



USED PACKAGING MATERIALS

**Summary of submissions received by the
National Environment Protection Council
in relation to the draft National Environment
Protection Measure and Impact Statement
for Used Packaging Materials**

and

**National Environment Protection Council's
responses to those submissions**

May 1999

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1. INTRODUCTION

This document is an analysis of public submissions to the draft National Environment Protection Measure for Used Packaging Materials.

At its meeting in November 1997, the National Environment Protection Council (NEPC) agreed to initiate a draft National Environment Protection Measure (Measure) for Used Packaging Materials. NEPC's decision was advertised in the Commonwealth Government Gazette, and the metropolitan daily press on Saturday 22 November 1997 and Wednesday 26 November 1997.

This Measure is to provide support for the National Packaging Covenant (Covenant) and ensure that Covenant signatories are not competitively disadvantaged.

The Covenant is a voluntary agreement aimed at improving the recovery, re-use and recycling of used domestic consumer packaging materials in Australia, and incorporates the principles of product stewardship and shared responsibility.

2. SUMMARY OF KEY CHANGES BETWEEN THE DRAFT USED PACKAGING MATERIALS MEASURE AND THE FINAL VERSION

Following consideration of:

- the submissions received by NEPC in relation to the draft Used Packaging Materials Measure and Impact Statement;
- advice provided by the Non-Government Organisation Advisory Group;
- input from the Jurisdictional Reference Network and the Project Team; and
- legal drafting advice

a number of changes to the draft Used Packaging Materials Measure have been included in the final version of the Measure. In addition to the substantive changes listed below, the Measure has been extensively re-drafted to improve the order and clarity of many of its clauses. These drafting changes, where they do not alter the intent or effect of the Measure, are not listed below.

The key changes are as follows:

CLAUSE 2 – COMMENCEMENT

Amended to make it clear that the Measure’s term is directly linked to that of the National Packaging Covenant.

CLAUSE 3 – DEFINITIONS

“**Brand owner**” has been amended to clarify that brand owner responsibility relates to specific products rather than classes of products.

CLAUSE 9 – STATUTORY OBLIGATIONS, RIGHTS AND PENALTIES

Clause 9(2)(d) has been amended to provide brand owners with a broader range of consumer information options.

Clause 9(4) has been amended to include references to non-kerbside recovery systems, technology, competition and Covenant signatory achievements. These parameters are given to guide jurisdictions in drafting the legislative instruments which will give effect to the NEPM at jurisdictional level.

CLAUSE 10 – ENFORCEMENT OF NEPM OBLIGATIONS

The draft NEPM has been amended by inserting a new Clause 10(1) setting out parameters to guide jurisdictions in securing compliance with the obligations contained in Clause 9.

CLAUSE 12 – THRESHOLDS

A note has been inserted acknowledging that jurisdictions may choose to provide exemptions, for example, in relation to sunrise industries.

CLAUSE 16 – RECOVERY DATA

Clause 16(1) amended by adding information on how consumers have been advised as to how packaging is to be recovered, to the information brand owners are required to record.

Clarification provided that for the purposes of this clause, “material” means the principal component or components of the container and does not include incidental components such as labels and closures.

3. THE PROCESS

3.1 Development of the Measure

A small project team of officers drawn from New South Wales, Queensland and Victoria, as well as a representative from the Australian Local Government Association and one from industry, and a project manager from the NEPC Service Corporation has carried out the development of the Used Packaging Materials Measure. A Jurisdictional Reference Network with representation from each participating jurisdiction (Commonwealth, States and Territories) was established to advise the project team.

During the preparation of the draft Measure and Impact Statement, NEPC sought the participation of the general public and interested parties by advertising in major newspapers across Australia. Public meetings were held by the jurisdictions in all capital cities and some regional centres.

To facilitate consultation, a Non-Government Organisations (NGO) Advisory Group was formed. This Group was charged with actively seeking views from its constituent organisations and providing high-level policy advice to the NEPC Committee.

A discussion paper containing a notional Measure and Impact Statement for Used Packaging Materials was released for public comment to provide a basis for discussion on what the formal draft NEPM and Impact Statement might include. The discussion paper was released on 6 July 1998, by NEPC Committee for a period of six weeks until 14 August 1998, and was circulated to all individuals and organisations that expressed interest during the preparation of the notional Measure. It was also distributed to Commonwealth, State and Territory Government departments, and to key stakeholders identified by jurisdictions. Key stakeholder meetings were held nationally to assist people who intended to make a submission.

The project team analysed the submissions and sought advice from the Jurisdictional Reference Network, the Non-government Organisation Advisory Group and NEPC Committee in incorporating relevant comments into the draft Measure and Impact Statement.

A formal draft Measure and Impact Statement for Used Packaging Materials was released for public comment on 11 January 1999 by the National Environment Protection Council for a period of two months until 19 March 1999. The availability of the draft Measure, and notification of the associated public meetings, were advertised in statewide and national newspapers. Submissions closed on 19 March 1999. Fifty-four submissions were received from individuals and groups in the community including environmental groups, concerned individuals, unions, government agencies, industry bodies, companies and community groups with a special interest in the development of the Measure.

The project team analysed the submissions and again sought advice from the Jurisdictional Reference Network, and NEPC Committee in developing a response to the issues raised and ultimately in revising the draft Measure.

4. PUBLIC PARTICIPATION AND CONSULTATION PROGRAM

The Measure development process is an extensive and open consultative process. The following sections outline the key components of that consultative process.

4.1 Protocol for consultation

A “Protocol for Consultation by NEPC” was developed (see Appendix C).

In accordance with this protocol, the overall aims of the Used Packaging Materials consultation were:

- to canvas the range of views on key issues and determine areas of agreement and disagreement among stakeholders; and
- to ensure that all views were taken into consideration in framing recommendations and reports to NEPC on the Used Packaging Materials National Environment Protection Measure.

Interested parties were given the opportunity to provide written comment through the Jurisdictional Reference Network, the NGO Advisory Group or directly to the Project Manager, NEPC Service Corporation.

In accordance with the protocol, consultation with stakeholders occurred through:

- formation of a broadly representative NGO advisory group;
- targeted consultation with NGO focus groups; and
- broad based consultation within the community.

Consultation within the individual jurisdictions was the responsibility of the Jurisdictional Reference Network and mechanisms used included workshops, meetings, focus groups and the taking of submissions.

4.2 NEPC public participation and consultation

The public participation and consultation program included:

- promotion of the availability of the draft Measure in major metropolitan newspapers, including an invitation to provide a submission;
- the establishment of a 1-800 telephone number to facilitate access to documents;
- the formation of a NGO Advisory Group to actively seek views from its constituent organisations; and
- a series of public meetings held across Australia, which were attended by a range of stakeholders including Commonwealth, State and local government, industry, and environment and community groups (see Appendix D).

The publication of this Summary document signals the end of the statutory and informal consultation processes for the development of the Used Packaging Materials Measure. Networks and contacts have been established within Government, business and the community by all those who participated in the development of this Measure and these networks have not only strongly contributed to the development of the Measure, but will greatly assist its implementation.

All jurisdictions have a strong commitment to a continuing consultation process in the implementation of this Measure.

5. SUMMARY OF PUBLIC COMMENT AND NEPC RESPONSE

5.1 Overview of comments received and their assessment

THE COVENANT/NEPM RELATIONSHIP

Industry views on the need for a NEPM

Industry support for the NEPM is not unanimous. A range of views on the need for a NEPM has been expressed by industry, for example: -

- the Covenant should be truly voluntary, with businesses signing up in the knowledge that others may not sign;
- debate regarding the Covenant and its regulatory safety net has progressed significantly, the objective of support for the Covenant has been achieved, and it is now reasonable to question the degree to which regulatory instruments now need to be developed and applied;
- the public interest is now best served by developing the NEPM to the stage of approval by NEPC but then defer enactment by state legislatures; and
- a regulatory safety net is essential if the Covenant is to be implemented; there will be no Covenant without it.

A condition of the Covenant and of the transitional arrangements under the Covenant relating to kerbside structural reform is that a regulatory safety net be developed and implemented. Any amendment to remove the safety net condition would need to be agreed between the Covenant negotiating parties.

Common misunderstandings of the NEPM's role

The intent of the NEPM is not to mirror the Covenant but to support it in the most strategically effective manner possible. Many of the comments arising from the consultation process indicate a misunderstanding of the Covenant/NEPM relationship and, consequently, the basis on which the NEPM has been structured and on which its impacts should be assessed.

Common misunderstandings include: -

- a perceived need for the NEPM's content to mimic all of the Covenant's elements and objectives;
- a perception that the NEPM will set an undesirable precedent for future government regulatory action in relation to take back and extended producer responsibility; and
- a perception that the Impact Statement should depend on detailed economic modelling of the impact of the NEPM, including quantitative assessment of the costs and environmental effects of packaging and of kerbside collection systems.

With respect to the first dot point, a regulatory scheme imposed by governments is intrinsically less flexible than the self-regulatory 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 chain with the most capacity to influence others.

With respect to the second dot point, precedent-setting concerns are unfounded. The NEPM's goal, the materials covered, brand owner performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant. All jurisdictions are familiar with European mandatory take-back models and, in the absence of a Covenant/NEPM package, could adopt them as a basis for policy if they chose. The NEPM constrains the use of mandatory, arbitrary take back approaches.

The third dot point is considered in detail later in this section under the heading "Impact Statement Issues".

NEPM ISSUES

Brand owner focus

A number of submissions disputed the power of the brand owner.

Brand owners are nominated in the NEPM as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. The fact that this capacity is relative rather than absolute (in that small brand owners may not have the same level of influence as large brand owners), is the reason for the Covenant model of shared responsibility.

Objective advice on packaging regulation in other jurisdictions around the world supports this approach. Major brand owners do have the capacity to exercise considerable influence over their packaging manufacturers.

Several submissions claimed that parallel importing would make the brand owner focus unworkable. It is acknowledged that several parties may qualify as “brand owners” in relation to a product retailed under the same brand name but which derives from different sources (within or outside of Australia). The obligation rests with each brand owner for the amount of that product which they put on the market.

In order to clarify that brand owner responsibility relates to specific products rather than classes of products, the definition of brand owner in clause 3 of the NEPM has been amended

Imposing the obligation on brand owners is also administratively efficient.

Scope of NEPM

The scope of the Covenant and NEPM are expressed so as not to be limited to particular materials in current use, as these may change in response to market pressures and technological developments. Both instruments, however, are restricted to the packaging of retail consumer products (which include but are not limited to food and grocery items). Numerically, food and grocery items far outweigh other packaged items in the post consumer waste stream.

Some submissions were concerned that the scope of the Covenant and the NEPM do not match. They argue that the scope of the NEPM is inappropriately broader and more prescriptive (eg. by including reference to consumption of products in hotels, restaurants and public places).

The Covenant covers “consumer packaging and household paper”. There is, however, nothing in the Covenant to indicate that it is limited to those materials only when found in the domestic waste stream. Nor does the Covenant provide a means for companies to be negligent in the discharge of their product stewardship undertakings in respect of non-domestic outlets for their products. The Covenant clearly contemplates that signatories will develop environmental management plans including waste avoidance and minimisation strategies regardless of the destination of their products.

The scope of the NEPM therefore falls within the scope of the Covenant and is consistent with the NEPM’s complementary role.

Labelling

Several submissions were concerned that the requirement in the draft NEPM to include information on the product label or package is not practical. They argue that the provisions for recovery and recycling differ from place to place and that it is not possible for brand owners to provide adequate information about their recovery processes via this medium.

Clause 9(2)(d) of the NEPM has therefore been amended to provide for a broader range of consumer information options, however these must be exercised in the context of current Trade Practices Act provisions, which require truth and accuracy in labelling.

Focus on recovery and recycling

In identifying material types, the draft NEPM guidelines suggested that jurisdictions should “have regard to those materials conventionally collected for recycling”.

A number of submissions took the view that the effectiveness of the NEPM as a safety net will be reduced if its scope is limited to conventionally recycled materials. While the focus on recovery and recycling addresses the competitive disadvantage issue, brand owners using non-recyclable materials would not be caught by the NEPM, providing no incentive for them to join the Covenant.

Clause 9(4) of the NEPM has therefore been amended to include references to non-kerbside recovery systems, technology, competition and Covenant signatory achievements. These parameters are given to guide jurisdictions in drafting the actual regulatory instruments which will give effect to the NEPM at jurisdictional level.

Performance expectation

Several submissions were concerned that the draft NEPM does not provide adequate uniformity in relation to the actual performance levels that will be required of brand owners.

The NEPM is intended to provide consistency of outcomes, and to provide flexibility at jurisdictional level to deal with practical implementation issues. The NEPM needs to be unambiguous rather than precise so as to ensure a consistent outcome which takes account of differences at jurisdictional level. Performance outcomes in a State/Territory with a low population /population density may reasonably be lower than in a jurisdiction with a high population/population density to produce a national outcome at or about desired levels.

Clause 9(5) of the NEPM intends to guide the research of the implementing jurisdictions. The emphasis of clause 9(5) is that performance levels should not be set arbitrarily. Clause 9(5) indicates that the performance of Covenant signatories is to be used by jurisdictions in establishing the required performance level of brand owners. The Covenant is not prescriptive and provides a menu of options which individual companies can apply depending on their own individual circumstances. Covenant signatories will not “determine” the level of performance required of brand owners under the NEPM. Rather, jurisdictions would have regard to the performance of relevant Covenant signatories as a start point for their considerations, which would then be modified by the jurisdiction in the light of its own circumstances and expectations and in the light of the amended clause 9(4).

Paradoxically, calls for performance requirements to be uniformly precise and measurable have quite often been made alongside comments that the environmental and economic impacts of recovering packaging differ significantly between centres of high population and remote and sparsely settled areas.

It should be noted that no targets are written into the Covenant. The Covenant Regulation Impact Statement strongly supports the argument that it is very complex for governments to set and adjust legislated take back targets that can be quickly adapted in response to changing economic and technological circumstances. The Covenant moves away from the current regulatory focus on targets which, as the Industry Commission points out “generate hidden economic costs which will ultimately be passed on” (Industry Commission, 1995, Packaging and Labelling).

Enforcement of NEPM obligations

The Impact Statement proposes the adoption of a complaints based enforcement system. A strong case was made during the consultation phase for the policy intent of this proposal to be reflected in the NEPM.

The NEPM has been amended by inserting a new clause 10(1) setting out parameters to guide jurisdictions in securing compliance with the obligations contained in clause 9.

Importantly, this amendment recommends that jurisdictions adopt an enforcement protocol which ensures that offences are prosecuted only when an informed choice has been made by the brand owner both not to join the Covenant and not to comply with NEPM obligations, and other options have been exhausted.

Thresholds and exemptions

A number of submissions seek to exempt small/medium business from the requirements of the NEPM.

The NEPM is drafted so as to generally advocate against exemptions without seeking to override jurisdictional prerogatives (e.g. in relation to sunrise industries).

Exemption thresholds are rare in both Australian and overseas packaging regulatory regimes. No thresholds have been incorporated in the Covenant or the NEPM.

Arguments favouring thresholds assume that the threshold is “fair” when in practice it is arbitrary. The selection of any threshold will always be unfair to those just above the threshold, providing encouragement to structure operations or engage in other devices to avoid the threshold. For example, in Ireland, many of the “small” players which fall below the nominated thresholds are major companies which form the bedrock of the recovery organisations in other EU member states. The United Kingdom has not adopted thresholds in the longer term although they did adopt turnover per year in the short term to phase in their provisions. This approach, however, is under review following complaints that some businesses are structuring themselves to avoid the threshold. Plastics converters, in particular, have complained that they are facing unfair competition from importers falling below the nominated threshold.

In selected markets, small companies can and do pose a major commercial challenge to larger companies. In the Australian context, industry sources have indicated that some of the larger companies have made the point that in particular segments, their market share is being eroded, not by their large competitors but by smaller producers who are targeting particular market segments. If this is achieved through free riding or negligence of product stewardship, then it is appropriate for it to be addressed through the Covenant and NEPM by ensuring that the full range of enterprises are covered.

The argument for the exemption of small/medium enterprises is also based on the assumption that small businesses neither offer nor suffer from competitive disadvantage as a result of free riding. Free riding is an issue for Australian small business. An Australian small manufacturer of a packaged product makes a contribution to existing State/Territory regulatory requirements through the price paid for packaging. An importer (whether large or small) of an identical product not only has a competitive advantage in that its packaging does not include an element related to compliance with existing environment regimes, and imposes an additional cost on Australian producers and local government by free riding the collection infrastructure.

An exemption threshold in favour of small/medium domestic producers would in all probability produce the risk of allegations from the World Trade Organisation (WTO) that the NEPM puts Australian businesses in a better position to compete with importers. It is a fundamental WTO principle that domestic producers and importers are treated on an equal basis in any system.

In pursuing enforcement activities, it is envisaged jurisdictions will operate in a strategic fashion in the public interest. This will have the practical effect of providing de facto exemptions to small/medium enterprises unless jurisdictions make a conscious effort to pursue them. Establishing a formal de jure exemption for small/medium enterprises to replace the existing de facto exemptions which occur in most jurisdictions would set a major precedent.

IMPACT STATEMENT ISSUES

Numbers of brand owners

A number of submissions put forward arguments that the NEPM will apply to a large number of companies. The numbers suggested range from 40,000 (based on trademarks) to over 1 million (based on registered companies).

These submissions appear to have made two significant misinterpretations of the NEPM.

Firstly, they have positioned the NEPM as a stand alone instrument despite it being clear that its purpose is limited to supporting the Covenant. As such it is implicit that the NEPM will affect only a very small proportion of packaged consumer goods.

Secondly, they ignore the terminology used in the NEPM which limits the obligation to “brand owners”. This leads to highly inflated estimates of the impact of the NEPM. The NEPM is not targeted at trademarks nor registered companies generally, so any data sets used need to be more specific than those put forward.

Using the definition of “brand owner” set out in the NEPM, an estimate of the number of businesses affected by the NEPM could be derived from data in the Industry Yearbook and Directory (1999 edition) published by Foodweek and Liquor Week. The Brand Index covers food, beverages, cosmetics, cleaning products, hardware, electronics, personal care, kitchenware, garden products, pet food, some clothing, and tobacco. 3,337 brands are listed, owned by 439 brand owners. It could therefore be argued that the maximum catchment for the NEPM is 439 nationally assuming that no brand owner prefers the Covenant. If the proportion of brand owners to brands from this data (about 13%) is extrapolated to all registered trademarks (including those completely unrelated to consumer packaged products), the resulting number of trademark owners would be about 5,200. If the Covenant is successful in its aim of having a large take up in industry, the number caught by the NEPM might be as low as 50 or 500 respectively (based on the assumption that the major packaging producers and enterprises representing 90% of grocery items retailed in Australia will be Covenant signatories).

It is not suggested that either 439 or 5,200 is the precise number of businesses likely to be considered “brand owners” under the NEPM nor necessarily that the Covenant will be completely successful in attracting the targeted take-up. These data do however suggest that, as indicated in the Impact Statement, the number of companies affected by the NEPM is small.

Cost benefit analyses and impact assessment

A number of submissions allege that the Impact Statement fails to adequately model the impact of the NEPM. They call for further extensive economic modelling, not only on the impact of the NEPM but also in relation to broader research into recycling systems.

NEPM Impact Statements cannot substitute for research programs. In this case it should be noted that an independent economic assessment of kerbside recycling systems is to be carried out under the transitional arrangements associated with the Covenant, and that further analysis of the type sought in submissions is likely to flow from the undertakings foreshadowed in the Industry Strategy for Sustainable Development associated with the Covenant.

The role of the Impact Statement has been misinterpreted in many submissions. The NEPC Protocol for Development of Impact Statements (29 November 1996, p.3) provides that an Impact Statement should:

- ...be a commonsense document which provides useful information to members of the community about the environmental, social and economic implications of a proposed NEPM. The focus of the document should be to provide a reasonable basis for informed comment and judgement on the proposed NEPM rather than a detailed technical analysis of the detail of the proposed NEPM.

The Impact Statement fulfils this role. In addition, the Commonwealth Office of Regulation Review (ORR) has reviewed the Impact Statement and is satisfied that it is “a thorough and clear document and satisfies the criteria” set out in COAG’s *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (ORR letter to the Chair of the ANZECC Standing Committee on Environment Protection dated 8 December 1998).

The NEPM is essentially an agreement amongst governments to constrain their policy options within the framework established by the NEPM. Because its core content is in guidelines to jurisdictions, the impacts cannot be quantified with any degree of accuracy until the NEPM is implemented at jurisdictional level.

The regulatory methods used to implement the NEPM would vary according to the instrument used in a jurisdiction. At the margin, impacts may vary. While it may be feasible in due course to model the instruments put in place by the various jurisdictions and to aggregate the results, it is not known at this stage precisely how different jurisdictions will implement the NEPM.

If an attempt were made now to model on the basis of the non-mandatory guidelines, the first set of variables would be the full range of legislative and regulatory options available to governments, including non-implementation, legislation, regulation, State Environment Protection Policies, Industry Waste Reduction Agreements, and Industry Waste Reduction Plans.

Further variables will arise from jurisdictional decisions within those options such as:

- what materials are nominated for inclusion within the NEPM obligations;
- the performance level applied by jurisdictions; and
- any exemptions or deemed compliance.

Other factors with a high degree of variability arise through the choices businesses will be able to make such as:

- whether or not to join the Covenant;
- whether the relevant materials are to be reused, recycled or have their energy recovered;
- the medium used to inform consumers as to how the packaging is to be recovered; and
- whether to fulfil their NEPM obligations alone, cooperatively or through contract arrangements with suppliers or recovery agencies.

Factors external to both governments and individual businesses include the value of packaging materials in secondary markets and the propensity to complain in a complaints-based enforcement regime.

In the context of the NEPM guidelines, the outcome is dependent on so many conditions that no reliance could be placed on the numerical result. The numerous permutations suggest that quantitative analysis of the kind requested in submissions is unlikely to contribute to a commonsense document of the sort described in the NEPC Protocol.

Impact on small business

A number of submissions allege that the costs of complying with the NEPM will be significant for small business, and that it will place a higher burden on small businesses compared with large businesses due to the ability of large businesses to absorb any added cost.

The submissions received do not establish that there will be significant costs to small business. The conclusion that the NEPM will impose considerable costs is not justified by the premises contained in these submissions, which generally: -

- fail to do more than assert that the NEPM has the effect of imposing costs on small business without any consideration of existing regulation or waste management options created by the Covenant/ NEPM package;

- fail to demonstrate that where costs might be incurred these are not negligible marginal costs over and above the regulatory compliance costs currently integrated into package prices (in accordance with the Industry Commission view of the impact of current target based approaches);
- fail to take into account that a reduction in costs for packaging manufacturers resulting from the Covenant's objective of placing recycling activity on a market basis would not lead to reduced costs being passed on to small business buyers of packaging;
- fail to examine the increased number of options available to small business to discharge product stewardship other than through a packaging supplier; and
- fail to recognise that some means of recovery of recyclable materials which may be practised by brand owners can have positive cash flow and profitability effects.

Compliance costs associated with the Covenant component of the package are intended to be lower than compliance costs associated with existing and prospective State/Territory regimes through the development of a consistent approach across jurisdictions. This was a major consideration in first contemplating national approaches to industry waste reduction agreements and subsequently the Covenant/NEPM package.

The Covenant caters for the interests of small players with its flexible provisions for action plans, which allows these to be developed on a collective or sectoral basis. While the opportunities for collective approaches under the NEPM are more restricted (for example, the need for individual record keeping), there is provision for such arrangements as far as recovery and utilisation requirements are concerned. Any NEPM costs will be dependent on the manner in which the brand owner exercises its obligations.

With respect to claims that compliance burdens are proportionately greater in smaller companies, it is not the intention to impose unnecessary costs on small businesses but at the same time there is no justification for the costs incurred from their activities to be imposed on their competitors, large or small. The notion that costs are absorbed by big business is refuted by industry which claims costs are passed on to customers. This view is supported by the Industry Commission.

If a business is to be affected by the NEPM it would be the result of a choice exercised by the business in its own self interest and presumably on a least cost basis. The NEPM is not intended to apply to the majority of small businesses – only those that are brand owners and prefer the NEPM to the Covenant.

5.2 Detailed Submissions and Responses

This Chapter presents a summary of public input to date so that stakeholders:

- have an understanding of the views being presented to NEPC; and
- can trace their input into the development of this Measure.

Many issues and comments were raised in more than one submission, and in different forms. Style and expressions differ from one submission to another, and thus issues are raised in different ways having different connotations, contexts and emphases. As it is not possible in this Summary to deal with all the subtleties emerging from such variations, an attempt has been made to group similar comments together. Similarly, an attempt has been made, where possible, to provide a single response which captures the key issues raised in submissions.

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.

This Chapter does not seek to make judgements about the content or accuracy of statements, although different views about particular issues are contrasted. Some of the information presented was anecdotal and varied in its degree of accuracy. Nevertheless, NEPC believes that, while it is important to base the

development of the Used Packaging Materials Measure on sound scientific and technical information, responses which may be less technically accurate also have a significant role to play in helping to design a regulatory safety-net such as this Measure. Such responses show the ways in which people interpret their experiences and may also highlight gaps in access to information or in knowledge.

There have been three versions of the draft National Environment Protection Measure for Used Packaging Materials:

1. the notional National Environment Protection Measure released with the Discussion Paper on 6 July 1998;
2. the formal draft National Environment Protection Measure released 11 January 1999; and
3. the revised draft National Environment Protection Measure developed in response to submissions received.

The comments made in public submissions refer to the draft document dated January 1999 (the left-hand column below), the responses by NEPC refer to the final document dated April 1999 (the right-hand column below).

The submissions are cited in the following manner. Submissions are given a unique number, in order of receipt, as indicated in Appendix A for those received during public consultation (11 January 1999 – 19 March 1999).

For example, the reference (B10) refers to a comment made by the Bicycle Federation of Australia during public consultation.

Many submitters provided comments on the National Packaging Covenant. These comments have been forwarded to the Covenant negotiating group for consideration. Issues which are pertinent to the Covenant alone have not been addressed in this document. Therefore, some submitters may not have any comments attributed to them.

The Proposed Self-Regulatory/Regulatory Safety-Net Approach	
A minimalist regulatory safety net to create a level playing field between signatories and non-signatories of the National Packaging Covenant is supported. The NEPM is viewed as the vehicle that will address “free loaders” within the system that are not committed to the recovery and re-use of their packaging material. B2	Support welcomed. The intent of the NEPM is to encourage membership of the Covenant which has very broad undertakings in relation to environmental management of packaging waste generally.
It is noted that the NEPM will not operate to directly address kerbside funding issues and that this issue has been explored in more detail in assessing the impacts of the Covenant... Supportive of the draft NEPM. B3	Agreed and support welcomed.
We are presented with yet another ‘impact statement for Used Packaging Materials’ based on the same utterly discredited principle of ‘voluntary system of industry self-regulation’, the very same system that has been extremely successful in preventing any progress in ‘producer responsibility’ and waste reduction (detailed under Part D-Executive Summary). B4	Disagree that this approach has failed to deliver progress in product stewardship and producer responsibility, as evidenced by the draft National Packaging Covenant.
As a Council committed to the principles of	The recognition by some local government

The Proposed Self-Regulatory/Regulatory Safety-Net Approach	
Local Agenda 21, we strongly support the National Packaging Covenant and the preparation of the draft National Environment Protection Measure as being an important step towards reflecting the true lifecycle economic and environmental costs of packaging. B7	authorities of the value of the package is noted in the context of the overall local government position.
The National Packaging Covenant and associated NEPM have been heralded as the mechanism to achieve an equitable distribution of recycling costs. It is disappointing that the proposals drafted to date only deliver a partial solution... Overall the Covenant and the NEPM are only framework documents for a raft of measures to be developed over time. This is a disappointing outcome to an already overdue process, which promised to provide solutions. B8	It is recognised that transparent, national policy development processes take longer to deliver detailed solutions, particularly where there are significant requirements for cultural change within the affected sectors.
The draft NEPM is a proposal to provide a head of power for State jurisdictions to legislate for improved rates of recycling for packaging materials from residential premises. B9	State jurisdictions already have this legislative responsibility. NEPC provides a forum for jurisdictions to agree on a consistent approach through NEPM guidelines. Where there is legislation, any performance expectations should be benchmarked against currently achieved performance.
ANZECC should remove the clause linking the Covenant with the NEPM, the Covenant would then be truly voluntary, as intended, and can be evaluated by possible signatories on its merits. The need for further action at a national level can be evaluated sensibly in the light of some experience with the improvements generated by the Covenant. B9	The Covenant is an agreement between all spheres of government and the packaging supply chain. ANZECC does not have the capacity to make a unilateral change to the draft which was prepared initially by industry. Any amendment would need to be agreed between the negotiating parties.
Participants in the Covenant negotiations should withdraw the requirement for a regulatory safety net for the Covenant because: <ul style="list-style-type: none"> - it is an unwarranted administrative burden, particularly on small business; - the businesses subject to the NEPM had no role in negotiating the requirements; - the Covenant is flexible, and resultant costs to signatories are low; - the target companies and compliance mechanisms are different; - the NEPM mechanisms are much more onerous than those in the Covenant; and - the NEPM and Covenant have different philosophical bases. B9	It remains a condition of the Covenant and of the transitional arrangements that a regulatory safety net be developed and implemented until such time as the condition is removed. See later comment on individual points.
The Measure is claimed to support the Covenant. However the target businesses and the type of mechanisms suggested for the Covenant	The intent of the NEPM is not to mirror the Covenant but to support it in the most strategically effective manner possible.

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<p>and Measure are significantly different. The Covenant is based on the US political principles of product stewardship and shared responsibility. The Measure on the other hand follows the EU model of extended producer responsibility, whereby one industry (brand owners) in the product cycle is allocated the majority of the responsibility. The linkage between brand owner and product stewardship is inappropriate for most small businesses.</p> <p>B9</p>	<p>A regulatory scheme imposed by governments is intrinsically less flexible than the self-regulatory Covenant.</p> <p>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 chain with the most capacity to influence others.</p> <p>The NEPM does not mimic the EU model in that it involves no mandatory or arbitrary targets and does not embrace the philosophy of extended producer responsibility which imposes all responsibility for the lifecycle of the product on the original producer.</p>
<p>It is normal practice that a business makes decisions that minimise the cost of packaging consistent with the overall essential objectives of protecting the contents from contamination, deterioration and wastage, reducing the costs of transportation and attracting consumers.</p> <p>B9</p>	<p>The whole Covenant/NEPM package is intended to help businesses to incorporate environmental considerations in to their usual decision making processes about packaging, in line with the Industry Environmental Code of Practice for Packaging. The value of packaging in preventing contamination etc is recognised and accepted.</p>
<p>Significant parts of the community believe that because some recycling is good, more is better. Householders support kerbside collection politically, partly because they continue to be misinformed about the costs and the true environmental effects of packaging and of kerbside collection systems. The NEPM and its Impact Statement contribute to this misinformation... The WA recycling system operates close to optimum, and is sufficiently flexible to remain optimum in response to changing markets and regulations.</p> <p>B9</p>	<p>The implication that the NEPM is solely based on the community attitudes described is false. Concerns that the NEPM will set an undesirable precedent for future government regulatory action are ill founded. It is a safety net only. The NEPM's goal, the materials covered, brand owner performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant.</p> <p>The Covenant aims to optimise recycling and the NEPM supports that approach by requiring jurisdictions to link performance requirements to the achievements of Covenant signatories.</p> <p>Two transitional mechanisms under the Covenant are (1) an independent assessment of kerbside recycling and (2) a broad community education strategy to ensure that the community is fully informed of the economic and environmental impacts of recycling.</p> <p>If the situation in WA is as described, then WA industries would presumably be in a position to submit Covenant Action Plans based on their current activities, or to secure an exemption</p>

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	under clause 10 of the NEPM.
<p>Industry does not support the NEPM. Business support for the NEPM is confined to the participants in the Covenant negotiations, as it is a means of spreading the costs of the Covenant that they have developed under some duress. Negotiation of the Covenant has excluded the great majority of brand owners. Consultation for the NEPM has been narrow and unrepresentative of the brand owners that would be required to respond.</p> <p>B9</p>	<p>It is acknowledged that industry support for the NEPM is not unanimous.</p> <p>Disagree that the NEPM will spread the costs of the Covenant.</p> <p>As is customary in developing policy approaches, initial negotiations have been conducted through associations which claim to represent significant proportions of the industry sectors to be affected by the proposed policy. The initial development was followed by widely advertised public consultation in two rounds over nine months, public meetings and a call for submissions.</p>
<p>Many of ACCI's members' organisations who would be affected by such a Measure do not feel that they have been adequately consulted.</p> <p>B56</p>	<p>As is customary in developing policy approaches, initial negotiations have been conducted through associations, which claim to represent significant proportions of the industry sectors to be affected by the proposed policy. Every effort was made in the early scoping and drafting exercises to consult with a wide range of industry associations from the packaging chain with national coverage, including small and large businesses. The initial development was followed by widely advertised public consultation in two rounds over nine months, public meetings and a call for submissions.</p>
<p>It would appear that the Covenant was developed by the handful of large companies that dominate the markets for glass, aluminium and paper packaging in Australia. Hence the requirements of the Covenant reflect their needs and capacities and make no allowances for the difficulties that would be faced by small packaging businesses in developing and adhering to an Action Plan under the Covenant.</p> <p>The NEPM, as the draft legislation underpinning the Covenant, was developed in response to requests from the large packaging companies to protect them from other companies gaining a commercial advantage through not signing the Covenant. The draft NEPM also clearly reflects the needs of the large companies and has no regard for the ability of small packaging companies to meet its requirements.</p> <p>There appears to have been little or no input or involvement in the development of the Covenant</p>	<p>The Covenant negotiations have taken account of the size of businesses. Industry associations represented at the table have both large and small-scale members. The "Action Plan" concept is a flexible device which provides considerable flexibility for signatories to deliver the objectives of the Covenant according to their means. The Action Plan concept is a similar but less onerous requirement, than the requirements to which small business is already exposed in some jurisdictions.</p> <p>The NEPM, as a regulatory support instrument, is intrinsically less flexible. If a business were affected by the NEPM it would be the result of a choice exercised by a business in its own self-interest and presumably on a least cost basis. Such a business is already contributing to the cost of compliance with existing regulatory regimes through prices paid for packaging.</p> <p>Every effort was made in the early scoping and drafting exercises to consult with a wide range</p>

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<p>or the NEPM by small Western Australian packaging businesses.</p> <p>A small packaging business in Western Australia would face enormous difficulties operating a viable product recovery and recycling program given the small, widespread population base in Western Australia, long distances between major centres and the high costs of transporting recovered products to a recycling centre. For this reason, SBDC is unable to support the Covenant or the NEPM. B13</p>	<p>of industry associations from the packaging chain with national coverage, including small and large businesses. The initial development was followed by widely advertised public consultation in two rounds over nine months, public meetings and a call for submissions. The issue of adequate representation needs to be taken up with relevant industry associations.</p> <p>This comment appears to be based on the assumptions (1) that brand owners = packaging business and (2) that brand owners would be required individually to recover their own packaging materials regardless of its distribution. Neither of these assumptions is correct. It should be noted that the guidelines (1) put the obligation on brand owners and (2) allow them to discharge their obligations by recovering etc packaging materials equivalent to those in which their goods are sold (3) either singly or through cooperative/contractual arrangements.</p>
<p>We cannot estimate the number or proportion of businesses who will be affected by the Covenant/NEPM, but we believe that all participants in the packaging supply chain must be – those which have already not contributed to waste reduction will be and should be heavily affected, while those who already have waste agreements in place have already made their contributions. The current non-contributors must be brought up to the same level as the current contributors. Without a NEPM we believe the Covenant will be irrelevant. Without the NEPM teeth, the Covenant will fail and those industries which already have large stakes in waste agreements will abandon them for competitive reasons. B14</p>	<p>This statement reflects the current position of the packaging supply chain and was accepted by NEPC as providing a basis for a regulatory safety net.</p>
<p>From the data we have seen, it is hard to understand why the packaging industry has been ‘singled’ out to suffer the complex requirements of the NEPM. The proportion of packaging materials in landfill is reported as being very low compared with other waste streams. Packaging is an industry which is making large inroads into collection and recycling on a basis which is growing in economic viability. The NEPM seems to be an extremely complex way of solving a problem which has not been defined. B17</p>	<p>Far from being “singled out” the consumer packaging industry is only one of several industry sectors to have been the focus of action at both jurisdictional and national levels. Other sectors include construction and demolition waste, commercial and industrial waste, hazardous waste, medical and dental waste, green waste, farm chemicals and mining waste.</p> <p>Any single component of the waste stream will be considered a small proportion of the whole, particularly as waste is conventionally measured by weight rather than volume. Consumer packaging materials have a high proportion of</p>

