



New South Wales

Protection of the Environment Operations (Waste) Amendment (Used Packaging Materials) Regulation 2006

under the

Protection of the Environment Operations Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

BOB DEBUS, M.P.,
Minister for the Environment

Explanatory note

The National Packaging Covenant (the *Covenant*) is a voluntary scheme for managing the environmental impacts of consumer packaging in Australia.

The object of this Regulation is to insert proposed Part 5B into the *Protection of the Environment Operations (Waste) Regulation 2005* to make provision in relation to certain persons who are not signatories to, or fail to comply with, the Covenant. The proposed Part applies to brand owners of products and to retailers who provide plastic bags to consumers but it does not apply to any person who has an annual turnover of less than \$5 million. A person to whom the proposed Part applies is required to prepare a waste action plan and is to ensure that the waste materials used in the person's packaging will be recovered in accordance with the targets set by the Environment Protection Authority (the *EPA*) and be re-used or recycled.

A person to whom the proposed Part applies is required to ensure that consumers are provided with adequate information so that they know how to deal with the materials in the person's packaging once they are no longer needed by the consumer. Any such person is also required to retain certain records for up to 5 years.

A maximum penalty of \$22,000 for an individual and \$44,000 for a corporation is provided for failing to comply with the requirements of the proposed Part (and in the case of a continuing offence a penalty of half those amounts is provided for each day for which the offence continues).

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including clause 5 (3) of Schedule 2 and section 323 (the general regulation-making power).

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Clause 1 Protection of the Environment Operations (Waste) Amendment (Used Packaging Materials) Regulation 2006

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Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Used Packaging Materials) Regulation 2006*.

2 Amendment of Protection of the Environment Operations (Waste) Regulation 2005

The *Protection of the Environment Operations (Waste) Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Part 5B

Insert after Part 5A:

Part 5B Recycling of consumer packaging

46G Definitions

In this Part:

brand owner has the meaning given by clause 46H.

National Packaging Covenant means the National Packaging Covenant of July 2005, as amended from time to time, and includes the annexures and schedules to that covenant.

person's packaging means all packaging made of any material, or combination of materials, for the containment, protection, marketing and handling of those items of the product in respect of which the person is the brand owner, including any packaging materials used to transport those items of the product to a retailer, but does not include packaging provided by a retailer to a consumer for the transportation of products from the retailer.

recover means, in relation to materials, to separate those materials from the waste stream in a manner that enables them to be re-used for packaging or used for other products.

turnover means gross annual income.

waste action plan has the meaning given by clause 46L.

46H Brand owners of products

- (1) For the purposes of this Part, a person is the *brand owner* of a product if the person is the owner of the product name under which the product is sold or otherwise distributed in Australia.
- (2) If there is no person who satisfies subclause (1) in Australia, each person who is a licensee of the product name under which the product is sold or otherwise distributed in Australia is the *brand owner* of the product for the purposes of this Part, but only in respect of those items of the product that are sold or distributed under that licence.

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Schedule 1 Amendment

- (3) If there is no person who satisfies subclause (1) or (2) in Australia, each person who is a franchisee under a business arrangement that allows the person to sell or otherwise distribute the product in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of those items of the product that are sold or distributed by the person under that arrangement.
- (4) If there is no person who satisfies subclause (1), (2) or (3) in Australia, the person who first sells a particular item of the product in Australia is the **brand owner** of the product for the purposes of this Part, but only in respect of that item.
- (5) In this clause:
product name includes a trade mark, brand name or trade name whether registered in Australia or not.

46I Application of Part

- (1) This Part applies to brand owners of products.
- (2) This Part also applies to a retailer who provides plastic bags to consumers for the transportation of products from the retailer and, for the purposes of this Part, those plastic bags are taken to be packaging for products for which the retailer is the brand owner, whether or not the retailer is a brand owner of any product or item of a product.
- (3) Despite subclauses (1) and (2), this Part does not apply to:
 - (a) a person who is a signatory to, and complying with:
 - (i) the National Packaging Covenant (or any arrangement that replaces the National Packaging Covenant), or
 - (ii) any other arrangement approved by the EPA by order published in the Gazette, being an arrangement that the EPA is satisfied will produce equivalent outcomes to the National Packaging Covenant, or
 - (b) a person who has a turnover in Australia of less than \$5 million.
- (4) For the purposes of subclause (3) (a), a person is taken not to be complying with the National Packaging Covenant if the person is a signatory to the Covenant and a formal letter confirming non-compliance is sent to the person under Schedule 3 to the Covenant.

46J EPA is to set targets for the recovery of materials

- (1) The EPA is, by order published in the Gazette, to set targets for the recovery of specified waste materials used in packaging products.
- (2) In setting any such target the EPA is to have regard to the targets set out in the National Packaging Covenant.
- (3) Without limiting subclause (1), any such target may be expressed in the form of a percentage of the materials used.

46K Persons must recover, re-use and recycle waste materials etc

- (1) A person to whom this Part applies must ensure:
 - (a) that the waste materials used in the person's packaging are recovered in accordance with the targets set by the EPA under clause 46J, and
 - (b) that after being recovered those materials are:
 - (i) re-used or recycled by the person, or
 - (ii) if that is not practicable, re-used or recycled within Australia, or
 - (iii) if that is not practicable, re-used or recycled overseas, and
 - (c) that consumers are given adequate information to enable them to deal with the materials used in the person's packaging once they are no longer needed by the consumer, including information on where to take the materials and how to re-use or recycle them.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
 - (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.
- (2) The requirement in subclause (1) (a) to recover materials used in a person's packaging is satisfied if an equivalent amount of the same material is recovered by, or on behalf of, the person from packaging that is substantially similar to the person's packaging.

46L Persons must prepare waste action plan

- (1) A person to whom this Part applies must prepare a plan (a *waste action plan*) in accordance with this clause and submit the plan to the EPA within one month after the commencement of this clause.
- (2) A waste action plan is to set out:
 - (a) a “baseline” of data setting out the person’s current performance in respect of the use, recovery, re-use and recycling of the materials used in the person’s packaging, and
 - (b) how the person will ensure compliance with clause 46K, including:
 - (i) targets for the recovery of the waste materials used in the person’s packaging, and
 - (ii) time frames, proposed actions and performance indicators for achieving those targets.
- (3) A waste action plan takes effect when it is submitted to the EPA.
- (4) A waste action plan is to be in the form, and is to contain any matter or particular in relation to the use, recovery, re-use or recycling of the materials used in the person’s packaging, as may be specified by the EPA by notice in writing to the person.
- (5) The EPA may direct a person to amend a waste action plan if the EPA reasonably believes that the plan is not sufficient to ensure that the person complies with clause 46K.
- (6) A person must comply with a direction of the EPA given in accordance with subclause (5).
- (7) Failure to comply with a waste action plan is evidence of a failure to comply with clause 46K.

Maximum penalty (subclauses (1) and (6)):

 - (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
 - (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.

46M Record keeping

- (1) A person to whom this Part applies must keep records that set out the following:
 - (a) the amount of each material used in the person's packaging,
 - (b) the arrangements that are in place to ensure that those materials are recovered, including details of any agreement with a third party for the recovery of those materials,
 - (c) the amounts of each material that is recovered and how any recovered material is used.
- (2) Records must be retained by the person for a period of at least 5 years following the annual reporting period to which they relate.

Maximum penalty:

 - (a) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
 - (b) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues.