

South Australia

Environment Protection (Used Packaging Materials) Policy 2012

under 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 2012*.

2—Commencement

This policy will come into operation on a day to be fixed by the Governor by notice in the Gazette.

3—Interpretation

- (1) In this policy—

Act means the *Environment Protection Act 1993*;

Australian Packaging Covenant has the same meaning as in the *National Environment Protection (Used Packaging Materials) Measure 2011* made by the National Environment Protection Council, as in force from time to time;

brand owner—see subclause (2)(a);

consumer packaging means packaging, comprised of any material, for the containment, protection, marketing or handling of retail consumer products, and includes in-store packaging, plastic shopping bags and distribution packaging;

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

Covenant means the Australian Packaging Covenant;

distribution packaging means packaging, comprised of any material, for the containment of multiple products (the same or mixed) intended for direct consumer purchase, and includes—

- (a) secondary packaging (for example, cardboard boxes and shrink film overwrap) for the containment of multiple consumer products; and
- (b) tertiary packaging (for example, pallet wrapping stretch film, shrink film overwrap and strapping) for the containment of multiples of secondary packaging;

in-store packaging does not include plastic shopping bags;

landfill depot means a depot for the controlled disposal of waste to land;

packaged retail consumer product means a retail consumer product packaged in consumer packaging;

plastic shopping bag means a high density polyethylene bag supplied or intended to be supplied to a retail customer at the point of sale;

resource recovery, in relation to waste, means—

- (a) reusing the waste; or
- (b) recycling the waste; or
- (c) recovering energy or other resources from the waste;

responsibility for consumer packaging—see subclause (2)(b).

(2) For the purposes of this policy—

- (a) each of the following persons will be taken to be a **brand owner** in the following circumstances:
 - (i) in the case of a retail consumer product sold or distributed in Australia under a trademark (whether or not the trademark is registered)—the owner or licensee of the trademark;
 - (ii) in the case of a retail consumer product sold or distributed in Australia under a franchise arrangement—the franchisee;
 - (iii) in the case of a retail consumer product imported into Australia—the first person to sell the product in Australia;
 - (iv) in the case of in-store packaging supplied to a retailer—the supplier of the packaging to the retailer;
 - (v) in the case of plastic shopping bags—the importer or manufacturer of such bags, the supplier of such bags to retailers and a retailer who supplies such bags to customers; and

- (b) each of the following brand owners will be taken to have *responsibility for consumer packaging* in the following circumstances:
- (i) a brand owner who is the owner or licensee of a trademark under which a retail consumer product is sold or distributed in Australia will be taken to have responsibility for any consumer packaging used for the product;
 - (ii) a brand owner who is a franchisee under which a retail consumer product is sold or distributed in Australia will be taken to have responsibility for any consumer packaging used for the product;
 - (iii) a brand owner who is the first person to sell a retail consumer product following its importation into Australia will be taken to have responsibility for any consumer packaging used for the product in Australia;
 - (iv) a brand owner who is the supplier of in-store packaging to a retailer will be taken to have responsibility for in-store packaging so supplied;
 - (v) a brand owner who is—
 - (A) the importer or manufacturer of plastic shopping bags; or
 - (B) the supplier of plastic shopping bags to retailers; or
 - (C) a retailer who supplies plastic shopping bags to customers, will be taken to have responsibility for plastic shopping bags so imported, manufactured or supplied.
- (3) In this policy, the expression *mandatory provision* followed by a statement as to the category of offence is to be taken to signify that contravention of the provision at the foot of which the expression appears is, for the purposes of Part 5 of the Act, an offence of the category so stated.

4—Purpose

The purpose of this policy is to implement the *National Environment Protection (Used Packaging Materials) Measure 2011* made by the National Environment Protection Council.

Note—

The goal of the Measure is stated to be "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 Covenant and by assisting the assessment of the performance of the Covenant" (clause 6 of the Measure).

5—Amendment of policy by Gazette notice

- (1) Pursuant to section 32(1)(c) of the Act, this policy may be amended by the Minister by notice in the Gazette so as to—
- (a) declare or modify, for the purposes of clause 6, the kind of packaging to which Part 2 will not apply; and

- (b) make other amendments as a consequence of an amendment referred to in paragraph (a).
- (2) An amendment referred to in subclause (1) is to be in the form of a textual amendment and, as such, a provision may be deleted from, substituted in or inserted into the policy and material may be deleted from, substituted in or inserted into a provision of the policy.
- (3) The Authority must, before making a recommendation to the Minister for an amendment referred to in subclause (1)(a) in relation to packaging, have regard to the following matters:
 - (a) the practices of signatories to the Covenant;
 - (b) whether packaging of that kind could be collected by a kerbside waste collection service for recyclable waste, a drop-off or public place collection service or some other service for the collection of waste for resource recovery;
 - (c) the state of technologies for resource recovery for packaging of that kind;
 - (d) any competitive issues that may arise from including or excluding packaging of that kind from the application of this policy.

