

Waste Management and Resource Recovery (Environment Protection—Used Packaging Materials) Code of Practice 2020

Disallowable instrument DI2020–256

made under the

Waste Management and Resource Recovery Act 2016, s 60 (Codes of practice—approval)

1 Name of instrument

This instrument is the *Waste Management and Resource Recovery (Environment Protection—Used Packaging Materials) Code of Practice 2020*.

2 Commencement

This instrument commences on the day after notification.

3 Approval

I approve the Environment Protection (Used Packaging Materials) Code of Practice as set out in Schedule 1.

Chris Steel MLA
Minister for Recycling and Waste Reduction

31 August 2020



Schedule 1 - Environment Protection (Used Packaging Materials) Code of Practice

TRANSPORT CANBERRA AND
CITY SERVICES DIRECTORATE

Contents

Preface	4
The National Environment Protection Measures	4
The <i>National Environment Protection (Used Packaging Materials) Measure 2011</i> (UPM NEPM).....	4
The Australian Packaging Covenant (the Covenant).....	4
The Territory context	4
Definitions	5
Background	7
National Environment Protection Goal.....	8
Purpose	8
Objectives	8
Scope.....	9
Application of the Code of Practice	9
Obligations	9
Targets	10
Enforcement of the Code of Practice.....	13
Failure to comply	13
Written direction	13
Penalties.....	13
Requirements.....	11
Requirement 1 – prepare waste action plan	11
1. Submission	11
2. Content	11
3. Approval.....	11
Requirement 2 – annual reporting and record keeping	11
Annual reporting to the Territory	11
Collection of data and record keeping.....	12
Information supplied by the Territory	13
Dependence on the Covenant	14

Preface

The National Environment Protection Measures

The *National Environmental Protection Council Act 1994* (Cth) and complementary state and territory legislation authorise the National Environmental Protection Council (NEPC) to make National Environmental Protection Measures (NEPMs). The NEPMs are a set of national objectives designed to assist in protecting or managing aspects of the environment. Jurisdictions individually decide how to implement the NEPMs. In the ACT, the equivalent Act is the *National Environmental Protection Council Act 1994* (ACT).

The *National Environment Protection (Used Packaging Materials) Measure 2011* (UPM NEPM)

The UPM NEPM aims to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the re-use and recycling of used packaging materials. The UPM NEPM supports and complements the voluntary strategies in the Australian Packaging Covenant (the Covenant) and assists with assessing performance of the Covenant.

The Australian Packaging Covenant (the Covenant)

The Covenant is a co-regulatory arrangement between industry and governments to manage packaging waste. The Covenant is based on the principles of product stewardship and shared responsibility. It aims to ensure that parties in the consumer packaging supply chain work collaboratively to achieve sustainable packaging outcomes and minimise the environmental impact of packaging waste. Under the Covenant, the Australian Packaging Covenant Organisation partners with governments and industry to achieve the National Packaging Target endorsed by the Meeting of Environment Ministers in April 2018.

The National Packaging Target is to make 100% of all Australian packaging reusable, recyclable or compostable by 2025 or earlier. This is supported by a number of sub-targets, developed and agreed by industry and endorsed by the Commonwealth Minister for the Environment:

- 70% of Australia's plastic packaging will be recycled or composted by 2025
- 50% average recycled content will be included across all packaging by 2025
- Problematic and unnecessary single-use plastic packaging will be phased out through design, innovation, or introduction of alternatives.

The Territory context

The Territory previously embedded the UPM NEPM through the *Waste Minimisation (Used Packaging Materials Industry Waste Reduction Plan) Approval 2013 (No 1)* (the IWRP) under the *Waste Minimisation Act 2001*. The IWRP was an enforceable legislative instrument.

The IWRP was repealed when the *Waste Management and Resource Recovery Act 2016* (the Act) replaced the *Waste Minimisation Act 2001* on 1 July 2017. The *Environment Protection (Used Packaging Materials) Code of Practice* is an equivalent and refreshed mechanism to embed the UPM NEPM under the Act.

The Act, the *Waste Management and Resource Recovery Regulation 2017*, and the Code of Practice provide an integrated framework to manage the impacts of packaging on the ACT environment.

Definitions

Unless otherwise specified, the following definitions apply to this Code of Practice:

The **Act** means the *Waste Management and Resource Recovery Act 2016* (ACT).

Australian Packaging Covenant means the agreement by that name (including all schedules and annexes to that agreement) between industry organisations and governments in the packaging supply chain to reduce the environmental impacts of packaging.

