



*National Environment Protection
(Used Packaging Materials) Measure*

**Summary of Submissions received in relation
to the Draft Variation to the
National Environment Protection
(Used Packaging Materials) Measure
and
National Environment Protection Council's
Responses to those Submissions**

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INTRODUCTION

The National Environment Protection (Used Packaging Materials) Measure (the NEPM) was made in July 1999. The NEPM was established 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 supply 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. A variation to the NEPM to align it with the amended Covenant was also prepared, along with an associated impact statement.

On 10 March 2005, NEPC Committee, under delegated power from Council, approved the release of the draft variation to the Used Packaging Materials NEPM and its associated impact statement for public consultation. The statutory consultation period concluded on 19 May 2005.

Consultation on the draft variation and impact statement was delivered through publication of statutory notices in newspapers circulating in all jurisdictions, placement of the relevant documents on the EPHC website and invitations to comment extended to the 121 organisations and individuals (including industry associations, environment groups, environmental consultants and government agencies) currently registered on the EPHC/NEPC waste issues database.

A total of nine submissions were received in response to the release of the draft variation and impact statement – three submissions from industry groups or individual businesses, three from local government, one from a community group, one from an individual plus one government submission.

A list of submitters is provided in Appendix A, along with a detailed summary of the issues raised and responses to those issues.

COMMENTS ON THE DRAFT VARIATION AND IMPACT STATEMENT

Due to the absence of substantive arguments for change to the basic approach adopted in the draft, the Guidelines and Protocols contained in the NEPM variation have not been changed.

However, in light of the submissions, some modifications to the NEPM variation itself have been made, particularly in relation to certain definitions, the clauses relating to background and the NEPM Goal. The changes are aimed at more accurately reflecting the strengthened Covenant and the context in which the NEPM will operate, and clarifying meaning within the amended clauses.

The key changes are:

- amendments to the definitions of ‘brand owner’, ‘consumer packaging’ and ‘distribution packaging’ to clarify meaning;
- amendments to clauses 5(2) and 5(3) (‘Background’) to more accurately reflect the strengthened Covenant and the context in which the NEPM will operate;

- an amendment to clause 6 ('National Environment Protection Goal') to make explicit the role of the NEPM in assisting the assessment of performance under the Covenant;
- inclusion of a footnote to clause 11 ('Exemptions/Deemed Compliance') referring to the strengthened governance and compliance procedures contained in the Covenant;
- amendments to clause 12 to clarify that the content of the clause relates to 'NEPM application' thresholds; and
- an amendment to clause 17(5)(b) to include reference to consultation with local government.

APPENDIX A – DETAILED SUBMISSIONS AND RESPONSES

LIST OF SUBMITTERS

Submitter Number	Submitter
1	Department of Primary Industry, Water & Environment, Tasmania
2	Western Australian Local Government Association
3	Australian Environment Business Network
4	Visy Recycling
5	Southern Waste Strategy Authority
6	Hewlett Packard Pty Ltd
7	Boomerang Alliance
8	Mr Nick Pastalatizis
9	Brisbane City Council

PREAMBLE

This appendix presents a summary of public input so that stakeholders have an understanding of the views being presented to NEPC, and can trace their input into the development of the NEPM variation.

Comments made in submissions have been assessed entirely on the cogency of points raised. No subjective weighting has been given to any submission for reasons of its origin or any other factor that would give cause to elevate the importance of any submission above another.

CLAUSE 3 – DEFINITIONS

Comment	Response
Definition of ‘distribution packaging’ should be amended. Suggest that wording be changed to: “...intended for direct consumer purchase, including...”. (3)	Definition of ‘distribution packaging’ in Cl 3 amended.

CLAUSE 3 – DEFINITIONS

Comment	Response
Suggested amendment to the definition for brand owner, add to (d): “in respect of in-store promotional material, the supplier of the material to the store”. (7)	The NEPM is intended to be strategically targeted rather than to fully reflect the coverage of the Covenant. The Covenant focuses on product stewardship and shared responsibility, the NEPM focuses on brand owner responsibility as the most efficient mechanism available to support the Covenant, and the point in the packaging supply chain with the most capacity to influence others. To amend the NEPM brand owner definition in this way would broaden the scope of and the number of organisations captured by the NEPM beyond the packaging supply chain. Notwithstanding this, there is no reason why the Covenant could not encourage signatories to address in-store promotional material through their action plans.

