

Australian Capital Territory

# Waste Minimisation (Used Packaging Materials Industry Waste Reduction Plan) Approval 2013 (No 1)

Notifiable Instrument NI2013–83

made under the

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

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**1 Name of instrument**

This instrument is the *Waste Minimisation (Used Packaging Materials Industry Waste Reduction Plan) Approval 2013 (No1)*

**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 approval NI2010-213

Shane Rattenbury MLA  
Minister for Territory and Municipal Services  
10 December 2012

# Schedule 1 - Used Packaging Materials Industry Waste Reduction Plan (“the IWRP”)

## Used Packaging Materials Industry Waste Reduction Plan

The ACT Government is implementing the requirements of the new Used Packaging Materials National Environment Protection Measure (‘the Measure’). Part 2 of the *Waste Minimisation Act 2001*, specifically section 15, provides that the Minister may, in writing, direct the director-general to prepare an IWRP for an industry to implement a national environment protection measure. Once a draft has been prepared, the director-general is to refer the draft to the Minister who can, in writing, approve the draft IWRP or require changes.

## The Goal of this Used Packaging Materials Industry Waste Reduction Plan

The goal of the IWRP is to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials by encouraging 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.

The goal of this IWRP is to implement the Measure within the Territory.

## Definitions

In this IWRP, unless the contrary intention appears:

‘**Australian Packaging Covenant**’ means the agreement by that name including all schedules and annexes to that agreement between industry organisations and governments.

‘**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; 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 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.

‘**Covenant**’ means the Australian Packaging Covenant.

**‘Covenant Council’** means the body established under the Australian Packaging 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 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’** means 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 the 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.

**‘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’** means the 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 packaging 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 manufacturer of a new product.

**‘Recycle’** 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.

**‘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.

**‘Signatory’** means a signatory to the Australian 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).

**‘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.

## **Background**

The Covenant is a self-regulatory 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 the production of a product to assume a share of responsibility for its lifecycle including recycling or disposal. The Covenant covers consumer packaging.

All signatories to the Covenant have made a commitment to:

- (i) work together to achieve the overarching targets established under the Covenant;
- (ii) 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;
- (iii) work co-operatively to develop good practice collection systems and markets, and education and promotion programs; and
- (iv) provide data to assess the performance of the Covenant and progress towards the goals of the Measure.

Packaging chain signatories to the Covenant have made commitments to practice product stewardship throughout the lifecycle of consumer packaging, including to:

- (i) design packaging to minimise use of materials and eliminate excessive packaging;
- (ii) adopt and implement the Sustainable Packaging Guidelines;
- (iii) support materials recovery systems and infrastructure for reprocessing used packaging materials in collaboration with State and local governments; and
- (iv) report and demonstrate continuous improvement against the key performance indicators and targets specified in the Covenant.

The Used Packaging Materials Industry Waste Reduction Plan had been developed to implement the ACT Government's commitments to the Australian Packaging Covenant and the *National Environment Protection (Used Packaging Materials) Measure* (NEPM). The 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 but 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 were developed through extensive public consultation.

#### **Who is covered by the IWRP?**

- 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; and
- all brand owners who are not complying signatories of the Covenant.

#### **Exemptions and deemed compliance with the IWRP**

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
- 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

#### **Thresholds**

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

#### **Objectives of the IWRP**

The objectives of the IWRP are to:

- a) ensure greater industry 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.

### **Scope of the IWRP**

The scope of the IWRP 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; and
- 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
- distribution packaging that contains multiples of products intended for consumer use.

### **Obligations under the IWRP**

Brand owners must:

- a) undertake or assure the systematic recovery of consumer packaging in which the brand owner's products are sold;
- b) undertake or assure the reuse, recycling or energy recovery of 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) or 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.

### **Materials to which IWRP 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 in Appendix 2 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**

Brand owners must:

(1) 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 to landfill; and
- (h) how consumers have been advised as to how packaging is to be recovered.

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.

Brand owners must keep records of the above information and calculated recovery rate for five years from the date the records were made and make such records available for inspection by an authorised officer of the Territory on request.

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

The Territory 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
- b) the Territory is legally required 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.

**Enforcement of IWRP**

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 IWRP 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 = \$110).

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 Directorate which administers this IWRP). This includes the name of the person and each contravention.

### **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 Territory will provide to Council the information in a standard reporting format including any information gathered from brand owners whose records have been audited; information gathered through the conduct of surveys; information relating to complaints received, investigations undertaken and prosecutions mounted pursuant to this Plan; and a statement of interpretation of the information.

### **Dependence on the Covenant**

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



## **APPENDIX 1 (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 – Less consumer packaging generated**

Brand owners operating in the ACT will work to reduce the quantity of packaging waste and to help the Territory Government achieve its target of waste generation per capita stabilising by 2020.

#### **TARGET 2- Increased Recycling of Used Packaging**

Brand owners will work cooperatively with the ACT Government and waste industry to increase the recycling of post consumer packaging and to help the Government achieve its waste targets of:

- 80% resource recovery by 2015;
- 85% resource recovery by 2020; and
- 90% resource recovery by 2025, with no recyclable material sent to landfill.

Brand owners will work together to maintain the post-consumer packaging recycled at or above its estimated 2012 recycling rate of 75%.

#### **TARGET 3 – Substitute or recycle packaging materials that are not presently recycled**

Brand owners will work to substitute or increase the recycling of 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 including:

- Plastics coded (4)-(7); and
- Composite packaging.

#### **TARGET 4 – Packaging to landfill**

Consistent with the targets of the *ACT Waste Management Strategy 2011-2025* a target has been set of no packaging to the Territory's landfill by 2025.