



# **Recycling and Waste Reduction (Export— Waste Plastic) Rules 2021**

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I, Sussan Ley, Minister for the Environment, make the following rules.

Dated 24 May 2021

Sussan Ley  
Minister for the Environment

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## Part 1—Preliminary

### 1 Name

This instrument is the *Recycling and Waste Reduction (Export—Waste Plastic) Rules 2021*.

### 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 2021.	1 July 2021

Note: This table relates only to the provisions of this instrument as originally made.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 declaration;
- (b) export licence;
- (c) export operations;
- (d) prescribed export conditions;
- (e) regulated waste material.

In this instrument:

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

**export permit** has the same meaning as in the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

**hazardous waste** has the same meaning as in the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

**listed waste plastic specification** means a waste plastic specification, as existing from time to time, that is listed on the Department's website.

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***nominated specification*** means:

- (a) for regulated waste plastic intended for export under a waste plastic export licence:
  - (i) the waste plastic specification nominated for the plastic in the application for the licence (see subsection 7(3)); or
  - (ii) if a different waste plastic specification is stated for the plastic in the licence (see subsection 12(2))—that specification; or
- (b) for an application for an exemption in relation to the export of a trade sample of regulated waste plastic—the waste plastic specification nominated for the plastic in the application (see subsection 18(3)).

***processed engineered fuel***: see subsection 5(3).

***regulated processed engineered fuel*** means regulated waste plastic that is processed engineered fuel.

***regulated waste plastic*** means waste plastic that is prescribed under section 5.

***trade sample***: see subsection 18(2).

***waste plastic***: see subsection 5(2).

***waste plastic export licence*** means an export licence to carry out export operations in relation to regulated waste plastic.

***Waste Plastic Exports List*** means the List with that name, as existing from time to time, that is published on the Department's website.

***waste plastic specification*** means a written industry specification or standard that relates to the manufacture, processing or supply of waste plastic.

## **Part 2—Exporting waste plastic**

### **Division 1—General**

#### **5 Waste plastic is regulated waste material**

- (1) For the purposes of subsection 17(1) of the Act, waste plastic is prescribed.

Note: Waste plastic that is prescribed under this section is *regulated waste plastic*.

- (2) **Waste plastic** means:
- (a) plastic that is discarded, rejected or left over from an industrial, commercial, domestic or other activity; or
  - (b) plastic that is surplus to or a by-product of an industrial, commercial, domestic or other activity; or
  - (c) processed engineered fuel.
- (3) **Processed engineered fuel** means waste material that:
- (a) is waste plastic within the meaning of paragraph (2)(a) or (b) that is processed with any other waste material; and
  - (b) is intended for use as fuel.
- (4) Despite subsection (1), the following kinds of waste plastic are not prescribed for the purposes of subsection 17(1) of the Act:
- (a) waste plastic that is exported for personal or domestic use;
  - (b) waste plastic 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 plastic that is hazardous waste in relation to which an order or arrangement has been made by the Minister under Part 3 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*.

#### **6 Prescribed export conditions for regulated waste plastic**

- (1) This section is made for the purposes of section 18 of the Act.
- (2) The export of regulated waste plastic is prohibited unless:
- (a) all of the following apply:
    - (i) the exporter holds a waste plastic export licence that covers the plastic;
    - (ii) the licence is in force and not suspended at the time the plastic is exported;
    - (iii) for each consignment of plastic that is exported—the exporter has given the Minister an export declaration for the consignment; or
  - (b) both of the following apply:
    - (i) the plastic is of a kind, and exported in the circumstances (if any), listed in the Waste Plastic Exports List;

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- (ii) the exporter has given the Minister a notification under subsection (3) in relation to plastic of that kind and to be exported in those circumstances (if any).

Note 1: For the purposes of subparagraph (b)(ii), a separate notification is not required for each consignment.

Note 2: 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) A notification given for the purposes of subparagraph (2)(b)(ii) must:

- (a) if the Minister has approved, in writing, a manner for giving the notification—be given in an approved manner; and
- (b) if the Minister has approved a form for the notification:
  - (i) include the information required by the form; and
  - (ii) be accompanied by any documents required by the form; and
- (c) be signed and dated by the exporter.

