

Waste Minimisation (Used Packaging Materials Industry Waste Reduction Plan) Approval 2010 (No 1)

Notifiable Instrument NI 2010-213

made under the

Waste Minimisation Act 2001 Section 17 (1) (Notice of approval of IWRP)

1 Name of instrument

This instrument is the *Waste Minimisation (Used Packaging Materials Industry Waste Reduction Plan) Approval 2010 (No 1)*.

2 Commencement

This instrument commences on the day after notification.

3 Approval

I approve:

- The Used Packaging Materials Industry Waste Reduction Plan as set out in Schedule 1.

4 Revocation

I revoke the approval NI 2006 – 426.

Jon Stanhope MLA

Minister for Territory and Municipal Services

22 April 2010

Schedule 1

Used Packaging Materials Industry Waste Reduction Plan

The ACT Government is implementing the requirements of the new Used Packaging Materials National Environment Protection Measure. Part 2 of the *Waste Minimisation Act 2001*, specifically section 15, allows for the Minister to prepare an Industry Waste Reduction Plan if the Minister is satisfied the plan will implement a national measure.

The Goal of this Used Packaging Materials Industry Waste Reduction Plan

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

Definitions

In this Used Packaging Materials Industry Waste Reduction Plan (IWRP) 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;
- 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) or 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 bags to the consumer for 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 and handling of retail consumer products. This also includes distribution packaging that contains multiples of products intended for direct consumer purchase.

“Consumer paper” means all paper and cardboard from domestic premises, other than paper used to publish newspapers and magazines.

“Covenant” means the National Packaging Covenant.

“Covenant Council” means the body established under the National Packaging Covenant for the purpose of administering the Covenant, including registration of signatories and action plans, monitoring, discipline and dispute resolution.

“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 wrap; and
- b) tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrap stretch film, shrink wrap, strapping.

“A free rider” means a company 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 and consumer paper 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.

“Life cycle management” means management of the potential environmental impacts of a product in all stages of production, distribution, use, collection, reuse, 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.

“National Packaging Covenant” means the agreement by that name including all schedules and annexes to that agreement between industry organisations and governments.

“Nominated agency” means the agency nominated by a participating jurisdiction for the purpose 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 which the service is available.

“Plastic bags” include single-use, lightweight plastic carry bags containing virgin or recycled plastic.

“Product stewardship” means the ethic of shared responsibility through the life cycle of products including the environmental impact of the product through to and including its ultimate disposal.

“Recovery rate” has the meaning which is recovery rate = weight of material recovered from post-consumer waste stream divided by the weight of the material sold as packaging within Australia multiplied by 100.

“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.

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

“Signatory” means a signatory to the National Packaging Covenant, and includes an organisation that accedes to the Covenant after it is made, whether before or after the commencement of this Industry Waste Reduction Plan (IWRP).

Background

The Used Packaging Materials Industry Waste Reduction Plan had been developed to implement the ACT Government’s commitments to the National Packaging Covenant and the Used Packaging Materials National Environment Protection Measure (NEPM). The Covenant is the leading instrument for managing packaging waste in Australia. It is a self-regulatory agreement between industries in the packaging chain and all spheres of government. The supporting NEPM provides a framework for a compulsory packaging recovery and utilisation system for brand owners who are not signatories to the Covenant, or for those who sign up to the Covenant and then fail to meet their commitments and are deemed by the Covenant Council not to have complied with the Covenant.

Both the Covenant and the NEPM have been developed through extensive public consultation.

Objectives of this Plan

The objectives of this plan are to:

- a) ensure greater responsibility for consumer packaging waste and other waste associated with used consumer packaging in the ACT;
- b) minimise the natural resources consumed in the manufacture, use, management and disposal of used packaging in the ACT;
- c) reduce the amount of used consumer packaging and consumer packaging waste being created in the ACT;
- d) reduce the amount of used consumer packaging and related waste requiring disposal in the ACT;
- e) ensure Covenant signatories are not competitively disadvantaged in the ACT marketplace; and
- f) assist in the waste reduction and recycling objectives of the Covenant in the ACT.

Commencement and Duration

The IWRP will commence on the date after notification (see the Legislation Register).

Scope of this Plan

The scope of this plan is limited to the recovery, reuse and recycling of used consumer packaging materials and will focus on:

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

Who is covered by this Plan?

- This plan applies to ALL brand owners who are not Covenant signatories and whose consumer packaging forms part of the waste stream in the ACT.
- All brand owners who are not signatories to the Covenant and who have registered offices located in the ACT.
- All brand owners who are not complying signatories of the Covenant.

Obligations under the Plan.

Brand owners must:

- a) undertake or assure the systematic recovery of consumer paper and consumer packaging in which the brand owner's products are sold;
- b) undertake or assure the reuse, recycling or energy recovery of consumer paper and consumer packaging in which the brand owner's products are sold;
- c) undertake or assure that all materials recovered by them or on their behalf have been utilised through in order of preference:
 - (i) reuse in the packaging of the brand owner's 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 customers are adequately advised as to how the packaging is to be recovered.

