



Queensland

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

Subordinate Legislation 2012 No. 180

made under the

Waste Reduction and Recycling Act 2011

Contents

		Page
1	Short title	3
2	Regulation amended	3
3	Insertion of new pt 5A.	3
	Part 5A Used packaging materials	
	Division 1 Preliminary	
	Subdivision 1 General	
	41A Purpose of pt 5A.	3
	Subdivision 2 Interpretation	
	41B Definitions for pt 5A	3
	41C Meaning of complying brand owner	6
	41D Meaning of consumer packaging material	6
	41E Meaning of recovery rate	7
	41F General.	8
	Division 2 Responsibilities of particular brand owners	
	41G Application of div 2	8
	41H Brand owner to be notified of obligations	8
	41I Brand owner to achieve recovery rate of consumer packaging material	8
	41J Special provision for brand owner notified of obligations in 2012-2013 financial year	9

Contents

	41K	Special provision for brand owner notified of obligations during a financial year	9
	41L	Action plans	9
	41M	Brand owner not complying within financial year	11
	41N	Brand owner to keep information and give information to chief executive	13
	41O	Request for exemption on ground of commercial confidentiality	14
	41P	Deciding request for exemption	15
	Division 3	Kerbside recycling collectors to give information to chief executive	
	41Q	Local government to give information to chief executive	16
	41R	Kerbside recycling collectors to give information to chief executive.	17
	Division 4	Chief executive reporting requirements	
	41S	Chief executive to give council information.	18
	Division 5	Other provisions	
	41T	Survey of brand owners	19
	41U	Review of part	19
	41V	Person not required to comply with part if measure or covenant not in force	20
	Division 6	Expiry	
	41W	Expiry of pt 5A	20
4		Insertion of new s 42A	20
	42A	Prescribed provisions for Act, s 245.	20
5		Amendment of sch 9 (Dictionary).	21

1 Short title

This regulation may be cited as the *Waste Reduction and Recycling Amendment Regulation (No. 2) 2012*.

2 Regulation amended

This regulation amends the *Waste Reduction and Recycling Regulation 2011*.

3 Insertion of new pt 5A

After section 41—

insert—

‘Part 5A Used packaging materials

‘Division 1 Preliminary

‘Subdivision 1 General

‘41A Purpose of pt 5A

‘The purpose of this part is to give effect to, and enforce compliance with, the measure.

‘Subdivision 2 Interpretation

‘41B Definitions for pt 5A

‘In this part—

brand owner means—

- (a) a person who is the owner or licensee in Australia of a trade mark under which a product is sold or otherwise distributed in Australia, whether the trade mark is registered or not; or

[s 3]

- (b) a person who is the franchisee in Australia of a business arrangement that allows an individual, partnership or company to operate under the name of an already established business; or
- (c) for a product that has been imported—the first person to sell the product in Australia; or
- (d) for in-store packaging—the supplier of the packaging to the retailer; or
- (e) an importer or Australian manufacturer of plastic bags, or a retailer who supplies a plastic bag to a consumer for the transportation of products bought by consumers at the point of sale.

complying brand owner see section 41C.

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

consumer packaging material see section 41D.

covenant means—

- (a) the ‘Australian Packaging Covenant’ made between governments and industry organisations to reduce the environmental impacts of consumer packaging; and
- (b) the annexures and schedules to the document mentioned in paragraph (a).

covenant signatory means a signatory to the covenant, and includes a person that accedes to the covenant after it is made, whether before or after the commencement of this part.

distribution packaging means all packaging that contains multiples of products (the same or mixed) intended for direct consumer sale, including—

- (a) secondary packaging used to secure or unitise multiples of consumer products including, for example, cardboard boxes and shrink film overwrap; or

- (b) tertiary packaging used to secure or unitise multiples of secondary packaging including, for example, pallet wrapping stretch film, shrink film and strapping.

free rider means a brand owner who is part of the packaging chain but is not a covenant signatory or is not producing equivalent outcomes to those achieved through the covenant.

kerbside recycling collection means roadside collection of domestic solid waste separated for recycling.

local government recycling provider see section 41Q(1).

measure means the *National Environment Protection (Used Packaging Materials) Measure 2011* dated 16 September 2011 made under the *National Environment Protection Council Act 1994* (Cwth), the *National Environment Protection Council (Queensland) Act 1994* and particular Acts of other States.