Australian Packaging Covenant Organisation means the body established under the Australian Packaging Covenant for the purpose of administering the Covenant, including registration of signatories and action plans, monitoring, discipline and dispute resolution where required.

Brand owner means:

- a person who is the owner or licensee in Australia of a trademark under which a product is sold or otherwise distributed in Australia, whether the trademark is registered or not; or
- 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; or
- in the case of a product which has been imported, the first person to sell that product in Australia; or
- in respect of in-store packaging, the supplier of the packaging to the retailer; or
- 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.

Code of Practice means this *Environment Protection (Used Packaging Materials) Code of Practice*.

Consumer packaging means all packaging products made of any material, or combination of materials, for the containment, protection, marketing and handling of retail consumer products. This also includes distribution packaging.

Council means the National Environment Protection Council established by the *National Environment Protection Council Act 1994* and the equivalent provisions of the corresponding Acts of the Commonwealth and participating States or Territories.

Covenant means the Australian Packaging Covenant.

Distribution packaging means all packaging that contains multiples of products (the same or mixed) intended for direct consumer purchase including:

- secondary packaging used to secure or unitise multiples of consumer products such as cardboard boxes, shipper, shrink film wrap; and
- tertiary packaging used to secure or unitise multiples of secondary packaging such as pallet wrapping stretch film, shrink wrap film, strapping.

Free rider means a brand owner or organisation that is a participant in the packaging chain and is not a signatory to the Covenant, is not producing equivalent outcomes to those achieved through the Covenant, and, is not compliant with the relevant state or territory instruments.

Household recycling collection, also known as kerbside recycling collection, means roadside collection of domestic solid waste separated for the purpose of recycling.

Industry means any manufacturing, industrial, commercial, wholesale or retail activity or process that can result in the generation, recycling, treatment, transport storage, or disposal of consumer packaging waste.

Landfill means waste disposal sites used for the authorised deposit of solid waste onto or into land.

Lifecycle management means management of the potential environmental impacts of a product in all stages of production, distribution, use, collection, reuse, recycling, reprocessing and disposal of that product.

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.

Nominated agency means the agency nominated by a participating jurisdiction for the purposes of receiving and reporting data or inspecting records.

Packaging chain means the linkages among materials suppliers, packaging manufacturers, packaging fillers, wholesalers, retailers and consumers of packaged products.

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 which the service is available.

Plastic bags include single-use, lightweight plastic carry bags containing virgin or recycled plastic.

Product stewardship means the ethic of shared responsibility through the lifecycle of products including the environmental impact of the product through to, and including, its ultimate disposal.

Recovery rate means the weight of the packaging material recovered from post-consumer waste stream divided by the weight of the packaging material sold as packaging within Australia multiplied by 100. For the purposes of this calculation, packaging material means the principal component or components of the packaging or container and does not include incidental components such as labels and closures.

Recyclable means packaging for a product reasonably able to be recovered in Australia through an approved or accredited collection or drop-off system, and able to be reprocessed and used as a raw material for the manufacturer of a new product.

Recycle, for a product, means to recover the product and use it as a raw material to produce another product.

Requirement means conduct which must be undertaken to remain compliant with the Code of Practice. Requirements are enforceable under part 9 of the Act.

Re-use, for a product, means use of a product for the same or similar purpose as the original purpose without subjecting the product to a manufacturing process which would change its physical appearance.

Signatory means a signatory to the Australian Packaging Covenant and includes an organisation that accedes to the Covenant after it is made, whether before or after the commencement of this Code of Practice.

Sustainable Packaging Guidelines means the guidelines published by the Australian Packaging Covenant Organisation, previously known as the Environmental Code of Practice for Packaging before 1 July 2010. The guidelines assist the design, manufacture and end-of-life management of packaging, tackling the sometimes conflicting demands of market performance and cost, consumer protection, and environmental health, while meeting the needs of a sustainable society.

Turnover means gross annual income.

Territory means the Australian Capital Territory.

Note: The following expressions used in this Code of Practice are defined in subsection 6 of the [*National Environment Protection Council Act 1994 \(ACT\)*](#).

- Agreement;
- National Environment Protection Council;
- national environment protection goal;
- national environment protection measure;
- participating jurisdiction;
- participating State; and
- participating Territory.

Background

The Covenant is an agreement entered into by governments and industry participants in the packaging chain based on the principles of product stewardship and shared responsibility. Product stewardship imposes an obligation on all those who benefit from production to assume a share of responsibility for a product over its lifecycle. The Covenant covers consumer packaging.

