Queensland

Waste Reduction and Recycling Amendment Regulation (No. 2) 2012

Explanatory Notes for SL 2012 No. 180

made under the

Waste Reduction and Recycling Act 2011

General outline

Short title

The short title of this regulation is the *Waste Reduction and Recycling Amendment Regulation (No. 2) 2012*.

Authorising law

The regulation is made under the head of power contained in section 271—Regulation-making power—of the *Waste Reduction and Recycling Act 2011*, where subsection (1) states "The Governor in Council may make regulations under this Act".

Subsection (2) states that without limiting subsection (1), a regulation may provide for, among other things, setting standards, controls or procedures for the manufacture, generation, sale, use, transport, receival, storage, treatment or disposal of waste, including for used packaging materials.

Policy objectives of the legislation

The primary objective of the legislation is to give effect to the provisions of the National Environment Protection (Used Packaging Materials) Measure (the NEPM).

The NEPM works with the Australian Packaging Covenant (the Covenant) to provide a national co-regulatory framework to reduce the environmental impacts of packaging waste.

The Covenant is 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 is an agreement entered into by governments and industry participants in the packaging supply chain.

The goal of the NEPM is to reduce environmental degradation from the disposal of used packaging and conserve virgin materials by encouraging reuse and recycling of used packaging materials.

The NEPM supports and complements the voluntary strategies under the Covenant. To achieve the desired environmental outcomes, the NEPM states that participating jurisdictions should establish a statutory basis for ensuring that signatories to the Covenant are not competitively disadvantaged in the market place by fulfilling their commitments under the Covenant.

The regulatory provisions giving effect to the NEPM requirements provide a safety net, which is designed to prevent the issue of free-riders. Free-riders are those eligible companies that are part of the packaging supply chain and who are not signatories to the Covenant or producing equivalent outcomes to those achieved under the Covenant.

How the objectives will be achieved

The policy objective to give effect to the requirements of the NEPM will be achieved through regulatory provisions that place specific obligations on eligible brand owners who are not signatories to the Covenant. These obligations include requiring a brand owner to:

- Achieve a recovery rate of at least 70% of the consumer packaging material used in the brand owner's packaging in a financial year;
- Prepare an action plan for a financial year that contains information including how the brand owner will ensure the systematic recovery of the packaging; and how the brand owner intends to inform the public of they way in which the packaging may be recovered; and
- Provide certain information to the chief executive including on the number of consumer packaging items made from each type of

material; the total weight recovered; the recovery rate for the packaging; and the weight of the recovered consumer packaging that was disposed of to landfill.

Consistency with other legislation

This regulation is consistent with the policy objectives of other legislation. The requirement under the *Statutory Instruments Act 1992* in relation to a regulatory assessment statement has been complied with.

The Regulatory Assessment Statement System Guidelines produced by the Queensland Office of Regulatory Efficiency, provide that regulation may be excluded from the Regulatory Assessment Statement process if the regulation has undergone an extensive impact assessment process that takes into account the impacts on Queensland and regulatory best practice principles. This includes regulation that is adopting an Australian or international protocol, standard, code or intergovernmental agreement or instrument. A NEPM Impact Statement was released for public consultation nationally in February 2011. The regulatory provisions are consistent with the requirements of the NEPM.

Consistency with authorising Act

This regulation is consistent with the *Waste Reduction and Recycling Act 2011*. The regulation helps to achieve the objects of the Act in relation to improving resource recovery, reducing consumption of natural resources and supporting and implementing national frameworks for waste management and resource recovery.

Possible alternative approach

The provisions give regulatory effect to the National Environment Protection (Used Packaging Materials) Measure (NEPM). One of the commitments of jurisdictional signatories to the Covenant is to give effect to the provisions of the NEPM through legislation in that jurisdiction.

This ensures that states and territories can take enforcement action against free-riders—brand owners with a turnover of over $5 million per annum who choose not to become Covenant signatories or who fail to comply with Covenant obligations.

