



**EPHC**  
Environment Protection and Heritage Council

**DECISION  
REGULATORY IMPACT  
STATEMENT**

**Used Packaging Materials**

**18 June 2010**

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## Glossary of acronyms and terms

Australian Packaging Covenant	Agreement to replace the National Packaging Covenant (2005-2010) from 1 July 2010.
Brand owner	<p>Brand owner means:</p> <ul style="list-style-type: none"> <li>• a person who is the owner or licensee in Australia of a trade mark under which a product is sold or otherwise distributed in Australia, whether the trade mark is registered or not;</li> <li>• a person who is the franchisee in Australia of a business arrangement which allows an individual, partnership, or company to operate under the name of an already established business;</li> <li>• in the case of a product which has been imported, the first person to sell that product in Australia;</li> <li>• in respect of in-store packaging, the supplier of the packaging to the store;</li> <li>• in respect of plastic bags, the importer or manufacturer of the plastic bags or the retailer who provides the plastic bag to the consumer for the transportation of products purchased by the consumer at the point of sale.</li> </ul> <p>Source: National Environment Protection (Used Packaging Materials) Measure, as varied 2010 (draft), p. 1</p>
COAG	Council of Australian Governments
Covenant	<p>Agreement between governments and organisations in the packaging supply chain to reduce the environmental impacts of packaging. There have been two agreements to date:</p> <ul style="list-style-type: none"> <li>• National Packaging Covenant (1999 – 2005)</li> <li>• National Packaging Covenant (2005 – 2010)</li> </ul> <p>The Covenant to be in place from July 2010 is called the ‘Australian Packaging Covenant’</p>
Down-gauging	Design strategies that reduce the thickness of material used for packaging
EPHC	Environment Protection and Heritage Council—established by the Council of Australian Governments in 2001 to address broad national policy issues relating to environmental protection, particularly in relation to air, water and waste matters.
Extended producer responsibility (EPR)	Environmental regulations that require firms to take responsibility for the impacts of products and/or packaging at end of life

Free rider	Free rider means a brand owner or organisation that is a participant in the packaging supply chain and is not a signatory to the Covenant, and is not producing equivalent outcomes to those achieved through the Covenant  Source: National Environment Protection (Used Packaging Materials) Measure, as varied 2010 (draft), NEPC, p. 2
Lightweighting	Design strategies that reduce the amount of material used in packaging, e.g. by eliminating components or down-gauging
HDPE	High density polyethylene: the plastics used for milk bottles and other containers (coded number '2')
NEPC	National Environment Protection Council—a statutory body under the NEPC Acts of the Commonwealth, the states and territories. It meets simultaneously with the Environment Protection and Heritage Council (see 'EPHC')
NEPM	National Environment Protection Measure: used in this document to refer to the National Environment Protection (Used Packaging Materials) Measure established under the NEPC Act 1994.
PET	Polyethylene terephthalate: the plastics used for drink bottles and other containers (coded number '1')
RIS	Regulatory Impact Statement

## Executive Summary

The purpose of this Decision Regulatory Impact Statement (RIS) is to explore options to address the current government policy objective of reducing the environmental impacts of packaging. This policy objective is outlined in the National Waste Policy: Less Waste, More Resources (EPHC, 2009).

Since 1999 the National Environmental Protection (Used Packaging Materials) Measure (the NEPM), made under the *National Environment Protection Council (NEPC) Act 1994*, in combination with the National Packaging Covenant (the Covenant), have served as the primary national mechanism in Australia to reduce the environmental impacts of packaging.

The Covenant is the voluntary component of a co-regulatory product stewardship scheme in which over 780 signatories (governments, business and industry and non-government organisations) work together to reduce the environmental impacts of packaging across the packaging supply chain. The Covenant is underpinned by the statutory NEPM to provide protection for brand owner Covenant signatories against 'free riders'. Under the NEPM firms over a \$5 million threshold who are not signatories of the Covenant are subject to the NEPM enforcement provisions.

There have been two iterations of the Covenant – the first Covenant commenced in 1999, and the second Covenant commenced in 2005.

The NEPM and Covenant lapse on 30 June 2010. In line with the Council of Australian Government (COAG) Regulatory Impact Statement (RIS) Guidelines, an extension of the NEPM requires an assessment of whether:

- the objectives of the Covenant and NEPM could be achieved without restricting competition
- the benefits to the community of restricting competition outweigh the costs and generate the greatest net benefit.

### The problem

The overall problem has been established in the National Waste Policy and the associated National Waste Policy RIS (The Allen Consulting Group, 2009). The issues identified include growth in the generation of waste, the opportunity to manage waste as a resource and invest in future long term economic growth, community expectations, and the opportunity to improve the use of resources and reduce greenhouse gas emissions. The RIS highlighted the efficiencies gained through a coordinated national approach to waste management relative to separate jurisdictional approaches.

Packaging makes a significant contribution to the problems identified by the National Waste Policy and the associated RIS. In 2006-07 Australia generated 43.8 million tonnes of solid waste (The Allen Consulting Group, 2009, p. 13) and approximately 10 per cent of this was packaging. Strategy 3 of the National Waste Policy specifically addresses packaging. It states '*The Australian Government in collaboration with state and territory governments, industry and the community will better manage packaging to improve the use of resources, reduce the environmental impact of packaging design, enhance away from home recycling and reduce litter.*' (EPHC, 2009, p.10)

Government action is needed because the price signal driving a reduction in the contribution of packaging to Australia's waste stream or to deliver against the objectives of the National Waste Policy is incomplete. In the absence of government intervention the external environmental and social costs associated with packaging are not fully represented in the costs incurred by producers or consumers. There is therefore limited incentive for producers or consumers to influence the quantity and design of packaging or to reduce waste. Information asymmetries also exist for both consumers and producers. There is inadequate information available for producers and consumers to make good decisions about packaging.

## Objectives

The objective of government action is efficient and effective arrangements to reduce the environmental impacts of packaging and address community expectations for increased resource recovery, consistent with Strategy 3 of the National Waste Policy.

Options considered in this RIS are:

- *Option 1:* Implementation of the Australian Packaging Covenant without the NEPM which would terminate on 30 June 2010
- *Option 2:* Implementation of the Australian Packaging Covenant, supported by a renewed NEPM which would lapse in June 2015
- *Option 3:* Implementation of the Australian Packaging Covenant supported by a renewed NEPM which would be ongoing, subject to review every 5 years
- *Option 4:* Implementation of the Australian Packaging Covenant supported by a renewed NEPM which would be ongoing and subject to review every five years, at a maximum, with the first review being conducted for the purpose of bringing the Australian Packaging Covenant and the NEPM under the Commonwealth Product Stewardship Framework legislation.

This RIS also considers the NEPM's approach to the application of targets, and thresholds for compliance, for brand owner firms—seeking to ensure they are appropriately set.

## Impact analysis

This RIS uses the following evaluation criteria to compare the four policy options:

1. *Participation/action by firms* — to what extent does the option induce action by firms that leads to the government objective being met?
2. *Certainty for investment* — to what extent does the option provide certainty for firms around their obligations, to the extent that firms are considering investments (such as in new technology) which assist them in meeting targets at lower cost?
3. *Impact on competition* — what would be the effects on competition of the options, including the NEPM threshold? For example, lower thresholds may capture more of the market, but could also impose costs on small firms, and for which the benefits from their participation may be small. The compliance target obligation applied may also have a competitive impact.
4. *Compliance costs* — what are the costs to firms associated with participation (including the costs of collective action compared with individual action)? Costs include data collection, data management and reporting, and are balanced against the benefits derived.



### *Participation*

The first criterion (participation and action by firms) is the primary measure of policy effectiveness.

Option 1 would rely on voluntary action by firms, through the Covenant or similar programs, to achieve the objectives of the National Waste Policy. The remaining options all involve a continuation of the NEPM in some form to provide a regulatory underpinning to the Covenant.

Two conclusions can be drawn from the analysis in this RIS. They are:

- options with a regulated structure such as a NEPM (Options 2, 3 and 4) are more effective in inducing firm participation and action than a voluntary approach (Option 1)
- there is little evidence to suggest that participation by firms would be significantly different between Option 2, 3 and 4.

### *Certainty for investment*

The degree of certainty for firms around how they should plan future investments is strongest where there is a smaller reliance on voluntary action by firms; and governments provide a commitment to a measure beyond a defined termination date.

On this basis, Option 2 provides more certainty than Option 1. The more permanent co-regulatory arrangement under Options 3 and 4 is expected to provide a greater degree of certainty for firms around their long term obligations, and their competitive position in the marketplace. Option 4 provides the opportunity for inclusion of the Covenant under National Product Stewardship Framework Legislation. However at this stage the legislative framework is not sufficiently advanced to determine its impact on certainty for firms. Options 3 and 4 are therefore preferred over options 1 and 2 on efficiency grounds, and expected to be the least cost co-regulatory options for firms.

### *Impact on competition*

The NEPM is unlikely to restrict competition because it applies equally to all brand owners with more than \$5 million annual turnover. Brand owners who fall below the threshold and do not need to comply have too little market share (less than 1 per cent) to restrict competition.

### *Compliance costs*

Under current arrangements, participation in the Covenant has a range of costs and benefits for firms. The costs, which include funding contributions, the development and implementation of action plans and preparation of annual reports, have been estimated to be around \$12 million per year, however these are anticipated to reduce under the streamlined requirements of the Australian Packaging Covenant

Voluntary action (Option 1) has the least direct costs, as participants have the option of determining whether participation is cost effective for them or not (i.e. balancing costs and benefits). Therefore, under a voluntary scheme, those firms with poor benefit-cost ratios would not participate. In terms of cost, there is very little difference between Options 2, 3 and 4, as each would require the same reporting and compliance requirements. The potential in Option 4 for harmonisation under future National Product Stewardship Framework Legislation provides potential further improvements and efficiencies as highlighted in the National Waste Policy RIS.

## **Submissions to the Consultation RIS**

A total of 27 submissions were received. These were from both Covenant signatories (21 submissions) and non-signatories (6 submissions). The majority of submissions (70 per cent) supported retention of the Covenant/NEPM arrangement (Options 2, 3 or 4).

Reasons provided included the desire for regulatory underpinning and a cost-effective, shared responsibility approach. Of these, Options 3 and 4 were most preferred, for providing greater certainty for business and an ongoing mechanism for review. A unified national approach to regulation (Option 4) was also strongly supported.

## **Conclusion**

The analysis indicates that the benefits of continuing the current co-regulatory (Covenant/NEPM) arrangement, for Options 2, 3 and 4, outweigh the costs. This is supported by the majority of submissions received.

Option 1 is considered to have the lowest compliance cost but to be the least effective option in delivering government objectives. Option 2 is assessed as effective, but not preferred, because it does not align the NEPM with the life of the Covenant and seems to provide less certainty for long term investment and planning. The assessment identifies Options 3 and 4 as equally preferred options. Both options are assessed as having equivalent levels of effectiveness and efficiency in meeting governments' objective and, therefore, delivering a net benefit to society, however Option 4 provides the potential for further improvements and efficiencies.

# Chapter 1 Introduction

Since 1999 the National Packaging Covenant (the Covenant), together with the National Environment Protection (Used Packaging Materials) Measure (the NEPM), has been the primary national instrument for the management of the environmental impacts of packaging in Australia. This mechanism has contributed to Australia's objectives in waste management as set out in the National Strategy for Ecologically Sustainable Development (ANZECC, 1992) and is consistent with Strategy 3 of the National Waste Policy: Less Waste, More Resources (EPHC, 2009).

The Covenant is the voluntary component of a co-regulatory product stewardship scheme in which governments, business and industry and non-government organisations work together to reduce the environmental impacts of packaging across the packaging supply chain. The Covenant is underpinned by the statutory NEPM to provide protection for brand owner Covenant signatories against 'free riders'. The NEPM is made under the *National Environment Protection Council (NEPC) Act 1994* and is given effect by individual legislation in each state and territory. Brand owner<sup>1</sup> firms over a \$5 million threshold are subject to the NEPM enforcement provisions. Firms can instead choose to be signatories of the Covenant, which applies targets in a consolidated way. To date all such firms have chosen to join the Covenant. Chapter 3 provides detail on the Covenant and the NEPM.

The NEPM and the Covenant will both terminate on 30 June 2010. There have been two iterations of the National Packaging Covenant. The term 'Covenant' has been used in this RIS as a generic term to apply broadly across both iterations. Where a specific Covenant is discussed, this is identified with relevant dates - Covenant (1999-2005) and Covenant (2005-2010). The third iteration of the Covenant, proposed to commence in July 2010, is termed The Australian Packaging Covenant.

In line with the Council of Australian Government (COAG) Regulatory Impact Statement Guidelines, extension of the NEPM requires an assessment of whether:

- the objectives of the Covenant and NEPM could be achieved without restricting competition
- the benefits to the community of restricting competition outweigh the costs and generate the greatest net benefit.

In November 2009, the Environment Protection and Heritage Council (EPHC) gave in principle support to the Covenant (2005-2010) being replaced by an improved Covenant, the Australian Packaging Covenant, from 1 July 2010.

This RIS:

- provides background and context to packaging and the role of the Covenant/NEPM
- describes the nature and extent of the problem with packaging
- outlines the government objectives for action and options including reviewing the impacts of continuation of the co-regulatory arrangements on competition, and whether the benefits of its application outweigh the costs
- considers the NEPM's approach to the application of targets, and thresholds for compliance, for brand owner firms, and their appropriateness
- provides the results of consultation on the options considered.

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<sup>1</sup> The NEPM only applies to brand owners because these firms have the strongest influence on the design and procurement of packaging. For a definition of brand owner see the Glossary on page iii.

## Chapter 2 Background and Context

### 2.1 About packaging

#### What is packaging?

Packaging is used for the containment, preservation, protection, marketing, distribution and branding of products. For these reasons it has an essential role to play in the supply chain for most products. Packaging also helps to reduce waste by minimising product damage and extending shelf life.

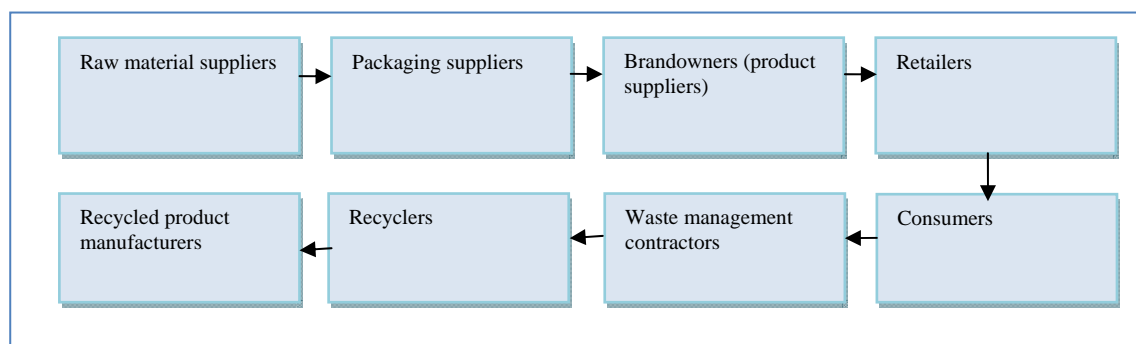
There are usually several layers of packaging that have different functions in the product supply chain:

- primary packaging, also called ‘consumer’ or ‘retail’ packaging, to contain and protect a product until it is consumed
- secondary packaging to contain multiple units of a product to facilitate transport and storage
- tertiary packaging, also called transport packaging, to secure products for transport and storage.

