



National Environment Protection
(Used Packaging Materials) Measure 2011

IMPACT STATEMENT

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Introduction

The National Environment Protection Council (NEPC) is a national council of Commonwealth, state and territory ministers. The NEPC's role is to make National Environment Protection Measures (NEPMs) which are designed to improve national consistency in environmental protection outcomes.

The *National Environment Protection Council Act 1994* (NEPC Act) establishes the process for making a NEPM. Information about the statutory process is available on the Environment Protection and Heritage Council website (<http://www.ephc.gov.au/nepms>).

The *National Environment Protection (Used Packaging Materials) Measure* (Used Packaging Materials NEPM) provides regulatory underpinning for the Australian Packaging Covenant. This co-regulatory arrangement has served as the primary national mechanism in Australia to reduce the environmental impacts of packaging since 1999. The Covenant was formerly known as the National Packaging Covenant.

On 5 November 2009 ministers agreed in principle to the development of the Australian Packaging Covenant to operate from 1 July 2010 and the 2010 Minor Variation to Used Packaging Materials NEPM. Following receipt of a compliant Regulatory Impact Statement (RIS) these decisions were ratified by ministers on 25 June 2010, to be implemented from 1 July 2010. The 2010 Minor Variation was required because the NEPM had an expiry date of 30 June 2010.

Late in 2010, administrative issues were identified with the registration of the 2005 and 2010 Minor Variations to the Used Packaging Materials NEPM which could call into question the validity of the NEPM. In order to put the question of validity beyond doubt and provide certainty to the packaging industry, the NEPM is being re-made. This is fundamentally an administrative process to ensure the Used Packaging Materials NEPM continues to provide regulatory underpinning for the Australian Packaging Covenant. The alignment of the terms of the NEPM and the Covenant is key to providing national consistency in regulatory support.

In accordance with the provisions of the NEPC Act, a notice of intention to prepare a draft NEPM was published in the *Commonwealth Government Notices Gazette* on Wednesday 23 February 2011 and in *The Australian* on Wednesday 23 February 2011 and Friday 25 February 2011. The next steps, following the close of the notification period, are to prepare the draft NEPM and impact statement and release them for public consultation.

Section 17(b) of the NEPC Act requires the preparation of an impact statement relating to the proposed NEPM that includes the following:

- i. the desired environmental outcomes;
- ii. the reasons for the proposed measure and the environmental impact of not making the measure;

- iii. a statement of the alternative methods of achieving the desired environmental outcomes and the reasons why those alternatives have not been adopted;
- iv. an identification and assessment of the economic and social impact on the community (including industry) of making the proposed measure;
- v. a statement of the manner in which any regional environmental differences in Australia have been addressed in the development of the proposed measure;
- vi. the intended date for making the proposed measure;
- vii. the timetable (if any) for the implementation of the proposed measure;
- viii. the transitional arrangements (if any) in relation to the proposed measure.

This impact statement provides a summary of the evidence presented in the 18 June 2010 Used Packaging Materials Decision Regulation Impact Statement (RIS) (Attachment A) and maps this evidence against the elements required in an impact statement as set out in Section 17(b) of the NEPC Act. This impact statement is designed to be read in conjunction with this RIS. The Office of Best Practice Regulation has advised that a new RIS is not required for this process.

Requirements of section 17(b)

The requirements of section 17(b) of the NEPC Act are predominantly addressed by the Used Packaging Materials Decision RIS, with the exception of section 17(b)(vi), (vii) and (viii) which are addressed below.

