



Victoria Government Gazette

No. S 88 Friday 23 June 2000
By Authority. Victorian Government Printer

SPECIAL

Environment Protection Act 1970

DECLARATION OF STATE ENVIRONMENT PROTECTION POLICY (USED PACKAGING MATERIALS)

Order in Council

The Governor in Council, under section 16(1C) in accordance with section 17A of the **Environment Protection Act 1970**, and on the recommendation of the Environment Protection Authority, declares the following State environment protection policy (Used Packaging Materials).

The National Packaging 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 and household paper.

As the Covenant includes a voluntary system of industry self regulation, a State environment protection policy is required to establish a statutory basis for ensuring that signatories to the National Packaging Covenant are not competitively disadvantaged in the market place by fulfilling their commitments under the National Packaging Covenant.

Part 1 Preliminary

1. Title

This Order may be cited as the State environment protection policy (Used Packaging Materials) and is referred to below as the policy.

2. Commencement

This policy will come into operation upon publication in the Government Gazette and will terminate five years after the date of commencement.

3. Definitions

In this policy, unless the contrary intention appears:

“**Authority**” means the Environment Protection Authority constituted under the **Environment Protection Act 1970**;

“**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;
- b) in the case of a product which has been imported, the first person to sell that product in Australia;
- c) in respect of in-store packaging, the supplier of the packaging to the store;

“**bulk packaging**” means packaging that contains multiple units of a product intended for consumer use;

“**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;

“**Council**” means the National Environment Protection Council established by Section 8 of the **National Environment Protection Council Act (Victoria) 1995** and the equivalent provisions of the corresponding Acts of the Commonwealth and participating States or Territories.

“**Covenant**” means the National Packaging Covenant;

“**Covenant monitoring body**” means the body established under the National Packaging Covenant for the purpose of administering the Covenant, including registration of signatories and action plans, monitoring, discipline and dispute resolution where required;

“free rider” means anyone who receives the benefits of a good or service without having to pay for it;

“household paper” means writing paper, cardboard and other paper which forms part of the domestic/municipal waste stream, but does not include paper which is used for publishing newspapers or magazines;

“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 waste;

“kerbside recycling collection” means roadside collection of domestic solid waste separated for the purpose of recycling or otherwise using those materials so separated;

“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, re-use, recycling, reprocessing and disposal of that product;

“Minister” means the Minister responsible for administering the **National Environment Protection Council Act (Victoria) 1995**;

“National Packaging Covenant” means the agreement by that name (including all schedules and annexes to that agreement) between industry organisations and governments, dated 2 July 1999;

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

“participating jurisdiction” means the Commonwealth, a participating State or a participating Territory;

“participating State” means a State:

- (a) that is a party to the Agreement; and
- (b) in which an Act that corresponds to the **National Environment Protection (Victoria) Act 1995** is in force in accordance with the Agreement;

“participating Territory” means a Territory:

- (a) that is a party to the Agreement; and
- (b) in which an Act that corresponds to the **National Environment Protection (Victoria) Act 1995** is in force in accordance with the Agreement;

“participation rate”, for a kerbside recycling collection service, means the number of households participating in the service, expressed as a proportion of the number of households to whom the service is available;

“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” has the meaning set out in subclause 14(2);

“recyclable”, packaging for a product, means 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 manufacture of a new product;

“recycle”, for a product, means recover the product and use it as a raw material to produce another product;

“re-use”, for a product, means use 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 National Packaging Covenant, and includes an organisation that accedes to the Covenant after it is made;

“significantly contribute to the waste stream” means to contribute to the waste stream an amount of packaging material associated with a level of production or distribution of consumer goods in Victoria more than or equal to 1% of the notional Victorian market for such goods.

Part 2 Policy Framework

4. Policy Goal

The goal of the policy is to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the National Packaging Covenant.

5. Policy Principles

The policy applies the following principles of ecologically sustainable development.

- 1) *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.
- 2) *Precautionary principle*: where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and an assessment of the risk-weighted consequences of various options.
- 3) *Intergenerational equity*: the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- 4) *Conservation of biological diversity and ecological integrity*: conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making.
- 5) *Improved valuation, pricing and incentive mechanisms*.
Valuation of assets and services: environmental factors should be included in the valuation of assets and services.
Polluter pays: those who generate pollution and waste should bear the cost of containment, avoidance, or abatement.
User pays: the users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes.
Incentives and market mechanisms: environment goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximise benefits and/or minimise costs to develop their own solutions and responses to environmental problems.

