

EXPOSURE DRAFT



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Recycling and Waste Reduction (Export— Waste Paper and Cardboard) Rules 2023

I, Tanya Plibersek, Minister for the Environment and Water, make the following rules.

Dated 2023

Tanya Plibersek [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for the Environment and Water

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Part 1—Preliminary

1 Name

This instrument is the *Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2024.	1 July 2024

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Recycling and Waste Reduction Act 2020*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) export;
- (b) export declaration;
- (c) export licence;
- (d) export operations;
- (e) regulated waste material.

In this instrument:

Act means the *Recycling and Waste Reduction Act 2020*.

listed waste paper and cardboard specification means a waste paper and cardboard specification, as existing from time to time, that is listed on the Department’s website.

prohibitive material, in relation to regulated waste paper and cardboard, means contaminants in the waste other than water.

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regulated waste paper and cardboard means waste paper and cardboard that is prescribed under section 5.

trade sample, in relation to regulated waste paper and cardboard, means such paper and cardboard that is exported solely for the purposes of providing:

- (a) a sample under a commercial agreement; or
- (b) a sample to the buyer of the waste for the purposes of technical or safety analysis.

waste paper and cardboard: see subsection 5(2).

waste paper and cardboard export licence means an export licence to carry out export operations in relation to regulated waste paper and cardboard.

waste paper and cardboard specification means a written industry specification or standard that relates to the manufacture, processing or supply of waste paper and cardboard.

Part 2—Regulating waste paper and cardboard

5 Waste paper and cardboard is regulated waste material

- (1) For the purposes of subsection 17(1) of the Act, waste paper and cardboard, other than the kinds of waste paper and cardboard referred to in subsection (3) of this section, is prescribed.

Note: Waste paper and cardboard that is prescribed under this section is ***regulated waste paper and cardboard***.

- (2) ***Waste paper and cardboard*** means:
- (a) mixed and unsorted paper and cardboard that is discarded, rejected or left-over from an industrial, commercial, domestic or other activity; or
 - (b) mixed and unsorted paper and cardboard that is surplus to, or a by-product of, an industrial, commercial, domestic or other activity; or
 - (c) the fibrous component of paper and cardboard described in paragraph (a) or (b).
- (3) The following kinds of waste paper and cardboard are not prescribed for the purposes of subsection 17(1) of the Act:
- (a) waste paper and cardboard that is exported for personal or domestic use;
 - (b) waste paper and cardboard that is imported into Australia on a temporary basis and is re-exported in the same covering and with the same trade description (within the meaning of the *Commerce (Trade Descriptions) Act 1905*) with which it was imported;
 - (c) waste paper and cardboard that is hazardous waste (within the meaning of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*).

6 Prescribed export conditions for regulated waste paper and cardboard

- (1) This section is made for the purposes of section 18 of the Act.
- (2) The export of regulated waste paper and cardboard is prohibited unless:
- (a) all of the following apply:
 - (i) the exporter holds a waste paper and cardboard export licence that covers the regulated waste paper and cardboard;
 - (ii) the licence is in force and not suspended at the time the regulated waste paper and cardboard is exported;
 - (iii) for each consignment of regulated waste paper and cardboard that is exported—the exporter has given the Minister an export declaration for the consignment; or
 - (b) all of the following apply:
 - (i) each consignment of regulated waste paper and cardboard that is exported is less than 25 kg;
 - (ii) the regulated waste paper and cardboard that is exported is a trade sample or exported for the purposes of testing or analysis;

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- (iii) for each consignment that is exported—the exporter has notified the Minister, in writing, of the matters specified in subsection (3).

Note: Contravention of one or more of the conditions in this subsection is an offence and a civil penalty provision (see section 20 of the Act).

- (3) For the purposes of subparagraph (2)(b)(iii), the matters are:
 - (a) the type of waste being exported; and
 - (b) the purpose of exporting the waste; and
 - (c) the weight of the consignment; and
 - (d) the final destination for the waste (including country and facility).