#### The packaging supply and recovery chain

A number of different and very diverse industry sectors are involved in the manufacture, use or recovery of packaging (see Figure 1). A large range of firms use packaging to protect and promote their products including manufacturers of food and beverages, clothing and footwear, electrical and electronic products, furniture, house wares, toys, personal care products and industrial raw materials.

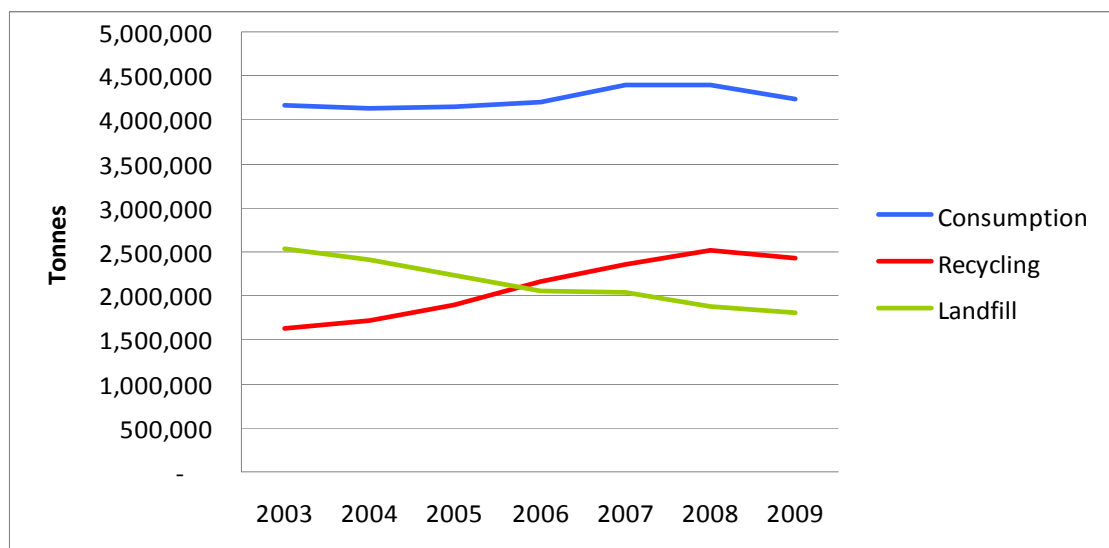
**Figure 1: Industry sectors involved in the packaging life cycle**



#### Packaging consumption, recovery and disposal

Figure 2 illustrates trends in Australia’s consumption, recovery and disposal of packaging between 2003 and 2009. Australian’s consume approximately 4.3 million tonnes of packaging per annum. This figure has remained relatively stable in absolute terms, although there has been an 11.7 per cent growth in population (2.3 million people) over the same period. Between 2003 and 2009 packaging recycling levels increased by almost 50 per cent, from 1.6 to 2.4 million tonnes. As a result, packaging waste disposed to landfill fell by 28.7 per cent, from 2.5 to 1.8 million tonnes.

**Figure 2: Packaging consumption, recycling and disposal to landfill, Australia, 2003-2009**

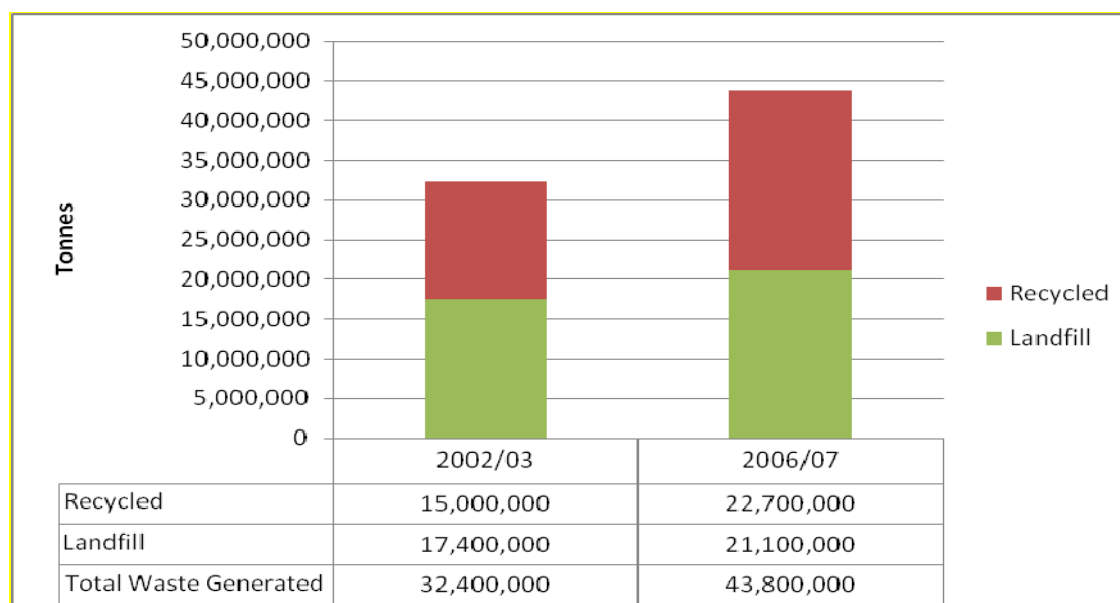


Source: Based on NPCC (2010b)

As stated in the National Waste Report (2010, p.22) reported data for the years 2002/03 and 2006/07 for the volume of waste disposed to landfill and recycling in Australia for all sectors: Municipal Solid Waste, Commercial and Industrial, and Construction and Demolition waste shows an increase in total waste generation across all waste sectors of 31 per cent<sup>2</sup> (11.4 million tonnes) (Figure 3). In comparison, between 2003 and 2007 packaging consumption increased only slightly (5.5 per cent).

Between 2002/03 and 2006/07, total waste to landfill increased by 21 per cent (3.7 million tonnes), whereas over the same period packaging waste to landfill decreased by over 19 per cent (500,000 tonnes).

**Figure 3: Waste disposal and recycling, all sectors, 2002/03 and 2006/07**



Note: Australian data for 2002/03 excluded Tasmania and NT and had only metropolitan data for WA. Source: Hyder Consulting (2009a) Waste and recycling in Australia

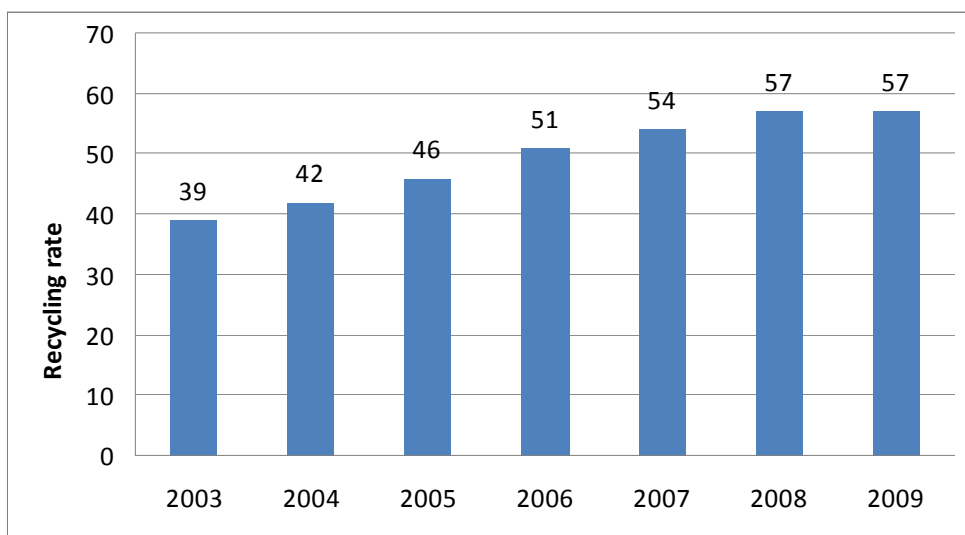
<sup>2</sup> Corrected from 35 per cent to 31 per cent to reflect data inconsistencies (Hyder Consulting 2009, p.45).

As shown in Figures 2 and 3, the trends for packaging waste in relation to disposal to landfill and recycling run counter to those for the overall waste sector. This suggests that the arrangements currently in place within the packaging waste sector have been effective in managing the environmental impacts of packaging waste.

Both packaging consumption and recycling fell in 2009. This can be explained, at least in part, by the global financial crisis and reduced demand for commodities, including recycled materials (see Attachment C). In mid to late 2008 Australian prices for recycled materials dropped between 55 and 75 per cent (different rates for different materials) as the global financial crisis precipitated contraction of manufacturing, domestically and in South-East Asia. Reduced demand saw some recyclable materials stockpiled or disposed to landfill.

Notwithstanding the impacts of the economic downturn, the general trend in packaging recycling rates between 2003 and 2009 has been positive (Figure 4), increasing from 39 per cent in 2003 to 57 per cent in 2009 (NPCC, 2010b). In 2008, the mid-term review of the Covenant (2005-2010) found that Australia was on track to meet the target recycling rate for packaging of 65 per cent by 2010 (Lewis, 2008). As a result of the global economic downturn, however, in 2009 the packaging recycling rate remained at the previous year's rate and it is unlikely the target will be met.

**Figure 4: Packaging recycling rates, Australia, 2003 – 2009 (%)**

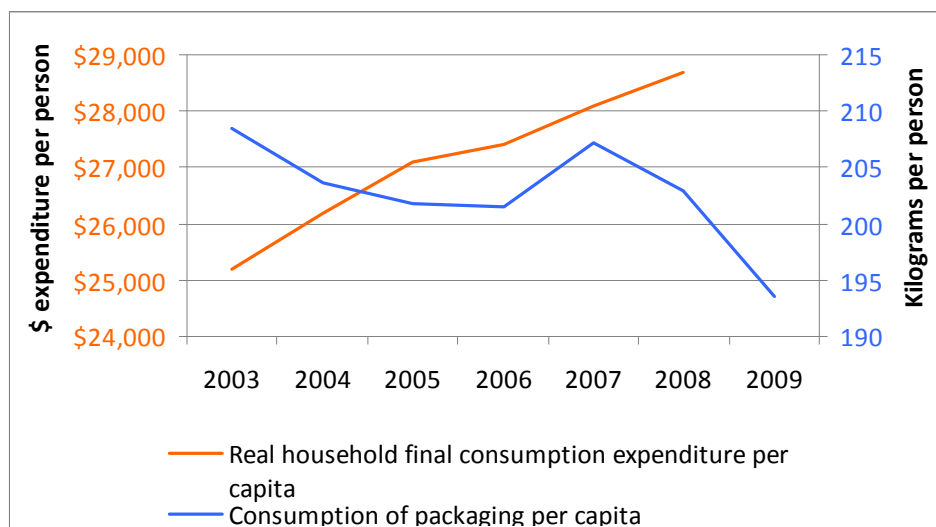


Source: Based on NPCC (2010b) 2009 Annual report

Although there was an overall increase in household consumption expenditure between 2003 and 2008, consumption of packaging per head of population fell from 208 kg to 203 over this period (Figure 5). This reflects a reduction in the overall proportion of packaging in purchases. This can be attributed to ongoing efforts by packaging manufacturers and brand owners to 'lightweight' packaging for commercial and environmental reasons, including the requirements of the Covenant (2005-2010)<sup>3</sup>.

<sup>3</sup> Sixty-four percent of stakeholders who responded to a survey for the Covenant (2005-2010) mid-term review said they believed that the Covenant has helped them to reduce the materials, energy and water used to produce packaging (Hyder Consulting, 2008, p. 22).

**Figure 5: Household consumption expenditure 2003-2008, and per capita consumption of packaging by weight 2003-2009**



Source: Household consumption expenditure; ABS 2010 (cat. no. 4102.0) Australian social trends.  
Source: per capita consumption of packaging; based on NPCC (2010b)

## The environmental benefits of recycling

The recovery of packaging materials can contribute to reducing greenhouse gas emissions, as well as water and energy use when considered on a life cycle basis. RMIT assessed the environmental benefits associated with recycling of common materials in the waste stream for the then NSW Department of Environment and Climate Change and an excerpt of the results is provided in Table 1.

**Table 1: Net benefit of recycling 1 tonne of material**

Note: positive values are benefits, negative values are impacts

	Global Warming in tonnes CO <sub>2</sub> -e	Energy in gigajoules (low heating value)	Water in kilolitres
Aluminium cans	15.85	171.10	181.77
Steel cans	0.40	7.31	-2.29
Cardboard/paper packaging	0.06	9.32	25.41
Glass containers	0.56	6.07	2.30
PET (code '1')	0.95	48.45	-20.38
HDPE (code '2')	0.84	50.35	-3.31
PVC (code '3')	1.38	38.81	64.02
Mixed plastics	1.53	58.24	- 11.37

Source: RMIT University (Carre et al., 2009, p. 16).

For resource recovery to be environmentally beneficial on a whole of life cycle basis the impacts associated with material collection and reprocessing need to be offset by the benefits associated with material recovery, i.e. avoided consumption of virgin materials, energy and water and avoided landfill impacts.

Modelling<sup>4</sup> shows that the tonnage of packaging recycled in 2009 delivered an annual net benefit equivalent to 6.94 million m3 of landfill space saved; 1.57 million tonnes CO2e saved; 378,000 cars removed from roads and 19,000 Olympic pools by volume of water savings (NPCC 2010b, p.3).

## 2.2 International and National Context

A range of factors influence Australia's approach to management of the environmental impacts of packaging including global practice, national, state and territory policies, and community expectations.

### Global practices

The concept of extended producer responsibility for products and packaging has been a feature of the business landscape for over 40 years. Regulations requiring producers to take responsibility for packaging at end of life were, for example, introduced in the European Union (EU) in the 1990s. Germany was the first European country to adopt legislation imposing responsibility on packaging waste<sup>5</sup>, and the basic concepts have been adopted widely throughout EU member countries.

Since then similar regulations have also been introduced in countries such as Japan and South Korea. Other countries, such as Singapore and New Zealand, have adopted voluntary agreements similar to the Covenant, in order to address the environmental impacts of packaging. China has introduced policies that require firms to eliminate unnecessary packaging and design packaging for reuse or recycling.

International efforts to promote, define and measure the sustainability of packaging are also being initiated by individual firms and industry associations. The drivers for this activity include a growing market demand for more sustainable packaging and the need to provide a consistent framework for industry action. Examples of international industry-lead activity are:

- the Sustainable Packaging Coalition (United States) has developed a definition of 'sustainable packaging' and associated metrics to help firms measure and report on progress towards this goal. Members of the Sustainable Packaging Coalition include large brand owners and packaging manufacturers
- Wal-Mart has developed a *Packaging Scorecard* to evaluate the environmental performance of packaging used by its suppliers. The scorecard is operational in North America and China and will be extended to Europe in 2010
- the Consumer Goods Forum, a grouping of the world's largest consumer goods manufacturers and retailers, initiated the *Global Packaging Project* in 2009. The aim of the project is to develop a common way of measuring environmental and sustainability improvements to packaging
- the International Standards Organisation (ISO) has started work on the development of a standard on packaging and the environment, which is expected to be finalised in 2012.

