement Details

The applicant must be the administrator

	YES	NO
1. Are you the administrator of the co-regulatory Arrangement?	☐	☐

The Arrangement administrator must be a body corporate

2. Please attach a certificate of incorporation/registration to verify the administrator's body corporate status.

Attachment Number:	

Administrator details

3. Contact details of Administrator

Name of Administrator					
Trading names/s					
ABN		ACN (or N/A)			
Street address					
		State		Postcode	
Postal address					
		State		Postcode	

4. Please provide details of each Executive Officer of the Administrator. An executive officer of the Arrangement is a person who is concerned in, or takes part in, the management of the Arrangement (see subsection 51(4) of the Act). For each Executive Officer please include the first name, middle name(s), surname, date of birth and office held in the Administrator.

5. Contact person for information about your application

Name _____ Position _____

Contact Numbers BH _____ Fax _____ Mobile _____

Email _____

Please circle your preferred method of contact above.

Postal address _____

_____ State _____ Postcode _____

Classes of Products

6. Please indicate the class or classes of products your co-regulatory Arrangement will deal with (if both apply, please tick both):
   a. Televisions ☐
   b. Computers/printers/computer products ☐

Summary of Arrangement

7. Please briefly describe the Arrangement (50-100 words), explaining in lay terms how it will operate, its services and objectives.

Part 2 Governance

Governance Plan

8. A Governance Plan for the Arrangement will need to be developed in order to demonstrate that the Arrangement meets the governance requirements of the Act and the Regulations. Please attach the Arrangement's Governance Plan. This plan must include the Arrangement's:

   a. Risk management plan demonstrating that risks and mitigation measures have been identified (including for managing demand for services and risks of financial distress or insolvency). It must also include procedures for ensuring the risk management framework is actively and regularly monitored by the Arrangement's board and/or senior management. For example, how are risks recorded, tracked, treated and reviewed?

   b. Dispute resolution procedures that enable any disputes between members and the arrangement administrator to be resolved.

   c. Procedures and policies governing decision-making powers and delegations relating to implementation of the arrangement (e.g. procurement decisions). These must ensure roles and responsibilities are clearly defined and that there is an appropriate level of oversight and monitoring of the overall implementation of the Arrangement by the board and/or senior management.

   d. Procedures and policies governing replacement of the Administrator.

   e. Procedures and policies that ensure confidential information concerning members is protected.

Attachment Number:	

Membership

Membership rules

	YES	NO
9. Is the Arrangement a multi-member Arrangement	☐	☐

10. For multi-member arrangements please attach the Arrangement's membership requirements (if these are outlined in the Arrangement's constitution, please attach the constitution). These requirements must stipulate:

    a. the rules for acceptance and cessation of membership. These must be fair and equitable. For example, if a requirement of membership is to pay annual costs towards implementation of the arrangement, it will be expected that costs will be fairly apportioned to members based on their relative contribution to the Arrangement's liability for recycling. Where the Arrangement is at 'arms-length' from members, this requirement is that costs are negotiated in good faith.

    b. that membership of the Arrangement is restricted to liable parties.

Attachment Number:	

The arrangement must have regard to relevant competition requirements

11. For multi-member Arrangements, please attach the Arrangement's ACCC authorisation under section 88 of the *Competition and Consumer Act 2010*, or present sufficient evidence to demonstrate that ACCC authorisation is not required (such as legal advice or evidence demonstrating management of the Arrangement that is independent of members).

Attachment Number:	

Details of Members

12. For multi-member Arrangements, please attach a list of current and prospective members of the Arrangement with the following information provided for each member: member's name, trading name/s, ABN/ACN, membership status, class/es of products dealt with.