Part 3—Waste paper and cardboard export licences

7 Application for waste paper and cardboard export licence—requirements

- (1) For the purposes of paragraphs 172(1)(c) and (d) of the Act, this section prescribes:
 - (a) information that must be included in an application under section 33 of the Act for a waste paper and cardboard export licence; and
 - (b) documents that must accompany such an application.
- (2) For each kind of regulated waste paper and cardboard intended for export under the licence, the application must nominate a waste paper and cardboard specification with which that kind of waste paper and cardboard will comply.
- (3) If the nominated specification is not a listed waste paper and cardboard specification, the application must be accompanied by a copy of the nominated specification.
- (4) The application must include information demonstrating that the regulated waste paper and cardboard intended for export under the licence will be processed prior to export to comply with the nominated specification.

8 Deciding whether to grant a waste paper and cardboard export licence

- (1) For the purposes of paragraph 34(2)(f) of the Act, this section prescribes other matters to which the Minister must have regard in deciding whether to grant a waste paper and cardboard export licence.
- (2) The matters are the following:
 - (a) the intended use of the waste paper and cardboard in the place to which the paper and cardboard is intended to be exported;
 - (b) whether the waste paper and cardboard specification nominated in the application for the export licence is appropriate for the intended use of the paper and cardboard in the place to which the paper and cardboard is intended to be exported;
 - (c) whether the applicant has the capability to process the waste paper and cardboard in accordance with the nominated specification;
 - (d) if the nominated specification is not a listed waste paper and cardboard specification:
 - (i) the grade description for the waste paper and cardboard; and
 - (ii) the thresholds for prohibitive materials in the specification; and
 - (iii) any packaging requirements in the specification; and
 - (iv) whether paper and cardboard processed in accordance with the specification is capable of re-manufacture without further processing; and
 - (v) whether paper and cardboard processed in accordance with the specification is appropriate for the intended use of the paper and

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cardboard in the place to which the waste paper and cardboard is intended to be exported;

- (e) whether the applicant has been the holder of an export licence, relating to any regulated waste material, that has been revoked under Division 2 of Part 8 of Chapter 2 of the Act (revocation by Minister).

Note: Other matters to which the Minister must have regard are specified in paragraphs 34(2)(a) to (e) of the Act. The Minister may also have regard to any other matter that the Minister considers relevant (see subsection 34(3) of the Act).

9 Conditions of waste paper and cardboard export licence

- (1) For the purposes of paragraph 35(1)(b) of the Act, this section prescribes conditions of a waste paper and cardboard export licence.

Note: A waste paper and cardboard export licence is also subject to:

- (a) the conditions (if any) specified in the licence under paragraph 35(1)(c) of the Act; and
 - (b) the condition that the holder of the licence must comply with any directions given to the holder under section 64 of the Act.
- (2) The holder of the licence must, for each consignment of regulated waste paper and cardboard intended for export under the licence:
 - (a) ensure that the waste paper and cardboard complies, before export, with the waste paper and cardboard specification stated in the licence; and
 - (b) have, at the time the waste paper and cardboard is exported, a commercial relationship with the importer of the waste paper and cardboard.
 - (3) If the holder of the licence is not the supplier of the regulated waste paper and cardboard intended for export, the holder must, at the time the paper and cardboard is supplied, have a commercial relationship with the supplier.
 - (4) If, in accordance with paragraph 36(2)(d) of the Act, the licence states one or more places to which the waste paper and cardboard may be exported, the holder of the licence must export the waste paper and cardboard only to a stated place.
 - (5) The holder of the licence must, for each consignment of regulated waste paper and cardboard exported under the licence, ensure that the rate of prohibitive materials in the waste paper and cardboard does not exceed the following:
 - (a) if the waste paper and cardboard is exported before 1 July 2026—5% of the total weight of the consignment;
 - (b) if the waste paper and cardboard is exported on or after 1 July 2026—3% of the total weight of the consignment.
 - (6) The holder of the licence must notify the Minister, in the form approved by the Minister, if any of the following events occur:
 - (a) there is a change in the supplier of the regulated waste paper and cardboard covered by the licence;
 - (b) there is a change in the freight forwarder or other agent used to export the regulated waste paper and cardboard covered by the licence (including using an agent where one was not previously used, or ceasing to use an agent);

- (c) there is a change in the importer of the regulated waste paper and cardboard covered by the licence.
- (7) A notification under subsection (6) must be given as soon as practicable after the change occurs.

