



National Environment Protection (Used Packaging Materials) Measure 2011¹

We, the National Environment Protection Council, make this Measure under subsection 14 (1) of the *National Environment Protection Council Act 1994* of the Commonwealth, the *National Environment Protection Council (New South Wales) Act 1995* of New South Wales, the *National Environment Protection Council (Victoria) Act 1995* of Victoria, the *National Environment Protection Council (Queensland) Act 1994* of Queensland, the *National Environment Protection Council (Western Australia) Act 1996* of Western Australia, the *National Environment Protection Council (South Australia) Act 1995* of South Australia, the *National Environment Protection Council (Tasmania) Act 1995* of Tasmania, the *National Environment Protection Council (Northern Territory) Act 1994* of the Northern Territory, and the *National Environment Protection Council Act 1994* of the Australian Capital Territory.

Dated 2011

DRAFT ONLY

Introductory Note

Section 14 of the *National Environment Protection Council Act 1994* and the equivalent provision of the corresponding Act of each participating State and Territory provides for the making of measures by the National Environment Protection Council and the matters to which they relate. This Measure relates to re-use and recycling of used materials (paragraph 14 (1) (f)).

The Measure is to be implemented by the laws and other arrangements participating jurisdictions consider necessary: see section 7 of the Commonwealth Act and the equivalent provision of the corresponding Act of each participating State and Territory.

Part 1 Preliminary

1 Name of measure

This Measure is the *National Environment Protection (Used Packaging Materials) Measure 2011*.

2 Commencement

- (1) This Measure is taken to have commenced on 15 July 2005 and will continue subject to review as per clause 22.
- (2) For subclause (1):
 - (a) the *National Environment Protection (Used Packaging Materials) Measure*, dated 2 July 1999, is revoked; and
 - (b) the Minor Variation to the *National Environment Protection (Used Packaging Materials) Measure*, dated 2 July 2004, is revoked; and
 - (c) the Variation to the *National Environment Protection (Used Packaging Materials) Measure*, dated 1 July 2005, is revoked and is taken never to have commenced; and
 - (d) on 3 August 2010, the *Variation to the National Environment Protection (Used Packaging Materials) Measure 2010 (No. 1)*, is revoked and is taken never to have commenced.
- (3) On and after 1 July 2010:
 - (a) a reference to the National Packaging Covenant is to be treated as reference to the Australian Packaging Covenant; and

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- (b) a reference to the Environmental Code of Practice for Packaging is to be treated as reference to the Sustainable Packaging Guidelines, except in clause 3.

3 Definitions

- (1) In this Measure, unless the contrary intention appears:

brand owner means:

- (a) a person who is the owner or licensee in Australia of a trade mark under which a product is sold or otherwise distributed in Australia, whether the trade mark is registered or not; or
- (b) a person who is the franchisee in Australia of a business arrangement which allows an individual, partnership or company to operate under the name of an already established business; or
- (c) in the case of a product which has been imported, the first person to sell that product in Australia; or
- (d) in respect of in-store packaging, the supplier of the packaging to the retailer; or
- (e) in respect of plastic bags, the importer or manufacturer of the plastic bags or the retailer who provides the plastic bag to the consumer for the transportation of products purchased by the consumer at the point of sale.

Commonwealth Act means the *National Environment Protection Council Act 1994* of the Commonwealth.

consumer packaging means all packaging products made of any material, or combination of materials, for the containment, protection, marketing and handling of retail consumer products. This also includes distribution packaging that contains multiples of products intended for direct consumer purchase.

Covenant means the National Packaging Covenant.

Covenant Council means the body established under the Covenant for the purpose of administering the Covenant, including registration of signatories and action plans, monitoring, discipline and dispute resolution where required.

distribution packaging means all packaging that contains multiples of products (the same or mixed) intended for direct consumer purchase, including:

- (a) secondary packaging used to secure or unitise multiples of consumer products such as cardboard boxes, shipper, shrink film overwrap;
- (b) tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrapping stretch film, shrink film, strapping.