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<sup>4</sup> DECCW 2009, *Benefits of recycling calculator*, NSW Department of Environment, Climate Change and Water.

<sup>5</sup> The German Packaging Ordinance of 1991 placed responsibility on producers throughout the supply chain to take back used packaging for re-use or recycling.



## National Waste Policy: Less Waste, More Resources

Waste policy in each jurisdiction of government is anchored in the 1992 COAG National Strategy for Ecologically Sustainable Development<sup>6</sup> which agreed the national approach to waste minimisation and management ‘to improve the efficiency with which resources are used and reduce the impact on the environment of waste disposal, and to improve the management of hazardous wastes, avoid their generation and address clean-up issues’ (ANZECC, 1992).

In November 2009 Australia’s environment ministers agreed on a new national policy on waste and resource management. The National Waste Policy<sup>7</sup> sets the agenda for waste and resource recovery in Australia over the next 10 years.

The aims of the National Waste Policy are to:

- avoid the generation of waste; reduce the amount of waste (including hazardous waste) for disposal; manage waste as a resource and ensure that waste treatment, disposal, recovery and reuse is undertaken in a safe, scientific and environmentally sound manner
- contribute to the reduction in greenhouse gas emissions, energy conservation and production, water efficiency and the productivity of the land.

The National waste Policy sets six key directions to deliver on its aims. The first key direction is: Taking responsibility, through product stewardship, to reduce the environmental, health and safety footprint of manufactured goods during and at end of life. Strategies 1 and 3 under this key direction are of particular relevance:

- Strategy 1: *The Australian Government, with the support of state and territory governments, will establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at end of life.*
- Strategy 3: *The Australian Government, in collaboration with state and territory governments, industry and the community will better manage packaging to improve the use of resources, reduce the environmental impacts of packaging design, enhance away from home recycling and reduce litter.*

A range of product stewardship – extended producer responsibility arrangements currently exist at a national level, including the co-regulatory Covenant/NEPM arrangement for packaging materials (Table 2). In addition, individual states, territories and local government are trialling or proposing product stewardship schemes.

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<sup>6</sup> [www.environment.gov.au/esd/national/nsesd](http://www.environment.gov.au/esd/national/nsesd)

<sup>7</sup> [www.environment.gov.au/wastepolicy](http://www.environment.gov.au/wastepolicy)

**Table 2: National product stewardship extended producer responsibility in Australia**

<b>Regulatory</b>	Oil	<i>Product Stewardship Oil Act 2000</i> imposes a levy to fund recycling
	Refrigerant gases	<i>Ozone and Synthetic Greenhouse Gas Management Act 1989</i> undertaken by Refrigerant Reclaim Australia – in place since 1998 and regulated in 2000
<b>Co-regulatory</b>	Packaging materials	Used Packaging NEPM under <i>National Environment Protection Council Act 1994</i> with regulation under separate legislation in each State. Introduced in 1999 underpins the National Packaging Covenant, a co-regulatory approach with jurisdictions and industry
<b>Voluntary</b>	Chemical and pesticide drums and contents	drumMUSTER and ChemClear – Industry led schemes under Industry-Commonwealth Agreement in 1998 subject to re-assessment and authorisation by the Australian Consumer and Competition Commission (ACCC) every 4 years
	Mobile phones	Mobile muster – voluntary industry scheme commenced 1999
	Cartridges	Planet Ark – voluntary industry scheme commenced 2003

The materials and products covered by the diverse jurisdictional arrangements are sold in a national market by companies that operate nationally. In the absence of a comprehensive national approach, this patchwork of initiatives and proposals creates uncertainty in the market place, causes additional regulatory and operational burdens on business, distorts the market and allows free-rider behaviour.

Under Strategy 1 of the National Waste Policy the Commonwealth, with the support of the states, will establish a national product stewardship framework underpinned by Commonwealth legislation to support product stewardship and extended producer responsibility (EPR) schemes. The National Waste Policy RIS indicated that there are likely to be benefits to the community from coordinated action through a Commonwealth product stewardship framework as well as cost savings.

A single piece of “framework” Commonwealth legislation will provide a consistent set of criteria and conditions for any products or material that the Commonwealth deems appropriate to cover nationally, while also providing flexibility in how product stewardship schemes are implemented. A single piece of legislation (allowing for the addition of products or materials from time to time) will avoid the proliferation of isolated product stewardship legislation relating to single products or materials at both the Commonwealth and state levels and avoid inconsistencies that arise from enacting separate pieces of legislation on the same issue.

For example, under the co-regulatory component of the framework legislation, the drive for inclusion of a product or material may come from industry, and the role of the Commonwealth would be to provide legal framework for those who willingly participate in a scheme so that non participants cannot benefit from free-rider behaviour. The free-rider component would take the form of a requirement for all manufacturers/importers to join a scheme or take individual responsibility for collecting and recycling their product. This is similar to the approach taken currently to the National Packaging Covenant, but would be more efficient than having a NEPM in each state for each product. The National Waste Policy RIS (The Allen Consulting Group, 2009, p vii) suggests that the framework is likely to provide a more efficient framework in the future.

Consultation with states, territories, industry and the community on the National Product Stewardship Framework Legislation will take place during 2010.

## State and territory policies

In Australia, the states and territories have primary responsibility for management of waste and litter. Following the 1992 COAG agreement, all states established comprehensive legislative and policy instruments for waste management, avoidance, minimisation and resource recovery (see Table 3), with waste avoidance as the highest preference, then minimisation, reuse, recycling and reprocessing, with the last being disposal. To meet their obligations they utilise a range of different policy approaches including landfill levies, waste reduction targets, voluntary product stewardship programs and legislation that allows for the introduction of extended producer responsibility schemes for priority materials (The Allen Consulting Group, 2009, p. 28).

**Table 3: State and territory legislation for waste management and resource recovery**

<b>ACT</b>	<i>Environment Protection Act 1997</i> <i>Waste Minimisation Act 2001</i>
<b>NT</b>	<i>Waste Management and Pollution Control Act 2007</i> <i>Waste Management and Pollution Control (Administration) Regulation 2001</i>
<b>NSW</b>	<i>Protection of the Environment Operations Act 1997 (amended in 2008)</i> <i>Waste Avoidance and Resource Recovery Act 2001</i>
<b>Qld</b>	<i>Environmental Protection Act 1994</i> <i>Environmental Protection (Waste Management) Policy 2000</i> <i>Environmental Protection (Waste Management) Regulation 2000</i> <i>Environmental Protection Regulation 2008</i>
<b>SA</b>	<i>Environment Protection Act 1993</i> <i>Zero Waste SA Act 2004</i> <i>Plastic Shopping Bags (Waste Avoidance) Act 2008</i> <i>Environment Protection Regulations 2009</i>
<b>Tas</b>	<i>Environmental Management and Pollution Control Act 1994</i> <i>Environmental Management and Pollution Control (Waste Management) Regulations 2000</i>
<b>Vic</b>	<i>Environment Protection Act 1970</i> <i>Environment Protection (Distribution of Landfill Levy) Regulations 2002</i> <i>Environment Protection (Amendment) Act 2006</i> <i>Environment Protection (Industrial Waste Resource) Regulations 2009</i>
<b>WA</b>	<i>Environmental Protection Act 1986</i> <i>Waste Avoidance and Resource Recovery Act 2007</i> <i>Waste Avoidance and Resource Recovery Levy Act 2007</i> <i>Waste Avoidance and Resource Recovery Regulations 2008</i> <i>Environmental Protection (Controlled Waste) Regulations 2001</i> <i>Environmental Protection (Rural Landfill) Regulations 2002</i>

These mechanisms all impact on packaging waste and recycling, though their application is not consistent between jurisdictions. Most target the management of materials at the end of life and have negligible effect on upstream activities (such as design and manufacture). Most also do not involve packaging manufacturers and retailers. Thus, while there are discrete instruments at state level targeting packaging at different stages, the Covenant/NEPM represents the only initiative with national coverage that involves the entire packaging supply and recovery chain.

Recent updates to state policies and legislation focus even more strongly on resource recovery and avoidance. As at October 2009, five states had product stewardship legislation in place for products or materials, or proposed product stewardship schemes. State policies set a path for further changes in waste management, but are likely to contribute to further fragmentation and to increased costs in the absence of coordinated national action.

## **Community Expectations**

The *National Waste Report* (EPHC, 2009) notes that there is interest in the community for recycling to be more readily available in work places and public spaces, and for convenient infrastructure to be established to help the community deal appropriately with waste arising from consumption choices. For example, a Victorian survey (Ipsos Australia, 2005, p. 19) suggests that 92 per cent of people would like to see more recycling bins in parks and shopping areas, while a national survey for Planet Ark (Pollinate Green, 2007, p. 4) found that most employees would like to see more recycling bins for plastic packaging (79 per cent) and paper (77 per cent) in the workplace.

The community is also strongly committed to kerbside recycling. In the twelve month period to March 2009, 95 per cent of households had recycled or reused paper, cardboard or newspapers. High levels of participation were also achieved for plastic bottles (94 per cent), glass (93 per cent), aluminium cans (84 per cent) and steel cans (80 per cent) (ABS, 2009, p.16).

There is also support for more action to reduce the environmental impacts of packaging. According to research undertaken for the mid-term review of the Covenant (Woolcott Research, 2008 p. 8-9), 60 per cent of consumers believe that not enough emphasis is placed on reducing the environmental impact of packaging and 40 per cent think that this is because too much packaging is used.

## **Chapter 3     Role of the Covenant and the NEPM**

### **3.1     Introduction**

The National Packaging Covenant (the Covenant), established by the Australian and New Zealand Environment and Conservation Council (ANZECC) in 1999, is an agreement between governments and industry participants in the packaging chain based on the principles of product stewardship and shared responsibility.

The National Environment Protection (Used Packaging Materials) Measure (the NEPM) came into effect in 1999 to support and complement the voluntary strategies in the Covenant. The NEPM provides a regulatory underpinning for the Covenant. The Covenant/NEPM is the only co-regulatory product stewardship scheme currently operating in Australia. NEPMs are broad framework-setting statutory instruments under the National Environment Protection Council (NEPC) Act 1994 which reflect agreed national objectives for protecting particular aspects of the environment.

There have been two iterations of the Covenant – Covenant (1999-2050) and Covenant (2005-2010) which expires on 30 June 2010. In November 2009 the Environment Protection and Heritage Council (EPHC) gave in principle support to the Covenant being replaced by a strengthened Australian Packaging Covenant from 1 July 2010. The NEPM also terminates on 30 June 2010.

### **3.2     The NEPM**

The NEPM and the Covenant are interdependent (NEPC 2005) – the NEPM operates only in support of the Covenant. The goal of the NEPM is to ‘reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the Covenant and by assisting the assessment of the performance of the Covenant’ (Clause 6).

To achieve this goal the NEPM requires that participating jurisdictions establish a statutory basis for ensuring that signatories to the Covenant are not competitively disadvantaged in the market place by fulfilling their commitments under the Covenant (Clause 9(1)). This is undertaken through separate legislation at state and territory level.

The NEPM is only applied to brand owner companies because they are considered the most influential point in the packaging supply chain. A threshold of an annual turnover above \$5 million was established by NEPC in July 2005’. This is consistent with Clause 12 of the NEPM that ‘it is not the intention of Council that enforceable obligations will be placed on brand owners that do not significantly contribute to the waste stream’.

#### **Operation of the NEPM**

The NEPM is enforced by the states and territories. Brand owners with turnover above the threshold who do not sign the Covenant, or signatories who are non-compliant with Covenant requirements (such as Action Plans, reporting), are referred to the relevant jurisdiction for action. Obligations arising from the NEPM are imposed at an individual company level and hence ‘as was intended, the Covenant continue(s) to provide a more flexible option for potential signatories than the NEPM’ (NEPC, 2009).

In accordance with Clause 16 of the NEPM, jurisdictions conduct an annual brand owner audit to identify non-signatory brand owners. Where a firm is found to be non-compliant and does not join the Covenant the jurisdiction may pursue regulatory action under the NEPM. Jurisdictional enforcement action under the NEPM generally consists of several pieces of written correspondence followed by formal compliance or enforcement action.

NEPM follow up in the past has yielded a mixed group of NEPM liable and NEPM exempt firms (Table 4).

**Table 4: Results of NEPM follow-up and enforcement (2005-08)**

Signed NPC	272
Exempt (under \$5m pa turnover)	111
Pending	326
NEPM applies (already)	112
Unknown company	71
Not applicable	91
<b>Total firms investigated</b>	<b>983</b>

Source: NEPM mid-term review (Victorian EPA, 2008)

Jurisdictions report annually on implementation of the NEPM. To date, no firms or other entities have incurred penalties for non-action under the NEPM. Enforcement activity has generally been effective in persuading non-signatories to sign the Covenant (or demonstrate an exemption) thereby avoiding the need for prosecution.

### **Variation to the NEPM**

The NEPC Act 1994 provides for the NEPC (the Ministerial Council established under the Act) to vary or revoke a NEPM. On 5 December 2009, the NEPC determined (under section 22 (A)1 of the NEPC Act 1994), that the changes required to the NEPM to align it with the proposed Australian Packaging Covenant constituted a 'minor variation' and notification and consultation was undertaken as set out in the Act (see Chapter 7).

The proposed minor variation to the NEPM include provisions to amend the duration, revise definitions, update background information and include a review provision. The changes do not alter its operation and reflect changes in the Australian Packaging Covenant. Table 1A in Attachment A provides in full the changes between the Covenant (2005-2010) and the Australian Packaging Covenant.

## **3.3 The Covenant**

The Covenant is the principle instrument for managing consumer packaging in Australia (NEPC 2005). Signatories to the Covenant commit to:

- working together to achieve Covenant targets
- producing and reporting on public action plans with measurable actions that will deliver improved environmental outcomes
- working co-operatively to develop good practice collection systems and markets, and education and promotion programs
- providing data to assess performance of the Covenant and progress towards the NEPM goal

### **History and reviews**

When the Covenant began in 1999, the concept of shared responsibility for mitigating the environmental impacts of packaging through product stewardship was 'new to the vast majority of participants within the packaging environment' (Environment Link, 2004, p.2).

Since its inception, the Covenant has evolved to meet the changing conditions of the Australian packaging market:

- the priority of the Covenant(1999-2005) was to improve kerbside recycling collection infrastructure and develop new markets for collected materials
- in the Covenant (2005-2010) there is greater emphasis on reducing the life cycle environmental impacts of packaging, for example by reducing material or energy consumption through better design, rather than the impacts at end of life
- The proposed Australian Packaging Covenant (to operate from July 2010) has a broader sustainability focus emphasising improved packaging design, increased away from home recycling and reduced litter (see also Table 1A in Attachment A).

The strategic direction of each Covenant was developed through a process of independent reviews, inquiries and extensive consultation with stakeholders.