10 Information to be stated in waste paper and cardboard export licence

- (1) For the purposes of paragraph 36(2)(k) of the Act, this section prescribes other information that must be stated in a waste paper and cardboard export licence.
- (2) The waste paper and cardboard export licence must state the waste paper and cardboard specification that the waste paper and cardboard exported under the licence will comply with. At the grant of the licence, the stated specification must be the specification nominated in the application for the licence.

Note: The licence may later be varied under Part 6 of Chapter 2 of the Act.

11 Renewal of waste paper and cardboard export licence

- (1) For the purposes of paragraph 38(4)(a) of the Act, an application for renewal of a waste paper and cardboard export licence must be made no later than 30 days before the expiry date of the licence.

Note: An application to renew a waste paper and cardboard export licence can only be made if there is an expiry date for the licence (see subsection 38(1) of the Act). Some licences remain in force until the happening of a specified event (see paragraph 34(4)(a) of the Act).

- (2) For the purposes of paragraph 39(3)(f) of the Act, the Minister must have regard to the matters listed in subsection 8(2) of this instrument in deciding whether to renew a waste paper and cardboard export licence.
- (3) For the purposes of the application of subsection (2), a reference in subsection 8(2) to a nominated waste paper and cardboard specification is taken, if the licence holder has not nominated a different specification in the application for renewal of the licence, to be a reference to the specification currently stated in the licence.

12 Application by holder to vary waste paper and cardboard export licence

- (1) For the purposes of paragraph 172(1)(c) and (d) of the Act, this section prescribes:
 - (a) information that must be included in an application under section 42 of the Act to vary a waste paper and cardboard export licence; and
 - (b) documents that must accompany such an application.
- (2) If the holder of the licence is applying to vary the licence to state a new waste paper and cardboard specification (whether in addition to or in substitution for a waste paper and cardboard specification currently stated in the licence), the application must:
 - (a) include information demonstrating that the regulated waste paper and cardboard intended for export under the licence, as varied, will be

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processed before export to comply with the proposed waste paper and cardboard specification; and

- (b) if the proposed waste paper and cardboard specification is not a listed waste paper and cardboard specification—be accompanied by a copy of the proposed waste paper and cardboard specification.

13 Deciding whether to vary a waste paper and cardboard export licence

- (1) For the purposes of paragraph 42(4)(e) of the Act, the Minister must have regard to the matters listed in subsection 8(2) of this instrument in deciding whether to vary a waste paper and cardboard export licence.

Note: Other matters to which the Minister must generally have regard are specified in paragraphs 42(4)(a) to (d) of the Act. The Minister may also have regard to any other matter that the Minister considers relevant (see subsection 42(6) of the Act).

- (2) For the purposes of the application of subsection (1), a reference in subsection 8(2) to a nominated waste paper and cardboard specification is taken, if the licence holder has not nominated a different specification in the application for variation of the licence, to be a reference to the specification currently stated in the licence.

14 Grounds for suspension of waste paper and cardboard export licence

For the purposes of paragraph 46(1)(i) of the Act, a ground for suspending a waste paper and cardboard export licence is that:

- (a) the holder of the licence was required to comply with subsection 60(2) of the Act (requirement to provide additional or corrected information), in relation to:
 - (i) information included in an application for the grant, renewal or variation of the licence; or
 - (ii) information or a document given in relation to such an application; and
- (b) the holder failed to comply with the requirement.

Note: Other grounds for suspending an export licence are specified in paragraphs 46(1)(a) to (h) of the Act.

15 Grounds for revocation of waste paper and cardboard export licence

For the purposes of paragraph 54(1)(i) of the Act, a ground for revoking a waste paper and cardboard export licence is that:

- (a) the holder of the licence was required to comply with subsection 60(2) of the Act (requirement to provide additional or correct information), in relation to:
 - (i) information included in an application for the grant, renewal or variation of the licence; or
 - (ii) information or a document given in relation to such an application; and
- (b) the holder failed to comply with the requirement.

Note: Other grounds for revoking an export licence are specified in paragraphs 54(1)(a) to (h) of the Act.