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 146 and 147 of the Act and sections 137.1 and 137.2 of the Criminal Code).

- (4) A notification given for the purposes of subparagraph (2)(b)(ii) is taken not to have been given if the notification does not comply with the requirements in subsection (3).
- (5) To avoid doubt, for the purposes of paragraph (3)(b) the Minister may approve:
  - (a) different forms for notifications in relation to different kinds of regulated waste plastic; or
  - (b) a single form for a notification for the export of consignments of more than one kind of regulated waste plastic.

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## **Division 2—Waste plastic export licences**

### **7 Application for waste plastic 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 plastic export licence; and
  - (b) documents that must accompany such an application.
- (2) For each kind of regulated waste plastic intended for export under the licence, the application must nominate a waste plastic specification with which that kind of plastic will comply.
- (3) If a kind of regulated waste plastic (other than processed engineered fuel) intended for export under the licence is intended for export both before 1 July 2022 and on or after 1 July 2022, the application must nominate for the purposes of subsection (2):
  - (a) a specification for the plastic intended for export before 1 July 2022; and
  - (b) a specification for the plastic intended for export on or after 1 July 2022.

Note: The specification referred to in paragraph (b) may or may not be the same as that referred to in paragraph (a). In deciding whether to grant the licence, the Minister considers different matters in relation to the nominated specification depending on whether the plastic is intended for export before, on or after, 1 July 2022 (see section 8).
- (4) If a nominated specification is not a listed waste plastic specification, the application must be accompanied by a copy of the nominated specification.
- (5) The application must include information demonstrating that the regulated waste plastic intended for export under the licence will be processed prior to export to comply with the nominated specification for the plastic.

### **8 Deciding whether to grant a waste plastic export licence—waste plastic other than processed engineered fuel**

- (1) For the purposes of paragraph 34(2)(f) of the Act, this section prescribes matters to which the Minister must have regard in deciding whether to grant a waste plastic export licence in relation to regulated waste plastic, other than regulated waste plastic that is processed engineered fuel (see section 9).
- (2) The matters are the following:
  - (a) the intended use of the plastic in the place to which the plastic is intended to be exported;
  - (b) whether the nominated specification for the plastic is appropriate for the intended use of the plastic in the place to which the plastic is intended to be exported;
  - (c) if the nominated specification is not a listed waste plastic specification:
    - (i) the plastic polymer or resin type covered by the specification; and
    - (ii) the thresholds for contaminants in the specification, including whether the specification includes any requirements for the plastic to be almost

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- free from contamination and other types of wastes (see subsection (3)); and
- (iii) any packaging requirements in the specification; and
  - (iv) any colour requirements in the specification;
- (d) if the nominated specification is not a listed waste plastic specification, and the plastic is intended for export on or after 1 July 2022:
- (i) the physical form of the processed plastic required by the specification; and
  - (ii) whether that physical form is appropriate for the intended use of the plastic in the place to which the plastic is intended to be exported; and
  - (iii) whether plastic processed in accordance with the specification is capable of remanufacture without further processing;
- (e) whether the applicant has applied for, is the holder of, or has been refused, an export permit relating to any hazardous waste;
- (f) 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);
- (g) whether the Minister is reasonably satisfied that a condition of an export permit held at any time by the applicant in relation to any hazardous waste has been, or is being, breached.

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).

- (3) For the purposes of subparagraph (2)(c)(ii), ***almost free from contamination and other types of wastes*** has the same meaning as in Annex II to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, as amended and in force for Australia from time to time.