6. Policy Intent

- 1) The policy establishes a statutory basis for ensuring that signatories to the National Packaging Covenant are not competitively disadvantaged in the market place by fulfilling their commitments under the National Packaging Covenant.
- 2) The policy will support commitments made by Industry signatories to the Covenant to practise product stewardship, including:

- (a) continuous improvement in recovery and reprocessing of used packaging materials; and
 - (b) support for kerbside recycling collection or other recovery systems.
- 3) The policy will also support commitments made by Local Government signatories to the Covenant in relation to best practice in the delivery of kerbside recycling collection systems.
- 4) The policy further supports commitments made by the State of Victoria in relation to:
- (a) facilitating product stewardship;
 - (b) market development;
 - (c) applying product stewardship to its own operations;
 - (d) community education; and
 - (e) supporting kerbside recycling collection services.
- 5) It is not the intention of the policy to place enforceable obligations on businesses that do not significantly contribute to the waste stream.
- 6) The policy will adopt the common approach used by participating jurisdictions to the interpretation of data gathered in accordance with this policy.
- 7) Financial penalties imposed to enforce the policy will be significant and consistent with other jurisdictions and sufficient resources will be allocated to ensure compliance with this policy.

7. **Scope**

The scope of the policy is limited to the recovery, re-use and recycling of used consumer packaging materials and focuses on:

- (a) materials used for packaging products consumed on domestic premises;
- (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;
- (c) household paper and cardboard; and
- (d) bulk packaging of household products.

8. **Beneficial Uses**

The beneficial uses to be protected by this policy are:

- (a) life, health and well being of current and future generations of humans;
- (b) future use of raw materials of all kinds used for the production of packaging;
- (c) aesthetic enjoyment of elements of the environment and local amenity;
- (d) water and land based recreation;
- (e) ecosystem protection-especially those beneficial uses that deal with the ecosystem protection that are set out in any State environment protection policy;
- (f) land-especially those beneficial uses that deal with the protection of land from litter that are set out in any State environment protection policy.

Part 3 Attainment Program

9. **Statutory Obligations and Rights**

- 1) In relation to products sold by brand owners or products for which the packaging is supplied by brand owners, brand owners will:
- (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 re-use, recycling or energy recovery of consumer packaging in which the brand owner's products are sold; and

- (c) demonstrate that all materials that have been recovered by them or on their behalf have been utilised through (in order of preference):
 - (i) re-use in the packaging of the brand owner's own 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 consumers are adequately advised as to how the packaging is to be recovered.
- 2) A brand owner can discharge his obligations under subclauses 1(a), 1 (b) and 1(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.
- 3) The Authority will publish guidelines specifying the materials in respect of which the obligations will be imposed. In determining those materials the Authority will have regard to:
 - (a) the practices and achievements of Covenant signatories;
 - (b) those materials collected for re-use, recycling or energy recovery whether in a kerbside recycling system or otherwise;
 - (c) the state of technologies for re-use, recycling or energy recovery; and
 - (d) any competitive issues which may arise from including or excluding particular materials.
- 4) For subclause (2), the proportion of a particular material required to be recovered and subsequently re-used, recycled or processed for energy recovery will be established by reference to the existing performance demonstrated by Covenant signatories for that particular material or by agreement among participating jurisdictions.
- 5) The Authority will ensure that full transparency of charging for kerbside recycling collections by Local Government is facilitated.

10. Enforcement of SEPP Obligations

A brand owner will be penalised for failure to discharge his or her obligations under clause 9 if brand owners have been notified of the need to comply with the obligations and the options for exemption from the obligations, and the brand owner has failed to comply with that notice.

11. Exemptions/Deemed Compliance

The following persons and bodies are exempted from, or deemed to comply with, the obligations imposed according to clause 9:

- (a) National Packaging Covenant signatories who are fulfilling their obligations under the Covenant; and
- (b) other industries or industry sectors which satisfy the Authority that arrangements exist for the industry or industry sector that produce equivalent outcomes to those achieved through the Covenant.

12. Dependence on National Packaging Covenant

The statutory obligations imposed pursuant to this policy will have no effect if the Covenant ceases to be in force.

Part 4 Environmental Quality Indicators and Objectives

13. Methods of Collecting Information and Reporting

To enable the Minister to report annually to the Council, the Authority will collect the information set out in this Part from brand owners and local governments.

