



New South Wales

Protection of the Environment Operations (Waste) Amendment (Australian Packaging Covenant) Regulation 2011

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*.

FRANK SARTOR, MP
Minister for Climate Change and the Environment

Explanatory note

The object of this Regulation is to amend the *Protection of the Environment Operations (Waste) Regulation 2005* as a consequence of the replacement of the National Packaging Covenant with the Australian Packaging Covenant and consequent variations to the *National Environment Protection (Used Packaging Materials) Measure* of the Commonwealth. The amendments:

- (a) update a definition and certain references, criteria and record-keeping requirements, and
- (b) require the EPA to set targets for the review of packaging design by brand owners and certain retailers and create an offence for failure to comply with such targets (with a maximum penalty of \$11,000 for an individual and \$22,000 for a corporation and, for a continuing offence, a maximum penalty of half those amounts for each day the offence continues), and
- (c) require brand owners and certain retailers to prepare waste action plans within one month of being notified in writing by the EPA, and
- (d) require waste action plans to set out how a brand owner or relevant retailer will ensure a continuous reduction in the number of packaging items in the litter stream and compliance with EPA targets for the review of packaging design, and
- (e) enable the EPA to direct waste action plans to be amended to set out the information referred to in paragraph (d), and extend an existing offence of failure to comply with directions of the EPA (with a maximum penalty the same as that referred to in paragraph (b)) so that it applies in relation to such directions, and

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(f) save the operation of existing waste action plans.

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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under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Waste) Amendment (Australian Packaging Covenant) Regulation 2011*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on the day on which it is published on the NSW legislation website.
- (2) Schedule 1 [17] commences on 1 July 2011.

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Schedule 1 Amendment of Protection of the Environment Operations (Waste) Regulation 2005

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[1] Clause 46G Definitions

Insert in alphabetical order:

Australian Packaging Covenant means the Australian Packaging Covenant of 1 July 2010 (including its annexures and schedules), as amended from time to time.

Sustainable Packaging Guidelines means the guidelines of that title contained in Schedule 2 to the Australian Packaging Covenant.

[2] Clause 46G, definition of “National Packaging Covenant”

Omit the definition.

[3] Clause 46G (2)

Insert at the end of clause 46G:

- (2) A reference in this Part:
 - (a) to the Australian Packaging Covenant is taken to include a reference to the targets for signatories to the Covenant that are specified in the Australian Packaging Covenant Council’s current strategic plan (as referred to in the Covenant), as amended from time to time, and
 - (b) to the Sustainable Packaging Guidelines, in relation to a person to whom this Part applies, is taken to include a reference to an alternative set of guidelines that the EPA:
 - (i) is satisfied will achieve outcomes equivalent to those achieved by the Sustainable Packaging Guidelines, and
 - (ii) has approved of in writing for adoption by the person for the purposes of this Part.

[4] Clauses 46I (3) (a) and (4) and 46J (2)

Omit “National Packaging Covenant” wherever occurring.

Insert instead “Australian Packaging Covenant”.

[5] Clause 46I Application of Part

Omit “formal letter confirming non-compliance” from clause 46I (4).

Insert instead “non-compliance notice”.

[6] Clause 46J EPA is to set targets for recovery of materials and review of packaging design

Omit clause 46J (1). Insert instead:

- (1) The EPA is, by order published in the Gazette, to set targets for the following:
 - (a) recovery of material used in packaging products (whether in relation to all or to particular material so used),
 - (b) review of packaging design.

[7] Clause 46J (2)

Insert “current national performance and” after “have regard to”.

[8] Clause 46J (3)

Omit “subclause (1)”. Insert instead “subclause (1) (a)”.

[9] Clause 46K Persons must recover, re-use and recycle waste materials etc and review packaging design in accordance with targets

Omit “clause 46J” from clause 46K (1). Insert instead “clause 46J (1) (a)”.

[10] Clause 46K (1) (d)

Insert at the end of clause 46K (1) (c):

- , and
- (d) that review of a person’s packaging design is in accordance with the targets set by the EPA under clause 46J (1) (b).

[11] Clause 46L Persons must prepare waste action plan

Omit “after the commencement of this clause” from clause 46L (1).

Insert instead “of being notified by the EPA in writing of the person’s obligation to do so”.

[12] Clause 46L (2) (b) (i)

Insert “and for reviewing the person’s packaging design” after “packaging”.

[13] Clause 46L (2) (c)

Insert at the end of clause 46L (2) (b) (ii):

- , and
- (c) how the person will ensure a continuous reduction in the number of packaging items in the litter stream.

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Schedule 1 Amendment of Protection of the Environment Operations (Waste) Regulation 2005

[14] Clause 46L (4)

Insert “, the review of the person’s packaging design, or reduction in packaging litter” after “packaging”.

[15] Clause 46L (5)

Insert “or subclause (2) (c)” after “clause 46K”.

[16] Clause 46L (7)

Omit “Failure”.

Insert instead “To the extent that a waste action plan relates to a person’s obligations under clause 46K, a failure”.

[17] Clause 46M Record keeping

Omit clause 46M (1). Insert instead:

- (1) A person to whom this Part applies must keep records that set out the following:
 - (a) for each packaging material used by the person in the person’s packaging in each financial year:
 - (i) the total weight of material used by material type, and
 - (ii) the number of units of packaging by unit and material type, and
 - (iii) the arrangements that are in place to ensure that material is recovered, including details of any agreement with a third party for the recovery of material, and
 - (iv) the total weight of material recovered by material type, and
 - (v) the total weight of recovered material re-used and recycled in Australia by material type, and
 - (vi) the total weight of recovered material re-used and recycled by material type through export, and
 - (vii) the total kilojoules of embedded energy recovered, and
 - (viii) the total weight of recovered material disposed of to landfill, and
 - (ix) how recovered material is used, and
 - (x) how consumers have been advised as to how packaging is to be recovered,

- (b) the percentages of the person's existing and new packaging reviewed using the Sustainable Packaging Guidelines, and any improvements made to the person's packaging design, in each financial year,
- (c) measures the person has taken to ensure a continuous reduction in the number of packaging items in the litter stream in each financial year.

[18] Clause 53 Savings and transitional provisions

Insert after clause 53 (4):

- (5) A waste action plan submitted to the EPA under clause 46L as in force immediately before its amendment by the *Protection of the Environment Operations (Waste) Amendment (Australian Packaging Covenant) Regulation 2011* continues in effect as a waste action plan for the purposes of Part 5B despite that amendment and, accordingly, may be the subject of a direction under clause 46L (5).