

## **Explanatory Statement**

Issued by the authority of the Acting Executive Officer of the National Environment Protection Council

*National Environment Protection Council Act 1994*

*National Environment Protection (Used Packaging Materials) Measure 2011*

Section 14 of the *National Environment Protection Council Act 1994* (the NEPC Act) provides, in part, that the National Environment Protection Council (the Council) may, by instrument in writing, make a measure, to be known as a national environment protection measure that relates to the re-use and recycling of materials.

### **Background**

The National Environment Protection (Used Packaging Materials) Measure (Used Packaging Materials NEPM) provides regulatory underpinning for the Australian Packaging Covenant (the Covenant). This co-regulatory arrangement has served as the primary mechanism in Australia to reduce the environmental impacts of packaging since 1999. The Covenant was formerly known as the National Packaging Covenant. The Australian Packaging Covenant is available at <http://www.packagingcovenant.org.au/documents/File/Aust%20Packaging%20Covenant%20-%201%20Jul%2010.pdf>.

Late in 2010, administrative issues were identified with the registration of the 2005 and 2010 Minor Variations to the Used Packaging Materials NEPM which could call into question the validity of the Used Packaging Materials NEPM. In order to put the question of the validity beyond doubt and provide certainty to the packaging industry, the Used Packaging Materials NEPM has been remade to ensure the Used Packaging Materials NEPM continues to provide the regulatory underpinning for the Covenant. The alignment of the terms of the Used Packaging Materials NEPM and the Covenant is key to providing national consistency in regulatory support.

### **Purpose**

The goal of the Used Packaging Materials NEPM is to:

- reduce environmental degradation arising from the disposal of used packaging;
- 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 in the assessment of the performance of the Covenant.

### **Consultation**

In accordance with the provisions of the NEPC Act, a notice of intention to prepare a draft Used Packaging Materials NEPM was published in the *Commonwealth Government Notices Gazette* (Gazette) on Wednesday 23 February 2011 and in *The Australian* on Wednesday 23 February 2011 and Friday 25 February 2011. Following the close of the notification period, the draft Used Packaging Materials NEPM and an Impact Statement were prepared and released for public consultation. The draft Impact Statement, including a Decision Regulatory Impact Statement is at Attachment A. A

notice of public consultation was published in the Gazette on Wednesday 15 June 2011 and in *The Australian* on Wednesday 15 June 2011 and Friday 17 June 2011, with the closing date for submissions being Monday 22 August 2011.

Two submissions were received in response to the release of the draft Used Packaging Materials NEPM and Impact Statement. A summary of submissions received in relation to the Draft National Environmental Protection (Used Packaging Materials) Measure and the National Environment Protection Council's response to Submissions is at Attachment B.

In response to the submissions received, in particular that of the NSW Office of Environment and Heritage, revisions were made to the draft Used Packaging Materials NEPM and Impact Statement. This principally involved aligning the definition of 'consumer packaging' in the Used Packaging Materials NEPM and Covenant.

### **Commencement**

The Used Packaging Materials NEPM is taken to have commenced on 15 July 2005. Commencing the Used Packaging Materials NEPM retrospectively will clarify its applicability from 15 July 2005.

Consistent with section 12 of the *Legislative Instruments Act 2003*, the retrospective commencement of the Used Packaging Materials NEPM will not affect any person's rights (other than the Commonwealth) to their detriment nor will it impose any liability on a person other than the Commonwealth in respect of anything done or omitted to be done before the date of registration.

The Used Packaging Materials NEPM is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*