



*National Environment Protection
(Used Packaging Materials) Measure*

**Draft Variation to the National Environment
Protection (Used Packaging Materials)
Measure**

Impact Statement

March 2005

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1 INTRODUCTION

The National Environment Protection (Used Packaging Materials) Measure (the NEPM) was made in July 1999. The NEPM was set up to support and complement the voluntary strategies in the National Packaging Covenant (the Covenant) which also commenced in 1999.

The Covenant is an agreement entered into by governments and industry participants in the packaging chain based on the principles of product stewardship and shared responsibility. A proposal for an amended Covenant has been prepared following an extensive process of review and consultation.

In 2003, a range of jurisdictions, industry associations and individual company CEOs were interviewed as part of an evaluation of the Covenant (*National Packaging Covenant Council, Evaluation of the Covenant*, Nolan ITU, January 2004). The evaluation found general agreement that the NEPM was an integral part of the Covenant/NEPM package and that the Covenant would be unlikely to gain sufficient industry support without it. Its role in increasing membership of the Covenant was thus seen by all as a critical component of the package.

A variation to the NEPM to align it with the amended Covenant has been prepared, along with this associated impact statement.

The draft variation and this impact statement have been prepared on the assumption that the amended Covenant will be adopted. If the amended Covenant is not endorsed by the Environment Protection and Heritage Council, then the variation to the NEPM will not be made by Council and the current NEPM will automatically lapse on 14 July 2005.

1.1 NATIONAL ENVIRONMENT PROTECTION COUNCIL

The National Environment Protection Council Acts of the commonwealth, states and territories establish the National Environment Protection Council (NEPC), which comprises Ministers representing each of the participating governments. The NEPC is empowered by the Acts to develop, make, or vary National Environment Protection Measures (NEPMs).

1.2 NATIONAL ENVIRONMENT PROTECTION MEASURES

NEPMs are broad framework-setting statutory instruments which, through an extensive process of inter-government and community/industry consultation, reflect agreed national objectives for protecting particular aspects of the environment. NEPMs may consist of any combination of goals, standards, protocols, and guidelines.

Once a NEPM has been finalised, it is then formally “made” by NEPC. A decision to make (or to vary) a NEPM requires the support of a two-thirds majority of members of NEPC. NEPMs are implemented by jurisdictions that participate in NEPC within their own jurisdictional legal frameworks.

1.3 PURPOSE OF THE IMPACT STATEMENT

In varying a NEPM, NEPC must have regard to the following matters (sections 15 and 20 of the NEPC Acts):

- consistency with the Inter-Governmental Agreement on the Environment (IGAE) 1992;
- environmental, economic and social impacts; and

- any regional environmental differences.

In varying a NEPM, a draft variation and an impact statement must be prepared. The impact statement must include (sections 17 and 20 of the NEPC Acts):

- a) the desired environmental outcomes;
- b) the reason for the proposed measure and the environmental impact of not making the measure;
- c) a statement of the alternative methods of achieving the desired environmental outcomes and the reasons why those alternatives have not been adopted;
- d) an identification and assessment of the economic and social impact on the community (including industry) of making the proposed measure;
- e) a statement of the manner in which any regional environmental differences in Australia have been addressed in the development of the proposed measure;
- f) the intended date for making the proposed measure;
- g) the timetable (if any) for the implementation of the proposed measure; and
- h) the transitional arrangements (if any) in relation to the proposed measure.

In addition to addressing the requirements of the NEPC Acts, impact statements are developed in keeping with the requirements of the Council of Australian Governments as outlined in the *Principles and guidelines for national standard setting and regulatory action by ministerial councils and standard setting bodies*.

The NEPC Acts require that both the draft NEPM variation and the impact statement be made available for public consultation for a period of at least two months. NEPC must have regard to the impact statement and submissions received during public consultation in deciding whether or not to make the NEPM.

