

Variation to the National Environment Protection
(Used Packaging Materials) Measure, July 2005

EXPLANATORY STATEMENT

Issued by the National Environment Protection Council

National Environment Protection Council Act 1995

Subsection 14(1) of the National Environment Protection Council Act 1995 (the Act) prescribes that the National Environment Protection Council may make national environment protection measures (NEPMs) by instrument in writing.

ABOUT NEPMS

NEPMs are broad framework-setting statutory instruments which, through an extensive process of inter-government and community/industry consultation, reflect agreed national objectives for protecting particular aspects of the environment. NEPMs may consist of any combination of goals, standards, protocols, and guidelines.

Once a NEPM has been finalised, it is then formally “made” by NEPC. A decision to make (or to vary) a NEPM requires the support of a two-thirds majority of members of NEPC. NEPMs are implemented by jurisdictions that participate in NEPC within their own jurisdictional legal frameworks.

USED PACKAGING MATERIALS NEPM

The goal of the Used Packaging Materials NEPM is to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the National Packaging Covenant.

The Covenant, an industry self-regulatory instrument, aims to ensure that all involved in the packaging chain play their part in reducing packaging waste. The NEPM ensures that participants in the Covenant are not unfairly disadvantaged in the market place.

The Covenant was extensively reviewed in 2004 and revised in response to the findings of the evaluations. After further public consultation a new, strengthened Covenant was released in July 2005. The new version of the Covenant incorporates changes to achieve substantially improved performance.

REASON FOR THE VARIATION TO THE USED PACKAGING MATERIALS NEPM

There would be considerable dislocation to the existing arrangements for the management of consumer packaging in Australia if the Covenant/NEPM package is not maintained and enhanced. Consequently the National Environment Protection (Used Packaging Materials) Measure was varied to align it with the strengthened National Packaging Covenant.

The Variation will ensure consistency between the Principal Measure and the strengthened National Packaging Covenant and provide for the continuation of an effective co-regulatory arrangement in relation to the management of consumer packaging and consumer paper for the life of the Covenant.

In order to align it with the strengthened Covenant, the NEPM has been varied to:

- extend the term of the NEPM to align it with the life of the Covenant
- extend the range of packaging materials covered to explicitly include distribution packaging
- clarify the definition of in-store packaging, provide an explicit definition of plastic bags and define the brand owner in relation to plastic bags
- expand the definition of brand owner to include franchisees
- clarify a number of other definitions and terms and align them with the Covenant
- update and strengthen the reporting requirements contained within the NEPM (clauses 17 and 18)
- require reporting against the targets and other key performance indicators set in the Covenant (clause 19)
- clarify the threshold for determining contribution to the waste stream
- include the addition of away from home recycling (eg public places, workplaces).

REASONS FOR GOVERNMENT INTERVENTION

The rationale for the Covenant/NEPM package has not changed since 1999. As detailed in the impact statement for the original NEPM (1999), both industry and government supported a collaborative and flexible approach to the management of consumer packaging and consumer paper as set out in the Covenant. However, a major concern of industry was to ensure that agreeing to voluntary measures through the Covenant did not disadvantage Covenant signatories in the market place. Industry called for a regulatory mechanism (the NEPM) so that non-signatories are required to deliver similar outcomes to those operating under the Covenant.

IMPACTS AND EFFECT

The proposed extension of the Covenant and the ongoing requirement for intervention through the Covenant necessitates the preparation of a variation to extend the life of the NEPM to provide for the continuation of an effective co-regulatory arrangement. Consistent with the recent evaluations of the Covenant/NEPM package, no changes to the core obligations contained in the NEPM are proposed. The amendments to the NEPM to align it with the strengthened Covenant are outlined above.

As required by the Act, an impact statement was prepared for the variation. Information on the environmental, social and economic impacts of the variation can be found in the impact statement. A copy of the impact statement is available from the NEPC website <http://www.ephc.gov.au/nepms/upm/upm_intro.html>.

CONSULTATION

On 10 March 2005, NEPC Committee, under delegated power from Council, approved the release of the draft variation to the Used Packaging Materials NEPM and its associated impact statement for public consultation. The statutory consultation period concluded on 19 May 2005.

Consultation on the draft variation and impact statement was delivered through publication of statutory notices in newspapers circulating in all jurisdictions and the Commonwealth of

Australia Gazette, placement of the relevant documents on the EPHC website and invitations to comment extended to the 121 organisations and individuals (including industry associations, environment groups, environmental consultants and government agencies) currently registered on the EPHC/NEPC waste issues database.

A total of nine submissions were received in response to the release of the draft variation and impact statement – three submissions from industry groups or individual businesses, three from local government, one from a community group, one from an individual plus one government submission.

On 1 July 2005, in accordance with section 19 of the Act, NEPC considered the submissions received and resolved to "make" the variation to the Used Packaging Materials NEPM. A copy of the summary of submissions document is available from the NEPC website <http://www.ephc.gov.au/nepms/upm/upm_intro.html>.

IMPLEMENTATION

Once a NEPM (or variation) is made by the NEPC, jurisdictions are required to implement the NEPM. Jurisdictions will implement the Used Packaging Materials NEPM as varied through their environment protection policies or regulations.

As required by the Act, jurisdictions will continue to report annually on the implementation and effectiveness of the NEPM.

LEGISLATIVE REQUIREMENTS

All legislative requirements specified in the Act have been met during the development of this variation.

DESCRIPTION OF THE VARIATION

Details of the variation are set out in the attachment.

This instrument is a legislative instrument for the purposes of the Legislative Instruments Act 2004 and commenced on the day after registration on the Federal Register of Legislative Instruments.

DETAILS OF THE VARIATION TO THE NATIONAL ENVIRONMENT PROTECTION
(USED PACKAGING MATERIALS) MEASURE, JULY 2005

- Clause 1 provides that the name of the variation is the 2005 Variation to the National Environment Protection (Used Packaging Materials) Measure and that the variation takes effect from the day after it is registered on the Federal Register of Legislative Instruments.
- Clause 2 provides that the purpose of the Variation is to vary the National Environment Protection (Used Packaging Materials) Measure (the Principal Measure) to align it with the National Packaging Covenant as varied in 2005 by agreement between governments and industry participants in the packaging chain.
- Clause 3 prescribes that the purpose of the part is to vary the National Environment Protection (Used Packaging Materials) Measure (the Principal Measure) to align it with the National Packaging Covenant as varied in 2005 by agreement between governments and industry participants in the packaging chain.
- Clause 4 prescribes amendments to the principal Measure