Attachment Number:	

Fit and Proper Person

13. Please state whether the Administrator or any Executive Officer of the Administrator:

		N/A	YES	NO
a.	Has been convicted for an offence against the Act committed within the last 10 years	☐	☐	☐
b.	Has been convicted for an offence against another law of the Commonwealth, or a law of a State or Territory, that is punishable by imprisonment for at least 1 year, if that offence was committed within the last 10 years	☐	☐	☐
c.	Has had a civil penalty order made against them for a contravention of a civil penalty provision in the Act or the Regulations, if that contravention occurred within the last 10 years	☐	☐	☐
d.	Is bankrupt, or has applied for bankruptcy	☐	☐	☐
e.	Has made a statement in an application under the Act that was false or misleading in a material particular	☐	☐	☐
f.	Knew that the statement in (e) above was false or misleading	☐	☐	☐
g.	Has been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*;	☐	☐	☐
h.	Please indicate whether the administrator is an externally-administered body corporate within the meaning given by section 9 of the *Corporations Act 2001*	☐	☐	☐

If you answered YES to any of the above questions, please give details in a separate attachment. Answering YES to any of the above will not necessarily prevent you from receiving an approval.

Attachment Number:	

Part 3 Meeting Required Outcomes

Arrangement Operational Plan

14. An Operational Plan for the Arrangement will need to be developed in order to demonstrate that the Arrangement is likely to achieve the targets and Australia wide implementation outcomes required by the Act and the Regulations. Please attach the Arrangement's Operational Plan for achieving these outcomes. The Operational Plan needs to address the following:

    a. Financial viability

        (i) Sources of funding and estimated costs (both administrative costs and costs related to implementation, including collection, transport, storage and recycling). Your application needs to demonstrate that the Administrator has sufficient funding to conduct the services.

        (ii) Contingency plans. These need to ensure continuity of the Arrangement's operations should risks of financial distress or insolvency be realised.

        (iii) Processes of the board and/or senior management for ongoing monitoring of budget trends.

    b. How recycling targets and Australia wide implementation obligations will be met

        (i) Estimates of the amount of product of each class the Arrangement will deal with, based on projected membership and market shares.

        (ii) Descriptions of the collection and recycling services that will be put in place over in order for the Arrangement to meet its target and Australia wide implementation outcomes. The plan must specify the types and the locations of services and demonstrate how these services satisfy the requirements of the Regulations for each metropolitan, regional and remote area. Appendix C summarises the requirements of the Regulations.

        (iii) The scalability and adaptability of the business model should membership and targets differ from expectations.

Attachment Number:	

Part 4 Communications and Reporting

Communications Plan

15. Please attach a copy of the Arrangement's Communications Plan for communicating information about the Arrangement to the public about the Arrangement, including its activities and how its services can be accessed. Please note that the Communications Plan must:

    - Provide for a website that outlines when and where collection services will be available;
    - Provide a contact number for enquiries or complaints;
    - Take into account the need to manage demand and meet outcomes; and
    - Provide for reasonable notice to be given to local governments and/or regional waste management bodies regarding the services that will be provided in their area.

Attachment Number:	

Monitoring and Reporting to the Regulator

16. Please describe how data will be gathered and recorded to meet each annual reporting requirement listed in the Regulations (summarised at Appendix D). Please outline any estimation techniques that are used (e.g. sampling).

Please note the reporting data must be provided to the Department in a suitable electronic format

17. Please attach the relevant procedures and policies of the Arrangement that govern making and keeping records. These procedures must require that the Arrangement maintain all records

relating to the administration and operation of the Arrangement for a period of five years from the date the record is created.

Attachment Number:	

Part 5 Other Matters and Declarations

Other matters

18. If there are any matters not covered sufficiently already that you would like to add to describe how the arrangement proposes to achieve the outcomes, or the matters dealt with by the arrangement, or any other matter specified in regulations please add here or in a separate attachment.

Attachment Number:	

Collection services undertaking

19. Please give an undertaking the Arrangement will comply with Regulation 3.01 so that the collection and recycling services provided to households by the Arrangement will be provided free of any charges and that the services will accept the covered products, regardless of brand and including orphan and historic waste.

Undertaking declaration
I declare that:

- the Arrangement will not charge for the collection of a product for recycling if the product was used only for household purposes;
- the collection of a product covered by the scheme will not be refused; and
- I will inform the department in writing if I withdraw my undertaking.

Signature of administrator's representative

_____

Date: ___/____/____
DAY MONTH YEAR

(Witness, Corporate Seal, etc)

Environment, health and safety undertaking

20. Please give an undertaking regarding Regulation 4.01 - assessing the adequacy of the environmental, health and safety policies and practices in relation to the collection, storage, transportation or recycling of products undertaken under the Arrangement.