Environmental Code of Practice for Packaging is designed to provide companies with guidelines to help evaluate the environmental impact of new and existing packaging. The Code is a statement of general principles

for the design of environmentally responsible packaging. The Environmental Guidelines for Packaging have been produced to assist companies to implement the principles of the Code in their product development process.

free rider means a brand owner or organisation that is a participant in the packaging chain and is not a signatory to the Covenant, and is not producing equivalent outcomes to those achieved through the Covenant.

industry means any manufacturing, industrial, commercial, wholesale, or retail activity or process that can result in the generation, recycling, treatment, transport, storage, or disposal of consumer packaging waste.

kerbside recycling collection means roadside collection of domestic solid waste separated for the purpose of recycling.

landfill means waste disposal sites used for the authorised deposit of solid waste onto or into land.

lifecycle management means management of the potential environmental impacts of a product in all stages of production, distribution, use, collection, re-use, recycling, reprocessing and disposal of that product.

materials recovery system means any system to collect, sort and pre-process materials recovered from the waste stream, including but not limited to domestic kerbside recycling collections, drop-off collection systems, public place collection and industrial and commercial recycling collection systems.

municipal district means the area in which a local government has authority.

National Packaging Covenant means the agreement by that name (including all schedules and annexes to that agreement) between governments and industry organisations in the packaging supply chain to reduce the environmental impacts of packaging.

nominated agency means the agency nominated by a participating jurisdiction for the purposes of receiving and reporting data or inspecting records.

packaging chain means the linkages among materials suppliers, packaging manufacturers, packaging fillers, wholesalers, retailers and consumers of packaged products.

participation rate, for a recycling collection service, means the number of households or other premises participating in the service, expressed as a proportion of the number of households or premises to whom the service is available.

plastic bags includes single use lightweight plastic carry bags containing virgin or recycled plastic.

product stewardship means the ethic of shared responsibility through the lifecycle of products including the environmental impact of the product through to, and including, its ultimate disposal.

recovery rate has the meaning set out in subclause 16 (2).

recyclable, packaging for a product, means reasonably able to be recovered in Australia through an approved or accredited collection or drop-off system, and able to be reprocessed and used as a raw material for the manufacture of a new product.

recycle, for a product, means recover the product and use it as a raw material to produce another product.

re-use, for a product, means use a product for the same or similar purpose as the original purpose without subjecting the product to a manufacturing process which would change its physical appearance.

signatory means a signatory to the Covenant, and includes an organisation that accedes to the Covenant after it is made, whether before or after the commencement of this Measure.

Sustainable Packaging Guidelines means the guidelines which comprise Schedule 2 of the Covenant. The guidelines assist the design, manufacture and end-of-life management of packaging, tackling the sometimes conflicting demands of market performance and cost, consumer protection, and the environmental health, while meeting the needs of a sustainable society.

Note The following expressions used in this Measure are defined in subsection 6 of the Commonwealth Act and in the equivalent provisions of participating states and territories:

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| • Agreement | • national environment protection protocol |
| • Council | • participating jurisdiction |
| • national environment protection goal | • participating State |
| • national environment protection guideline | • participating Territory |
| • national environment protection measure | • Territory |

Part 2

National Environment Protection Goal

4 Purpose of Part (Act, s 14 (3) (b))

The purpose of this Part is to set out a goal that:

- (a) relates to the desired environmental outcomes; and
- (b) guides the formulation of strategies for the management of human activities that may affect the environment.

5 Background

- (1) The Covenant is an agreement entered into by governments and industry participants in the packaging chain based on the principles of product stewardship and shared responsibility. Product stewardship imposes an obligation on all those who benefit from production to assume a share of responsibility for a product over its lifecycle. The Covenant covers consumer packaging.
- (2) All signatories to the Covenant have made a commitment to:
 - (a) work together to achieve the overarching targets established under the Covenant; and
 - (b) produce and report on public action plans with measurable actions that will deliver improved environmental outcomes appropriate to their production, usage, sale, recovery and/or reprocessing of consumer packaging; and
 - (c) work co-operatively to develop good practice collection systems and markets, and education and promotion programs; and
 - (d) provide data to assess the performance of the Covenant and progress towards the national environment protection goal.
- (3) Packaging chain signatories to the Covenant have made commitments to practice product stewardship throughout the lifecycle of consumer packaging, including to:
 - (a) design packaging to minimise use of materials and elimination of excessive packaging; and
 - (b) adopt and implement the Environmental Code of Practice for Packaging; and
 - (c) support materials recovery systems and infrastructure for reprocessing used packaging materials in collaboration with state and local governments; and
 - (d) report and demonstrate continuous improvement against the key performance indicators and targets specified in the Covenant.

