

**Environment Protection Act 1970**

**WASTE MANAGEMENT POLICY (USED PACKAGING MATERIALS)**

**Order in Council**

The Governor in Council under section 16A(1) and in accordance with section 17A of the **Environment Protection Act 1970**, and on the recommendation of the Environment Protection Authority, declares the Waste Management Policy (Used Packaging Materials) contained in the Schedule to this Order.

This Order is effective from the date it is published in the Government Gazette.

Dated 24 April 2012

Responsible Minister

RYAN SMITH

Minister for Environment and Climate Change

MATTHEW McBEATH  
Clerk of the Executive Council

---

**Environment Protection Act 1970**

**Act No. 8056/1970**

**WASTE MANAGEMENT POLICY (USED PACKAGING MATERIALS)**

**Schedule to the Order in Council**

**PART 1 – PRELIMINARY**

1. Title
2. Commencement
3. Revocation of Waste Management Policy (Used Packaging Materials)
4. Dependence on the Covenant
5. Exemptions/Deemed Compliance
6. Definitions

**PART 2 – POLICY OBJECTIVE**

7. Background
8. Goals
9. Scope
10. Principles

**PART 3 – ATTAINMENT PROGRAM**

11. Statutory Obligations and Rights
12. Recovery Data
13. Enforcement of Obligations
14. Methods of Collecting Information and Reporting
15. Collection and Participation Data
16. Supporting Data
17. Commencement of Reporting
18. Information Supplied to Council

**PART 1 – PRELIMINARY****1. Title**

This order may be cited as the Waste Management Policy (Used Packaging Materials).

**2. Commencement**

This Policy will come into operation upon publication in the Government Gazette.

**3. Revocation of Waste Management Policy (Used Packaging Materials)**

The Waste Management Policy (Used Packaging Materials), as published in the Government Gazette dated 28 October 2010, is revoked.

**4. Dependence on the Covenant**

This Policy will have no effect if the Covenant ceases to be in force.

**5. Exemptions/Deemed Compliance**

The following brand owners are exempted from, or deemed to comply with, the obligations in this Policy:

- (1) Covenant signatories who are fulfilling their obligations under the Covenant;
- (2) persons who are a signatory to, and are complying with, any other arrangement which the Authority is satisfied produces equivalent outcomes to those achieved through the Covenant; and
- (3) brand owners whose annual turnover in Australia is not more than \$5 million.

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.

**6. Definitions**

In this Policy, unless the contrary intention appears:

**Australian Packaging Covenant** means the agreement by that name (including all schedules and annexes to that agreement) between government and industry organisations in the packaging supply chain to reduce the environmental impacts of consumer packaging;

**Authority** means the Environment Protection Authority established under the **Environment Protection Act 1970**;

**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;
- (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;
- (c) in the case of a product which has been imported, the first person to sell that product in Australia;
- (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;

**consumer packaging** means all packaging products made of any material, or combination of materials, for the containment, protection, marketing or handling of consumer products. This also includes distribution packaging;

**Council** means the National Environment Protection Council established by section 8 of the **National Environment Protection Council (Victoria) Act 1995** and the equivalent provisions of the corresponding Acts of the Commonwealth and participating States or Territories;

**Covenant** means the Australian 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; and
- (b) tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrapping stretch film, shrink film, strapping;

**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;

**Measure** means the National Environment Protection (Used Packaging Materials) Measure made under section 14(1) of the **National Environment Protection Council (Victoria) Act 1995** and equivalent provisions of the corresponding Acts of the Commonwealth and participating States and Territories;

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

**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;

**Policy** means this Waste Management Policy (Used Packaging Materials);

**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 clause 12(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 to recover the product and use it as a raw material to produce another product;

**re-use**, for a product, means use of 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;

**secondary resource** means a resource used or to be used:

- (a) to manufacture new consumer packaging or another product to replace raw or virgin materials; or
- (b) for energy recovery;

**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 Policy;

**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 environmental health, while meeting the needs of a sustainable society; and

**turnover** means gross annual income.

## PART 2 – POLICY OBJECTIVE

### 7. 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;
  - (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;
  - (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 goals of the Measure.
- (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 eliminate excessive packaging;
  - (b) adopt and implement the Sustainable Packaging Guidelines;
  - (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.
- (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 the Measure;
  - (b) facilitating market development initiatives;
  - (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.

#### **8. Goals**

- (1) The goals of the Measure are to:
  - (a) reduce environmental degradation arising from the disposal of used packaging; and
  - (b) conserve virgin materials through encouraging waste avoidance and the re-use and recycling of used packaging materialsby supporting and complementing the voluntary strategies in the Covenant and by assisting the assessment of the performance of the Covenant.
- (2) The goal of this Policy is to implement the Measure within the State of Victoria.

#### **9. Scope**

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

- (1) materials used for packaging retail products consumed in industrial, commercial and domestic premises and public places;
- (2) 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
- (3) distribution packaging that contains multiples of products intended for consumer use.