Part 2—Obligations of brand owners

6—Application of Part

- (1) This Part does not apply in relation to—
 - (a) a brand owner who is a signatory to the Covenant; or
 - (b) a brand owner whose turnover during the previous financial year was less than \$5 million, assessed in accordance with this clause; or
 - (c) a beverage container to which Part 8 Division 2 of the Act applies.
- (2) For the purposes of subclause (1)(b), the turnover of a brand owner in a financial year will be taken to be—
 - (a) in the case of a brand owner who is the owner or licensee of a trade mark under which packaged retail consumer products are sold or distributed in Australia—the wholesale value of the products so sold or distributed by the brand owner during the financial year; or
 - (b) in the case of a brand owner who is a franchisee under which packaged retail consumer products are sold or distributed in Australia—the wholesale value of the products so sold or distributed by the brand owner during the financial year; or
 - (c) in the case of a brand owner who is the first person to sell packaged retail consumer products following their importation into Australia—the wholesale value of the products so sold by the brand owner during the financial year; or
 - (d) in the case of a brand owner who supplies in-store packaging to retailers—the wholesale value of the packaging so supplied during the financial year; or

- (e) in the case of a brand owner who imports or manufactures plastic shopping bags—the wholesale value of the bags so imported or manufactured during the financial year; or
 - (f) in the case of a brand owner who supplies plastic shopping bags to retailers—the wholesale value of the bags so supplied during the financial year; or
 - (g) in the case of a brand owner who is a retailer who supplies plastic shopping bags to customers—the wholesale value of the bags so supplied during the financial year.
- (3) If a person is a brand owner in more than 1 capacity under subclause (2), the turnover of the brand owner is the aggregate of the turnover of the brand owner in each such capacity.
- (4) The Authority may only grant an exemption to a person from the application of this Part (or a provision of this Part) if satisfied that the person—
- (a) engages in resource recovery practices in respect of consumer packaging for which the person has responsibility that produce equivalent outcomes to those achieved through the Covenant; or
 - (b) is part of an industry or industry sector for which resource recovery arrangements exist in respect of consumer packaging for which the person has responsibility that produce equivalent outcomes to those achieved through the Covenant.
- (5) Section 39(1) of the Act does not apply in relation to an application for an exemption from the application of this Part (or a provision of this Part).

7—Brand owners must have action plans

- (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) the processes, technologies or systems to be used by the brand owner to enable resource recovery in relation to consumer packaging for which the brand owner has responsibility;
 - (b) the quantity of each type of such consumer packaging proposed to be dealt with in that way (which must be at least equivalent to the performance target set out in the Covenant for consumer packaging of that kind);
 - (c) how the brand owner intends to inform the public of the action to be taken by the brand owner under paragraph (a).
- (3) The action plan must be consistent with the Sustainable Packaging Guidelines set out in Schedule 2 of the Covenant.

8—Brand owners must keep records

- (1) A brand owner must, within 3 months after the end of a financial year—
- (a) record the following information about the use of consumer packaging for which the brand owner has responsibility:
 - (i) in the case of a brand owner who is the owner or licensee of a trade mark under which retail consumer products are sold or distributed in Australia—the total weight in kilograms of the consumer packaging used for the products so sold or distributed during the financial year (classified, in the manner approved by the Authority, according to each material type of which the packaging consists);
 - (ii) in the case of a brand owner who is a franchisee under which retail consumer products are sold or distributed in Australia—the total weight in kilograms of the consumer packaging used for the products so sold or distributed during the financial year (classified, in the manner approved by the Authority, according to each material type of which the packaging consists);
 - (iii) in the case of a brand owner who is the first person to sell retail consumer products following their importation into Australia—the total weight in kilograms of the consumer packaging used for the products so sold during the financial year (classified, in the manner approved by the Authority, according to each material type of which the packaging consists);
 - (iv) in the case of a brand owner who supplies in-store packaging to retailers—the total weight in kilograms of the in-store packaging so supplied during the financial year (classified, in the manner approved by the Authority, according to each material type of which the packaging consists);
 - (v) in the case of a brand owner who imports or manufactures plastic shopping bags or who supplies plastic shopping bags to retailers—the total weight in kilograms of the bags so imported, manufactured or supplied during the financial year (classified, in the manner approved by the Authority, according to each material type of which the packaging consists);
 - (vi) in the case of a brand owner who is a retailer who supplies plastic shopping bags to customers—the total weight in kilograms of the bags so supplied during the financial year (classified, in the manner approved by the Authority, according to each material type of which the packaging consists);
 - (b) record the following information about resource recovery of consumer packaging for which the brand owner has responsibility:
 - (i) the total weight in kilograms of consumer packaging for which the brand owner has responsibility that was recovered during the financial year from the post-consumer waste stream;
 - (ii) the total weight in kilograms of consumer packaging for which the brand owner has responsibility that was, during the financial year—

- (A) recycled or re-used in Australia; or
 - (B) recycled or re-used through export; or
 - (C) used for resource recovery other than recycling or re-use; or
 - (D) disposed of to a landfill depot;
- (iii) the recovery rate for the financial year in relation to consumer packaging for which the brand owner has responsibility, calculated in accordance with the following formula:

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

Where—

RR is the recovery rate in relation to such consumer packaging for the financial year; and

WMR is the total weight in kilograms of such consumer packaging recovered from the post-consumer waste stream during the financial year; and

WMS is the total weight in kilograms recorded under paragraph (a) by the brand owner in relation to such consumer packaging.

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 3—Obligations of councils

9—Councils must report

If, during a financial year, a council operates a kerbside waste collection service for recyclable waste, a drop-off or public place collection service or some other service for the collection of waste for resource recovery, it must, within 3 months after the end of the financial year, provide the Authority with the following information:

- (a) the number of residential and non-residential premises in the council's area during the financial year;
- (b) the number of residential and non-residential premises in the council's area to which such services were available during the financial year;
- (c) the number of residential and non-residential premises that made use of such services during the financial year (expressed as a proportion of the number of residential and non-residential premises to which the service was available during that year);

- (d) the fees charged by the council in respect of such services during the financial year;
- (e) the total weight in tonnes of material so collected during the financial year, itemised, to the extent reasonably practicable, by material type;
- (f) the total weight in tonnes of material so collected that was disposed of to a landfill depot during the financial year, itemised, to the extent reasonably practicable, by material type.