The goal of the Used Packaging Materials NEPM makes it clear that it is intended to operate only in support of the National Packaging Covenant. In assessing the impacts of varying the NEPM, this impact statement acknowledges that the Covenant and the NEPM are an integral package and that assessment of the varied NEPM cannot ignore the anticipated effects of the Covenant.

Because of the interdependence of the NEPM with the Covenant, this impact statement should be read in conjunction with the *Regulatory Impact Statement on Revised National Packaging Covenant* Nolan ITU, March 2005. This document includes references to the three reviews of the Covenant that were conducted in 2003 and 2004 (Nolan-ITU, Meinhardt, and the NSW Nature Conservation Council) which also contain relevant information.

This impact statement should also be read in conjunction with the impact statement for the original NEPM (National Environment Protection Council, January 1999). The 1999 impact statement deals with the economic, environmental, and social impacts of the original NEPM, along with an assessment of the alternative options. It also contains an extensive review of overseas models for the management of packaging waste. Much of the assessment in the 1999 impact statement is still valid and will not be repeated in detail in this document. Nevertheless the key elements of the previous document are outlined where appropriate in this document. The 1999 impact statement is available from the EPHC website at the same location as this impact statement.

2 STATEMENT OF THE PROBLEM

2.1 PACKAGING AND THE ENVIRONMENT

The 1999 impact statement described the purpose of packaging, and associated environmental and social issues. This description is still valid in 2005 and the key elements are repeated below.

Packaging plays an important role in preserving, protecting and marketing products during their storage, transport and use. Packaging reduces damage and waste and plays an important public health function by protecting and preventing the contamination of food and beverages.

The functions of packaging described above provide environmental benefits through avoided food waste, however there are a range of environmental costs associated with the production, use and disposal of packaging.

The production of some types of packaging is energy intensive and can generate solid wastes that may contain impurities and hazardous substances. Some materials generated during production, such as off-cuts and scraps, can be reused within the production process. Solid wastes need to be appropriately managed or disposed of in order to avoid risks to people or damage to the environment. Production of some packaging types (eg aluminium) from secondary materials requires less energy than the production of the same package from virgin materials. Most energy production and use results in the generation of carbon dioxide and other greenhouse gases which contribute to global warming.

If not effectively disposed of, packaging can cause environmental impacts such as litter. Litter detracts from the attractiveness of the natural environment and artificial landscapes, can interfere with and harm wildlife, can be a danger to people and can be widely dispersed making it difficult and costly to collect. Packaging accounts for a significant component of municipal waste, as well as away from home waste which primarily ends up in the commercial and industrial waste stream. As a consequence it is a contributor to landfill costs and impacts.

The 1999 impact statement described widespread evidence of strong community support for recycling. This is still the case in 2005 and the visible willingness of the community to purchase re-useable 'green bags' from supermarkets is evidence of a public demand that packaging producers take environmental issues into consideration.

2.2 THE ROLE OF THE COVENANT

The Covenant will continue as the principal instrument for managing consumer packaging in Australia. The objective of the Covenant is to reduce environmental degradation arising from the disposal of used packaging and conserve resources through better product design and encouragement for the recovery, re-use and recycling of used packaging materials.

It seeks to achieve this objective through providing a framework for the effective life cycle management of packaging and paper products and through establishing a collaborative approach between commonwealth, state and local governments, and the community and industry.

2.3 REASON FOR INTERVENTION

As detailed in the 1999 impact statement, both industry and government supported a collaborative and flexible approach as set out in the Covenant. However, a major concern of industry was to ensure that agreeing to voluntary measures through the Covenant did not disadvantage Covenant signatories in the market place. Industry called for a regulatory mechanism so that non-signatories are required to deliver similar outcomes to those operating under the Covenant.

Intervention was necessary to support this national co-operative framework and approach for the effective lifecycle management of consumer packaging and consumer paper – covering design, production, distribution, use, recovery and disposal. Intervention was also necessary to establish a nationally consistent and reliable basis for the collection of data on the environmental, economic and social issues associated with packaging, along with data about the environmental performance of the packaging chain. Issues regarding the Covenant are dealt with in the RIS for the amended National Packaging Covenant.