The packaging industry supports, and expects, strong enforcement of the NEPM. If a jurisdiction does not provide regulatory effect for the NEPM, the NEPM has no legislative standing in that jurisdiction and no compliance action can be taken by that jurisdiction.

One of the options assessed in the NEPM Impact Statement was the extent to which the Covenant would be effective without the underpinning NEPM. The Covenant is not an entirely voluntary scheme. In essence it is an agreed alternative to specific obligations established under the NEPM. The Covenant provides a more flexible alternative than the individual company level obligations set out in the NEPM, as it allows for a pooling of capacity across firms by applying a collective target that can be reached through joint and/or negotiated action by industry participants.

The Covenant works because the NEPM provisions place more stringent requirements on companies. The regulatory underpinning of a credible threat, such as application of the NEPM requirements, fits within the structure of potential drivers to industry participation in voluntary measures. Without safety net legislation giving effect to the NEPM provisions there would be no enforcement capability, leaving voluntary participation likely to be unable to effectively met government objectives in this area.

The NEPM Impact Statement determined that options with a regulated structure such as a NEPM are more effective in encouraging company participation and action than a purely voluntary approach.

On the basis of this assessment, the best approach is to provide regulatory underpinning to give effect to the NEPM to support companies undertaking voluntary actions through the Covenant.

Consistency with fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* provides the meaning of fundamental legislative principles. Section 4(2)(a) requires that legislation have sufficient regard to the rights and liberties of individuals. Section 4(2)(b) requires that the legislation have sufficient regard to the institution of parliament.

While the regulation is generally consistent with the fundamental legislative principles, the regulation prescribes sections of the regulation as 'prescribed provisions' for the definition of *prescribed provision* in section 245 of the *Waste Reduction and Recycling Act 2011* (the Act).

A breach of a prescribed provision by a brand owner means that the brand owner may receive a show cause notice and then a compliance notice under the Act. Failure to comply with a compliance notice is an offence with a maximum penalty of 300 penalty units (as per section 251 of the Act).

The former Scrutiny of Legislation Committee adopted a policy that subordinate legislation should contain offences with a maximum penalty of not more than 20 penalty units. Breach of a prescribed provision effectively exposes a brand owner to a maximum penalty of 300 penalty units if a compliance notice is given under the Act for the breach, and the brand owner does not comply with the notice. There is no penalty under the *Waste Reduction and Recycling Regulation 2011* for a breach of a prescribed provision.

Specifying certain provisions as prescribed provisions allows more enforcement flexibility, creating the ability for the chief executive to issue a show cause notice prior to a compliance notice being given. This allows for a better natural justice process by giving a person more opportunity to demonstrate they are not contravening a prescribed provision before further compliance action is taken.

Another factor that was considered when deciding to prescribe provisions was equity for brand owners that are complying with their signatory obligations. As the maximum penalty under a regulation is 20 penalty units, if there is not a higher penalty associated with some obligations this could lead to companies choosing not to comply as it is cheaper to be non-compliant than to become a signatory and comply with the obligations of a signatory.

There are costs and benefits associated with participating in the Covenant. Costs include funding contributions and the development and implementation of action plans and preparation of annual reports. The application of a maximum penalty of 20 penalty units would lead to ineffective offence provisions and an uneven playing field for Covenant signatories who are meeting their signatory obligations.

Benefits and costs of implementation

The regulatory provisions provide a safety net that is designed to prevent the issue of free-riders companies. It offers benefits to the cost of government administration as well, given that compliance is only likely in relation to the small number of non-participants.

The NEPM, and therefore the regulatory provisions, do not apply to brand owners with an annual turnover of less than $5 million. This threshold was established to ensure that small businesses are not impacted by requirements under the Covenant or NEPM in relation to obligations. One of the obligations as a Covenant signatory is to contribute to an industry fund. This contribution is based on turnover. As companies under $5 million are not covered they avoid the costs associated with mandatory participation under the NEPM.

Compliance costs for government will only be incurred if enforcement action is required.