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

plastic bag includes a single use lightweight plastic carry bag containing virgin or recycled plastic.

recover, for consumer packaging material, means that the consumer packaging material—

- (a) is reused; or
- (b) is recycled; or
- (c) becomes a secondary resource.

recovery rate see section 41E.

recycle, for a product, means use the product as a raw material to produce another product.

registered, for a trade mark, means registered under the *Trade Marks Act 1995* (Cwth).

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

[s 3]

secondary resource means a resource used or to be used—

- (a) to manufacture new consumer packaging or another product to replace raw or virgin materials; or
- (b) for energy recovery.

‘41C Meaning of *complying brand owner*

‘A *complying brand owner* is a brand owner—

- (a) who is a covenant signatory and is complying with the covenant; or
- (b) who is not a covenant signatory but is a brand owner to whom any of the following apply—
 - (i) the brand owner uses consumer packaging in which the brand owner’s products are sold in a way that achieves environmental outcomes at least equivalent to the environmental outcomes stated for the packaging under the covenant;
 - (ii) the brand owner’s business has, in the most recent financial year, had a gross turnover of less than \$5m;
 - (iii) the brand owner does not use consumer packaging.

‘41D Meaning of *consumer packaging material*

‘(1) *Consumer packaging material* is consumer packaging made of one or more of the following materials—

- (a) paper;
- (b) cardboard;
- (c) steel;
- (d) aluminium;
- (e) polyethylene terephthalate (PET) plastics;
- (f) high density polyethylene (HDPE) plastics;
- (g) other plastics, including—

-
- (i) unplasticised polyvinyl chloride (UPVC) plastics; or
 - (ii) plasticised polyvinyl chloride (PPVC) plastics; or
 - (iii) low density polyethylene (LDPE) plastics; or
 - (iv) polypropylene (PP) plastics; or
 - (v) polystyrene (PS) plastics; or
 - (vi) expandable polystyrene (EPS) plastics.
- ‘(2) **Consumer packaging material**, for a brand owner, is—
- (a) 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
 - (b) for an importer or Australian manufacturer of plastic bags—a plastic bag imported or manufactured, other than a plastic bag given or sold to a retailer for use as mentioned in paragraph (a); or
 - (c) for all other brand owners—consumer packaging material sold in carrying on the brand owner’s business.

‘41E Meaning of **recovery rate**

‘The **recovery rate**, for a brand owner, is the rate at which consumer packaging material is recovered by or for the brand owner, and is worked out by using the formula—

$$R = \frac{WR}{WS} \times 100\%$$

where—

R means the brand owner’s recovery rate.

WR means the weight of the consumer packaging material recovered by or for the brand owner.

WS means the weight of the brand owner’s consumer packaging material sold in Australia.

[s 3]

‘41F General

‘Unless this part provides otherwise, expressions used in this part that are defined in the measure have the meaning given to them in the measure.

‘Division 2 Responsibilities of particular brand owners

‘41G Application of div 2

- ‘(1) This division applies to a brand owner other than a complying brand owner.
- ‘(2) Despite subsection (1), this division applies to a brand owner only if the brand owner has received written notice of the brand owner’s obligations under this division under section 41H.

‘41H Brand owner to be notified of obligations

‘If the chief executive is satisfied on reasonable grounds in the circumstances that a brand owner is not a complying brand owner, the chief executive may give a written notice to the brand owner stating the following—

- (a) that the division is in force;
- (b) that the division applies to the brand owner;
- (c) that the division does not apply to a complying brand owner.

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

- ‘(1) A brand owner must achieve a recovery rate of at least 70% in a financial year.
Maximum penalty—20 penalty units.
- ‘(2) 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 the brand owner's consumer packaging material.

Example—

A brand owner that packages its product in glass complies with subsection (1) if it recovers wine bottles that are not the brand owner's consumer packaging material.

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

- '(1) This section applies if a brand owner is given a notice under section 41H in the 2012-2013 financial year.
- '(2) The brand owner must achieve a recovery rate of at least 70% from the day the brand owner receives a notice under section 41H until the end of the financial year.

