

South Australia

## **Environment Protection (Used Packaging Materials) Policy 2007**

under section 29 of the *Environment Protection Act 1993*

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### **Part 1—Preliminary**

#### **1—Short title**

This policy may be cited as the *Environment Protection (Used Packaging Materials) Policy 2007*.

#### **2—Expiry**

This policy expires on 30 June 2010 or on the Covenant ceasing to be in force, whichever occurs first.

#### **3—Interpretation**

- (1) In this policy—

*Act* means the *Environment Protection Act 1993*;

***brand owner*** means—

- (a) in respect of retail consumer products sold or otherwise distributed in Australia under a trade mark (whether or not the trade mark is registered)—the person who is the owner or licensee in Australia of the trade mark; or
- (b) in respect of retail consumer products sold or otherwise distributed in Australia under a franchise (a business arrangement which allows an individual, partnership or company to operate under the name of an already established business)—the person who is the franchisee in Australia; or
- (c) in respect of retail consumer products imported into Australia—the first person to sell the product in Australia; or
- (d) in respect of in-store packaging other than plastic bags provided by a retailer at the point of sale—the supplier of the packaging to the retailer; or
- (e) in respect of plastic bags provided by a retailer at the point of sale for the transportation of products purchased by a consumer—the importer or manufacturer of the plastic bags, the supplier of the plastic bags to the retailer and the retailer;

***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 (including distribution packaging);

***council*** means a council constituted under the *Local Government Act 1999*;

***distribution packaging*** means all packaging that contains multiples of products (the same or mixed) intended for direct consumer purchase, and includes—

- (a) secondary packaging used to secure or unitise multiples of consumer products such as cardboard boxes, shipper and shrink film overwrap; and
- (b) tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrapping stretch film and shrink film, strapping;

***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;

***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 environment protection goal*** has the same meaning as in the *National Environment Protection Council Act 1994* of the Commonwealth;

***National Packaging Covenant*** or ***Covenant*** means the agreement by that name (including all schedules and annexes to that agreement) between industry organisations and governments, published by the National Packaging Covenant Council 2005, as in force from time to time;

***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 bag* means a high density polyethylene bag;

*recyclable* 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;

*re-use*, for a product, means use 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 National Packaging Covenant, and includes an organisation that accedes to the Covenant after it is made, whether before or after the commencement of the national environment protection measure from which this policy is derived.

- (2) In this policy, the expression “Mandatory provision” followed by a statement as to the category of an offence is to be taken to signify that contravention of the provision at whose foot the expression appears will be an offence of the category so stated for the purposes of Part 5 of the Act.

## **Part 2—Implementation of the National Environment Protection (Used Packaging Materials) Measure**

### **4—Implementation of the National Environment Protection (Used Packaging Materials) Measure**

- (1) This policy implements the *National Environment Protection (Used Packaging Materials) Measure*.

**Note—**

The National Environment Protection Council made the national environment protection (used packaging materials) measure on 2 July 1999.

- (2) The national environment protection goal of the *National Environment Protection (Used Packaging Materials) Measure* is to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the National Packaging Covenant.
- (3) The Minister is satisfied that the provisions of this policy that are not included in or required by the *National Environment Protection (Used Packaging Materials) Measure* relate to the enforcement of the policy (including the imposition of penalties for contravention of the policy) or are otherwise necessary for the application of the policy in this jurisdiction.

**Note—**

See section 29(1b) of the *Environment Protection Act 1993*.

## Part 3—Obligations of brand owners

### 5—Application of Part

- (1) This Part does not apply in relation to the following:
  - (a) consumer packaging—
    - (i) that is a container to which Division 2 of Part 8 of the Act applies; or
    - (ii) that is of a type declared by the Authority by notice published in the Gazette to be consumer packaging to which this policy does not apply;
  - (b) a brand owner who—
    - (i) had a relevant turnover in Australia during the financial year ending on the previous 30 June of less than \$5 million; or
    - (ii) is a signatory to, and complies with, the Covenant; or
    - (iii) can satisfy the Authority that they—
      - (A) engage in practices that produce equivalent outcomes to those achieved through the Covenant; or
      - (B) are part of an industry or industry sector for which arrangements exist that produce equivalent outcomes to those achieved through the Covenant.
- (2) In making a declaration under subclause (1)(a)(ii), the Authority must have regard to—
  - (a) the practices of Covenant signatories; and
  - (b) the materials that are collected for re-use, recycling or energy recovery whether through kerbside recycling collection or other materials recovery systems; and
  - (c) the state of technologies for re-use, recycling or energy recovery; and
  - (d) any competitive issues that may arise from including or excluding particular materials.
- (3) The Authority may, by notice in the Gazette, vary or revoke a notice under this clause.
- (4) For the purposes of subclause (1)(b)(i), the *relevant turnover* of a brand owner in a financial year is—
  - (a) if the brand owner is the owner or licensee of a trade mark (whether or not registered) and sells or distributes packaged retail consumer products under the trade mark in Australia—the wholesale value of packaged retail consumer products so sold or distributed during the financial year;
  - (b) if the brand owner is a franchisee and sells or distributes packaged retail consumer products under the franchise in Australia—the wholesale value of packaged retail consumer products so sold or distributed during the financial year;

- (c) if the brand owner is the first person to sell packaged retail consumer products following their import into Australia—the wholesale value of packaged retail consumer products so sold during the financial year;
  - (d) if the brand owner supplies in-store packaging (other than plastic bags) to a retailer to be provided by the retailer at the point of sale—the wholesale value of in-store packaging so supplied during the financial year;
  - (e) if the brand owner imports, manufactures or supplies to a retailer plastic bags provided by a retailer at the point of sale for the transportation of products purchased by a consumer—the wholesale value of plastic bags so imported, manufactured or supplied during the financial year;
  - (f) if the brand owner is a retailer and provides plastic bags at the point of sale for the transportation of products purchased by a consumer—the wholesale value of plastic bags so provided during the financial year.
- (5) If a person is a brand owner in more than 1 capacity, the relevant turnover of the brand owner is the aggregate of the relevant turnover of the brand owner in each such capacity.

- (6) In this clause—

***Covenant Council*** means the body established under the Covenant for the purpose of administering the Covenant;

***National Environment Protection Council*** means the council of that name established under the *National Environment Protection Council (South Australia) Act 1995*;

***packaged retail consumer product*** means a retail consumer product packaged in consumer packaging.

## 6—Brand owner to prepare action plan

- (1) A brand owner must—
- (a) prepare, maintain and implement an action plan in accordance with this clause; and
  - (b) comply with the plan.
- Mandatory provision: Category B offence.
- (2) The action plan must contain the following information:
- (a) how the brand owner intends to ensure that consumer packaging in which the brand owner's products are sold, or that is imported, manufactured, supplied or provided by the brand owner, or consumer packaging that is substantially the same as that packaging, is recovered and re-used, recycled or used for energy recovery;
  - (b) the quantity of each type of consumer packaging proposed to be recovered and re-used, recycled or used for energy recovery;
  - (c) how the brand owner intends to inform the public of the way in which the consumer packaging may be recovered.
- (3) The quantity referred to in subclause (2)(b) must be at least equivalent to the performance target for the type of consumer packaging in the Covenant.

- (4) A prosecution must not be commenced against a brand owner under this clause unless—
- (a) the Authority has served the brand owner with a notice, in writing, giving particulars of an alleged contravention of the clause and requiring the brand owner to comply with the clause within 3 months of the date of service of the notice; and
  - (b) the Authority is satisfied that the brand owner has failed to comply with the requirement specified in the notice.

### **7—Records to be kept by brand owners**

- (1) A brand owner must, within 3 months of the end of a financial year, record the following information in relation to each type of consumer packaging in which the brand owner's products are sold or that is imported, manufactured, supplied or provided by the brand owner during that financial year:
- (a) the number of units of packaging;
  - (b) the total weight of material used;
  - (c) the total weight of material recovered;
  - (d) the total weight of recovered material re-used and recycled in Australia;
  - (e) the total weight of recovered material re-used and recycled through export;
  - (f) the total weight of recovered material used for energy recovery;
  - (g) the total weight of recovered material disposed of to landfill;
  - (h) the recovery rate calculated in accordance with the following formula:

$$RR = \frac{WMR}{WMS} \times 100$$

Where—

**RR** is the recovery rate;

**WMR** is the weight of material recovered from the post-consumer waste stream;

**WMS** is the weight of material sold as packaging within Australia.

Mandatory provision: Category B offence.

- (2) A brand owner must—
- (a) keep a record required under this clause for a period of 5 years commencing on the last day of the financial year to which the record relates; and
  - (b) at the request of the Authority, make a record required to be kept under this clause available for inspection by the Authority.

Mandatory provision: Category B offence.

## **Part 4—Obligations of councils**

### **8—Reporting obligations**

A council that has, during a financial year or any part of a financial year, operated a kerbside recycling collection service or other materials recovery system must, within 3 months after the end of that financial year, provide the Authority with the following information:

- (a) the number of residential and non-residential premises in the council's area;
- (b) the number of residential and non-residential premises in the council's area that were covered by the service or system;
- (c) the participation rate for the service or system;
- (d) the fee charged by the council in respect of the service or system;
- (e) the total weight of recyclable material collected, itemised, to the extent practicable, by material type;
- (f) the total weight of recyclable material collected that was then disposed of to landfill, itemised, to the extent practicable, by material type.