Prior to the conclusion of the Covenant (1999-2005) there were a number of reviews undertaken (see Table 5). Key themes from these reviews included a need for increased accountability, transparency, and measurable outcomes. Recommendations from these reports informed the development of the Covenant (2005-2010), in particular the inclusion of key performance measures and three overarching targets. Other key changes were the introduction of more consistent data-reporting requirements, and the inclusion of packaging waste occurring away from homes and workplaces.

**Table 5: Reviews undertaken of the Covenant (1999-2005)**

Report	Key findings
<i>Evaluation of the Covenant</i> (Nolan-ITU Pty Ltd 2004)	The Covenant had 'partially achieved its stated objectives', though there was 'limited quantitative evidence of achievement of its indirect objectives of increasing product stewardship and improving kerbside recycling'. (p. iv). The NEPM was integral to the arrangements and there was 'sufficient evidence to support the view that the NEPM has been effective in providing a regulatory safety net for Covenant industry signatories' but that enforcement was critical to its effectiveness (p. 39).
<i>Peer review of the Nolan-ITU Evaluation Of The Covenant</i> (Environment Link 2004)	The review supported the Nolan-ITU recommendations that the Covenant/NEPM, with operational improvements and other modifications, be extended for a minimum of three years. The review identified an increase in activity in the last eighteen months, hastened in some cases by the 'threat' of the NEPM. While acknowledging the need for improvements in performance the review did support the Nolan-ITS recommendation for Substantial Improvement.
<i>Independent review of the National Packaging Covenant</i> , (Meinhardt Infrastructure and Environmental 2004)	This report evaluated issues and outcomes from the Covenant for local government. It identified support for shared responsibility and for greater enforcement of the NEPM. While local government acknowledged the high level of industry participation in the Covenant, it lacked confidence that this translated into more efficient minimisation, management and recycling of used packaging material through its life cycle.
<i>Review of the National Packaging Covenant</i> , (Institute for Sustainable Futures 2004)	While the National Packaging Covenant may be responsible for achievements by individual signatories, the overall achievements are not substantial enough to recommend continuation of the Covenant as it stands. The report made specific recommendations for a new, national, simplified and stronger packaging policy framework, with objectives and targets, compliance and measurability.

The Covenant (2005-2010) has also been the subject of a number of reviews and inquiries. For example, the 2006 Productivity Commission report into Waste Management detailed the various planning and reporting requirements under the Covenant (2005-2010) and indicated they would be costly to comply with. The Productivity Commission did not consider the case had been made for the Covenant/NEPM arrangements and proposed that future reviews focus on evidence to justify the arrangement. Issues relevant to the Covenant have been explored in Senate inquiry reports in 2008 and 2009 – *Management of Australia's Waste Streams (including consideration of the Drink Container Recycling Bill 2008)* and the *Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009*.

### **Mid-term review<sup>8</sup> of the Covenant (2005-2010)**

As required under the Covenant (2005-2010) a comprehensive, independent evaluation of the progress against the Covenant's overarching targets was undertaken in 2008. The review involved eight separate reports and research investigations: a NEPM enforcement report, a contextual review, evaluations of signatory Action Plans and Annual reports, a review of Covenant-funded projects and stakeholder and community views.

The mid-term review of the Covenant stated that:

*'on average, implementation produces net benefits. This rests on the well-established finding that resource efficiency gains are often found by businesses who are prompted to look for them. Some participants will find benefits; others will invest only to the extent that they believe there is a gain in doing so. Combined this would result in net benefits' (Hyder 2008a, p.69)*

The mid-term review of the Covenant found that many stakeholders believe that the primary benefit to industry of the Covenant is in achieving environmentally sound management of packaging through a mechanism that is relatively inexpensive (Hyder Consulting, 2008a, p. 69). However, consistent with other reviews, the mid-term review also found that the reporting requirements of the Covenant were overly burdensome. As a result, reporting requirements have been streamlined for the Australian Packaging Covenant. A full summary of the differences between the Covenant (2005-2010) and the Australian Packaging Covenant is in Attachment A.

The general view of key stakeholders expressed in the mid-term review was that the costs of participation in the Covenant (2005-2010) 'are not significant enough to cause material disadvantage to companies, and that the benefits of participation are directly related to the amount of effort and money invested in the process' (Lewis 2008, p. 22). The survey of Covenant signatories undertaken as part of the mid-term review further concluded that close to 90 per cent of signatories preferred a continuation of the current co-regulatory arrangement beyond 2010 (Hyder 2008b, p. 28).

The various reviews undertaken of the Covenant have identified conflicting views of the effectiveness of the arrangements. In general they have had difficulty in demonstrating that improvements are a direct result of the Covenant and in assessing the full costs and benefits of the arrangements due to the lack of accurate data.

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<sup>8</sup> <http://www.packagingcovenant.org.au/page.php?name=midtermreview>



### **3.4 The Current Arrangements Under the Covenant (2005-2010)**

The objective of the Covenant (2005-2010) is to reduce environmental degradation arising from the disposal of used consumer packaging and conserve resources through:

- better product design
- increased reduction, re-use and recycling of used packaging materials
- reduced use of non-recyclable materials
- reduced amount of packaging materials going to landfill
- reduced incidence of packaging being littered.

Through actions by signatories and Covenant funded projects, the Covenant (2005-2010) seeks to encourage a shift to better, more holistic packaging management and disposal, more efficient and sustainable packaging and recycle markets, improved infrastructure and governance, and technological advancement in packaging design.

The Covenant (2005-2010) includes three overarching targets to be achieved by June 2010:

- Recycling rate of 65% for packaging materials
- Increase recycling of previously 'non-recyclable' materials to 25%
- No new packaging to landfill.

Signatories to the Covenant are obliged to develop multi-year Action Plans which state the actions and processes they have identified as relevant to them and which they propose to implement. Signatories report to the Covenant on their progress through their Annual Reports. These Annual Reports include baseline performance data on packaging and targets for improving performance and must demonstrate that the signatory is seeking, where possible, to increase use of recyclable materials, implement recycling systems, and reduce packaging. Action Plans and Annual Reports are publicly available from the Covenant website.

Examples of actions taken by signatories include design improvements which lead to lightweighting packaging, installing and promoting the use of on site recycling services, and increasing the education of staff and consumers about the recyclability of packaging material. Signatories also report working directly with their suppliers to reduce the amount of packaging materials used by suppliers (Ferrero and Woolworths), and re-using shipper cartons rather than using new cartons for internal transport between warehouses (Revlon).

The Covenant (2005-2010) also has well-defined enforcement procedures (Schedule 3 of the Covenant) for where a signatory fails to meet a Covenant requirement. This includes follow-up action and finally a non-compliance letter to both the signatory and the relevant jurisdiction for that signatory. This may be followed by jurisdictional action by the relevant State or Territory under their NEPM legislation.

#### **Administrative and funding arrangements**

The Covenant is managed by the National Packaging Covenant Council (NPCC), which includes representatives from Commonwealth, state and local governments, industry and community groups. The NPCC meets quarterly and publishes an annual report on progress toward reaching the overarching targets.

The National Packaging Council Industry Association (NPCIA) is the main industry association representing industry signatories to the Covenant and is responsible for development and management of the Environmental Code of Practice for Packaging (ECoPP). The NPCIA is managed by a Committee representing the major industry associations:

- Australian Food and Grocery Council (AFGC)
- Australian Industry Group (AIG)
- Australian Retailers Association (ARA)
- Packaging Stewardship Forum (PSF)
- Packaging Council of Australia (PCA)
- Plastics and Chemicals Industries Association (PACIA).

Federal and state governments co-fund Covenant administration and projects with the National Packaging Covenant Industry Association (NPCIA), on a 50:50 basis. Industry has committed to providing a minimum of \$3 million per annum for Covenant administration and projects, with contributions from individual firms based on their turnover and sector. Administration costs for 2008-09 were approximately \$750,000.

### Membership

Covenant membership covers all sectors involved in the packaging life cycle, bringing together a diverse group of companies and industry sectors (see Table 6). The 786 Covenant (2005-2010) signatories (as at March 2010) represented approximately 90 per cent of the packaging produced, and 80 per cent of packaged consumer brands sold in Australia.

**Table 6: Covenant (2005-2010) signatories by sector, March 2010**

Sector	Number
Raw material suppliers	7
Packaging suppliers	58
Brand owners	623
Retailers	49
Waste management firms	14
Community groups	3
Governments	15
Industry associations	16
Other	1
<b>Total</b>	<b>786</b>

Source: NPCC (2010a)

While there is a large size distribution of Covenant members, based on analysis undertaken in 2008 for the mid-term review, 15 per cent of total turnover generated by company signatories to the Covenant (2005-2010) is attributable to 2 major firms (Coles and Woolworths) (Table 7). By contrast, the 66 firms in the \$5-10 million annual turnover range are responsible for about a 0.4 per cent share of turnover within the Covenant.

**Table 7: Covenant (2005-2010) signatory firms (at Oct 2008)**

Company size (\$ turnover pa)	No. of firms	mid-point value (\$m)	estimated turnover (\$m)	% total
>\$10b	2	10000 <sup>a</sup>	20000 <sup>a</sup>	15.0% <sup>a</sup>
\$5-10b	1	7500	7500	5.6%
\$3b-5b	2	4000	8000	6.0%
\$1b-3b	20	1500	30000	22.5%
\$0.75b-1b	14	875	12250	9.2%
\$500m-750m	18	625	11250	8.4%
\$250m-500m	52	375	19500	14.6%
\$100m-250m	79	175	13825	10.4%
\$75m-100m	32	87.5	2800	2.1%
\$50m-75m	41	62.5	2562.5	1.9%
\$25m-50m	84	37.5	3150	2.4%
\$10m-25m	120	17.5	2100	1.6%
\$5m-10m	66	7.5	495	0.4%
< \$5m	36	2.5	90	0.1%

Note: The size distribution of data as at 2008 was used to estimate actual revenues for firms (based on midpoint estimates), and relative shares of firms contributing to the Covenant. They are derived from an estimate of the 'representative' or average turnover of a company in a particular turnover band (assumed to be the midpoint value in the band), and the number of firms in each turnover band.

<sup>a</sup> A lower bound estimate has been used for these 'over \$10 billion pa turnover' firms. This is a conservative approach to estimating the market share (and dominance) of Covenant signatories.

Source: NPCIA (2008)

### 3.5 Covenant (2005-2010) achievements and costs

The Covenant (2005-2010) has five specific performance goals that encompass environmental, social and economic performance. Three specific overarching targets are in place to measure achievement against these goals, (NPCC, 2005, p. 16):

- Target 1: increased recycling of post consumer packaging from its 2003 baseline rate of 48% to 65% by 2010 (representing an increase of 17%), with specific packaging material targets;
- Target 2: increased recycling of 'non-recyclable' packaging (defined as plastics coded 4-7 and non-recyclable paper and cardboard packaging), from 10% (2003) to 25% by 2010; and
- Target 3: no increase in the amount of packaging disposed to landfill.

#### Achievements

In regard to Target 1, the packaging recycling rate is currently at 57 per cent, which indicates that the target rate of 65 per cent is not likely to be met by 2010. However, since this target was set in 2005 the Covenant has undertaken considerable work to improve the robustness of the data underpinning the recycling rates and has been able to apply these better methodologies retrospectively. This has led to a recalibration of the 2003 baseline - from 48 per cent down to 39 per cent. Based on the recalibrated 2003 baseline, recycling has increased 18 per cent between 2003 and 2009, which exceeds the targeted 17 per cent increase.

Targets 2 and 3 have both been exceeded (NPC, 2009). The 2009 recycling rate of 'non-recyclable packaging' is 28 per cent (compared with the target of 25 per cent) and in the period 2003- 2009 there has been a 28.7 per cent decline in the amount of packaging to landfill.

Individual action plans and reports of signatory firms also demonstrate benefits gained through participation in the Covenant. These documents identify savings in materials, production and transport costs and better decision-making due to an improved information base. Anchor Foods, for example, reported a 20 per cent increase in their product to packaging ratio – reducing the number of waste skips required each week and the cost of removal of recyclables (see Attachment B for other case studies). However, such information of benefits gained by individual firms is largely qualitative and firm-specific, and therefore it is difficult to collate into a broader picture of Covenant achievements.

The Covenant (2005-2010) also facilitates and co-funds projects undertaken by signatories in new recycling infrastructure, programs and systems. In doing so it leverages and encourages additional investment from Covenant members. During 2008-09 approval was given to a total of 20 projects valued at over \$41 million, with a Covenant contribution of \$10.7 million. As at 30 June 2009 there were 45 current projects supported by covenant funding. These projects have the potential to divert an estimated additional 430,000 tonnes of packaging from landfill per annum.

From 2005 to June 2009 a total of 80 projects have been supported by Covenant funding, with a total value of \$93 million. Over this period the Covenant has provided \$22.7 million in funding, leveraging a further \$70.3 million of private investment, demonstrating a leverage for investment ratio of a little over 1:4.

## Costs

Participation in the Covenant imposes costs on firms (both in terms of administrative costs and costs of action) and on other signatories.

### *Direct costs of the Covenant*

In relation to administrative or 'direct' costs, analysis for the mid-term review of the Covenant (2005-2010) provides a breakdown of the annual compliance costs for business who are signatories to the Covenant (Table 8). The annual contribution costs are payments made by participating firms to support implementation of the Covenant (payment rates are scheduled according to business category and size).

**Table 8: Estimated direct costs to business signatories of Covenant (2005-2010) participation, 2006**

	<b>Small (turnover up to \$5m/yr)</b>	<b>Medium (turnover between \$5m and \$1b/yr)</b>	<b>Large (turnover &gt;\$1 b/yr)</b>
Annual contribution (weighted average)	\$677	\$3,102	\$64,680
Action plan development (prepared every 3 years)	\$3,000	\$5,000	\$10,000
Annual reporting	\$3,000	\$10,000	\$20,000
Average cost for one business	\$6680	\$18,100	\$94,680
Number of businesses	37	505	25
<b>Total annual direct cost to business signatories</b>			<b>\$11,750,000</b>

Note: figures have been rounded. Source: Hyder Consulting (2008a, p. 68)

Costs to signatory firms comprise the largest proportion of total costs of the Covenant (approximately 63 per cent of the estimated \$18.6 million). Government and industry associations also incur costs of managing and participating in the Covenant, as shown in Table 9. These include the annual financial contributions that signatories make towards the cost of running the Covenant, including the cost of recycling infrastructure projects.

**Table 9: Estimated direct costs of the Covenant, 2006**

Sector	Total annual cost	Typical activities
Business signatories	\$11 750 000	Participation by approx 600 signatories, including funding contributions, annual reporting and action plan development
Industry associations	\$504 000	Participation such as action plan development and implementation, annual reporting, meetings, etc
State and federal governments	\$5 940 000	The largest component of this goes towards project funding. It also includes contributions to meeting Secretariat costs, staff resources and enforcement cost for states in relation to the NEPM (estimated at \$640 000 pa)
Local governments	\$390 000	Covenant data reporting
Environment groups	\$15 360	Participation by active groups
<b>Total</b>	<b>\$18 600,000</b>	

Note: figures have been rounded. Source: Hyder Consulting (Hyder Consulting, 2008a, p. 66)

These estimates of compliance costs relate to the Covenant (2005-2010). The new Australian Packaging Covenant has fewer and streamlined reporting and planning requirements, which it is anticipated will lead to reduced compliance costs. The estimates of compliance costs provide an indication of total costs to firms participating in the Covenant. However, given the Covenant is already in place, this assessment should focus on marginal changes to compliance costs (as opposed to a measure of total compliance costs with the Covenant, as conducted for the mid-term review).