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	<p>low weight, high volume components.</p> <p>The view expressed is not widely held and the NEPM has been developed to support self-regulatory measures to ensure sustainability of current packaging industry initiatives.</p>
<p>The entire approach to the Covenant and NEPM is over complex, littered with detailed questions which cannot be answered, limiting our confidence in supporting them. The approach lacks an overall need to exist, and if as we suspect it exists only because kerbside collection economics are unacceptable then that needs to be handled differently.</p> <p>Decision making and resulting action on waste in the packaging materials life cycle cannot ultimately be made by the brand owner, but this brand owner is being held responsible for the costs.</p> <p>The consultation and information phase of the process has been found to be inadequate, and the reluctance to adopt a target-based approach is an error.</p> <p>The costs to our company cannot be predicted, the need for the NEPM cannot be defined, the benefits uncertain, we do not support the Covenant/NEPM approach. B17</p>	<p>The Covenant follows a history of attempts at both national and jurisdictional levels to establish the roles and responsibilities of local government, state/commonwealth jurisdictions and industry in regard to the lifecycle management of consumer packaging. The Covenant identifies that current approaches to kerbside systems which involve over-market pricing of recovered materials and mutually exclusive claims of subsidisation by both local government and industry are not sustainable.</p> <p>Brand owners have been targeted for the following reasons: brand owners encompass importers as well as domestic producers; they can exert influence ‘up’ the packaging chain as customers of packaging manufacturers and fillers; and they can also pass costs ‘down’ the chain to wholesalers/ retailers and consumers. This is consistent with approaches taken in other jurisdictions.</p> <p>Every effort was made in the early scoping and drafting exercises to consult with a wide range of industry associations from the packaging chain with national coverage, including small and large businesses. The initial development was followed by widely advertised public consultation in two rounds over nine months, public meetings and a call for submissions. The issue of adequate representation needs to be taken up with relevant industry associations.</p> <p>It is agreed that costs to an individual company cannot be predicted until the company decides whether to join the Covenant or be covered by the NEPM, and also how it will deliver its obligations under either instrument. The NEPM makes an assumption that the preferred option would be to join the Covenant. The “Action Plan” concept under the Covenant is a device which provides considerable flexibility for signatories to deliver the objectives of the Covenant according to their means. The Action Plan concept is a similar but less onerous requirement, than the requirements to which business is already exposed in some</p>

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	<p>jurisdictions.</p> <p>If a business were affected by the NEPM it would be the result of a choice exercised by a business in its own self-interest and presumably on a least cost basis. Such a business is already contributing to the cost of compliance with existing regulatory regimes through prices paid for packaging.</p>
<p>At its meeting on 2 March 1999, the national executive of the ALGA resolved:</p> <p>To request the Chair of ANZECC to reconvene ANZECC with appropriate representation from ALGA in order to revisit the National Packaging Covenant and that ALGA will not sign the Covenant until such time as an appropriate decision has been made by the reconstituted ANZECC that meets Local Government's concerns.</p> <p>In view of this resolution, ALGA reserves its position on the NEPM at this time.</p> <p>B19, B53</p>	<p>Noted.</p>
<p>Redland Shire Council's concern is that industries will choose the Covenant because there are no targets, guidelines or goals for industry to work towards, just simply the achievement of 'continual improvement' in some way or form...Ultimately, the voluntary, self-regulatory approach of the Covenant and NEPM are too weak and lean towards benefiting industry more than the environment...However, the Covenant and NEPM should be given the opportunity to perform, provided that changes such as the inclusion of benchmarks and targets to the draft Covenant are adopted:</p> <ol style="list-style-type: none"> 1. Nationally consistent performance benchmarks and objectives should be established within a year; 2. Industry should be required to report to a peak industry body on a regular basis...The peak industry body should be required to report to government; 3. The public should have access to individual industries performance reports. <p>B21</p>	<p>This comment, whilst cautious, clearly recognises that cultural change involves some risks.</p> <p>Some targets are established by national IWRA's which are deemed to be Action Plans.</p> <p>All Covenant signatories are required to report to the Covenant Council annually.</p> <p>Action Plans are expected to set objectives and monitor performance outcomes. These and Reports to the Covenant Council will be public and could be expected to generate competition between Covenant signatories in relation to performance and, on that basis, would provide <u>de facto</u> targets for other Covenant signatories.</p>
<p>The importance of the draft NEPM cannot be underestimated. It has already served to ensure that more members of the packaging industry chain are taking the issues of packaging waste management and kerbside recycling, and their responsibilities regarding same, much more</p>	<p>Noted. It is one intent of the Covenant/NEPM package to raise the profile of environmental issues in corporate decision-making in Australia. The involvement of a broad range of industries is essential to this process.</p>

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<p>seriously. It is certainly pleasing to see the range of industries represented at the negotiations now expanded way beyond those usually involved such as the Beverage Industry Environment Council and the Packaging Council of Australia. The involvement of all industries currently at the table is acknowledged...</p> <p>Recent rumblings from some sectors that there is no longer a need for a NEPM must be ignored. All parties have agreed that the NEPM/Covenant form a complementary package, and the NEPM was after all primarily drafted to address industry's concern about free riders in the recycling system. The provision of a concise and effective regulatory safety net in the form of a NEPM is essential for the success of the current initiatives to secure the future of the recycling system and its various stakeholders.</p> <p>B23</p>	<p>Agreed. It remains a condition of the Covenant and the transitional funding arrangements that a NEPM be implemented.</p>
<p>The PCA Board decided that a regulatory safety net was essential if the Covenant was to be implemented. If there were no regulatory safety net, there would be no Covenant.</p> <p>B22</p>	<p>It remains a condition of the Covenant and of the transitional arrangements that a regulatory safety net be developed and implemented until such time as the condition is removed.</p>
<p>The Association acknowledges that the role of the NEPM is as a legislative safety net or support to the National Packaging Covenant. If we can be confident that the majority of industry members of the packaging chain will in fact become signatories to the Covenant, as assured by the industry representatives involved in Covenant discussions, it is recognised that the NEPM will have application to a relatively small percentage of those companies who might be regarded as "brand owners". Given the scope of the NEPM's intended application then, it appears to provide an effective raft of measures to support and complement the Covenant...</p> <p>Without the legislative safety net approach, local government would have even less confidence in the likelihood of positive outcomes of the Covenant... We do not necessarily concur with an apparently prevailing view within the industry group that the NEPM should simply "mirror" the Covenant. If this were the case, there would be little incentive apparent for a brand owner to consider joining the Covenant.</p> <p>B23</p>	<p>Agreed and support noted. It is especially noted that a regulation that effectively mirrored the Covenant would not provide a regulatory safety net but rather a regulatory alternative, and would call into question the effectiveness of industry's self-regulatory initiative.</p>
<p>It is interesting to note that whilst some industry sectors are querying the need for the NEPM, some members of our Association are querying the need for a Covenant. Some have expressed</p>	<p>If the Covenant were not effective in delivering meaningful packaging waste minimisation, then Ministers would wish to re-examine the issue. However, at this stage a self-regulatory approach</p>

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<p>the desire to dispense with the self regulatory approach of the Covenant, in preference to an all encompassing NEPM to provide a legislative mechanism forcing packaging producers to become involved with and supportive of recycling systems established by local government to manage their products. The Association recognises however, that if this were the scope of the NEPM, it would need to adopt a very different range of mechanisms to achieve what would necessarily be quite a different goal. Our members would appear to prefer options such as packaging levies, advance disposal fees and/or container deposit- like systems to be implemented if such a blanket legislative approach were to be undertaken. In all of these cases, our members envisage that a major proportion of the monies raised therein would go towards the provision and maintenance of recycling and re-use schemes, which would be of benefit to the entire community.</p> <p>B23</p>	<p>is preferred, supported by a NEPM.</p> <p>Revenue raising measures were found not suitable as a safety net for the reasons set out in the Impact Statement.</p>
<p>Reliance of the effectiveness of the NEPM on the successful and efficient administration of the Covenant. Several references are made within the NEPM to the Covenant, including regarding the range of materials “conventionally collected for recycling”, as expressed in the Covenant, exemption from application of the NEPM for Covenant signatories who are fulfilling their obligations there-under etc. and especially the footnote on page 7. The footnote refers to the monitoring, disciplinary and dispute resolution procedures under the Covenant. The provisions of the NEPM will simply be unenforceable if the Covenant is not effectively administered in an ongoing efficient manner. Once again the importance of proper resourcing of the Covenant Monitoring Group/Covenant council must be stressed. Without ongoing monitoring of action plans and provision of data, both the Covenant and therefore the NEPM are meaningless.</p> <p>B23</p>	<p>Noted. These issues are being addressed through the Interim Covenant Council.</p> <p>Clause 9(4) has been amended to make it clear that jurisdictions should take a wider range of factors into account when imposing NEPM obligations on brand owners.</p>
<p>The Municipal Waste Advisory Council has decided to refrain from responding to the NEPM until such time as an appropriate draft of the National Packaging Covenant has been prepared.</p> <p>B24</p>	<p>Noted.</p>
<p>The proposed self regulatory structure and voluntary agreements between government and the packaging industry will fail to produce any reductions in the rate of packaging waste that is</p>	<p>Although it is within the power of NEPC to regulate for recyclability of packaging, at this stage a cooperative approach with industry is preferred and the NEPM has a support function</p>

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<p>generated, or reduce the quantities of packaging waste which are currently disposed of in landfill...Producers remain opposed to implementing waste avoidance measures or finance waste management and recycling schemes, therefore policies must be introduced which focus on a comprehensive regulatory structure. Regulation must include a system of product based levies with mandatory targets for reductions in packaging which is manufactured and quantities of product reprocessed...Strict penalties should be applied to packaging manufacturers for non-compliance with regulation and mandatory targets.</p> <p>B26</p>	<p>only.</p> <p>Action Plans under the Covenant will require signatories to address a broad range of packaging waste avoidance and minimisation initiatives, as appropriate to their style of business, which may include, but are not limited to the recycling of packaging.</p> <p>A variety of levy based options were considered as the primary regulatory approach in the Regulation Impact Statement for the National Packaging Covenant. The levy approach was not preferred for the reasons set out in that Statement.</p>
<p>The NEPM is a policy measure. Policy measures are necessary where there is market failure, and resource allocation is likely to be inefficient. Neither the NEPM nor the Covenant describes the market failure which the policy measure is intended to address. The key market failure is the failure to charge households according to their waste generating behaviour, thus denying them appropriate information or incentive.</p> <p>B33</p>	<p>The responsibilities of governments go beyond the market to include the broader context of social goals, values and mores. Governments recognise that, because a “pure” market is unlikely to be realised in Australia, policy measures can and should be initiated on the basis of broader considerations.</p> <p>In relation to the suggested market failure, the NEPM is not the primary instrument through which household charges are to be addressed. It is a key undertaking of local governments under the Covenant that they will “apply transparency to municipal budgets and rates so that the financial aspects associated with waste disposal and kerbside collection systems are available to households and the general community”. The proposed independent economic assessment of kerbside under the Covenant, the proposed community education program about recycling costs and benefits, and clause 9(7) of the NEPM guidelines are all directed towards ensuring better information and clearer pricing signals to householders in relation to their waste generating behaviour and their participation, or otherwise, in kerbside recycling schemes.</p>
<p>Recommend that:</p> <p>(1) a program be established based on the successful Greenhouse Challenge program to work cooperatively with industry and Local Government. This program would take ownership and deliver the principles outlined in the Covenant on a purely voluntary basis. Appropriate levels of funding should be provided by Government to establish this program; and</p> <p>(2) a full inquiry into domestic and municipal waste management and recycling policies be</p>	<p>Voluntary approaches in relation to consumer packaging since the expiry in 1995 of national recycling targets have not lived up to the expectations of ANZECC. It is noted that the voluntary Greenhouse Challenge program has attracted industries representing approximately 50% of greenhouse emissions from Australia’s industrial and commercial sources. In contrast, the Covenant, if supported by a robust regulatory safety net, is expected to cover approximately 90% of the packaged consumer goods market.</p>

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<p>undertaken by the Productivity Commission to:</p> <ul style="list-style-type: none"> - consider the key policies for managing these issues such as conservation of resources and protection of the environment; - recommend the appropriate mix of tools such as education, economic incentives and direct regulation that could be used in managing these issues; and - recommend the key principles by which economic measures should be developed and applied to address these issues. <p>B33</p>	<p>Note that an independent economic assessment of kerbside recycling is to be undertaken under the Covenant. A copy of this submission will be passed on to the Commonwealth Government for appropriate action in respect of this suggestion.</p>
<p>In its submission to the NEPC on the notional NEPM for Used Packaging Materials in September 1998, the AAC indicated that it broadly supported the intent of the notional NEPM. Following the release of the draft NEPM in January 1999, the AAC continues to support the intent of the draft NEPM... The AAC supports a national approach to addressing the issue of packaging waste.</p> <p>B35</p>	<p>Support noted</p>
<p>The effectiveness of the NEPM is compromised by the Covenant and vice versa. The NEPM is compromised by the Covenant because signing on to the Covenant is voluntary and because signatories to the Covenant can opt for a range of actions that will not necessarily guarantee a reduction in packaging.</p> <p>B39</p>	<p>If the Covenant fails to achieve its objectives of sound product stewardship and significant uptake by industry as the preferred option, the whole issue of how consumer packaging waste should be managed will need to be reviewed. The NEPM is not intended to operate independently: if it is effective in encouraging Covenant membership, then it will have achieved its goal.</p>
<p>Neither the Covenant nor the NEPM will achieve an equitable sharing of the cost of materials recovery from the kerbside. Ratepayers universally will still be covering the cost of the gap between the collection costs and the buy back price regardless of the extent of their use of the system and the products involved.</p> <p>B37</p>	<p>The purpose of the Covenant is to establish the roles and responsibilities of local government, state/commonwealth jurisdictions and industry in regard to the lifecycle management of product packaging. It seeks to reduce the commodity price risk for local government and the commodity price cost for industry by clarifying responsibilities and expanding secondary markets. It does not attempt to bridge “the gap”, rather to produce a new system.</p>
<p>The development of the Covenant has been useful in that government and industry, as well as local government and recyclers, have a better understanding of each other’s views and share a larger patch of common ground.</p> <p>From our interaction with some of those in industry the attitudes to the draft NEPM, as a measure underpinning the Covenant, could be put in three groups;</p> <ol style="list-style-type: none"> 1. those like Kimberly-Clark that consider it unnecessary and undesirable, 	<p>It is acknowledged that industry views on the NEPM have been and remain divided, both on ideological grounds (as to whether a safety net should exist at all) and on practical grounds (relating to the design of the current draft NEPM). This is to be expected in a Measure which explicitly addresses perceived free rider issues.</p>

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2. those who would want only a contingent NEPM to be invoked if the Covenant is inadequate,
3. those who could accept a NEPM modified to include (1) a direct mirroring of the Covenant's provisions and (2) a 5-year sunset provision. It would also have to exclude the compulsory take back provisions.

Supporters of the NEPM in its current format don't constitute a group either by number or industry status.

Even if the Covenant and NEPM were to be implemented as envisaged, we believe the strong prognosis is for continued losses and major disharmony. It seems most desirable that the underlying structural problems of the governments' waste policies be addressed.

Accordingly, we seek your support for a government inquiry into domestic and municipal waste management and recycling policies in Australia in conjunction with a moratorium on the current National Environment Protection Measure (NEPM) proposals on *Used Packaging Materials*.

B38

The purpose of the Covenant is to establish the roles and responsibilities of local government, state/commonwealth jurisdictions and industry in regard to the lifecycle management of product packaging. It seeks to reduce the commodity price risk for local government and the commodity price cost for industry by clarifying responsibilities and expanding secondary markets. It does not attempt to bridge "the gap"(or eliminate "losses") rather to produce a new system. If the Covenant/NEPM package fails to work, all options will be open for alternative mechanisms at either jurisdictional or national level.

Note that an independent economic assessment of kerbside recycling is to be undertaken under the Covenant.

The intent of the Covenant/NEPM is laudable...However:

- industry and the community have not recently been surveyed to identify the level of resistance to the Covenant/NEPM – the successful implementation of the latter depends on the purpose and function being fully appreciated and widely embraced; and
- product stewardship may be attained through industry training specifically aimed at raising the level of environmental awareness amongst entrepreneurs. Firms doing the right thing by the environment are said to have a competitive edge – therefore, why is there a need for legislation to protect those with a competitive edge from the free riders?

The current public consultation process is intended to elicit responses from industry participants and the public in relation to the proposed scheme.

Product stewardship requires a multi-dimensional approach within industry. One manifestation of industry training is provided through the Covenant which includes the Environmental Code of Practice for Packaging and a packaging checklist to assist companies in making packaging decisions. It is worth noting that promoters of the current Code of Practice and its forerunner have been generally disappointed with its rate of acceptance by industry and hope that its inclusion in the Covenant will raise its status as a responsible industry initiative.

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<p>The intent of the Covenant/NEPM can be alternatively attained by establishing a truly voluntary national packaging challenge similar to the Greenhouse Challenge. The proposed packaging challenge would incorporate many of the covenant elements. Participating bodies may also serve as case studies, thus providing other firms and organisations with typical costings and environmental impact scenarios.</p> <p>B41</p>	<p>Voluntary approaches in relation to consumer packaging since the expiry in 1995 of national recycling targets have not lived up to the expectations of ANZECC.</p>
<p>The NEPM provides a sound framework for Product Stewardship - for example, it uses the brand owner as the primary contact to drive a whole-of-lifecycle approach to waste minimisation. The Packaging Covenant however is based on a more limited “Shared Responsibility” model. While it is recognised that the NEPM is intended to act as a safety net and encourage industry to become a signatory to the primary mechanism which is the Covenant, it is questionable as to whether the difference between the two (and hence the driver for signing the Covenant) should be based on a lesser standard of product stewardship.</p> <p>B43</p>	<p>This comment appears to be based upon an assumption that the NEPM imposes a European model of extended producer responsibility. This is not correct.</p> <p>It is not agreed that the Covenant imposes a lesser “standard” of product stewardship than the NEPM. The Covenant establishes a standard of product stewardship through a range of waste avoidance, minimisation and management activities which include but are not limited to post consumer recovery and recycling of materials. The NEPM imposes an obligation for particular action on a single point in the packaging chain. It is feasible to comply with the obligation without embracing concepts of product stewardship.</p>
<p>There is support for the Covenant and supporting NEPM on the basis that the voluntary approach to addressing the problem of used packaging materials is much preferred to one relying on individual State legislation. Also, that these instruments will provide an initial framework for the effective lifecycle management of consumer packaging and household paper and establish a collaborative approach between all spheres of government and industry.</p> <p>B44</p>	<p>Support noted</p>
<p>The attempt to separate the impacts of the NEPM from the Covenant may be unfounded because industries could be encouraged to opt out of the Covenant if the NEPM does not proceed. This is because there is currently an expectation among those companies which have signed the Covenant that the NEPM will be introduced and produce a ‘level playing field’.</p> <p>B44</p>	<p>The Covenant will not proceed unless a NEPM has been made, and industry funding for the proposed transitional arrangements will not be available to jurisdictions until they have implemented it.</p>
<p>While it is not a direct responsibility of the Service Corporation, it is important that the Covenant be finalised before the NEPM can be completed. It was understood that the final draft documents would be presented together as a</p>	<p>Noted.</p>

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<p>“package” for the public consultation process. This has not occurred as the final draft Covenant has not been available. It is difficult to provide complete comment on an incomplete package and as a consequence further comment from SA agencies can be expected as information comes to hand.</p> <p>B1</p>	
<p>The Covenant should be implemented purely as a voluntary scheme, with a NEPM underpinning it as an insurance against free loading. For example, the Covenant could be trialed for at least 12 months and then reviewed against agreed benchmarks for unacceptable levels of free loading. If unacceptable free loading was identified then the NEPM could be deemed to operate in terms of the responsibilities of jurisdictions and local government.</p> <p>B1</p>	<p>Voluntary approaches in relation to consumer packaging since the expiry in 1995 of national recycling targets have not lived up to the expectations of ANZECC.</p> <p>It remains a condition of the Covenant and of the transitional arrangements that a regulatory safety net be developed and implemented until such time as the condition is removed.</p> <p>The Covenant is an agreement between all spheres of government and the packaging supply chain. Any amendment would need to be agreed between the negotiating parties.</p>
<p>Covenant/NEPM Relationship – While continuing to recognise the need for a direct or indirect regulatory dimension for the Covenant, the AFGC is of the view that the current draft NEPM is of great concern and does not merit support...</p> <p>A joint industry/government Working Group should be formed on the successful multi-stakeholder, senior level model used to devise the Covenant itself to advise the NEPM project team</p> <p>The new Working Group should in the first instance assess other options that can achieve the policy issues of competitive equity and national consistency related to the Covenant. As part of assessing options, a key aspect that the Working Group should seriously consider is the relationship of actual regulation to foreshadowed regulation.</p> <p>B46</p>	<p>Support for a regulatory dimension noted. The draft NEPM should not be of great concern to AFGC, which has been an integral part of Covenant negotiations and which is supportive of the Covenant, so long as it is understood that the role of the NEPM is to support the Covenant and is not to be a stand-alone instrument.</p> <p>The NGO Advisory Group has that structure and is intended to fulfil this purpose.</p> <p>Other options have been assessed. In two rounds of public consultation and other consultative processes to date including Jurisdictional Reference Network and the NGO Advisory Group, no specific options beyond the broad menu considered in the NEPM development process have been put forward.</p>
<p>The assertion that a “regulatory safety net” – a NEPM of some sort – is required to prevent “free riding” is disproved by the fact that many of the major stakeholders in the food and beverage packaging chain, including those who now argue for a safety net, have voluntarily taken on substantial expenditures through infrastructure development and operation, buy-</p>	<p>The requirement for a regulatory safety net is a condition of the Covenant itself and the transitional funding arrangement. This condition has been supported by the author’s organisation.</p>

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back of commodities and/or voluntary levies for many years in the absence of either a Covenant or a NEPM. B11, B47	
Regardless of the history, the actual financial impact of the Covenant/transitional arrangements may not be large enough to constitute a competitive disadvantage of any significance in those sectors where a small number of major businesses dominate. B11, B47	This view is not widely held among industry negotiators of the Covenant. The draft NEPM is a government response to industry concerns that elevating industry performance exposed companies which were prepared to do so to unfair competitive pressures.
<p>Since late 1997, the Beverage Industry Environment Council (BIEC) has given qualified support to a minimal regulatory safety net for the Covenant. The purposes of this regulatory safety net should be to:</p> <ul style="list-style-type: none"> (a) create a level playing field between signatories and non-signatories of the Covenant; and (b) create greater harmony in waste management policy frameworks for national businesses working across various political constituencies. <p>BIEC accepted Government advice at the time that a NEPM was the only available instrument for the above stated purpose. The process for determining that instrument, however, was not transparent to BIEC and, therefore, it is unclear what other instruments may have been more robustly considered. As the public record shows, it is inaccurate to suggest that BIEC's membership advocated a NEPM in particular. B48</p>	<p>The question of the type of regulatory safety net best able to provide the assurance that industry negotiators were seeking was discussed extensively in meetings of the high level negotiating group for the Covenant.</p> <p>Legislative responsibility for used packaging waste rests with state and territory jurisdictions. NEPC is the only forum for governments which has the authority to create a statutory instrument at national level which deals with these issues.</p>
<p>BIEC believes that an alternative way forward is worthy of consideration... To that end, BIEC puts forward the proposition that the public interest is now best served by developing the NEPM to the stage of approval by NEPC but then have it temporarily deferred from further enactment by State legislatures.</p> <p>Put simply, BIEC believes that the purpose and intent of regulation can be achieved without its cost and unintended consequences. A strategy such as the above would also provide a response to many stakeholders who are concerned about the precedent-setting nature of the NEPM and are, by perhaps unintended consequence, undermining the future of the Covenant. B48</p>	<p>This is an option open to NEPC. However, it is noted that implementation of the NEPM remains a condition of both the Covenant and the Transitional Funding offer.</p> <p>Concerns that the NEPM will set an undesirable precedent for future government regulatory action are ill founded. It is a safety net only. The NEPM's goal, the materials covered, brand owner performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant.</p>
The AiGroup does not support the need for the establishment of a NEPM to protect signatories to the Covenant. We believe the Covenant can	Voluntary approaches in relation to consumer packaging since the expiry in 1995 of national recycling targets have not lived up to the

The Proposed Self-Regulatory/Regulatory Safety-Net Approach	
<p>be restructured and funded by offering an incentive to industry as a voluntary scheme. Consequently, the NEPM's enforcement of the Covenant, or alternatively the take-back scheme, to protect Covenant signatories, we believe is flawed in concept. It also sets a dangerous legal precedent for industry and recycling in the future... The NEPM should be abandoned and the Covenant be supported to operate along voluntary lines.</p> <p>B50</p>	<p>expectations of ANZECC. Implementation of the NEPM remains a condition of both the Covenant and the Transitional Funding offer.</p> <p>Concerns that the NEPM will set an undesirable precedent for future government regulatory action are ill founded. It is a safety net only. The NEPM's goal, the materials covered, brand owner performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant.</p>
<p>QCCI is supportive of the concept of the Covenant as an excellent example of a self-regulatory initiative by an industry sector. QCCI believes that a case cannot be made now for underpinning the Covenant with a NEPM.</p> <p>QCCI recommends that the NEPM process be put on hold until the Covenant is finalised, implemented, extensively publicised and its costs to signatories evaluated. It is quite likely that with experience Covenant signatories may withdraw their support for legislated underpinning. Action should then be based on a performance review of the Covenant, including costing. Assuming the Covenant is completed mid-1999, an appropriate date for the review would be October 2000.</p> <p>B51</p>	<p>Support for the Covenant welcomed.</p> <p>It is open to NEPC to delay implementation of the NEPM, however implementation of the NEPM remains a condition of both the Covenant and the Transitional Funding offer.</p> <p>The Covenant has been substantially complete since August 1997. It is the intention that the Covenant be finalised and available for signature before NEPC considers making the NEPM.</p> <p>It can be expected that the existence of the NEPM would influence decision making by companies in respect to Covenant membership. The NEPM consequently needs to be available for consideration in its final form at the same time.</p>
<p>Strongly recommend that the Packaging Covenant be allowed to operate as a single entity without the NEPM. A review period should be established to assess its performance.</p> <p>B52</p>	<p>This is an option open to NEPC. However, it is noted that implementation of the NEPM remains a condition of both the Covenant and the Transitional Funding offer.</p> <p>The Covenant will be under constant review by the Covenant Council and ANZECC.</p>
<p>There is a lack of commonality between the NEPM and the Covenant:</p> <ul style="list-style-type: none"> • The NEPM enshrines the European concepts of Extended Producer Responsibility, while the Covenant uses the principles of Shared Producer Responsibility. • The experience in Europe has been one of additional cost and bureaucracy for no readily identifiable environmental benefit. It is therefore highly problematic to go down this path. <p>B46, B52</p>	<p>The two instruments are intended to be complementary. The NEPM does not mimic the EU model in that it involves no mandatory or arbitrary targets and does not embrace the philosophy of extended producer responsibility which imposes all responsibility for the lifecycle of the product on the original producer.</p>

THE NATIONAL ENVIRONMENT PROTECTION MEASURE

2. Commencement	
It is understood that the NEPM will not come into effect until the National Packaging Covenant comes into existence. B2	Correct.
3. Definitions	
“brand owner” (c) may require additional wording, such as ‘...and this used packaging is systematically collected at kerbside as part of local government kerbside collection services’. B1	Any limitations on material coverage are expressed in the body of the NEPM rather than through definitions.
Significant amounts of packaging are imported to Australia. Concerns raised regarding the potential imposition of standards for domestic suppliers which importers need not meet. Also concern over how take-away containers would be provided for under the definition. B7	The brand owner definition includes importers. The supplier of in-store packaging is identified as the brand owner for the purposes of the NEPM.
The definition of brand owner is confusing. If it is “the first person to sell the product in Australia” then are raw materials suppliers subject? B17	To understand clause 3(b) the definition of brand owner needs to be read in conjunction with the definition of consumer packaging which implicitly excludes the producers of raw materials such as paper fibres or polymers.
The term “brand ownership” appears to need far more definition. Some brands are now globally owned while others are owned by a number of parties. It also appears to remove the responsibility from the manufacturer of packaging to the bottler/filler...It was stated that imported product will be included under the provisions. It does not seem as if this has been fully considered or explained in terms of World Treaties, method and size of some imports and “brand ownership” definition. B34	It is acknowledged that several parties may qualify as “brand owners” in relation to a product retailed under the same brand name but which derives from different sources (within or outside of Australia). The obligation rests with each brand owner for the proportion of the product which they put on the market. The definition has been amended to clarify that brand owner responsibility relates to specific products rather than classes of products. The NEPM is deliberately targeted at brand owners rather than other points in the packaging chain, but in the expectation that it will affect, through the brand owner, other points in the chain. World Trade Organisation aspects have been discussed with the relevant authorities.
A more specific definition of “consumer packaging” is needed to allow consistent assessment by businesses and regulators as to whether or not a particular product is covered by the NEPM. It is important to at least provide a framework, including a set of principles, for deciding on which items are consumer packaging and which are not. There should be a mechanism for ensuring that such decisions will	The clarity required would need to be provided through instruments at jurisdictional level. The aim of the NEPM is to provide consistency of underlying principles and approaches, rather than uniformity of detail. While the suggestion is supported in principle, NEPM guidelines cannot provide the degree of specificity required. Jurisdictions may choose to

3. Definitions	
have national application. It has been reported that in the EU, queries have arisen in relation to items such as coat hangers, a box for a board game, coatings on medicines, cores and reels, insulation foam, and plant pots. This is an indication of the potential for disputes that may need to be dealt with by such a mechanism. B42	work through existing working groups or other mechanisms to resolve any differences of approach which arise across jurisdictions.
Clarification is needed as to who is the brand owner - for example in Darwin is the brand owner a company such as Coca-Cola or a franchisee such as Pauls NT? If franchisers are the brand owner, then will they be covered by Packaging Covenant Action Plans of the national company? B43	Insufficient information to answer the specific question; jurisdictions would not normally draft regulations so as to severely constrain the possibility of action. The matter would be determined by the jurisdiction if and when a complaint under NEPM provisions or a prosecution under jurisdictional regulation is contemplated. The Covenant requires all participants in the packaging chain to submit Action Plans, but also provides for joint Action Plans by cooperating parties.
Uncertainty exists with the definition of “brand owners”. It is possible that the practical application of the definition could evolve over time, causing much uncertainty. During public consultation, the question arose as to whether brand owners selling to wholesale, not retail, would be captured by the NEPM? This needs to be addressed. B1	Both the brand owner and consumer packaging definitions need to be applied. Brand owner obligations do not depend on whether the brand owner sells to retailers or wholesalers but on whether the packaging is of a retail consumer product. Secondary packaging (that falls outside the definition of “consumer packaging”) is not captured.
The NEPM drafting team seems to have convinced itself that the proposed arrangements would apply only to grocery items (see RIS, “Economic Impacts, p. iv). This assumption is clearly incorrect. If only “grocery” items are to be covered by the NEPM, it would cover a much smaller percentage than 0.04 to 0.05 per cent by weight of total solid waste. B11, B47	The Impact Statement does not use the word “only” and the project team has not made that assumption. The convention for the measurement of waste uses weight rather than volume. It is widely recognised that the convention can produce perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream. Nationally, solid waste comprises a number of different streams. Each waste stream needs to be dealt with individually. Other streams being addressed include construction and demolition waste, commercial and industrial, hazardous waste, medical and dental waste, green waste, farm chemicals and mining waste.

5. Background	
5(2) Continuous improvement principles should extend to waste minimisation as well as recovery and reprocessing. B7	The list of Covenant commitments stated is not exhaustive.
5(4) Neither the Federal nor the NSW government has in seven years made any attempt to 'legislate' to achieve 'producer responsibility'... NSW has made sure, that by agreeing to the industry-sponsored IWRPs, it is 'business as usual'. B4	The term "commitment" has a broader meaning than "legislation".
With regard to the commitments given by state and federal governments in Clause 5, the Association would like to see inclusion of and reference to the commitments previously given and signed, in the National Strategy for Ecologically Sustainable Development, which was adopted by the Council of Australian Governments in 1992, and referred to in our covering letter. B23	The commitments quoted are not intended to represent the full scope of Covenant commitments.
<p>The stated objectives of the NEPM are political. They seek to enshrine in legislation political principles of product stewardship and shared responsibility under which all those deemed to benefit from production of consumer packaging will assume a share of responsibility for a product over its lifecycle.</p> <p>There are exceptions, namely households which dispose of used packaging are deemed not to benefit from production or to be participants in stewardship.</p> <p>In the NEPM these principles are made operational for industry in a completely arbitrary manner as:</p> <ul style="list-style-type: none"> - continuous improvement in recovery and reprocessing of used packaging materials; and - support for kerbside collection and recovery systems. <p>These principles have no evaluation criterion attached, and make no attempt to recognise that continuously increasing recoveries and continuous expansion of the kerbside system will come at an unsustainable cost to the environment and the economy. B33</p>	<p>Disagree. In supporting the Covenant the NEPM is acknowledging that householders receive a share of the benefits of consumer packaging and through their rates bear a share of the financial responsibility for the management of that packaging.</p> <p>The examples given of industry commitments under the Covenant are not exhaustive and are given as background.</p> <p>The Covenant does not assume continuously increasing recovery, but it is conceded that the terminology used in the NEPM could be interpreted in that way and therefore the NEPM text has been amended. Rather, the Covenant makes it clear that the environmental benefits derived from it are to be achieved in a cost effective manner; that there should be no distortion of local or international competitiveness; that environmental outcomes should be optimal rather than maximal; that support for kerbside recycling should be based on achieving optimal rather than maximal outcomes.</p>

6. Goal	
<p>The goal implies increase in quantity of packaging dealt with through kerbside systems, with no suggestion of other systems. Our understanding is that the Covenant is not necessarily limited to kerbside recycled materials and is, or should be dealing with waste minimisation. If it is, addition of the words ‘collected at kerbside by local government or its contractors’ after ‘packaging materials’ in the third line.</p> <p>B1</p>	<p>The Covenant is intended to be broad and not limited to kerbside recycling as indicated in this comment. However, the suggested textual insertion appears to have the opposite effect to the one intended by limiting its ambit to local government/ contractor kerbside collections.</p>
<p>The goal and desired outcomes of the NEPM are political and financial, and only remotely related to environmental protection. Therefore a NEPM is an inappropriate mechanism.</p> <p>B9</p> <p>The purpose of the NEPM is to ensure that signatories to the National Packaging Covenant are not economically disadvantaged. As such this NEPM aims to achieve an economic outcome. This is a precedent that could lead to the resources of NEPC being hijacked for purposes such as this, rather than for environmental protection.</p> <p>B57</p>	<p>The NEPM’s goal is both financial and environmental – it has been structured to accommodate the potential scale of the free rider problem (capturing as many relevant parties as possible with the lowest level of complexity and expense to the community) – and thus facilitate the desired environmental outcomes of the Covenant (the NEPC Acts require a goal to <u>relate</u> to desired environmental outcomes).</p> <p>The question of the type of regulatory safety net best able to provide the assurance that industry negotiators were seeking was discussed extensively in meetings of the high level negotiating group for the Covenant.</p> <p>Legislative responsibility for used packaging waste rests with state and territory jurisdictions. NEPC is the only forum for governments which has the authority to create a statutory instrument at national level which deals with these issues.</p>
<p>If we are encountering extra costs, which will be the case under either the Covenant or the NEPM (assuming our opposition are on the same level playing field) then it seems our prices may rise, and the consumer will pay. This will not fix kerbside collection profitability.</p> <p>B17</p>	<p>Prices already include costs of compliance with current State/ Territory regulatory and voluntary regimes. Any analysis of costs of the Covenant/NEPM therefore needs to be done on a marginal cost basis. Compliance costs associated with the Covenant/ NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions.</p> <p>The Covenant moves away from the current regulatory focus on targets, which, as the Industry Commission pointed out “generate hidden economic costs which will ultimately to be passed on”(Industry Commission, (1995), Packaging and Labelling).</p>
<p>The goals of the NEPM are unclear and should be redefined to incorporate the economic costs (including industry costs) as well as the</p>	<p>The NEPM is not intended to operate independently of the Covenant. The NEPM’s goal, the materials covered, brand owner</p>