16 Holder of waste paper and cardboard export licence to notify the Minister of certain events

For the purposes of paragraph 61(1)(e) of the Act, the following are prescribed events for the holder of a waste paper and cardboard export licence:

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

17 Directions to holders of waste paper and cardboard export licence

For the purposes of paragraph 64(3)(b) of the Act, the Minister must, in considering whether to give a direction under subsection 64(1) of the Act to the holder of a waste paper and cardboard export licence, have regard to the following:

- (a) whether a condition of the licence has been contravened, or is likely to be contravened;
- (b) whether the holder has not complied, or is likely not to comply, with a requirement of the Act;
- (c) whether the regulated waste paper and cardboard covered by the licence does not comply, or is likely not to comply, with a requirement under the Act that applies in relation to the paper and cardboard.

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Part 4 Exemptions

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Part 4—Exemptions

18 Revocation of exemption

For the purposes of paragraph 31(2)(b) of the Act, the Minister must, in considering whether to revoke an exemption in relation to regulated waste paper and cardboard, have regard to whether the holder of the exemption has contravened or is contravening a condition of the exemption.

Part 5—Record-keeping

19 Purpose of Part

This Part is made for the purposes of subsection 142(1) of the Act.

20 Making and retaining records

- (1) The holder of a waste paper and cardboard export licence must make and retain the following records:
 - (a) for each consignment of regulated waste paper and cardboard that is exported under the licence:
 - (i) the export declaration made for the consignment; and
 - (ii) evidence supporting the matters stated in the export declaration; and
 - (iii) photographs of the paper and cardboard in the consignment, and of the consignment once packed for export, that have sufficient resolution, brightness and contrast to show the consignment clearly and that are time and date stamped;
 - (b) a copy of the receipt for payment for the consignment issued by the holder to the importer of the consignment;
 - (c) each other document, made by the holder or that comes into the holder's possession, that is relevant to showing whether the holder has complied or is complying with the applicable requirements of the Act.
- (2) The holder of the waste paper and cardboard export licence must retain each record for at least 5 years beginning on the day the record is made by the holder or comes into the holder's possession (as the case may be).
- (3) A record that is required under this section must be:
 - (a) subject to subsection (4)—in English; and
 - (b) dated, with the date that the document was made by the holder or came into the holder's possession; and
 - (c) for a document made by the holder—accurate and legible; and
 - (d) able to be audited.
- (4) If the record is not in English, the holder of the waste paper and cardboard export licence must obtain (as soon as practicable after the record is made by the holder or comes into the holder's possession) and retain a translation of the record into English.

21 Records must not be altered or defaced during retention period

- (1) A record that is required to be retained by the holder of a waste paper and cardboard export licence under section 20 must not be altered or defaced during the period of 5 years (the *retention period*) in which it is required to be retained.
- (2) However, subsection (1) does not prevent notations or markings being made on the record in accordance with ordinary practice.

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Part 5 Record-keeping

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- (3) If, during the retention period, notations or markings are made on the record in accordance with ordinary practice, the licence holder must also retain, during the retention period:
 - (a) if reasonably practicable—a copy of the original record without notations or markings; and
 - (b) copies of the record that show how the record has changed over time.

Part 6—Other matters

22 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

- (1) For the purposes of section 181 of the Act, subsection (2) of this section prescribes circumstances in which a relevant Commonwealth liability of a person is taken to have been paid for the purposes of any of the following provisions (a ***relevant provision***) of the Act in relation to a waste paper and cardboard export licence:
 - (a) paragraph 34(2)(c) (grant of export licence);
 - (b) paragraph 39(3)(c) (renewal of export licence);
 - (c) paragraph 42(4)(b) (variation of export licence).
- (2) A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a relevant provision if:
 - (a) the person, or another person, has given a written undertaking to the Minister to pay the amount of the relevant Commonwealth liability; and
 - (b) the undertaking includes a term that the relevant Commonwealth liability is to be reduced by each amount paid in accordance with the undertaking; and
 - (c) the Minister has accepted the undertaking and has not revoked the acceptance.
- (3) For the purposes of paragraph (2)(c), the Minister must not accept an undertaking unless the Minister has considered the following matters:
 - (a) the financial position of the person who gave the undertaking;
 - (b) the nature and likely cost of the export operations to which a decision under the relevant provision relates;
 - (c) whether the person who gave the undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the export operations referred to in paragraph (b) of this subsection.

The Minister may also consider any other matter that the Minister considers relevant.