The rationale for the Covenant/NEPM package has not changed since 1999. The proposed extension of the Covenant and the ongoing requirement for intervention through the Covenant necessitates the preparation of a variation to extend the life of the NEPM to provide for the continuation of an effective co-regulatory arrangement. Consistent with the recent evaluations of the Covenant/NEPM package, no changes to the core obligations contained in the NEPM are proposed. However, as detailed below, changes to the NEPM are necessary to reflect the expanded scope and strengthened elements of the Covenant. This will maintain consistency between the scope and goals of the amended Covenant and the NEPM.

The purpose of the variation to the NEPM is to ensure that the NEPM remains aligned with the amended Covenant, in order to maximise the intended environmental outcomes of the Covenant and to maintain equity between Covenant signatories and non-signatories. There would be considerable dislocation to the existing arrangements for the management of consumer packaging in Australia if the Covenant/NEPM package is not maintained and enhanced.

In order to align it with the amended Covenant, the NEPM needs to be varied to:

- extend the term of the NEPM to align it with the life of the Covenant;
- extend the range of packaging materials covered to explicitly include distribution packaging;
- clarify the definition of in-store packaging, provide an explicit definition of plastic bags and define the brand owner in relation to plastic bags;
- expand the definition of brand owner to include franchisees;
- clarify a number of other definitions and terms and align them with the Covenant;
- update and strengthen the reporting requirements contained within the NEPM (clauses 17 and 18);
- require reporting against the targets and other key performance indicators set in the Covenant (clause 19);
- clarify the threshold for determining contribution to the waste stream; and
- include the addition of away from home recycling (eg public places, workplaces).

3 SPECIFICATION OF REGULATORY OBJECTIVES

3.1 THE PURPOSE OF THE NEPM

The purpose of the NEPM is to provide support for the National Packaging Covenant and to ensure that signatories are not competitively disadvantaged. It also provides for reporting about the performance of the Covenant and requires the submission of data.

3.2 DESIRED ENVIRONMENTAL OUTCOMES

The desired environmental outcomes of the combination of the Covenant and NEPM are to optimise resource use and recovery and encourage the conservation of virgin materials. These desired outcomes remain similar to those described in the 1999 NEPM impact statement, but the proposed variation seeks to extend these outcomes to include a broader range of materials, namely to include distribution packaging and locations such as public places, workplaces and commercial and industrial premises.

4 ALTERNATIVE METHODS OF ACHIEVING THE DESIRED ENVIRONMENTAL OUTCOMES

This section discusses alternative approaches for achieving the desired environmental outcomes specified in the NEPM as varied. These options were discussed in detail in the *Impact Statement for the Draft National Environment Protection Measure for Used Packaging Materials*, National Environment Protection Council, January 1999. The identification and assessment of these options done then remains valid and will not be repeated in detail.

It is intended that the Covenant will remain the principal instrument for managing packaging waste in Australia, and the majority of industry players are already signatories. The NEPM, as a regulatory safety net, therefore only potentially applies to a minority of industry players. It is not anticipated that the proposed amendments to the NEPM will significantly increase the number of stakeholders that the NEPM would apply to.

The following options are discussed on the basis of their suitability as a regulatory safety net appropriate for the size of the problem being addressed:

- Do Nothing Further;
- Take Back and Utilise; and
- Container Deposit Legislation (CDL).

The 1999 impact statement also describes a range of other 'blanket' regulatory options such as fees on raw materials, packaging levies, disposal levies on householders, mandatory recycling targets and advanced disposal fees. These options were evaluated as not being suitable for the purposes of providing a regulatory safety net. Some of these options are evaluated (for the purpose of stand alone regulation) in the 2005 regulatory impact statement for the Covenant. These options will not be discussed further in this impact statement.