#### *'Indirect' costs of the Covenant*

The mid-term review of the Covenant (2005-2010) also attempted to identify and estimate what it classed as 'indirect costs' of the Covenant. These costs were defined as costs related to the increase in recycling rates driven by the Covenant (2005-2010). The review did not directly estimate these costs, noting that, even in cases where costs of increased recycling rates could be estimated, it is unclear to what extent these costs are attributable to the Covenant (2005-2010), as opposed to other government policies, or market pressures to increase recycling rates.

Kerbside recycling was also included as an indirect cost in the Consultation RIS for the Covenant (2005-2010) (Nolan-ITU, 2005), but the contextual report for the mid-term review in 2008 found that, when commodity prices are high, there could be a net benefit of up to \$13.6 million per year (Hyder Consulting, 2008a, p. 74).

## Chapter 4 The Nature and Extent of the Problem

### 4.1 What is the problem being addressed and how significant is it?

As indicated in Chapter 2, a national approach on waste was established in 1992 through the Strategy for Ecologically Sustainable Development<sup>9</sup>. Over the last two decades the international requirements, including treaty obligations, for the management of hazardous substances and waste have changed significantly as scientific understanding and global agreement on risk and impacts have emerged. At the same time with rising living standards the generation of waste has continued to grow and the nature of waste has changed with more complex goods now comprising a significant component of landfill. There has also been a growth in the technologies for managing waste and recognition of waste as a resource, along with changing community expectations.

Over the same period there has been an evolution of the current mix of policies, legislation, and programs across jurisdictions, directed at waste avoidance and resource recovery which has resulted in a patchwork of local approaches. The National Waste Policy (EPHC, 2009) provides strategies for market and regulatory reform to address the results of uncoordinated action. The 2006 Productivity Commission Inquiry into Waste Generation and Resource Efficiency in Australia concluded that the Commonwealth should facilitate such reform and this was echoed in the 2008 Senate Committee Report on the Management of Australia's Waste Streams and the 2008 and 2009 Productivity Commission Annual Reviews of regulatory burdens on business.

The National Waste Policy (EPHC, 2009) agreed by all Australian governments renews and updates a national collaborative approach on waste for the ten year period to 2020. It identifies the key drivers for improved management of waste in Australia and sets directions in six key areas and outlines<sup>16</sup> priority strategies that would benefit from a national or coordinated approach. These strategies build on current directions and complement existing activity, and provide clarity and certainty for business and the community.

#### Key Drivers for improved management of waste

The National Waste Policy outlines a range of major interrelated drivers for its renewal of the national approach to waste management. These include:

- large scale growth in the generation of waste
- the opportunity to manage waste as a resource and invest in future long term economic growth
- the potential for waste management to reduce greenhouse gas emissions, and improve energy and water efficiency
- changing community expectations and aspirations, and
- the extent of inefficiency of the regulation of resource recovery and waste management sectors due to a lack of co-ordination and consistency across Australian jurisdictions.

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<sup>9</sup> The 1992 *Strategy for Ecologically Sustainable Development* was endorsed by the Council of Australian Governments and committed Australia to improving the efficiency with which resources are used; reducing the impact on the environment of waste disposal; and improving the management of hazardous wastes, avoiding their generation and addressing clean-up issues.

## **Significance of packaging to Australia's waste stream**

Packaging waste makes a significant contribution to the overall waste management problems identified above. In 2006-07 Australia generated 43.8 million tonnes of solid waste (The Allen Consulting Group, 2009, p.13). In the same year Australia consumed 4.4 million tonnes of packaging (including paper/cardboard, glass, plastic, steel cans and aluminium beverage cans) representing approximately 10 per cent of the total solid waste stream. Over half of all packaging (57 per cent) was recycled in 2009 (NPCC, 2010b).

Packaging is manufactured, used or recovered by a range of diverse industry sectors, including manufacturers of food, beverages, clothing, footwear, electrical products, furniture, homewares, toys, personal care products and industrial raw materials.

Given these drivers and the role of packaging waste within the waste stream, Strategy 3 of the National Waste Policy focuses specifically on packaging waste. Strategy 3 aims to '...better manage packaging to improve the use of resources, reduce the environmental impact of packaging design, enhance away from home recycling and reduce litter'.

Strategy 3 of the National Waste Policy sits under the key direction of the National Waste Policy which relates to taking shared responsibility for reducing the environmental, health and safety footprint of manufactured goods and materials across the manufacture-supply-consumption chain and at end of life. The objective of this key direction is to support business and consumers to appropriately manage end of life products, materials and packaging.

The current national mechanism for delivering on Strategy 3 of the National Waste Policy rests with the co-regulatory product stewardship arrangement reflected in the Covenant (2005-2010) underpinned by the statutory NEPM.

The Covenant/NEPM arrangement is also consistent with broader strategies of the National Waste Policy outlined in Chapter 2, in particular Strategy 1 to establish a national framework underpinned by legislation to support voluntary, co-regulatory and regulatory product stewardship and extended producer responsibility schemes to provide for the impacts of a product being responsibly managed during and at the end of life. The government has stated that the framework legislation will be in place by 2011 (Garrett, 2009).

## **4.2 Why is government action needed on packaging waste?**

Government action to maintain a coordinated and collaborative approach to managing waste packaging is needed because the price signal alone is not effective in driving a reduction in the contribution of packaging to Australia's waste stream, or in delivering against the objectives of the National Waste Policy. In the absence of government intervention the external environmental and social costs associated with packaging are not fully represented in the costs incurred by either producers or consumers. There is, therefore, limited incentive for producers or consumers to change the quantity and design of packaging or to reduce waste.

From a producer's perspective:

- packaging suppliers do not pay for disposal, nor are there appropriate mechanisms in place to make disposal costs transparent

- while there may be some market incentives to reduce use of packaging, many of the costs associated with packaging are external to individual businesses (externalities which impact on the community more broadly)
- individual businesses can benefit from industry-led action without contributing to it, reducing the incentive to participate in jointly beneficial action
- there is diminished incentive to innovate or develop infrastructure to improve product design and waste management.

From a consumer's perspective:

- individuals are not charged according to the mass, volume or composition of waste
- there is limited control over the amount or nature of packaging
- the cost of packaging is not transparent and is disguised in overall pricing strategies.

The key market failure is that businesses do not face the full costs of their packaging decisions, as costs of waste packaging fall on consumers and local governments. As noted in the National Waste Policy, these costs include: the increasing costs of transporting waste to distant locations; dealing with the associated greenhouse gas emissions and community opposition to new landfill sites. In a market which is operating efficiently businesses would take these external costs into account when making decisions. However, it is not known to what extent businesses would make different packaging decisions in their operations if they were faced with the full costs of packaging and its disposal. The proportion of a business's overall packaging costs, which these costs comprise, would vary across individual businesses.

Consistent with the National Waste Policy which has been agreed by the Commonwealth and all state and territory governments, there is a role for government in supporting and encouraging business and consumers in mitigating waste packaging externalities. This includes ensuring the social and environmental costs and benefits of improved manufacture, use and disposal of packaging are factored into private decision making and to ensure effective market and program structures evolve to deliver social, environmental and economic outcomes, such as those outlined in the National Waste Policy, at least cost.

### **4.3 If regulation is already in place, why is additional action needed?**

Since 1999 the Covenant, underpinned by the NEPM, has provided a national mechanism in Australia for managing the environmental impacts of packaging. The NEPM and the Covenant will lapse on 30 June 2010. Action prior to this date is required to renew or extend the NEPM and Covenant if a national arrangement is to continue.

Without the NEPM and Covenant there would not be a nationally co-ordinated mechanism for reducing the environmental impacts of packaging across the packaging supply chain. This is likely to have a range of consequences, including:

- potential for the proliferation of individual state and territory action on used packaging with associated inefficiencies as highlighted by the National Waste Policy RIS
- increased uncertainty for businesses in the packaging sector and less action in areas requiring investment of resources (e.g. to implement a new design process) or longer term actions, and in monitoring performance and improvement
- reduced ability to deliver on Strategy 3 of the National Waste Policy and the National Waste Policy more broadly



- loss of industry commitment to the environmentally sound management of packaging developed over the ten years of operation of the Covenant
- a progressive increase in the total amount of packaging disposed to landfill with consequential increase in greenhouse gas emissions and increased use of materials including energy and water.

National Product Stewardship Framework Legislation as required under Strategy 1 of the National Waste Policy is to be in place in 2011. Given the termination of the Covenant/NEPM arrangement on 30 June 2010, the timeframe for the framework legislation does not allow for consideration of transitioning the Covenant under the legislation at this stage. Action is therefore required to extend the Covenant NEPM arrangement if a nationally co-ordinated approach to the management of the environmental impacts of packaging is to be maintained.

If, as proposed in this RIS, the NEPM/Covenant is renewed for a further period of time it is important to ensure it remains current and as effective as possible and provides business with certainty. Following a comprehensive mid-term review in 2008, the Covenant (2005-2010) has been revised and updated to the Australian Packaging Covenant. In considering renewing the NEPM attention has also been given to the specific issues of targets and threshold for compliance by brand owner firms. This RIS includes consideration of both these issues.

## 4.4 Conclusion

Governments' objectives in relation to better managing packaging are set out in Strategy 3 of the National Waste Policy (2009) – *'The Australian Government, in collaboration with state and territory governments, industry and the community will better manage packaging to improve the use of resources, reduce the environmental impacts of packaging design, enhance away from home recycling and reduce litter'*.

The current national mechanism to achieve this, the Covenant/NEPM arrangement, terminates on 30 June 2010.

Without a nationally consistent approach, it is unlikely that government objectives will be met.

## Chapter 5 Options to Address the Problem

Chapter 4 identified the key drivers for improved management of waste in Australia and the governments' response through the National Waste Policy. Packaging waste is an important contributor to the overall waste stream and the current co-regulatory Covenant/NEPM arrangement is an effective mechanism for national coordination of the diverse firms and industries operating in the waste packaging sector.

### 5.1 Options for addressing the problem

As part of the RIS process, it is necessary to describe and consider the different options that can be used to achieve the stated objective. The Office of Best Practice Regulation and COAG best practice guidelines (OBPR 2007) require that a RIS should test the effectiveness and appropriateness of the most feasible range of alternative options.

This RIS considers four options for achieving the stated objective. These are:

- *Option 1:* Implementation of the Australian Packaging Covenant without the NEPM which would terminate on 30 June 2010
- *Option 2:* Implementation of the Australian Packaging Covenant, supported by a renewed NEPM which would lapse in June 2015
- *Option 3:* Implementation of the Australian Packaging Covenant supported by a renewed NEPM which would be ongoing, subject to review every 5 years
- *Option 4:* Implementation of the Australian Packaging Covenant supported by a renewed NEPM which would be ongoing and subject to review every five years, at a maximum, with the first review being conducted for the purpose of bringing the Australian Packaging Covenant and the NEPM under the Commonwealth Product Stewardship Framework legislation.

These four options have been identified in the context of the current co-regulatory arrangement which has been the nationally consistent instrument for managing the environmental impacts of packaging since 1999, and which therefore constitutes business as usual. The options have also been developed in the context of the National Waste Policy and forthcoming Commonwealth Product Stewardship Framework Legislation under that policy.

Considerations in selecting appropriate options for analysis included:

- the need for the continuation of a nationally consistent measure to deliver on Strategy 3 of the National Waste Policy
- the need to provide certainty to business given the termination of the Covenant and NEPM on 30 June 2010
- addressing community expectations.

The Australian Packaging Covenant has strong stakeholder support and builds on the previous achievements of the Covenant. It is the only feasible arrangement ready to be implemented by July 2010, and hence all options analysed in the RIS involve implementation of the Australian Packaging Covenant. This is consistent with EPHC in-principle agreement in November 2009 to replace the Covenant (2005-2010) with the Australian Packaging Covenant from July 2010.

The Covenant and the NEPM are inter-dependent, in that the purpose of the NEPM is to support the Covenant. The four options all include a transition to the Australian Packaging Covenant. A purely voluntary option of the Australian Packaging Covenant with no regulatory underpinning by way of a NEPM is examined in Option 1. The other three options each involve differing arrangements for the NEPM - exploring the impact of a termination date in the NEPM, the alignment of the NEPM with the ongoing Covenant and the harmonisation benefits that may be available under the Commonwealth Product Stewardship Framework Legislation currently being developed.

Alternative options that involve a more regulatory explicit approach, such as Extended Producer Responsibility legislation, have not been considered. This is primarily because the Commonwealth Product Stewardship Framework Legislation, through which this approach could be delivered, is not yet available.

## **5.2 Option 1**

This option depicts a scenario where the Australian Packaging Covenant, agreed in-principle by the EPHC, would commence on 1 July 2010, without the underpinning 'free rider' protection for brand owner signatories that has been provided since 1999 by the NEPM.

In the absence of the NEPM, which would terminate on 30 June 2010, brand owners would choose between being Covenant signatories, establishing alternative voluntary initiatives to reduce packaging waste, or doing nothing.

## **5.3 Option 2**

This option depicts a continuation of the Covenant/NEPM arrangements for a third five year period with a renewed NEPM to lapse in June 2015. This option comes closest to representing 'business as usual', however with a strengthened and streamlined Covenant.

The key elements of this scenario are:

- the Australian Packaging Covenant would commence on 1 July 2010
- the NEPM would be renewed for a further 5 years, subject to minor variations as agreed by the EPHC in November 2009, and would terminate on 30 June 2015. Extension of the NEPM beyond 2015 would require further regulatory impact assessment
- brand owners with a turnover greater than the NEPM threshold would be required to comply with its terms or become signatories to the Australian Packaging Covenant.

## **5.4 Option 3**

This option depicts a scenario similar to Option 2 where the Covenant/NEPM arrangements are continued, however the NEPM has no termination date.

The key elements of this scenario are:

- the Australian Packaging Covenant would commence on 1 July 2010
- the NEPM (with minor variations) would be renewed without a termination date but requiring a review of its effectiveness and efficiency every five years in line with review of the Australian Packaging Covenant
- brand owners with a turnover greater than the NEPM threshold would be required to comply with its terms or become signatories to the Australian Packaging Covenant.

## 5.5 Option 4

This option is similar to Option 3 where the Covenant/NEPM arrangements are continued, without a termination date, but subject to review every five years. However it seeks to align the first review of the NEPM to governments' broader waste policy agenda and legislation.

The key elements of this scenario are:

- the Australian Packaging Covenant would commence on 1 July 2010
- the NEPM (with minor variations) would be renewed without a termination date but requiring a review of its effectiveness and efficiency every five years in line with review of the Australian Packaging Covenant
- the first review of the NEPM would include consideration of bringing the Australian Packaging Covenant/NEPM arrangement under the Commonwealth Product Stewardship Framework Legislation
- brand owners with a turnover greater than the NEPM threshold would be required to comply with its terms or become signatories to the Australian Packaging Covenant.