Note: The Convention is in Australian Treaty Series 1992 No. 7 ([1992] ATS 7) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

## 9 Deciding whether to grant a waste plastic export licence—processed engineered fuel

- (1) For the purposes of paragraph 34(2)(f) of the Act, this section prescribes matters to which the Minister must have regard in deciding whether to grant a waste plastic export licence in relation to regulated waste plastic that is processed engineered fuel.
- (2) The matters are the following:
- (a) the intended use of the plastic in the place to which the plastic is intended to be exported;
  - (b) whether the nominated specification for the plastic is appropriate for the intended use of the plastic in the place to which the plastic is intended to be exported;
  - (c) if the nominated specification is not a listed waste plastic specification:
    - (i) any calorific value requirements in the specification; and
    - (ii) the thresholds for contaminants in the specification; and
    - (iii) any packaging requirements in the specification; and

- (iv) any particle size or bulk density requirements in the specification; and
- (v) the thresholds for moisture in the specification; and
- (vi) any testing or sampling requirements in the specification;
- (d) whether the applicant has applied for, is the holder of, or has been refused, an export permit relating to any hazardous waste;
- (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);
- (f) whether the Minister is reasonably satisfied that a condition of an export permit held at any time by the applicant in relation to any hazardous waste has been, or is being, breached.

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).

## **10 Conditions of waste plastic export licence—waste plastic other than processed engineered fuel**

- (1) For the purposes of paragraph 35(1)(b) of the Act, this section prescribes conditions of a waste plastic export licence in relation to regulated waste plastic covered by the licence, other than regulated waste plastic that is processed engineered fuel (see section 11).

Note 1: A waste plastic 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.

Note 2: The holder of a waste plastic export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 59 of the Act).

Note 3: Conditions, and any other aspect of a waste plastic export licence, may be varied either on application by the licence holder or by the Minister on the Minister's own initiative (see Part 6 of Chapter 2 of the Act).

- (2) The holder of the licence must, for each consignment of regulated waste plastic intended for export under the licence:
- (a) ensure that the plastic is sorted, prior to export, into a single polymer plastic or single resin plastic; and
  - (b) ensure that the plastic complies, prior to export, with the nominated specification for the plastic; and
  - (c) have or have had, at the time the plastic is exported, a commercial relationship with the importer of the plastic.

Note: For the purposes of paragraph (b), the nominated specification for a kind of plastic intended for export before 1 July 2022 may be a different nominated specification to that for the same kind of plastic intended for export on or after 1 July 2022 (see the definition of *nominated specification* in section 4 and see subsection 7(3)).

- (3) If the holder of the licence is not the supplier of the regulated waste plastic intended for export, the holder must, at the time the plastic is exported, have or have had a commercial relationship with the supplier.

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- (4) If, in accordance with paragraph 36(2)(d) of the Act, the licence states a place to which the plastic may be exported, the holder of the licence must export the plastic only to that place.
- (5) The holder of the licence must notify the Minister, in the form approved by the Minister, if any of the following changes occur:
  - (a) if the holder is not the supplier of the plastic—a change in the supplier;
  - (b) if the holder uses a freight forwarder or other agent to export the plastic—a change in the freight forwarder or other agent used;
  - (c) a change in the importer of the plastic.
- (6) A notification under subsection (5) must be given as soon as practicable after the change occurs.

Note: The holder of a waste plastic export licence may be required to produce to the Minister evidence of the matters mentioned in this section (see section 143 of the Act).

**11 Conditions of waste plastic export licence—processed engineered fuel**

- (1) For the purposes of paragraph 35(1)(b) of the Act, this section prescribes conditions of a waste plastic export licence in relation to regulated waste plastic covered by the licence that is processed engineered fuel.

Note 1: A waste plastic 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.

Note 2: The holder of a waste plastic export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 59 of the Act).

Note 3: Conditions, and any other aspect of a waste plastic export licence, may be varied either on application by the licence holder or by the Minister on the Minister's own initiative (see Part 6 of Chapter 2 of the Act).

- (2) The holder of the licence must, for each consignment of regulated waste plastic intended for export under the licence:
  - (a) ensure that the plastic complies, prior to export, with the nominated specification for the plastic; and
  - (b) ensure that the plastic is securely packaged prior to export; and
  - (c) take all reasonable steps to ensure that the plastic will be combusted in a way that minimises the risk of harm to the environment or human health; and
  - (d) have or have had, at the time the plastic is exported, a commercial relationship with the importer of the plastic.