6. Goal	
<p>economic benefits associated with reduced degradation and increased conservation. The concept of product stewardship should be defined within these criteria, and appropriate waste reduction and conservation targets should then be set.</p> <p>It cannot be assured that kerbside recycling will suddenly become economic or profitable. It cannot be assumed that packaging will become thinner and lighter or lesser in volume. B17, B18</p>	<p>performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant.</p> <p>The Covenant aims to optimise recycling and the NEPM supports that approach by requiring jurisdictions to link performance requirements to the achievements of Covenant signatories. A transitional mechanism under the Covenant is an independent assessment of kerbside recycling.</p>
<p>PACIA believes that the National Environment Protection goal and the Scope places undue emphasis on take back and utilisation of consumer packaging rather than the total life cycle approach embodied in the Covenant. Therefore, the NEPM as presently drafted does not necessarily reflect the commitments likely to be made by Covenant signatories. B54</p>	<p>The NEPM is intended to be strategically targeted rather than to fully reflect the coverage of the Covenant. Further, the NEPM is not intended to operate independently of the Covenant. The Covenant provides a degree of autonomy which is not available under the less flexible regulatory framework.</p>
<p>The goal of the NEPM is narrowly defined. The instrument is defined within the goal: ‘through the encouragement of reuse and recycling of used packaging materials by supporting and complementing the voluntary strategies in the National Packaging Covenant’. In this way the goal becomes whatever eventually finds its way into the Covenant. B33</p>	<p>Agree. A cooperative approach with industry is preferred and the NEPM has a support function only.</p> <p>The NEPM will not be made until the Covenant is complete.</p>
<p>The NEPM talks of reducing “environmental degradation arising from the disposal of used packaging and to conserve virgin materials through the encouragement of reuse and recycling of Used Packaging Materials”. While this is an admirable goal it fails to consider the full picture. The conservation of virgin materials through reuse and recycling needs to be offset by the consumption of virgin materials in collecting the recycling.</p> <p>Failure to consider the whole of the energy cycle compromises the environmental outcomes from the NEPM and risks a negative impact on the environment for a substantial cost. B52, B57</p>	<p>Noted. A key transitional mechanism under the Covenant is an independent assessment of kerbside recycling.</p>
7. Scope	
<p>If the focus of the NEPM is kerbside recycling, does the broad scope match with that focus? B1</p>	<p>The focus of the NEPM is on the obligation on brand owners to undertake or assure the recovery of their packaging material without</p>

7. Scope	
	<p>limiting the means. In identifying material types, the NEPM guidelines suggest that jurisdictions should “have regard to those materials conventionally collected for recycling”. However, it should be noted that the obligations under clause 9(2) clearly also contemplate the possible recovery of materials for reuse and energy recovery.</p>
<p>The scope of the draft NEPM is different to the scope defined in the Covenant. The scope of the Covenant is “consumer packaging and household paper” generated by domestic premises. The NEPM also includes food and beverages intended for consumption in public places and used by the commercial sector.</p> <p>This difference in scope is significant, particularly as local government can take action against negligent companies to recover costs (as outlined in clause 9). The inclusion of food and beverage packaging consumed in public places or in commercial premises in hotels and restaurants is not supported by measures to address negligence in these areas by packaging companies. It is recommended that the scope of the NEPM is changed to link with the scope of the National Packaging Covenant.</p> <p>B2</p>	<p>It is agreed that the Covenant covers “consumer packaging and household paper” but there is nothing in the Covenant to indicate that it is limited to those materials only when found in the domestic waste stream. Nor does the Covenant provide a means for packaging companies to be negligent in the discharge of their product stewardship undertakings in respect of non-domestic outlets for their products.</p> <p>The advice to provide local government with a power to recover costs is specifically limited to packaging found in kerbside systems provided by local government where a brand owner has not discharged its recovery/utilisation obligation. The power would not carry over to other circumstances.</p>
<p>Concern that the scope did not extend to production. The use of virgin fibre and the use of coatings such as clay, varnish and foil are not addressed. Extension of the scope to minimisation strategies would be more consistent with the principles of the Covenant.</p> <p>B7</p>	<p>The NEPM is intended to be strategically targeted rather than to fully reflect the coverage of the Covenant. Further, the NEPM is not intended to operate independently of the Covenant.</p>
<p>Emphasis is placed upon primary packaging – this tends to lead to a revenue raising exercise as opposed to resolving the real issues of recyclability, disposal and/or land fill. A balanced view needs to prevail, and therefore include both primary and secondary packaging materials.</p> <p>B12</p>	<p>No revenues are raised through either the Covenant or the NEPM.</p> <p>The Covenant and the NEPM do not preclude other measures to address other components of the waste stream.</p>
<p>The focus on “retail consumer” products also is unclear because many products are taken from their packages at the wholesaler level. Does this mean the brand owner does or does not fall under the NEPM?</p> <p>B17</p>	<p>If products are taken from their packages and passed on unpackaged to retail consumers, then there is no consumer packaging to be accounted for.</p>
<p>The scope of packaging to be included in the Covenant and NEPM should be more clearly articulated:</p> <ul style="list-style-type: none"> it is agreed that the two documents should be 	<p>The scope of the Covenant and NEPM are expressed so as not to be limited to particular materials in current use as these may change in response to market pressures and technological</p>

7. Scope	
<p>clear and equivalent in their application and in their definition; and</p> <ul style="list-style-type: none"> it is noted that the definition of ‘consumer packaging’ in the NEPM includes ‘all packaging products’ and ‘retail consumer products’, whilst there are other areas of the NEPM and the Covenant which by inference suggest that packaging is restricted to household grocery items (eg packages used for manufactured food products, toiletries, laundry products). <p>B23, B44</p>	<p>developments. Both instruments are restricted to the packaging of retail consumer products, which include but are not limited to food and grocery items.</p>
<p>Seek confirmation that prescription pharmaceutical products fall outside the scope of the Covenant and the NEPM...There is relatively limited flexibility in choice of packaging materials for pharmaceutical products, and a change of packaging material may require stability studies and further approval by the Therapeutic Goods Administration...Prescription pharmaceutical products are not “normal” retail consumer products.</p> <p>B27, B49, B53</p>	<p>In so far as the Covenant encourages product stewardship of packaging on a self-regulatory basis, there is no provision or need for exemption.</p> <p>In respect of the NEPM, no uniform exemptions are recommended. Any case for exemption would need to be able to distinguish between prescribed products and others, or demonstrate that product stewardship is being practised. For example, it is noted that programs exist in several jurisdictions for the recovery of prescription medicines and their packaging. This may provide the capacity for exemptions under the provisions of Clause 11 (second dot point).</p>
<p>Packages for white goods, chemical products and consumables used by business, commercial enterprises and on farm should be included. Limiting the scope to a small range of household products will only capture a small amount of the market and foster further inequalities between brand owners.</p> <p>B44</p>	<p>The Covenant/NEPM package does not eliminate options for dealing with other waste streams.</p>
<p>Clause 7 The scope of the Covenant and that of the draft NEPM are not aligned. If one were to accept for the purposes of the exercise that the NEPM is to be a regulatory net for the kerbside recycling schedule in isolation, it is nevertheless flawed. For example, it indicates that food and beverage consumed in non-domestic situations are subject to the NEPM. This is irrational and no explanation is to be found anywhere in the documentation. I am aware that several industry associations have raised this specific concern in consultation to date and it is disappointing that there has been no response.</p> <p>B46</p>	<p>The scope of the NEPM is not greater than the scope of the Covenant. It is not accepted that the NEPM is intended to be a regulatory safety net for the kerbside recycling schedule in isolation.</p> <p>The Covenant covers “consumer packaging and household paper” but there is nothing in the Covenant to indicate that it is limited to those materials only when found in the domestic waste stream. Nor does the Covenant provide a means for packaging companies to be negligent in the discharge of their product stewardship undertakings in respect of non-domestic outlets for their products.</p>
<p>The scope of the Covenant and the draft NEPM do not match. The scope of the Covenant is</p>	<p>The Covenant and the NEPM are intended to be complementary: the NEPM is not intended to</p>

7. Scope	
<p>“consumer packaging and household paper”. The intent of this scope is understood by all parties to be the packaging waste stream flowing through domestic premises. However, the scope of the NEPM is inappropriately broader and more prescriptive. For example, it includes “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”. No economic or environmental justification is provided in the draft NEPM documentation for this approach which generally targets a specific type of packaging in a specific context. If the NEPM is to “recognise the role of the Covenant as the lead instrument” (Commentary on NEPM clauses, page 2), this inconsistency needs to be corrected.</p> <p>B48</p>	<p>mirror the Covenant.</p> <p>It is agreed that the Covenant covers “consumer packaging and household paper” but there is nothing in the Covenant to indicate that it is limited to those materials only when found in the domestic waste stream. Indeed, the Covenant clearly contemplates that signatories will develop waste avoidance and minimisation strategies regardless of the destination of their products.</p>
<p>PACIA recommends that materials used for packaging food and beverage intended for consumption in public places or commercial provision of food should be removed from the scope of the NEPM. This category is a commercial source of recyclate rather than a post-consumer domestic source and PACIA therefore believes that it is outside the scope of the Covenant, the NEPM’s lead document. When this issue was raised at the first NGO Advisory Group meeting on 26 March 1998, the advice given was that the NEPM would follow the Covenant in its scope. This has not been acknowledged.</p> <p>B54</p>	<p>It is agreed that the Covenant covers “consumer packaging and household paper” but there is nothing in the Covenant to indicate that it is limited to those materials only when found in the domestic waste stream. Nor does the Covenant provide a means for packaging companies to be negligent in the discharge of their product stewardship undertakings in respect of non-domestic outlets for their products.</p>
<p>The scope of the Covenant is “consumer packaging and household paper”. The scope of this definition is understood to be the flow of packaging waste from domestic premises.</p> <p>However, the scope of the NEPM is much broader. It includes items like “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”. There is no financial or environmental justification as to why this has been done.</p> <p>B52</p>	<p>It is agreed that the Covenant covers “consumer packaging and household paper” but there is nothing in the Covenant to indicate that it is limited to those materials only when found in the domestic waste stream. Indeed, the Covenant clearly contemplates that signatories will develop waste avoidance and minimisation strategies regardless of the destination of their products.</p>

8. Purpose of Part – Guidelines	
<p>‘...set guidelines that give guidance’ is tautological. This should be ‘...set guidelines</p>	<p>Agreed, but note that this wording is taken from the NEPC Acts.</p>

8. Purpose of Part – Guidelines	
on possible means’. B1	
<p>There is insufficient precision in the Draft NEPM to guide regulators in all jurisdictions to achieve consistent outcomes. The Commonwealth’s comments made in August and October 1998 on this point require renewed attention. The primary reason for developing a NEPM, rather than leaving it to jurisdictions to regulate separately, is to capture the benefits of national consistency for industry and for governments. The NEPM does not appear to provide a satisfactory degree of consistency from the point of view of industry. This is particularly important given that packaged products are very commonly distributed across borders.</p> <p>The NEPM as drafted allows for a wide variation in the nature and extent of the obligations to be imposed on industry, and for wide variation in the extent and manner of enforcement. B42</p>	<p>The Covenant provides uniformity in outcomes across jurisdictions. The safety net is directed at consistent, rather than uniform outcomes.</p> <p>The capacity of NEPM guidelines to be prescriptive in designing regulations is limited by their non-mandatory nature and the differing legislative bases for environmental regulation and enforcement across jurisdictions (e.g. regulation, SEPP, IWRA, IWRP etc). However it is noted that several jurisdictions intend to collaborate in the development of a regulation that may provide a precedent in some legislative environments.</p> <p>The guidelines limit the nature of the obligation to recovery and reuse etc of materials. In so far as there is scope for variation among jurisdictions as to the extent of the obligation, Clause 9(5) recognises that jurisdictions, while having reference to the performance of Covenant signatories, will need to recognise variations in social, economic and other circumstances in order to set realistic performance requirements.</p>
<p>The Commonwealth has not received any advice that would rule out mandatory obligations being created by a set of standards, as defined in section 6 of the NEPC Act. Such standards might refer to the effect on environmental quality of the exploitation of resources (particularly virgin materials) for packaging and the disposal of waste by deposition at landfill sites, by incineration and by littering. B42</p>	<p>This approach may be possible if the NEPM were intended to be a stand alone instrument. However it is difficult to see how the type of standards suggested are consistent with the intent of NEPC.</p> <p>ANZECC/NEPC may wish to approach this issue as a longer term project to develop environmental quality standards which can be directly and justifiably linked to the impacts of consumer packaging.</p>
<p>The term “substantial financial penalties” in relation to brandowners who fail to fulfil obligations is relatively meaningless and open to considerable differences in interpretation between jurisdictions. Its usefulness in achieving a consistent outcome is questionable. An indication of the order of magnitude envisaged as a penalty needs to be discussed and agreed to. B43</p>	<p>Noted. Implementation working groups have been established to resolve similar issues in relation to other NEPMs. It is anticipated that a similar group would be appropriate for this NEPM.</p>

9. Statutory obligations, rights and penalties	
In May 1998 we drew the attention of the NEPM drafting group to the forthcoming amendments to the Copyright Act. Those amendments have	It is acknowledged that several parties may qualify as “brand owners” in relation to a product retailed under the same brand name but

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<p>since been made and facilitate parallel importing.</p> <p>While a “brand owner” is nominated in the draft NEPM as the focus for enforcement because it is regarded as having influence up and down the chain – a claim which is fatuous and unsubstantiated – parallel importing would make the proposal unworkable. B11, B47</p>	<p>which derives from different sources (within or outside of Australia). The obligation rests with each brand owner for the amount of that product which they put on the market. The definition has been amended to clarify that brand owner responsibility relates to specific products rather than classes of products.</p> <p>Brand owners are nominated as the point in the packaging chain where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone.</p>
<p>Clause 9 The focus on brand owners is unrealistic. The draft document assumes too much about the relative commercial leverage of brand owners – including the core of the AFGC’s membership base – over their suppliers and most certainly their customers in the retail sector. Clearly, commercial factors well outside the scope of environmental concerns enter into these complex relationships. It is a significant overestimation to assume that a brand owner can readily change the behaviours and/or business plans of their suppliers and rarely; if ever, their customers. B46</p>	<p>As a general statement outside of the context of the Covenant or NEPM, major brand owners do have the capacity to exercise substantial influence over their packaging manufacturers.</p> <p>Brand owners are nominated in the NEPM as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Nowadays brand owners and their packaging manufacturers are developing long term relationships in which issues such as product development, new technologies and quality control are cooperatively pursued.</p> <p>Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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</p> <p>Objective advice on packaging regulation in other jurisdictions around the world supports this approach.</p>
<p>Clause 9 - PACIA acknowledges the rationale behind the placement of the obligation at the brand owner. However, in targeting only brand owners, PACIA does not believe the NEPM holds any direct legislative threat against the competitors of PACIA member companies who plan to sign the Covenant and do not wish to be commercially disadvantaged. This includes raw material suppliers and packaging manufacturers. B54</p>	<p>Brand owners are nominated as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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.</p>
<p>The NEPM’s take-back provisions, subsections</p>	<p>Alternatives to recovery and reuse etc were</p>

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9(2) to 9(6) inclusively be omitted.	considered and not preferred. The NEPM's provisions were adopted because of their similarity with the actual practices of anticipated Covenant members.
<p>Clause 9 The draft suggests that collective systems stimulated in other jurisdictions (such as a number of European countries) could be applied to this NEPM to make take-back feasible. However, the key difference here is that the NEPM operates as a back-up to the Covenant, thereby requiring differentiation between the packaging of signatories and that of non-signatories.</p> <p>Even if the thousands of different packages could be differentiated, the following should be taken into account:</p> <ul style="list-style-type: none"> the NEPM presupposes that the householder who is presenting the packages for collection is either able to or inclined to differentiate. Experience in countries such as Germany proves this to be a major problem; if brand owners caught by the NEPM are in contractual relationships with packaging manufacturers who are Covenant signatories, the packaging company will be required to act twice to fulfil their obligations or potentially lose a supply contract; and imported packages cannot be differentiated from local packaging. <p>B54</p>	<p>The draft suggests the possibility of cooperative action or agency arrangements by brand owners, without assuming that large scale collective systems would be appropriate to address the small proportion of packaging expected to be covered by the NEPM.</p> <p>The NEPM requires adequate advice to consumers, who have clearly indicated their willingness to facilitate recovery, which currently includes a degree of separation at the domestic level, as well as the existence of parallel systems eg aluminium drop-off centres. This is one of the considerations a jurisdiction would have to take into account when defining the materials to which regulations flowing from the NEPM apply. It is not necessarily the case, as it is in Germany, that the recovery of all materials will be attempted. Whereas the obligation in Germany is a blanket one, the obligation in Australia is targeted towards dealing with competitive disadvantage.</p> <p>The brand owner focus does not assume that brand owners have absolute control over the contractual relationship. However, it is noted that a key industry commitment under the Covenant is to promote Covenant membership throughout the packaging chain.</p> <p>It is acknowledged that several parties may qualify as "brand owners" in relation to a product retailed under the same brand name but which derives from different sources (within or outside of Australia). The obligation rests with each brand owner for the amount of that product which they put on the market. The definition has been amended to clarify that brand owner responsibility relates to specific products rather than classes of products.</p>
9(1) It is unclear which products will be covered by the Covenant (and therefore the NEPM). For example, will computer game packaging be covered? If so, who will be signing the Covenant on behalf of such an industry? If no one signs, how will the NEPM apply to such an industry	Both instruments are restricted to the packaging of retail consumer products. In all cases, all participants in the packaging chain related to those products will be encouraged to join the Covenant. The "brand owners" of those products who decide not to join the Covenant

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when there is no Covenant signatory to “suffer market disadvantage”? B8	will bear the obligations under the NEPM.
9(1) Whilst this clause says that jurisdictions should establish a statutory basis for ensuring Covenant signatories are not competitively disadvantaged, it does not prevent jurisdictions from imposing additional requirements, over and above those contained in the covenant, on signatories and non-signatories alike. Whilst the States always retain that right anyhow, it should be clear that any statutory changes should not apply to Covenant signatories since that is the whole basis for establishing the NEPM. B48	<p>It is acknowledged that legislative responsibility for the regulation of consumer packaging waste rests with jurisdictions. The NEPM, if made, will constitute agreement among jurisdictions as to the regulation of non-Covenant signatories, but the NEPM cannot specify the treatment of a class of persons to which it does not apply, particularly since the Covenant itself does not have a clause of the type suggested.</p> <p>However, Commonwealth, State, Territory and local governments agree under the Covenant that they “will ensure that any future waste management agreements negotiated by them and involving packaging will conform with this Covenant”; and that they will “develop consistent and harmonious policies and systems for the management and disposal of used packaging”.</p>
9(2) There is a likely increase in cost for local government in the administration of contract arrangements either dealing directly or indirectly with companies affected by the NEPM and not currently dealing with Council or its contractors. B3	Local Government need have no contact with companies affected by the NEPM unless it chooses in its own interests to do so. It is not clear therefore why there would be a “likely” increase.
9(2) This clause provides brand owners “with the flexibility to make suitable arrangements rather than imposing a direct ‘take-back’ system which may be costly and impractical”. Only ‘extended producer responsibility’ which involves the legal compulsion to ‘take back’ will have the effect of products being designed for re-use or re-manufacture. B4	EPR is not proposed as the basis for the NEPM.
<p>During the brief consultation phase prior to the release of the draft NEPM, there was overwhelming concern expressed that non-signatories to the Covenant should not be subjected to “take-back” style mechanisms common in some European countries. Despite this, the proposed Measure contains these instruments.</p> <p>The Measure therefore is not a complementary tool to the Covenant as it:</p> <ul style="list-style-type: none"> • enshrines the concept of Extended Producer Responsibility rather than the principle of Product Stewardship (which is supported by industry) which underpins the Covenant; and • uses a completely different set of instruments 	<p>The NEPM does not mimic the EU model of extended producer responsibility in that it involves no mandatory or arbitrary targets and does not embrace the philosophy of extended producer responsibility which imposes all responsibility for the lifecycle of the product on the original producer. The NEPM imposes an obligation for particular action on a single point in the packaging chain. It is feasible to comply with the obligation without embracing concepts of product stewardship.</p> <p>The intent of the NEPM is not to mirror the</p>

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to achieve its objectives to those used in the Covenant. B56	Covenant but to support it in the most strategically effective manner possible. A regulatory scheme imposed by governments is intrinsically less flexible than the self-regulatory Covenant.
9(2) Supports the concept of product stewardship and placing the onus for compliance on 'brand owners' where 'compliance' means striving for continuous improvement in the recovery and recycling of used packaging materials. Also agree, with qualifications, that brand owners should support kerbside collection or other recovery systems. B6	Noted.
9(2) Item 5 of the Covenant Kerbside Schedule provides for the parties to establish an appropriate accreditation scheme for contractors undertaking recyclable collection and sorting. The NEPM suggests that brand owners are free to establish their own recyclable collection and sorting schemes, which presumably will then be subject to this accreditation. Existing suppliers gain a legislated capacity to determine the entry standards of competitors. B9, B33	Accreditation is proposed to enhance efficiencies in the Covenant context. Whether brand owners operating outside the Covenant use accredited operators or not is up to them. Therefore existing suppliers do not gain the capacity suggested.
9(2) Currently a small proportion of the packaging chain, mainly the raw materials suppliers and packaging manufacturers, bear most of the costs and responsibilities. The style and nature of packaging is decided by the brand owner and indirectly by the consumer. There is a strong argument that these two groups should bear the major cost of recycling. B14	This underpins the "shared responsibility" of the Covenant.
9(2) Brand owners have no decision making power to influence the way people dispose of packaging. Opponents of this viewpoint would argue that the design of packaging is the influencing factor in persuading people to buy the product, therefore they can have influence in the customer disposing of the package. If this is the case, then the solution to the problem (if there is one) is simply to legislate this agreed persuasive method to be printed on the package, just as many other messages are legislated to be printed (e.g. mass, health warnings, ingredients use by etc). B17	<p>Brand owners are nominated as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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.</p> <p>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.</p>

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9(2) Households make decisions about the volume of waste, and the volume of waste packaging. However, households are not included in the NEPM and are not subject to charges on their waste generating behaviour...Industry makes decisions, which minimise the cost of packaging subject to protecting the contents from contamination, deterioration and wastage, reducing the costs of transportation and attracting consumers. B33	<p>It is not accepted that households are the sole determinants of waste generation. Householders contribute to the costs of managing their waste through their rates. Both the Covenant and the NEPM provide mechanisms for giving householders clearer pricing signals in relation to waste generating behaviour.</p> <p>This is reflected in the Covenant's emphasis on shared responsibility. The NEPM is focused on brand owners to the exclusion of other points in the chain for strategic reasons.</p>
9(2) The "take-back" provisions are unlikely to be workable for rural and remote communities. There are communities with access only by foot or air...The lack of local users for recycled material and/or the very high cost of interstate or overseas transport of material makes recovery, sorting and handling, in most cases, an unviable option. B34	The NEPM guidelines are framed in such a way as to provide jurisdictions with the necessary flexibility to regulate appropriately. The structural reform of kerbside under the Covenant combined with the adoption of market pricing structures may lead to altered expectations for remote and rural communities.
9(2)(b) Brand owners cannot assure the re-use, recycling or energy recovery of consumer packaging in which the brand owner's products are sold. Brand owners can facilitate the recycling of such packaging, they can encourage consumers to recycle used packaging, they can even provide funds and resources to make recycling easier for consumers but in the end recycling is a choice made by consumers. Companies cannot make anyone recycle yet this clause imposes just such a requirement on brand owners. It is a classic case of being able to lead a horse to water but not being able to make it drink. B48	Brand owners are being called upon to adopt a level of performance generally in line with that being achieved by Covenant signatories, taking account of any relevant local factors.
9(2)(c) Secondary aluminium generated through recycling aluminium cans has many uses and is a valuable resource that is freely and actively traded both domestically and internationally. The aluminium industry does not consider any one use of secondary metal to be more appropriate than any other. The industry therefore believes that prioritising reuse applications as in this clause is inappropriate. B35	The viewpoint of the aluminium industry is noted but the expressed preference is useful in that it addresses some of the complications which can arise if there is undue dependence on export markets.
9(2)(c) This clause does not appear to provide for the option of energy recovery as provided for in sub clause 9(2)(b). B48	Clause amended to "Use within Australia as a secondary resource" which includes use for energy recovery.
9(2)(c)(iii) Export of waste is presented as a means of waste reduction. Export of post-consumer material whether recyclable or not	The export of waste is regulated by the Commonwealth in accordance with the Basel Convention. Recyclables are traded

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<p>should be banned. It is incumbent upon industry to design products in such a way that they can readily be used again, that they can be re-manufactured with minimal energy input, with the aim of a long useable life cycle and an ultimate take-back responsibility by the producer.</p> <p>B4</p>	<p>internationally. The NEPM expresses an appropriate preference for secondary use within Australia.</p>
<p>9(2)(d) Refers to information on product labelling. Four issues arise:</p> <ul style="list-style-type: none"> • imported product will need to be labelled accordingly. This is often not the case and will presumably become the importers' responsibility. While this of itself may not be difficult, enforcement of labelling needs will be. Many of these companies are small and from non-English speaking backgrounds. • is locally produced product to be labelled through application of the Covenant? While the Covenant refers to the need for packaging to bear relevant information on the package or label, it is not clear what the labelling requirements are. • a lot of product already on the shelves (and likely to be for some time) will not be able to be labelled. How will the NEPM deal with this when the NEPM is made? • it seems important for labelling and management of labelling to be consistent across jurisdictions. A generic regulation is the only way to deal with this. <p>B1</p>	<p>The labelling requirement has been amended to provide for a broader range of consumer information options, however these must be exercised in the context of current Trade Practices Act restrictions.</p> <p>Jurisdictions could make appropriate transitional arrangements or take the matter up with an implementation task force if established.</p> <p>It is noted that a generic regulation developed through a task force has been proposed by South Australia.</p>
<p>9(2)(d) Wineries will be required to provide recycling details on labels. This will include bottles and casks and may include outer packaging. Given the variations in recycling requirements in different jurisdictions, it is difficult to see what information could be included that would have a possible use. At the time of packaging, it is not usually known where the wine will be destined.</p> <p>B18</p>	<p>The labelling requirement has been amended.</p>
<p>9(2)(d) The labelling requirement is not practical. Provisions for recovery and recycling differ from place to place and between local government areas. Accordingly, the information to be provided depends upon where the package is sold and the contents used – unknown at the time of production. It is not possible for brand owners to provide adequate information about</p>	<p>The labelling requirement has been amended to provide for a broader range of consumer information options, however these must be exercised in the context of current Trade Practices Act restrictions.</p>

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the available processes for recycling packaging at the point of consumption. However, should the labelling provide inadequate advice it will violate the NEPM, incurring severe penalties, and violate the misleading practices provisions of the Trade Practices Act, incurring another set of penalties. B33	
9(2)(d) Effective product labelling should allow consumers to base their purchasing decisions on the waste performance of a package. The labelling obligation currently contained within the NEPM is unlikely to achieve this because it will not provide consumers with adequate information to differentiate between packages. Labels should indicate an actual recycling performance (recovery and reuse) so that they may be used by the consumer as a point of differentiation. B35	The proposal goes beyond the purpose of the NEPM however there is no barrier to providing more detailed information on a package's recycling performance should a company wish to do so.
9(2)(d) We have no objection to companies complying with the labelling provisions of the NEPM, and labelling their products as such, if it unequivocally means that they are taking back their packaging. B39	Noted.
9(2)(d) This clause requires "adequate" information on "all" product packaging. What constitutes adequate information and the scope of packaging that needs to carry such labels needs to be clarified. This will be a complex and contentious matter in which national consistency should be ensured. There is potential for inconsistency with commonwealth, State and Territory trade practices and fair trading laws. Under these laws, label instructions relating to recyclability may be deemed to be misleading in many circumstances (refer to determinations by the Australian Competition and Consumer Commission and guidelines on labelling and recycling claims http://www.accc.gov.au). B42	The labelling requirement has been amended to provide for a broader range of consumer information media. This issue could be dealt with through an implementation task force if established.
9(2)(d) Labelling of packaging must not portray a false, misleading or deceptive nature of the package. As such logos used to indicate the package is recyclable should only be used on products that have an existing recycling route for the type of package. Packages that do not have a recycling route (e.g. cordial, yoghurt and soft cheese containers) should not be permitted to use a marking that indicates that the package is recyclable. In addition, labelling should be clear so not to confuse that the package was	Noted.

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<p>manufactured wholly or in part from recycled material as opposed to the package itself being suitable for recycling.</p> <p>B44</p>	
<p>9(2)(d) The need for information on the package that adequately advises consumers how the package is to be recycled must be able to be achieved via the use of a simple symbol which is common to all jurisdictions. With food labelling laws already requiring ingredient lists, nutritional information, contents, etc, there is, in many cases, no room left for further information. Brand owners must have the option of using a symbol which is understood by the community at large to convey the recycling details.</p> <p>B48</p>	<p>The labelling requirement has been amended to provide for a broader range of consumer information media. As a general principle, ACCC discourages the use of logos as an alternative to the use of clear written information.</p>
<p>Clause 9(2)(d) Under the obligation relating to labelling, PACIA recommends that prescriptive requirements not be recommended in the NEPM. Guidance should be provided that:</p> <ul style="list-style-type: none"> • helps companies to meet their obligations on the provision of labelling; and • is practical and informative but does not create problems with regard to developments in recycling and regional differences in recycling practices. <p>B54</p>	<p>The labelling requirement has been amended to provide for a broader range of consumer information media.</p>
<p>9(3) Could there ever be a scenario where a brand owner establishes a recycling collection facility targeting the most accessible materials to collect, including their own packaging and that of another company, leaving another brand owner to collect the less accessible materials, requiring a more vigorous recovery and advertising campaign? Would the latter brand owner be penalised for not accessing as much material as they had hoped?</p> <p>Should provision be made for a brand owner to recover their own packaging materials if they wish to do so?</p> <p>B45</p>	<p>The obligation relates to all types of packaging in which the brand owner's products are sold. Any enforcement activity is at the discretion of the jurisdiction and would need to take equity issues into account. Competition in the recovery of materials may be a positive outcome.</p> <p>The guidelines already enable a brand owner to do this.</p>
<p>Clarification required on what packaging material the NEPM applies to ie all packaging capable of being recycled, or only packaging systematically collected at kerbside.</p> <p>B1</p>	<p>These remarks seem to indicate a lack of familiarity with the Covenant as a broad product stewardship device covering (Covenant: page 2) "all consumer packaging ... made of any material, or combination of materials, for the containment, protection, marketing and handling of retail consumer products". Since the materials presently used for these purposes may change over time, neither the Covenant, nor the NEPM is able to be definitive about them. If this were done, the Covenant and so the NEPM,</p>

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	could create exemptions for materials not specifically referred to. The NEPM's reference to materials conventionally (not systematically) collected in kerbside is intentional. It allows flexibility to jurisdictions across both recycling practices and material types. The NEPM aims for consistency rather than uniformity.
9(4) Refers to 'materials conventionally collected for recycling'. If this is referring to kerbside, it would be better moved forward and arguably be part of the Scope in section 7. B1	The intent of this clause is to indicate to jurisdictions that, in imposing an obligation on a brand owner, they should take account of the feasibility of recycling options. It would make no sense, for example, to impose a "re-utilisation" option on brand owners if no such option were actually available. The start point for a jurisdiction would be the materials collected in kerbside or other recycling systems in the jurisdiction and then move out to consider systems in other jurisdictions or practices in other parts of the world. The clause is merely trying to guide the research effort of the jurisdiction.
<p>9(4) Any exemptions or exclusions will weaken the effectiveness of the NEPM in supporting the Covenant and providing an effective regulatory safety net:</p> <ul style="list-style-type: none"> • If the scope of the NEPM is limited to "those materials conventionally collected for recycling", it will not provide an effective safety net. Given that interpretation, those companies that decide not to sign the covenant would not be caught by the NEPM, thus severely reducing the NEPM's effectiveness as a safety weapon. • The draft NEPM focuses on materials that are traditionally collected in the kerbside collection system. This represents serious shortcomings and does nothing to encourage recycling of currently unrecyclable products and new entrants with poor recycling characteristics. Once again, industries such as aluminium that have built recycling systems at considerable cost will be disadvantaged in the marketplace. • The Commonwealth understands that the NEPC Act restricts the powers of NEPC to make NEPMs relating to "the re-use and recycling of used materials" (para. 14(1)(f)). However, we recommend that the NEPM project team investigate possible mechanisms for working around this problem so that free riding on the Covenant can be fully and effectively addressed. 	<p>In identifying material types, the draft NEPM guidelines suggested that jurisdictions should "have regard to those materials conventionally collected for recycling".</p> <p>Clause 9(4) has now been amended to include references to non-kerbside recovery systems, technology, competition and Covenant signatory achievements. These parameters are given to guide jurisdictions in drafting the actual regulatory instruments which will give effect to the NEPM at jurisdictional level.</p>

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- The scope of the Covenant and that of the draft NEPM are not aligned. The NEPM in its current form is effectively a regulatory net for the kerbside schedule of the Covenant rather than its totality. The draft NEPM in no way deals with the issue of companies that may not adhere to other schedules, such as the product stewardship schedule, of the Covenant. This potentially gives that company an advantage over those that adhere to product stewardship schedule and the Environmental Code of Packaging.
- The Covenant is compromised by the NEPM because of its restricted application. The exclusion of anything other than materials conventionally collected for recycling, means that there is no incentive for brand owners using these “unconventional” packaging materials to sign onto the Covenant. Meanwhile, brand owners using “conventional” packaging materials feel they are compelled to sign onto the Covenant under threat of invoking the NEPM.
- The fact that the Covenant and the NEPM are disconnected in terms of scope creates a bias in favour of products that are non-recyclable in the current kerbside recycling system or in the future. The implication, therefore, is that companies that use exclusively materials that are of a non-recyclable nature are put into a potentially advantageous position. This would be most inappropriate from both competitive and environmental perspectives.
- The NEPM focuses on the recovery and recycling of packaging (Section 7) and, as such, does not reflect the scope of the Covenant. It can only be applied as a safety net to those packages that can be viably sorted by the householder and reprocessed by technologies available in Australia and offers no protection to Covenant signatories whose competitors do not fall into this category. In other words, the NEPM does not place obligations on packaging that is unlikely to be collected. Potential results could be market distortions, issues with the Trade Practices Act and a move toward non-recyclable packaging.

B22, B35, B37, B39, B42, B46, B48, 54

9(4) The proposed NEPM/Covenant seems deficient in providing incentives for brand owners to use recyclable packaging materials. For example, there are no penalties or

In identifying material types, the draft NEPM guidelines suggested that jurisdictions should “have regard to those materials conventionally collected for recycling”.