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- (4) Local government signatories to the Covenant have made commitments in relation to good practice in the delivery of kerbside recycling collection systems.
 - (5) The Commonwealth, State and Territory governments have made commitments in relation to:
 - (a) facilitating product stewardship through their legislation by developing a national environment protection measure on used packaging materials; and
 - (b) facilitating market development initiatives; and
 - (c) applying product stewardship to their own operations; and
 - (d) supporting kerbside and other recycling collection services.
 - (6) As the Covenant includes a voluntary system of industry self regulation, the intent of Council is to ensure that industry signatories do not suffer any competitive disadvantage as a result of fulfilling their commitments under the Covenant.

6 National Environment Protection Goal

The goal of the Measure is to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the Covenant and by assisting the assessment of the performance of the Covenant.

7 Scope

The scope of the Measure is limited to the recovery, re-use and recycling of used consumer packaging materials and will focus on:

- (a) materials used for packaging retail products consumed in industrial, commercial and domestic premises and public places; and
- (b) materials used for packaging food and beverages intended for consumption in public places or in commercial provision of food services to individuals in hotels and restaurants; and
- (c) distribution packaging that contains multiples of products intended for consumer use.

Part 3 National Environment Protection Guidelines

8 Purpose of Part (Act, s 14 (3) (c))

The purpose of this part is to set guidelines that give guidance on possible means for achieving desired environmental outcomes.

9 Statutory Obligations and Rights

- (1) To achieve the desired environmental outcomes, participating jurisdictions should establish a statutory basis for ensuring that signatories to the Covenant are not competitively disadvantaged in the market place by fulfilling their commitments under the Covenant.
- (2) Participating jurisdictions should oblige brand owners to:
 - (a) undertake or assure the systematic recovery of consumer packaging in which the brand owner's products are sold; and
 - (b) undertake or assure the re-use, recycling or energy recovery of consumer packaging in which the brand owner's products are sold; and
 - (c) demonstrate that all materials that have been recovered by them or on their behalf have been utilised through (in order of preference):
 - (i) re-use in the packaging of the brand owner's own products (if applicable); or
 - (ii) use within Australia as a secondary resource; or
 - (iii) export as a secondary resource; and
 - (d) demonstrate that reasonable steps have been taken to ensure that consumers are adequately advised as to how the packaging is to be recovered.
- (3) Participating jurisdictions should ensure that a brand owner can discharge their obligations under subclauses 2 (a), (b) and (c) above if the brand owner undertakes or assures the recovery and utilisation of used packaging materials which are of a size and type substantially the same as the packaging in which the brand owner's products are sold.
- (4) To determine the materials in respect of which the obligations will be imposed, participating jurisdictions should have regard to:
 - (a) the practices of Covenant signatories; and
 - (b) those materials collected for re-use, recycling or energy recovery whether in a kerbside recycling collection system or other materials recovery system; and
 - (c) the state of technologies for re-use, recycling or energy recovery; and

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- (d) any competition issues which may arise from including or excluding particular materials.
 - (5) For subclause (2), the proportion of material required to be recovered and subsequently re-used, recycled or processed for energy recovery should not be arbitrary but should be established by reference to current national performance and targets specified in the Covenant.
 - (6) The Council envisages that participating jurisdictions may wish to preserve the integrity of the Covenant from free riders in materials recovery systems by introducing measures such as an entitlement for a local government or its agent to recover from a brand owner the reasonable costs of collection, sorting and return of the brand owner's consumer packaging if the packaging is collected through materials recovery systems provided by the local government or its agent and the brand owner has not discharged their obligations under subclause (2) above.
 - (7) Participating jurisdictions should facilitate transparency of charging for kerbside recycling collections by local government by removing any legislative barriers that prevent transparency.

10 Enforcement of National Environment Protection Measure Obligations

- (1) The Council envisages that brand owners will not be penalised for failure to discharge their obligations under clause 9 of these guidelines unless brand owners have first been notified of the need to comply with these obligations and the options for exemption from those obligations, and they have failed to comply with that notice.
- (2) Subject to subclause 10 (1) above, participating jurisdictions should establish offences carrying substantial financial penalties for brand owners who fail to comply with these obligations under subclause 9 (2).
- (3) The financial penalties imposed by participating jurisdictions should be consistent among the participating jurisdictions.
- (4) Jurisdictions should allocate sufficient resources to enforce compliance with this Measure.

11 Exemptions/Deemed Compliance

Participating jurisdictions should ensure that the following persons and bodies will be exempted from, or deemed to comply with, the obligations imposed according to clause 9:

- (a) Covenant signatories who are fulfilling their obligations under the Covenant;

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- (b) other industries or industry sectors for which the participating jurisdiction is satisfied that arrangements exist for the industry or industry sector that produce equivalent outcomes to those achieved through the Covenant.