Continuing the NEPM in its current form is not appropriate as it would not then provide the requisite level of compatibility and support for the amended Covenant.

4.1 DO NOTHING FURTHER

The current NEPM expires on 14 July 2005. 'Do nothing further' is not really an option in the usual sense, as the variation of the NEPM is a condition of finalisation and continuation of the amended Covenant. This option would be contrary to the co-regulatory approach

adopted for packaging that involves a voluntary mechanism (the Covenant) with a supporting safety net and reporting mechanisms provided by the NEPM.

If the Covenant is not extended, states and territories would be likely to consider a range of legislative and regulatory requirements to deal with packaging waste.

The impacts on stakeholders of the 'do nothing further' option have not changed substantially since the 1999 impact statement was written. The key impacts are summarised below.

- Jurisdictions would be subject to strong community pressures to implement their own measures for the whole of the packaging sector, which may be more or less onerous than the NEPM, requiring appropriate levels of resources for implementation and enforcement. The potential compliance costs to industry could be considerable if jurisdictions introduce a range of different measures.
- In the absence of the national initiatives contemplated under the Covenant, local governments could be faced with decreased support for kerbside collections, less certainty around ongoing markets for recyclates and consequent potential difficulties in sustaining kerbside recycling systems.
- Impacts on communities would vary but could include sharply escalating costs for kerbside recycling systems or a significant reduction in service availability. They could also include increased overall waste disposal costs as more packaging is sent to landfill.

In addition, it is also noted that the 'do nothing further' option would mean that:

- Opportunities to increase the take up of public place recycling, and improved design and recovery of distribution packaging would be lost.
- The ongoing commitments of over 600 signatories to the Covenant could be lost. These commitments include the production of action plans and annual reports, using the Environmental Code of Packaging, contributing funding to support areas such as recycling and market development, and working across the packaging chain to minimise the environmental impacts of packaging.

Since the 1999 impact statement was prepared, better data about the management of packaging in Australia is available enabling further analysis of the impacts of the Covenant/NEPM package. These impacts are addressed in section 5 and in the 2005 regulatory impact statement for the Covenant.

4.2 COMPULSORY TAKE-BACK AND UTILISE

This option places an obligation on brand owners and importers to undertake, or assure, the recovery, re-use and recycling or energy recovery of the consumer packaging in which the brand owner's products are retailed. Performance levels would be established by reference to the key performance indicators established for Covenant signatories.

Brand owners would also be required to provide information to consumers on the product label/package as to how the packaging is to be recycled, or that it is not recyclable.

Again, the strengths and weaknesses of this model have not changed significantly since the 1999 impact statement. Compulsory take-back, imposed through the NEPM, obligating brand owners to assure the systematic recovery of packaging in which their products are

sold continues to provide a strong incentive for manufacturers/fillers to minimise packaging waste and has encouraged a high participation rate in the Covenant.

4.3 CONTAINER DEPOSIT LEGISLATION (CDL)

Another option is to mandate a deposit-and-return system for containers placed on the market by companies captured by the NEPM. This approach would require a new system and complex infrastructure to deal with a limited range of packaging products and industry players.

A variation of CDL is the 'half-back' system. The distinctive feature of 'half-back' CDL is that only half of the deposit charged would be returned to the consumer when the container was brought back. The remainder would be paid into a fund to be used to support kerbside recycling.

Again, the strengths and weaknesses of this model were examined extensively in the 1999 impact statement. Since that time, kerbside recycling systems have grown and the costs associated with replacing existing safety net systems with a CDL based approach would have increased.

Since 1999, better information about the potential costs of CDL has come to light. In May 2003, the Environment Protection and Heritage Council noted the significant costs for the introduction of a CDL system in parallel with the existing kerbside recycling system. These costs were \$111 to \$157 per household per annum compared with an average existing cost for kerbside recycling of \$28.85 per household. A peer review report later recalculated these costs using a different methodology as \$81.50 per household per annum, however the cost of introducing a CDL system is still substantially more than the existing kerbside costs.