14. Recovery Data

- 1) A brand owner must record the following information for each packaging material used during a financial year by the brand owner:
 - (a) total weight of material used by material type;
 - (b) number of units of packaging by unit and material type;
 - (c) total weight of material recovered by material type;
 - (d) total weight of recovered material re-used and recycled in Australia by material type;
 - (e) total weight of recovered material re-used and recycled by material type through export;
 - (f) total kilojoules of embedded energy recovered;
 - (g) total weight of recovered material disposed of to landfill; and
 - (h) how consumers have been advised as to how packaging is to be recovered.
- 2) The above information must be used to calculate and record a recovery rate for the brand owner's used packaging materials in accordance with the following formula:

$$\text{Recovery rate} = \frac{\text{weight of material recovered from the post-consumer waste stream}}{\text{weight of material sold as packaging within Australia}} \times 100$$

- 3) A brand owner must:
 - (a) keep records of the information in subclauses (1) and (2) for five years; and
 - (b) make records available for inspection by the Authority.
- 4) The Authority will audit the records kept by brand owners under this clause.
- 5) The requirements of clause 15 will be imposed, to the extent practicable, on brand owners with a registered office in Victoria.
- 6) The Authority will maintain the confidentiality of commercially sensitive information given to it by a brand owner and will not publicly release any information unless:
 - (a) the brand owner consents to the release of the information; or
 - (b) the Authority is legally compelled 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.

For the purpose of this clause, "material" means the principal component or components of the container and does not include incidental components such as labels and closures.

15. Collection and Participation Data

- 1) The Authority will require each local government municipality in which a kerbside recycling collection service is provided, to provide the following information in relation to the municipality, for a financial year:
 - (a) what percentage of households is covered by any such service;
 - (b) participation rate in any such service;
 - (c) number of tenements covered by the service and whether the tenements are residential tenements or other kinds of tenement;
 - (d) per tenement fee charged for recycling collection services;
 - (e) total weight of recyclable material collected at kerbside by material type;
 - (f) if the material collected is sorted;
 - (g) the total weight of each material type sold and/or sent for secondary use, including energy recovery;
 - (h) the total weight of the residual fraction of each material type disposed of to landfill.

- 2) Each local government municipality must ensure that any new or novated contract with a recycling collection service requires such contractors to provide any information to the local government municipality that the local government municipality needs to supply the information mentioned in subclause (1).
- 3) Where a local government municipality is subject to current contract conditions which prevent it complying with subclause (1) above, the Authority will, by notice in writing, require the party supplying the services to supply the mentioned information to the Authority.
- 4) The Authority will maintain the confidentiality of any commercially sensitive information provided under this clause unless:
 - (a) the parties identified in subclauses (1) and (3) consent to the release of the information; or
 - (b) the Authority is legally compelled 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.
- 5) Each local government municipality must report the information mentioned in subclause (1) for a financial year to the Authority within three months after the end of the financial year to which the information relates.
- 6) The Authority may also report on participation in complementary collection systems for recyclables.

16. Supporting Data

At least once every year, the Authority will ensure that surveys of materials and brand owners represented in the kerbside recycling collection system are carried out to ascertain the effectiveness of the policy in preventing free riding in the kerbside recycling collection system.

17. Commencement of Reporting

- 1) The Authority will carry out an audit under subclause 14(4) in accordance with audit methodology:
 - (a) agreed between participating jurisdictions; and
 - (b) published by the Authority.
- 2) The Authority will require a local government municipality to provide information required under clause 14 in accordance with a national reporting form:
 - (a) agreed between participating jurisdictions in consultation with the relevant State/Territory Local Government Associations; and
 - (b) published by the Authority.
- 3) The Authority will require a local government municipality to provide information required under subclause 15 (1) (b) in accordance with a national standard participation rate survey methodology:
 - (a) agreed between participating jurisdictions in consultation with the relevant State/Territory Local Government Associations; and
 - (b) published by the Authority.
- 4) The Authority may require a local government municipality to provide information collected under clause 15 to another participating jurisdiction once a standard reporting format has been agreed between participating jurisdictions in consultation with the relevant State/Territory Local Government Associations.
- 5) The Authority will ensure that surveys are conducted under clause 16 in accordance with standard survey methodology agreed between participating jurisdictions.

18. Information Supplied to Council

- 1) The Minister will provide to Council the following information in a standard reporting format:
 - (a) information gathered from brand owners whose records under clause 14 have been audited by the Authority;
 - (b) aggregated information received from local governments under clause 15;
 - (c) information gathered through the conduct of surveys under clause 16;
 - (d) information relating to complaints received, investigations undertaken and prosecutions mounted pursuant to this policy;
 - (e) a statement of interpretation of the information.
- 2) For the purposes of supplying information to Council, the first financial year to which clauses 14, 15 and 16 apply is the financial year commencing on 1 July 2000.

Dated 22 June 2000.