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<p>disincentives for a brand owner to switch to using non-recyclable packaging. B31</p>	<p>Clause 9(4) has now been amended to include references to non-kerbside recovery systems, technology, competition and Covenant signatory achievements. These parameters are given to guide jurisdictions in drafting the actual regulatory instruments which will give effect to the NEPM at jurisdictional level.</p>
<p>The NEPM is designed to catch “free loaders” to the Covenant and as such the Covenant acts as the lead document. However, many companies that will be Covenant signatories are working on alternative waste management solutions to these problems and this thrust would be diluted if similar equivalent materials were not addressed under the NEPM scope. B54</p>	<p>In identifying material types, the draft NEPM guidelines suggested that jurisdictions should “have regard to those materials conventionally collected for recycling”.</p> <p>Clause 9(4) has now been amended to include references to non-kerbside recovery systems, technology, competition and Covenant signatory achievements. These parameters are given to guide jurisdictions in drafting the actual regulatory instruments which will give effect to the NEPM at jurisdictional level.</p>
<p>The uncertainty surrounding the application of the NEPM on packaging remains a concern. B25</p>	<p>In effect the NEPM is a regulatory instrument only affecting governments. It requires implementation through a state/ territory instrument which will provide the clarity sought. To determine the materials in respect of which the obligations will be imposed, participating jurisdictions should have regard to: those materials collected for re-use, recycling or energy recovery whether in a kerbside system or otherwise; the practices and achievements of Covenant signatories; the state of technologies for re-use, recycling or energy recovery; and any competitive issues which may arise from including or excluding particular materials</p>
<p>9(5) What is the methodology to be used to establish the proportion to be re-used? B1</p>	<p>Clause 9(5) intends to guide the research of the implementing jurisdiction. In this case it is saying “don’t pick an arbitrary number, refer to what is being achieved elsewhere and use that as a benchmark, albeit adjusted if necessary to take account of actual circumstances”.</p>
<p>9(5) It is proposed that the Covenant signatories are to determine “the proportion to be recovered and subsequently re-used, recycled or processed for energy recovery”. One can well imagine the ‘sweet deals’ that can be negotiated under this clause.</p> <p>All post-consumer material should be re-circulated for further use. Any material not capable of being re-used or fed back into a closed production loop, should be phased out: it should not have been made in the first place. B4</p>	<p>Covenant signatories will not “determine” the level of performance required of brand owners under the NEPM. Clause 9(5) indicates that the performance of Covenant signatories is to be used by jurisdictions in establishing the required performance level of brand owners.</p> <p>Not a practical proposition and inconsistent with the waste hierarchy.</p>

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<p>9(5) Under the NEPM a monopoly packaging supplier who is a Covenant signatory can decide the level of impost imposed on competitors entering their markets because they have the capacity under this clause, to determine the proportion of packaging to be recovered by non-signatories. This provides a significant barrier to entry and to innovation because it will give some businesses a legislated capacity to impose a performance standard on competitors. B9, B33</p>	<p>The emphasis of 9(5) is that performance levels should not be set arbitrarily. Covenant signatories will not “determine” the level of performance required of brand owners under the NEPM. Clause 9(5) indicates that the performance of Covenant signatories is to be used by jurisdictions in establishing the required performance level of brand owners. The Covenant is not prescriptive and provides a menu of options which individual companies can apply depending on their own individual circumstances. Jurisdictions would have regard to the performance of relevant Covenant signatories as a start point for their considerations, which would then be modified by the jurisdiction in the light of its own circumstances and expectations and in the light of the amended 9(4).</p>
<p>9(5) The draft NEPM continues to ignore the issue of material equity. For the aluminium industry to continue to invest and participate in waste reduction activities a non-discriminatory legislative environment is required that treats competing packaging materials in an equitable manner. The aluminium industry believes this can only be achieved by requiring competing packages to meet equivalent obligations. B35</p>	<p>This comment seems to recommend that all materials should be required to achieve the same levels of recovery and recycling as aluminium. The NEPM has a brand owner rather than a material basis and Clause 9(4) has been amended to encourage jurisdictions to take a broader range of considerations into account.</p>
<p>9(5) The draft NEPM does not provide adequate clarity of consistency in relation to the actual performance levels that will be required of brand owners. This remains a matter of serious concern. As NEPM requirements must be translated into regulation, the requirements must be precise and measurable to a degree that is not vital in a voluntary, cooperative agreement such as the Covenant. B42</p>	<p>The NEPM is intended to provide consistency rather than uniformity, and to provide flexibility at jurisdictional level to deal with practical implementation issues. The NEPM needs to be unambiguous rather than precise so as to ensure a consistent outcome but one which takes account of differences at jurisdictional level.</p>
<p>9(5) Reference should be made to the <i>particular material being collected</i> in this subclause, for example, by adding the following eg for subclause (2): the proportion of <i>a particular material</i> required to be recovered and subsequently re-used, recycled or processed for energy recovery should not be arbitrary but should be established by reference to the existing performance demonstrated by Covenant signatories <i>for that particular material</i> or by agreement among participating jurisdictions. This would ensure that brand owners are not comparing themselves against other brand owners who produce totally different materials.</p>	<p>The Clause has been amended as recommended.</p>

9. Statutory obligations, rights and penalties

B45	
<p>9(6) Clarification required on who determines reasonable costs. For example, under the current scope a local council could set up a recycling service with the commercial sector and seek the recovery of complete costs from the brand owner.</p> <p>B2</p>	<p>What constitutes a reasonable cost could only be definitively determined in the courts. The capacity of local government to set up recycling services with the commercial sector and recover costs is limited by clause 9(6) which refers only to kerbside recycling collections and the definition of kerbside recycling collection which further limits it to domestic waste streams. In seeking to recover costs in these defined circumstances, local government would also need to demonstrate that it had incurred the costs as a result of the failure of the brand owner to discharge the obligations imposed in response to clause 2.</p>
<p>9(6) Should reflect the moves the National Packaging Covenant will be making with local government. The wording of the current clause provides local government with an opportunity <u>not</u> to adopt the principles advocated as part of the Covenant. The principles advocated as part of the Covenant are:</p> <ul style="list-style-type: none"> • that local government move away from carrying the commodity price risk for recycling materials through a split contract for collection and sorting material • that local government move to a more efficient contract structure. <p>Recommended that clause 9 be amended to reflect the intent of the Covenant.</p> <p>B2</p>	<p>Clause 9(6) relates to recovery of actual costs of collecting materials of brand owners who are not meeting their obligations. There is a good deal of scope for argument including whether costs should be calculated on an absolute, proportional or marginal basis. The issue alluded to (the overall cost of providing kerbside collection services taking account of possible exposure of local government to commodity price changes and operating at less than maximum efficiency) is catered for through the use of the term “reasonable” in relation to cost. As indicated above the final arbiter of what is reasonable is the judicial system. A Court would take account of a variety of factors including the basis of any local government charge in determining what is reasonable in any particular circumstance.</p>
<p>9(6) There is a likely increase in cost for local government in the administration of recovery of collection and sorting costs from non-complying brand owners. First it has to be established which brand owners are non complying by sorting through the waste stream into each of the separate brands and second, it must be determined whether the amount of penalty payment warrants the efforts of collection.</p> <p>B3, B15</p>	<p>It is assumed that this entitlement would not be exercised unless it was strategically and financially beneficial for local government.</p>
<p>9(6) Such cost recovery activities by local government should be resourced by participating jurisdictions.</p> <p>B7</p>	<p>This is inappropriate for inclusion in the NEPM.</p>
<p>9(6) The essence of the NEPM is that companies owning brand names will pay to reduce their packaging outputs and then risk paying again through the collection cost recovery procedure which is not defined in the NEPM, but the mechanics of which are awe-inspiring.</p> <p>B17</p>	<p>Local government would only have this option if it could be demonstrated that the brand owner had failed to discharge its obligations.</p>

9. Statutory obligations, rights and penalties

<p>Whilst Clause 9(6) provides a possible mechanism via which councils may seek to recover from a brand owner the costs of collection and sorting of his products in their recycling system, councils have indicated that they would prefer a more direct and less costly system to be re-imbursed for the costs of handling non- performing brandowners products.</p> <p>B23</p>	<p>It is assumed that this entitlement would not be exercised unless it was strategically and financially beneficial for local government. The entitlement described is given as an example of the kind of measure jurisdictions may wish to impose.</p>
<p>Clause 9(6) PACIA envisages difficulties in ensuring cost recovery is carried out in a non-discriminatory manner when there are thousands of different packages on the market supplied by a large number of companies and sources from beverage to food to household appliances and other goods. Furthermore, because goods are collected as a “basket”, the individual cost of collecting a package type is almost impossible to determine.</p> <p>B54</p>	<p>The cost recovery option is offered as an example of the kind of mechanism jurisdictions may wish to make available to local government. It is assumed that the option would only be exercised where it is strategically and financially sensible to do so and where recovery costs can be reasonably attributed. In a debt recovery situation, it is open to a person to have the matter heard by the courts.</p> <p>Clause 9(6) relates to recovery of actual costs of collecting materials of brand owners who are not meeting their obligations. There is scope for argument including whether costs should be calculated on an absolute, proportional or marginal basis. The final arbiter of what is reasonable is the judicial system. A Court would take account of a variety of factors including the basis of any local government charge in determining what is reasonable in any particular circumstance.</p>
<p>The NEPM does not sufficiently address the problem of providing assistance to local governments in respect of the collection and recovery of materials for which non-exempt brand owners are responsible.</p> <p>B42</p>	<p>It is not the intent of the NEPM to raise revenues to assist local government.</p>
<p>9(6) The duality between a self-regulatory/voluntary Covenant system and the legislative framework of a NEPM may create an inequitable situation. A ‘brand owner’ with high volume product turnover could have a significant financial advantage by becoming a signatory to the Covenant system, whilst a smaller producer, who does not participate in the Covenant system may fall victim of a Local Government audit system which has no guideline or base line criteria.</p> <p>B44</p>	<p>A small producer has the same options to join the Covenant as any other business. If it chose not to, it could be assumed that this was the least cost option. Clause 9(6) is entirely dependent on the brand owner having failed to discharge its obligations under 9(2).</p>
<p>9(6) The draft NEPM suggests that jurisdictions should give local government authorities and their agents an “entitlement...to recover from a brand owner the reasonable costs of collection,</p>	<p>Clause 9(6) relates to recovery of actual costs of collecting materials of brand owners who are not meeting their obligations. There is a good deal of scope for argument including whether costs</p>

9. Statutory obligations, rights and penalties

<p>sorting and return of the brand owner's consumer packaging if the packaging is collected through the kerbside recycling collection services provided by the local government or its agent and the brand owner has not discharged his obligations..."</p> <p>If the suggestion were to be generally taken up, all 700 local government authorities, or their waste contractors, would be free to decide what constituted "reasonable" costs. No dispute resolution or appeals mechanism is envisaged. No verification of a claim by the "agent" is required. Clearly, this situation would result in widespread litigation. B11, B47</p>	<p>should be calculated on an absolute, proportional or marginal basis. The final arbiter of what is reasonable is the judicial system. A Court would take account of a variety of factors including the basis of any local government charge in determining what is reasonable in any particular circumstance.</p> <p>The cost recovery option is offered as an example of the kind of mechanism jurisdictions may wish to make available to local government. It is assumed that the option would only be exercised where it is strategically and financially sensible to do so and where recovery costs can be reasonably attributed. In a debt recovery situation, it is open to a person to have the matter heard by the courts.</p>
<p>9(7) Could clarify to whom the transparency is directed, eg ratepayers, industry. B1</p>	<p>The guidance is to remove legislative barriers; transparency should be clear to all and not limited to any particular audience.</p>
<p>9(7) In many cases Local Government kerbside collections are done by competitive tender and some of the information contained in the pricing is of a commercial nature and should not be made widely available. The objective of this clause is unclear and appears unwarranted. B15</p>	<p>The clause refers to charges to ratepayers rather than to any commercial contracting information.</p>
<p>9(7) Households continue to be misinformed about the costs or the true environmental effects of packaging and of kerbside collection systems. The impact statement contributes to this misinformation. B33</p>	<p>One of the key expectations of the Covenant/NEPM package is a higher level of community awareness and education about these issues. Views of the current level of community understanding and the effectiveness of various measures to influence it differ and are likely to continue to differ.</p>
<p>9(8) There should be prior discussion and agreement on 'substantial financial penalties'. B1</p>	<p>Of course, perhaps through the standard regulation working group</p>
<p>9(8) It is suggested that "offences will be established carrying substantial financial penalties for brand owners who fail to comply with ... obligations". Surely the promoters of such a proposal don't expect it to be taken seriously? A voluntary system with substantial financial penalties ... B4</p>	<p>The penalties are attached but to the voluntary system but to the NEPM.</p>
<p>Clause 9(8), (9) & (10) Any penalties imposed under the NEPM must meet two requirements:</p> <ul style="list-style-type: none"> • be easily enforceable with minimum cost of bureaucracy; and • represent a significantly higher cost to a company than being a signatory of the 	<p>The provisions relating to enforcement have been expanded to recommend efficient and strategic enforcement approaches. Substantial penalties will need to be imposed through regulation at jurisdictional level and the exact level of these is to be negotiated among jurisdictions.</p>

9. Statutory obligations, rights and penalties

<p>Covenant.</p> <p>These cannot be assessed due to the lack of penalties outlined in the NEPM and the lack of detail about how these will be enforced in a non-discriminatory manner.</p> <p>B54</p>	
<p>The Association has a very real concern, apparently shared by some staff of EPA regional and district offices, about the state's commitment to and adequate resourcing of the administration and enforcement of the NEPM. We are unaware at this stage whether this is an issue of concern to local governments in other states. This then relates to Clause 9 (10) in Part 3. Who shall determine if a relevant jurisdiction is in fact allocating sufficient resources to ensure compliance with the NEPM and how could such a situation be addressed? The party likely to be most disadvantaged by inadequate resourcing and enforcement would be of course local government, unless the market share of the non-performer was significant enough to cause an unfair advantage over Covenant signatories.</p> <p>B23</p>	<p>Jurisdictions are required to report to NEPC on the implementation of all NEPMs. By passing the National Environment Protection Council Acts, jurisdictions have declared their intent to implement, by such laws and other arrangements as are necessary, each NEPM.</p>

10. Exemptions/deemed compliance

<p>Deemed compliance opens the door wide to manipulation.</p> <p>B4</p>	<p>Noted. Deemed compliance is a form of exemption. The NEPM provides for limited exemptions.</p>
<p>Recommend that industries/sectors be wholly or partially exempt from the NEPM if they enter into appropriate funding arrangements with KABC, resulting in environmental outcomes wholly or partially equivalent to the Covenant.</p> <p>B6</p>	<p>This kind of arrangement may be appropriate for inclusion in an Action Plan under the Covenant rather than the NEPM. Clause 10 provides for this to happen where a jurisdiction is satisfied that the arrangement produces an outcome equivalent to that produced under the Covenant.</p>
<p>If Covenant signatories fail to comply with the Covenant or their action plan they may be disqualified from the Covenant. Due to small oligopolies currently in place, this could result in disqualification of entire sectors. In such a case the NEPM would also cease to apply to disqualified sectors since there would be no Covenant signatory to suffer market disadvantage. At worst this makes the entire system vulnerable to collapse. At best it places the monitoring group in a very weak negotiating position.</p> <p>B8</p>	<p>There is a general principle to preclude market disadvantage, however this is not the sole basis for the NEPM which is to underpin the Covenant.</p>
<p>We note that paragraph (c) of the definition of "brand owner" has been drafted with a view to excluding small retail businesses from operation of the NEPM.</p>	<p>There is not a need for exemption for retailers. They are simply not addressed by the NEPM.</p>

10. Exemptions/deemed compliance	
B25, B42	
<p>Many small businesses will have to seek advice as to whether they are required to comply with the NEPM, increasing the paperwork and compliance burden.</p> <p>A simpler option would be to exempt small business from the requirements of the NEPM. B25, B42, B43</p>	<p>It is unclear why this would be different or more onerous than ascertaining the compliance obligation under existing regulatory regimes. On the contrary, the establishment of a single national approach means that businesses will only have to ascertain the nature of their compliance obligations once.</p> <p>...but would simultaneously jeopardise the integrity of the Covenant/ NEPM package exposing businesses to the consequences of collapse of the co-regulatory framework. These are likely to include revised and potentially more prescriptive state based regimes. Exemptions/thresholds needs enforcing at jurisdictional level. In pursuing enforcement activities in a variety of regulatory contexts, jurisdictions operate in a strategic fashion. This has the practical effect of providing de facto exemptions to small businesses unless jurisdictions make a conscious effort to pursue them. Establishing a formal de jure exemption for small businesses to replace the existing de facto exemptions which exist in most jurisdictions would set a major precedent.</p> <p>Arguments favouring thresholds assume that the threshold is “fair” when in practice it is arbitrary. Exemption thresholds are rare in both Australian and overseas packaging regulatory regimes. An exemption threshold in favour of SME domestic producers may produce WTO difficulties.</p> <p>The argument for the exemption of SMEs is also based on the assumption that small businesses neither offer nor suffer from competitive disadvantage as a result of free riding. Free-riding is also an issue for Australian small business. An Australian small manufacturer of a packaged product, makes a contribution to existing state regulatory requirements through the price paid for packaging. An importer (whether large or small) of an identical product not only has a competitive advantage in that its packaging does not include an element related to compliance with existing state environment regimes, but imposes an additional cost of Australian producers and / local government (to which Australian enterprises pay rates) by free-riding collection infrastructure.</p>
The NEPM process makes every brand owner a law breaker until they are able to secure	The Covenant would be available to brand owners ahead of the implementation of the

10. Exemptions/deemed compliance	
<p>compliance by becoming a signatory of the Covenant, gain compliance by agreement with a signatory Australian packaging supplier, or gain exemption from the Covenant by undertaking actions deemed equivalent by signatories. B33</p>	<p>NEPM. Jurisdictional instruments implementing the NEPM would be subject to the normal publication requirements applying to statutory instruments within those jurisdictions.</p> <p>The guidelines have been amended to recommend that jurisdictions adopt an enforcement protocol which ensures that offences are prosecuted only when an informed choice has been made both not to join the Covenant and not to comply with NEPM obligations and other options have been exhausted.</p>
<p>However, there is no specific exemption for small retail businesses and it appears that obligations will apply to small businesses that import products, and small manufacturing operations. B42</p>	<p>Correct.</p>

11. Thresholds	
<p>Describing exemptions as uniform exemptions cloud the meaning of the section. Unless there are other types of exemption, it would best be removed. B1</p>	<p>The purpose is to generally advocate against exemptions without seeking to override jurisdictional prerogatives (eg in relation to sunrise industries). As guidelines are not mandatory upon jurisdictions, it is not practical to require that there be no exemptions.</p>
<p>An argument raised in the NEPM information package is that if small packaging businesses are exempted from the requirements of the Covenant and the NEPM, packaging companies may be restructured so that they could avoid the requirements of the Covenant or NEPM. The SBDC considers that if an exemption for small firms were introduced, it would be unlikely that the exemption would lead to wholesale restructuring of large packaging companies, as the costs of restructuring would negate any benefit gained.</p> <p>As small businesses would be commercially disadvantaged under both the Covenant and the NEPM there is justification for exempting these businesses from the requirements of both.</p> <p>The Commonwealth strongly retains the view that regulatory tiering should be adopted in the NEPM to exempt small businesses using insignificant amounts of packaging. Options for tiering are set out in the submission from the Commonwealth Office of Small Business (OSB) provided in December 1998.</p>	<p>The flexibility and non-prescriptive nature of the Covenant is designed to keep compliance costs low and is a particular advantage to small business. It enables them to respond in a manner appropriate to their own circumstances rather than having arbitrary targets imposed upon them. The Covenant also encourages small businesses to take advantages of economies of scale by providing for sector-wide action and reporting. The Covenant moves away from the current regulatory focus on targets, which, as the Industry Commission pointed out “generate hidden economic costs which will ultimately be passed on” (Industry Commission, (1995), Packaging and Labelling).</p> <p>Exemption thresholds are never likely to be anything but arbitrary. The selection of any threshold will always be unfair to players just above the threshold; it would provide encouragement to structure operations or engage in other devices to avoid the threshold. For example, in Ireland, many of the “small” players which fall below the nominated thresholds are major companies which form the bedrock of the</p>

11. Thresholds

B13, B42

recovery organisations in other EU member states.

This assertion does not recognise that prices paid by small businesses already include costs of compliance with current State/ Territory regulatory and voluntary regimes. Any analysis of costs of the Covenant/NEPM therefore needs to be done on a marginal cost basis. Compliance costs associated with the Covenant/ NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions.

In pursuing enforcement activities in a variety of regulatory contexts, jurisdictions operate in a strategic fashion. This has the practical effect of providing de facto exemptions to small businesses unless jurisdictions make a conscious effort to pursue them. Establishing a formal de jure exemption for small businesses to replace the existing de facto exemptions which exist in most jurisdictions would set a major precedent.

The argument is also based on the assumption that small businesses neither offer nor suffer from competitive disadvantage as a result of free riding. Free-riding is also an issue for Australian small business. An Australian small manufacturer of a packaged product, makes a contribution to existing state regulatory requirements through the price paid for packaging. An importer (whether large or small) of an identical product not only has a competitive advantage in that its packaging does not include an element related to compliance with existing state environment regimes, but imposes an additional cost of Australian producers and / local government (to which Australian enterprises pay rates) by free-riding collection infrastructure.

On the other hand, in selected markets, small companies can and do pose a major commercial challenge to larger companies. Some of the larger companies have made the point that in particular segments, their market share is being eroded, not by their large competitors but by smaller producers who are targeting particular market segments. If this is achieved through free riding or negligence of product stewardship, then it is appropriate for it to be addressed through the Covenant and NEPM by ensuring

11. Thresholds	
	that the full range of enterprises are covered.
All enterprises who are participants in the packaging supply chain must be included in the Covenant/NEPM. Exempting small and medium size operators gives them a competitive advantage over other companies. This is especially true where barriers to entry are low as in plastics manufacturing or importing. If our business is to continue contributing to the steel IWRA and the Covenant/NEPM we consider it critical that all participants in the packaging chain are included and there are no exemptions. B14	Agreed.
The PCA Board reiterated its view that a regulatory safety net was essential if the Covenant was to be implemented. If there were no regulatory safety net, there would be no Covenant. In addition, the regulatory safety net should contain no exemptions for small and medium enterprises – it was ‘one in, all in’. B22	Noted. The NEPM is drafted so as to generally advocate against exemptions without seeking to override jurisdictional prerogatives (eg in relation to sunrise industries). As guidelines are not mandatory upon jurisdictions, it is not practical to require that there be no exemptions.
The impact statement makes no estimate on the number of brand owners covered by the NEPM. There are estimated to be over 230,000 registered trademarks in Australia. There are over 1 million companies registered with the Australian Securities and Investment Commission, and over 100,000 registered business names in SA. There would be more brands and brand owners who are not so registered...We estimate that the number of “brand owners” captured by the definition provided in the draft NEPM may be in the ten’s of thousands in SA and in the hundred’s of thousands across Australia. The draft NEPM will effectively see each of these to be deemed to be acting illegally until they take one of the actions open to them under the NEPM. B33	<p>The obligation is not to be imposed on registered trademarks. It is not expected that all companies registered with the ASIC will be affected, nor that all registered business names in South Australia or elsewhere are brand owners. It is expected that the numbers of relevant brand owners will be of several orders of magnitude below that suggested and that many, if not most of those, will be Covenant signatories.</p> <p>The enforcement guidelines (new clause 10) make it clear that the offence should be dependent on failure to rectify a non-compliance.</p>
If exemptions to the NEPM are raised as a means of addressing concerns of SME’s, then the practical effects of kerbside audit have to be considered as part of the proposal. B1	Noted. The NEPM is drafted so as to generally advocate against exemptions without seeking to override jurisdictional prerogatives (eg in relation to sunrise industries). As guidelines are not mandatory upon jurisdictions, it is not practical to require that there be no exemptions.

12. Dependence on National Packaging Covenant	
How is it deemed that the Covenant ‘ceases to be in force’? Who is responsible to deciding and on what criteria is the decision made? B1	The Covenant has a life of five years and would cease to be in force if it is not renewed. It would also cease to be in force if ANZECC or industry withdrew from it entirely. In either case, it would cease to be in force as a consequence of a

12. Dependence on National Packaging Covenant	
	deliberate decision. It may cease to be in force if ANZECC determined that there was insufficient industry commitment to it. This would require a formal decision of ANZECC.
The term of the Covenant is five years from its commencement. The term of the NEPM is not clearly stated. The term of both the Covenant and NEPM must be the same. Recommended that clause 12 is strengthened to ensure that jurisdictions do not establish statutory obligations beyond the life of the Covenant which is deemed to be five years. The Covenant and NEPM should cease to exist after five years. B2	The main features of the NEPM which are guidelines for governments cannot limit the sovereign right of a jurisdiction to legislate/regulate. The clause goes as far as it is feasible to go to ensure that the Covenant and NEPM remain linked through time.
The draft NEPM remains dependent on the implementation of the voluntary National Packaging Covenant (clause 12). The AAC believes that national regulation is required to address the issue of packaging waste and continues to support the implementation of the NEPM, with or without the support of the Covenant. B35	The NEPM as drafted is designed for a regulatory support role only. Should the Covenant not proceed Ministers would want to revisit basic principles.
<p>For most small packaging firms the choice would be between the lesser of three costs, that is between:</p> <ul style="list-style-type: none"> - the costs incurred through signing the Covenant and developing, implementing and maintaining an Action Plan, as well as contributing a proportion of the \$17.45 million transitional cost; - implementing or participating in a product recycle and recovery program as dictated by the NEPM; or - by taking no action and running the risk of incurring fines and penalties should a competitor complain and local government take legal action. <p>The SBDC is greatly concerned that economic reality may force many small packaging businesses to adopt the latter approach. Alternatively, the costs may see small firms opting, where possible, to use non-recyclable products to take them away from the requirements of the draft NEPM. B13</p>	<p>The nominated choices also need to be weighed against the alternative of the continuation of existing regulatory regimes.</p> <p>The NEPM is not directed at packaging firms, but at product brand owners.</p> <p>See point above and note that, in any case, any action by Local Government is dependent upon a prior action by jurisdictions to establish that a brand owner has failed to honour the obligations of clause 9(2).</p> <p>Clause 9(4) has been amended to address this possibility.</p>
The timeframe for the duration of the NEPM does not appear to be mentioned anywhere in the NEPM or Commentary. Should this be included? B45	The maximum recommended timeframe for the duration of jurisdictional instruments made under the NEPM guidelines is five years, which is the duration of the Covenant.
The NEPM has a sunset clause of 3 years. The difference between the sunset clause of the	Not understood. The only three-year timeframe relates to the transitional arrangements under the

12. Dependence on National Packaging Covenant	
NEPM (3 years) and the Covenant (5 years) is not explained in the NEPM or the Commentary. Should this be explained? B45	Covenant.
It would be naive in the extreme to believe that the requisite bureaucratic infrastructure would be established for the five year life of the Covenant, then disbanded, or that the raft of State and Territorial legislation which would flow from the NEPM would be uniformly repealed on the expiry of the Covenant. This legislation would remain in place as a long-term, unjustified (and increasing) burden on industry, consumers and taxpayers. B11, B47	<p>This is an unwarranted assertion given the obligation of governments to work within NEPM frameworks and to publicly report their performance against NEPM goals.</p> <p>The Covenant has a capacity to deliver a self-regulatory regime which makes all other forms of regulation redundant. Any other form of regulation would be dependent upon the level of success achieved through this approach.</p>
The term of the Covenant and the NEPM do not reconcile. The term of the Covenant is five years from its commencement in mid-1999; the term of the NEPM is not clearly stated. It is stated that “participating jurisdictions should ensure that statutory obligations imposed pursuant to the guidelines should have no effect if the Covenant ceases to be in force”. Equally, Government representatives have asserted on numerous occasions, the NEPM “cannot exist” without the Covenant. This aspect can be resolved by specifying that the NEPM’s term is directly linked to that of the Covenant. Additionally, it should be stated that the NEPM and any legislation established as a result of the NEPM shall be repealed if the Covenant and/or a similar instrument do not exist. B46, B48	<p>Clause 12 makes it clear that any jurisdictional instrument made to implement the NEPM guidelines, should not outlive the Covenant. However it is not within NEPC’s power to prohibit jurisdictions from regulating in areas for which they have legislative responsibility.</p> <p>Clause 12 specifically makes the regulatory dimension to the Covenant coterminous with the Covenant. This is reinforced by the guidelines which advocate that jurisdictions refer to the Covenant and Covenant signatories’ performance as a start point when establishing specific requirements.</p>

15. Recovery Data	
A model for new bureaucracy with numerous loopholes to withhold or ‘tailor’ information. It would be nearly impossible to check actual compliance. B4	Disagree.
Clause 15 The focus on brand owners also assumes too much about the operational capacity of the brand owners themselves. For example, while brand owner X may be able to gather and report data on how much packaging it uses, it is difficult to envisage a situation in which that brand owner will readily know how much of that packaging is returned for reprocessing for several reasons. Short of directly setting up and running one’s own ‘take back and utilise’ system (which is highly improbable), the brand owner will need to rely on a reprocessor and other	<p>The requirement to collect this data is a key NEPM obligation.</p> <p>It is acknowledged that collection of this data will present some inconvenience for brand owners who are not Covenant members, and should consequently be an incentive for them to join the Covenant, allowing for sector wide reporting of recovery data, which is an integral part of fulfilling product stewardship obligations.</p>

15. Recovery Data	
<p>parties. These other parties will in turn need to decipher how much of their total recovered material (say cardboard boxes) is attributable to that brand owner – a difficult exercise in its own right. B46</p>	<p>Clause 9(3) provides that brand owners may undertake or assure the recovery of equivalent packaging materials. This could eliminate the need for individual identification of recovered packaging.. For example, if a brand owner uses cardboard packaging, it may contract with a collector to collect cardboard outside of standard kerbside collection services. The recovery data could then be expressed as a proportion of the whole amount collected on behalf of the collector’s customers rather than through individual identification of recovered packages.</p>
<p>Although PACIA supports the need for reporting requirements, it seems excessively onerous and likely to represent a high cost of compliance. In order to provide meaningful data, statistics need to be collected from all brand owners and with literally thousands of packages on the markets, the data requested is almost impossible to collect. Data collection needs to be reasonable and the mechanism used easily applied to a broad range of markets. B54</p>	<p>Note there is no reporting requirement and that the records referred to in the NEPM are expected, for the most part, to be records already held by brand owners. It is disputed that meaningful data could be drawn from the small proportion of brand owners expected to be covered by the NEPM.</p>
<p>The record keeping requirements for brand owners should be greatly simplified or omitted, and reliance be made more on the collection sectors to supply data which is cost effectively obtained and useable. B50</p>	<p>The records required are for the most part standard data kept for other purposes. Reliance on collection agencies is a matter for brand owners and their collection agents.</p>
<p>15(1)(e) We cannot see industry involving itself in such a time-consuming regime. The detailed figures required under clause 15 can at best only be approximations and would therefore have no practical relevance. The amount of reporting involving brand owners, importers, local Councils, Federal and State governments, the NEPC and ANZECC will ensure an administrative nightmare. B4</p>	<p>It would be most odd if brand owners did not know how many units of packaging they purchased, used and marketed to contain their products. Financial records related to these must already be retained for taxation purposes. A brand owner’s other record keeping would depend on how it discharged its obligations under state regulations based on the NEPM. Note that while brand owners are required to record this information, routine reporting is not required. Reporting required of local councils is consistent with good business practice in the administration of kerbside recycling systems. Reporting by governments is integral to evaluating the success of the Covenant/NEPM package.</p>
<p>15(3) Participating jurisdictions shall require a brand owner to keep records for five years. Is this a fair request when the NEPM has a duration of 3 years? B45</p>	<p>The NEPM does not have a duration of three years.</p>
<p>15(6)(d) Recovery data is important in community education to target specific wastes. Data should be available for this purpose.</p>	<p>Noted.</p>

15. Recovery Data	
B7	
<p>A component of the audit process will be a requirement on wineries to keep accurate records on all of their packaging materials. Therefore details on weight of materials used, recovered, reused or disposed as waste will need to be collected. For wineries these details will extend to outer cartons and packaging, bottles, corks, capsules, labels and casks. The requirements will be further complicated by a requirement to record exports separately.</p> <p>B18</p>	<p>Clause 15 amended to refer to principal material.</p> <p>It would be most odd if brand owners did not know how many units of packaging they purchased, used and marketed to contain their products. Financial records related to these must already be retained for taxation purposes. Data in respect of exported product would need to be discounted from gross figures. A brand owner's record keeping in relation to post-consumer packaging would depend on how it discharged its obligations under state regulations based on the NEPM.</p>
<p>The draft NEPM does not provide for an obligation on brand owners to report their performance. All businesses subject to the NEPM should be required to report their performance. The Executive Summary in the Impact Statement has not, in our view, accurately informed readers by stating (last paragraph under the heading Summary of the Draft NEPM on Used Packaging Materials), "the protocols establish data reporting requirements for brand owners...which are intended to establish the amount of packaging put into the market, the amount recovered and the purposes to which it is put".</p> <p>Reporting of performance is needed to allow governments to:</p> <ul style="list-style-type: none"> - assess whether progress is being made, outside the Covenant, towards minimisation of packaging waste; - compare performance of covenant signatories and others; - enforce the requirements of the NEPM. <p>The information required to be reported should include:</p> <ul style="list-style-type: none"> - amount of packaging produced, imported and distributed; - amounts (and proportion) being recovered and reused; - amounts being disposed of in Australia. <p>B42</p>	<p>It is acknowledged that the major environmental benefits will be delivered through the Covenant rather than the NEPM. A distinction needs to be drawn between the usefulness of this kind of information in respect of broad coverage (eg as expected under the Covenant) and its usefulness in respect of an anticipated small proportion of the total industry catchment (eg obligated by regulation resulting from the NEPM). The requirement on brand owners to record their packaging use and recovery etc enables jurisdictions to establish whether brand owner obligations are being fulfilled when enforcement action is triggered.</p> <p>Routine reporting of all of this information would add significantly to the administrative burden on both brand owners and governments without providing meaningful information on the achievement of the product stewardship and packaging waste minimisation objectives of the Covenant/NEPM package.</p> <p>The required information includes these factors.</p> <p>It is noted that there is an inconsistency between this comment and the desire expressed by the Commonwealth elsewhere to minimise the compliance burden on business. (Acknowledged that the fifth word of the paragraph referred to should be "recording" rather than "reporting".)</p>
<p>This clause requires brand owners to record information which is unlikely to be available to brand owners, since generally it is not brand owners but their packaging suppliers (or even their suppliers) who conduct the recycling activity. For example, Schweppes Cottee's can establish what quantity and weight of glass</p>	<p>The requirement to obtain this information would be a consideration in deciding whether or not to join the Covenant. This comment demonstrates a possible advantage of membership of the Covenant, which allows for sector-wide reporting. However, it is understood that new collection service products</p>

15. Recovery Data	
bottles it fills in any one year but would have no idea of the total weight of recycled glass bought back by ACI Glass as recycle. This applies equally to items (c) through to (g). It also means that the calculation of a recovery rate for a brand owner's used packaging is nonsensical, since recyclers do not and could not practically record recovered materials by brand. B48	are likely to be developed in response to the Covenant and NEPM.
15(6)(d) This sub clause allows potentially commercially sensitive information to be disclosed if it is in the public interest to do so. The undefined public interest is so broad that this sub clause could be open to abuse. It should be deleted or at the very least its public interest value should be subject to scrutiny by a competent authority. B48	Yes, public interest value would require assessment and scrutiny by a competent authority. Participating jurisdictions are believed to be the "competent authority" in this context.

16. Collection and Participation Data	
Participating jurisdictions must provide sufficient resources to collect participation data. B7, B57	Noted.
The Covenant and NEPM place requirements on local government to account for recycling costs and report information to state governments and ratepayers. These requirements are reasonable. Transparent reporting of recycling costs should be interpreted to include offsets for social and environmental costs of the alternative (landfill). B8	Noted. It is open to councils when reporting their recycling costs to note any offsets.
Many local governments already collect this material as part of their normal function for their purposes of evaluating their systems. However, to be compelled to collect it may not necessarily ensure consistency or reliability of this information across the various jurisdictions. B15	Noted. Clause 19 requires standard protocols to be developed.
There was some confusion amongst some local governments as to who will be responsible for administration and enforcement of the NEPM, and the provision of data etc. It is the understanding of the Association that whilst local government has reporting requirements placed upon it, which will in fact incur considerable expense, the overall responsibility for enforcement of and reporting on the NEPM rests with the jurisdictions- ie. the EPA in Qld. B23	Responsibility for implementation of the NEPM rests with jurisdictions. Many local governments already collect this material as part of their normal function for their purposes of evaluating their systems.
This clause has significant cost implications for local government, whether recycling is carried out by council or contract labour. The	The information required is expected to be available as a normal prudent function of local governments either operating or contracting out

16. Collection and Participation Data	
<p>Association is in the process of promoting to councils the need for more accurate data on waste and recycling streams, and for more accountability by contractors. We see such data collection and monitoring and contract modification as essential to identify inefficiencies and areas of possible improvements. However practical difficulties can be foreseen with Clause 16(1) (e) and (f).</p> <p>The horrendous expense of ongoing analysis of the residual waste stream, ie. the contaminants in the recycling system, cannot be warranted.</p> <p>It is suggested therefore that councils and their contractors could reasonably be asked to undertake the extra work and expenditure associated with 16(e) if:</p> <ul style="list-style-type: none"> • it was re-worded to seek total weight of material collected at kerbside intended for recycling, then; • (f) was reworded to seek the information required in (f) (i). <p>Analysis of the make-up of the residual stream would be best undertaken through a random audit process, and should be part of the surveys of materials which jurisdictions are to perform as per Clause 17.</p> <p>B23</p>	<p>kerbside recycling collections.</p> <p>The amount of contaminants in the recycling waste stream is the total amount of recyclables collected (e) minus the total weight of materials sold and/or sent for secondary use, including energy recovery (f)(i).</p> <p>The results of the above calculation should eliminate the need for analysis of the residual stream.</p>
<p>16(1) Percentage of households would best be expressed as the number of households serviced and the total number of households.</p> <p>B1</p>	<p>Agreed.</p>
<p>16(1) There is a likely increase in cost for local government in the administration of increased reporting responsibilities for recycled products.</p> <p>B3</p>	<p>Disagree. A number of submissions make the point that the data requirements on local government do not go beyond general current practice.</p>
<p>16(2) The legalities of a State or Territory jurisdiction imposing requirements on contractual obligations between a second and third party need to be more fully explored. In any case, it is arguable that the Measure should be placing obligations on the State or Territory to ensure municipal districts collect certain information without telling the municipal district how to fulfil its duty to report.</p> <p>B43</p>	<p>Local government is already subject to numerous statutory functions imposed under the laws of state/territory jurisdictions. Non-statutory directions, guidelines and procedural requirements in relation to local government contracting practices are also common.</p>
<p>16(3) ‘regulatory steps’ implies penalties and raises the issue of consistency. Also the reference to ‘subclause data’ is obscure and suggests the need for more specific information.</p> <p>B1</p>	<p>“Data” deleted. The provision of information to a nominated agency may be included in the existing powers of the agency and may vary from jurisdiction to jurisdiction. Where there is no existing power and one is to be acquired</p>

16. Collection and Participation Data	
	through legislation/ regulation, it would make sense for jurisdictions to collaborate in defining the powers and any relevant penalties to address the issue of consistency.
16(4) The confidentiality requirements are different from those for industry in section 15(6). Is there any reason why they should be different? B1	The requirement that commercially sensitive information be protected is the same in both clauses. The NEPM has been amended to clarify this.