All signatories to the Covenant have made a commitment to:

- work together to achieve the overarching targets established under the Covenant; and
- produce and report 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
- work co-operatively to develop good practice collection systems and markets, and education and promotion programs; and
- provide data to assess the performance of the Covenant and progress towards the national environment protection goal.

Packaging chain signatories to the Covenant have made commitments to practice product stewardship throughout the lifecycle of consumer packaging, including to:

- design packaging to minimise use of materials and elimination of excessive packaging; and
- adopt and implement the Sustainable Packaging Guidelines; and
- support materials recovery systems and infrastructure for reprocessing used packaging materials in collaboration with state and local governments; and
- report and demonstrate continuous improvement against the key performance indicators and targets specified in the Covenant.

Local government signatories to the Covenant have made commitments in relation to good practice in the delivery of household recycling collection systems.

The Commonwealth, State and Territory governments have made commitments in relation to:

- facilitating product stewardship through their legislation by developing a national environment protection measure on used packaging materials; and
- facilitating market development initiatives; and
- applying product stewardship to their own operations; and
- supporting household and other recycling collection services.

As the Covenant includes a voluntary system of industry self-regulation, the intent of Australian Packaging Covenant Organisation is to ensure that industry signatories do not suffer any competitive disadvantage as a result of fulfilling their commitments under the Covenant.

National Environment Protection Goal

The goal of the Measure is to reduce environmental degradation arising from the disposal of used packaging and 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 the assessment of the performance of the Covenant.

Purpose

The purpose of the Code of Practice is to implement the UPM NEPM in the Territory. This will ensure that the Territory meets its obligations under the UPM NEPM and its responsibilities as a Covenant signatory. It establishes a statutory basis to ensure that Covenant signatories are not competitively disadvantaged by fulfilling their obligations under the Covenant.

The Code of Practice provides compliance options for brand owners located in the Territory; they can choose to either become a Covenant signatory, or to be regulated by the Territory. The Code of Practice will also authorise the Territory Government to undertake enforcement activities against non-compliant Covenant signatories. It complements the existing Territory packaging initiatives and policies, in addition to providing certainty to the community and industry about the Territory's packaging commitments.

Objectives

The objectives of the Code of Practice are to:

- a) ensure greater industry responsibility for consumer packaging waste and other waste associated with used consumer packaging in the Territory;
- b) minimise the natural resources consumed in the manufacture, use, management and disposal of used packaging in the Territory;
- c) reduce the amount of used consumer packaging and consumer packaging waste being created in the Territory;
- d) reduce the amount of used consumer packaging and related waste requiring disposal in the Territory;
- e) ensure Covenant signatories are not competitively disadvantaged in the Territory marketplace; and
- f) assist in the waste reduction and recycling objectives of the Covenant in the Territory.

Scope

The scope of the Code of Practice is limited to the recovery, re-use and recycling of used consumer packaging materials and will focus on:

- a) materials used for packaging retail products consumed in industrial, commercial and domestic premises and public places; and
- b) materials used for packaging food and beverages intended for consumption in public places or in commercial provision of food services to individuals in hotels and restaurants; and
- c) distribution packaging that contains multiples of products intended for consumer use.

The Code of Practice must be considered in conjunction with other best practice guidelines and related Commonwealth, state and territory legislation and policies, including:

- a) the Sustainable Packaging Guidelines, with emphasis on packaging design; and
- b) the Australian Packaging Covenant; and
- c) ACT legislation and respective instruments regarding waste management; and
- d) the principles of environment protection set out in section 3D of the *Environment Protection Act 1997* (ACT).

Application of the Code of Practice

The Code of Practice applies to all brand owners who have an annual turnover of \$5 million or more:

- a) who are not Covenant signatories and whose consumer packaging forms part of the waste stream in the ACT; or
- b) who have registered offices located in the ACT; and
 - a. who are not signatories to the Covenant; or
 - b. who are non-compliant Covenant signatories.

For the purposes of this clause, a non-compliant Covenant signatory is:

- a) a brand owner who is a signatory to the Covenant; and
- b) the Territory has been notified by the Australian Packaging Covenant Organisation that the brand owner is no longer compliant with the Covenant.

The Code of Practice does not apply if a brand owner is fulfilling their obligations under arrangements for other industries or industry sectors and has written approval by an authorised officer of the Territory that the Territory is satisfied the brand owner will produce equivalent outcomes set out in the Covenant and the Sustainable Packaging Guidelines.

Note: the Covenant establishes monitoring, disciplinary and dispute resolution procedures for non-compliant signatories, including the process for referring non-compliant signatories to Australian jurisdictions.