Maximum penalty—20 penalty units.

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

- '(1) 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.
- '(2) The brand owner must take reasonable steps to achieve a recovery rate of at least 70% for all of the financial year.

Maximum penalty—20 penalty units.

- '(3) 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.

'41L Action plans

- '(1) A brand owner must—
 - (a) create an action plan for a financial year that complies with the requirements of subsections (2) and (3); and
 - (b) give each action plan to the chief executive—

[s 3]

- (i) 30 days after the brand owner receives a notice under section 41H; and
- (ii) for every subsequent financial year—at least 30 days before the start of the financial year.

Note—

Section 42A states that this subsection is a prescribed provision for section 245 of the Act, definition *prescribed provision*.

- ‘(2) The brand owner’s action plan must, to the greatest possible extent, contain the following information—
 - (a) how the brand owner will ensure the systematic recovery of the brand owner’s consumer packaging material, or packaging that is substantially the same as the brand owner’s consumer packaging material;
 - (b) the quantity of each type of consumer packaging material sold and that is proposed to be recovered;
 - (c) how the brand owner intends to ensure the quantity proposed under paragraph (b) will be recovered;
 - (d) either—
 - (i) that all consumer packaging material to be recovered by or for the brand owner will be recovered in the following order (the ***preferred order***)—
 - (A) for use in the brand owner’s consumer packaging material;
 - (B) for use within the State as a secondary resource;
 - (C) for use within Australia as a secondary resource;
 - (D) for export as a secondary resource; or
 - (ii) that the brand owner considers it will be impracticable to recover the consumer packaging materials in the preferred order;
 - (e) if paragraph (d)(ii) applies—

-
- (i) reasons why the brand owner considers the preferred order impracticable; and
 - (ii) the order in which the materials will be recovered;
 - (f) how the brand owner intends to inform the public of the way the consumer packaging material is to be recovered.
- ‘(3) The quantity mentioned in subsection (2)(b) must consist of at least the percentage of consumer packaging material 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

- ‘(1) This section applies if the chief executive reasonably believes that—
- (a) in the financial year immediately before the current financial year a brand owner did not comply with the recovery rate under sections 41I, 41J or 41K; and
 - (b) in the current financial year the brand owner will not achieve the recovery rate stated in section 41I for the financial year.
- ‘(2) The chief executive may give a notice to the brand owner that states the following—
- (a) the chief executive reasonably believes the matters stated in subsection (1);
 - (b) 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 for the current financial year;
 - (c) failure to comply with the notice may result in the chief executive taking action under chapter 11 of the Act;
 - (d) the consequences of failing to comply with the compliance notice issued under chapter 11 of the Act;

[s 3]

- (e) that submissions may be made about why the chief executive should not take action under chapter 11 of the Act;
 - (f) how the submissions may be made;
 - (g) where the submissions may be made or sent;
 - (h) a period within which the submissions must be made.
- ‘(3) The time stated in the notice under subsection (2)(b) must end at least 14 business days after the notice is given.
- ‘(4) 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.
- ‘(5) The application under subsection (4) must—
- (a) be made before the day stated in the notice under subsection (2)(b); and
 - (b) state the reasons why the extension should be granted.
- ‘(6) The chief executive may grant the application only if the chief executive believes that it is reasonable to extend the time stated in the notice.
- ‘(7) The chief executive must, within 10 business days after an application under subsection (4) is received, decide whether to grant the extension and—
- (a) if the decision is to grant the extension—give the brand owner a written notice stating the new date by which the brand owner must comply with the notice; or
 - (b) if the decision is to refuse the extension—give the brand owner a written notice stating that the application is refused.
- ‘(8) If the chief executive fails to advise the brand owner under subsection (7), the application for an extension is taken to have been refused.
- ‘(9) The brand owner must comply with the requirement mentioned in subsection (2)(b), or make submissions as mentioned in subsection (2)(e), within—

-
- (a) the time stated in the notice given under subsection (2);
or
 - (b) if an extension of time has been granted by the chief executive—the new time decided by the chief executive.