17. Supporting Data	
While there is provision for jurisdictions to undertake surveys of brand owners, the NEPM does not provide for mandatory responses to surveys by brand owners. Options of mandatory responses to surveys and random/exceptional reporting might be considered. Other models might also be investigated. It is difficult to argue that industry should meet new requirements if governments see the problem as too insignificant to gather comprehensive performance data. B42	<p>Clause 17 provides for surveys of kerbside recycling systems to be analysed by material and brand owner. It does not propose a survey of brand owners.</p> <p>The surveys may provide data which stimulate investigation of over-represented brand owners.</p>
<p>“At least once every year, participating jurisdictions shall carry out surveys of materials...to ascertain effectiveness of the Measure...”</p> <p>Part C, Commentary on NEPM, Part 3, clauses 9(8), 9(9) and 9(10) states that “It is not proposed that jurisdictions should be required to allocate resources to establish extensive databases of brand owners or towards comprehensive routine monitoring procedures”.</p> <p>These two statements would appear to be a contradictory. The type and extent (scope) of the surveys have not been defined, therefore the resources required to conduct these surveys also cannot be determined, however, they may not be insubstantial.</p> <p>B45</p>	<p>Disagree. The survey procedure represents a strategic rather than routine monitoring tool.</p> <p>Clause 19 provides for consultation among jurisdictions as to survey methodology. Jurisdictions would consider cost effectiveness as a factor in determining the methodology.</p>

18. Information relating to the National Packaging Covenant	
The Commonwealth would need to provide a list of participating Covenant signatories to all jurisdictions and updated monthly. Expulsions would need to be reported possibly weekly. Without this information, jurisdictions would not know whom it is dealing with. B1	Clause 18 is to do with annual reporting. How the register of Covenant signatories is to be maintained has yet to be discussed. It is conceivable that it could simply be posted on a website and kept up to date on a daily basis. Jurisdictions also have the option of inquiring as to the status of any particular organisation.
The draft NEPM admits that “the environmental	The environmental impact of the NEPM is

18. Information relating to the National Packaging Covenant	
<p>impact of the NEPM is expected to be marginal”. In other words, the industry promoters of the NEPM are not really going out of their way to reduce the impact of the flood of one-use-only packaging littering the environment. Despite all the repetition and rhetoric in the draft NEPM, the industry promoters have only one concern: to stave off any legislation which could make waste avoidance and reduction mandatory, on the German example.</p> <p>B4</p>	<p>expected to be marginal because of its role as a support only to the primary instrument which is the National Packaging Covenant.</p>
<p>The Commonwealth has been nominated as the post office to receive from the Covenant monitoring body (the Covenant Council) information provided by signatories and pass it on to NEPC (sections 14 & 18). We understand that this was an interim drafting solution. The Commonwealth, in isolation, will not be able to fulfil this role and another reporting arrangement will be necessary. It may be preferable for the Covenant Council to report to NEPC through jurisdictions and ANZECC as appropriate. The Commonwealth is preparing a discussion paper on the Covenant Council which will assist in clarifying mechanisms for reporting.</p> <p>Please note that, at present, the Covenant does not provide specifically for signatories to consent to the Covenant Council making data available to jurisdictions or NEPC. However, the Commonwealth will propose that this be negotiated by Covenant parties.</p> <p>B42</p>	<p>Noted. Outcomes of the discussion paper will be taken into account. The concept of the Commonwealth undertaking a coordinating function in respect of the Covenant seems compatible with the Commonwealth’s role as provider of secretariat services to ANZECC.</p> <p>The Covenant provides that Action Plans will be publicly available unless the signatory advises and demonstrates to the Covenant Council that the information is confidential or commercially sensitive.</p>
<p>The Commonwealth provides to Council the information received from the Covenant Monitoring Body. Why can’t the Covenant Monitoring Body report directly to the Council?</p> <p>B45</p>	<p>Reporting arrangements between the Covenant Council and NEPC to be clarified.</p>
<p>18(3) – the “utilisation rate” should be incorporated into the requirements for the submission of Recovery Data (Clause 15). Although the total weights of reused and recycled materials is required to be reported, these are not reported in the format of “utilisation rates”.</p> <p>B45</p>	<p>Recovery rate formula is specified to ensure consistency of approach since it is known that there are presently methodological variations. Utilisation rates can be readily deduced from the information required to be recorded.</p>
<p>Clause 18 should be removed in its entirety. First, it creates a duplicative monitoring and data gathering process to that already enshrined in the Covenant. Secondly, it inappropriately positions the NEPC as an “overseer” of the Covenant; that is clearly not its role nor is it in the spirit of a</p>	<p>Clause 18 provides the means of bringing information about the Covenant and NEPM together. The Covenant Council is the overseer of the Covenant. The Commonwealth (although at this stage the Commonwealth does not see itself as the most appropriate body to fulfil this</p>

18. Information relating to the National Packaging Covenant	
voluntary, industry-initiated agreement. B48	role) is presently anticipated to be a member of the Covenant Council with a responsibility under clause 18 for forwarding information to the most appropriate national environment body (NEPC).

19. Commencement of Reporting	
Section 19 of the draft NEPM requires reporting forms to be developed for brand owners and local governments. Data should be reported in a form that is compatible with data reported under the Covenant. Forms should be developed in consultation with the manager of the Australian Waste Database (please refer to previous correspondence). B42	These matters will need to be resolved among jurisdictions, for example through an Implementation Working Group.
19(2) “a national reporting form” – is this an actual “form” (ie a reporting document) or does it relate to reporting protocols (this appears to be ambiguous). B45	Clause 19 (now clause 20) amended to remove reference to “reporting form”.
There is a requirement for participating jurisdictions to be able to collect information required from brand owners and local governments. The process for participating jurisdictions to have access to this information should be uniform across all jurisdictions. B57	Noted. Clause 19 (now clause 20) is designed to achieve this objective.

20. Information supplied to Council	
It will only be feasible for jurisdictions to meet this survey and reporting requirement by outsourcing at significant cost. B1	A jurisdiction’s response to (a) depends on the level of auditing carried out. There are minor collation costs for information provided by local government. Annual surveys may be comprehensive or random depending upon the methodology adopted in response to the requirement in 19(1). At this stage it is therefore not possible to determine whether the costs are significant and it would be assumed that containing the costs to a reasonable level would be a consideration in developing an appropriate methodology.

Enforcement	
The proposed adoption of a complaints based enforcement system is noted. The proposal is contained in the explanatory document and impact statement. The policy intent of this proposal should be reflected in the Measure. B43	Agreed. NEPM amended.

Review of National Environment Protection Measure	
<p>Recommend inserting a new clause: “The Council shall review this National Environment Protection Measure no later than five years from the date of its declaration.” B5</p>	<p>The Covenant and the NEPM both include a reporting mechanism. Both ANZECC and NEPC have the capacity to review if the package is not delivering the desired outcomes. This amounts to a continuous review that would enable a more prompt reaction than a set review date.</p>
<p>The draft Measure should be amended to include a provision that the Measure will be reviewed within 2 or 3 years of commencement. The terms of reference for the review could include issues such as:</p> <ul style="list-style-type: none"> - the effectiveness of the Measure in successfully acting as a safety net or whether it is acting as the primary control mechanism; - the impacts on small business and the potential applicability of thresholds for brand owner obligations; - effectiveness of the enforcement regime. <p>B43</p>	<p>The Covenant and the NEPM both include a reporting mechanism. Both ANZECC and NEPC have the capacity to review if the package is not delivering the desired outcomes. This amounts to a continuous review that would enable a more prompt reaction than a set review date.</p>
<p>The wider business community does not accept that the Covenant will operate effectively only with a regulatory safety-net. The Covenant should first be assessed. This assessment should take place after the three-year transition to a market-based recycling system and address the concerns of all sectors and also the issues raised by the Industry Commission on packaging and labelling.</p> <p>If, at that time further action is considered necessary, any form of safety net mechanism should:</p> <ul style="list-style-type: none"> - More closely reflect the provisions outlined in the Covenant; - Incur costs that would be no greater than those required under the Covenant; - Contain a sunset clause that would require a review of the regulatory mechanism after three years, to determine its costs and benefits; and <p>Retain clause 10 of the NEPM exemptions regarding “deemed compliance”, with additional guidance as to the definition of “equivalent outcomes”.</p> <p>B56</p>	<p>Proposal noted. However it is recognised that a regulation that effectively mirrored the Covenant would not provide a regulatory safety net but rather a regulatory alternative, and would call into question the effectiveness of industry’s self-regulatory initiative.</p>

IMPACT STATEMENT

Executive Summary	
<p>Page i, para 2 says that ‘industry called for a regulatory mechanism for non-signatories’. We believe this could be a distortion of the facts, due to a lack of simple and widespread information. Many industries, particularly small industries know nothing about the NEPM. It would be more accurate to say ‘the major packaging industries called for a regulatory mechanism’.</p> <p>B1</p>	<p>It would not be correct to say that only the major packaging industries called for a regulatory mechanism. The call for regulation came both in the context of Covenant discussions and as a specific condition of industry transitional funding. In the latter context quite explicitly it came from the Australian Food and Grocery Council, the Australian Supermarket Institute, the Plastics and Chemicals Industry Association, the Packaging Council of Australia and the Beverage Industry Environment Council. Collectively, these groups represent 90% or more of products expected to be covered by the Covenant/ NEPM. The statement is consequently a reasonable interpretation of the facts. However, the word “industry” can be substituted with “They” to make a more direct link with the previous sentence that refers specifically to Covenant signatories.</p>
<p>Page v, <i>Collection services</i> para seems to imply that industry is directly subsidising kerbside recycling. It is also assumed that ‘municipal services’ refer to waste collection.</p> <p>B1</p>	<p>Comment not understood. Perhaps confusing the waste industry with the packaging supply chain.</p>
<p>Page v, <i>Administrative costs</i> para suggests that savings could in part be provided from savings in resources committed to research and policy development. This is most unlikely and the second sentence should be removed.</p> <p>B1</p>	<p>The assessment has to cover the anticipated effects across all jurisdictions where resources devoted to packaging waste issues differ. It is a reasonable expectation that as the Covenant/ NEPM package substitutes in varying degrees in different jurisdictions for existing regimes that, <i>in part</i>, resource requirements would be met by diverting resources and/ or altering priorities.</p>
<p>Page vi, third para, first sentence would be more accurate if the verb in the second line was changed from ‘will’ to ‘could’. This changes the meaning considerably.</p> <p>B1</p>	<p>As the entire paragraph is conditional, there is no requirement to make the change suggested. Some jurisdictions have indicated that they “will” take action of the kind suggested.</p>

Background	
<p>Page 9, section 1.2.3, first para, first sentence clearly implies that all used packaging material is to be recovered by brand owners. This is a somewhat different message from previous statements. There needs to be more consistency throughout the document on who and what is affected and through what means.</p> <p>B1</p>	<p>The statement is a true one. It does not say that “all” used packaging is to be recovered and should not be read in isolation from the NEPM which makes it clear that performance expectations would be established by jurisdictions in the light of performance of Covenant signatories.</p>
<p>Page 10, section 1.2.3, first para, use of the word ‘avoid’ in third line sends the wrong message</p>	<p>Agreed.</p>

Background	
and should be replaced with 'meet'. B1	
<p>The Industry Commission's report, <i>Packaging and Labelling</i> (No 49, 14 Feb 96) already provides a number of key recommendations, numbers 4 to 12, which address environmental and waste management issues of packaging. These recommendations resulted from a full public inquiry process and sound analysis. We fully support them. However many aspects and measures in the current draft NEPM on <i>Used Packaging Materials</i> and the associated <i>National Packaging Covenant</i> conflict with, or are inconsistent with, the Industry Commission's recommendations. This would seem to be an embarrassing position for Government.</p> <p>B38</p>	<p>It should be noted that the Industry Commission report was prepared in 1995 and published in 1996 and is based on data derived from 1992/93 and has been substantially overtaken by subsequent events. It should also be noted that the terms of reference for the Industry Commission did not require the Commission to consider social issues. As is made clear in the Impact Statement, social issues are a major dimension for consideration.</p> <p>Nevertheless, in relation to the recommendations quoted:</p> <ul style="list-style-type: none"> • Recommendation 4 relates to conditions for the establishment of private landfills and is not relevant to the NEPM. • Recommendation 5 relates to the charging philosophy for landfills and is not relevant to the NEPM. • Recommendation 6 is relevant to both the NEPM and the Covenant and has been taken up in the proposals for transparent local government charging. • Recommendation 7 is reflected in the provisions of the NEPM which cater for waste to energy. • Recommendation 8 refers to a suggested Commonwealth responsibility and is not expressed in unequivocal terms. The development of waste management modelling tools are included within the Covenant. • Mechanisms proposed under the Covenant, to convert the existing system to a market basis, to introduce more transparent charging and to conduct public education campaigns directed towards optimising rather than maximising recovery, all fulfil Recommendation 9. • Recognising that packaging waste reduction initiatives are already in existence, the proposed independent economic assessment of kerbside, and other transitional mechanisms proposed under the Covenant provide the opportunity to fulfil the requirements of Recommendation 10 without first dismantling existing systems. • Recommendation 11 - no industry waste reduction agreements are proposed by the Covenant or the NEPM; "existing" waste management targets under the National Waste Minimisation and Recycling Strategy

Background	
	<p>expired in 1995 and are therefore not subject to review.</p> <ul style="list-style-type: none"> Neither the Covenant nor the NEPM seek to set packaging or labelling standards as referred to in Recommendation 12.
<p>The reference to the word “industry” in the sentence “industry called for a regulatory mechanism for non-signatories to the Covenant, to ensure that signatories were not disadvantaged” be changed to “the Packaging Stewardship Group”.</p> <p>B50</p>	<p>No – the Packaging Stewardship Group was a middle management industry/association group which conducted a series of meetings with local government without State/Commonwealth jurisdictions and focused on kerbside recycling practices.</p>
<p>In the development of the Impact Statement several industries were consulted regarding the use and function of the NEPM. During these consultations several points were made:</p> <ol style="list-style-type: none"> 1. There was, at that time, general support for a voluntary agreement underpinned with regulatory instruments; 2. There was guarded support for the NEPM given that its nature was not known; 3. Respondents were concerned that the NEPM would be similar to the German system of take-back which was regarded as being costly and inefficient. <p>We would challenge that this NEPM has the level of support that the Impact Statement reports. Especially as it looks like a German system of take-back that industry had expressed so much concern about.</p> <p>Since the details of the NEPM are now known, we would also challenge statements like: “Some of the positions have evolved with the progress of Covenant negotiations, and express a more supportive view of the Covenant/NEPM than those expressed in the questionnaire/ interview process.”</p> <p>Recommend that the NEPC take action on industry’s concern and allow the Covenant to operate without the NEPM.</p> <p>B52</p>	<p>The Impact Statement makes it clear that there are diverse views about the NEPM.</p> <p>A number of submissions have made a connection between the NEPM’s recovery obligation and the German system, about which some parts of industry had expressed concern. This connection is easy to make on a superficial reading but is unwarranted in the light of the NEPM’s scope. The German system has much wider application, and includes all forms of packaging including transport packaging. It also includes arbitrary and mandatory performance requirements. This approach has been avoided by limiting the NEPM to post consumer packaging and basing it on Australian actual practice and not nominating mandatory performance targets which are the central feature of European systems.</p>
<p>Section 1.4 outlines the desired environmental outcomes of the Measure as optimisation of “resource use and recovery” and “conservation of virgin materials”. PACIA believes that the strong focus on landfill diversion is too narrow and should be considered in view of other factors such as fuel use, preservation of air and water quality. If these were taken into account, diversion from landfill may not “optimise resource use and recovery” in all cases.</p>	<p>The NEPM’s goal, the materials covered, brand owner performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant.</p> <p>Two transitional mechanisms under the Covenant are (1) an independent assessment of kerbside recycling and (2) a broad community</p>

Background	
<p>In addition, the stated outcomes need to be challenged on the following points:</p> <ul style="list-style-type: none"> - there is an implication that there is a need to conserve virgin materials. Whilst we agree with the principle, in the case of plastics in Australia, the raw materials in question are natural gas and coal by-products, none of which are limited in supply; - furthermore, production of all plastics account for about 4% of energy reserves used in Australia, each year, with packaging being only 30% of this. Therefore, a reduction in packaging through recycling is going to have a minimal impact on virgin materials without an equal focus on issues such as heating and transportation; and - to conserve virgin materials, the use of packaging as a fuel substitute would provide better result than the resource intensive process of recycling. <p>In addition, PACIA supports the findings of the Industry Commission's report on Packaging and Labelling, that found that landfill does not represent a significant intergenerational risk when compared to such issues as the Greenhouse effect.</p> <p>B54</p>	<p>education strategy to ensure that the community is fully informed of the economic and environmental impacts of recycling.</p> <p>The NEPM includes energy recovery as an option.</p> <p>The Covenant/NEPM package does not introduce any new initiatives aimed at reducing waste to landfill, rather it seeks to put existing practices on a more sound basis. It should be noted that the Industry Commission report was prepared in 1995 and published in 1996 and is based on data derived from 1992/93 and has been substantially overtaken by subsequent events. It should also be noted that the terms of reference for the Industry Commission did not require the Commission to consider social issues. As is made clear in the Impact Statement, social issues are a major dimension for consideration.</p>
<p>While the benefits of plastics with respect to energy savings, reduced wastage and product safety are acknowledged in Section 1.2, PACIA is disappointed that they have been dismissed from the environmental impact analysis because they are "not readily apparent to the consumer".</p> <p>Section 1.2 then goes on to consider the environment "costs" in isolation. These include:</p> <ul style="list-style-type: none"> - energy intensive; - generation of solid waste containing hazardous substances; - liquid and gaseous waste emissions; - generation of carbon dioxide and therefore greenhouse effects; - litter; and - landfill costs and impacts. 	

Background	
<p>The first four “costs” can equally be applied to the recycling process as to virgin production, and in the case of plastics, these “costs” are often higher from recycling. Recycling “costs” are due to the need for extensive collection infrastructure (fuel usage and vehicle fumes including greenhouse gases), reprocessing (solid waste generation from unwanted portion of packaging, wastewater from washing plant, chemical use, etc).</p> <p>Increased recycling is unlikely to have any direct impact on the fifth “cost”, litter.</p> <p>The sixth “cost” is given as landfill costs and impacts. Landfill costs in this country are considerably lower than the cost of recycling and as discussed above, the Industry Commission found that landfill did not represent a high intergenerational risk.</p> <p>Therefore, use of “environmental costs” as a justification for recycling is invalid for many forms of packaging.</p> <p>B54</p>	<p>In the lead instrument (the Covenant), litter reduction is one of the mechanisms contemplated for inclusion in Action Plans.</p> <p>The Covenant/NEPM package aims to optimise rather than maximise recycling, however the environmental costs do support action to minimise packaging waste, which is the broader aim of the Covenant.</p>

Regulatory Options	
<p>The South Australian bottle deposit system works and that system should be revised and updated and then applied to every other state and territory. It is noted that the Dutch Covenant between government and the packaging industry includes a more effective system for recycling bottle glass and returnables generally. The Dutch model is the way to go in the longer term and the initiative of the SA government in introducing bottle deposit legislation is a logical step in that direction. The NEPM has much to recommend it, but without a Dutch style Covenant that includes returnable bottles the NEPM is flawed. The NEPM needs to be revised.</p> <p>B10</p>	<p>CDL systems were assessed and found not suitable as a regulatory support mechanisms for the Covenant, especially for the range of packaging to be covered.</p> <p>Some observers have noted similarities with the Dutch model.</p>
<p>Households in aggregate make the dominant decisions about the amount of waste produced, and the volume of waste packaging. However households are not included in the NEPM and are not subject to charges on their waste generating behaviour... There is not a reasonably well informed competitive market for the kerbside collection of waste or recyclables because many households in Australia pay for</p>	<p>In relation to the suggested market failure, the NEPM is not the primary instrument through which household charges are to be addressed. It is a key undertaking of local governments under the Covenant that they will “apply transparency to municipal budgets and rates so that the financial aspects associated with waste disposal and kerbside collection systems are available to households and the general community”. The</p>

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these services out of general local government rates rather than through a levy on the quantities placed for collection. This leads to the current market failure. B9, B33	proposed independent economic assessment of kerbside under the Covenant, the proposed community education program about recycling costs and benefits, and clause 9(7) of the NEPM guidelines are all directed towards ensuring better information and clearer pricing signals to householders in relation to their waste generating behaviour and their participation, or otherwise, in kerbside recycling schemes.
The assessment estimates that about 380,000 tonnes of added material would be diverted from the waste stream as a result of the NEPM.	<p>This is an incorrect reading of the Impact Statement. The figure of 380,000 tonnes referred to the potential difference between the consequences of taking no action to address recycling issues and adopting a Covenant/NEPM package which included ongoing industry support for kerbside recycling systems.</p> <p>It is implicit in the arrangement set out in the Covenant that the focus on optimisation and market pricing will result in materials recovery settling at a sustainable level. The 200,000 tonne (note the reference to 380,000 tonnes is incorrect) projected increase as a consequence of the Covenant/NEPM package was speculative and based on an earlier modelling assumption that there could be significant industry contributions to the cost of kerbside recycling. However, ANZECC has subsequently accepted an industry proposition that industry would not contribute to the cost of operating kerbside recycling systems, beyond a transitional funding package and paying market prices for materials from that point on.</p>
This amounts to about 1.8% of the total household waste stream. As an example of alternative approaches, a volume charge on household waste that led households to halve their green waste production would reduce solid waste volumes by 20%. B9	<p>Notwithstanding the error referred to above, if the increase were 380,000 tonnes this would represent 1.8% of the total national waste stream, not 1.8% of the “total household waste stream”. Nationally, solid waste comprises a number of different streams. Each waste stream needs to be dealt with individually. ANZECC has an organic and green waste strategy. The convention for the measurement of waste uses weight rather than volume. It is widely recognised that the convention can produce perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream.</p>
The base case that has been defined in the Impact Statement might be described as a threat	The base case is a recognition that state and territory jurisdictions have responsibility for the

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<p>that policy makers will do their worst to create an onerous, costly and inflexible system with maximum variation between jurisdictions if the NEPM and Covenant are not secured. This is not regulatory best practice.</p> <p>A more appropriate base case would be a transfer of the cost of kerbside household waste recycling and household waste collection from a general charge on ratepayers to a specific and transparent household charge per kilogram or cubic metre of waste placed for collection. B9, B33</p>	<p>regulation of all waste streams and that, in the absence of a coordinated approach such as the Covenant/NEPM package, these are unpredictable. In pursuing the Covenant governments have recognised that self-regulation is a more suitable regulatory approach.</p> <p>It is a key undertaking of local governments under the Covenant that they will “apply transparency to municipal budgets and rates so that the financial aspects associated with waste disposal and kerbside collection systems are available to households and the general community”. This is also being undertaken in part through the NEPM.</p>
<p>The case for a voluntary stand-alone Covenant should also be evaluated. B9</p>	<p>The case for a voluntary stand alone Covenant was evaluated as part of the Covenant RIS.</p>
<p>The goal and desired outcomes of the NEPM are already addressed in WA through the waste management provisions of local government and the Environmental Protection Act. B9</p>	<p>Most jurisdictions could make the same claim but the mechanisms vary. The NEPM will unify the mechanisms through which the goal and outcomes are achieved.</p>
<p>Proposed elements:</p> <ul style="list-style-type: none"> The existing relationship should be continued with major packaging manufacturers ie Visy Board, Amcor, ACI, Southcorp and plastics producers, to continue to cater for the uptake of recyclable materials, and possibly consider a “green” duty to be applicable on imports of base raw materials. Standardise legislation throughout the country which is also applicable to deposit legislation. There is a need for continuity of “user pays” systems through domestic rating systems or application at point of sale. Application of a “green” tax/duty on all imports (including vehicles) to cater for disposal issues. <p>B12</p>	<p>Commitments will no doubt continue to be made by packaging manufacturers under the Covenant. However, the limited scope of the “existing relationships” was one of the factors which led ANZECC to seek product stewardship commitments from a broader range of industry participants in the packaging chain. It is not feasible, in terms of WTO obligations, to focus particularly on imports.</p> <p>Complementary legislation is extremely difficult to achieve. Recovery obligations under the NEPM could potentially be fulfilled by complying with deposit legislation subject to how jurisdictions choose to implement the guidelines.</p> <p>It is a key undertaking of local governments under the Covenant that they will “apply transparency to municipal budgets and rates so that the financial aspects associated with waste disposal and kerbside collection systems are available to households and the general community”. This is supported by the NEPM. Point of sale charges were considered and not preferred for the reasons set out in the Impact Statement.</p> <p>The NEPM can only deal with post consumer packaging waste, however see note above in respect of imports.</p>

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Thousands upon thousands of PET bottles and plastic bags litter our foreshores and deposit themselves in mangrove areas along our waterways together with broken pieces of polystyrene packaging etc... Unless the plastic problem is addressed, possibly by Deposit Legislation, it is felt that people will be picking up PET bottles for the rest of their lives and we will be passing on to the next generation a legacy of plastic problems. B16	In the lead instrument (the Covenant), litter reduction is one of the mechanisms contemplated for inclusion in Action Plans. Under the support instrument (the NEPM), PET is one of the materials which would be expected to be included by most jurisdictions under the provisions of clause 9(4). Other plastic litter may be addressed by the inclusion of energy recovery options in the NEPM. CDL systems were assessed and found not suitable as a regulatory support mechanisms for the Covenant, especially for the range of packaging to be covered.
Brand owners seem to be bearing the entire load of the requirements, but in our case, and we suspect many others, we responsibly handle all packaging in which our suppliers package our componentry. By this, I mean that it is economics driven for us to recover the costs of our inward packaging, as we do not have the luxury of 'free' council collection, even though through our rates, we already pay for the same. Although not specifically a part of the scope of NEPM, we are certain that if a cost/benefit analysis of council rates were undertaken, then the 'free riders' as defined in the NEPM would be seen to be the domestic households who benefit from kerbside recycling. B17	Brand owners are nominated as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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. The point being made is unclear. However it is clear that households make a significant financial contribution to the costs of kerbside recycling through rates. Nevertheless, a key undertaking of local governments under the Covenant is that they will "apply transparency to municipal budgets and rates so that the financial aspects associated with waste disposal and kerbside collection systems are available to households and the general community". This is supported by the NEPM.
More evidence needs to be provided on the so-called "free rider" problems associated with the voluntary Covenant in support of the benefits of introducing the NEPM. B18	The clearest example, amongst others, is that the Australian community is significantly dependent upon packaged imported goods, none of which are covered by existing agreements between governments and industry. In this context the free rider issue is self-evident. The extent to which free riders become an issue in the context of the Covenant will remain unclear until the Covenant is concluded and taken up by industry. At that stage, it is expected that robust data on free riders will emerge. In the meantime, the precautionary principle applies.
The packaging industry and related users must wear their responsibilities under ISO 14000 & 14001, as a duty of care in establishing environmental management systems to continually reduce and control their waste	There is a parallel between the flexibility of the ISO 14000 series and the Action Plan concept under the Covenant. Some observers have noted similarities with the

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<p>packaging materials. Governments must also act to ensure that waste packaging materials are further controlled as their responsibility in protecting the environment, by enacting deposit packaging legislation (DPL). It is recommended that the Dutch system for recycling rates be adopted, as well as adopting the South Australian deposit legislation, all of course being subject to the political will of our governments. B29</p>	<p>Dutch model. However systems need to be culturally relevant, and there are specific factors at work in the Netherlands which do not apply in Australia.</p> <p>CDL systems were assessed and found not suitable as a regulatory support mechanisms for the Covenant, especially for the range of packaging to be covered.</p>
<p>The need for a NEPM is not established and the assessment of an alternative, potentially more cost-effective approach is inadequate... In considering alternative strategies to the NEPM a narrow range of options were assessed largely predicated on the need to implement a safety net for the Covenant rather than an objective assessment of delivering improved environmental outcomes in a cost effective way.</p> <p>An assessment of the introduction of volume charge on household waste may demonstrate much more significant impacts than...</p> <p>... the 1.8% estimated to be delivered by the proposed NEPM. B33</p>	<p>The purpose of the NEPM is to provide a regulatory safety net for the primary instrument which is the Covenant, therefore consideration of options in another context would not have been appropriate.</p> <p>It is a key undertaking of local governments under the Covenant that they will “apply transparency to municipal budgets and rates so that the financial aspects associated with waste disposal and kerbside collection systems are available to households and the general community”. This is supported by the NEPM.</p> <p>This is an incorrect reading of the Impact Statement. The figure of 380,000 tonnes referred to the potential difference between the consequences of taking no action to address recycling issues (which would result in a decrease in current recyclables collected) and adopting the Covenant/NEPM package. It should be noted that the projected increase resulting from the Covenant/NEPM package does not take account of proposed community education strategies aimed at optimising rather than maximising materials put out by householders.</p> <p>Notwithstanding the error referred to above, if the increase were 380,000 tonnes this would represent 1.8% of the total national waste stream, not 1.8% of the “total household waste stream”. Nationally, solid waste comprises a number of different streams. Each waste stream needs to be dealt with individually. ANZECC has an organic and green waste strategy. The convention for the measurement of waste uses weight rather than volume. It is widely recognised that the convention can produce</p>

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	perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream.
<p>The AAC believes that of the options considered, take-back is the most appropriate because it provides industry with maximum flexibility in improving its recycling performance. The aluminium industry has successfully operated a take-back recycling scheme for three decades.</p> <p>Raw material suppliers have traditionally shouldered a disproportionate share of the responsibility for the recycling performance of their material. Given that it is the brand owner who makes packaging mix decisions it is appropriate that this be the point where the NEPM is applied. By focusing on the brand owner, the NEPM should result in responsibility for recycling being more evenly distributed across the packaging chain.</p> <p>B35</p>	<p>Noted.</p> <p>Noted.</p>
<p>Brisbane City Council's preference is for a strong regulatory framework that allows flexibility for the various participants yet has specific performance indicators and a system of penalty and incentive for individual performance. That approach fits most closely with Option G – the levy on manufacturers which reflects the cost of recycling a product and rewards packagers who incorporate recyclates into packaging.</p> <p>B40</p>	<p>Revenue raising options for a regulatory safety net were considered but not preferred for the reasons set out in the Impact Statement.</p>
<p>The NEPM focuses on “brand owners” while the Covenant shares the responsibility across the packaging chain. It is understood that this was done because the brand owner was seen as the most influential entity in the packaging cycle. However, we would argue the effect on brand owners has not been fully assessed in the Impact Statement. The number of brands in Australia is conservatively estimated at well over 40,000.</p> <p>The Measure appears to cover owners of registered trademarks, which are understood to number more than 40,000 in Australia. These companies are not represented in the Covenant negotiations; and the Measure is not negotiated, it is presented as a fait accompli... Public sources suggest that there could be over</p>	<p>Several commentators have put forward arguments that the NEPM will apply to a large number of companies. The numbers suggested range from 40,000 (based on numbers of brands) to over 1 million (based on registered companies). These commentators appear to have made two significant misinterpretations of the NEPM.</p> <ol style="list-style-type: none"> 1. They have positioned the NEPM as a stand alone instrument despite it being clear that its purpose is limited to supporting the Covenant. As such it is implicit that it will affect only a very small proportion of packaged consumer goods. 2. They ignore the terminology used in the NEPM which limits the obligation to “brand owners”. Ignoring the limitations on the

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<p>1,000,000 brand owners in Australia. Since no threshold is proposed, any of these brands that enter the retail market will trigger obligations under the NEPM.</p> <p>B9, B52</p>	<p>obligation allows them to use inappropriate data sets. This leads to highly inflated estimates of the impact of the NEPM. The NEPM is targeted at neither brands nor registered companies generally, so any data sets used need to be more specific than those put forward.</p> <p>Using the definition of “brand owner” set out in the NEPM, another estimate of the number of businesses affected by the NEPM could be derived from data in the 1999 Foodweek Industry Yearbook. This data is contained in the Brand Index which covers food, beverages, cosmetics, cleaning products, hardware, electronics, personal care, kitchenware, garden products, pet food, some clothing, tobacco. 3,337 brands are listed, owned by 439 brand owners. It could therefore be argued that the maximum catchment for the NEPM is 439 nationally assuming that no brand owner prefers the Covenant. If the proportion of brand owners to brands from this data (about 13%) is extrapolated to all sectors (including brands completely unrelated to consumer packaged products), the resulting number of businesses would be about 5,200.</p> <p>It is not suggested that either 439 or 5,200 is the precise number of businesses likely to be considered “brand owners” under the NEPM. These data do however suggest that, as indicated in the Impact Statement, the number of companies affected by the NEPM is inevitably small. The exercise illustrates the fallibility of attempting to extract meaningful figures from data which, while reliable for the purpose for which it was collected, is not applicable for the purpose in hand. The Impact Statement includes warnings about this. The discrepancy between the obviously inflated range of 40,000 to 1 million and the lower range of 439 to 5,200 demonstrates the wisdom of adopting a broad assessment methodology as quantitative approaches require reliable data sets which no commentator has been able to identify.</p>
<p>The recommendation of the preferred option has been on subjective grounds, and mostly without reference to the unique conditions of Australia, namely the relatively small population base (and therefore small amount of each type of package available on the market), large transportation distances, lack of landfill crisis. Many of the</p>	<p>Clause 9(4) has been amended to make it clear that jurisdictions should consider a broad range of factors when considering whether to include particular packaging in NEPM obligations.</p>

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weaknesses found in the alternative option could be equally applied to the preferred option of take-back...

Overall the basis for take-back is weak from environmental, economic viewpoints and the ability to deliver protection to Covenant signatories.

The statement that compulsory take-back moves the responsibility for collection from local government to the individual company is naive. It assumes that consumers (or for that matter, collectors) will differentiate between packaging types and this has not been found to be the case in other jurisdictions including Germany where the systems are the most advanced.

B54

The main instrument (the Covenant) is expected to deliver the primary environmental impacts. See following response re costs to business of the NEPM (page 80).

Brand owners are required to demonstrate that they have discharged their obligations, including the provision of adequate information to consumers. There is no assumption that collectors will differentiate between packaging types unless it is strategically in their interests to do so for the purpose of possible cost recovery from major brand owners.

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Many issues and comments were raised in more than one submission, and in different forms. Style and expressions differ from one submission to another, and thus issues are raised in different ways having different connotations, contexts and emphases. As it is not possible in this Summary to deal with all the subtleties emerging from such variations, an attempt has been made to group similar comments together. Similarly, an attempt has been made, where possible, to provide a single response which captures the key issues raised in submissions.

The major recurrent themes raised in the submissions relate to the numbers affected by the NEPM; the impact on small business; the desire for more economic modelling; and the relationship between the National Environment Protection Measure and the National Packaging Covenant. It is important to fully address these concerns, and detailed responses to these issues appear below. Readers are referred back to these responses throughout this section of the document.

Purpose of the Impact Statement

The NEPC Protocol for Development of Impact Statements (29 November 1996, p.3) provides that an Impact Statement should:

be a commonsense document which provides useful information to members of the community about the environmental, social and economic implications of a proposed NEPM. The focus of the document should be to provide a reasonable basis for informed comment and judgement on the proposed NEPM rather than a detailed technical analysis of the detail of the proposed NEPM.

NEPM Impact Statements cannot substitute for research programs, either in terms of economic modelling or in terms of more general research into recycling systems (note that an independent economic assessment of kerbside is to be carried out under the transitional arrangements associated with the Covenant).

Numbers affected by the NEPM

Several commentators have put forward arguments that the NEPM will apply to a large number of companies. The numbers suggested range from 40,000 (based on numbers of brands) to over 1 million (based on registered companies). These commentators appear to have made two significant misinterpretations of the NEPM.

- They have positioned the NEPM as a stand alone instrument despite it being clear that its purpose is limited to supporting the Covenant. As such it is implicit that it will affect only a very

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small proportion of packaged consumer goods.

- They ignore the terminology used in the NEPM which limits the obligation to “brand owners”. Ignoring the limitations on the obligation allows them to use inappropriate data sets. This leads to highly inflated estimates of the impact of the NEPM. The NEPM is targeted at neither brands nor registered companies generally, so any data sets used need to be more specific than those put forward.

Using the definition of “brand owner” set out in the NEPM, another estimate of the number of businesses affected by the NEPM could be derived from data in the 1999 Foodweek Industry Yearbook. This data is contained in the Brand Index which covers food, beverages, cosmetics, cleaning products, hardware, electronics, personal care, kitchenware, garden products, pet food, some clothing, and tobacco. 3,337 brands are listed, owned by 439 brand owners. It could therefore be argued that the maximum catchment for the NEPM is 439 nationally assuming that no brand owner prefers the Covenant. If the proportion of brand owners to brands from this data (about 13%) is extrapolated to all sectors (including brands completely unrelated to consumer packaged products), the resulting number of businesses would be about 5,200.

It is not suggested that either 439 or 5,200 is the precise number of businesses likely to be considered “brand owners” under the NEPM. These data do however suggest that, as indicated in the Impact Statement, the number of companies affected by the NEPM is inevitably small. The exercise illustrates the fallibility of attempting to extract meaningful figures from data which, while reliable for the purpose for which it was collected, is not applicable for the purpose in hand. The Impact Statement includes warnings about this. The discrepancy between the obviously inflated range of 40,000 to 1 million and the lower range of 439 to 5,200 demonstrates the wisdom of adopting a broad assessment methodology as quantitative approaches require reliable data sets which no commentator has been able to identify.

