



## **Variation to the National Environment Protection (Used Packaging Materials) Measure**

made under section 20 of the

*National Environment Protection Council Act 1994 (Cwlth), National Environment Protection Council (New South Wales) Act 1995 (NSW), National Environment Protection Council (Victoria) Act 1995 (Vic), National Environment Protection Council (Queensland) Act 1994 (Qld), National Environment Protection Council (Western Australia) Act 1996 (WA), National Environment Protection Council (South Australia) Act 1995 (SA), National Environment Protection Council (Tasmania) Act 1995 (Tas), National Environment Protection Council Act 1994 (ACT) and the National Environment Protection Council (Northern Territory) Act 1994 (NT)*

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## INTRODUCTORY NOTE

Section 20 of the *National Environment Protection Council Act 1994* and the equivalent provision of the corresponding Act of each participating State and Territory enables the National Environment Protection Council to vary a national environment protection measure. This is a variation to the National Environment Protection (Used Packaging Materials) Measure which was made by the National Environment Protection Council on 2 July 1999.

The Variation is to be implemented by the laws and other arrangements participating jurisdictions consider necessary pursuant to section 7 of the Commonwealth Act and the equivalent provision of the corresponding Act of each participating State and Territory.

### PART 1 — PRELIMINARY

#### 1. Citation

This Variation may be cited as the 2005 Variation to the National Environment Protection (Used Packaging Materials) Measure.

Note: This Variation commences on the day after registration on the Federal Register of Legislative Instruments.

#### 2. Purpose

The purpose of this 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.

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## PART 2 — NEPM VARIATION

### 3. Purpose of Part

The purpose of this Part is to vary the National Environment Protection (Used Packaging Materials) Measure to align it with the National Packaging Covenant as varied in 2005 by agreement between governments and industry participants in the packaging chain.

The Variation will ensure consistency between the Principal Measure and the amended 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.

### 4. Variation to the Principal Measure

#### PART 1 – PRELIMINARY

- (1) In Part 1, Clause 1 of the Principal Measure, for the words “as varied 2 July 2004” substitute “as varied 1 July 2005”.
- (2) In Part 1, Clause 2 of the Principal Measure, insert “and Duration” in the clause heading.
- (3) In Part 1, Clause 2 of the Principal Measure, for the existing clause substitute: “This Measure will commence on the date of gazettal of this Measure and will terminate on 30 June 2010.”
- (4) In Part 1, Clause 3 of the Principal Measure, in relation to the definition of “brand owner”:  
add “(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”;  
in new (d) delete the word “store” and insert “retailer”; and  
add “(e) in respect of plastic bags, the importer or manufacturer of the plastic bags or the retailer who provides the plastic bag to the consumer for the transportation of products purchased by the consumer at the point of sale”; and  
insert the word “or” after (a), (b), (c) and (d).
- (5) In Part 1, Clause 3 of the Principal Measure, delete the existing definition of “bulk packaging” and insert the following definition:  
“**“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 overwrap:
  - b) tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrapping stretch film, shrink film, strapping.”

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- (6) In Part 1, Clause 3 of the Principal Measure, at the end of the definition of “consumer packaging” insert the sentence “This also includes distribution packaging that contains multiples of products intended for direct consumer purchase.”
  - (7) In Part 1, Clause 3 of the Principal Measure, for the words “Covenant monitoring body” substitute “**Covenant Council**”.
  - (8) In Part 1, Clause 3 of the Principal Measure, delete the existing definition of “household paper” and insert the following definition:  
“**consumer paper**” means all paper and cardboard from domestic premises, other than paper used to publish newspapers and magazines.”
  - (9) In Part 1, Clause 3 of the Principal Measure, delete the existing definition of “free rider” and insert the following definition:  
“**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;”
  - (10) In Part 1, Clause 3 of the Principal Measure, in the definition of “industry” after the words “disposal of” insert “consumer packaging and consumer paper”.
  - (11) In Part 1, Clause 3 of the Principal Measure, delete the words “or otherwise using those materials so separated” from the definition of “kerbside recycling collection”.
  - (12) In Part 1, Clause 3 of the Principal Measure, insert the following definition:  
“**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”.
  - (13) In Part 1, Clause 3 of the Principal Measure, in the definition of “National Packaging Covenant”:  
delete the words “dated 2 July 1999 (as in force on the day this Measure commences)”; and  
delete the note referring to the definition.
  - (14) In Part 1, Clause 3 of the Principal Measure, delete the existing definition of “participation rate” and insert the following definition:  
“**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”.
  - (15) In Part 1, Clause 3 of the Principal Measure, insert the following definition:

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“**plastic bags**” includes single use lightweight plastic carry bags containing virgin or recycled plastic”.