CLAUSE 5 – BACKGROUND

Comment	Response
Suggested amendment to Cl 5, add dot points to sub-clause (5): <ul style="list-style-type: none"> “achieving the landfill reduction and recycling targets established under the National Packaging Covenant; collecting and providing data to assess the performance of the Covenant and progress towards the National Environment Protection Goal”. (2) 	Cl 5(2) amended to include reference to the commitment by all Covenant signatories to work together to achieve the overarching Covenant targets and the collection of data to assess performance.
Suggested amendment to Cl 5, add sub-clause: “The packaging chain signatories have, as a collective group, made a commitment to achieve the landfill reduction and recycling targets established under the National Packaging Covenant”. (2)	Cl 5(2) amended to include reference to the achievement of targets under the Covenant by all signatories, not solely packaging supply chain signatories.
Suggested amendment to Cl 5, add dot point to sub-clause (3): <ul style="list-style-type: none"> “to adopt and implement the Environmental Code of Practice for Packaging”. (2) 	Cl 5(3) amended to include reference to the Environmental Code of Practice for Packaging.
Covenant signatories must report and demonstrate continuous improvement against the KPIs and targets specified in the Covenant. (8)	Cl 5(2) of the NEPM references the commitment by signatories to reporting against KPIs through their action plans.
Clause 5(2) should include commitments on greenhouse gas emissions. Covenant signatories should be reducing greenhouse emissions during the production processes of their materials. (8)	Cl 5(2) of the NEPM references reporting of improved environmental outcomes. Greenhouse gas emissions are included as one of the reporting requirements in the Covenant KPIs.

CLAUSE 6 - NATIONAL ENVIRONMENT PROTECTION GOAL

Comment	Response
The Goal of the NEPM should include assessment of the performance of the Covenant. Supporting the Covenant and evaluating the performance of the Covenant are equally important components of the EPHC's strategy. (2)	Cl 6 of the NEPM amended to reflect the role of the NEPM in assisting the assessment of performance under the Covenant.

CLAUSE 7 - SCOPE

Comment	Response
<p>Waste avoidance should be included in the scope of the NEPM since encouraging this activity forms part of the National Environment Protection Goal.</p> <p>The Goal should be modified to recognise that waste avoidance is a key aspect of reducing the environmental impacts of packaging and hence a key part of the product stewardship ethic which the EPHC seeks to support. Consistent with the idea that the NEPM establishes a parallel system for producer responsibility, the types of outcomes pursued should be similar. Therefore waste avoidance should be within the scope of the NEPM. (2)</p>	<p>The NEPM is intended to be strategically targeted rather than to fully reflect the coverage of the Covenant. The Covenant focuses on product stewardship and shared responsibility to address whole of lifecycle management of packaging. The NEPM focuses on brand owner responsibility as the most efficient mechanism available to support the Covenant, and the point in the packaging supply chain with the most capacity to influence others. Compulsory take back, as proposed in the NEPM, provides a strong incentive to minimise packaging waste. It constitutes an effective driver to ensure that appropriate influence is exerted on packaging suppliers and manufacturers and, when linked with the obligation to utilise recovered materials, supports the full waste hierarchy, including waste avoidance.</p>