Impact on small business

The flexibility and non-prescriptive nature of the Covenant is designed to keep compliance costs low and is a particular advantage to small business. It enables them to respond in a manner appropriate to their own circumstances rather than having arbitrary targets foisted upon them. The Covenant also encourages small businesses to take advantages of economies of scale by providing for sector-wide action and reporting. The Covenant moves away from the current regulatory focus on targets, which, as the Industry Commission pointed out “generate hidden economic costs which will ultimately be passed on”(Industry Commission, (1995), Packaging and Labelling).

Exemption thresholds are never likely to be anything but arbitrary. The selection of any threshold will always be unfair to players just above the threshold; it would provide encouragement to structure operations or engage in other devices to avoid the threshold. For example, in Ireland, many of the “small” players which fall below the nominated thresholds are major companies which form the bedrock of the recovery organisations in other EU member states.

This assertion does not recognise that prices paid by small businesses already include costs of compliance with current State/ Territory regulatory and voluntary regimes. Any analysis of costs of the Covenant/NEPM therefore needs to be done on a marginal cost basis. Compliance costs associated with the Covenant/ NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions.

In pursuing enforcement activities in a variety of regulatory contexts, jurisdictions operate in a strategic fashion. This has the practical effect of providing de facto exemptions to small businesses unless jurisdictions make a conscious effort to pursue them. Establishing a formal de jure exemption for small businesses to replace the existing de facto exemptions, which exist in most jurisdictions, would set a major precedent.

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Compliance costs

It would be most odd if brand owners did not know how many units of packaging they purchased, used and marketed to contain their products. Financial records related to these must already be retained for taxation purposes; so the NEPM produces no additional costs. Indeed without this very basic production information, an enterprise would be unlikely to survive.

Its record keeping in relation to recovery and utilisation would depend on how it discharged its obligations under state regulations based on the NEPM. If it recovered the materials itself (for example by providing a drop-off facility at its premises) it would be a simple and low cost option to provide separate containers for the various container types it recovered. The materials have a value and are traded by weight. If they are sold for reprocessing, the sales dockets would provide weight data by type and weight. The value of materials varies. The cost to the enterprise would be the cost of the floor space devoted to the drop off centre minus the revenue generated from sales. Whether this resulted in a negative or positive cash flow would depend upon the materials collected, the floor space cost and any infrastructure required by the centre. There is nothing to suggest that the outcome would inevitably be negative; in the case of aluminium for example, the outcome would probably be positive. If the materials (most likely plastics) are used for energy recovery, kilojoule values for a wide range of materials including mixed domestic garbage are readily available and can be provided eg by industry associations or environment agencies. The costs are the charge for disposal (free under existing circumstances) plus the cost of floor space and transport to a disposal facility. Transport dockets would provide the paperwork. If the material is landfilled, the cost is the landfill charge (which may not apply if the materials are recyclable by the landfill operator), plus the cost of space plus the cost of transport to the disposal facility. If these records/ services were provided through a cooperative or contractor arrangement or a mixture of enterprise and contractor/ cooperative endeavour, contractual details would need to include provision for the service provider to supply the required information to the brand owner. It would logically be assumed that brand owners would take the least cost option. In each case however, the record keeping component of the cost for industry is exceedingly small, amounting to periodic sales transactions. Moreover, they can be potentially absorbed within a positive cash-flow context.

Economic modelling

Any output from economic modelling depends upon the data used in the model. As indicated elsewhere, even on the single factor of the number of businesses affected, the range is so broad as to render the exercise meaningless.

The NEPM is essentially an agreement amongst governments to constrain their policy options within the framework established by the NEPM. The impacts on industry cannot be quantified with any confidence until the NEPM is implemented at jurisdictional level.

The aim of the NEPM is to produce consistency of approach to supporting the Covenant at jurisdictional level (ie a recovery and utilisation regime as a regulatory safety net) rather than uniformity of regulatory instruments. The regulatory methods used to provide the safety net would vary according to the instrument used in a jurisdiction. At the margin, impacts may vary. While it may be feasible in due course to model the instruments put in place by the various jurisdictions and to aggregate the results, it is not known at this stage precisely how different jurisdictions will implement the NEPM.

If an attempt were made now to model on the basis of the non-mandatory guidelines, the first set of variables would be the full range of legislative and regulatory options available to governments, including non-implementation, legislation, regulation, SEPPs, IWRAs, IWRPs etc.

Further variables will arise from jurisdictional decisions within those options such as:

- what materials are nominated for inclusion within the NEPM obligations;

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- the performance level applied by jurisdictions; and
- any exemptions or deemed compliance.

Other factors with a high degree of variability arise through the choices businesses will be able to make such as:

- whether or not to join the Covenant;
- whether the relevant materials are to be reused, recycled or have their energy recovered;
- the medium used to inform consumers as to how the packaging is to be recovered; and
- whether to fulfil their NEPM obligations alone, cooperatively or through contract arrangements with suppliers or recovery agencies.

Factors external to both governments and individual businesses include the value of packaging materials in secondary markets and the propensity to complain in a complaints-based enforcement regime.

In the context of the NEPM guidelines, the outcome is dependent on so many conditions that no reliance could be placed on the numerical result. The numerous permutations would lead to a compounding of errors, reinforcing that quantitative analysis of the kind suggested is unlikely to contribute to a commonsense document of the sort described in the NEPC Protocol.

NEPM/Covenant Relationship

Voluntary approaches in relation to consumer packaging since the expiry in 1995 of national recycling targets have not lived up to the expectations of ANZECC.

The purpose of the Covenant is to establish the roles and responsibilities of local government, state/commonwealth jurisdictions and industry in regard to the lifecycle management of product packaging. It seeks to reduce the commodity price risk for local government and the commodity price cost for industry by clarifying responsibilities and expanding secondary markets. The requirement for a regulatory safety net is a condition of the Covenant itself and the transitional funding arrangement.

Some have suggested that the Covenant imposes a lesser “standard” of product stewardship than the NEPM. The Covenant establishes a standard of product stewardship through a range of waste avoidance, minimisation and management activities which include but are not limited to post consumer recovery and recycling of materials. The NEPM imposes an obligation for particular action on a single point in the packaging chain. It is feasible to comply with the obligation without embracing concepts of product stewardship.

Concerns that the NEPM will set an undesirable precedent for future government regulatory action are ill founded. It is a safety net only. The NEPM’s goal, the materials covered, brand owner performance expectations, and the duration of the NEPM are directly linked to the Covenant and its life, and to the outcomes of the kerbside structural reform contemplated under the Covenant. The two instruments are intended to be complementary.

It is acknowledged that industry views on the NEPM have been and remain divided, both on ideological grounds (as to whether a safety net should exist at all) and on practical grounds (relating to the design of the current draft NEPM). This is to be expected in a Measure which explicitly addresses perceived free rider issues.

380,000 Tonnes

It is implicit in the arrangement set out in the Covenant that the focus on optimisation and market pricing will result in materials recovery settling at a sustainable level. The 200,000 tonne (note the reference to 380,000 tonnes is incorrect) projected increase as a consequence of the Covenant/NEPM package was speculative and based on an earlier modelling assumption that there could be significant industry contributions to the cost of kerbside recycling. However, ANZECC

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<p>has subsequently accepted an industry proposition that industry would not contribute to the cost of operating kerbside recycling systems, beyond a transitional funding package and paying market prices for materials from that point on. It should be noted that the projected increase resulting from the Covenant/NEPM package does not take account of proposed community education strategies aimed at optimising rather than maximising materials put out by householders.</p> <p>Notwithstanding the error referred to above, if the increase were 380,000 tonnes this would represent 1.8% of the total national waste stream, not 1.8% of the “total household waste stream”. Nationally, solid waste comprises a number of different streams. Each waste stream needs to be dealt with individually. ANZECC has an organic and green waste strategy. The convention for the measurement of waste uses weight rather than volume. It is widely recognised that the convention can produce perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream.</p>	
<p>Page 41, section 3.1, third para, first sentence does not accurately portray the likely cost to the community through increasing resource allocations in government to implement the NEPM.</p> <p>B1</p>	<p>It is not conceded that the implementation of the NEPM causes an increase in cost to the community. These costs will depend to a degree on the means a jurisdiction chooses to implement and enforce the NEPM. It is more likely that overall, across all jurisdictions, costs would be covered by a redistribution of resources than by an increase.</p>
<p>Page 44, section 3.1.3, first para, comment has been made (Executive Summary, page v, <i>Administrative costs</i>) on purported resource ‘savings’ for state jurisdictions and the inaccuracy of this statement.</p> <p>B1</p>	<p>It is not agreed that the statements made are inaccurate, however they relate to an Australia wide perspective rather than a local viewpoint.</p>
<p>Page 44, section 3.1.3, second para, it is not clear whether new state legislation/regulations are needed to empower local government to recover costs.</p> <p>B1</p>	<p>The guidelines use cost recovery by local government as an example of what might be done to preserve the integrity of the Covenant from free-riders and leave jurisdictions free to explore the particular suggestion made or any alternative which suits its situation better.</p>
<p>Page 48, section 3.3.1, first sentence fourth para and last sentence fifth para, imply a good level of information about the NEPM. It is unlikely that small industry groups would agree with these assertions. The same application appears on page 49, third para (see reference to ‘across industry’; and page 50, second para (‘many companies’).</p> <p>B1</p>	<p>The purpose of the section is to enable Ministers to see that there is a divergence of views across industry sectors. The introduction makes it clear that the sample was limited. The interpretation indicates that the divergence of views includes some very negative attitudes towards the Covenant/ NEPM package that coincide with those expressed in submissions by associations representing small and medium size enterprises.</p>
<p>The net environmental and economic effects of the NEPM are likely to be negative:</p> <ul style="list-style-type: none"> Any improvements can be achieved more effectively and efficiently by other means. It is inappropriate that businesses should be diverted from their key business factors to a matter of such marginal environmental significance. Increasing throughput of kerbside, which is the likely impact of the NEPM, without 	<p>Provided it is understood that the NEPM is not a stand alone instrument and merely supports the Covenant, it is difficult to see how its effects can be negative. The Covenant is intended to have economic impacts which are positive through flexible self-regulation, changing kerbside recycling systems to a market basis and expanding secondary markets for materials. It is disputed that environmental considerations should not be a key factor in business decision</p>

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<p>practical use of its resources and a viable end use of the collected materials, will only increase the negative economic effect in a climate of high unemployment and decreasing international competitiveness for Australian business.</p> <ul style="list-style-type: none"> The NEPM perpetuates the myth that because some recycling is good, more is better, ignoring the costs and the true environmental effects of packaging and of kerbside collection systems. <p>B9, B54</p>	<p>making. The integration of environmental considerations in decision making is reflected internationally, for example, through the development of the ISO 14000 series of standards.</p> <p>Not correct. The Covenant's focus is on product stewardship and shared responsibility, not on maximising recycling. The NEPM supports the Covenant – nominating Covenant signatories' performance as a basic point of reference.</p>
<p>The Impact Statement fails to model the impact of the NEPM, even though data is available. It can be demonstrated that aggregate costs to Australian business will be significant. Given the negligible environmental effect, no economic impact is acceptable... Standard evaluation practice, where some information is lacking, is to construct a model of the economic and environmental impacts of the proposed systems and its alternatives. There is ample information for the development of a model to assess the impacts of the NEPM and the Covenant...The omission of evaluation is claimed to be due to a lack of data, but there has been no attempt to use relevant existing Australian data.</p> <p>B9, B33, B56</p>	<p>The Commonwealth Office of Regulation Review has reviewed the Impact Statement and is satisfied that it is "a thorough and clear document and satisfies the criteria" set out in COAG's <i>Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies</i>.</p> <p>The NEPC Protocol for Development of Impact Statements (29 November 1996, p.3) provides that an Impact Statement should:</p> <ul style="list-style-type: none"> be a commonsense document which provides useful information to members of the community about the environmental, social and economic implications of a proposed NEPM. The focus of the document should be to provide a reasonable basis for informed comment and judgement on the proposed NEPM rather than a detailed technical analysis of the detail of the proposed NEPM. <p>NEPM Impact Statements cannot substitute for research programs, either in terms of the modelling proposed by this commentator or in terms of more general research into recycling systems (note that an independent economic assessment of kerbside is to be carried out under the transitional arrangements associated with the Covenant).</p> <p>Any output from economic modelling depends upon the data used in the model. As indicated elsewhere, even on the single factor of the number of businesses affected, the range is so broad as to render the exercise meaningless.</p> <p>The NEPM is essentially an agreement amongst governments to constrain their policy options within the framework established by the NEPM. The impacts on industry cannot be quantified with any confidence until the NEPM is implemented at jurisdictional level.</p>

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<p>The aim of the NEPM is to produce consistency of approach to supporting the Covenant at jurisdictional level (ie a recovery and utilisation regime as a regulatory safety net) rather than uniformity of regulatory instruments. The regulatory methods used to provide the safety net would vary according to the instrument used in a jurisdiction. At the margin, impacts may vary. While it may be feasible in due course to model the instruments put in place by the various jurisdictions and to aggregate the results, it is not known at this stage precisely how different jurisdictions will implement the NEPM.</p> <p>If an attempt were made now to model on the basis of the non-mandatory guidelines, the first set of variables would be the full range of legislative and regulatory options available to governments, including non-implementation, legislation, regulation, SEPPs, IWRAs, IWRPs etc.</p> <p>Further variables will arise from jurisdictional decisions within those options such as:</p> <ul style="list-style-type: none"> • what materials are nominated for inclusion within the NEPM obligations; • the performance level applied by jurisdictions; and • any exemptions or deemed compliance. <p>Other factors with a high degree of variability arise through the choices businesses will be able to make such as:</p> <ul style="list-style-type: none"> • whether or not to join the Covenant; • whether the relevant materials are to be reused, recycled or have their energy recovered; • the medium used to inform consumers as to how the packaging is to be recovered; and • whether to fulfil their NEPM obligations alone, cooperatively or through contract arrangements with suppliers or recovery agencies. <p>Factors external to both governments and individual businesses include the value of packaging materials in secondary markets and the propensity to complain in a complaints-based enforcement regime.</p> <p>In the context of the NEPM guidelines, the outcome is dependent on so many conditions that no reliance could be placed on the</p>

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	numerical result. The numerous permutations would lead to a compounding of errors, reinforcing that quantitative analysis of the kind suggested is unlikely to contribute to a commonsense document of the sort described in the NEPC Protocol.
The NEPM imposes recovery and reuse costs on brand owners for materials that are not under their control. It concludes that this will not affect the overall cost to the community of collection and recycling of packaging materials. This conclusion is unsubstantiated, counter intuitive and incorrect. Recovery and reuse of 380,000 tonnes of material has a cost. This cost will be imposed on brand owners and the environment. Based on German recovery cost reports, the costs could be as high as A\$680 per tonne, and this would add \$258 million per annum to recovery and reuse costs. Based on Canadian data the added costs could be \$25 million per annum. B9, B33	It is implicit in the arrangement set out in the Covenant that the focus on optimisation and market pricing will result in materials recovery settling at a sustainable level. The 200,000 tonne (note the reference to 380,000 tonnes is incorrect) projected increase as a consequence of the Covenant/NEPM package was speculative and based on an earlier modelling assumption that there could be significant industry contributions to the cost of kerbside recycling. However, ANZECC has subsequently accepted an industry proposition that industry would not contribute to the cost of operating kerbside recycling systems, beyond a transitional funding package and paying market prices for materials from that point on.
Compliance costs to brand owners of maintaining records for inspection and audit will be very high, both for individual brand owners and when aggregated over even as few as 40,000 brands. Even if compliance for an individual brand cost only \$1,000 per year, aggregated industry cost would exceed \$40 million per year...	The NEPM obligations relate to brand owners not brands. Since it is clear that some brand owners own more than one brand, the multiplier is clearly not 40,000.
Brand owners do not have the same information about weight of materials used, recovered, reused or disposed to solid waste as is available to packaging suppliers...	See earlier response regarding compliance costs to brand owners (page 80).
If brand owners request their packaging suppliers to compile their data, there continues to be a significant cost. Packaging suppliers gain the ability to increase the cost to brand owners of switching packaging suppliers, reducing competition in the packaging market. B9	This reflects one of the choices a brand owner has to make – whether to choose the Covenant or the NEPM and if the latter, how to discharge the obligations with the least cost to the business. Any consideration of costs of the Covenant/NEPM needs to be done on a marginal cost basis. Compliance costs associated with the Covenant are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions. This provides a rationale for signing up to the Covenant.
There is a significant cost imposed by the requirement to redesign labelling to provide	The guidelines have been amended to provide a choice in media for communication of recovery

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information on the package to advise consumers how the packaging is to be recycled. Costs of \$1,000 to \$5,000 could be typical, resulting in aggregated cost up to \$40 to \$200 million... It is not possible for the brand owner to provide adequate information about the available processes for recycling packaging at the point of consumption... This could lead to violation of the 'misleading practices' provisions of the Trade Practices Act. B9	options to consumers.
Local government charges on brand owners who are non-signatories will be determined by the Courts... A complaints process in this area will be extremely costly to business, and to state and local governments. B9	<p>Clause 9(6) relates to recovery of actual costs of collecting materials of brand owners who are not meeting their obligations. There is a good deal of scope for argument including whether costs should be calculated on an absolute, proportional or marginal basis. The final arbiter of what is reasonable is the judicial system. A Court would take account of a variety of factors including the basis of any local government charge in determining what is reasonable in any particular circumstance.</p> <p>The cost recovery option is offered as an example of the kind of mechanism jurisdictions may wish to make available to local government. It is assumed that the option would only be exercised where it is strategically and financially sensible to do so and where recovery costs can be reasonably attributed. In a debt recovery situation, it is open to a person to have the matter heard by the courts.</p>
The NEPM imposes significant compliance and policing costs on State agencies, particularly environment protection agencies. These costs arise from requirements to enforce compliance, to survey materials, and to audit and inspect brand owner's records. The number of brand owners far exceeds the number of packaging manufacturers. While this is essentially a matter for government, the trend is to pass these costs on to businesses. B9, B33	<p>The point being made assumes that significant numbers of brand owners will prefer to be covered by the NEPM than sign up to the Covenant. This does not accord with the position put to governments by industry negotiators of the Covenant. If significant numbers of brand owners were to be affected by the NEPM, Ministers would wish to revisit the whole issue.</p> <p>Jurisdictional costs will depend on the means each jurisdiction chooses to implement and enforce the NEPM. The enforcement guidelines (new clause 10) make it clear that jurisdictions are expected to marshal their resources appropriately for the size of the brand owner population expected to be affected by the NEPM. Whether governments pass these costs on at all, or to business in general or on to non-complying brand owners in particular is a decision to be made at jurisdictional level.</p>

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<p>The Impact Statement takes the view that brand owners can pass these added costs on to consumers or package suppliers. This is not true. Small brand owners cannot necessarily pass their costs up the chain to monopoly package suppliers or down the chain to price sensitive consumers. The additional costs created by the NEPM will impact most severely on small enterprise brand owners and exporters of packaged goods, and the employment they create. They will also absorb business and government resources that would be better used elsewhere.</p> <p>B9</p>	<p>Brand owners are nominated as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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, and the expectation that most brand owners would choose to join the Covenant.</p> <p>See earlier statement about compliance costs (page 80).</p> <p>This comment does not recognise that prices paid by small businesses already include costs of compliance with current State/ Territory regulatory and voluntary regimes. Any consideration of the costs of the Covenant/NEPM therefore needs to be done on a marginal cost basis. Compliance costs associated with the Covenant/ NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions.</p>
<p>No evidence is provided in support of the claim that there is free riding under the current system. Data sources are not disclosed, and information is anecdotal at best. The potential for significant free riding is queried if Covenant negotiators account for 100% of packaging and 92% of groceries.</p> <p>B9, B33</p>	<p>The clearest example, amongst others, is that the Australian community is significantly dependent upon packaged imported goods, none of which are covered by existing agreements between governments and industry. In this context the free rider issue is self-evident. The extent to which free riders become an issue in the context of the Covenant will remain unclear until the Covenant is concluded and taken up by industry. At that stage, it is expected that robust data on free riders will emerge. In the meantime, the precautionary principle applies.</p> <p>The expected coverage of the packaged goods market by the Covenant is based on the existence of a regulatory safety net. It cannot be assumed with confidence that the same level of subscription to the Covenant would apply if there were no NEPM.</p>
<p>The steel IWRA and infrastructure is estimated to have cost the steel industry up to \$5 million to date. Competitors who have no agreements have not borne these costs and logically must have a competitive advantage. An example of this is the</p>	<p>Noted. This comment supports the view that free riders can be a significant issue especially in the area of imported packaging.</p>

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import of filled and unfilled steel cans into Australia. The importer does not contribute to the IWRA but has his cans collected, shipped and recycled at no cost. Other packaging materials also have a marked advantage, in particular plastics, aluminium aerosols and composite materials. B14	
The NEPM is an unnecessary imposition on business, and will not achieve any environmental benefit, particularly in WA. Alternative approaches will achieve optimum waste minimisation and resource recovery in WA, and would serve as a better model for improvements in other States. B9	Coverage by the NEPM is a choice for business. The NEPM has been developed as a supporting instrument for the Covenant in the belief that the majority of players would prefer to be covered by the Covenant. The extent of any imposition on business by the NEPM would thus be limited unless the Covenant did not succeed in attracting signatories. In this event, the entire package would be reviewed.
Additional energy and resources used to collect, sort, recover, return, clean, reprocess or dispose of 380,000 tonnes of recyclable material is not reported. It is clear, from the current economic results of kerbside recovery, that the economic value of the resources recovered will be less than their costs of recover. The NEPM will not significantly reduce, and may increase, the scale and cost burden on households of sustaining the inefficient kerbside household waste recycling system. The environmental and financial costs of recovering packaging from remote and sparsely settled areas impose significant regional variations in burden. This impact is not reported. B9	See earlier response regarding 380,000 tonnes (page 81). The lead instrument, which is the Covenant, contains measures to ensure the optimisation of kerbside recycling systems to prevent the outcomes implied by the comment. The NEPM of itself is unlikely to have any direct impact on the cost to householders of kerbside recycling systems since it requires independent action by the brand owner. There is nothing in either the NEPM or the Covenant to suggest that packaging must be recovered regardless of circumstances.
The NEPM reduces incentives to set the scope of kerbside collection to a scale that balances the economic and environmental burdens imposed by the system with the economic and environmental benefits it produces. The losses already being incurred by the kerbside collection system provides ample evidence it has already exceeded its optimal economic scale, and possibly its optimal environmental scale. An acceptable NEPM must demonstrate that it will lead to an optimal supply of recovery and recycling services, and not one that is determined politically. Optimality is demonstrated by an assessment that shows that a marginal increase in scale has an adverse effect on net costs to the overall	The optimal outcomes proposed by the commentator are supported and are intended to be achieved through the main instrument which is the Covenant. It has already been identified that there is a potential 20% cost saving in kerbside through efficiency gains. The economic status of the kerbside system is not constant as the value of materials varies considerably over time. It is not intended that the NEPM should achieve these outcomes in isolation. The Covenant as the main instrument is more focused on these issues. See earlier comment on the non-technical character of Impact Statements (page 78).

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environment and to the economy. At present an increase in kerbside recycling would increase the net costs to the economy and the environment. B9, B33	
The Covenant and NEPM appear to require a large bureaucratic administrative infrastructure, which would in itself be costly, and we would suggest diverting a significant portion of any raised revenues away from its intended application. B12	<p>The cost of administering the Covenant depends upon the systems developed through the Covenant Council. Options are currently being evaluated with the intent of ensuring that as far as possible, systems are automated and do not impose unreasonable costs on jurisdictions, industry or local government. There are no proposals for revenue raising and it is anticipated, that in so far as the Covenant is concerned, each player would meet its own costs.</p> <p>Jurisdictional costs in relation to the NEPM will depend on the means each jurisdiction chooses to implement and enforce the NEPM. The enforcement guidelines (new clause 10) make it clear that jurisdictions are expected to marshal their resources appropriately for the size of the brand owner population expected to be affected by the NEPM.</p>
The burden of cost and responsibility will be borne unfairly by the larger ethical companies, who we would suggest are already sensitive to the environmental issues and sustainability. B12	It is anticipated that ethical companies of all sizes will seize the opportunity provided by the Covenant to self regulate. Compliance costs associated with the Covenant are intended to be lower than compliance costs associated with existing and prospective state regimes through a national self-regulatory option and a consistent approach across jurisdictions.
The suggestions of generating and monitoring data, places significant time and cost burden on industry, and reduces international competitiveness. For those companies in the most vulnerable competition sectors, this could be a catalyst to move off shore, and this is totally counter productive. B12	<p>See earlier response regarding compliance costs to business (page 80).</p> <p>Product stewardship is increasingly embraced by companies that wish to be globally competitive and profitable on a long term basis. The flexible, performance based approach to product stewardship offered by the package compares favourably with packaging regimes in many other countries.</p>
The monitoring of small companies plus the control of imports will be exceedingly time consuming, and probably impractical. B12	See earlier response regarding compliance cost to business (page 80).
The suggestion of penalties for non-compliance is negative, and will prove difficult to enforce, and will inevitably lead to litigation. B12	The enforcement guidelines (new clause 10) make it clear that the offence should be dependent on failure to rectify a non-compliance.
Greatly concerned at the unrealistic and impractical requirements of the draft NEPM and	The NEPM is focused on product brand owners rather than packaging businesses per se. The

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<p>at the additional compliance burdens and costs that it could impose on small packaging businesses in WA. As a consequence, the SBDC is opposed to the draft NEPM in its present form... The draft NEPM and Impact Statement makes no attempt to quantify the compliance costs and burdens that would be incurred by small packaging businesses as a result of the introduction of the NEPM. It also makes no differentiation between the resources available to a small packaging business and those of a large company when it comes to implementing a recovery and recycling program.</p> <p>B13</p>	<p>Covenant will clearly be the preferred vehicle for packaging suppliers.</p> <p>See also earlier response regarding compliance cost (page 80).</p>
<p>It is well recognised that compliance burdens and costs are proportionately greater and absorb more resources, relatively speaking, in smaller firms than in large companies. A small packaging business, with a minor share of the market and fewer products to sell, is far less able to absorb increased costs or to pass the costs onto customers. Many of the large packaging companies already conduct the types of recycling activities envisaged under the Covenant or the NEPM and have already factored these costs into their products. As a consequence, the costs to smaller businesses would rise while those to large companies would remain unchanged. Therefore through the Covenant and the NEPM, the larger companies may gain a commercial advantage. In neither the material provided with the Covenant, the draft NEPM or the Impact Statement is there any information provided that indicates the level of costs that may be incurred by small packaging businesses.</p> <p>B13</p>	<p>See earlier responses regarding compliance costs for business generally (page 80); thresholds for small business and the purpose of Impact Statements (page 78).</p> <p>It is not the intention to impose unnecessary costs on small packaging business but at the same time there is no justification for the costs incurred from their activities to be imposed on their competitors, large or small. The Covenant caters for the interests of small players with its flexible provisions for Action Plans, which allows these to be developed on a collective or sectoral basis. While the opportunities for collective approaches under the NEPM are more restricted (for example, the need for individual record keeping), there is provision for such arrangements as far as recovery and utilisation requirements are concerned.</p>
<p>The Impact Statement appears to go to great lengths to dismiss all other options and seems intent on trying to justify the reasoning for the introduction of the draft NEPM in its present form. It is noted that the Impact Statement states that:</p> <ul style="list-style-type: none"> - the NEPM will have only a marginal environmental impact; - the major impact of the NEPM will be confined largely to producers of packaging goods having approximately a 10 per cent market share of grocery items retailed within Australia; and - the aim of the NEPM is to encourage membership of the Covenant which is intended to be the primary instrument for 	<p>See earlier response regarding the purpose of Impact Statements (page 78).</p>

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<p>delivering environmental impacts. Thus the Impact Statement acknowledges that the requirements of the NEPM will, at best, only have a marginal effect on the recycling of used packaging, particularly for small businesses with less than ten per cent of the packaging market. It would also seem that rather than provide a real alternative to the Covenant, the primary objective of the NEPM is to ensure that the costs of developing or participating in a recycling program are so unrealistic, that small businesses will be forced to sign the “voluntary” Covenant. B13</p>	<p>The NEPM is not intended to be an “alternative” to the Covenant, but to support it.</p>
<p>With so many variables, all of which are beyond the control of small packaging businesses, few business owners would readily invest scarce capital, equipment and time to an activity with such an uncertain outcome, particularly when:</p> <ul style="list-style-type: none"> - large packaging companies that often provide the market for recycled products, are in a position to influence or control the market price of recycling products; - there is nothing in the NEPM to encourage domestic consumers to contribute, or participate in recycling programs; and - the participating of local government in recycling programs in many regional areas cannot be assured. <p>The draft NEPM takes no account of these factors and would force small packaging firms into investing in a recycling activity where there is a high likelihood of incurring losses. B13</p>	<p>The NEPM does not focus on packaging businesses, but on brand owners.</p> <p>The Covenant expects prices to have open-market links and for these to be transparent.</p> <p>The main instrument, which is the Covenant, involves households.</p> <p>The NEPM is not intended to involve local government in the recovery/utilisation activities of brand owners.</p> <p>The option exists to join the Covenant and undertake product stewardship activities commensurate with the size and nature of the enterprise.</p>
<p>As we already participate in the IWRA we do not expect further expense for Covenant or NEPM compliance beyond our existing IWRA commitments. B14</p>	<p>The IWRA would be recognised as an Action Plan under the Covenant – but signing up to the Covenant is required to secure this recognition.</p>
<p>A nationally consistent approach is very important for ease of administration and consequent reduced costs. Individual state labelling laws and container deposit legislation already cause administrative problems. Lack of a national approach could lead to individual states implementing different packaging specifications and possible bans on various materials – a commercial, industrial and administrative nightmare. B14</p>	<p>A national approach is preferred by stakeholders in the Covenant.</p>
<p>It appears that there has been little economic analysis done on the full impact of how this particular NEPM is going to be measured and whether or not this is cost effective... In</p>	<p>See earlier response regarding the purpose of impact statements (page 78). The NEPM must be considered in its role as a support instrument only, affecting a small minority of the market.</p>

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summary, whilst the thrust of the NEPM and the Covenant are satisfactory in principle, it is considered that the NEPM, as proposed, will lead to greater inefficiency and will not have the desired outcomes and it should therefore be abandoned. B15	
The cost of administering the NEPM obligations, if performed accurately and consistently may well negate the overall benefit to the community. B17	The proposed enforcement regime, now brought in to the NEPM (new clause 10) will minimise costs and further encourage participation in the Covenant.
The NEPM reduces the incentives to diminish the scope of kerbside collection to a scale which balances the economic and environmental burdens imposed by the system with the economic and environment benefits it produces. The NEPM will most likely further entrench the kerbside collection, a considerable economic risk, given the lack of fundamental cost benefit analysis. The industry is concerned that the risk will be passed on to brand owners indefinitely, whilst maintaining a kerbside scheme with no defined economic objectives. B18	The NEPM is not intended to operate independently of the Covenant and has no direct connection to kerbside collection. A key transitional arrangement under the Covenant is intended to prevent expansion of kerbside recycling collection systems beyond their optimal level.
<p>The draft Impact Statements provides some cursory comments on the cost to industry of compliance with the NEPM, disregards the macro-economic costs and concludes that costs to companies will be limited. These conclusions are based on no evidence, and assume that the replacement of a local government cost (collection cost) with an industry compliance cost result in no net cost change. It is extremely difficult to comprehend how these conclusions were reached, without any studies of the impact on industry.</p> <p>Firstly, the scale of the majority of small business brand owners would be significantly less than the average local government collection and recycling agency. Coupled with the fact that collection is not a core business to small businesses, the net cost to the community would certainly be higher.</p> <p>Furthermore, if brand owners request packaging suppliers to manage recovery and reuse, these costs will be passed on to brand owners. Therefore, it is ultimately erroneous to dismiss the potential aggregate cost increase and the certain cost increase to industry. B18</p>	<p>See earlier responses regarding the purpose of Impact Statements (page 78) and compliance cost to business (page 80).</p> <p>The value of this comparison is not apparent.</p> <p>Recovery under the NEPM rather than joining the Covenant is a choice that some businesses will make and it is assumed that this choice would be made on a least cost basis. The preferred option in most cases is expected to be the Covenant.</p> <p>These costs are already passed on to brand owners. The point at issue is that if the Covenant facilitates a reduction in the cost to be passed on by moving the pricing system to a market basis, are the costs to be passed on increased, maintained or reduced. The assumption that they will be increased is not substantiated.</p>

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<p>The NEPM (and Covenant) will impose significant compliance and policy costs on State Governments. With 1000 wineries and 8,000 brands in Australia, the monitoring and audit resources required will be immense. Furthermore, there is an industry expectation that the appropriate monitoring and enforcement will be undertaken. If it is not, the so called free rider problem will continue, and ethical companies will be disadvantaged.</p> <p>B18</p>	<p>Jurisdictional costs will depend on the means each jurisdiction chooses to implement and enforce the NEPM. The enforcement guidelines (new clause 10) make it clear that jurisdictions are expected to marshal their resources appropriately for the size of the brand owner population expected to be affected by the NEPM.</p> <p>Also, see earlier response regarding numbers of businesses potentially affected (page 78). Note that the NEPM is not directed at either production sites or brands, but on brand owners.</p>
<p>The Impact Statement prepared for the NEPM certainly made for some interesting and relevant background reading. It has come under criticism for lacking a stronger cost benefit analysis approach, especially in economic terms. The Association sees that such an analysis for the NEPM is simply not possible at this time. The need for a clear economic and environmental analysis of the costs and benefits of recycling in Australia per se, as given as a key condition of the industry funding offer, is keenly supported by local government. It has been raised in comments on both the NEPM and the Covenant, that such an analysis is long overdue, although some work has been done by the Bureau of Industry Economics and the National Institute of Economic and Industry Research. However, the temptation to perform a simplistic economic analysis must be resisted.</p> <p>B23</p>	<p>Noted – this realistic approach is supported. See also earlier response regarding economic modelling (page 80).</p> <p>Note that a key transitional arrangement under the Covenant will be an independent economic assessment of kerbside recycling.</p>
<p>The costs of complying with the National Environment Protection Measure on packaging will be significant for small business.</p> <p>B25</p>	<p>If a business were affected by the NEPM it would be the result of a choice exercised by the business in its own self-interest and presumably on a least cost basis. Such a business is already contributing to the cost of compliance with existing regulatory regimes through prices paid for packaging. The Covenant aims to reduce these costs and to provide choices as to how compliance with the regulatory framework is achieved – providing greater independence of action and cost to small businesses.</p>
<p>The proposed measure will increase the compliance burden on small business considerably.</p> <p>B25</p>	<p>A central purpose of the Covenant/ NEPM package is to reduce costs of compliance with a variety of state jurisdictional requirements by developing a consistent national approach which recognises that state-by-state approaches to environmental regulation are inherently more costly for business.</p>
<p>...the Office of Small Business is concerned to reduce the compliance costs and paperwork</p>	<p>This objective is strongly supported. The purpose of the Covenant/ NEPM package is to</p>

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burden on small business. B25	<p>achieve this objective for all businesses. Compliance costs associated with the Covenant/ NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions. Compliance costs associated with, for example, a mandatory state industry waste reduction agreement are:</p> <ul style="list-style-type: none"> • the time of staff during negotiations with officials, development of drafts (more than 20 in one case), • travel costs to meetings which may involve interstate travel, • legal expenses, • costs of actions arising from the agreement including financial support for recycling systems, • preparation of regular reports, • costs of complying with any deficiencies identified in reports, • costs associated with naming in Parliament if obligations are disregarded.
The NEPM on packaging will not produce significant environment benefits. B25	True – however, this is a reference to the direct effect of the NEPM. If the NEPM makes the Covenant possible (which it does), it has a significant indirect effect.
It is not accepted that it is necessary to impose significant costs on small business in order to placate large businesses over the issue of free-riding. B25	Office of Small Business has yet to establish that there are significant costs on small business. This is merely an assertion made without supporting evidence. Similarly there is no basis for the statement that the inclusion of SMEs within the ambit of the NEPM is to placate large businesses. The issue is an equity one and the industry sectors which have been involved in developing the Covenant include both large and small businesses.
While free-riding is an issue for large businesses, small businesses are unlikely to gain a competitive advantage due to their size. B25	Free-riding is also an issue for Australian small business. An Australian small manufacturer of a packaged product, makes a contribution to existing state regulatory requirements through the price paid for packaging. An importer (whether large or small) of an identical product not only has a competitive advantage in that its packaging does not include an element related to compliance with existing state environment regimes, but imposes an additional cost on Australian producers and / local government (to which Australian enterprises pay rates) by free-riding collection infrastructure.
The impact statement has disregarded the fact that the NEPM on packaging will place a higher	First it has not been established that there is an added burden. Secondly, the NEPM provides

