

Monitor 11 – Ministerial Responses¹

Chapter 2: Concluded matters:

Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024 [F2024L00491].....	1
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THE HON TANYA PLIBERSEK MP
MINISTER FOR THE ENVIRONMENT AND WATER

MS24-001480

Ms Hannah Dibley
Committee Secretary
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
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Dear Committee Secretary

I refer to your correspondence of 22 August 2024 regarding the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) request for further information regarding the *Recycling and Waste Reduction (Export–Waste Paper and Cardboard) Rules 2024* (the Rules), as set out in Delegated Legislation Monitor 9 of 2024.

I have carefully considered the Committee's request for further information on particular issues arising from the Rules.

As requested by the Committee, I agree to amend the explanatory statement to include the relevant information from this response and my response.

My detailed response is in the Attachment.

I thank the Committee for the opportunity to respond.

Yours sincerely

TANYA PLIBERSEK

Enc Response to the Senate Standing Committee for the Scrutiny of Delegated Legislation

10.9.2024

**ATTACHMENT: RESPONSE TO SENATE STANDING COMMITTEE FOR THE SCRUTINY OF DELEGATED
LEGISLATION
DELEGATED LEGISLATION MONITOR 9 OF 2024**

RECYCLING AND WASTE REDUCTION (EXPORT–WASTE PAPER AND CARDBOARD) RULES 2024

Conferral of discretionary powers; adequacy of explanatory materials

Committee comments:

The Committee requests the Minister’s advice as to whether substantive guidance can be provided in relation to the factors that may be taken into account in determining ‘any other matters’ under subsection 21(3) and/or specific examples of what ‘any other matters’ may include.

Response:

The *Recycling and Waste Reduction (Export–Waste Paper and Cardboard) Rules 2024* (the Rules) provides for circumstances in which a relevant Commonwealth liability of a person is taken to have been paid. A relevant Commonwealth liability includes a fee or charge, or a penalty for a late payment of a fee or charge, that is payable under the *Recycling and Waste Reduction Act 2020* (the RAWR Act).

Section 21 of the Rules has the practical effect that a fee charged for a waste paper and cardboard export licence, licence renewal, or licence variation, is taken to have been paid if the person liable to pay the fee has given an undertaking to pay the amount of the fee to the Minister, and the Minister has accepted (and not subsequently revoked) the undertaking.

Subsection 21(3) of the Rules sets out matters that the Minister must consider before accepting an undertaking from a person. These criteria go to the financial position of the person and whether they will be able to pay the liability in accordance with the undertaking. These criteria must be considered by the Minister in all cases.

In addition, subsection 21(3) provides that the Minister may also consider any other matter that the Minister considers relevant before accepting an undertaking. As noted in my previous response, this allows the Minister to consider other factors that may be unique to an individual case and so are not easily identifiable or appropriate to expressly set out in the Rules.

Examples of relevant matters may include:

- the amount of the outstanding liability;
- the reason the liability has not been paid by the person;
- the person’s financial history under the RAWR Act (including whether the person has previously had outstanding liabilities, or has made (or complied with) a payment undertaking);
- the purpose of the export operations to which the application relates and whether those operations could be considered to be in the public or national interest;
- any written policy of the Australian Government in relation to the treatment of outstanding liabilities;
- Australia’s international obligations;
- Australia’s relations with the relevant importing country.

In response to the Committee’s question about substantive guidance in relation to factors that may be taken into account in determining ‘any other matters’ for the purposes of subsection

21(3) and/or specific examples of what 'any other matters' may include, I undertake to amend the explanatory statement to include the information in this response and, where relevant, my previous response.

Privacy

Committee comments:

The Committee requests the Minister's advice as to whether the instrument's explanatory statement can be amended to include the details provided about the nature and scope of personal information that may be collected under the instrument and applicable privacy protections including the application of *Privacy Act 1988*.

Response:

Yes, I undertake to amend the explanatory statement for the Paper and Cardboard Rules to include the details provided in my previous response about the nature and scope of personal information that may be collected under the instrument and applicable privacy protections including the application of *Privacy Act 1988*.