Responsible Minister
SHERRYL GARBUTT MP
Minister for Environment and Conservation

HELEN DOYE
Clerk of the Executive Council

EXPLANATORY NOTES**Background to State environment protection policy (Used Packaging Materials)**

State environment protection policies are declared by the Governor in Council under sections 16 and 17A of the **Environment Protection Act 1970**. The State environment protection policy (Used Packaging Materials) (the 'policy') is a new policy which reflects the National Environment Protection Measure for Used Packaging Materials within Victoria.

The National Environment Protection Measure (Used Packaging Materials) was made by the National Environment Protection Council in July 1999 to provide a national regulatory safety net for the National Packaging Covenant. The National Packaging Covenant is a voluntary agreement entered into by governments and industry participants in the packaging chain based on the principles of product stewardship and shared responsibility.

The State environment protection policy (Used Packaging Materials) protects Covenant signatories from competitive disadvantage by adopting the regulatory scheme set out in the Measure. This scheme applies to industry players who choose not to sign the Covenant.

State environment protection policy (Used Packaging Materials) in detail**Preamble**

The policy is preceded by the necessary legal preamble for an Order in Council. The purpose of the Order is to declare the State environment protection policy (Used Packaging Materials).

The preamble also contains an explanation of the National Packaging Covenant and the reasoning behind the declaration of this policy.

Part 1 - Preliminary**Title**

Clause 1 states that the title of the new policy is 'State environment protection policy (Used Packaging Materials)'.

Commencement

Clause 2 states when the policy comes into effect and that it will terminate five years after the date of commencement.

Definitions

Clause 3 provides specific definitions of various words and terms used throughout the policy. The purpose of these definitions is not to provide a glossary of technical terms but simply to give a specific meaning to a term which may slightly limit or otherwise differentiate it from the meaning currently accepted in every-day language.

Part 2 - Policy Framework**Policy Goal**

Clause 4 states that the goal of the policy is to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials. The policy aims to encourage the re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the National Packaging Covenant.

Policy Principles

Clause 5 sets out the key environmental public policy principles upon which the policy is based. These principles are drawn from the Intergovernmental Agreement on the Environment and the NEPM definition of product stewardship.

Product stewardship involves the recognition by brand owners of a shared responsibility with consumers for the wastes they generate (including the wastes which their products ultimately become).

Intergenerational equity, cost effectiveness, improved valuation, pricing and incentive mechanisms and the precautionary principle have been accepted by all Australian Governments through the Intergenerational Agreement on the Environment. These principles are framed in terms of environment protection but apply equally to the protection of human health and the environment.

Policy Intent

Clause 6 outlines that the intent of the policy is to:

- ensure that signatories to the National Packaging Covenant are not competitively disadvantaged in the market place by fulfilling their commitments under the National Packaging Covenant;
- support commitments made by Industry signatories to the Covenant;
- support commitments made by Local Government signatories to the Covenant;
- support commitments made by the State of Victoria in relation to used packaging materials;
- adopt the common approach used by participating jurisdictions to the interpretation of data gathered in accordance with this policy; and
- ensure that financial penalties imposed to enforce the policy will be significant and consistent with other jurisdictions and that sufficient resources will be allocated to ensure compliance with this policy.

This clause also states that it is not the intention of the policy to place enforceable obligations on businesses that do not significantly contribute to the waste stream.

Scope

Clause 7 states what the scope of the policy and that it is limited with respect to the lifecycle of packaging materials and the types of packaging materials.

Beneficial Uses

Clause 8 sets out the beneficial uses of the environment to be protected throughout Victoria by this policy.

Part 3 - Attainment Program**Statutory Obligations and Rights**

Clause 9 sets out how brand owners are expected to apply the principle of product stewardship under the policy. Brand owners are obligated to undertake or assure a systematic recovery of the consumer packaging in which their products are sold. Systematic recovery should include all

aspects including reuse, recycling, energy recovery and litter prevention and control. Brand owners need to demonstrate that the materials they recover are then reused in packaging their own products or used within Australia or exported as a secondary resource. There is also an obligation on brand owners to demonstrate that they have taken reasonable steps to inform customers as to how the packaging will be recovered.

Clause 9(2) enables a brand owner to discharge these obligations by recovering packaging of a similar size and type to his or her original packaging.

The clause also states that the Authority will publish guidelines specifying the materials to which these obligations are imposed and that rates of recovery will be established by reference to existing performance demonstrated by Covenant signatories or through jurisdictional agreement.

Enforcement of SEPP Obligations

Clause 10 states that brand owners will not be penalised for failing to comply with the obligations imposed by this policy, unless they have been made aware of those obligations and any options that they may have for receiving an exemption (such as signing the Covenant). Once notified, subsequent incidents of non-compliance will result in the brand owner being penalised.