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burden on small businesses than large businesses due to the ability of large businesses to absorb the added burden. B25	for collective action on the part of small businesses which allow small businesses to achieve the economy of scale advantages which might be achieved by larger concerns. The notion that costs are absorbed by big business is refuted by industry which claims costs are passed on to customers including small businesses. This is supported by the Industry Commission Report on Packaging and Labelling.
The current proposal has the potential to impose significant compliance costs on small business. B25	This conclusion assumes that compliance costs for small business under existing regimes are either non-existent or lower, but no evidence is offered
Without a detailed cost-benefit and industry analysis of the proposed regulations, it is difficult to accurately establish the effects the regulations will have on small business in terms of the cost of compliance and the likely paperwork burden. B25	The NEPM is in effect an instrument to regulate the scope of state/territory jurisdictions in regulating packaging waste. State regulations to implement the NEPM would need to follow conventional assessment protocols applying in such jurisdictions.
The Impact Statement ignores the difference in cost and burden of compliance between large and small businesses, as well as the relative impact on the resources of small business. B1	This view flows from the incorrect belief that the requirement is considerable.
Initial examination ... suggests its application to small business would create a substantial burden.... The recording requirements of the NEPM place a significant burden on small business, particularly in terms of the paperwork involved. This also contradicts the More Time for Business statement that requires a reduction in the paperwork burden for small business... B1, B25	The first two dot points relate to packaging used in production and relate only to enterprises operating under state regulations based on the NEPM. It would be most odd if brand owners did not know how many units of packaging they purchased, used and marketed to contain their products. Financial records related to these must already be retained for taxation purposes; so the NEPM produces no additional costs. Indeed without this very basic production information, an enterprise would be unlikely to survive. Its record keeping in response to the second four dot points would depend on how it discharged its obligations under state regulations based on the NEPM. If it recovered the materials itself (for example by providing a drop-off facility at its premises) it would be a simple and low cost option to provide separate containers for the various container types it recovered. The materials have a value and are traded by weight. If they are sold for reprocessing, the sales dockets would provide weight data by type and weight. The value of materials varies. The cost to the enterprise would be the cost of the floor space devoted to the drop off centre minus the revenue generated from sales. Whether this

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	<p>resulted in a negative or positive cash flow would depend upon the materials collected, the floor space cost and any infrastructure required by the centre. There is nothing to suggest that the outcome would inevitably be negative; if only aluminium were collected for example, the outcome would probably be positive. If the materials (most likely plastics) are used for energy recovery, kilojoule values for a wide range of materials including mixed domestic garbage are readily available and can be provided eg by industry associations or environment agencies. The costs are the charge for disposal (free under existing circumstances) plus the cost of floor space and transport to a disposal facility. Transport dockets would provide the paperwork. If the material is landfilled, the cost is the landfill charge (which may not apply if the materials are recyclable by the landfill operator), plus the cost of space plus the cost of transport to the disposal facility. If these records/ services were provided through a cooperative or contractor arrangement or a mixture of enterprise and contractor/ cooperative endeavour, contractual details would need to include provision for the service provider to supply the required information to the brand owner. It would logically be assumed that brand owners would take the least cost option. In each case however, the record keeping component of the cost for industry is exceedingly small, amounting to periodic sales transactions. Moreover, they can be potentially absorbed within a positive cash-flow context.</p>
<p>The requirements contained in the NEPM on packaging waste would substantially increase the amount of time small businesses have to spend on paperwork... Many small businesses would not have the necessary equipment to comply with such requirements as determining the “total kilojoules of embedded energy recovered”.</p> <p>B25</p>	<p>In practice this information is readily available. A calculation of tonnage x kilojoule factor for the waste stream is all that is required. The paperwork burden is negligible; no equipment is required.</p>
<p>Government policy in relation to regulation reform... Therefore the NEPM will be expensive and complicated for small business to implement and will provide negligible environmental benefits.</p> <p>B25</p>	<p>The NEPM is expected to have marginal effects throughout based on an assumption about the coverage of the Covenant. It is anticipated that if the Covenant does not produce the coverage anticipated, ANZECC Ministers would wish to go back to the drawing board. There is no intent whatsoever for the NEPM to produce a regulatory framework in isolation from the Covenant. The environmental benefits and industry costs are irrevocably linked. There is</p>

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	consequently no scope for an argument that the environmental benefit is small while the cost impact is great. The opposite could be argued – that the NEPM has an indirect positive impact on the environment by making the Covenant possible.
<p>There are two points to be made in relation to using this model of enforcement for the NEPM. It is extremely unlikely, that should a complaint be made against a small business, which the impact statement notes is unlikely in itself, that the breach would be significant enough to warrant action on economic grounds.</p> <p>Secondly, as the Impact Statement notes that the environmental benefits of the NEPM will be negligible, a breach could hardly be considered to represent one of the most “detrimental examples of unlawful conduct”.</p> <p>Therefore, applying the NEPM to small business will not produce significant environmental benefits and will impose considerable cost on small business. It is unlikely that breaches by small business would be reported, and even if they are, it is unlikely that any action would be taken by the enforcing body.</p> <p>The NEPM would appear to be an example of imposing an unnecessary burden on small business for no reason.</p> <p>The Government has made a commitment to reduce the amount of regulation on small business. Small business should therefore be exempt from the requirements of the NEPM. B25</p>	<p>There is an absence of logical consequence between the two propositions i) that it is unlikely that the breach would warrant action ii) that environmental benefits are negligible. The conclusion that applying the NEPM to small business will not produce significant environmental benefits and will impose considerable costs is not justified by the premises in this section or in previous sections of OSB’s analysis. Firstly the OSB analysis fails to do more than assert that the NEPM has the effect of imposing costs on small business without any consideration of existing regulation and waste management options created by the Covenant/ NEPM. Secondly it fails to demonstrate that where costs might be incurred these are not negligible marginal costs over and above the current regulatory compliance costs integrated into package prices. Thirdly it fails to take into account that a reduction in costs for packaging manufacturers resulting from the Covenant’s objective of placing recycling activity on a market basis would not lead to reduced costs being passed on to small business buyers of packaging. Fourthly it has not examined the increased number of options available to small business to discharge product stewardship other than through a packaging supplier. Fifthly it has not recognised that some means of recovery of recyclable materials which may be practiced by brand owners can have positive cash flow and profitability effects</p>
<p>There are few benefits to be gained from requiring the majority of small businesses who produce very low levels of packaging waste to comply with the NEPM and these benefits would be easily outweighed by the likely costs to small business of complying with the regulation. B25</p>	<p>The costs are dependent on the manner in which the brand owner exercises its obligation. This may be revenue positive as noted above. It has not been established that the majority of small businesses produce low levels of packaging waste. A small producer using some packaging materials (for examples plastics for which there is no secondary market in preference to others for which there are secondary markets) can produce significant problems. Nor is the NEPM intended to apply to the majority of small businesses – only those that are brand owners and prefer the NEPM to the Covenant in their own self interest.</p>
The NEPM impacts statement suggests that it	This statement disingenuously employs a

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will be primarily small business that will be subject to the NEPM. "Given the small scale of operation of the likely affected companies..." It appears that the NEPM will impose a significant burden on small business... B25	selective quote from the impact statement to make precisely the opposite point to the point made in the statement. The full quote is: "Given the small scale of operation of the likely affected companies, it is probable that agency arrangements will dominate ...costs would be limited."
<p>The Impact Statement provides inadequate analysis of the NEPM:</p> <ul style="list-style-type: none"> - it does not provide a quantification of the costs and benefits or a risk and sensitivity analysis of the Covenant and NEPM; - it does not acknowledge the costs imposed on brand owners by the compliance and monitoring requirements of the NEPM; - there is no analysis of the risk that manufacturers will incur significant costs in implementing this strategy only to find that they cannot sell the output because of a depressed market for recycled products; - there is no acknowledgment that the costs imposed on brand owners by the compliance and monitoring requirements of the NEPM, or alternatively the Covenant may have an impact on households in the form of higher prices; and - there is no public benefit test of the proposed regulation. <p>B31</p>	<p>See earlier responses regarding purpose of Impact Statements (page 78), compliance costs for business (page 80), and the applicability of modelling tools for national guidelines (page 80).</p> <p>The Covenant sets out to reduce the costs of buy back and compliance as compared with present arrangements. For a brand owner to take the NEPM route he would need to conclude that this is the least cost option as compared with the Covenant. One object of the Covenant is to create greater market opportunity for recyclates.</p> <p>If this scenario became a reality it would mean that the Covenant had failed to achieve one of its primary objectives of reducing cost to business. This would be odd given that it is generally agreed that self-regulation is a lower cost option than regulation (and regulation is in place in many jurisdictions).</p>
The NEPM, as a regulatory safety net appears to have merit. The only concerns relate to the impact the NEPM may have on smaller businesses; and the cost and time involved for rural councils and smaller businesses in collecting information and reporting as required under Part 4 – National Environment Protection Protocols. B32	<p>See earlier response regarding compliance cost to business (page 80).</p> <p>The reporting requirements on local government are based on existing local government practice.</p>
Industry consultation on the NEPM appears to have largely involved only the direct participants in negotiations. A questionnaire was distributed and 30 interviews were conducted in early 1998, before either the NEPM or the Kerbside Schedule to the Covenant were known. A selection of views have been taken from statements released by industry association during 1998.	Two public consultation processes (in which industry representatives have taken a leading part) have involved a considerably larger group. The Impact Statement makes it clear that there is a divergence of views.
The industry view was clearly against a	This view contradicts the statements made by

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<p>legislated NEPM...</p> <p>Those few industry supporters of the NEPM do so because they face a threat of a more onerous and complex regulation, varying between jurisdictions, or because they see a chance to secure funds from other businesses or to reduce competition.</p> <p>B33</p>	<p>industry CEOs as presidents/chairs of industry associations. However some association officers have put forward views which differ from those previously offered by their board members.</p> <p>The initiative for the NEPM came from industry negotiators.</p>
<p>The impact statement is significantly flawed and does not meet the requirements of the NEPC Act, particularly section 17(d); “an identification and assessment of the economic and social impact on the community (including industry) of making the proposed NEPM”.</p> <p>B33</p>	<p>See earlier response regarding purpose of Impact Statements (page 78).</p>
<p>The impact statement claims that 380,000 tonnes per annum would be diverted from landfill. The additional energy and resources used to collect, sort, recover, return, clean, reprocess or dispose of 380,000 tonnes of material is not reported...</p> <p>The Industry Commission recommended that any initiative to reduce packaging waste going to landfill should not be made unless clear environmental benefits were established and that they should only proceed if justified on balance between the costs and benefits. The NEPM will not significantly reduce, and may increase, the scale and cost burden on households of sustaining the inefficient kerbside household waste recycling system.</p> <p>B33</p>	<p>See earlier response regarding 380,000 tonnes (page 81).</p> <p>The Covenant/NEPM package does not introduce any new initiatives aimed at reducing waste to landfill, rather it seeks to put existing practices on a more sound basis.</p> <p>The NEPM does not address the kerbside recycling system directly. The Covenant specifically aims to put the system on a sustainable market basis in the long term.</p>
<p>In section 3.2, it is stated that the current diversion must be maintained for preservation of landfill space, landfill impact on the environment and conservation of virgin resources.</p> <p>The current tonnage of 380,000 represents only 2.5% of material currently sent to landfill in Australia each year. Concentration on green waste and building and demolition sector (together about 70% of landfill) will represent much bigger returns on landfill space.</p> <p>Therefore, while maintenance of kerbside recycling is socially aspirational, there are no clear environmental drivers for the Measure or, in fact, for industry contributions to kerbside</p>	<p>It is implicit in the arrangement set out in the Covenant that the focus on optimisation and market pricing will result in materials recovery settling at a sustainable level. The 200,000 tonne (note the reference to 380,000 tonnes is incorrect) projected increase as a consequence of the Covenant/NEPM package was speculative and based on an earlier modelling assumption that there could be significant industry contributions to the cost of kerbside recycling. However, ANZECC has subsequently accepted an industry proposition that industry would not contribute to the cost of operating kerbside recycling systems, beyond a transitional funding package and paying market prices for materials from that point on. It should be noted that the projected increase resulting from the</p>

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recycling under the Covenant. B54	<p>Covenant/NEPM package does not take account of proposed community education strategies aimed at optimising rather than maximising materials put out by householders.</p> <p>Notwithstanding the error referred to above, if the increase were 380,000 tonnes this would represent 1.8% of the total national waste stream, not 1.8% of the “total household waste stream”. Nationally, solid waste comprises a number of different streams. Each waste stream needs to be dealt with individually. ANZECC has an organic and green waste strategy. The convention for the measurement of waste uses weight rather than volume. It is widely recognised that the convention can produce perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream.</p>
<p>The Impact Statement fails to meet the requirements of the NEPC Act. This failure is explained by claims that:</p> <ul style="list-style-type: none"> - the Covenant and the NEPM are inextricable and mutually dependent and the independent effects of the NEPM cannot be separated for evaluation; - there is a lack of relevant information; and - the only relevant base case is oppressive regulation. <p>B33</p>	See above response.
<p>The Impact Statement does not attempt to estimate the added costs imposed on brand owners. These include additional costs of package recovery and reuse, of inspection, record keeping, reporting, labelling, litigation and local government charges ...</p> <p>...and of increased package prices arising from increased market power of packaging suppliers. B33</p>	<p>See earlier responses regarding compliance costs for business generally (page 80), and the purpose of Impact Statements (page 78).</p> <p>Brand owners are nominated as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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.</p> <p>Compliance costs associated with the Covenant/NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development</p>

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	of a consistent approach across jurisdictions, providing a capacity for price reduction rather than increase.
<p>The Impact Statement takes the view that brand owners can pass the additional costs of complying with the NEPM on to consumers or package suppliers. This is not true. Small brand owners cannot necessarily pass their costs up the chain to monopoly package suppliers or down the chain to price sensitive consumers. The additional costs will destroy small enterprise brand owners and employment. They will absorb resources which would be better used elsewhere (perhaps on more beneficial environmental improvements).</p> <p>B33</p>	<p>Brand owners are nominated as the most feasible point to be targeted in the packaging chain, where there is relative freedom of choice and action and where product stewardship principles can be realistically pursued. Targeting brand owners is based in part on their capacity to ensure that they do not bear the responsibility alone. 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, and the expectation that most brand owners would choose to join the Covenant.</p> <p>See earlier statement about compliance costs (page 80).</p> <p>This comment does not recognise that prices paid by small businesses already include costs of compliance with current State/ Territory regulatory and voluntary regimes. Any consideration of the costs of the Covenant/NEPM therefore needs to be done on a marginal cost basis. Compliance costs associated with the Covenant/ NEPM package are intended to be lower than compliance costs associated with existing and prospective state regimes through development of a consistent approach across jurisdictions.</p>
<p>Exporters of packaged goods will have their costs increased. Providing discount for these costs will be difficult to reconcile with WTO because the costs are joint in nature and cannot be readily estimated.</p> <p>B33</p>	<p>The Covenant is intended to reduce packaging costs, especially for the exporters. The comment springs from an assertion about cost impacts, which ignores the benefits offered by the Covenant and the costs of existing regulatory regimes.</p>
<p>Concerned that the Northern Territory is not financially or administratively disadvantaged with any new arrangement. The difficulties associated with larger area, long distances, low population and aboriginal communities need to be understood and supported.</p> <p>B34</p>	<p>This is an <i>implementation</i> matter for the Northern Territory.</p>
<p>The administrative and compliance costs are likely to be substantial and this will further increase the costs of food and beverages to consumers. Food prices in Darwin are now 8% higher than elsewhere in Australia. In remote communities this figure could be as much as 100% higher.</p> <p>B34</p>	<p>The Covenant as the main instrument is intended to reduce the packaging cost element in prices. If the NEPM route were adopted by an enterprise it would presumably be the least cost option for that particular business.</p>

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<p>Importantly, the Impact Statement on the draft NEPM does not comply with the NEPC Act (section 17 (b)(iv)).</p> <p>Moreover, the NEPM process has become so complex and fractured it must now have a poor chance of success in a form envisaged by ANZECC or its bureaucratic advisers... Section 17 (b) of the National Environmental Protection Council Act states that the Impact Statement for the draft NEPM must include;</p> <p>(iv) <i>an identification and assessment of the economic and social impact on the community (including industry) of the proposed measure.</i></p> <p>As we noted earlier, there is no substantive economic assessment of the impact of the draft NEPM. It would surely be a breach of the Act to implement the NEPM without such an economic assessment being included in an impact statement which met all the other requirements of the Act.</p> <p>B38</p>	<p>See earlier response regarding the purpose of Impact Statements (page 78).</p>
<p>If the Covenant and the NEPM are implemented we estimate net costs to us would be;</p> <ul style="list-style-type: none"> • under the Covenant - around \$30,000 a year (mainly extra admin costs for labelling) • under the NEPM - from \$150,000 to \$250,000 a year (mainly fees for collection, sorting and taking back used packaging). <p>B38</p>	<p>The Covenant does not impose these costs.</p> <p>The suggested costs would vary according to how the company chose to discharge NEPM obligations. Current compliance costs absorbed into packaging costs should also be noted.</p>
<p>The Impact Statements can best be described as notional: the potential socio-economic and environmental impact of the Covenant/ NEPM is substantial, therefore a cumulative and strategic impact assessment is warranted. The documents do not provide any implementation mechanisms and costings. The negotiating bodies should consider commissioning a research organisation to model the impact of the Covenant and the NEPM on industry, the national economy and the environment.</p> <p>B41</p>	<p>The NEPM is in effect an instrument to constrain the nature of state regulation. It has no direct effect on industry. Implementation costs of the NEPM depend upon the take-up of the Covenant. The Covenant is intended to reduce costs for the business.</p>
<p>For those small to medium businesses that are caught by the NEPM, compliance may be expensive and complicated (especially manufacturing and importing businesses). The impact statement for the Draft NEPM has ignored the fact that the proposed Brand Owner obligations would place a higher burden on small business due to the ability of large business to absorb the added burden.</p>	<p>Businesses of any particular scale would only be 'caught by the NEPM' if they chose this option, presumably as a least cost option. Domestic manufacturers, if they took the Covenant route should benefit from the cost reduction intended by the Covenant Council packaging costs include economic costs of existing regulation (see Industry Commission Report) Importers are being asked to comply with domestic</p>

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B42	requirements. If this incurs an increased cost, it would seem to indicate that they are presently free loading on domestic infrastructure.
<p>The Brand Owner obligations set out in the Draft NEPM would substantially increase the amount of time small businesses have to spend on paper work. In addition, many small businesses would not have the resources to comply with requirements such as determining the “total kilojoules of embedded energy recovered”.</p> <p>B42</p>	<p>Paper work requirements are based on existing requirements for other purposes.</p> <p>The flexibility and non-prescriptive nature of the Covenant is designed to keep compliance costs low and is a particular advantage to small business. It enables them to respond in a manner appropriate to their own circumstances rather than having arbitrary targets foisted upon them. The Covenant also encourages small businesses to take advantages of economies of scale by providing for sector-wide action and reporting. The Covenant moves away from the current regulatory focus on targets, which, as the Industry Commission pointed out “generate hidden economic costs which will ultimately be passed on”(Industry Commission, (1995), Packaging and Labelling).</p>
<p>The impact statement for the NEPM suggests that the NEPM will operate primarily on small manufacturing businesses. We note that small importers will also be affected. OSB does not accept that it is necessary to impose significant costs on small business in order to reach agreement with large businesses. Small businesses are unlikely to gain a competitive advantage due to their size.</p> <p>B42</p>	<p>It is not accepted that the costs of compliance with regulation flowing from the NEPM is inevitably greater than the cost of compliance with existing regulatory regimes.</p>
<p>We understand that jurisdictions may have concerns about the administrative burden of dealing with information reported under the NEPM. In order to reduce duplication in this area (given that major Brand Owners operate across borders), consideration should be given to a requirement that Brand Owners report to a central agency. We understand that for this to be possible, the agency would need to be (or be a part of) a legally constituted body with appropriate powers and functions. It would also need to be subject to legal constraints on the treatment of confidentiality of information. Options for such an agency may include a joint industry/ government (State, Territory and Local) organisation.</p> <p>B42</p>	<p>Brand owners are not required to report routinely. State based regulation cannot require that a report be made outside the jurisdiction.</p>
<p>Some general concerns have been expressed about possible impacts on small to medium enterprises (SMEs). Although SMEs are not expected to be unduly affected because the flexible nature of the Covenant will allow</p>	<p>Correct. The Covenant caters for the interests of small players with its flexible provisions for Action Plans, which allows these to be developed on a collective or sectoral basis. While the opportunities for collective</p>

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signatories to undertake activities within their sphere of activation and responsibility, within the packaging chain. B44	approaches under the NEPM are more restricted (for example, the need for individual record keeping), there is provision for such arrangements as far as recovery and utilisation requirements are concerned.
Economic analysis of the issues would benefit from a more comprehensive approach. For example, there does not seem to be any cost/benefit analysis of the value of the data collection from brand owners or local government. The economic assessment considers savings in the cost of landfill space and mentions conservation of resources. However, there is no attempt to quantify the saving, nor is consideration given to the potential reduction in jobs in the resource industries which provide the virgin raw materials that will have reduced demand due to competition from recycled material. This applies especially to aluminium, glass and plastics derived from petroleum. It is recognised that the externalities involved in most environmental issues are not easily quantified and there are few market processes to internalise them. B44	<p>The NEPC Protocol for Development of Impact Statements (29 November 1996, p.3) provides that an Impact Statement should:</p> <p>be a commonsense document which provides useful information to members of the community about the environmental, social and economic implications of a proposed NEPM. The focus of the document should be to provide a reasonable basis for informed comment and judgement on the proposed NEPM rather than a detailed technical analysis of the detail of the proposed NEPM.</p> <p>NEPM Impact Statements cannot substitute for research programs, either in terms of the modelling proposed by this commentator or in terms of more general research into recycling systems (note that an independent economic assessment of kerbside is to be carried out under the transitional arrangements associated with the Covenant).</p> <p>See also earlier response on economic modelling (page 80)</p>
<p>The assumption that the NEPM is a support mechanism and not intended to be a stand alone mechanism is understood and that the success of the Covenant/NEPM package is dependant on the majority of players becoming Covenant signatories. It is also understood that those companies supporting the package represent the majority market share of packaging materials and grocery items.</p> <p>However, the `major players' are relatively few companies compared to the many small companies who are also affected by the package.</p> <p>Although the package allows companies a choice to join the covenant or come under the NEPM, many small companies are still unaware of the existence of Covenant.</p> <p>There is also concern that there will be a considerable additional administrative burden on SMEs to comply with either the Covenant or the NEPM.</p> <p>B44</p>	<p>Correct.</p> <p>There is a long list of members of AGFC and PACIA in particular.</p> <p>The enforcement guidelines (new clause 10) make it clear that the offence should be dependent on failure to rectify a non-compliance.</p> <p>The Covenant caters for the interests of small players with its flexible provisions for Action Plans, which allows these to be developed on a collective or sectoral basis. While the opportunities for collective approaches under the NEPM are more restricted (for example, the</p>

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	need for individual record keeping), there is provision for such arrangements as far as recovery and utilisation requirements are concerned.
What impact will the GST have on the commitments made in the NEPM/Covenant? B45	Not known until the final shape of the GST is known.
In relation to the Impact Statement for the NEPM, it appears that the ORR disagrees with the statement that the NEPM will only impact on 10% of the industry (those not signing the Covenant). This is similar to the point that South Australian industry is making and highlights the need to better quantify the nature of the impact on industry of the NEPM. B1	<p>The Commonwealth Office of Regulation Review has reviewed the Impact Statement and is satisfied that it is “a thorough and clear document and satisfies the criteria” set out in COAG’s <i>Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies</i>.</p> <p>Note the 10% refers to market share rather than number of businesses.</p> <p>See earlier response regarding economic modelling and quantifying the impacts of NEPM guidelines (page 80).</p>
The impacts on regional areas resulting from the NEPM/Covenant package are not reported in the Impact Statement. Important considerations are population base, access to markets and availability of collection mechanisms. B1	The Covenant transitional arrangements and amended Clause 9(4) of the NEPM support the need to consider these factors in developing kerbside best practices and in imposing NEPM obligations at jurisdictional level.
<p>The Impact Statement has been prepared without cost benefit analysis and other modelling which allows a variety of influences and trade offs to be assessed. As a result, the Impact Statement is narrowly focused, and in some instances misleading. The same could be said of the Covenant and analysis of both needs to be adequate prior to whole of government consideration.</p> <p>For example, the cost of systematically recovering packaging, demonstrating recovery and utilisation of packaging, labelling of brand owners’ products, record keeping etc have not been quantified.</p> <p>These costs have been described as not significant, but are deemed to be significant enough to place Covenant signatories at a</p>	<p>See earlier response regarding the purpose of impact statements (page 78) and economic modelling (page 80).</p> <p>The labelling requirement (clause 9(2)(d)) has been amended.</p> <p>It would be most odd if brand owners did not know how many units of packaging they purchased, used and marketed to contain their products. Financial records related to these must already be retained for taxation purposes; so the NEPM produces no additional costs. Indeed without this very basic production information, an enterprise would be unlikely to survive.</p> <p>The costs cannot be assessed on a company by company basis. There is no way of predicting how the obligations will be discharged.</p>

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competitive disadvantage if there was no NEPM. B1	
<p>Industry notes that there has been no adequate assessment of the impact on the jurisdictions which will be responsible for the NEPM. This is of concern as such costs are invariably recovered through business and community charges. B56</p>	<p>The underlying premise of the NEPM is that it is part of an integrated package in which the Covenant will have the major impact. The rule of thumb applied (and which remains to be tested by making the Covenant available for signature) is that the vast majority of products and brand owners would be covered by the Covenant rather than by the NEPM. The rule of thumb is drawn from the understanding that nearly all consumer products in retail outlets are accounted for by the group of industry associations which have made it clear that they intend to be signatories to the Covenant. The Covenant has a life of five years and the NEPM is directly associated with it and will not have a life without the Covenant. On this basis, if the package works as intended, the NEPM will apply to few concerns. If it does not, it will cease to be the way forward for dealing with packaging waste and the NEPM will cease to have a life. If any of these “preconditions” turn out to be false, it is unlikely that ANZECC will wish to continue with the Covenant/ NEPM approach. The consequence of this is that the NEPM, of itself (as expressed in the impact statement) cannot impose long-term costs on jurisdictions.</p>
<p>There is concern that the cost of participating in either the Covenant or NEPM will be sufficient to drive some smaller packaging operators out of the market, or firms that do their own packaging will cease doing so, thereby leading to a substantial lessening of competition in the packaging supply markets. In turn packaging prices could rise where fewer suppliers have opportunity to control the market. Comment in terms of competition policy and economic analysis is sought. B1</p>	<p>See earlier response regarding compliance cost (page 80).</p> <p>The NEPM is focused on product brand owners rather than packaging businesses per se. It is expected that the Covenant would be the preferred vehicle for packaging suppliers.</p>
<p>Particular points of concern to DIT officers are:</p> <ul style="list-style-type: none"> - non-compliance with key principles outlined in the IGAE; - lack of rigour applied in the Impact Statement with respect to an environmental and economic cost benefit analysis of the proposed NEPM and the lack of attention paid to alternatives; - The Covenant is likely to appeal to large players, who can afford the cost of the actions listed in the Covenant. Other businesses are likely to be unaware of the 	<p>Not clear which principles are referred to.</p> <p>Cost benefit analysis is not required and is of limited use in the context of the NEPM guidelines.</p> <p>It is anticipated that ethical companies of all sizes will seize the opportunity provided by the Covenant to self regulate. Compliance costs associated with the Covenant are intended to be</p>

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<p>opportunity or unable to meet the requirements of the Covenant, and as a consequence will be subject to the NEPM. This means that small medium enterprises are more likely to be effected by the cost impacts of the NEPM and this is even more reason to thoroughly quantify them;</p> <ul style="list-style-type: none"> - Until the administrative arrangements for the Covenant and its complementary NEPM are known, it is difficult to judge the cost to the jurisdictions; - The environmental benefits of the Covenant/NEPM package need to be shown to clearly outweigh the costs. Economic modelling should be undertaken using a variety of assumptions. <p>B1</p>	<p>lower than compliance costs associated with existing and prospective state regimes through a national self-regulatory option and a consistent approach across jurisdictions.</p> <p>The enforcement guidelines (new clause 10) make it clear that the offence should be dependent on failure to rectify a non-compliance.</p> <p>The administrative arrangements are in the hands of the jurisdictions themselves.</p> <p>See earlier response regarding the purpose of Impact Statements (page 78) and economic modelling (page 80).</p>
<p>The NEPM will impose on brand owners the costs of:</p> <ul style="list-style-type: none"> - package recovery and reuse or sale as a secondary resource; - record keeping, labelling and response to complaints; - possible increased package prices arising from increased market power of packaging suppliers. <p>In particular note, based on DIT case studies on industry cost of external reporting, the cost of compliance under clauses 9(2)(c), 15(1), 15(3) and 15(4), of the NEPM are estimated to be around \$10,000 to \$20,000 per year per brand owner.</p> <p>B1</p>	<p>These costs will only be incurred at the brand owner's election, presumably as the least cost option.</p> <p>The labelling requirement (clause 9(2)(d)) has been amended.</p> <p>The DIT case studies make unjustified exemptions about both implementation and compliance with the NEPM which predetermine their outcomes and consequently should not be relied upon.</p>
<p>The essential elements of the situation are these:</p> <ul style="list-style-type: none"> - the National Packaging Covenant and the National Environment Protection Measure for Used Packaging Materials are intended to reduce the "adverse environmental impacts" of "excessive packaging"; - "adverse environmental impacts" and "excessive packaging" are neither defined nor quantified; - in practice, the combined Covenant/NEPM/transitional arrangements package is intended to reduce 0.04 to 0.05 per cent of solid waste (by weight) by an unquantified fraction; - the National Packaging Covenant, as currently drafted, would commit signatories to a number of undertakings (eg research, 	<p>These comments highlight the shortcomings of an over-dependence on quantitative approaches. The issues being addressed by the Covenant are environmental, economic and social. Only one of these (economic) lends itself to a quantitative approach and would nevertheless need to be based on assumptions which are unlikely to be agreed as relevant by all stakeholders.</p> <p>As the Impact Statement points out quantitative approaches can lack validity (that is they may not address the real issues). While they might produce "numbers" rather than "assessments", the numbers inevitably reflect the assumptions (about which there would be disagreement).</p> <p>Qualitative approaches allow values to be</p>

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<p>identification of new end uses, market development, public education campaigns, packaging redesign, and extensive, undefined data collection) which are uncoded;</p> <ul style="list-style-type: none"> - additionally, it is very clear that the proposed “Covenant Monitoring Group” and the “Kerbside Recycling Group” and the NEPM would require the establishment of a large bureaucratic infrastructure, which is also uncoded. <p>The total costs of the exercise, to government, industry, and the public remain unquantified. The total benefits would be minuscule.</p> <p>And, of course, no attempt has been made to balance the proposals with a consideration of the “adverse environmental impacts” of kerbside collection and recycling systems, which would offset any presumed benefits of reducing or diverting a small fraction of 0.04 to 0.05 per cent by weight of solid waste. B11, B47</p>	<p>accounted for. It is clear that the community places a high value on a sustainable system of product stewardship and resource conservation.</p> <p>Any single component of the waste stream will be considered a small proportion of the whole, particularly as waste is conventionally measured by weight rather than volume. Consumer packaging materials have a high proportion of low weight, high volume components.</p> <p>The convention for the measurement of waste uses weight rather than volume. It is widely recognised that the convention can produce perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream.</p> <p>Nationally, solid waste comprises a number of different streams. Each waste stream needs to be dealt with individually. Other streams being addressed include construction and demolition waste, commercial and industrial, hazardous waste, medical and dental waste, green waste, farm chemicals and mining waste.</p>
<p>It is clear that the establishment and operation of the bureaucratic infrastructure which would be required to carry out the assessment, monitoring, data collection, audit and review functions under both the Covenant and the NEPM would amount to a substantial new cost to governments and their taxpayers for no substantiated benefit. Similarly, industry’s burden in complying “voluntarily” or through obligation, would also amount to a substantial new cost...</p> <p>Under both the Covenant and the NEPM, there would be requirements for extensive, intrusive and ultimately useless data collection relating to 0.04 to 0.05 per cent by weight of solid waste. B11, B47</p>	<p>The “requirement” to establish bureaucratic infrastructure is an assumption/assertion without basis. As a consequence the views expressed have no foundation.</p> <p>The forums and data collection under the Covenant replace existing arrangements. Data required through the NEPM are based on existing business records (related to production, marketing etc) and local government practice.</p> <p>Any single component of the waste stream will be considered a small proportion of the whole, particularly as waste is conventionally measured by weight rather than volume. Consumer packaging materials have a high proportion of low weight, high volume components.</p> <p>The convention for the measurement of waste</p>

Impacts	
	uses weight rather than volume. It is widely recognised that the convention can produce perverse results particularly in relation to used consumer packaging materials. These have a high proportion of low weight, high volume components and comprise, on a volume basis, a substantial and highly visible proportion of the municipal waste stream.
<p>The costs and benefits of neither the Covenant nor the NEPM have been rigorously calculated, as required by the NEPC Act. The costs generated by the proposed arrangements would be multiplied through the supply chain and passed on in price increases to consumers and taxpayers without any substantial change in the volumes of packaging waste going to landfill.</p> <p>These additional costs would impact most on low and fixed income earners and overall would divert consumer expenditures away from products and services which generate employment, without any benefit or return to the consumer.</p> <p>B11, B47</p>	<p>The Act requires that economic and social impacts be identified and assessed.</p> <p>The view that the Covenant/NEPM introduced new costs fails to take account of existing costs. The Covenant, in particular, is intended to lead to reduced costs.</p> <p>In the unlikely even that new costs were incurred, it cannot be assumed that price increases are (a) measurable at the check-out in a monetary regime with 0.05 cents as the smallest coin which already requires rounding up/down or (b) capable of being passed on unless elasticity of demand strongly favours sellers.</p>
<p>For both the Covenant and the NEPM, the regulation impact statements are remarkable for their arguments unsupported by logic or evidence. The failure of the NEPC officers to validate this process probably constitutes a breach of the National Environment Protection Council Act.</p> <p>B11, B47</p>	<p>There are undoubtably differing views on what constitutes sufficient evidence. The Impact Statement points out that there are competing claims about materials cited in the Impact Statement (page 4). It also points out that the materials should be regarded as indicative.</p>
<p>Section 3.2.3 states that “regional environmental differences are not considered significant in relation to the development of the NEPM”, holding instead that differences are “more typically social or economic”.</p> <p>PACIA challenges this view. Regional collection, by its very nature, requires trucking of recyclates (with significant air space) over large distances to places where they can be reprocessed. This has an increased impact on air quality (one of the major environmental issues facing Australia today) and resource use (through additional fuel use) that have not been balanced against the environmental benefits from recycling.</p> <p>Furthermore, to maintain the position that economic and environmental impacts are always independent is over-simplification. Frequently, an activity which is not economically viable is</p>	<p>The term regional environmental differences has been considered in the context of other NEPMs and taken to refer to ambient environmental characteristics which might be relevant to the imposition of environmental quality standards.</p> <p>It is a key transitional mechanism under the Covenant arrangements that an independent assessment of kerbside recycling be undertaken. This exercise will support the Covenant’s intent to ensure that recycling is optimised, rather than simply maximised.</p> <p>Clause 9(4) of the NEPM has been amended to make it clear that jurisdictions will have to consider a range of factors when imposing NEPM obligations.</p>

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that way because of high use of resources such as raw materials, energy and water. This then has a direct environmental impact through resource consumption. B54	
It is completely incorrect to assume that because member companies of the Australian Supermarket Institute have historically accounted for 95 per cent of grocery sales in Australia, this equates to 95 per cent of all packaged goods. Grocery sales amount to less than \$40 billion a year, compared with a total retail market of more than \$140 billion a year, according to ABS figures which were readily available to the drafting team. B11, B47	<p>The reduced membership of the Australian Supermarket Institute resulting from the departure of Myer would further modify the suggested figure in any event. The dollar value of the total retail market is no more useful a reference for this purpose than the total trade marks or total registered companies are for the purpose of establishing the number of brand owners.</p> <p>The view expressed in the Impact Statement is that the major impact of the NEPM will be “largely”:</p> <ul style="list-style-type: none"> (i) on grocery items; and (ii) confined to about 10% of market share.
<p>Most industry associations which have been involved in the negotiations over the past few years have been prepared to accept the Covenant and related schedules as a statement of good intent in relation to the production and use of packaging and recovery and reprocessing of used packaging waste. However, those associations have largely been limited to the food and beverage sector.</p> <p>Other significant packaging users – such as pharmacy, hardware, home electronics, home entertainment, white goods, power tools, etc – have not been involved in the process and may be unaware that the Covenant and related NEPM will impact on their business operations. B11, B47</p>	<p>Invitations to public consultation meetings have been issued to as many relevant industry organisations as possible. Submissions have been received from some of the sectors nominated.</p>
<p>The Task Force identified a set of features that an ideal regulatory system should have, including:</p> <ul style="list-style-type: none"> • minimal duplication and overlap with well coordinated institutions within the system; • consistent regulations across sectors; • transparent and predictable processes; • regulators which are accountable to business and the community; and • regulators that take a risk management approach to forming and administering regulation. <p>B25</p>	<p>It seems to be misunderstood that the objective of the NEPM is to produce such an outcome at jurisdiction level. Its effect is to constrain the freedom of jurisdictions to legislate or regulate on packaging issues other than in accordance with the regime set out in the NEPM. In that way it would produce consistent outcomes across jurisdictions, transparency etc.</p>
The Task Force also emphasised that cost-benefit analysis should be undertaken with regard to the public benefit of any proposed	The requirements of a NEPM Impact Statement are set out in the laws of the Commonwealth (National Environment Protection Council Act