The NEPM Decision Regulation Impact Statement determined that the benefits of the co-regulatory arrangement of the Covenant/NEPM outweigh the cost.

Consultation

Public consultation was conducted through the national Regulatory Impact Statement process. The Covenant and NEPM framework have been in place since 1999. The latest round of consultation was undertaken in 2011, resulting in a remade NEPM on 16 September 2011. As these provisions give effect to the NEPM there has been no separate public consultation undertaken on this regulation.

The majority of submissions supported retention of the Covenant/NEPM arrangement. Reasons included the desire for regulatory underpinning and that this arrangement provides a cost-effective, shared responsibility approach.

Results of consultation

No significant issues were raised by stakeholders during the national public consultation process.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 states that the short title of this legislation is the *Waste Reduction and Recycling Amendment Regulation (No. 2) 2012.*

2 Regulation amended

Clause 2 states that this regulation amends the *Waste Reduction and Recycling Regulation 2011*.

3 Insertion of new pt 5A

Clause 3 inserts a new pt 5A after section 41 for the *Waste Reduction and Recycling Regulation 2011* in relation to used packaging materials as follows.

'Part 5A Used packaging materials

Division 1 Preliminary

Subdivision 1 General

41A Purpose of pt 5A

New section 41A provides the purpose of the new part 5A. The purpose of this part is to give effect to, and enforce compliance with, the National Environment Protection (Used Packaging Materials) Measure (the Measure).

Subdivision 2 Interpretation

41B Definitions for pt 5A

New section 41B provides the definitions for this part. Key definitions for this part include 'brand owner', 'consumer packaging', 'free rider', 'recover' and 'secondary resource'.

41C Meaning of *complying brand owner*

New section 41C defines a *complying brand owner* for the purposes of this part.

A complying brand owner is a brand owner:

- who is a Covenant signatory and is complying with the Covenant or,
- if they are not a Covenant signatory then they are a brand owner that any of the following applies to:
  - the brand owner uses the consumer packaging in which their products are sold in a way that achieves environmental outcomes that are at least equivalent to those stated under the Covenant;
  - the brand owner's business has, in the most recent financial year, had a gross turnover of less than $5 million;
  - the brand owner does not use consumer packaging.

41D Meaning of *consumer packaging material*

New section 41D provides a definition for consumer packaging material.

Subsection (1) defines consumer packaging material as consumer packaging that is made of one or more of the following materials:

- paper
- cardboard
- steel
- aluminium

- polyethylene terephthalate (PET)
- high density polyethylene (HDPE)
- other plastics including PVC, LDPE and polystyrene.

Subsection (2) states that consumer packaging material, for a brand owner, is—

- for a retailer, a plastic bag given or sold to a consumer for the transportation of products bought by the consumer from the retailer; or
- for an importer or Australian manufacturer of plastic bags, a plastic bag being imported or manufactured, other than a plastic bag given or sold to a retailer for use by the consumer for the transportation of products bought by the consumer from the retailer ; or
- for all other brand owners, consumer packaging material sold in carrying on the brand owner's business.

41E Meaning of *recovery rate*

New section 41E provides the meaning for recovery rate.

The recovery rate, for a brand owner, is the rate at which consumer packaging material is recovered by or for a brand owner. The recovery rate is worked out using the following formula:

R = WR/WS x 100%;

where—

R is the brand owner's recovery rate; **WR** is the weight of the consumer packaging material recovered by or for the brand owner; and **WS** is the weight of the brand owner's consumer packaging material sold in Australia.

41F General

New section 41F states that, unless otherwise stated, the expressions used in this part that are defined in the Measure have the same meaning that is given to them in the Measure.

Division 2 Responsibilities of particular brand owners

41G Application of div 2

New section 41G describes the application of this division.

Subsection (1) states that this division applies to a brand owner other than a complying brand owner.

Subsection (2) states that, despite subsection (1), this division only applies if the brand owner has received written notification of their obligations under this division under section 41H.