Note: The holder of a waste plastic export licence may be required to produce to the Minister evidence of the matters mentioned in this section (see section 143 of the Act).

- (3) If the holder of the licence is not the supplier of the regulated waste plastic intended for export, the holder must, at the time the plastic is exported, have or have had a commercial relationship with the supplier.
- (4) If, in accordance with paragraph 36(2)(d) of the Act, the licence states a place to which the plastic may be exported, the holder of the licence must export the plastic only to that place.

- (5) The holder of the licence must notify the Minister, in the form approved by the Minister, if any of the following changes occur:
  - (a) if the holder is not the supplier of the plastic—a change in the supplier of the plastic covered by the licence;
  - (b) if the holder uses a freight forwarder or other agent to export the plastic—a change in the freight forwarder or other agent used;
  - (c) a change in the importer of the plastic.
- (6) A notification under subsection (5) must be given as soon as practicable after the change occurs.

### **12 Information to be stated in export licence—nominated specification**

- (1) For the purposes of paragraph 36(2)(k) of the Act, this section prescribes information that must be stated in a waste plastic export licence.
- (2) If there is a waste plastic specification with which a kind of plastic covered by the licence will comply, the licence must state that specification for the plastic.

Note 1: The stated specification is the nominated specification for the plastic (see the definition of *nominated specification* in section 4).

Note 2: This information may be varied either on application by the licence holder or by the Minister on the Minister's own initiative (see Part 6 of Chapter 2 of the Act).

### **13 Renewal of waste plastic export licence**

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

Note: An application to renew a waste plastic 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).

### **14 Suspension of waste plastic export licence**

- (1) For the purposes of paragraph 46(1)(i) of the Act, this section prescribes grounds for suspending a waste plastic export licence.

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

- (2) It is a ground for suspension 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 relating to 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.

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### **15 Revocation of waste plastic export licence**

- (1) For the purposes of paragraph 54(1)(i) of the Act, this section prescribes grounds for revoking a waste plastic export licence.

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

- (2) It is a ground for revocation 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 relating to the licence; or
    - (ii) information or a document in relation to such an application; and
  - (b) the holder failed to comply with the requirement.

### **16 Holder of waste plastic export licence to notify the Minister of certain events**

For the purposes of paragraph 61(1)(e) of the Act, the holder of a waste plastic export licence ceasing to operate the export business that carries out export operations covered by the licence is prescribed.

### **17 Directions to holders of waste plastic export licences**

For the purposes of paragraph 64(3)(b) of the Act, a matter to which the Minister must have regard in considering whether to give a direction under subsection 64(1) of the Act to the holder of a waste plastic export licence is whether the Minister is satisfied of one or more of the following:

- (a) a condition of the licence has been contravened, or it is likely that such a condition will be contravened;
- (b) the holder has not complied, or is likely not to comply, with a requirement under the Act;
- (c) the regulated waste plastic 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 plastic.

## **Division 3—Exemptions**

### **18 Application for exemption—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 25 of the Act for an exemption in relation to the export of a trade sample of regulated waste plastic; and
  - (b) the documents that must accompany such an application.
- (2) A *trade sample* of regulated waste plastic is waste plastic that:
  - (a) is exported solely for the purposes of market testing; and
  - (b) is not hazardous waste.
- (3) The application must nominate a waste plastic specification with which the plastic will comply.
- (4) If the nominated specification is not a listed waste plastic specification, the application must be accompanied by a copy of the specification.
- (5) The application must include information demonstrating that the plastic will be processed prior to export to comply with the nominated specification.

### **19 Matters to which the Minister must have regard in deciding whether the Minister is satisfied it is appropriate to grant the exemption**

- (1) For the purposes of subsection 26(2) of the Act, this section prescribes matters to which the Minister must have regard in deciding whether the Minister is satisfied that it is appropriate to grant an exemption under Part 3 of the Act in relation to the export of a trade sample of regulated waste plastic.