## Chapter 6 Impact Analysis

### 6.1 Introduction

The purpose of the impact analysis in a RIS is to:

- determine the net impact of the policy or regulatory options being considered by government
- identify the preferred option.

The options assessed in this RIS include allowing the NEPM to lapse and instead rely on voluntary action through the Covenant (the 'no intervention' option), and three other options to retain the NEPM, with variations around sunset and review provisions. Option 2, the continuation of the Covenant and NEPM with a termination provision, represents the 'business as usual' approach. The analysis also discusses the impact of participation thresholds and use of targets within the measure.

The analysis compares the relative effectiveness and efficiency of the various options in achieving the stated government objective as set out in the National Waste Policy. The analysis focuses on the potential impact of changes to the current regulatory settings.

### 6.2 Framework for analysis

Options are assessed using both qualitative and quantitative information. The aim of the analysis is to provide an 'on-balance' assessment of how each option compares against a range of factors – which represent the key costs and benefits of the options.

The key elements in considering the options in this RIS are their:

- *effectiveness* in achieving government objectives (primarily represented by the objectives and strategies outlined in the National Waste Policy)
- *efficiency* in achieving the government objectives, which considers the costs (inputs) required — a policy or regulation may be highly effective but also impose very high costs on business, the community and/or government. Well designed policies and measures should be focused on reliably achieving their objectives at the lowest cost possible. Of a suite of options that are equally effective in achieving desirable policy outcomes, the least cost option is to be preferred.

#### Effectiveness in achieving the government objective

There are two aspects to assessing the effectiveness of the various options. Firstly, the extent to which the Covenant provides an effective mechanism for collaborative and coordinated national action across the diverse sectors operating in the packaging area to improve management of packaging waste. Measures of effectiveness include delivery against targets, success in leveraging and encouraging investment and the extent of membership.

Secondly, the extent to which the Covenant would be effective without the underpinning NEPM (Option 1). Would an entirely voluntary arrangement generate the level of collaborative and coordinated action necessary to address the problems identified in Chapter 4 and address stated government objectives as outlined in the National Waste Policy?

Given that benefits/outcomes from the Covenant/NEPM arrangement derive principally from action taken by Covenant signatories, the number of firms participating in the Covenant and the level of activity that firms put into achieving targets are two key indicators of effectiveness.

The analysis of the various options includes an assessment of how each option would impact on participation levels and action by firms, which takes into account:

- incentives for firms to act voluntarily to support packaging waste minimisation objectives (such as reputation, cost savings, credibility and marketing benefits)
- scope for collective action to lead to lower cost outcomes than might be expected if individual firms acted alone to satisfy waste reduction requirements
- implications of targets and threshold design for program coverage and competitiveness.

The key point of difference is between Option 1 (voluntary) and the (NEPM-based) Options 2, 3 and 4 and relates to the:

- extent to which a coercive regulatory element (the NEPM) induces cooperative action which leads to better outcomes and reduced costs
- nature of these obligations over time.

### **Efficiency — key regulatory and policy design elements**

The following key design elements are relevant to assessing the efficiency of the various options:

#### **Life of the measure**

The period for which government has committed to the measure can have an important impact on decision making, risk assessment and planning by firms. In particular, where firms are considering investment options, such as new technology or new machinery and equipment, it is important that they have a degree of certainty about the regulatory framework within which they are operating and investing. Higher levels of certainty can encourage companies to make large or long term investments. The corollary of this is that higher levels of uncertainty are commonly associated with a preference among investors for faster pay-offs and smaller financial commitments.

The key point of difference is between Option 2 (non-ongoing provision) and the (on-going) Options 3 and 4 and relates to the:

- extent to which an on-going measure provides greater certainty for firms
- impact on efficiency.

#### **Flexibility**

The flexibility of the options relates to the extent to which they allow for cost effective participation by firms and how they impact on the competitive balance in the market. Currently, the key element of flexibility within the NEPM is the ability of firms to fulfil their obligations by becoming a participant in the Covenant.

The key role of the NEPM is that it provides a regulatory underpinning for the Covenant. The Covenant is not an entirely voluntary scheme, in essence it is an agreed alternative to specific obligations established under the NEPM. The Covenant provides a flexible alternative than the individual company level obligations set out in the NEPM, as it allows for a pooling of capability across firms by applying a collective target that can be reached through joint and/or negotiated action by industry participants.

All NEPM-based options (Options 2, 3 and 4) involve the same design features of the NEPM as regards flexibility.

### Cost burden

The design of a measure will have an important impact on the cost of participation for firms. The compliance burden under the Covenant was criticised by the Productivity Commission in 2006, which described the reporting requirements as ‘excessive and cumbersome’. As outlined in Chapter 3 and Attachment A the proposed Australian Packaging Covenant has reduced reporting requirements, including reducing the number of KPIs for signatories to report against from 29 to 8. The Australian Packaging Covenant will also remove the requirement for signatories to report consumption data. All options are based on the Australian Packaging Covenant.

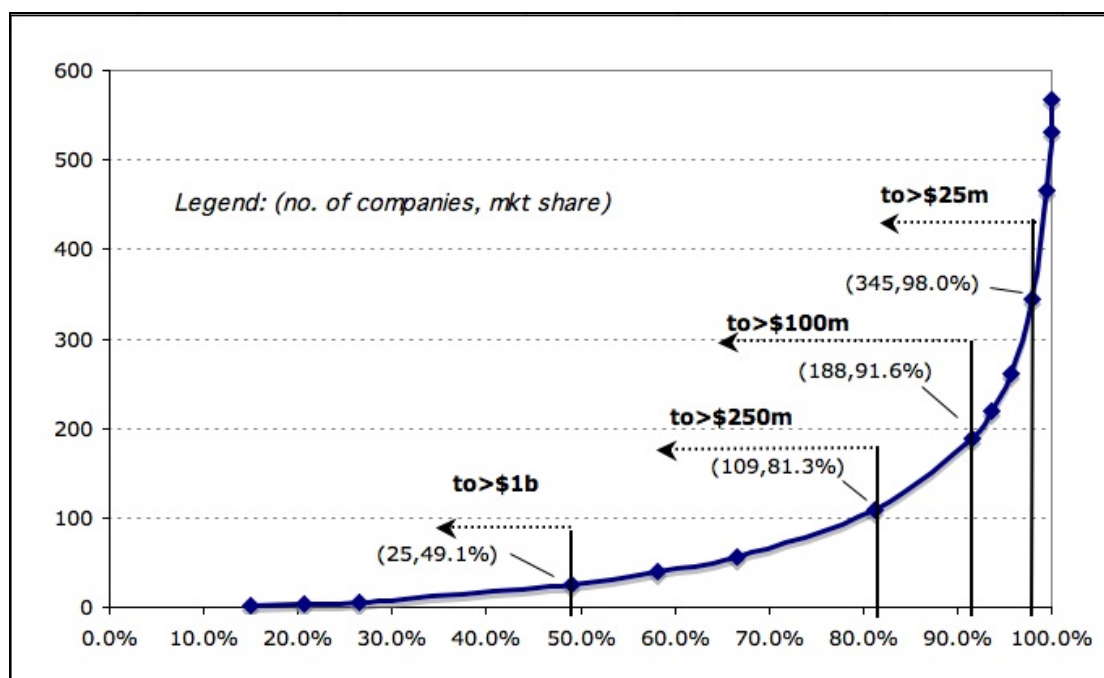
The key point of difference is between Option 1 (voluntary) and the other options and the extent to which regulatory arrangements lead to costs being imposed on firms.

### Thresholds under the NEPM

The threshold set by the NEPM impacts on the size (and number) of firms that must either sign on to the Covenant or meet individual targets under the NEPM. The size of the threshold is also relevant to the NEPM’s effectiveness as a safety net to protect Covenant participants from so-called ‘free rider’ activity.

Issues of distribution, packaging shares and compliance costs are relevant to the issue of setting the threshold for NEPM obligations. Figure 6 indicates that of the 567 firms signed up to the Covenant in 2008, the largest 345 firms (61 per cent) with an annual turnover of more than \$25 million, represented 98 per cent of the sales. By inference it is reasonable to assume these firms represent a similar share of the packaging material targeted by the NEPM.

**Figure 6: Cumulative contribution of Covenant signatories**



Source: National Packaging Covenant Industry Association (NPCIA, 2008)

Firms with turnover below the current \$5 million threshold are not subject to the NEPM (and associated Covenant) and hence avoid the costs associated with mandatory participation. These firms represent 'leakage' from the measure that could potentially erode the achievement of waste reduction goals. Given that these firms are not subject to packaging obligations, they also do not incur the costs of compliance which firms subject to the measure incur (both in terms of administrative costs and costs of action). Given these cost differences, firms operating outside of the measure could potentially grow market share at the expense of firms subject to NEPM requirements.

While the threshold in the NEPM has the potential to impose these imbalances in costs and competition in the market, the extent to which this actually occurs is greatly dependent on the level at which the threshold is set (as a threshold can be set as to only exclude a small proportion of firms, and therefore only have a marginal impact on competition).

All NEPM-based options (Options 2, 3 and 4) have the same \$5 million threshold. A full discussion of the extent to which the NEPM can impose imbalances in costs and competition in the market forms part of the analysis of Options 2, 3 and 4. The analysis considers the impact of current threshold levels, and the marginal impact of raising or lowering the threshold level.

### **Type of target used by the measure**

Currently, the NEPM applies the targets within the Covenant 'by reference'. Clause 9 (5) states that the targets '*should not be arbitrary but should be established by reference to the performance targets*' of the Covenant. The design of the new Australian Packaging Covenant includes a change to continuous improvement style targets. The revised NEPM will continue the current approach of referencing back to the Covenant.

Prescriptive targets normally imply higher levels of cost to businesses. However, under the influence of innovation and technological change, improved environmental performance (in line with these changes) can often be achieved at minimal additional cost. Continuous improvement targets that reflect these technical opportunities and the circumstances of individual firms are, in general, likely to be less onerous than prescriptive 'one size fits all' targets applied at an industry or activity level. Linking the targets for compliance in the NEPM to the continuous improvement target in the Australian Packaging Covenant ensures that NEPM compliance requirements are based on the current performance of the industry and there is adequate flexibility to reflect changes in the sector.

## **6.3 Assessment criteria**

The preceding discussion identifies a set of key criteria for assessing the four options. submissions received in response to the Consultation RIS have been included in the discussion of options. A total of 27 public submissions were received (see Chapter 7 for more detail, including summary Tables 12 and 13 outlining responses).

### **Participation/action by firms**

The options are assessed as to the extent they will induce the necessary level of participation and action to deliver government objectives. In other words, which approach best encourages a level of participation and activity by firms to achieve the policy objective for packaging?



Factors that influence participation and action include: flexibility, private benefits, opportunities for collaboration and regulatory underpinning. Higher levels of participation are likely to deliver greater benefits - private benefits for individual firms and broader public benefits consistent with the governments' stated objectives under Strategy 3 of the National Waste Policy.

### **Certainty for investment**

Options are assessed as to the extent they provide certainty for firms around their obligations given the potential for this to impact on investment decisions such as in new technology which would assist firms in meeting outcomes at lower costs.

### **Impact on competition**

Two major elements have been taken into account in analysing the impact of the options on competition. These are the level of free rider behaviour in the packaging sector and how thresholds for company inclusion under the NEPM impact on competition. For example, lower thresholds capture more of the market, but could also impose disproportionate costs on small firms which impact on their competitive position, and yield only a modest additional benefit. The compliance target obligation applied may also have a competitive impact via the costs imposed on individual firms.

### **Compliance costs**

Options are assessed in terms of the direct and indirect costs of complying with the requirements of the Covenant/NEPM. Under current arrangements compliance with the NEPM is principally represented by the costs of Covenant membership as all firms captured by the NEPM have opted to sign on to the Covenant. This includes direct costs to brand owner firms (membership, planning and reporting costs and contributions to project funding) and indirect costs which are more difficult to quantify but are largely linked to meeting the performance requirements of the Covenant (2005-2010) (for example, recycling rates) and may include investment in public and private infrastructure (see Chapter 3).

The analysis compares the cost burden of the various options in relation to costs from the current Covenant, however notes that future costs under the Australian Packaging Covenant are anticipated to be reduced due to streamlined reporting requirements. The analysis also identifies the broader public benefits and the direct and indirect benefits that firms derive from their participation in the Covenant, which act to balance consideration of compliance costs.

## **6.4 Assessment of options**

### **6.4.1 Option 1**

Of the options being assessed in this RIS, Option 1 represents an entirely voluntary approach without underpinning free rider regulation.

#### **Participation/action by firms**

The Covenant, as the national coordinating mechanism for managing waste packaging, has demonstrated a range of outcomes. These include (more detail in Chapter 3):

- Effective delivery against three overarching targets
  - to increase the amount of post consumer packaging recycled from a base line of 48 per cent in 2003 to 65 per cent in 2010 – while an actual rate of 65 per cent has not been achieved, the target in terms of percentage increase has been exceeded

- a recycling target of 25 per cent for 'non recyclable' packaging – exceeded with 2009 rate at 28 per cent
- target for no increase in the amount of packaging disposed to landfill – exceeded – 28.7 per cent decline
- Facilitating the collection of funds to support investment in recycling infrastructure, programs and systems. This activity has contributed to increases in recycling rates and leveraged an additional \$70.3 million for investment
- Accountable performance by signatories through Action Plans and reporting of improved environmental outcomes
- Providing a collaborative and co-ordinated forum to address information failures across diverse sectors to achieve improved outcomes.

A key consideration in relation to Option 1 is the extent to which an entirely voluntary arrangement will maintain the current level of collaborative and co-ordinated activity on waste packaging or whether it would lead over time to declining levels of participation in the Covenant and resultant failure to achieve outcomes. It is important to understand the underlying factors that drive voluntary action by firms, and how these compare with the action induced through a regulated approach. One way to consider the potential level of action in voluntary versus mandatory options is to determine the private benefits of participation to individual firms, and the extent to which these may lead to voluntary action, in the absence of regulation.

From its inception there has been a range of stakeholder views on the effectiveness of the Covenant. This is reflective of the broad stakeholder base of the Covenant, including a broad range of manufacturing industries, waste management and recycling companies, community groups and all levels of government. It also reflects the difficulty of establishing the extent to which the Covenant has been directly responsible for outcomes that are also influenced by commercial, political, economic and other factors. For example, improvements in packaging efficiency and increased recycling rates have been influenced by levels of infrastructure as well as social trends and community attitudes.

As discussed in Chapter 3, at the individual firm level the Covenant provides direct and indirect benefits to signatories, however these are difficult to quantify. Available evidence on potential benefits from participation in the Covenant highlights a set of predominantly qualitative or intangible benefits to firms, such as through reputation, promotion of packaging issues within firms, and promotion of packaging issues across the supply chain.

For example, analysis of annual reports of signatory firms, done as part of this RIS, identified that out of 53 annual reports analysed, 38 (76 per cent) reported that the Covenant has contributed to increased organisational capacity for improved design and process management of packaging. This increased capacity is evident in changes made to packaging by Covenant signatories. Case studies of some of these changes are set out in Attachment B. Other benefits to joining the Covenant which signatories have reported relate to reputation and customer relations, improved supplier relations and increased sales.

The mid-term review of the Covenant (2005-2010) indicated that many stakeholders believe the Covenant is a relatively inexpensive mechanism for waste management. However it remains uncertain how strong the participation and action by signatories would be under an entirely voluntary arrangement without the NEPM in place.

In the absence of an observable example on which to base this assessment, such as an equivalent measure in the market which is voluntary, some conclusions can be drawn about the potential response of firms under a voluntary scheme.

Firstly, there is evidence supporting the conclusion that participation in the Covenant imposes costs on firms (both in terms of administrative costs and costs of action). If firms were able to voluntarily participate in the Covenant, it is reasonable to assume that each firm would make this determination based on their own assessment of the balance of costs and benefit of participation. Importantly, these costs and benefits will be those to the firm itself, rather than broader social costs and benefits. Firms are unlikely to be aware of the broader social benefits, and certainly would have difficulty estimating their size and incorporating them into their decision making.

On this basis, only firms with a net benefit of participation will sign on voluntarily. It is, therefore, likely that a voluntary measure will tend to induce a lower level of participation than a regulated measure, given the presence of broader social benefits of participation which are not captured within firm-level decision making. To the extent that full benefits of NEPM (and Covenant) activities cannot be captured by private participants, there will always be a tendency for voluntary approaches to under-provide goods and services generating strong social and environmental benefits.

A major attraction of voluntary schemes is they tend to have lower administration and compliance costs than mandatory approaches. For example, voluntary schemes do not require 'the costly monitoring and enforcement measures associated with mandatory approaches' (Productivity Commission 2006, p. 265).

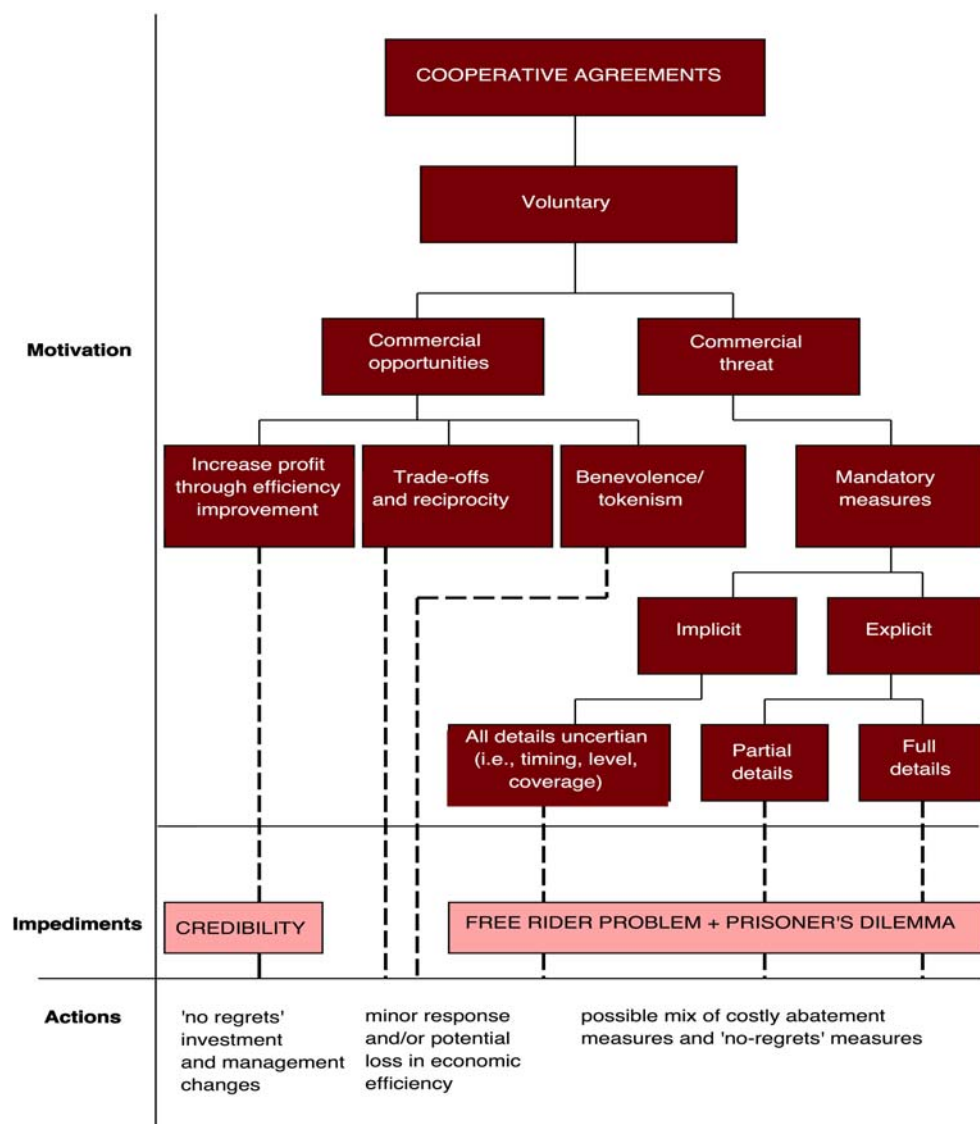
While acknowledging the efficiency benefits of voluntary measure, the OECD also acknowledged that voluntary approaches can result in weak drivers for change in cases where there are no sanctions for unmet commitments — in such cases program managers can find themselves 'pushing on a string'. 'Free riding' and loss of motivation can also be a significant problem with collective voluntary approaches — essentially these measures have low *effectiveness* in achieving the desired outcomes.

Further, the Intergovernmental Panel on Climate Change (IPCC, Working Group 3, 2007) found that:

...voluntary agreements between industry and governments are politically attractive, raise awareness among stakeholders, and have played a role in the evolution of many national policies. The majority of agreements have not achieved significant emissions reductions beyond business as usual (19).

Figure 7 provides another perspective in considering the effectiveness of voluntary measures, in particular those factors that influence the level motivation for firms. As shown in the figure, firm motivation can be influenced by both commercial opportunities and threats. The regulatory underpinning of a credible threat, such as a NEPM fits within this structure of potential drivers of firm participation in measures.

Figure 7: Factors affecting business participation in cooperative agreements



Source: Bureau of Industry Economics (BIE) 1996 Energy Efficiency and Greenhouse Gas Abatement, Report 96/5, Canberra.

The OECD has identified several characteristics that boost the effectiveness of voluntary programs. These include:

- developing a baseline for comparing actions
- quantifying targets
- designing rigorous (preferably third party) monitoring mechanisms
- providing mechanisms to promote industry leaders
- putting in place sanctions in case of non-compliance.

The OECD also reported that voluntary agreements 'are likely to generate significant 'soft effects' in terms of dissemination of information and awareness raising' (OECD, 1999). Further, when used in combination with command-and-control policies (or a sanction or credible threat) they can enhance technology diffusion.

Given the discussion above, it is unlikely that a measure without free rider regulation such as Option 1 would drive sufficient participation in activities to meet policy objectives.

### **Certainty for investment**

Option 1 is a voluntary measure, with firms encouraged, but not required, to participate in the measure (which would essentially be a Covenant without the obligations for participation under a NEPM). Under a voluntary scheme low certainty exists because firms will not know the future commitment of competitors to the Covenant, assuming that the Covenant would continue on as a voluntary, collective measure.

Signatory firms are currently operating under the NEPM and decisions on investment in new technologies, new products and/or new processes to meet requirements under the NEPM and the Covenant are greatly influenced by their expectations about governments' commitment to these measures. Without such a mechanism, action to reduce the environmental impacts of packaging waste would be taken at an individual firm level and voluntary measures involve an on-going risk to the competitive position of firms who decide to invest longer term than their competitors. Because competitors at any time could opt out of the voluntary Covenant measure, firms would need to be mindful of the potential competitive impacts of their investment in the instance where their direct competitors sought a lower cost pathway.

Results of the consultation process on the RIS confirm that business see an increase in uncertainty as likely to reduce long term investment, in areas such as new technology to assist firms in meeting outcomes at lower costs. Eight of the submissions which supported Options 3 and/or 4 identified greater certainty as a reason to support these options in preference to options 1 and 2.

### **Impact on competition**

Under Option 1 the Covenant would remain as a voluntary measure. Firms would be in a position to freely determine whether they wished to participate in the Covenant or not. Activity by firms to reduce the environmental impact of their packaging would be undertaken on an individual, voluntary basis and would not impact on competition within the market.

### **Compliance costs**

Option 1 provides for voluntary measures only and hence will involve reduced compliance costs compared with the base case, and a lower marginal cost compared with the other options. This conclusion is based on the ability of signatory firms, under a voluntary scheme, to determine whether participation is cost effective for them or not (i.e. balancing costs and benefits). Therefore, under a voluntary scheme, those firms with poor benefit-cost ratios would not participate, reducing the overall cost burden compared with the base case.

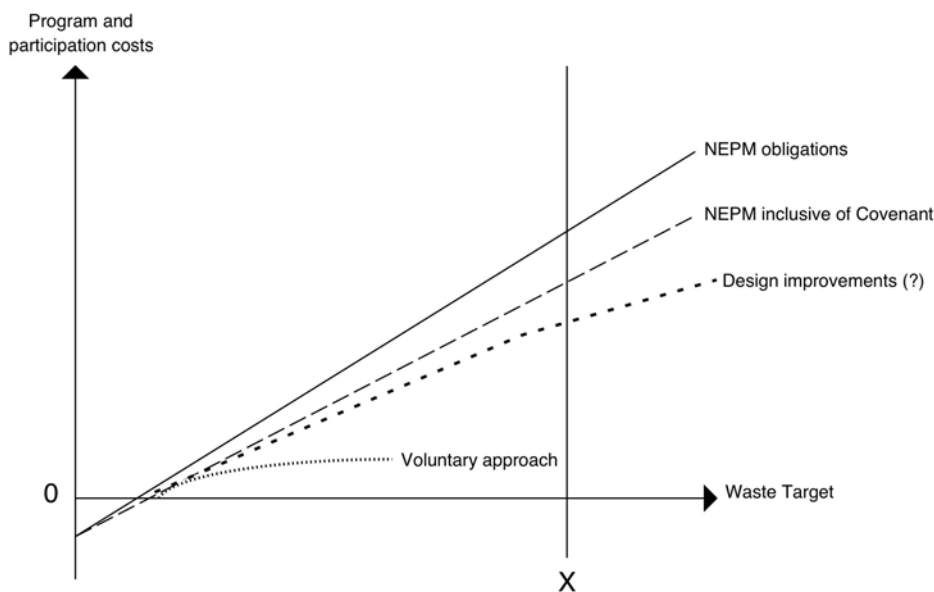
In general, with a purely voluntary approach, direct private benefits will tend to drive efforts and outcomes. The mismatch of private and community valuations and benefits, and the number and diversity of stakeholders in the packaging waste realm, can be expected to see a level of private effort in the waste reduction area that falls below the socially (and environmentally) desirable optimum. It is also unlikely to meet government objectives.

By contrast, prescriptive waste minimisation or packaging performance targets applied at an individual company level would be a more costly way of achieving policy objectives because each firm would be required to meet a target, regardless of relative cost structures across the sector. In addition, the extent to which a voluntary arrangement would fail to deliver on government objectives raises the risk jurisdictions may move to introduce requirements at a local level which would impose higher costs on industry.

Figure 8 depicts different approaches (and costs) associated with delivering on waste policy objectives. While voluntary measures would be expected to be lowest cost, they also hold the greatest risk of not achieving government (and social) objectives. Notionally, at least, higher costs would be associated with obligations prescribed at a company level. These costs are reduced through more flexible arrangements (as offered through the Covenant), and variations in design and delivery offer the potential to reduce costs further.

The fact that firms choose Covenant participation over being subject to the NEPM supports the analysis that the Covenant offers greater flexibility in terms of targets, timeframes and trade-offs.

**Figure 8: Waste program design – achieving targets at least cost**



A lower participation rate under Option 1 would also impact on the ability to generate and leverage funds for investment in projects to build industry infrastructure and capacity and trial improved processes. As noted in Chapter 2, from 2005 to June 2009 a total of 80 projects have been supported by Covenant funding, with a total value of \$93 million.

Responses to the Consultation RIS (Chapter 7) identified little support for a voluntary mechanism as outlined in Option 1 and concerns were raised as to the impact this would have on the effectiveness of the Covenant. Over 70 per cent of submissions supported the continuation of a co-regulatory arrangement. These include three industry organisations, all signatories to the Covenant (2005-2010) and together representing a broad range of firms of varying sizes and market shares in the packaging sector.

The submission from the community group stated that allowing the NEPM to lapse would 'render the [new] Australian Packaging Covenant a meaningless exercise destined to quickly lose community credibility' (submission 23). Others stated that they would not remain in the Covenant if it were not underpinned by the NEPM (e.g. submission 10), or that although they themselves would remain, they perceived that many brand owners – including large stakeholders – would leave (e.g. submission 12).

Three (of the 27) submissions to the Consultation RIS supported the implementation of Option 1 (submissions 6, 15 and 22), while a further two submissions stated a preference for no Covenant or NEPM (submissions 3 and 7).

In summary, while Option 1 does not impact on competition and involves reduced overall direct compliance costs, it provides less certainty to firms and is unlikely to drive sufficient participation to meet policy objectives.

#### **6.4.2 Option 2**

Option 2 proposes a NEPM for a further five-year period, to terminate in 2015 (at which time government would have the option of replacing the measure with a similar scheme, not replacing it or introducing a new style or type of regulation, as deemed to be necessary). The key factor in regard to assessing the three NEPM-based options (Option 2, 3 and 4) is their effectiveness in influencing participation and action by firms that contribute towards governments' stated objectives in the National Waste Policy.

##### **Participation/action by firms**

The presence of the NEPM in Option 2 (and Options 3 and 4) acts as an incentive to drive compliance, and hence participation and action in Covenant activities (see Chapter 3). The fact that firms opt for the Covenant over the NEPM is a strong indicator that the Covenant is the lower cost pathway to delivering on governments' goals in this area.

The enforcement activities (see Table 4) undertaken by jurisdictions during the Covenant (2005-2010) have resulted in high levels of brand owner participation. This was despite the low numbers of Covenant (1999-2005) signatories who re-signed the Covenant (2005-2010) without being prompted by direct jurisdictional NEPM enforcement action. A number of reviews have commented on the effectiveness of the NEPM in inducing participation in the Covenant (Nolan-ITU, 2004; Meinhardt, 2004).

As discussed above in relation to Option 1, over 70 per cent of submissions to the Consultation RIS supported continuation of a NEPM-based approach and removal of the NEPM would impact negatively on levels of participation and effectiveness of the Covenant.

##### **Certainty for investment**

Option 2 provides more certainty for firms in their investment decisions than in Option 1. However, while there will always be a sovereign risk for firms of changes in government policy, placing a set termination date for a measure has a larger impact on firm investment in the period directly preceding the termination date, as it would be reasonable for firms to put on hold all investment decisions in this period until future policy is announced by government.