41H Brand owner to be notified of obligations

New section 41H states that, if the chief executive is satisfied on reasonable grounds in the circumstances that a brand owner is a not a complying brand owner, the chief executive may give a written notice to the brand owner.

The notice must state that the division is in force; that the division applies to the brand owner; and that the division does not apply to a complying brand owner.

41I Brand owner to achieve recovery rate of consumer packaging material

New section 41I provides the requirement to recover a percentage of consumer packaging material.

Subsection (1) states that a brand owner (to whom this division applies) must achieve a recovery rate at least 70% in a financial year.

It is an offence for a brand owner not to comply with this requirement. A maximum penalty of 20 penalty units applies.

Subsection (2) states that a brand owner may comply with subsection (1) by undertaking, or ensuring, the recovery of consumer packaging material that is of a size and type substantially the same as their own consumer packaging material.

For example, if a brand owner packages product in glass jars, then the brand owner complies with subsection (1) if the brand owner recovers glass

jars that are not the brand owner's packaging. However, if the same brand owner recovers plastic containers, even if the plastic container is the same size as the brand owner's packaging, they are not complying with subsection (1) as the consumer packaging material is not a substantially similar type. This is to prevent a brand owner from choosing to recover material that is easier to recycle than the consumer packaging material that their own product is packaged in.

41J Special provision for brand owner notified of obligations in 2012-2013 financial year

New section 41J provides information in relation to a notice that may be given to a brand owner in the 2012-2013 financial year.

Subsection (1) states that this section applies if a brand owner is given a notice under section 41H in the 2012-2013 financial year.

Subsection (2) states that the brand owner must achieve a recovery rate of at least 70% from the day that the brand owner receives a notice under section 41H until the end of the financial year.

It is an offence for a brand owner not to comply with this requirement. A maximum penalty of 20 penalty units applies.

41K Special provision for brand owner notified of obligations during a financial year

New section 41K provides the obligations for a brand owner during a financial year.

Subsection (1) states that this section applies if a brand owner is given a notice under section 41H in a financial year other than the 2012-2013 financial year.

Subsection (2) states that the brand owner must take reasonable steps to achieve a recovery rate of 70% for all of the financial year.

It is an offence for a brand owner not to comply with this requirement. A maximum penalty of 20 penalty units applies.

Subsection (3) states that subsection (2) applies to a brand owner even though the notice under section 41H was not given to the brand owner before the start of the financial year that the notice relates to.

This section means that a brand owner must take the reasonable steps to ensure that they achieve the 70% recovery rate if it is reasonable for them to do so (if, for example, they receive the notice early enough in the financial year so that they can comply with the requirement). If the brand owner receives the notice later in the financial year, then they would not have to achieve that target but must take the reasonable steps that would be required to achieve it for future financial years.

The provision is an intermediate obligation on a brand owner to achieve an appropriate recovery rate for the financial year in which they receive the notice, and oblige them to achieve the full 70% recovery rate the following year.

41L Action plans

New section 41L provides requirements in relation to action plans.

Subsection (1) states that a brand owner must create an action plan for a financial year and that the action plan must comply with the requirements established in subsections (2) and (3).

The brand owner is then required to give each action plan to the chief executive 30 days after the brand owner receives a notice under section 41H and for every subsequent financial year - 30 days before the start of the financial year.

Subsection (1) is a prescribed provision for section 245 of the *Waste Reduction and Recycling Act 2011*.

Subsection (2) states that a brand owner's action plan must contain, as far as possible, information about:

- how the brand owner is going to ensure the systematic recovery of their packaging or packaging that is substantially the same as the brand owner's consumer packaging material;
- the quantity of each type of consumer packaging material sold and that is proposed to be recovered;
- how the brand owner intends to ensure the quantity of consumer packaging material sold and proposed to be recovered will be recovered;
- either—

- that all consumer packaging material to be recovered by or for the brand owner will be recovered in the following order (the ***preferred order***)—
  - for use in the brand owner's consumer packaging material;
  - for use within Queensland as a secondary resource;
  - for use within Australia as a secondary resource;
  - for export as a secondary resource; or
- that the brand owner considers that it is not practical to recover the consumer packaging material in the preferred order

- if the brand owner considers it will be impracticable to recover the consumer packaging material in the preferred order then the brand owner must state—
  - the reasons why the brand owner considers the preferred order to be impractical and
  - the order in which the materials will be recovered.
- how the brand owner will inform the public about the way that the consumer packaging material may be recovered.