#### *General matters*

- (2) The Minister must have regard to the following matters:
  - (a) whether the applicant is capable of complying with the nominated specification;
  - (b) whether the plastic will be processed to comply, prior to export, with the specification;
  - (c) whether the specification is appropriate for the intended use of the plastic in the place to which the plastic is intended to be exported.

#### *Matters for trade samples other than of processed engineered fuel*

- (3) If the application for the exemption relates to regulated waste plastic other than processed engineered fuel, and the nominated specification is not a listed waste plastic specification, the Minister must also have regard to the matters set out in subsection 8(2).

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*Matters for trade samples of regulated processed engineered fuel*

- (4) If the application for the exemption relates to regulated processed engineered fuel, and the nominated specification is not a listed waste plastic specification, the Minister must also have regard to the following matters:
- (a) any calorific value requirements in the specification;
  - (b) the thresholds for contaminants in the specification;
  - (c) any packaging requirements in the specification;
  - (d) any particle size or bulk density requirements in the specification;
  - (e) the thresholds for moisture in the specification;
  - (f) any testing and sampling requirements in the specification.

**20 Revocation of exemption**

- (1) This section is made for the purposes of paragraph 31(2)(b) of the Act (about matters the Minister must have regard to in considering whether to revoke an exemption).
- (2) The matter is whether the holder of the exemption has contravened or is contravening a condition of the exemption.

## Division 4—Record-keeping

### 21 Making and retaining records

- (1) This section is made for the purposes of subsection 142(1) of the Act.
- (2) The holder of a waste plastic export licence must make and retain the following records:
  - (a) for each consignment of regulated waste plastic 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) a photograph or photographs of the plastic in the consignment, and of the consignment once packed for export, that have sufficient resolution, brightness and contrast to show the plastic and consignment clearly and that are time and date stamped;
  - (b) each other document:
    - (i) that is made by the holder or that comes into the holder's possession; and
    - (ii) that is relevant to showing whether the holder has complied, or is complying, with the applicable requirements of the Act.
- (3) The holder of the waste plastic export licence must retain each of the records for at least 5 years starting on the day the record is made by the holder or comes into the holder's possession (as the case may be).
- (4) A record that is required to be retained under this section must be:
  - (a) subject to subsection (5)—in English; and
  - (b) dated; and
  - (c) accurate, legible and able to be audited.
- (5) If the record is not in English, the holder of the waste plastic export licence must obtain and retain a translation of the record into English.

### 22 Records must not be altered or defaced during retention period

- (1) A record that is retained as required under section 21 must not be altered or defaced during the period (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.
- (3) If, during the retention period, notations or markings are made on the record (the *original record*) in accordance with ordinary practice, the person who is required to retain the original record must also retain, during the retention period, each document:
  - (a) that the person creates or that comes into the person's possession; and
  - (b) that shows how the original record was changed.

## Division 5—Other matters

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

#### *Purpose of this section*

- (1) For the purposes of section 181 of the Act, 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:
- (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).

#### *Payment undertaking*

- (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 (a **payment undertaking**) to the Minister to pay the amount of the relevant Commonwealth liability; and
  - (b) the payment undertaking includes a term that the relevant Commonwealth liability is to be reduced by each amount paid in accordance with the undertaking; and
  - (c) the Minister has accepted the payment undertaking, having considered the following matters:
    - (i) the financial position of the person who gave the payment undertaking;
    - (ii) the nature and likely cost of the export operations to which a decision under the relevant provision relates;
    - (iii) whether the person who gave the payment undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the export operations referred to in subparagraph (ii);
    - (iv) any other relevant considerations.
- (3) If:
- (a) a payment undertaking relates to 2 or more relevant Commonwealth liabilities; or
  - (b) a person has given 2 or more payment undertakings in relation to different relevant Commonwealth liabilities of the person or of another person;
- the Minister may determine the order in which payments are to be applied to reduce the outstanding relevant Commonwealth liabilities.

#### *Variation of payment undertaking*

- (4) A payment undertaking may be varied at any time by agreement between the Minister and the person who gave the undertaking.

- (5) The variation must not reduce the amount of any relevant Commonwealth liability covered by the undertaking that has not been paid.