The brand owner can discharge his/her obligations under a) b) c) above if they (brand owner) undertake or assure 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.

Materials to which this Plan applies

In determining the materials in respect of which the obligations will be imposed the ACT has regard to:

- (a) the practices of Covenant signatories;
- (b) those materials collected for reuse, recycling or energy recovery whether in a kerbside recycling collection system or other materials recovery system;
- (c) the state of technologies for reuse, recycling or energy recovery; and

(d) any competition issues which may arise from including or excluding particular materials.

The proportion of a particular material required to be recovered and subsequently reused, recycled or processed for energy recovery should not be arbitrary but should be by reference to the performance targets for that particular material specific in the Covenant.

Performance targets for specific materials are set out in Appendix A and attached to this Plan

This Appendix will be updated from time to time and changes will be notified on the legislation register at <http://www.legislation.act.gov.au>.

Collection of and utilisation of data

1) Brand owners must 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 reused and recycled in Australia by material type;
- (e) total weight of recovered material reused and recycled by material type through export;
- (f) total kilojoules of embedded energy recovered;
- (g) total weight of recovered material disposed of at landfill; and
- (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:

Recovery rate = weight of material recovered from the post-consumer waste stream divided by the weight of material sold as packaging within Australia multiplied by 100.

The brand owner must keep records of the information required in clause 1 and 2 above for five years from the date the records were made and make such records available for inspection by an authorised officer of TAMS on request.

For the purposes of this part material means the principal component or components of the packaging or container and does not include components such as labels and closures.

TAMS will maintain confidentiality of commercially sensitive information given to it by the brand owner and shall not publicly release any information unless:

- a) the brand owner consents to release of the information, or
- a) the EPA is legally required to release it; or
- b) the information is aggregated with other information to conceal its source; or
- c) it is in the public interest to release it.

Enforcement of the Plan

Brand owners will not be penalised for failure to discharge their obligations above unless brand owners have first been notified of the need to comply with the obligations and the options for exemptions from obligations, and have failed to comply with that notice.

A contravention of the plan includes a failure to meet any of the requirements of the plan.

A person to whom a notice is given under section 18 (1) of the *Waste Minimisation Act 2001* must rectify the contravention in accordance with the requirements in the notice.

A person failing to comply with the above notice as set out in section 18 (5) of the *Waste Minimisation Act 2001* is guilty of an offence. The maximum penalty is 250 penalty units for an individual and five times that amount for a company. (1 penalty unit = \$100), that is, a maximum fine of \$25,000 and \$125,000 respectively.

A person who contravenes section 18 (5) commits a separate offence for each day (after the first day) during any part of which the contravention continues. An ongoing daily penalty rate of 50 penalty units per day applies.

Section 19 of the *Waste Minimisation Act 2001* requires reporting of all contraventions of the IWRP in the Annual Report of TAMS (the department which administers this IWRP). This includes the name of the person and each contravention.

Exemptions and deemed compliance with this Plan

The following persons and bodies will be exempted from or deemed to comply with the obligations above:

- Covenant signatories who are fulfilling their obligations under the Covenant;
- other industries or industry sectors which the ACT is satisfied that arrangements exist for industry or the industry sector that produce equivalent outcomes to those achieved through the Covenant; and
- members of the retail sector that are fully participating signatories or are producing equivalent outcomes to the Australian Retailers' Association Code of Practice for the management of plastic bags.

Thresholds

The threshold is set so brand owners who have over \$5 million annual turnover will be subject to the obligations under the IWRP. Brand owners with under \$5 million annual turnover are exempt from the IWRP.

APPENDIX A (TO SCHEDULE 1 – USED PACKAGING MATERIALS INDUSTRY WASTE REDUCTION PLAN)

MATERIALS TO WHICH THE PLAN APPLIES AND TARGETS FOR THE RECOVERY, REUSE AND RECYCLING OF USED PACKAGING MATERIALS UNDER THIS PLAN

TARGET 1 Increased Recycling of Post-consumer Packaging

Brand owners will work together to increase the post-consumer packaging recycled from its current rate of 48% (2003) baseline data to 75% by 2010.

Packaging made from specific materials will make a contribution to the overarching target as follows:

- **Paper and cardboard 70-80%**
- **Glass 50-60%**
- **Steel 60-65%**
- **Aluminium 70-75%**
- **Plastics 30-35%**

TARGET 2 Non-recyclable Packaging

Brand owners will work to increase the recycling of some specific materials that are currently either not recycled or recycled at very low rates due to their design, lack of collection/processing infrastructure or lack of markets.

- **Plastics coded (4) – (7) increase from 10% to 25% by 2010**
- **Non-recyclable paper and cardboard packaging increase from 10% to 25% by 2010**
- **Composite packaging target to be set at a later date**

TARGET 3 Packaging to Landfill

It is recognised that through increased consumption and population growth the amount of packaging disposed of at landfill could still increase substantially.

- **A target has been set of no new packaging to landfill**