Obligations

Brand owners have an obligation to recover, re-use and recycle packaging materials in accordance with the targets set out in this Code of Practice.

Brand owners must:

- a) undertake or assure the systematic recovery of consumer packaging in which the brand owner's products are sold; and

- b) undertake or assure the reuse, recycling or energy recovery of consumer packaging in which the brand owner's products are sold; and
- c) undertake or assure that all materials recovered by them or on their behalf have been utilised through in order of preference:
 - i. reuse in the packaging of the brand owner's products if applicable; or
 - ii. use within Australia as a secondary resource; or
 - iii. export as a secondary resource; and
- d) demonstrate that reasonable steps have been taken to ensure that customers are adequately advised as to how the packaging is to be recovered.

The brand owner can discharge their obligations under a) b) or c) above if the brand owner undertakes or assures the recovery and utilisation of used packaging materials which are of a size and type substantially the same as the packaging in which the brand owner's products are sold.

Targets

Brand owners must work cooperatively with the ACT Government to achieve the following targets.

Target 1 – 100% reusable, recyclable or compostable packaging by 2025

Brand owners must work to have 100% reusable, recyclable or compostable packaging by 2025 and actively encourage awareness, education and action at the consumer level. This will contribute to reducing the quantity of packaging waste generated.

Target 2 – full resource recovery by 2025

Brand owners must:

- a) work towards the Territory's target of full resource recovery by 2025; and
- b) maintain their post-consumer packaging recycling rate at a minimum of 70%; and
- c) ensure a minimum overall recovery rate of 70% for the following consumer packaging materials: paper and cardboard, glass, steel, aluminium, PET plastics (Code 1), HDPE plastics (Code 2), plastics (Codes 3–7).

Target 3 – no packaging to landfill by 2025

Brand owners must work towards the target of no packaging to any landfill by 2025.

Target 4 – 50% of average recycled content included in packaging by 2025

Brand owners must work to achieve an average of 50% recycled content in their packaging by 2025 and must work towards achieving the following targets for individual materials:

Material type	2025 targets
Plastics	20%
<i>PET</i>	30%
<i>HDPE</i>	20%
<i>PP</i>	20%
<i>Flexible plastics</i>	10%
Paper	60%
Metals	35%
Glass	50%

Requirements

Requirement 1 – prepare waste action plan

1. Submission

A brand owner to whom this Code of Practice applies must submit a waste action plan to the Territory for approval.

2. Content

The waste action plan must set out:

- a) baseline data for the information outlined in the “Collection of data and record keeping” clause, setting out the brand owner’s current performance regarding the use, recovery, re-use and recycling of the materials used in the packaging for which the person is responsible; and
- b) how the brand owner will ensure compliance with their obligations, including:
 - i. targets for the recovery of the materials used in the packaging and for reviewing the design of that packaging, which are at minimum equal to or greater than the targets set out in the Code of Practice; and
 - ii. time frames, proposed actions and performance indicators for achieving those targets; and
 - iii. proposed methodologies for the collection of data; and
 - iv. monitoring and evaluation procedures to assess performance;
- c) how the brand owner will ensure a continuous reduction in the number of packaging items in the waste stream; and
- d) how the waste action plan and its targets align with the best practice guidelines and related Commonwealth, state and territory legislation and policies listed under ‘Scope’.

3. Approval

The Territory has 20 working days to review the waste action plan unless otherwise agreed between the Territory and the brand owner.

If the waste action plan complies with the Code of Practice, the Territory must provide written approval of the waste action plan. The waste action plan is deemed to be in force from the date of the Territory’s approval.

If the waste action plan does not comply with the Code of Practice, the Territory must provide written feedback which outlines:

- a) how the waste action plan does not comply with the Code of Practice; and
- b) the changes that need to be made before approval can be granted; and
- c) the date by which the waste action plan needs to be resubmitted.

The brand owner must make the recommended changes and resubmit the waste action plan to the Territory for approval by the specified date to comply with this Code of Practice.

Requirement 2 – reporting and record keeping

Annual reporting to the Territory

Unless otherwise agreed with the Territory, the brand owner must submit an annual report by 31 July each year, commencing in the financial year after this Code of Practice applies to the brand owner. The annual report must be in a standard reporting format in accordance with the National

Environment Protection Council's reporting requirements, provided as directed by the Territory. At a minimum, reporting must be electronic and in a commonly used format. The annual report must:

- a) outline annual performance against all the waste action plan commitments in Requirement 1; and
- b) provide an annual summary of the data collection and record keeping obligations in Requirement 2.