CLAUSE 9 – STATUTORY OBLIGATIONS AND RIGHTS

Comment	Response
<p>The principle of shared responsibility underpins the approach to packaging product stewardship yet, whilst the NPC applies to the packaging supply chain, the NEPM applies only to brand owners. For industry-wide implementation to be successful, the regulatory underpinning and associated enforcement must cover the entire packaging supply chain – it should not be limited to brand owners. (6)</p>	<p>The NEPM is intended to be strategically targeted rather than to fully reflect the coverage of the Covenant. The Covenant focuses on product stewardship and shared responsibility, the NEPM focuses on brand owner responsibility as the most efficient mechanism available to support the Covenant, and the point in the packaging supply chain with the most capacity to influence others. Brand owners are nominated as the most feasible point to be targeted in the packaging supply chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based on their capacity to ensure that they do not bear the responsibility alone. Businesses who are able to influence the quality of their product packaging in response to marketing, consumer protection, occupational health and safety or other considerations, can be realistically expected to be able to influence the quality of their packaging in terms of its environmental impacts. The fact that this position is relative rather than absolute is the reason for the preference by governments for the Covenant model of shared responsibility. A regulation that effectively mirrored the Covenant would not provide a regulatory safety net but rather a regulatory alternative, would be intrinsically less flexible than the Covenant, and would call into question the effectiveness of industry self-regulatory initiatives.</p>
<p>In conjunction with subclause (2), this implies that the jurisdiction can oblige brand owners to meet specific performance targets for particular materials. We object to the setting of rigid performance targets that do not take account of local market circumstances. In the case of Tasmania, we do not yet have sufficient accurate information that can be used to assess what is a reasonable target. (5)</p>	<p>Cl 9(5) states that take back requirements need to be set with reference to the performance targets for particular materials specified in the National Packaging Covenant. In setting requirements, jurisdictions will take local circumstances into account.</p>
<p>Suggested amendment to Cl 9, add sub-clause: “Participating jurisdictions should oblige brand owners to reduce their use of packaging materials to agreed levels if they use packaging materials that are determined, in accordance with sub-clause (4), not to be practically recoverable”.</p> <p>Sub-clause 9(4) seeks to avoid requiring recovery in cases where it would be impractical. However, significant use of non-recoverable materials and composites persists and needs to be addressed by the NEPM. (2)</p>	<p>The Covenant aims to optimise recycling and the NEPM supports that approach through its take back and reutilise obligations. Jurisdictions are able to place conditions on the nature of the take back that a brand owner must undertake. If the use of non-recyclable packaging persists, jurisdictions could require brand owners to meet the disposal costs for that packaging in addition to the costs of collection.</p>

CLAUSE 9 - STATUTORY OBLIGATIONS AND RIGHTS

Comment	Response
<p>The intention and operation of sub-clause 9(4) is unclear and its potential effect is very broad – it should be redrafted.</p> <p>While this sub-clause foreshadows the need for jurisdictions to make technical determinations about whether it is reasonable to require material recovery in a given case, this sub-clause provides another layer of jurisdictional discretion which further complicates the process of deploying the NEPM. While it may be reasonable to require jurisdictions to consider the practical, case-specific implications of deploying the NEPM, this sub-clause provides too little detail about the process.</p> <p>We are concerned about the effect of 9(4)(d) as a universal exemption provision. Companies to whom sub-clause 9(2) is applied will be at a competitive disadvantage to other companies. Companies may suggest that in light of 9(4)(d) a jurisdiction should consider the competitive disadvantage they will suffer if the NEPM is applied to them. We believe that this would miss the point of the safety net system and provide yet another opportunity for companies to delay the jurisdictions. (2)</p>	<p>The intention of the sub-clause is clear and, given the complex processes and time required to update and amend legislative instruments, it would be inappropriate to incorporate operational detail in the NEPM. Jurisdictions (and companies) will benefit from a flexible approach to operational detail that allows freedom to manoeuvre in a rapidly changing environment. Jurisdictions will provide further clarification about the application of this clause through the NEPM implementation process.</p>

CLAUSE 10 - ENFORCEMENT OF NEPM OBLIGATIONS

Comment	Response
<p>A key failing of the last Covenant was a failure of jurisdictions to enforce the NEPM or match industry dollars to implement new initiatives. Industry has made it clear that for recycling rates to be lifted, they will need to see the NEPM enforced, and a tightening up on the small business sector. (7)</p>	<p>It is a statutory requirement that jurisdictions apply the NEPM. Governments have undertaken to increase enforcement action under the NEPM.</p>
<p>The NEPM should be implemented for those parties who fail to fulfil their Covenant obligations. (7)</p>	<p>The Covenant now includes strengthened governance and compliance enforcement procedures to ensure that this will occur.</p>