CDL is unlikely to be an equitable or an effective solution to the free rider problem, since a CDL system that covers only a small proportion of consumer packaging (that of non-Covenant signatories) is likely to impose infrastructure costs disproportionate to the size of the problem being addressed. If major beverage industries are Covenant signatories and are therefore exempt from the safety net, it may not gain strong community support or patronage. This approach could create confusion and potentially dilute support for existing collection systems by all users.

4.4 COST EFFECTIVENESS COMPARISON

A cost effectiveness comparison of each of the three options listed in Section 4 was made in the 1999 impact statement.

CDL requires establishment of expensive infrastructure and is costly to administer relative to the size of the problem being addressed. The analysis shows that the Take Back and Utilise option is likely to be the most cost effective for industry.

As noted in the 1999 impact statement 'take back and utilise' is likely to continue to be most cost effective for jurisdictions. This approach entails a complaints-based and/or targeted enforcement model.

5 IMPACTS OF A VARIED NEPM

5.1 ENVIRONMENTAL IMPACTS

Alone, the proposed variation to the NEPM will have minimal environmental impact. However, as the key supporting instrument to the Covenant, the NEPM has flow through impacts that have been taken into account in the 2005 regulatory impact statement for the amended Covenant. Additionally, many of the environmental impacts associated with the NEPM remain the same as outlined in the 1999 NEPM impact statement. The key points from 1999 are summarised below.

Environmental Impact of Not Making the NEPM

- The absence of the NEPM or other device to support the Covenant is likely to see a reduction in the amount of material recovered at kerbside.
- Aluminium, steel and glass containers will continue to be collected, however the collection of mixed paper and some plastics is less assured.
- In the absence of an effective Covenant/NEPM package, jurisdictions may take action to impose individual regulatory systems, some of which may nominate recovery levels that produce unintended lifecycle environmental impacts.

Environmental Impact of the Draft Variation to the NEPM

- As the NEPM is designed to support the Covenant, the marginal environmental effect of the variation to the NEPM will not be great.
- The impact of the provision in the NEPM for the systematic recovery of brand owner packaging, which remains unchanged, will be small due to the projected small number of companies likely to be captured under the NEPM.
- Companies caught by the NEPM will be required to establish their own take-back systems. These may have adverse or beneficial lifecycle environmental impacts, however exploring each theoretical scenario is outside the scope of this impact statement.

Consideration of Regional Environmental Differences

- Regional environmental differences are not considered significant in relation to the NEPM as the availability of kerbside or other recovery systems would most likely be decided on the basis of population density, community attitudes and the availability of materials recovery systems rather than regional environmental considerations.
- Optimal use of resources and conservation of virgin materials are likely to lead to positive rather than negative environmental impacts.

5.2 SOCIAL IMPACTS

As indicated in the previous section, the NEPM is subordinate to the National Packaging Covenant. The social impacts identified in the Covenant regulatory impact statement, therefore, will be relevant to the NEPM. The social impacts outlined in the 1999 NEPM impact statement also remain relevant. These have been summarised below, looking at the key issues raised by industry, local government and the community across the Covenant, NEPM and recycling more generally.

Industry

- Many companies acknowledged that the Covenant cannot exist without the support of an effective NEPM.
- There was an industry view that the Covenant/NEPM package would:
 - Spread recycling commitments equitably across all materials and sectors of the packaging chain.
 - Stop importers of packaging and packaging materials getting a free ride and making no contribution to the system.
 - Require downstream companies in the packaging chain to contribute their fair share of 'shared responsibility'.

Local Government

- The responsibility for waste minimisation and recycling must be shared more fairly by industry, state governments and the commonwealth.
- While financial relief for local government was seen as the primary issue, there was also an emphasis on market development and on the system maintaining a demand-supply balance.
- Kerbside recycling services were very likely to be reduced if local government short-term kerbside funding problems were not dealt with, and that longer term increases in kerbside recovery were anticipated, based on delivery of more sustainable kerbside systems.