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<p>regulatory arrangements, including quasi-regulation, that impose a burden on small business...</p> <p>Central to the development and implementation of environmental regulation is consideration of the effects of that regulation on small business, particularly in view of the Government identifying small business as a priority of its reform agenda...</p> <p>B25</p>	<p>1994) and mirroring Acts in each State/Territory. These require “identification” and “assessment” of the economic and social impact on the community (including industry) of making the measure. Cost benefit analysis is one tool which might be employed in making an “assessment”, but does not provide sufficiently for qualitative dimensions; indeed the term “assessment” itself suggests the need for a broader tool.</p>
<p>The AiGroup is concerned that the full economic and environmental costs associated with the NEPM have not been fully considered. The NEPM’s Impact Statement places most emphasis on the social popularity of maintaining and increasing kerbside recycling, and does not adequately assess the true costs. Cross-referencing between the NEPM and the Covenant’s Impact Statements identifies that neither document covers the environmental or economic impacts except in a superficial manner. As a result Government and industry has no understanding of the current costs involved in kerbside recycling nor have they an appreciation of the current environmental impacts and benefits.</p> <p>Only detailed studies on current and proposed levels of kerbside recycling can identify which direction should be taken for the benefit of the environment and the economy... Impact Statements should be undertaken considering:</p> <ul style="list-style-type: none"> - the current economic and environmental impacts of kerbside recycling; and - the full costs on signatories and brand owners, directly and internally for those effected by the NEPM/Covenant. <p>B50</p> 	<p>The Covenant/NEPM do not represent a new recycling policy initiative. They focus on modifying existing arrangements to make them more sustainable in a market context.</p> <p>It is beyond the role of either the Covenant or the NEPM to research the question posed. However it is intended that an economic study of kerbside recycling systems should be undertaken under Covenant transitional arrangements.</p> <p>See earlier comment regarding purpose of Impact Statements (page 78).</p>
<p>The AiGroup believes the desired environmental outcomes stated in the Impact Statement will not be obtained through the NEPM process. Scientific research and standard scientific argument suggests that virgin material usage could increase under the NEPM and Covenant due to the expected 200,000 tonne increase in kerbside recycle, without any identified improvement in quality.</p> <p>As an alternative, the AiGroup proposes that:</p> <ul style="list-style-type: none"> - practices be introduced and expanded to improve the quality of collected materials; - emphasis be given to improving the 	<p>See earlier response regarding 380,000 tonnes (page 81).</p> <p>These are objectives rather than alternatives and are identified as key objectives of the transitional arrangements under the Covenant.</p>

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<p>efficiencies of the current systems;</p> <ul style="list-style-type: none"> - emphasis be placed on market developments for recycled materials. <p>B50</p>	
<p>The impacts of the NEPM have not been defined. There is a fundamental lack of data on its impacts because it is considered the minor of the two instruments. To conduct a standard cost benefit analysis will be difficult to do, providing results that would be highly speculative, inappropriate and misleading. Section 17(b) of the NEPC Act requires that NEPC prepare an Impact Statement relating to the proposed NEPM that contains an identification and assessment of the economic and social impact on the community (including industry) of making the proposed NEPM. The Impact Statement fails section 17 of the NEPC Act... While industry recognises the need for the whole of industry to take part in the shared responsibility of this issue, the ad hoc implementation of such an instrument is inappropriate.</p> <p>Recommend that, given the gross lack of data the Covenant be allowed to operate without the NEPM pending a review at a later date. That review would determine the cost, appropriateness and instruments to be used in a regulatory safety net if it was deemed necessary.</p> <p>B52</p>	<p>See earlier responses regarding the purpose of impact statements (page 78) and economic modelling (page 80).</p> <p>There will be an automatic interregnum as the NEPM merely sets parameters for jurisdictional legislation/regulation.</p>

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<p>Page 70, section 4.1.2, first para, second sentence is equivocal to the point of being meaningless. It should be specific on this point, as it is important information.</p> <p>B1</p>	<p>Disagree. The Impact Statement cannot substitute for the detailed evaluation of individual jurisdictions, but provides Ministers with a general overview of the legislative/regulatory landscape.</p>
<p>Page 73, summary, first para, what is the justification for the first sentence that the NEPM will not impose long term costs on jurisdictions?</p> <p>B1</p>	<p>The underlying premise of the NEPM is that it is part of an integrated package in which the Covenant will have the major impact. The rule of thumb applied (and which remains to be tested by making the Covenant available for signature) is that the vast majority of products and brand owners would be covered by the Covenant rather than by the NEPM. The rule of thumb is drawn from the understanding that nearly all consumer products in retail outlets are accounted for by the group of industry associations which have made it clear that they intend to be signatories to the Covenant. The Covenant has a life of five years and the NEPM is directly associated with it and will not have a</p>

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	life without the Covenant. On this basis, if the package works as intended, the NEPM will apply to few concerns. If it does not, it will cease to be the way forward for dealing with packaging waste and the NEPM will cease to have a life. If any of these “preconditions” turn out to be false, it is unlikely that ANZECC will wish to continue with the Covenant/ NEPM approach. The consequence of this is that the NEPM, of itself (as expressed in the impact statement) cannot impose long-term costs on jurisdictions.
Page 73, section 4.1.3, last para suggests that the NEPM will be made in June 1999. It may be wise not to be specific about the date. B1	The date indicated is the best current knowledge. If another date becomes necessary it can be included in any revised impact statement which may be required.
The Covenant and the NEPM rely on state government implementation of regulations and on matching funds from state governments. There is no clear indication at this time regarding the Queensland Government’s position on either of these topics. B8	Noted.
The NEPM significantly lessens competition in branded goods markets, in packaging markets, and in markets for the supply of collection and recovery services. It will have particularly severe impacts on small to medium sized brand owners and on industry sectors that face a domestic monopoly in packaging supply. Importers of product and domestic brand owners seeking to use imported packaging to maintain or improve competitiveness will face unwarranted additional costs. B9, B33	The Covenant is designed to allow domestic packaging producers to be more competitive in relation to imports which do not generally incur costs of compliance with state requirements.
It is claimed that the NEPM creates no issues for the ACCC. This is probably because the Trade Practices Act does not provide jurisdiction over legislation of the Commonwealth. It is certainly not because there are no anti-competitive elements in the proposed measures. The Covenant is not so protected, and signatories may be exposed to action if the Covenant is not mandated by ACCC. B33	ACCC has been consulted.
Innovation in packaging and in brand development, by small and medium sized competitors and by importers, will be stifled by the take-back requirements of the NEPM. The level of this requirement will be determined by the large businesses that are Covenant signatories. B9, B33	<p>The take back requirement is performance based unlike regimes in Europe.</p> <p>No – it will be determined by jurisdictions who will take account of existing performance as one consideration amongst many.</p>

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<p>The NEPM creates an opportunity for vexatious litigation... The Impact Statement places too much reliance on the construction of the enforcement mechanism to constrain unreasonable costs... Regardless of whether a complaint results in enforcement action, the demands of responding are an unwarranted imposition on business.</p> <p>B9</p>	<p>Companies are already exposed to a variety of requirements to provide information.</p> <p>The enforcement philosophy has been clarified (new clause 10).</p>
<p>The NEPM and the Covenant both rely upon complaints to instigate inquiries and audits. In this way they create opportunities for vexatious litigation, which will be costly to both business and government. Litigation will arise frequently because there is popular concern and misinformation about packaging, the Action Plans and performance reports will be available to the public, the NEPM process is invoked by complaints and the costs of the kerbside recycling system cannot be determined without litigation.</p> <p>B33</p>	<p>Litigation would be constrained by the enforcement guidelines (new clause 10) which make it clear that jurisdictions are expected to marshal their resources appropriately for the size of the brand owner population expected to be affected by the NEPM.</p> <p>In the normal course of enforcement of any regulation, jurisdictions have to assess whether information or complaints are vexatious before acting on them.</p>
<p>Local market monopolists and duopolists that are signatories to the Covenant are given the capacity to influence the size of impost by influencing the proportion of packaging to be recovered. Although it will also apply a cost to those suppliers, if they already have the recovery/collection mechanisms in place it will be a lower cost relative to potential competitors. This presents a potential barrier to entry, particularly from imported products which would not have the capacity to recover materials in Australia. Furthermore, this opens up a potential conflict with trade practices legislation. An offshore (most likely) competitor, unable to comply with the Covenant will then be forced to comply with the NEPM, and presumably incur a cost penalty. In addition, if wineries purchasing packaging materials from Covenant signatories are implied signatories to the Covenant, there will be an incentive to purchase from Covenant signatories. In theory this reduces winery compliance, and encourages signatories to the Covenant. However, in practice, where competitors are unable to comply with the Covenant, it will further entrench industry reliance on one or two packaging suppliers. In an industry where product differentiation is crucial, the Covenant and NEPM will potentially diminish competition, diminish choice and diminish differentiation.</p> <p>B18</p>	<p>No – their performance is no more than a reference point.</p> <p>The importer in this case is the brand owner.</p> <p>Offshore competitors are able to join the Covenant or discharge their NEPM obligations through the importer of their products (the brand owner).</p> <p>There are no “implied signatory” arrangements.</p> <p>Product differentiation may also be increased in that the Covenant may be an exploitable factor.</p>

Implementation	
It is assumed that the NEPM and Covenant will not apply to exported packaging materials. This must be the case, as industry already complies with the requirements in the country of destination. A contrary position would diminish competitiveness. B18	Noted.
The issues that are of most concern relate to the likely costs of fulfilling statutory obligations, protocols and ongoing enforcement. At this stage these are unquantifiable and will need to be addressed further in due course. B31	Noted.
The NEPM makes compliance the responsibility of brand owners and allows them to secure compliance services from others, such as packaging suppliers or others. It places these services in a position to discriminate between brand owners and packages, at least in some cases. Packaging suppliers who charge their customers for this service, and who refuse to recover packages sold by competitors, will be using their recovery systems as a barrier to entry while recovering the costs of the barrier from their customers. The NEPM gives Covenant signatories control over who may compete in the market to provide recovery services. B33	Recovery services are largely operated by service providers to local government and are not controlled by packaging suppliers, although they have a significant influence over quantities and prices for materials re-used in their own processes. The NEPM is more likely to increase the number and variety of recovery services.
The point raised “Jurisdictions are not likely to pursue companies when the cost of bringing them in exceeds the benefits to be gained” would possibly exempt the Northern Territory. If not, it seems that small and in many cases the worst offenders (in ratio to product) have an advantage. B34	The point merely recognises jurisdictional prerogatives in enforcing NEPM-based regulations.
In many aspects the proposals seem to be a duplication of current legislation such as the Northern Territory Waste Management and Pollution Control Act. B34	If so, this is a coincidence.
The omission of any avenue for the community to be involved in consultation or complaint (other than market disadvantage) is an oversight which is contrary to the intention of the Covenant and the NEPM process. B37, B57	Community members may complain to jurisdictions – however it is recognised that the most likely source of complaint would be industry and the most likely trigger would be perceived competitive disadvantage.
The Commonwealth is not convinced that the selective enforcement model proposed is an adequate safeguard against unnecessary impacts on small and medium business. Ultimate Commonwealth support of this measure may depend on satisfactory resolution of this issue.	Enforcement provisions have been brought into the NEPM (new clause 10).

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B42	
<p>It is noted that non-compliance by a brand owner might only be enforced if a breach of their obligations amounted to unfair competition with Covenant signatories. However, there is no reference in the Draft NEPM to a test for competitive disadvantage. Reference to a test may provide for greater consistency across jurisdictions, and greater certainty for industry. A clear test may also be needed to allow assessment of the potential impact of the Draft NEPM on small businesses.</p> <p>B42</p>	<p>Complaint provisions are not confined to Covenant signatories. See above response. It is not suggested that competitive disadvantage would need to be proved to support a complaint.</p>
<p>It appears that further consideration may need to be given to ensuring there is a satisfactory mechanism for dealing with cases where non-compliance occurs in several jurisdictions in respect of one product (or one set of products). A product may be distributed, not by the original brand owner (eg. the owner of the trade mark) but, by a network of different distributors in different jurisdictions. If the trade mark owner does not actually conduct business in every jurisdiction in which the product is distributed, then enforcement of non-compliance in respect of a single product may be quite complex, involving many “brand owners”, regulation in several jurisdictions and considerable duplication of effort by enforcing agencies.</p> <p>B42</p>	<p>The relevant clause has been amended to avoid the situation described.</p>
<p>DTRD is also concerned that there is a need to ensure that rural and remote communities are not disadvantaged by the Measure in relation to the range and quality of products that would be made available to them. A mechanism may be needed for ensuring that the costs of retrieving packaging do not lead to decisions by brand owners not to supply their products to rural and remote areas.</p> <p>B42</p>	<p>Clause 9(4) has been amended to make it clear that jurisdictions should take a number of factors into account when imposing NEPM-based obligations.</p>
<p>There is a need to ensure that the NEPM/ Covenant package does not result in discrimination against importers. While this requirement has been met in the general coverage of the notional NEPM and the eligibility requirements for the Covenant, further work will be needed to ensure that:</p> <ul style="list-style-type: none"> - importers are included in the consultation process - in order to satisfy the transparency principle contained in the international Technical Barriers to Trade Agreement; - no discriminatory burden is imposed by jurisdictions on imported goods in the 	<p>All public consultation meetings have been open sessions.</p> <p>The definition of brand owner has been designed to ensure that importers are treated equally with</p>

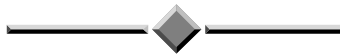
Implementation	
implementation of the NEPM. B42	domestic manufacturers.
The Department of Foreign Affairs and Trade has asked that it be noted, in order to comply with Australia's international trade obligations, governments and businesses should not unfairly subsidise exports. An example of an unfair subsidy would be a subsidy that was contingent upon export performance. B42	None intended.
To reduce the regulatory / enforcement burden on government, consideration could be given to providing a right to take enforcement action to a company who believes on reasonable grounds that it has been disadvantaged by the non-compliance of another. This would supplement rather than replace a complaints based enforcement system. While the details would be an implementation issue, the Measure could provide policy direction. B43	This would seem to be inappropriate, but would be a matter for consideration by the Northern Territory in implementation if it believed there was a compelling case for it. Non-compliance could probably only be definitively ascertained through a successful prosecution by a jurisdiction. A case brought privately would seem to be handicapped if this had not previously been done.
There is concern that the Covenant/NEPM package does not disadvantage Australian, as opposed to overseas industry, by creation of an effective tax on domestic packages. B44	Domestic and imported packaged consumer products are treated equally under both the Covenant and the NEPM.
Food hygiene problems often conflict with waste minimisation targets. A certain degree of packaging is required by the Health Department <u>in the food processing factory</u> to keep food fresh and sometimes that packaging is unable to be recycled or reused, but may makes up a large proportion of the packaging used. Then food is required to be packaged in a certain way to ensure quality, which often conflicts with waste reduction attempts. There should be liaison between state Health Departments and the jurisdictions enforcing the NEPM to ensure that there is no conflict with regard to design and other requirements for packaging. B45	No targets are proposed in either the Covenant or the NEPM. This is one of the factors jurisdictions would need to take into account when considering whether to include particular packaging in NEPM-based regulation.
The development of generic legislation on particular issues needing common management for possible use by State and Territory jurisdictions is supported. Such generic legislation needs to be prepared, and negotiated with jurisdictions in time to allow them to seek Cabinet approval for legislative changes to support the NEPM, before NEPC can vote on making the NEPM. B1	This suggestion is being pursued by NEPC.
DIT officers are concerned that the existence of the NEPM is likely to lead vexatious complaints	This is always a possibility; but unlikely to be a significant issue if jurisdictions identify

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and possibly litigation by some firms as a means of gaining advantage over their competitors. B1	complaints as vexatious.
Those companies covered by the NEPM would, similarly, be required to monitor and report on their activities, which, presumably, would require the presence of a body of people to assess and verify the performance reflected in those reports. Indeed, the draft NEPM provides for annual audits of these companies. Through the Covenant and the NEPM, hundreds of thousands of businesses would be involved. The uses to which the data would be put are unspecified, beyond allowing reports to be written to the NEPC. B11, B47	The presumption is incorrect. See earlier response regarding numbers affected by the NEPM (page 78). Data from brand owners would only be called upon for enforcement or auditing purposes. This is consistent with other regulatory/enforcement approaches in non-packaging areas.
When the first draft of the NEPM was revealed to the Non-Government Organisations Advisory Group in May 1998, ASI's written response was that the proposed arrangement might be in breach of the Trade Practices Act. Section 45(b), for example, specifically deals with covenants affecting competition and would seem to cover the arrangements proposed by the NEPC. The NEPC did not respond to our concern and the proposal remains in the current draft NEPM. Our concern remains. B11, B47	"Covenant" is defined by the <i>Trade Practices Act 1974</i> : "means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land), ..." This seems irrelevant to the National Packaging Covenant.
The relationship of the potential NEPM to the existing State legislation is essentially unstated, particularly in terms of South Australia Container Deposit Legislation. This issue is also not robustly addressed in the context of the Impact Statement. You would note that this causes real uncertainty for our sector, which is primarily affected by South Australia's anachronistic position. B48	Noted. The NEPM constrains the basis of state jurisdictional instruments but it cannot override them.
The primary purpose of the NEPM is to encourage participation in the Covenant by acting as a regulatory safety net for free riders. The mechanism to encourage participation in the Covenant appears to be one of making the alternative such a regulatory burden that people will flock to the Covenant. Having made the regulatory instrument it must now be enforced. It is this issue that does not appear to be well addressed in the Impact Statement. The cost benefit analysis on industry	Enforcement provisions have been brought into the NEPM (new clause 10).

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would be strongly dependent on the level of uptake by industry of the Covenant, and on the number of complaints. Given the gross lack of data, it is surprising that the “suck it and see” approach has been adopted.

B52



APPENDIX A SUBMISSIONS - PUBLIC CONSULTATION

(11 January – 19 March 1999)

Submission No.	Organisation/Individual
B1	South Australian Government Agencies
B2	Australian Council of Recyclers
B3	Gosford City Council (NSW)
B4	Waste Crisis Network (NSW)
B5	Mr Hugh Evans (Victoria)
B6	Keep Australia Beautiful Council (WA)
B7	City of Mitcham (SA)
B8	Maroochy Shire Council (Qld)
B9	Chamber of Commerce and Industry (WA)
B10	Bicycle Federation of Australia
B11	Woolworths Limited
B12	Orlando Wyndham (SA)
B13	Small Business Development Corporation (WA)
B14	National Can Industries
B15	City of Charles Sturt (SA)
B16	Cook's River Valley Association (NSW)
B17	Gerard Industries Pty Ltd (SA)
B18	Winemakers' Federation of Australia
B19	Australian Local Government Association
B20	Environment Management Industry Association of Australia
B21	Redland Shire Council (Qld)
B22	Packaging Council of Australia
B23	Local Government Association of Queensland
B24	Municipal Waste Advisory Council (WA)
B25	Department of Workplace Relations and Small Business (Commonwealth)
B26	Cairns and Far North Environment Centre (Qld)
B27	Australian Pharmaceutical Manufacturers Association
B28	Local Government and Shires Association of New South Wales
B29	Mr Bob Allen (NSW)
B30	South East Queensland Regional Organisation of Councils
B31	Department of Urban Services (ACT)
B32	South East Region Recycling Group (NSW)

Submission No.	Organisation/Individual
B33	South Australian Employers' Chamber of Commerce and Industry
B34	Beverage Industry Environment Council (NT)
B35	Australian Aluminium Council
B36	Mr Michael A Potter (Tasmania)
B37	Victorian Government Agencies
B38	Kimberly-Clark Australia
B39	Worldwide Home Environmentalists Network
B40	Brisbane City Council (Qld)
B41	Yalumba (SA)
B42	Commonwealth Government Agencies
B43	Northern Territory Government Agencies
B44	Queensland Government Agencies
B45	Tasmanian Government Agencies
B46	Australian Food and Grocery Council
B47	Australian Supermarket Institute
B48	Beverage Industry Environment Council
B49	The Proprietary Medicines Association of Australia
B50	Australian Industry Group
B51	Queensland Chamber of Commerce and Industry
B52	Australian Business
B53	Strathfield Municipal Council (NSW)
B54	Plastics and Chemicals Industries Association
B55	Clarence City Council
B56	Australian Chamber of Commerce and Industry
B57	National Environment Consultative Forum

APPENDIX B GLOSSARY

ACCC	Australian Competition and Consumer Commission
ACTU	Australian Council of Trade Unions
ALGA	Australian Local Government Association
ANZECC	Australia and New Zealand Environment and Conservation Council
CDL	Container Deposit Legislation
COAG	Council of Australian Governments
Committee	National Environment Protection Council Committee
Council	National Environment Protection Council
Covenant	National Packaging Covenant
DIT	Department of Industry and Trade (South Australia)
EU	European Union
GST	Goods and Services Tax
IWRA	Industry Waste Reduction Agreement
IWRP	Industry Waste Reduction Plan
JRN	Jurisdictional Reference Network
Measure	National Environment Protection Measure
NEPC	National Environment Protection Council
NEPM	National Environment Protection Measure
NGO	Non-Government Organisation
ORR	(Commonwealth) Office of Regulation Review
OSB	Commonwealth Office of Small Business
RIS	Regulation Impact Statement
SEPP	State Environment Protection Policy
SME	Small-Medium Enterprise

APPENDIX C PROTOCOL FOR CONSULTATION

PROTOCOL FOR CONSULTATION

Complementary National Environment Protection Council legislation has been passed by all jurisdictions in Australia. This legislation enables the National Environment Protection Council (NEPC) to develop national environment protection measures (Measures).

The legislation requires that prior to a Measure being made, notice of the intention to prepare a draft Measure must be given (Section 16)¹. The legislation also requires that a draft Measure and its accompanying impact statement must be made available for public comment (Section 18).

The NEPC recognises that effective consultation will contribute to the making of informed decisions for the increased effectiveness of Measures. This Protocol describes the approach to be adopted by the NEPC to ensuring productive and transparent consultation processes.

This Protocol for consultation incorporates objectives, principles and strategies.

CONSULTATION OBJECTIVES

The NEPC, in accordance with the Principles of Consultation, seeks to achieve the following objectives:

- To ensure the development and implementation of National Environment Protection Measures through effective consultation.
- To ensure that the NEPC obtains useful information from stakeholders.
- To maximise the understanding and involvement of stakeholders in consultation leading to the development of Measures.
- To encourage an appropriate level of community and stakeholder ownership of Measures.

PRINCIPLES OF CONSULTATION

The National Environment Protection Council, in accordance with the Consultation Objectives:

- recognises that relevant consultation is an essential component of public policy development, implementation and review and that effective consultation will lead to more informed decisions and increase the effectiveness of environmental outcomes.
- will conduct consultation in a transparent and accountable manner, encouraging input from all interested parties and will commence consultation as soon as practicable after the publication of the Notice of Intention.
- will provide comprehensive and timely information, ensuring that there are clearly defined lines of communication.
- will ensure that material is written in plain English and is accessible to all stakeholders.
- will have regard to the differing resources of interested parties and use appropriate means of disseminating information.
- will provide feedback to those providing comment and submissions.
- will monitor and review the effectiveness of consultation.
- assumes effective management of the chosen methods and techniques which promote the ease of understanding of material.

¹ Note that throughout this document reference is made to sections of the NEPC legislation. The section numbers refer to the legislation in all jurisdictions except the Australian Capital Territory.

STRATEGIES FOR CONSULTATION

The elements of a consultation strategy are outlined with reference to the four key stages of MEASURE development. In each stage, there will be identified actions, roles and responsibilities.

Stage 1: NEPC work program

It is recognised that the environmental priorities are identified by NEPC and the NEPC Committee and proposed for the work program are not developed in a vacuum. They result from issues raised over a period of time in many different ways - from submissions, research, complaints, other fora (e.g. ANZECC) and environment policy development processes.

NGOs and other stakeholders have many opportunities to contribute to the proposed work program of NEPC such as through member agencies or directly to Commonwealth, state or territory governments. NEPC will, therefore, not establish new and duplicative formal processes for obtaining input to its work program decisions, but instead encourages NGOs to continue to put forward their views through existing mechanisms.

The NEPC legislation states the scope of potential Measures (Section 14). Matters which come before Council must be consistent with the legislation.

Stage 2: Public notification of the intention to prepare a measure

Once Council has decided to undertake development of a draft Measure, a Notice of Intention will be published in accordance with the legislation (Section 16); that is, twice in a newspaper circulating in each jurisdiction and the Commonwealth Government Gazette.

The Notice will specify the nature of the proposed measure and state that Council intends to proceed with the development of a draft. It will also describe how stakeholders can register their interest in the development of a Measure and will call for preliminary submissions on the proposal.

An information bulletin will be available as soon as possible after the Notice of Intention has been published. This will contain preliminary information explaining the reasons for proposing the development of a draft Measure, details of where information held by the NEPC can be accessed and where submissions can be forwarded.

A consultation plan which outlines methods and tasks that will be used to achieve participation and maximise understanding among stakeholders and the general public will be developed.

The legislation specifies a minimum of 30 days for comment before a draft Measure is prepared. However, in most cases, there will be significantly more time between the NEPC announcing its intention to prepare a draft Measure and the preparation of the draft. During this time, submissions will be considered and, where appropriate, input on specific issues or aspects of the draft Measure and impact statement will be sought from stakeholders.

Stage 3: Drafting the measure and making the draft available

For each Measure, there will be a Project Chair who will be a member of the NEPC Committee. The Project Chair shall guide the development of the Measure. A Project Manager from the Service Corporation and a Project Team will be established to prepare the draft Measure and associated impact statement. In addition, other approaches could be adopted to facilitate consultation such as establishing:

- mechanisms for ensuring appropriate consultation within each jurisdiction. For example, a Jurisdictional Reference Group may be established involving a nominated environment agency representative from each jurisdiction. These representatives should provide a link between the Project Team and their jurisdiction.
- mechanisms for ensuring peak NGO input to the Measure development process. This may occur via the Jurisdictional Reference Groups or it might occur through other mechanism such as some form of NGO advisory group.
- mechanisms for ensuring input from other sections of the community. Again, this might occur, at least partly, through the Jurisdictional Reference Groups or other mechanisms might be used. For example, focus groups of community, professionals and industry representatives may be established. These might be established by the associations themselves to provide information and input to the Measure development process.

During the development of the draft Measure and impact statement, the Project Team, through the NEPC Service Corporation, will provide regular information to stakeholders. The NEPC Service Corporation will also maintain a register of stakeholders and will actively solicit submissions where appropriate.

Once the draft Measure and impact statement are prepared and made available for public comment, submissions will be sought in accordance with the legislation, principles and objectives. This requires a minimum period of two months.

Stage 4: Adoption and Implementation in the Legislation, Principles and Objectives

All comments will be recorded, acknowledged and considered by the Project Team in finalising the proposed Measure. Feedback will be provided to people who have made submissions.

Having allowed at least two months for submissions, Council may vote on the measure in accordance with Section 19.

Once Council has made a decision, this decision will be promptly communicated to stakeholders and the broader community.

APPENDIX D LIST OF CONSULTATION MEETINGS HELD

Commonwealth

22 February 1999	Government (Canberra)
22 February 1999	Industry (Canberra)

Australian Capital Territory

23 February 1999	Government (Canberra)
23 February 1999	Public (Canberra)

New South Wales

11 February 1999	Industry (Sydney)
11 February 1999	Government/Public (Sydney)

Northern Territory

19 February 1999	Public (Darwin)
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Queensland

12 February 1999	Public (Toowoomba)
15 February 1999	Industry (Brisbane)
15 February 1999	Government (Brisbane)
16 February 1999	Public (Rockhampton)
17 February 1999	Public (Townsville)
18 February 1999	Public (Cairns)

South Australia

1 March 1999	Public (Adelaide)
1 March 1999	Key Stakeholder (Adelaide)

Tasmania

24 February 1999	Public (Hobart)
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Victoria

25 February 1999	Public (Melbourne)
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Western Australia

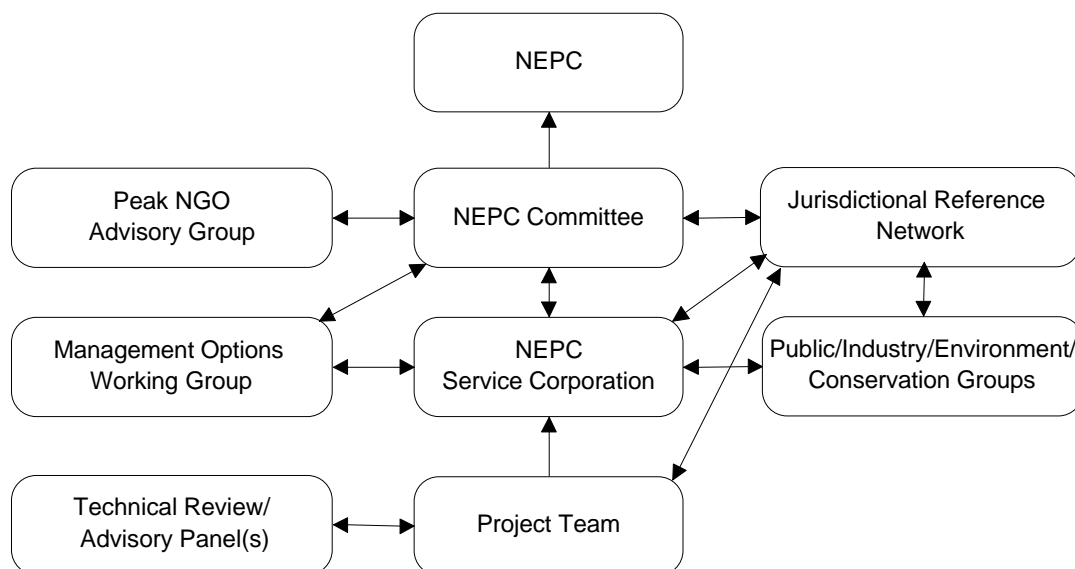
8 February 1999	Public (Perth)
8 February 1999	Government (Perth)

NGO Advisory Group Meetings

26 March 1998	Sydney
15 May 1998	Sydney
30 October 1998	Sydney
19 March 1999	Sydney

APPENDIX E REPORTING AND CONSULTATION ARRANGEMENTS

In the development of each National Environment Protection Measure (Measure), a working structure is established as displayed in the following diagram.



The roles of these groups in Measure development can be characterised in the following manner:

NEPC

- initiates the development of the draft Measure
- approves the release of the draft Measure and Impact Statement for public consultation
- makes the Measure

SENATOR THE HON ROBERT HILL (CHAIR)

Minister for the Environment
Commonwealth

THE HON MARIE TEHAN MP

Minister for Conservation and Land Management
Victoria

THE HON PAM ALLAN MP/THE HON BOB DEBUS MP

Minister for the Environment
New South Wales

THE HON DOROTHY KOTZ MP

Minister for the Environment and Heritage
South Australia

THE HON BRIAN LITTLEPROUD MLA/THE HON ROD WELFORD MLA

Minister for the Environment/Minister for Environment and Heritage and Minister for Natural Resources
Queensland

MR BRENDAN SMYTH MLA

Minister for Urban Services
Australian Capital Territory

THE HON CHERYL EDWARDES MLA

Minister for the Environment
Western Australia

THE HON PETER HODGMAN MHA/THE HON DAVID LLEWELLYN MHA

Minister for the Environment and Land Management/Minister for Primary Industries Water and Environment
Tasmania

THE HON MICK PALMER MLA/THE HON TIM BALDWIN MLA

Minister for Lands Planning and Environment
Northern Territory

NEPC COMMITTEE

- appoints a Project Chair from the NEPC Committee
- appoints Project Team - experts from jurisdictions
- develops the proposal for the Measure
- oversees the development of the draft Measure
- members of NEPC Committee are responsible for consultation in their respective jurisdictions

MR ROGER BEALE (CHAIR)

Secretary
Environment Australia
Commonwealth

MS ANTHEA TINNEY Alternate Member

Head Environment Protection Group
Environment Australia
Commonwealth

DR NEIL SHEPHERD

Director General
Environment Protection Authority
New South Wales

MS LISA CORBYN Alternate Member

Assistant Director General
Environment Protection Authority
New South Wales

DR BRIAN ROBINSON

Chairman
Environment Protection Authority
Victoria

MR JOHN GILMOUR

Executive Director (Environment)
Department of Environment
Queensland

DR BRYAN JENKINS

Chief Executive Officer
Department of Environmental Protection
Western Australia

MR ROB THOMAS

Executive Director
Environment Protection Authority
South AustraliaSouth Australia

MS LEANNE BURCH Alternate Member

Manager Policy and Planning
Environment Protection Authority

DR FRANK CATTELL/DR WARREN JONES

Manager Operations/Director Environmental Management
Department of Environment and Land Management/Department of Primary Industries Water and Environment
Tasmania

MR BARRY CHAMBERS

Secretary
Department of Lands Planning and Environment
Northern Territory

MS BARB SINGER Alternate Member

Assistant Secretary
Department of Lands Planning and Environment
Northern Territory

MR PETER BURNETT

Director
Environment Protection
Environment ACT

DR BRUCE KENNEDY

Executive Officer
NEPC Service Corporation

MR GRAHAM SANSOM/MR ROD NETTLE (OBSERVER)

Australian Local Government Association (ALGA)

PROJECT CHAIR

- responsible to NEPC and NEPC Committee for overall development of the Used Packaging Materials Measure

MR JOHN GILMOUR Queensland

PROJECT MANAGER

- responsible for managing the development of the Measure and Impact Statement. The Project Manager is also the Executive Officer for the NGO Advisory Group and Jurisdictional Reference Network

MR IAN NEWBERY NEPC Service Corporation

PROJECT ASSISTANCE

- provide support and assistance to the Project Manager and Project Team

MS LISA DAVIES NEPC Service Corporation

MS MONINA GILBEY NEPC Service Corporation

PROJECT TEAM

- develops draft Measure and Impact Statement under the guidance of the Project Chair and Project Manager

MS GERALDINE ANDREWS New South Wales

MR LES HAYES Victoria

MS SUE HOGG Queensland

Due to the inextricable linkages between the Measure and the National Packaging Covenant, the Project Team also had corresponding members:

MS HEATHER NEIL/MS MICHELLE JEPPESEN ALGA

MR VAUGHN LEVITZKE South Australia

MR GAVIN WILLIAMS Packaging Council of Australia

MR WAYNE FURLER Environment Australia

PEAK NGO ADVISORY GROUP

- comprises senior executives from Non-Government Organisation (NGO) groups (conservation, industry, professional)
- is chaired by Project Chair
- provides policy advice to NEPC Committee

MS ISABELLA ALLAN

Kaal Australia Pty Limited

MR MARTIN ALYWARD

South Eastern Regional Waste Management Group Consulting

MR PETER ARENTZ

Grocery Manufacturers of Australia

MR NORM CROTHERS

Australian Consumers Association

MR ANDREW DOIG

Australian Industry Group

DR SUE GRAHAM-TAYLOR

National Environment Consultative Forum

MR KEN HENRICK

Australian Supermarket Institute

MR TREVOR HOCKLEY

Western Region Waste Management Authority

MR PHIL HURST

Keep Australia Beautiful National Association (Inc.)

MS ADRIENNE KEANE

Clean Up Australia

MR WARREN KNOX

BHP Tinmill Division

MR SHMIGEL/MS MAREE MCCASKILL Beverage Industry Environment Council

MR TONY MORRISSEY	Australian Industry Group
MS SUSAN PENNICUIK	Australian Council of Trade Unions
MR RICK RALPH	Benjas Pty Ltd
MS TAMZIN ROLLASON	Environment Victoria
MR IAN SWANN	Plastics and Chemicals Industries Association
MR GAVIN WILLIAMS	Packaging Council of Australia

JURISDICTIONAL REFERENCE NETWORK

- comprises one government officer from each jurisdiction
- conducts whole-of-government consultation
- usually conducts public consultation
- provides policy advice and feedback to Project Team through the NEPC Service Corporation
- supplies appropriate data and information to Project Team to assist Measure development

MR FLOYD BROWN Tasmania	MR ANDREW BUICK Northern Territory
MS JUDITH CARLL NSW	MS MICHELLE JEPPESEN ALGA
MS SALLY LOCK Victoria	MR JIM MALCOLM Western Australia
MR WARREN MULLER Queensland	MR NICHOLAS NEWLAND South Australia
MR MARK TUCKER/MR MALCOLM FORBES Commonwealth	MR IAN WOOLCOCK ACT