CLAUSE 10 – ENFORCEMENT OF NEPM OBLIGATIONS

Comment	Response
<p>Greater enforcement of the NEPM is needed.</p> <p>The recycling targets of the Covenant can only be achieved if governments enforce the NEPM and ensure a policy environment that penalises packaging with a poor environmental lifecycle. (4)</p>	<p>Governments have undertaken to increase enforcement action under the NEPM. The Covenant now includes strengthened governance and compliance enforcement procedures to ensure that this will occur. The Covenant KPIs cover aspects of the full lifecycle of packaging. Signatories who produce packaging with a poor environmental lifecycle are more likely to be identified as non-compliant and therefore subject to the NEPM.</p>
<p>Signatories who, without good reason, do not meet their targets are supposed to be de-registered as signatories and thus come under the regulatory framework of the NEPM. Only the Queensland government has instigated any action under the NEPM but stopped short of the court. There will have to be a major change by state governments to enforce the NEPM if this regime is to function. (9)</p>	<p>Governments have undertaken to increase enforcement action under the NEPM. The Covenant now includes strengthened governance and compliance enforcement procedures to ensure that this will occur. Signatories who produce packaging with a poor environmental lifecycle are more likely to be identified as non-compliant and therefore subject to the NEPM.</p>

CLAUSE 11 – EXEMPTIONS/DEEMED COMPLIANCE

Comment	Response
<p>The NEPM will be an extremely controversial regulatory tool to deploy. It will place any liable company at a significant competitive disadvantage. Any company making a claim of 'equivalent performance' will expect to enjoy a high standard of procedural fairness at the hands of the decision maker. It is necessary that much more thought be given to defining both the elements to be proved and the process by which the case will be tested. We suggest that removing the exemption all together makes greater sense.</p> <p>If the exemption is to be retained, it should be reworded for clarity and supported by additional clauses or notes to guide its implementation. The necessary changes include:</p> <ul style="list-style-type: none"> • tightening the clause to make it much clearer what companies must demonstrate • outlining the process by which a jurisdiction will make its determination about these outcomes or arrangements • identifying the point beyond which a company is no longer permitted to 'jump' back into the Covenant system • standardising the procedures used for determining equivalent performance. (2) 	<p>The NEPM does not propose any barriers to entry, exit or innovation in either the packaging manufacture or consumer products markets. Exemption from, or deemed compliance with, the NEPM is attainable through joining the Covenant or through establishing arrangements that produce equivalent outcomes. In the interests of natural justice, it is important to provide industry with the flexibility to engage in schemes that provide equivalent outcomes. Given the complex processes and time required to update and amend legislative instruments, it would be inappropriate to incorporate this level of detail in the NEPM. Jurisdictions (and companies) will benefit from a flexible approach that allows freedom to manoeuvre in a rapidly changing environment. The addition of KPIs and strengthened reporting requirements (including company baseline data) in the Covenant will provide jurisdictions with better information with which to assess equivalent outcomes to those achieved through the Covenant.</p>

CLAUSE 11 - EXEMPTIONS/DEEMED COMPLIANCE

Comment	Response
<p>It remains important to define exactly what 'non-compliance' means for the purposes to the NEPM.</p> <p>The existing NEPM includes within section 11 a footnote explaining that the NPCC determines non-compliance for the purposes of this section. The concept of compliance is no longer explained or defined - even as a footnote - within the NEPM. (2)</p>	<p>A footnote has been reinserted, however, given that the Covenant contains strengthened governance and compliance procedures, the footnote has been reworded to refer to Schedule 3 of the Covenant.</p>

CLAUSE 12 - THRESHOLDS

Comment	Response
<p>Clarification on thresholds for brand owners is needed. The statement in the NEPM that jurisdictions are yet to develop a standard methodology to establish thresholds indicates that the issue is still under development.</p> <p>The current threshold was considered inadequate and too vague to provide companies a clear cut off point for NPC and NEPM actions. While a dollar amount of sales is being considered as a threshold, this may catch high-valued products like watches or jewellery, where the packaging is small compared to the value of the product. (3)</p>	<p>Agreed. These matters will be addressed in the process for finalising the thresholds.</p>
<p>The meaning of the term 'threshold' needs to be clarified, replaced or defined.</p> <p>The existing NEPM used the term 'threshold' in a title, but did not use it in the text of a clause. The proposed NEPM now uses the term in the text of Clause 12. This causes difficulties with interpretation of the NEPM, because the term has not been explained or defined. The amendment suggested is one way of clarifying what is meant. Another method would be to include the word 'threshold' in the definitions section. (2)</p>	<p>Cl 12 amended to clarify the meaning of 'threshold'.</p>
<p>NEPC should modify this threshold clause to refer to:</p> <ul style="list-style-type: none"> • a specific instrument or document, eg "The NEPM Application Threshold Protocol" • the forum which will deliver this instrument or document, eg the Protocol will enter into effect by resolution of the EPHC, having satisfied itself that the Protocol has been agreed between States and Territory Governments in consultation with the NPCC. <p>The expectation expressed in Clause 12 that external processes will deliver the standard methodology is significantly different from the similarly worded expectations expressed in sub-clauses 20(1)-(5). In these other instances, we accept that the jurisdictions should collaborate to generate standard forms, formats and survey methodologies etc. However in the case of Clause 12, the current draft has delegated a task that relates to the scope of the NEPM's application. This is a question of such significance that it needs to receive more detailed attention within the NEPM itself, by either of the approaches outlined above. (2)</p>	<p>The intention of the clause and its scope is clear and, given the complex processes and time required to update and amend legislative instruments, it would be inappropriate to incorporate operational detail in the NEPM. Jurisdictions (and companies) will benefit from a flexible approach to operational detail that allows freedom to manoeuvre in a rapidly changing environment. The NEPM commits jurisdictions to developing a standard methodology for establishing thresholds which will be done through the NEPM implementation process.</p>

CLAUSE 15 - METHODS OF COLLECTING INFORMATION AND REPORTING

Comment	Response
<p>Suggested amendment to Cl 15, add sub-clause:</p> <ul style="list-style-type: none"> “Jurisdictions shall annually provide to the EPHC (or data management organisation nominated under the Covenant agreement) the data collated under clauses 16 and 17”. <p>The jurisdictions need to report the information they collect into a central repository. Once again, this reflects a shift in the way the Covenant’s performance will be monitored. The jurisdictions may continue to annually report to the EPHC on the achievement of the National Environment Protection Goal, but this will not discharge their obligation to support the centralised, quantitative approach to Covenant assessment. It is important that this is specifically identified as an obligation under the NEPM.</p> <p>The working group on targets have concluded that the measurement framework required to monitor the progress towards the targets needs to be administered by an independent third party. We expect that this independent 3rd party would be the most appropriate party to receive the data compiled by the jurisdictions. (2)</p>	<p>Cl 21 covers annual jurisdictional reporting of this information. The Covenant has been amended to clarify that jurisdictions are obliged to provide all data relevant to the assessment of Covenant performance to the National Packaging Covenant Council.</p>
<p>Suggested amendment to Cl 15(1): <u>“To enable participating jurisdictions to report annually to the Council on whether the goal is being met, participating jurisdictions shall ensure they are able to collect the information set out in this Part from brand owners, local governments, regional waste management groups, material recovery facility operators, recycling collection service providers and any other enterprise or organisation which may be well placed to provide the information jurisdictions require”.</u></p> <p>The original objective of Clause 17 was to create the authority to collect a specific data set which related to local government operated kerbside recycling systems. The clause was apparently drafted on the basis of an assumption that the best collection points for that data set would be local government. We take the view that this assumption is invalid. We also believe that the objective should be updated in line with the expansion of the Covenant to consider away-from-home recovery of packaging materials. (2)</p>	<p>Local government has the contractual relationship with material recovery facility operators and are therefore the best point in the chain to provide data relating to kerbside recycling. When originally made, it was anticipated that no change to the services provided by material recovery facility operators and collection service providers would result from the NEPM. The inclusion of new data reporting obligations on these service providers would need to be subject to an appropriate consultation process. The Covenant is putting new processes in place to gather away-from-home data.</p>
<p>We believe that an effective data collection system will require jurisdictions to also collect data directly from recyclers and re-processors. (5)</p>	<p>The Covenant is putting new processes in place to gather away-from-home data.</p>

CLAUSE 17 - COLLECTION AND PARTICIPATION DATA

Comment	Response
<p>Suggested amendment to Cl 17 placing data provision requirements on operators of recycling collection services and materials recovery systems.</p> <p>Involving collectors and MRF operators in data collection will be more efficient in some cases and will be necessary to expand data collection beyond kerbside.</p> <p>Granting the jurisdictions power to require data from operators and enterprises provides data to monitor progress in the away-from-home sector. The proposed NEPM variation incorrectly assumes that the away-from-home sector will consist of recycling services operated by Local Governments in public places. The formulation of targets has contemplated additional packaging material being collected from a range of sources, including pre-consumer sources like distribution packaging. This widening of the Covenant's ambit has to be reflected in a widening of the measurement scope. (2)</p>	<p>Local government has the contractual relationship with material recovery facility operators and are therefore the best point in the chain to provide data relating to kerbside recycling. When originally made, it was anticipated that no change to the services provided by material recovery facility operators and collection service providers would result from the NEPM. The inclusion of new data reporting obligations on these service providers would need to be subject to an appropriate consultation process. The covenant is putting new processes in place to gather away-from-home data. In addition, many jurisdictions already have appropriate legislation that could be utilised in certain circumstances to require information.</p>
<p>Suggested amendment to Cl 17, add sub-clause: "The jurisdictions may collectively decide to permit the data required under clause 17 to be collected by the data management organisation nominated under the Covenant agreement".</p> <p>The NEPM should facilitate the centralisation of data collection by the jurisdictions. (2)</p>	<p>Cl 17 refers to kerbside collection and participation data and the centralised collation of data is covered by NEPM in Cl 21. The Covenant also commits to developing consistent data collection methodologies, including appropriate collection and verification mechanisms, for implementation by all jurisdictions.</p>
<p>Local government should be consulted with respect to the timeframes required to collect data, once the data collection requirements have been clarified. (5)</p>	<p>Cl 17(5)(b) has been amended to include reference to consultation with local government.</p>
<p>Suggested amendments to Cl 17(1):</p> <ul style="list-style-type: none"> (a) definition required; (b) there are considerable costs involved in measuring participation rates and doubts that this measure is a key indicator of performance – the yield and value of materials, collection costs and contamination rates are considered more relevant measures of performance; (c) definition required; (d) may be subject to confidentiality clauses in contracts; (e) this data should be collected directly from the MRF operator; (f) as (e) above. <p>At this stage of implementation of the new</p>	<p>These matters are covered in existing implementation guidelines supporting the NEPM that will be reviewed in consultation with local government prior to the commencement of the 2005-06 reporting period on 1 July 2006.</p>

CLAUSE 17 - COLLECTION AND PARTICIPATION DATA

Comment	Response
Covenant, we believe the NEPM should indicate the information required, and signal the need for further definition and consultation with local government before specifying precisely what data is to be collected from whom. (5)	
The accepted methodology in gathering data regarding the waste and resource recovery industries has been to distribute a questionnaire to local government. This attempts to transfer the responsibility and the considerable cost of data collection onto local government. Rather than requiring local government to require information from others, jurisdictions should seek the information directly. (5)	Local government has the contractual relationship with material recovery facility operators and are therefore the best point in the chain to provide data relating to kerbside recycling.