Community

- The relatively high levels of materials recovery achieved in most Australian kerbside recycling programs demonstrate significant community support for these programs.
- Environment protection and waste management concerns are highly placed in community surveys.
- A high percentage of people indicated they recycled to reduce waste and that any action to reduce recycling levels would be met with concern.
- The frequent mention of markets in surveys and the media in the context of recycling recognises the importance of this matter for long-term sustainability.

5.3 ECONOMIC IMPACTS

Over 80% of eligible brand owners selling in Australia are currently covered by the Covenant therefore the economic effects of the NEPM will be marginal within the total Covenant/NEPM package. As the alternative options considered in section 4 above have been discarded on other criteria as well as cost, this section considers only the economic impacts of the NEPM component of the Covenant/NEPM package.

Current Application of the NEPM

In making the NEPM, NEPC was concerned to ensure businesses, mainly small businesses, that did not make a substantial contribution to the waste stream should not be subject to unnecessary regulation or cost. A clause to this effect was inserted into the original NEPM.

To give effect to this clause, jurisdictions agreed that a notional threshold of 1% contribution to the market would be used as a trigger for determining whether a brand owner should be subject to the NEPM. It should be stressed that this is a trigger for determining whether a

brand owner is subject to the NEPM, not for determining whether a brand owner should become a signatory to the Covenant. All brand owners are encouraged to sign the Covenant. The intention of the notional threshold was to ensure a focus on the more significant free riders. In reality, the NEPM has not been applied to any brand owners or any prosecutions undertaken by jurisdictions using their legal NEPM enforcement instruments.

Consequently the actual costs of establishing and maintaining individual brand owner take back schemes are unknown and there have been no direct costs to brand owners arising from the NEPM.

As indicated in the 1999 impact statement, the extent to which the obligation to take back and reutilise materials imposes costs will vary dependent on how companies respond. The spectrum of responses could vary from development of an agency relationship with either local government or independent collectors to establishment of dedicated company-owned collection systems and storage facilities. Costs will vary according to a range of factors such as the scale of operation of the company, whether or not the company packages its products in materials that lend themselves to economical recycling, the nature (simple or complex) of the collection/sorting technology required, the nature of any applicable agency arrangements, lower costs that might result from the opportunity to recover and reutilise packaging materials that are of a size and type substantially the same as the packaging in which their products are sold, and the value of the materials used for packaging.

These potential costs can be avoided by signing up to the Covenant and taking advantage of the flexibility inherent in action plans under the Covenant, which take into account the nature and scale of operation of the company. Participation by brand owners in the Covenant will enable the environmental outcomes envisaged in the Covenant/NEPM package to be achieved, and maintain support for kerbside and other broad-based materials collection systems.

Information from brand owners on cost estimates in relation to the NEPM take back and reutilise obligation would be welcomed.

The NEPM has, however, been used during the first term of the Covenant to encourage sign up (through use of courtesy and initial warning letters to non-signatories). The common experience has been that companies contacted have been unaware of the nature and advantages of the Covenant and the potential disadvantages of the NEPM. Once these were explained, there has been a readiness in most cases to join the Covenant. To date no companies have incurred costs in implementing the NEPM as all have elected to join the Covenant and not be regulated under the NEPM, indicating that the Covenant/NEPM package is an effective mechanism.

Increases in signatories to the Covenant after initiation of action by a jurisdiction have been recorded in all participating states. Industry has expressed the view that without the NEPM there would not be 600 signatories to the Covenant. For example, in South Australia, signatories went from eight to 72 in the 12 months following the introduction of the statutory policy through which the NEPM is administered.