Undertaking declaration
I declare that:

- the adequacy of the environmental, health and safety policies and practices in relation to the collection, storage, transportation or recycling of products undertaken under the Arrangement will be assessed.
- the Arrangement will not carry out or engage a third party to carry out collection, storage, transport or recycling activities unless it is satisfied that appropriate environmental, health and safety policies and practices are in place.
- the Arrangement will regularly monitor and review the conduct of service providers to ensure that collection, storage, transport and recycling are carried out in a safe and environmentally acceptable manner
- I will inform the department in writing if I withdraw my undertaking.

Signature of administrator

_____
Date: ___/____/____
(Witness, Corporate Seal, etc)

Applicant's Declaration

21. **WARNING**: Giving false or misleading information is a serious offence, and may provide a basis for finding that the applicant is not a fit and proper person and/or cancellation of an arrangement's approval.

I declare that:

- I am authorised to sign this application on behalf of the applicant by resolution of the governing body of the Arrangement
    - A true copy of the resolution is attached

Attachment Number:	

- To the best of my knowledge and belief the information contained on this form is correct in every essential detail;
- I am aware of the requirements of Administrators and Arrangements under the Act and Regulations;

Signature of administrator

_____
Date: ___/____/____
(Witness, Corporate Seal, etc)

Appendix A

Application Checklist

Question number(s)	Information to provide	✓ or N/A
1	Have you indicated whether the applicant is the Arrangement administrator?	
2	Have you attached evidence the administrator is a body corporate?	
3	Have you provided relevant contact details of the administrator?	
4	Have you provided details of each Executive Officer of the Administrator?	
5	Have you provided relevant details of a contact person for the application?	
6	Have you indicated the classes of products the Arrangement will deal with?	
7	Have you provided a brief description of the Arrangement?	
8	Have you attached the Arrangement's Governance Plan?	
9	Have you indicated whether the Arrangement is a multi-member Arrangement?	
10	If the Arrangement is multi-member, have you attached the membership requirements?	
11	If the Arrangement is multi-member, have you attached the Arrangement's ACCC authorisation or presented evidence to demonstrate this is not required?	
12	If the Arrangement is multi-member, have you attached the membership list?	
13	Have you completed the Fit and Proper Person questions and attached any relevant details?	
14	Have you attached the Arrangement's Operational Plan?	
15	Have you attached the Arrangement's Communication Plan?	
16	Have you described how data will be collected to meet the reporting requirements in the Regulations?	
17	Have you attached the Arrangement's record keeping procedures?	
18	Have you addressed relevant matters not addressed elsewhere?	
19	Have you completed the collections services undertaking?	
20	Have you completed the environment, health and safety undertaking?	
21	Have you completed the applicant's declaration?	
Attachments	Have you attached a completed Attachment Cover Sheet for each Attachment to the application form?	

Appendix B

Attachment Cover Sheet

Please copy and complete one Attachment Cover Sheet for each supporting document attached to the application form. Please attach the completed sheet to the front of the relevant Attachment.

Description/title of the attachment:	
Attachment number as indicated on the application:	
Total number of pages:	
Question on the application form to which the attachment relates:	
Please provide a brief summary of how the attachment addresses the question by the including the page numbers of the attachment that answer each of the subparts of the question:	

Appendix C

The circumstances in which reasonable access will be assessed as having been provided

Metropolitan areas	*Inner Regional areas*	*Outer Regional areas*	*Remote areas*
For each metropolitan area, the number of collection services available in each financial year must at least equal the population of that area divided by 250 000 and rounded up to the closest whole number.	At least one service must be provided for every town of 10 000 people or more in each financial year. A service is taken to be provided for a town if the service is available within 100km by road of the centre of that town.	At least one service must be provided for every town of 4 000 people or more in each financial year. A service is taken to be provided for a town if the service is available within 150km by road of the centre of that town.	At least one service must be provided for every town of 2 000 people or more, once every 2 financial years. A service is taken to be provided for a town if the service is available within 200km by road of the centre of that town.

The definitions in the above table are based on those in the *Statistical Geography Volume 1—Australian Standard Geographical Classification* (ASGC) (ABS catalogue number 1216.0), published by the Australian Statistician in July 2006. "Metropolitan area" means a major city of Australia, as described in the Remoteness Structure in the AGSC; "Inner Regional area" means inner regional Australia; "Outer Regional area" means outer regional Australia; "Remote area" means remote Australia or very remote Australia.