Note—

Section 42A states that this subsection is a prescribed provision for section 245 of the Act, definition *prescribed provision*.

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

- ‘(1) A brand owner must prepare, for each financial year, and keep for at least 5 years after the end of the financial year—
 - (a) the following information about each type of material for consumer packaging used by the brand owner in the year—
 - (i) the number of consumer packaging items made from the type of material;
 - (ii) the total weight of the type of material;
 - (iii) the total weight of the type of material sold in Australia; and
 - (b) the following information about the consumer packaging material recovered by or for the brand owner in the financial year—
 - (i) the total weight of each type of the consumer packaging material;
 - (ii) how much of each type of consumer packaging material was reused or recycled in Australia;
 - (iii) how much of each type of consumer packaging material was exported for reuse or recycling;
 - (iv) how much of the consumer packaging material was used for energy recovery;
 - (v) the recovery rate for the consumer packaging material; and

[s 3]

- (c) information about the weight of the consumer packaging material that was collected by or for the brand owner in the financial year and that was disposed of as landfill; and
- (d) information about how consumers were advised about how the consumer packaging material would be recovered.

Note—

Section 42A states that this subsection is a prescribed provision for section 245 of the Act, definition *prescribed provision*.

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

Note—

Section 42A states that this subsection is a prescribed provision for section 245 of the Act, definition *prescribed provision*.

- ‘(3) It is a reasonable excuse for an individual not to give the information stated in subsection (1) if giving the information might tend to incriminate the individual or expose the individual to a penalty.

- ‘(4) In this section—

material, for consumer packaging, means consumer packaging made from—

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

‘410 Request for exemption on ground of commercial confidentiality

- ‘(1) A brand owner may, by written notice given to the chief executive, ask for an exemption from the requirement stated

in section 41N(2) on the grounds of commercial confidentiality.

- ‘(2) The notice must contain the information necessary to enable the chief executive to decide the request.
- ‘(3) The chief executive may, by written notice given to the brand owner, ask the brand owner to give the chief executive, in the reasonable period stated in the notice, further relevant information to enable the chief executive to decide the request.
- ‘(4) 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

- ‘(1) The chief executive may grant a request for exemption under section 41O only if the chief executive reasonably believes the information would be—
 - (a) exempt information under the *Right to Information Act 2009*; or
 - (b) information disclosure of which could reasonably be expected to cause a public interest harm as mentioned in the *Right to Information Act 2009*, schedule 4, part 4, section 7.
- ‘(2) If the chief executive grants the exemption, the brand owner is exempted from giving the information under section 41N(2) to the chief executive.
- ‘(3) The chief executive must give the brand owner written notice of the chief executive’s decision on the request for exemption.
- ‘(4) If the chief executive refuses to grant the request, the notice must be an information notice about the decision to refuse to grant the request.
- ‘(5) Subsection (6) applies if the chief executive does not give the brand owner a notice about the chief executive’s decision on the request—
 - (a) within 60 days after the request is made; or

[s 3]

- (b) if the brand owner gave the chief executive further information under section 41O(3)—within 60 days after receiving the further information.
- ‘(6) 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

- ‘(1) 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 (a *local government recycling provider*).
- ‘(2) 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 to the chief executive the following information for the financial year—
- (a) the percentage of households with access to the kerbside recycling collection service;
 - (b) the participation rate for the kerbside recycling collection service;
 - (c) the fee charged to each household for the collection service;
 - (d) the total weight of recyclable material, however collected, in the local government area or areas;
 - (e) if the recyclable material collected is sorted—
 - (i) the total weight of each type of recyclable material collected; and

-
- (ii) if practicable, the total weight of each type of recyclable material that is the residue disposed of as landfill.
- ‘(3) 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 each financial year in which the kerbside recycling collection service operates, give the chief executive information about the percentage of households with access to the recycling system.
- ‘(4) If, after the commencement of this part, a local government recycling provider enters into a contract with another person, or an existing contract is renewed or novated, to provide a kerbside recycling collection service, 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).
- ‘(5) In this section—
- household* includes residential premises and non-residential premises supplied with a container for the collection of recyclable material by the operator of the service.
- participation rate*, for a kerbside recycling collection service, means the number of households or other premises making use of the service, expressed as a proportion of the number of households or premises to which the service is available.
- recyclable material* means material reasonably able to be recycled.