The economic impacts of the current NEPM have, in the main, fallen on government. The NEPM has not imposed a significant resource demand on jurisdictions with the total estimated costs of the current Covenant/NEPM package to state and territory jurisdictions for all functions being estimated at just under \$600,000 per annum.

These costs were derived from a survey of all governments as part of the development of the Covenant RIS. Governments were asked to calculate total hours and levels of personnel involved in order to calculate total costs. Areas covered included participation in all Covenant working groups (Covenant Council, Kerbside Recycling Group, Jurisdictional Recycling Group, action plan assessment groups), provision of compliance support to jurisdictional-based businesses/local governments, activity to implement the NEPM in the supply chain, including identification of 'eligible' businesses, correspondence, liaison and activity to gather NEPM-required data from local government.

Implementation of the NEPM has generally taken the form of mail outs to companies identified through telephone listings and commercial databases (700-1200 in larger jurisdictions) and follow up of responses including assessment of whether a company was below the "1% market threshold" to limit impact on small business. Follow up action in relation to companies identified in the annual packaging waste audits required under the NEPM has also been undertaken.

Whilst there have been some instances of companies being reported to jurisdictions as non-signatories, industry has generally relied on the identification of free riders through the brand owner surveys and through jurisdictional action.

An additional emerging area for jurisdictional follow up is action against non-complying Covenant signatories however, until the final year of the current Covenant, the Covenant Council had no clear process for assessing signatory performance and determining non compliance. Action against non-complying signatories was also compromised by a lack of clear objectives and specific deliverables in the Covenant.

Impact of Strengthening Covenant Compliance and NEPM Enforcement

The amended Covenant builds in specific strategies that will ensure a higher degree of 'policing' of brand owners in terms of compliance with and delivery of their obligations as Covenant signatories. This includes a new Covenant Compliance and Governance Schedule and performance indicators and reporting requirements for companies.

The Covenant therefore establishes monitoring, disciplinary and dispute resolution procedures to identify non-complying signatories. Decisions will be made by the Covenant Council, in accordance with these procedures, as to whether a signatory is meeting its commitments under the Covenant. If a signatory is deemed non-compliant and a formal non-compliance letter has been issued by the Covenant Council, the non-compliant brand owner will be referred to the relevant state or territory for action under the NEPM. It should be noted that some Covenant signatories are not brand owners and if they default on their obligations under the Covenant they will not be subject to the NEPM.

Dealing with non-compliant Covenant signatories as well as continuing to follow up non-signatories will require increased resourcing by governments. The estimated total increase in cost for this extra enforcement activity across all jurisdictions as a result of the amended Covenant/NEPM package is in the order of an additional \$250,000 per annum.

As there are no changes proposed to the brand owner obligations in the NEPM variation, costs for brand owners resulting from compliance with the NEPM will remain the same as indicated in the 1999 impact statement, varying between companies depending on how they manage their obligations and record keeping requirements.

If, for any reason, there were to be an exodus of companies from the Covenant, governments would review the current co-regulatory model and look at alternatives such as fully regulating consumer packaging in Australia.

Comment is invited on the potential effect that strengthening Covenant compliance and NEPM enforcement will have on the decisions of businesses regarding the amended Covenant.

Impact of a Revised Threshold

A portion of the 20% of brand owners who are not currently Covenant signatories (perhaps as many as 10%) will not be subject to the NEPM, given the commitment to minimise impacts on businesses that do not contribute substantially to the waste stream.

Jurisdictions have undertaken a review of the effectiveness of the current criterion (agreed by jurisdictions after the original NEPM was made) for determining a non-significant contribution to the waste stream. Given the difficulty in obtaining and verifying market share data, jurisdictions are considering replacing this with a combination of total production value and tonnes or units of packaging. This information will be relatively easy for a brand owner to obtain at little cost. While this information will be used as the basis for a revised threshold, some discretion in its application by jurisdictions is envisaged, assisted by a set of guiding principles.