Note: The Covenant establishes monitoring, disciplinary and dispute resolution procedures to identify non-complying signatories. These and the process for referring non-complying signatories to jurisdictions are contained in Schedule 3 of the Covenant.

12 National Environment Protection Measure Application Thresholds

- (1) It is not the intention of the Council that enforceable obligations will be placed on brand owners that do not significantly contribute to the waste stream.
- (2) Participating jurisdictions shall develop a standard methodology for establishing national environment protection measure application thresholds in consultation with the Covenant Council.

13 Dependence on the Covenant

Participating jurisdictions should ensure that statutory obligations imposed pursuant to these guidelines should have no effect if the Covenant ceases to be in force.

Part 4 National Environment Protection Protocol

14 Purpose of Part (Act, s 14 (3) (d))

The purpose of this Part is to set out protocols for the process to be followed to enable participating jurisdictions to assess the achievement of the desired environmental outcomes of the Covenant and the national environment protection measure and to report annually to the Council on progress against the goal of the national environment protection measure.

15 Methods of Collecting Information and Reporting

- (1) To enable participating jurisdictions to report annually to the Council on whether the goal is being met, participating jurisdictions shall ensure that they are able to collect the information set out in this Part from brand owners and local governments.
- (2) Where a Covenant signatory has provided information to the Covenant Council, the Covenant Council will provide the information to the Commonwealth on request, subject to subclause 17 (4), and no additional reporting of that information will be required by the participating jurisdiction.
- (3) Participating jurisdictions shall adopt a common approach to the interpretation of data gathered pursuant to these protocols and to the terminology used with the data.
- (4) The terminology shall be used in accordance with the definitions set out in this Measure.

16 Recovery Data

- (1) Participating jurisdictions shall require brand owners to record the following information for each packaging material used during a financial year by the brand owner:
 - (a) total weight of material used by material type;
 - (b) number of units of packaging by unit and material type;
 - (c) total weight of material recovered by material type;
 - (d) total weight of recovered material re-used and recycled in Australia by material type;
 - (e) total weight of recovered material re-used and recycled by material type through export;
 - (f) total kilojoules of embedded energy recovered;
 - (g) total weight of recovered material disposed of to landfill;

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- (h) how consumers have been advised as to how packaging is to be recovered.
- (2) The above information should be used to calculate and record a recovery rate for the brand owner's used packaging materials in accordance with the following formula:

$$\text{Recovery rate} = \frac{\text{weight of material recovered from the post-consumer waste stream}}{\text{weight of material sold as packaging within Australia}} \times 100$$

- (3) Participating jurisdictions shall require a brand owner to:
- (a) keep records of the information in subclauses (1) and (2) for five years; and
 - (b) make records available for inspection by the nominated agency of the participating jurisdiction.
- (4) Participating jurisdictions shall make arrangements to audit the records kept by brand owners under this clause.
- (5) The requirements of clause 17 shall be imposed, to the extent possible, by the participating jurisdiction within which the brand owner has its registered office.
- (6) Each participating jurisdiction shall maintain the confidentiality of commercially sensitive information given to it by a brand owner and shall not publicly release any information unless:
- (a) the brand owner consents to the release of the information; or
 - (b) the participating jurisdiction is legally compelled to release it; or
 - (c) the information is aggregated with other information so as to conceal its source: or
 - (d) it is in the public interest to release it.
- (7) For the purpose of this clause, "material" means the principal component or components of the container and does not include incidental components such as labels and closures.

17 Collection and Participation Data

- (1) Participating jurisdictions shall require each local government of a municipal district (or each grouping of local governments of municipal districts where waste management groups exist) in which a kerbside recycling collection service or other municipal materials recovery system is provided, to provide the following information in relation to the municipal district or group of municipal districts, for a financial year:
- (a) what percentage of households is covered by any such service;
 - (b) participation rate in any such service;
 - (c) number of tenements covered by the service and whether the tenements are residential tenements or other kinds of tenement;