## **PART 2 – NATIONAL ENVIRONMENT PROTECTION GOAL**

- (16) In Part 2, Clause 5 (1) of the Principal Measure, delete the word “household” and insert “consumer”.
- (17) In Part 2, Clause 5 of the Principal Measure, insert new subclause (2) as follows:  
“(2) All signatories to the Covenant have made commitments to:
- working together to achieve the overarching targets established under the Covenant;
  - producing and reporting 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 and consumer paper;
  - working co-operatively to develop good practice collection systems and markets, and education and promotion programs; and
  - providing data to assess the performance of the National Packaging Covenant and progress towards the NEPM goal.”
- (18) In Part 2, Clause 5 of the Principal Measure, insert new subclause (3) as follows:  
“(3) Packaging chain signatories to the Covenant have made commitments to practice product stewardship throughout the lifecycle of consumer packaging, including:
- packaging design to minimise use of materials and elimination of excessive packaging;
  - adopting and implementing the Environmental Code of Practice for Packaging;
  - support for materials recovery systems and infrastructure for reprocessing used packaging materials in collaboration with state and local governments; and
  - reporting and demonstrated continuous improvement against the key performance indicators and targets specified in the Covenant.”
- (19) In Part 2, Clause 5 (4) the Principal Measure, delete the word “best” and insert “good”.
- (20) In Part 2, Clause 5 (5) the Principal Measure:  
delete the second existing dot point and insert “facilitating market development initiatives”;  
delete the fourth existing dot point; and  
in the fifth existing dot point insert the words “and other” after the word “kerbside”.
- (21) In Part 2, Clause 6 of the Principal Measure, after the words “through the encouragement of” insert “waste avoidance and the”, and after the words

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”National Packaging Covenant” insert “and by assisting the assessment of the performance of the Covenant”.

- (22) In Part 2, Clause 7 of the Principal Measure:  
delete the first existing dot point and insert ”materials used for packaging retail products consumed in industrial, commercial and domestic premises and public places;”;  
delete the third existing dot point and insert “consumer paper; and”; and  
delete the fourth existing dot point and insert “distribution packaging that contains multiples of products intended for consumer use.”

### **PART 3 – NATIONAL ENVIRONMENT PROTECTION GUIDELINES**

- (23) In Part 3, Clause 9 (2) of the Principal Measure, delete the words “in relation to products sold by brand owners or products for which the packaging is supplied by brand owners”, and after the words “oblige brand owners” insert “to”.
- (24) In Part 3, Clause 9 (2) (a) of the Principal Measure, after the words “systematic recovery of” insert “consumer paper and”.
- (25) In Part 3, Clause 9 (2) (b) of the Principal Measure, after the words “energy recovery of” insert “consumer paper and”.
- (26) In Part 3, Clause 9 (2) of the Principal Measure, delete the paragraph commencing “Notwithstanding the definition of brand owners ...”.
- (27) In Part 3, Clause 9 (3) of the Principal Measure, delete the note commencing “it is acknowledged that ...”.
- (28) In Part 3, Clause 9 (4) (a) of the Principal Measure, delete the words “and achievements”.
- (29) In Part 3, Clause 9 (4) (b) of the Principal Measure, delete the words “or otherwise” and insert “or other materials recovery system;”
- (30) In Part 3, Clause 9 (5) of the Principal Measure, delete the words after “by reference to” and insert “the performance targets for that particular material specified in the Covenant.”
- (31) In Part 3, Clause 9 (6) of the Principal Measure, delete the words “the kerbside recycling collection system” and “kerbside recycling collection services” and insert “materials recovery systems” for both.
- (32) In Part 3, Clause 11 of the Principal Measure, insert the following additional dot point:  
“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.”

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(33) In Part 3, Clause 11 of the Principal Measure, replace the existing note with “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.”

(34) In Part 3, Clause 12 of the Principal Measure, delete the existing clause and note and insert the following:  
“NEPM Application Thresholds  
It is not the intention of Council that enforceable obligations will be placed on brand owners that do not significantly contribute to the waste stream.

Participating jurisdictions shall develop a standard methodology for establishing NEPM application thresholds in consultation with the Covenant Council.”

#### **PART 4 – NATIONAL ENVIRONMENT PROTECTION PROTOCOLS**

(35) In Part 4, Clause 15 (2) of the Principal Measure, delete all references to “monitoring body” and replace with “Council”.

(36) In Part 4, Clause 15 (4) of the Principal Measure, delete the note commencing “The National Packaging Covenant requires ...”.

(37) In Part 4, Clause 17 (1) of the Principal Measure, after the words “kerbside recycling collection service” insert “or other municipal materials recovery system”.

(38) In Part 4, Clause 17 (1) (e) of the Principal Measure, after the words “at kerbside” insert “or by other municipal materials recovery systems”.

(39) In Part 4, Clause 17 (1) (f) (ii) of the Principal Measure, delete the words “of each material type” and after the words “to landfill” insert “by material type if practicable”.

(40) In Part 4, Clause 17 (5) (b) of the Principal Measure, delete the words “three months” and after “within” insert “a timeframe agreed by jurisdictions in consultation with local government”.

(41) In Part 4, Clause 17 (6) of the Principal Measure, delete the word “may” and insert “should”.

(42) In Part 4, Clause 18 of the Principal Measure, delete the existing clause and insert the following:  
“At least once every year, participating jurisdictions shall carry out surveys of packaged products sold by retailers and/or surveys of brand owners represented in materials recovery systems to ascertain the effectiveness of the Measure in preventing free riding”.



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- (43) In Part 4, Clause 19 of the Principal Measure, delete all references to “monitoring body” and replace with “Council”.
  - (44) In Part 4, Clause 19 (3) of the Principal Measure, delete the words “by material type” and insert “with reference to the key performance indicators and targets specified in the Covenant;”
  - (45) In Part 4, Clause 20 (2) of the Principal Measure, delete the words “clause 16” and insert “clause 17”.
  - (46) In Part 4, Clause 20 (6) of the Principal Measure, delete the words “monitoring body” and insert “Council”, and delete the words “Australia and New Zealand Environment and Conservation Council (ANZECC)” and insert “the National Environment Protection Council”.
  - (47) In Part 4, Clause 21 (4) of the Principal Measure, delete the existing clause.