Collection of data and record keeping

A brand owner to whom this Code of Practice applies must record the following information for each packaging material used during a financial year by the brand owner:

- a) for each packaging material used by the person in packaging for which the person is responsible:
 - i. total weight of material used by material type;
 - ii. number of units of packaging by unit and material type;
 - iii. total weight of material recovered by material type;
 - iv. total weight of recovered material reused and recycled in Australia by material type;
 - v. total weight of recovered material reused and recycled by material type through export;
 - vi. total amount of embedded energy recovered (in kilojoules);
 - vii. total weight of recovered material disposed of to landfill;
 - viii. how recovered material is used;
 - ix. 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;
 - x. how consumers have been advised as to how packaging is to be recovered; and
- b) the percentages of existing and new packaging for which the brand owner is responsible that is reviewed using the Sustainable Packaging Guidelines; and
- c) any improvements made to the design of that packaging; and
- d) any measures that the brand owner takes to ensure a continuous reduction in the number of packaging items in the litter stream.

A brand owner who is required to keep records under this Code of Practice must:

- a) submit these records quarterly via the Territory's reporting systems; and
- b) ensure that those records are retained for at least 5 years from the date the records were made and make such records available for inspection by an authorised officer of the Territory on request; and
- c) make those records available for inspection and copying by an authorised officer on request.

In this clause:

- a) financial year, in relation to the keeping and retention of records by a brand owner, means:
 - i. in the case of a brand owner that is a company—a financial year of the company; or
 - ii. in any other case—the period of 12 months commencing on 1 July in any year.

Enforcement of the Code of Practice

Failure to comply

A failure to comply with the Code of Practice includes a failure to meet any of the requirements of the brand owner's waste action plan, to the extent that a waste action plan relates to a brand owner's obligations.

Written direction

The Territory may give a person a written direction to rectify a breach of this Code of Practice under section 62 of the *Waste Management and Resource Recovery Act 2016* ('the Act'). The written direction may include:

- a) directing a brand owner to submit a draft waste action plan if the Territory has not received the draft waste action plan within one month of the date on which this Code of Practice applies to the brand owner; or
- b) directing the brand owner to resubmit a draft waste action plan if the Territory reasonably believes it is not sufficient to ensure:
 - i. that the brand owner will fulfil their obligations under this Code of Practice or comply with Requirement 2; or
 - ii. a continuous reduction in the number of packaging items in the waste stream in the ACT; or
- c) directing a brand owner to rectify the breach.

Penalties

A failure to comply with a requirement of this Code of Practice is a strict liability offence and is subject to penalties under section 61 of the Act.

A brand owner may be liable for an infringement penalty or prosecution in the ACT Magistrates Court. The infringement penalty for failing to comply with a Code of Practice is set out in the *Magistrates Court (Waste Management and Resource Recovery Infringement Notices) Regulation 2017*. If prosecuted in Court, the value of a penalty unit for an offence against this Code of Practice is set by section 133 of the [Legislation Act 2001](#).

Brand owners will not be penalised for failure to discharge their obligations under Requirements 1 and 2 unless brand owners have first been notified of the need to comply with these requirements and the options for exemption from those requirements, and they have failed to comply with that notice.

Brand owners are encouraged to pursue ambitious targets that are higher than those specified in the Code of Practice and to pursue packaging design and packaging reduction activities wider than the scope of the Code of Practice. Brand owners will not be penalised for falling short of ambitious waste action plan targets if they still comply with the minimum standards set out in the Code of Practice.

Confidentiality

The Territory will maintain confidentiality of commercially sensitive information given to it by the brand owner and shall not publicly release any information unless:

- a) the brand owner consents to release of the information, or
- b) the Territory is legally required to release it; or

- c) the information is aggregated with other information so as to conceal its source; or
- d) it is in the public interest to release it.

Information supplied by the Territory

The Territory will provide to the National Environment Protection Council, on or before 31 December each year, the following information in a standard reporting format:

- a) information gathered from brand owners whose records have been audited; and
- b) information gathered through the conduct of surveys; and
- c) information relating to complaints received, investigations undertaken, and prosecutions mounted pursuant to this Plan; and
- d) a statement of interpretation of the information.

The purpose of providing this information is for the National Environment Protection Council to be able to publish a statement of overall national performance.

Dependence on the Covenant

This Code of Practice will have no effect if the Covenant ceases to be in force.

This Code of Practice continues to be in force if the UPM NEPM is revoked, varied or replaced by the *National Environment Protection Council Act 1994*, except to the extent of any inconsistencies with the UPM NEPM.