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- (d) per tenement fee charged for recycling collection services;
 - (e) total weight of recyclable material collected at kerbside or by other municipal materials recovery systems by material type;
 - (f) if the material collected is sorted:
 - (i) the total weight of each material type sold and/or sent for secondary use, including energy recovery; and
 - (ii) the total weight of the residual fraction disposed of to landfill by material type if practicable.
- (2) Participating jurisdictions shall require each local government or grouping of local governments to ensure that any new or novated contract with a recycling collection service requires such contractors to provide any information to the local government that the local government needs to supply the information mentioned in subclause (1).
- (3) Where a local government is subject to current contract conditions which prevent it complying with subclause (1) above, the participating jurisdiction within which the local government's municipal district lies shall take any regulatory steps that are necessary to ensure that kerbside recycling collection services supply the information mentioned in that subclause to the nominated agency of the participating jurisdiction.
- (4) Participating jurisdictions shall maintain the confidentiality of any commercially sensitive information provided under this clause unless:
- (a) the parties identified in subclauses 17 (1) and 17 (3) consent to the release of the information; or
 - (b) the participating jurisdiction is legally compelled to release it; or
 - (c) the information is aggregated with other information so as to conceal its source; or
 - (d) it is in the public interest to release it.
- (5) Participating jurisdictions shall require each local government, or grouping of local governments, to report the information mentioned in subclause (1) for a financial year:
- (a) to the nominated agency of the participating jurisdiction within which the municipal district or group of municipal districts lies; and
 - (b) within a timeframe agreed by jurisdictions in consultation with local government after the end of the financial year to which the information relates.
- (6) Participating jurisdictions should also report on participation in complementary collection systems for recyclables.

18 Supporting Data

At least once every year, participating jurisdictions shall ensure that surveys of packaged products sold by retailers and/or surveys of brand owners represented in materials recovery systems to ascertain the effectiveness of the Measure in preventing free riding are carried out.

19 Information Relating to the Covenant

For the Council to be able to publish a statement of overall national performance, on or before 31 December each year, the Commonwealth shall provide to the Council information received from the Covenant Council for the previous financial year in relation to:

- (a) membership of the Covenant expressed as both the number of signatories and the proportion of consumer packaging used in Australia represented by those signatories; and
- (b) the number of Action Plans lodged with the Covenant Council;
- (c) recovery and utilisation rates reported by Covenant signatories in accordance with their Action Plans under the Covenant, with reference to the key performance indicators and targets specified in the Covenant; and
- (d) a statement of interpretation of the information.

20 Commencement of Reporting

- (1) A participating jurisdiction shall not carry out an audit under subclause 16 (4) unless an audit methodology:
 - (a) has been agreed between participating jurisdictions; and
 - (b) has been published by the Commonwealth or participating States and Territories.
- (2) A participating jurisdiction shall not require a local government or grouping of local governments to give any information otherwise required under clause 17 unless a national reporting form:
 - (a) has been agreed between participating jurisdictions in consultation with the relevant State/Territory Local Government Associations; and
 - (b) has been published by the Commonwealth or participating States and Territories.
- (3) A participating jurisdiction shall not require a local government or grouping of local governments to give any information otherwise required under subclause 17 (1) (b) unless a national standard participation rate survey methodology:
 - (a) has been agreed between participating jurisdictions in consultation with the relevant State/Territory Local Government Associations; and
 - (b) has been published by the Commonwealth or participating States and Territories.

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- (4) A participating jurisdiction shall not require a local government or grouping of local governments to provide information collected under clause 17 to any other participating jurisdiction unless a standard reporting format has been agreed between participating jurisdictions in consultation with the relevant State/Territory Local Government Associations.
 - (5) Participating jurisdictions shall not require surveys to be conducted under clause 18 unless a standard survey methodology has been agreed between participating jurisdictions.
 - (6) The Commonwealth shall not be required to give information otherwise required under clause 19 unless the Covenant Council has supplied the required information to the National Environment Protection Council.

21 Information Supplied to Council

- (1) For Council to be able to publish a statement of overall national performance, on or before 31 December each year, each participating jurisdiction shall provide to the Council the following information in a standard reporting format:
 - (a) information gathered from brand owners whose records under clause 16 have been audited by the jurisdiction;
 - (b) aggregated information received from local governments under clause 17;
 - (c) information gathered through the conduct of surveys under clause 18;
 - (d) information relating to complaints received, investigations undertaken and prosecutions mounted pursuant to this Measure;
 - (e) a statement of interpretation of the information.
- (2) In publishing a statement of overall national performance, the Council must have regard to the statement of interpretation provided by each participating jurisdiction under subclause (1) (e).
- (3) The Council will consult with a participating jurisdiction before publishing an interpretation of information provided by the participating jurisdiction which varies from that provided by the jurisdiction under subclause (1) (e).

22 Review of this Measure

This Measure will be subject to review every five years as part of any comprehensive evaluation of the Covenant.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.