Subsection (3) states that the quantity mentioned in subsection (2)(b) must consist of at least the percentage of consumer packaging that is required to be recovered by or for the brand owner as stated in sections 41I, 41J or 41K.

41M Brand owner not complying within financial year

New section 41M states the application of this section and the process for its application.

Subsection (1) states that this section applies if the chief executive reasonably believes that—

- in the financial year immediately before the current financial year a brand owner did not comply with the recovery rate of 70% under sections 41I, 41J or 41K and
- in the current financial year the brand owner will not achieve the recovery rate stated in section 41I for the financial year.

Subsection (2) states that the chief executive may give a notice to the brand owner that states:

- that the chief executive reasonably believes the matters stated in subsection (1) in relation to the brand owner's compliance;
- that the brand owner is required, within a reasonable time stated in the notice, to state what steps have been taken, or will be taken, that are consistent with achieving the recovery rate stated in section 41I;
- failure to comply with the notice may result in the chief executive taking action under chapter 11—Show cause notices and compliance notices—of the *Waste Reduction and Recycling Act 2011*;
- the consequences of failing to comply with a compliance notice issued under chapter 11 of the Act;
- that submissions may be made about why the chief executive should not take action under chapter 11 of the Act;
- how the submissions may be made;
- where the submissions may be made or sent;
- a period within which the submissions must be made.

Subsection (3) states that the time stated in the notice issued under subsection (2)(b) must end at least 14 business days after the notice is given.

Subsection (4) states that a brand owner who has been issued with a notice under subsection (2) may apply to the chief executive for an extension of time to comply with the notice.

Subsection (5) states that an application made under subsection (4) must be made before the day stated in the notice issued under subsection (2)(b) and must state the reasons why the extension should be granted.

Subsection (6) states that the chief executive may grant the application for extension only if the chief executive believes that it is reasonable to extend the time stated in the notice.

Subsection (7) states that the chief executive must, within 10 business days of receiving the application made under subsection (4), decide whether to grant the extension. If the chief executive decides to grant the extension, the chief executive must give the brand owner written notice stating the new date by which the brand owner must comply with the notice. If the

decision is to refuse the extension, the chief executive must give the brand owner a written notice stating that the application was refused.

Subsection (8) states that if the chief executive fails to advise the brand owner under subsection (7), then the application for extension is taken to have been refused.

Subsection (9) states that the brand owner must comply with the requirement mentioned in subsection 2(b), or make submissions as mentioned in subsection (2)(e) within the time stated in the noticed issued under subsection (2) or within the new time decided by the chief executive if an extension of time has been granted.

This subsection is a prescribed provision for section 245 of the *Waste Reduction and Recycling Act 2011*.

41N Brand owner to keep information and give information to chief executive

New section 41N provides that a brand owner must keep certain information and make that information available to the chief executive.

Subsection (1) states that a brand owner must prepare, for each financial year, and keep for at least five years from the end of the financial year:

- the following information about each type of material for consumer packaging used by the brand owner in the year—
    - the number of consumer packaging items made from each type of material;
    - the total weight of the type of material;
    - the total weight of the type of material sold in Australia; and
- the following information about the consumer packaging material recovered by or for the brand owner in the financial year—
    - the total weight of each type of consumer packaging material;
    - how much of each type of consumer packaging material was reused or recycled in Australia;
    - how much of each type of consumer packaging material was exported for reuse or recycling;

  - how much of the consumer packaging was used for energy recovery;
  - the recovery rate for the consumer packaging material; and
- information about the weight of consumer packaging material that was collected by or for the brand owner in the financial year and that was disposed of as landfill; and
- information about how consumers were advised about how the consumer packaging material would be recovered.