A reference to:

(a) a distance is the distance by road; and

(b) the population of an area or town is the population of the area or town as determined in the 2006 Census of Population and Housing, published on the website of the Australian Bureau of Statistics; and

(c) the centre point of a town is the location of the town as stated in the Gazetteer of Australia 2010 Release, published by Geoscience Australia in February 2011

Appendix D

Information requirements for annual reporting by Arrangements

Matters to be included in annual report

(1) The annual report must:

(a) identify the class or classes of products covered by the co-regulatory arrangement; and

(b) describe any activities undertaken in relation to the matters required to be dealt with by the co-regulatory; and

(c) describe the performance of the co-regulatory arrangement in relation to each outcome to be achieved; and

(d) if an outcome was not achieved — explain why the outcome was not achieved, and the measures proposed to be implemented to rectify the failure to achieve the outcome.

Details about membership

(2) The annual report must also include the number of members of the co-regulatory arrangement, and the following information about each member:

(a) the name, and the trading name (if any), of the member;

(b) if the co-regulatory arrangement covers more than one class of products — the class of products in relation to which the member is a liable party;

(c) the ABN or ACN of the member;

(d) the date the member became a member;

(e) for each liable party that is no longer a member of the co-regulatory arrangement — the date the liable party ceased to be a member.

Details about collection and storage of products

(3) The annual report must also include the following in relation to the collection and storage of products under the co-regulatory arrangement:

(a) details about each collection service, including the type of collection service, the location of the collection service and the frequency of the collection service; and

(b) the total weight of products in a class of products collected in each of the following areas in each State and Territory:

(i) metropolitan areas;

(ii) inner regional areas;

(iii) outer regional areas;

(iv) remote areas;

(c) the total weight of products in a class of products stored other than at a recycling facility.

Details about re-use and recycling of products

(4) The annual report must also include the following in relation to recycling of products under the co-regulatory arrangement:

(a) the total weight of products in a class of products delivered to a recycling facility;

(b) the total weight of products in a class of products recycled;

(c) the types of materials recovered from the disassembly of products in a class of products;

(d) the total weight of materials recovered from the disassembly of products in a class of products;

(e) the types of materials sent for disposal from the disassembly of products in a class of products;

(f) the total weight of materials sent for disposal from the disassembly of products in a class of products.

Details about exporting products

(5) The annual report must also include the following in relation to products exported under the co-regulatory arrangement:

(a) the total weight of products in a class of products that are exported as whole units for recycling;
(b) the country to which the products were exported.

Details about contracted service providers

(6) The annual report must also include, for each class of products, the following in relation to each service provider contracted to provide collection, transportation, storage or recycling services in relation to the co-regulatory arrangement:

(a) the name of the service provider;
(b) the service provided by the service provider;
(c) the total weight of products recycled by the service provider.

(7) ***service provider*** includes:

(a) an overseas facility that receives whole units of products exported from Australia under the co-regulatory arrangement; and
(b) if the administrator is providing services in relation to the co-regulatory arrangement beyond the role of being administrator — the administrator in its capacity of providing those services.

Details about environmental and OH&S incidents or breaches

(8) The annual report must also include details about any of the following that occur in the course of the collection, transportation, storage or recycling of products in a class of products under the co-regulatory arrangement:

(a) if an environmental law or an occupational health and safety law requires a person to notify a public office holder or public authority if a particular incident occurs — any of those incidents;
(b) a breach of an environmental law or an occupational health and safety law.

(9) Law means a law of the Commonwealth, or of a State or Territory.

Details to be provided from 2014–2015 financial year

(10) The annual report must also include the following details in relation to the co-regulatory arrangement:

(a) if a service provider mentioned in (6) exports components that have been recycled from products in a class of products — the weight of the components exported by the service provider for processing;
(b) the country to which the components mentioned in (a) were exported;
(c) the total weight of useable materials recovered from products in a class of products;
(d) the total weight of non-useable materials sent to landfill from products in a class of products by each of the following classes of facilities:
    (i) domestic processing facilities;
    (ii) overseas processing facilities.