Exemptions/Deemed Compliance

Clause 11 states that National Packaging Covenant signatories, as well as other industries or industry sectors which satisfy the Authority that they have systems in place to produce equivalent outcomes to those achieved through the Covenant, are exempted, or deemed to comply with, the obligations imposed by this policy.

Dependence on National Packaging Covenant

Clause 12 states that if there is no Covenant, the statutory obligations imposed under the policy have no effect.

Part 4 - Environmental Quality Indicators and Objectives

Methods of Collecting Information and Reporting

Clause 13 notes that the Authority will collect the information listed in Part 4 of the policy from brand owners and local governments.

Recovery Data

Clause 14 outlines what information brand owners are required to record and the length of time that they are required to keep that information. Clause 14 also delineates what the Authority can and cannot do with the information recorded by brand holders.

Collection and Participation Data

Clause 15 outlines what information local municipalities (in which kerbside recycling collections occur) are required to record. Clause 15 also notes what the Authority can and cannot do with the information recorded by local municipalities.

Supporting Data

Clause 16 states that at least once every year, the Authority will ensure that surveys of materials and brand owners represented in the kerbside recycling collection system are carried out. The surveys will be used to evaluate the effectiveness of the policy in preventing free riding in the kerbside recycling collection system.

Commencement of Reporting

Clause 17 outlines the circumstances under which the Authority will carry out an audit of records kept by brand owners. This clause also states that the Authority can only request particular information from local government once certain things (such as survey methodologies, a national reporting form and a standard reporting format) have been both nationally agreed to and published by the Authority.

Information Supplied to Council

Clause 18 details the information that the Minister needs to provide to the National Environment Protection Council.

Health Services (Governance) Act 2000
PROCLAMATION OF COMMENCEMENT

I, James Gobbo, Governor of Victoria, acting with the advice of the Executive Council and under section 2(1) of the **Health Services (Governance) Act 2000**, fix 30 June 2000 as the day on which that Act comes into operation.

Given under my hand and the seal of Victoria on 22 June 2000.

(L.S.) JAMES GOBBO

Governor

By His Excellency's Command

HON JOHN THWAITES MP
Minister for Health

Panels Victoria, Department of Infrastructure,
P.O. Box 2797Y, Melbourne 3001 by 24 July
2000.

PAUL JEROME
Executive Director
Planning, Heritage and
Building Division
Department of Infrastructure

Planning and Environment Act 1987

MELBOURNE PLANNING SCHEME

Notice of Amendment

Amendment C28

The Minister for Planning has prepared Amendment C28 to the Melbourne Planning Scheme.

The Amendment inserts in the table to the schedule of Clause 52.03 and Clause 81, the Incorporated Document titled 'Flinders Wharf, Siddeley Street, Melbourne, June 2000'. The Amendment provides for the future development, subdivision and use of the land described below for residential apartments, food and drink premises, shops and ancillary purposes including car parking.

The Amendment affects the following land: Land located in Siddeley Street, Melbourne, adjacent to the World Trade Centre, being the land described in Certificate of Title Volume 10299, Folio 965 and known as Flinders Wharf.

A copy of the Amendment can be inspected, free of charge, during office hours, at the Department of Infrastructure, Planning Information Centre, Upper Plaza, Nauru House, 80 Collins Street, Melbourne and at the offices of the Melbourne City Council, 6th Floor, Council House, 200 Little Collins Street, Melbourne.

Submissions about the Amendment must be sent to: Attention: Adrian Williams, Planning

Gazette Services

The *Victorian Government Gazette* (VGG) is published by The Craftsman Press Pty. Ltd. for the State of Victoria and is produced in three editions.

VGG General is published each Thursday and provides information regarding Acts of Parliament and their effective date of operation; Government notices; requests for tenders; as well as contracts accepted. Private Notices are also published.

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Periodical — \$113.00 each year.

Subscriptions are payable in advance and accepted for a period of one year. All subscriptions are on a firm basis and refunds will not be given.

All payments should be made payable to

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Subscription enquiries:

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125 Highbury Road, Burwood Vic 3125

Telephone: (03) 9926 1233

Fax (03) 9926 1292

The Victoria Government Gazette is published by
The Craftsman Press Pty. Ltd. with the authority of the
Government Printer for the State of Victoria

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ISSN 0819-5471

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State of Victoria

Government Information and Communications Branch

Department of Premier and Cabinet

Level 3, 356 Collins Street

Melbourne 3000

Victoria Australia

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Price Code A