Subsection (1) is a prescribed provision for the purposes of section 245 of the *Waste Reduction and Recycling Act 2011*.

Subsection (2) states that, for each financial year, unless the person has a reasonable excuse a brand owner must provide the information stated in subsection (1) to the chief executive by 30 September after the end of the financial year.

Subsection (2) is a prescribed provision for the purposes of section 245 of the *Waste Reduction and Recycling Act 2011*.

Subsection (3) states that it is a reasonable excuse for the individual not to give the information stated in subsection (1), if giving that information to the chief executive might incriminate the individual or expose the individual to a penalty.

Subsection (4) provides a definition for *material*. For the purposes of this section, material, for consumer packaging, means consumer packaging made from—

- any type of consumer packaging material; or
- material other than consumer packaging material (***non-consumer packaging material***); or
- a combination of consumer packaging material and non-consumer packaging material.

41O Request for exemption on ground of commercial confidentiality

New section 41O allows a brand owner to claim an exemption from giving the information to the chief executive on the grounds of commercial confidentiality.

Subsection (1) states that a brand owner may give a written notice to the chief executive asking for an exemption from the requirement stated in section 41N(2) on the grounds of commercial confidentiality.

Subsection (2) states that the notice must contain the information that is necessary to enable the chief executive to decide the request.

Subsection (3) states that the chief executive may, by written notice given to the brand owner, ask the brand owner to give to the chief executive, in the reasonable period stated in the notice, further relevant information within to enable the chief executive to decide the request.

Subsection (4) states that a notice under subsection (3) must be accompanied by, or include, the reasons the chief executive has made the request for further information.

41P Deciding request for exemption

New section 41P provides for deciding the claim for confidentiality.

Subsection (1) states that the chief executive may grant a request for exemption under section 41O only if the chief executive reasonably believes that the information would be exempt information under the *Right to Information Act 2009* or would be information the disclosure of which could reasonably be expected to cause a public interest harm as mentioned in schedule 4, part 4, section 7 of the *Right to Information Act 2009*.

Subsection (2) states that if the chief executive grants the exemption the brand owner is exempted from giving the information under section 42N(2) to the chief executive.

Subsection (3) states that the chief executive must give the brand owner written notice of the chief executive's decision in relation to the request for exemption.

Subsection (4) states that if the chief executive refuses to grant the request, the notice must be in an information notice about the decision to refuse to grant the request.

Subsection (5) states that subsection (6) applies if the chief executive does not give the brand owner a notice about the chief executive's decision on the request within 60 days after the request is made or, if the brand owner gave the chief executive further information under section 41O(3), within 60 days of the chief executive receiving the further information.

Subsection (6) states that the chief executive's failure to give the notice is taken to be a decision by the chief executive to refuse to grant the request at the end of the 60 days.

Division 3 Kerbside recycling collectors to give information to chief executive

41Q Local government to give information to chief executive

New section 41Q states that a local government must give certain information to the chief executive.

Subsection (1) states that this section applies to a local government, or a regional grouping of local governments, that operates or provides a kerbside recycling collection service or other recycling system within a local government area. For the purpose of this section this is the ***local government recycling provider***.

Subsection (2) states that, if the local government recycling provider operates or provides a kerbside recycling collection service, the local government recycling provider must, within 3 months after the end of each financial year in which the kerbside recycling collection service operates, give the chief executive the following information about the kerbside recycling collection service for the financial year—

- the percentage of households with access to a kerbside recycling collection service;
- the participation rate for the service;
- the fee charged to each household for the collection service;
- the total weight of recyclable material, however collected, in the local government area or areas;
- if the recyclable material is sorted, the total weight of each type of recyclable material collected and, if practicable, the total weight of each type of recyclable material that is the residue disposed of as landfill.

Subsection (3) states that if the local government recycling provider operates or provides another recycling service, the local government recycling provider must, within 3 months after the end of the financial year

in which the service operates, give the chief executive information about the percentage of households with access to the recycling system.

