



Variation to the National Environment Protection  
(Used Packaging Materials) Measure 2010 (No. 1)

## **Explanatory Statement**

Issued by the National Environment Protection Council

*National Environment Protection Council Act 1994*

**March 2010**

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Subsection 22A of the *National Environment Protection Council Act 1994* (NEPC Act) prescribes that the National Environment Protection Council (NEPC) may make minor variations to National Environment Protection Measures (NEPMs).

### **ABOUT NEPMs**

NEPMs are broad framework-setting statutory instruments which, through an extensive process of inter-government and community/industry consultation, reflect agreed national objectives for protecting particular aspects of the environment. NEPMs may consist of any combination of goals, standards, protocols, and guidelines.

Once a draft NEPM has been finalised, it is then formally 'made' by NEPC. A decision to make (or to vary) a NEPM requires the support of a two-thirds majority of members of NEPC. NEPMs are implemented by jurisdictions which participate in NEPC within their own jurisdictional legal frameworks.

### **NATIONAL PACKAGING COVENANT & USED PACKAGING MATERIALS NEPM**

Over the last decade, the National Packaging Covenant ('the Covenant') has been the primary instrument in Australia to reduce the environmental impacts of consumer packaging. More than 750 signatories, including companies across the supply chain, governments and the community have committed to actions that support the Covenant's objectives including the efficient recovery and recycling of used packaging. The current Covenant expires on 30 June 2010 and is expected to be replaced by a revised Australian Packaging Covenant (APC).

The Used Packaging Materials (UPM) NEPM is a regulatory safety net designed to prevent industries in the packaging chain that choose not to participate in the Covenant from gaining a competitive advantage. The NEPM ensures industry non-signatories meet environmental objectives, and contribute to the cost of recovery and recycling systems developed under the auspices of the Covenant.

NEPC made a minor variation to the NEPM in 2004 to extend its term for twelve months to allow time for the development of the current Covenant. The NEPM was then varied again in 2005 to ensure consistency between it and the current Covenant.

## REASON FOR PROPOSED VARIATION TO NEPM

The current Covenant and UPM NEPM both expire on 30 June 2010. It is intended that the Covenant/NEPM arrangement continue in the future. A revised Australian Packaging Covenant (APC) is being developed.

In November 2009, NEPC agreed to initiate a minor variation process for the UPM NEPM to either (a) extend the duration of the current NEPM for twelve months until 30 June 2011 to allow time for finalisation of the APC or (b) align the NEPM with the Australian Packaging Covenant should the APC be ready for endorsement by 1 July 2010.

A NEPM variation is a 'minor variation' under the NEPC Acts provided it is supported by a unanimous resolution of NEPC and the resolution states that the variation does not involve a significant change in the effect of the NEPM.

In making this decision NEPC considered the following factors:

- no changes will be made to the core obligations contained in the NEPM
- the proposed amendments will simply align the life of the NEPM to that of either (a) the existing Covenant or (b) the proposed Australian Packaging Covenant
- with respect to (b) above, the proposed amendments are administrative only to ensure consistency between the NEPM and the revised Covenant in referencing the 'Australian Packaging Covenant' and the new 'Sustainable Packaging Guidelines'.

## DESCRIPTION OF PROPOSED VARIATION TO NEPM

### (a) Extension of Duration of Current UPM NEPM

Cl 1 '*Name of Measure*' to be amended to reflect the date of this variation.

Cl 2 '*Commencement and Duration*' to be amended so that the NEPM terminates on 30 June 2011.

No other amendments to the NEPM are proposed for the purposes of this option.

### (b) Alignment of NEPM with Australian Packaging Covenant

Cl 1 '*Name of Measure*' to be amended to reflect the date of this variation.

Cl 2 '*Commencement and Duration*' to be amended so that the NEPM continues subject to periodic review.

Cl 3 '*Definitions*' to be amended so that 'Australian Packaging Covenant' replaces 'National Packaging Covenant' (with consequential amendments to cl 13 and cl 19).

Cl 3 '*Definitions*' to be amended to refer to brand owners rather than companies in the definition of free rider.

Cl 5 (1) '*Background*' to be amended to remove the reference to consumer paper.

Cl 5 (3) '*Background*' to be amended so that 'Sustainable Packaging Guidelines' replaces 'Environmental Code of Practice for Packaging'.

Cl 9 '*Statutory Obligations and Rights*' to be amended to reflect the performance targets specified in the APC.

Cl 11 '*Exemptions/Deemed Compliance*' to be amended to delete reference to the now defunct Australian Retailers Association Code of Practice for the Management of Plastic Bags (with the consequential omission of definitions relating to plastic bags).

Cl 18 '*Supporting Data*' to be amended to provide flexibility in relation to the conduct of annual surveys (with a consequential amendment to cl 20 (5)).

Cl 22 '*Review of This Measure*' to be inserted to formalise the accepted practice of reviewing the UPM NEPM as part of any comprehensive evaluation of the Covenant.

#### **NATURE AND EFFECT OF PROPOSED VARIATION TO NEPM**

The amendments to the UPM NEPM contemplated in this variation process (viz amended duration, revised definitions, updated background information, flexibility in surveying, and inclusion of a review provision) do not involve a significant change in the effect of the NEPM.