It is not anticipated that there will be any economic impact on businesses generally from changing the current notional threshold. This design criterion will mean that there will be no increase in cost to business or government as a result of modifying the threshold. This change will simply provide a simpler and more transparent approach.

Impact of the Inclusion of Workplaces and Commercial and Industrial Premises

The coverage of the Covenant is being expanded to 'away from home' locations. This includes workplaces, businesses and industry, and public places and facilities. Covenant signatories currently supply both domestic and commercial consumers and will particularly need to focus on expanding materials recovery from away from home locations. There will also be a requirement for brand owners subject to the NEPM to recover their packaging from both domestic and away from home locations. This will not affect the economic impact on brand owners captured by the NEPM since the NEPM has always provided flexibility in relation to the source of recovered materials.

As a consequence, jurisdictions will need to expand audits to include sampling at away from home sites. This is unlikely to be a major resourcing issue given that current audits cost less than \$5,000 per jurisdiction using the methodology developed and agreed under the current NEPM.

The NEPM variation provides the option for audits at retail level which would substantially reduce costs for jurisdictions, or at least enable a broader range of sampling of both municipal and away from home streams at no greater costs than currently incurred by jurisdictions.

Impact of the Inclusion of Franchisees in the Definition of Brand Owner

The explicit reference to 'franchisees' in the definition of brand owner under the NEPM was made to clarify the original intent of the NEPM and close off possible loop-holes for

franchisees that did not hold the licence for a particular product. This reference is not intended to expand the potential coverage of the NEPM.

6 COVENANT/NEPM IMPLEMENTATION

The three Covenant evaluations and a further review of NEPM implementation by jurisdictions have identified a number of areas where further work is needed. The key comments regarding the NEPM have related, not to its framing or content, but to its implementation which has lacked consistency and transparency of process across jurisdictions. This has led to a view that the NEPM has been far less effective than it could be in providing a driver for improved environmental outcomes under the Covenant.

Specific areas for action are summarised below. The cost to jurisdictions of implementing these improvements has been factored into the additional cost identified in section 5.3 above.

Most of the issues have been broadly described earlier and include:

- Replacement of the existing threshold criterion to ensure consistent application across jurisdictions; clear processes for industry in collecting and presenting data as the basis for exemption; clarification of the application of the NEPM to franchises and branch operations of companies headquartered in other states.

[There was considerable discussion regarding the existing threshold criterion during the consultation workshops on the amended Covenant with strong views expressed about both retaining and abandoning any exemption for small businesses. For example, proposal 20 in the Covenant Consultation Proposal, which suggested that the current criterion be retained and that clear processes be developed for substantiating claims, was received with caution and generated some strong opposition.]

- Establishment of clear Covenant deliverables and obligations to enable action against non-complying signatories under the NEPM. Proposal 18 in the Covenant Consultation Proposal, which related to the need for a transparent mechanism for dealing with non-performers, had some of the strongest support in the 'dot voting' exercise at the consultation workshops held throughout Australia in mid 2004. This issue has been addressed as part of the amended Covenant.
- Packaging waste audits will need to be expanded to sample materials in away from home locations. Jurisdictions will develop a process and methodology for away from home audits in accordance with Clause 18 of the NEPM.

Jurisdictions have agreed to establish guidelines and processes to address these implementation issues and place them on all Covenant related websites. They have also agreed to meet annually to review the effectiveness of NEPM implementation measures and make further adjustments as needed, and to develop an effective communication strategy for the Covenant/NEPM package in consultation with the Covenant Council.

7 CONSULTATION

Consultation processes to date have related to the evaluations of the Covenant/NEPM package and to the development of the amended Covenant. These processes are summarised in the Covenant RIS.

Consultation on the draft NEPM variation and this impact statement will be conducted according to the requirements of the NEPC Acts and the NEPC Consultation Protocol. NEPC is required to prepare a summary of issues raised in submissions and responses to them. In deciding whether to vary the NEPM, Council must take into account the impact statement and the summary of submissions and responses.