CLAUSE 18 - SUPPORTING DATA

Comment	Response
In the case of smaller jurisdictions, the conduct of annual brand owner surveys impacts significantly on jurisdictional resources. We recommend that for smaller jurisdictions, for example with populations less than 1 million, the survey be only required once every three years. (1)	This clause in the original NEPM was amended to introduce a cost-effective alternative method (surveys of packaging products sold by retailers) for jurisdictions to assist in ascertaining the effectiveness of the NEPM in preventing free riding. The impact of this alternative option on jurisdictions, and particularly the cost implications for smaller jurisdictions, will be taken into account in fulfilling the requirements of Cl 20(5) in relation to an agreed survey methodology.

CLAUSE 19 - INFORMATION RELATING TO THE NATIONAL PACKAGING COVENANT

Comment	Response
Suggested amendment to Cl 19(3): "Data reported to the Covenant Council by Covenant signatories against the key performance indicators and targets specified in the National Packaging Covenant. The Covenant Council shall provide Council with this data in a disaggregated form which permits comparisons between different material types, different jurisdictions and different collection systems". The KPIs and targets of the Covenant have been developed as the best indicators of overall performance and these indicators should form the basis for the EPHC's statement of overall performance. (2)	The Covenant commits to developing consistent data collection and reporting mechanisms, for implementation by signatories. Data is required under the KPIs for different material types and collection systems. Each jurisdiction, as a signatory, will be required to provide this.

GENERAL COMMENTS

Comment	Response
We agree that the NPC/NEPM package offers the best policy structure to support innovation, address the whole lifecycle of packaging, address the wider post-consumer stream of used packaging and support Australia's existing social, economic and government structures. (4)	Noted
It is of deep concern that the [Covenant] RIS fails to identify any significant costs to government, given that a key failing of the last Covenant was a failure of jurisdictions to enforce the NEPM or match industry dollars to implement new initiatives. Industry has made it clear that for recycling rates to be lifted they will need to see the NEPM enforced, and a tightening up on the small business sector. (7)	Governments have undertaken to increase enforcement action under the NEPM and the Covenant now includes strengthened governance and compliance enforcement procedures to ensure that this will occur. It is envisaged that the current 'small business' threshold criterion will be replaced by criteria that can be more easily applied. This change will provide a simpler, transparent and more cost effective approach.
<p>The NEPM does not allow for the treatment of companies and packaging types in classes. This has the combined effect of making management less effective and enforcement prohibitively expensive and grossly prejudicial to the competitiveness of individual companies. The NEPM should be modified to enable it to be applied to groups of companies and/or to particular sets of packaging types.</p> <p>The Covenant and the NEPM need to allow the jurisdictions to address specific problems associated with material types, not simply with poorly performing companies.</p> <p>The Covenant and the NEPM need to allow the jurisdictions to impose collective measures on groups of companies which persist in problematic packaging practices.</p> <p>We recognise that the first Covenant established the principle of non-discrimination between packaging types and that this limitation has restricted the ability of the NEPM's take-back provisions to be applied to classes of packaging materials. (2)</p>	The Covenant is the lead document in terms of the management of used packaging materials in Australia. Industry signatories produce action plans for evaluating and improving environmental outcomes with respect to their packaging. Companies choose undertakings in areas relevant to them, including research, design and use of specific material types. The NEPM supplements the Covenant and is not meant to be a stand-alone instrument mirroring all of the Covenant's elements and objectives. The Covenant focuses on product stewardship and shared responsibility, the NEPM focuses on individual brand owner responsibility as the most efficient mechanism available to support the Covenant, and the point in the packaging supply chain with the most capacity to influence others.

GENERAL COMMENTS

Comment	Response
It is likely that the NEPM has encouraged a high participation rate in the Covenant. There is at least evidence that this outcome has been achieved during the time the NEPM was in place. However, we are aware of very little empirical evidence to show that manufacturers/fillers have been minimising packaging waste, much less that the NEPM has provided a strong incentive for this to happen. The statement that the existing NEPM obligations have been effective in achieving the desired environmental outcomes is perhaps the most important conclusion contained in the impact statement. It is not acceptable to draw this conclusion without describing the evidence on which it is based. (2)	Noted.