‘41R Kerbside recycling collectors to give information to chief executive

- ‘(1) This section applies if—
- (a) a person other than a local government or regional grouping of local governments provides a kerbside recycling collection service in a local government area under a contract; and

[s 3]

- (b) the contract does not require the person to give the information stated in section 41Q(2) and (3) to the local government or the regional grouping.
- ‘(2) 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—
- (a) the information stated in section 41Q(2) and (3) that is required from the person;
 - (b) that the information must be given within 3 months after the end of the financial year to which the information relates;
 - (c) that failure to comply with the notice may result in the chief executive taking action under chapter 11 of the Act;
 - (d) the consequences of failing to comply with a compliance notice issued under chapter 11 of the Act.
- ‘(3) The person must provide the information stated in the notice to the chief executive within 3 months after the end of the financial year to which the information relates.

Note—

Section 42A states that this subsection is a prescribed provision for section 245 of the Act, definition *prescribed provision*.

‘Division 4 Chief executive reporting requirements

‘41S Chief executive to give council information

- ‘(1) Within 6 months after the end of a financial year, the chief executive must give the council the following for the financial year—
- (a) aggregate information based on information received from brand owners under section 41N;
 - (b) aggregate information based on information received from local government recycling providers under

-
- section 41Q and from kerbside recycling collectors under section 41R;
- (c) information gathered through surveys conducted under section 41T;
 - (d) information about—
 - (i) complaints received by the chief executive about matters arising under this part; and
 - (ii) investigations undertaken for the purposes of this part; and
 - (iii) prosecutions undertaken for offences under this part;
 - (e) a statement of interpretation that summarises and explains the information provided under this section.
- ‘(2) In this section—
- council* means the Australian Packaging Covenant Council.

‘Division 5 Other provisions

‘41T Survey of brand owners

‘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

- ‘(1) The chief executive must carry out a review of the operation of this part.
- ‘(2) The review must be carried out at least every five years, but it may be undertaken more often if—
 - (a) the Minister directs the chief executive to conduct a review; or
 - (b) the covenant or the measure is being reviewed.

[s 4]

- ‘(3) The objects of the review include—
- (a) evaluating the effectiveness of this part to prevent a brand owner from being a free rider; and
 - (b) deciding whether this part aligns with applicable waste management strategies, priority product statements or product stewardship arrangements then in effect.
- ‘(4) 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

‘A person is not required to comply with this part if either of the following are not in force—

- (a) the covenant;
- (b) the measure.

‘Division 6 Expiry

‘41W Expiry of pt 5A

‘This part expires on 16 September 2016.’.

4 Insertion of new s 42A

After section 42—

insert—

‘42A Prescribed provisions for Act, s 245

‘The following provisions of this regulation are prescribed provisions for the Act, section 245, definition *prescribed provision*, paragraph (b)—

- section 41L(1);
- section 41M(9);
- section 41N(1) and (2);
- section 41R(3).’.

5 Amendment of sch 9 (Dictionary)

Schedule 9—

insert—

'brand owner, for part 5A, see section 41B.

complying brand owner, for part 5A, see section 41C.

consumer packaging, for part 5A, see section 41B.

consumer packaging material, for part 5A, see section 41D.

covenant, for part 5A, see section 41B.

covenant signatory, for part 5A, see section 41B.

distribution packaging, for part 5A, see section 41B.

free rider, for part 5A, see section 41B.

kerbside recycling collection, for part 5A, see section 41B.

local government recycling provider, for part 5A, see section 41Q(1).

measure, for part 5A, see section 41B.

packaging chain, for part 5A, see section 41B.

plastic bag, for part 5A, see section 41B.

recovery rate, for part 5A, see section 41E.

recycle, for part 5A, see section 41B.

registered, for part 5A, see section 41B.

reuse, for part 5A, see section 41B.

secondary resource, for part 5A, see section 41B.'.

ENDNOTES

- 1 Made by the Governor in Council on 18 October 2012.
- 2 Notified in the gazette on 19 October 2012.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Environment and Heritage Protection.

© State of Queensland 2012