Subsection (4) states that, if after the commencement of this part, a local government recycling provider enters into a contract with another person to provide a kerbside recycling service, or an existing contract is renewed or novated, the local government recycling provider must include an obligation in the contract for the other person to give the provider the information contained in subsections (2) and (3).

Subsection (5) provides definitions for '*household*', '*participation rate*' and '*recyclable material*' for this section.

41R Kerbside recycling collectors to give information to chief executive

New section 41R requires kerbside recycling collectors to give information to the chief executive.

Subsection (1) states that this section applies if a person other than a local government or regional grouping of local governments provides a kerbside recycling service in the local government area under a contract and the contract does not require the person to give the information stated in 41Q(2) and (3) to the local government or the regional grouping.

Subsection (2) states that the chief executive may, at least one month before the end of the financial year to which the information relates, give a notice to the person stating the following:

- the information that is required from the person, as stated in section 41Q(2) and (3);
- that the information must be given within 3 months after the end of the financial year to which the information relates;
- that failure to comply with the notice may result in the chief executive taking action under chapter 11 of the Act; and
- the consequences of failing to comply with a compliance notice issued under chapter 11 of the Act.

Subsection (3) states that the person must provide the information stated in the notice to the chief executive within 3 months from the end of the financial year to which the information relates.

Subsection (3) is a prescribed provision for section 245 of the *Waste Reduction and Recycling Act 2011*.

Division 4 Chief executive reporting requirements

41S Chief executive to give Council information

New section 41S states that the chief executive must give the council certain information.

Subsection (1) states that within 6 months of the end of a financial year the chief executive must give the council the following information for the financial year—

- aggregate information based on information received from brand owners under section 41N;
- aggregate information based on information received from local government recycling providers under section 41Q and from kerbside recycling collectors under section 41R; and
- information gathered through surveys that may be conducted under section 41T.

The chief executive must also give to the council any information regarding complaints received by the chief executive about matters arising under this part; investigations undertaken for the purposes of this part; and prosecutions undertaken for offences under this part.

The chief executive must also provide a statement of interpretation that summarises and explains the information that has been provided under this section.

Subsection (2) provides the definition for council. For this section, council means the Australian Packaging Covenant Council.

Division 5 Other provisions

41T Survey of brand owners

New section 41T states that the chief executive may conduct a brand survey of packaged products or a survey of brand owners to determine the effectiveness of this part in stopping brand owners from being free riders.

41U Review of part

New section 41U provides for a review of this part.

Subsection (1) states that the chief executive must carry out a review of the operation of this part.

Subsection (2) states that the review must take place at least every five years. However, the review may be carried out more often if the Minister directs the chief executive to conduct the review or if the Covenant or the Measure is being reviewed.

Subsection (3) states that the objects of the review include evaluating the effectiveness of this part to prevent a brand owner from being a free rider; and deciding whether this part aligns with applicable waste management strategies, priority product statements or product stewardship arrangements then in effect.

Subsection (4) states that the chief executive may conduct the review by surveying brand owners.

41V Person not required to comply with part if measure or covenant not in force

New section 41V states that a person is not required to comply with this part if either the Covenant or the Measure is not in force.

Division 6 Expiry

41W Expiry of pt 5A

New section 41W states that the expiry of this part is 16 September 2016.

4 Insertion of new s 42A

Clause 4 inserts a new section after section 42.

'42A Prescribed provisions for Act, s245

New section 42A provides the prescribed provisions for the purposes of section 245 of the *Waste Reduction and Recycling Act 2011*, *prescribed provision*, paragraph (b). The prescribed provisions are sections 41L(1), 41M(9), 41N(1) and (2), and 41R(3).'

5 Amendment to sch9 (Dictionary)

Clause 5 amends the schedule 9 (Dictionary) of the *Waste Reduction and Recycling Regulation 2011* to insert the terms that are used in part 5A. The specific definitions are contained within part 5A.

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Environment and Heritage Protection.