Section 17 (b):

- i. The 'desired environmental outcome' of the NEPM is to address the current government policy objective of reducing the environmental impacts of packaging. This policy objective is outlined in Strategy 3 of the *National Waste Policy: Less Waste, More Resources* (which is available at: <http://www.ephc.gov.au/taxonomy/term/86>). Further details on the objectives of the NEPM and Covenant mechanism are in Chapter 4 of the RIS 'The nature and extent of the problem' (pages 24-27). The environmental benefits of recycling are outlined on pages 9-10 of the RIS, and the Covenant's environmental, economic and social achievements are outlined on pages 21-22.
- ii. The 'reasons for the proposed measure and the environmental impact of not making the measure' have been established in the National Waste Policy. Government action is needed due to incomplete price signals to drive a reduction in Australian's packaging waste. Other reasons for the proposed NEPM include addressing issues such as: the increasing amount of waste, managing waste as a resource, increasing community expectations, improving resource use efficiency and reducing greenhouse gas emissions. Packaging makes a significant contribution to the problems identified by the National Waste Policy. For further evidence on policy objectives and the need for government action please refer to Chapter 4 of the RIS 'The nature and extent of the problem' (pages 24-27). Option 1 in the RIS depicts a scenario where the Covenant operates as a voluntary scheme without regulatory underpinning from the NEPM. The RIS concluded that the option of not making the NEPM would have fewer direct costs but would be less effective in delivering against the objectives of the National Waste Policy than Options 2, 3 and 4 which include regulatory underpinning provided by the NEPM.
- iii. Four 'alternative methods' for achieving the desired outcome are analysed in the RIS. These options are described in Chapter 5 of the RIS 'Options to address the problem' (pages 28-30). Option 1 is for a Covenant without a NEPM. Options 2, 3 & 4 each involve differing arrangements for the NEPM –

exploring the impact of a termination date in the NEPM, the alignment of the NEPM with the ongoing Covenant, and transitioning the arrangement under Commonwealth product stewardship legislation. Chapter 6 of the RIS 'Impact analysis' (pages 31-48) identifies Options 3 and 4 as the equally preferred methods, as they have equivalent levels of effectiveness and efficiency in meeting the desired outcome. However, Option 4, which involves transitioning the arrangements under product stewardship legislation, provides the potential for further improvements and efficiencies, and was therefore the method agreed to by ministers.

- iv. The 'economic and social impact... of making the proposed measure' are detailed in Chapter 6 of the RIS 'Impact analysis' (pages 31-48). The RIS concludes that the benefits of continuing the current co-regulatory arrangement outweigh the costs. This conclusion was supported by the majority of submissions received on the Consultation RIS.
- v. Chapter 2.2 of the RIS 'International and national context' (pages 10-14) details the manner in which 'regional environmental differences in Australia have been addressed in the development of the proposed measure'. The RIS notes that while state, territory and local governments have primary responsibility for delivering appropriate waste management, avoidance, minimisation and resource recovery mechanisms (including for used packaging), the NEPM and Covenant represents the only mechanism with national coverage that involves the entire packaging supply and recovery chain.
- vi. Following the close of public consultation on the draft NEPM and this impact statement on 17 June 2011, a final NEPM and impact statement will be prepared for NEPC's consideration that reflects the results of the public consultation. The 'intended date for making the NEPM' is expected to be in July or August 2011.
- vii. The RIS sets out the implementation and transition arrangements in Chapter 8 of the RIS 'Implementation and review' (pages 53-54). Ministers approved the new Covenant to operate from 1 July 2010. The final NEPM is expected to be made in late 2011 and be effective retrospectively from 15 July 2005, in order to address issues arising from the late registration of both the 2005 and 2010 Minor Variations. The 1999 NEPM expired on 14 July 2005.
- viii. It is anticipated that the Covenant will continue to operate as usual while the Used Packaging Materials NEPM is being re-made. The existing NEPM is considered to be legal and effective. No transitional arrangements are required.

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Submissions on this document are welcome. Written submissions should be sent to:

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The closing date for submissions is 22 August 2011. Late submissions will not be accepted.

For further information on the re-making of the Used Packaging Materials NEPM, contact the NEPC Service Corporation on (02) 6274 1819

All submissions are public documents unless clearly marked 'confidential' and may be made available to other interested parties, subject to the provisions of the *Freedom of Information Act 1982*.