#### **10. Principles**

In applying this Policy, regard must be had to the principles of environment protection set out in sections 1B to 1L of the **Environment Protection Act 1970**.

### **PART 3 – ATTAINMENT PROGRAM**

#### **11. Statutory Obligations and Rights**

- (1) This Policy establishes 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) A brand owner must:
  - (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) For the purpose of sub-clause (2), a brand owner must ensure an overall recovery rate of 70% for the following consumer packaging materials:
- (a) paper and cardboard;
  - (b) glass;
  - (c) steel;
  - (d) aluminium;
  - (e) PET plastics (Code 1);
  - (f) HDPE plastics (Code 2); and
  - (g) plastics (Codes 3–7).
- (4) A brand owner can discharge the obligations under sub-clause 2(a), 2(b) and 2(c) 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.

## 12. Recovery Data

- (1) For the purposes of clause 11(2)(c), a brand owner must record the following information for each packaging material used during a financial year:
- (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; and
  - (h) how consumers have been advised as to how packaging is to be recovered.
- (2) The above information must 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) A brand owner must:
- (a) keep records of the information in sub-clause (1) and (2) for five years; and
  - (b) make records available for inspection on request by the Authority.
- (4) The Authority will make arrangements to audit the records kept by brand owners under this clause.
- (5) The Authority will maintain the confidentiality of commercially sensitive information given to it by a brand owner and will not publicly release any information unless:
- (a) the brand owner consents to the release of the information; or
  - (b) the Authority 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.
- (6) 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.

**13. Enforcement of Obligations**

Brand owners will not be penalised for failure to discharge their obligations under clauses 11 and 12 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.

**14. Methods of Collecting Information and Reporting**

To enable annual reporting to the Council on whether the goals in clause 8 are being met, the Authority will collect the information set out in clauses 12, 15 and 16 from brand owners and local governments.

**15. Collection and Participation Data**

- (1) The Authority will 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;
  - (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;
    - (ii) the total weight of the residual fraction disposed of to landfill by material type if practicable.
- (2) Each local government or grouping of local governments must 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 sub-clause (1).
- (3) Where a local government is subject to current contract conditions which prevent it complying with sub-clause (1), the Authority will take any steps that are necessary to ensure that kerbside recycling collection services supply the information mentioned in that sub-clause to the Authority.
- (4) The Authority will maintain the confidentiality of any commercially sensitive information provided under this clause unless:
  - (a) the parties identified in sub-clause (1) and (3) consent to the release of the information; or
  - (b) the Authority 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) Each local government, or grouping of local governments, must report the information mentioned in sub-clause (1) for a financial year to the Authority within three months after the end of the financial year to which the information relates.
- (6) The Authority will report on participation in complementary collection systems for recyclables.

**16. Supporting Data**

At least once every year, the Authority will ensure that surveys of packaged products sold by retailers and/or surveys of brand owners represented in materials recovery systems are conducted to ascertain the effectiveness of this Policy in preventing free riding.

**17. Commencement of Reporting**

- (1) An audit shall not be carried out under clause 12(4) unless an audit methodology:
  - (a) has been agreed between jurisdictions participating in the Council; and
  - (b) has been published by the Commonwealth or jurisdictions participating in the Council.
- (2) The Authority will not require a local government or grouping of local governments to give any information otherwise required under clause 15 unless a national reporting form:
  - (a) has been agreed between jurisdictions participating in the Council in consultation with the relevant State/Territory Local Government Associations; and
  - (b) has been published by the Commonwealth or jurisdictions participating in the Council.
- (3) The Authority will not require a local government or grouping of local governments to give any information otherwise required under clause 15(1)(b) unless a national standard participation rate survey methodology:
  - (a) has been agreed between jurisdictions participating in the Council in consultation with the relevant State/Territory Local Government Associations; and
  - (b) has been published by the Commonwealth or jurisdictions participating in the Council.
- (4) The Authority will not require a local government or grouping of local governments to provide information collected under clause 15 to any other jurisdiction participating in the Council unless a standard reporting format has been agreed between jurisdictions in consultation with the relevant State/Territory Local Government Associations.
- (5) The Authority will not require surveys to be conducted under clause 16 unless a standard survey methodology has been agreed between jurisdictions participating in the Council.

**18. Information Supplied to Council**

For Council to be able to publish a statement of overall national performance, on or before 31 December each year, the Authority will provide to Council the following information in a standard reporting format:

- (a) information gathered from brand owners whose records under clause 12 have been audited;
  - (b) aggregated information received from local governments under clause 15;
  - (c) information gathered through the conduct of surveys under clause 16;
  - (d) information relating to complaints received, investigations undertaken and prosecutions mounted pursuant to this Policy; and
  - (e) a statement of interpretation of the information.
-

This page was left blank intentionally