As an example of this, the uncertainty created by delays in the transition in 2005 from the Covenant (1999-2005) to the Covenant (2005-2010) resulted in a drop of over 30 per cent in signatory numbers (see Figure A1 in Attachment 1) and an increase in NEPM enforcement costs for governments. It took two years of jurisdictional enforcement action under the NEPM to bring signatory numbers back to the 2004 level of 645 signatories. It was not until 2007-08 that signatory numbers for the Covenant (2005-2010) reached this level.

The costs associated with regulatory uncertainty are essentially a loss of efficiency for firms. As noted in the literature, the efficiency of regulatory structures diminishes when market participants are uncertain about processes, responsibilities and obligations:

*A primary aim of regulation is to create an environment in which investment can take place ... regulatory systems where a high degree of discretion is vested with the regulatory agency may actually work against this aim – investors fear arbitrary decisions that could expropriate value and consequently they either do not invest or require a higher rate of return than would otherwise be the case to compensate for this risk. (Alexander 2008, p.1)*

Further, these uncertainties have the potential to influence future investment decisions, in particular in capital intensive sectors, where investment decisions can often require larger up-front levels of investment in long lived assets (such as purchasing of large equipment items).

The impact of Option 2 on firm uncertainty can be considered in terms of:

- *the duration of the measure* - sun-setting regulations must be re-made or revised by the sunset date in order to continue, which introduces uncertainty for firms (both the risk that regulations may not be re-made, or that, presented with the opportunity to re-make the regulations, government make revision to regulations)
- *the nature of the measure* – in sun-setting provisions firms can only be certain about the design features of compliance and enforcement of a measure, and therefore, that they will not be at a competitive disadvantage if they invest in complying with it, for the term of the measure.

The terminating provision in Option 2 may negatively impact planning and investment. Should the NEPM terminate in 2015, it could limit the planning horizon for current signatories to 5 years. A company deemed subject to the NEPM in 2014 can face an even shorter planning horizon, and uncertainty in contemplating its optimal compliance strategy, and potential investments with an economic life beyond 1 year.

Eight of the 27 submissions to the Consultation RIS (submissions 5, 9, 12, 13, 17, 20, 26, 27) identified greater uncertainty for business as a cause of concern in Options 1 and 2. One Submission (13) identified that there are negative impacts of uncertainty especially for participation of new brand owners identified towards the end of the 5-year period.

### **Impact on competition**

The aspect of Option 2 that may have an impact on competition relates to the operation of the NEPM, and specifically the design of thresholds within the NEPM measure. The threshold contained in the NEPM (and currently set at \$5 million) essentially determines which firms are subject to the measure, and therefore which firms are required to comply or join the Covenant (see Chapter 3). The level of the threshold limits the impact on small business and improves compliance efficiency. The design of the threshold is consistent across Options 2, 3 and 4 – hence the impact is the same for each of these options.

In terms of competition considerations two aspects of the threshold are relevant:

- that the compliance and program cost savings to these 'small' producers who fall below the threshold are not outweighed by the additional costs falling on other firms obliged to deliver on NEPM goals (or the wider community which accepts NEPM waste outcomes). To the extent that there is a disparity of obligations, and associated costs, market competitiveness issues can arise
- that the additional costs falling on firms who have turnovers just above the threshold and hence subject to the measure do not unduly impact on their competitiveness.



Having a threshold to participation naturally exempts some firms. The current threshold of \$5m turnover excludes many small firms, but these appear to represent less than 1 per cent of the market based on turnover. Based on ACCC practice, it would appear that the market share (and market power) of excluded firms is likely to be too small for the threshold to have a significant detrimental effect on competition.

The other consideration in terms of impact on competition relates to those smaller firms just above the threshold who are subject to the operation of the NEPM. These firms make up a portion of the \$5 - \$10 million group shown in Table 7, Chapter 3. This group overall comprises 11.6 per cent of Covenant signatories and represents 0.4 per cent of signatories' turnover. It is unclear to what extent the NEPM is an imposition or a barrier to competition on this group. A further 6 per cent of Covenant membership is made up of small firms with no requirement to participate – those below the \$5 million threshold (Table 7). For these small firms who voluntarily choose to participate, the Covenant provides a benefit which exceeds costs and any potential impact on their competitive position. This suggests that the competition impacts on small firms are not likely to be substantial.

The NEPM complies with the OBPR best practice assessment checklist OBPR (2009), as outlined in Table 10.

**Table 10: Office of Best Practice Regulation competition assessment checklist**

Would the regulatory proposal restrict or reduce the number and range of businesses?	No. The NEPM only applies to brand owners with annual turnover above a certain threshold. Those with annual turnover above the threshold all face the same restrictions. The cost of complying with the NEPM is unlikely to be large for brand owners - as long as the flexibility of the Covenant cooperative approach is available as a 'safety valve'.
Would the regulatory proposal restrict or reduce the ability of businesses to compete?	No. The NEPM does not place any restrictions on the ability of businesses to compete; it only requires brand owners to reduce the amount of packaging going to land fill. Brand owners who fall below the threshold and do not need to comply have too little market share to restrict competition.
Would the regulatory proposal alter businesses' incentive to compete vigorously?	No. Brand owners' incentive to compete vigorously remains the same because all brand owners with annual turnover above the threshold have to comply with the same requirements under the NEPM and the Covenant.

**Source:** *Best Practice Regulation Preliminary Assessment Form*, Office of Best Practice Regulation, **OBPR 2009**

On the basis of the above discussion, it is reasonable to assume that the NEPM-based options (Options 2, 3 and 4) do not represent a significant change in competitive conditions, compared with current practice (the base case). The design of the NEPM threshold would not appear to unduly restrict the number of firms or their ability to operate competitively.

### **Compliance costs**

Option 2 establishes a mandatory element via either Covenant membership or adherence to the NEPM. The cost estimates in Chapter 3 included both direct and indirect costs, based on analysis prepared for the mid-term review of the Covenant. As noted earlier, these direct costs are anticipated to be lower under the Australian Packaging Covenant due to streamlined reporting requirements.

The NEPM-based options (Options 2, 3 and 4) each have similar cost structures, and levels of compliance costs for firms, as each will maintain the current structure of setting a legislated requirement in a NEPM, which will draw participants to the Covenant (as the lower cost alternative to compliance under the NEPM). There are no discernable differences between these options to conclude that compliance costs would differ in a measurable way between them. While Option 2 is likely to provide a lower level of certainty for firms, this primarily influences business investment behaviour — firms would still be required to continue on with their administrative requirements under the Covenant even if there were uncertainty around the future of the NEPM.

Submissions to the consultation RIS support the view that Covenant is a cost-effective mechanism. For example, the Australian Food and Grocery Council (AFGC) which is a signatory to the Covenant (2005-2010) stated that, 'there is no doubt that the Covenant (including the NEPM) is a cost effective and efficient policy mechanism to respond to the issue of packaging waste management. The improvements to the recycling rate over the last decade has been significant and while not absolutely or solely achieved as a result of the Covenant, there is no doubt the Covenant has contributed to the improvements. The AFGC view is that these achievements have come at a fraction of the cost of what might have otherwise been the case' (Submission 12 ). This position is supported by four other submissions( 9, 13, 26 and 19), which also stated that Covenant membership is cost effective, and/or that they valued taking shared responsibility and having a coordinated approach.

In summary, the analysis of Option 2 has indicated that while a voluntary approach (Option 1) has lower costs, it will not induce the necessary participation to address the problem outlined in regard to waste packaging in Chapter 3, and in particular will not effectively deliver the governments' stated objectives in the National Waste Policy. Options with a regulated structure such as a NEPM (Option 2, 3 and 4) are inherently more effective in inducing participation and action than a voluntary approach where some net cost to participants is involved. Although there can be offsetting benefits to participation in the Covenant, these are not universal, nor always fully anticipated by firms.

The analysis demonstrates that the NEPM is effective in encouraging firms to participate in the Covenant. However, under Option 2 the inclusion of a termination date could impact negatively on the planning horizon of firms and lead to lower levels of participation and lessened investment than under an on-going provision. This is supported by the over 60 per cent of submissions to the Consultation RIS which preferred the on-going Options 3 and 4.

The submission from the community-based Total Environment Centre (submission 23) preferred Option 2 on the basis that a termination clause in the NEPM would provide the opportunity to trial the changes in the Australian Packaging Covenant.

### **5.4.3 Option 3**

Option 3 proposes a remaking of the NEPM with no termination date, but with a requirement for the measure to be reviewed every five years (with presumably an option for government to make changes to the measure on the basis of review recommendations).

### **Participation/action by firms**

As discussed above in relation to Option 2, NEPM-based options are inherently more effective in inducing firm participation and action than a voluntary approach. Levels of participation are likely to be higher with an on-going mechanism as in Options 3 and 4.

### **Certainty for investment**

Both Options 3 and 4 involve non-terminating provisions for the NEPM. Non-terminating provisions have the advantage of greater consistency with proposed continuous improvement targets (which invite a longer term perspective) and the prospect that government concern for packaging waste reductions are also likely to be a long term feature of the environmental policy landscape. A more permanent co-regulatory arrangement (as under Options 3 and 4) is expected to provide a greater degree of certainty for firms around their long term obligations, and their competitive position in the marketplace. These options are also more likely to support a longer term planning horizon and facilitate more efficient investment because they extend the menu of options beyond those offering only a short term pay-off. As discussed under Option 1, this conclusion is supported by specific comments contained in eight of the submissions to the Consultation RIS.

### **Impact on competition**

The design of the NEPM threshold for Option 3 is the same as under Option 2 and Option 4, and hence the competition aspects are similar and would not appear to unduly restrict the number of firms or their ability to operate competitively. Further detail on this aspect is under Option 2.

### **Compliance costs**

Costs under Option 3 are likely to be similar to Option 2. The difference is that Option 3 is likely to provide a higher level of certainty for firms due to its on-going nature; this greater certainty primarily influences business investment behaviour and can drive improved efficiencies. Greater certainty around the arrangements would not necessarily impact on the costs associated with the administrative requirements under the Covenant.

In summary, Option 3 has similar impacts to Option 2 in terms of compliance costs and impact on competition. However, under the on-going measure contemplated in Option 3 there is likely to be a greater inducement towards the necessary participation and action to delivery government objectives. This is because an element of future uncertainty has been removed.

In the submissions received to the Consultation RIS, a majority of 60 per cent indicated a preference for either or both of the options containing an on-going measure (Options 3 and 4). Two submissions to the Consultation RIS stated a preference for Option 3 (5, 26). In addition, five submissions, including two from industry associations (9, 12, 13, 16, and 17) supported both Options 3 and 4 equally. In particular, submission 17 stated that 'both options combine a more permanent regulatory arrangement with provision for review which would allow for tailoring of the regulation to ensure consistency with a net community benefits approach.' Other reasons provided for preferring these options include administrative simplicity, ongoing review mechanisms and effectiveness in achieving policy objectives.

#### **5.4.4 Option 4**

Option 4 proposes a remaking of the NEPM without a termination date, but including a requirement to review every five years, with the first major review being for consideration of transitioning the Covenant to the new Product Stewardship Framework legislation (once introduced).

##### **Participation/action by firms**

As discussed above in relation to Option 2, NEPM-based options are inherently more effective in inducing firm participation and action than a voluntary approach. Levels of participation are likely to be higher with an on-going mechanism as in Options 3 and 4.

Reviews (Nolan-ITU, 2004; Meinhardt, 2004) have identified that NEPM enforcement is critical to the co-regulatory arrangement and have considered compliance needed strengthening to ensure participation. The current arrangements contain an inherent inefficiency as the NEPMs are made as regulations under different legislation in each jurisdiction, yet compliance action must be taken in the jurisdiction where the company head office is located. This has also led to delays in implementation. For example, the NEPMs for the Covenant (1999-2005) were not in place in all jurisdictions until almost four years after the Covenant commenced.

##### **Certainty for investment**

As outlined in relation to Option 3, an 'on-balance' assessment suggests that the degree of certainty for firms around how they should plan future investments is strongest where governments provide a commitment to a measure beyond a defined termination date.

The key difference between Options 3 and 4 is that Option 4 is linked to a potential future product stewardship scheme. Option 4 provides the opportunity for the Covenant to be included under National Product Stewardship Framework Legislation. At this stage the framework legislation is not sufficiently advanced to be able to determine how this would impact on certainty for firms operating under the Covenant. The legislation is expected to be in place in 2011.

##### **Impact on competition**

The design of the NEPM threshold for Option 4 is the same as that under Options 2 and 3, and hence the competition aspects are similar and would not appear to unduly restrict the number of firms or their ability to operate competitively. Further detail on this aspect is under Option 2.

##### **Compliance costs**

Compliance costs for participants under Option 4 are likely to be similar to Options 2 and 3. As with Option 3, while an on-going measure is likely to provide a higher level of certainty for firms, this greater certainty around the arrangements would not necessarily impact on the costs associated with the administrative requirements under the Covenant.

However, in terms of broader costs, the National Waste Policy RIS indicated likely benefits to the community from coordinated action under the National Waste Policy. For example, the RIS estimated a benefit in administrative savings from operating a Commonwealth product stewardship framework of \$147 million over 20 years, in comparison with individual jurisdictional approaches. It could be argued that transitioning the NEPM to a national product stewardship framework would deliver additional benefits by replacing eight separate pieces of state legislation. The framework legislation provides opportunities

in the future to remove inefficiencies in the operation of the current NEPM including inconsistencies in approach, difficulty in undertaking compliance action and delays in gaining national coverage. This suggests the costs of regulation would be reduced by implementing a single national regulatory approach, when compared to individual state by state regulation of product stewardship

In summary, Option 4 is therefore equally preferred on efficiency grounds with Option 3. The key consideration between Options 3 and 4 is whether the opportunity to transition to a National Product Stewardship Framework would improve the effectiveness of the measure in the longer term. Without the details of Product Stewardship Framework, it is difficult to make this assessment, although the RIS analysis undertaken to support introduction of the National Waste Policy suggests that there are benefits associated with a unified national approach to these measures. While the NEPM is national in nature, it nevertheless requires multiple sets of legislation at the State level and Option 4 provides for a single national approach. Submissions to the Consultation RIS support this view.

Ten submissions (1, 4, 8, 14, 18, 19, 20, 21, 25 and 27) to the Consultation RIS support the implementation of Option 4. A number of submissions state that there would be clear benefits associated with streamlining regulatory requirements by introducing a unified national approach in place of the existing arrangement which requires multiple sets of legislation at the State level to underpin the NEPM. As an example of potential benefits to be gained, submission 19 noted favourably that this approach would also make its treatment of packaging consistent with its used oil regulatory requirements.

## 5.5 Summary of Assessment

The analysis of each option highlights their relative strengths and weakness, and the extent to which one option can be identified as being most effective in addressing the identified problem (and, therefore, the most effective in meeting the stated government objective).

Table 11 summarises the assessment under each option. This table highlights the similarity of the three NEPM options (Options 2, 3 and 4), which do not have many discernable differences across some criteria (due to their similarities).

**Table 11: Relative effectiveness of options in meeting government objectives**

(Best performing options shaded blue)

Criterion	Option 1	Option 2	Option 3	Option 4
Participation (sufficient to deliver government objectives)	Least effective (no underpinning)	Second highest effectiveness (given presence of NEPM)	Highest effectiveness (equivalent to Option 4)	Highest effectiveness (equivalent to Option 3)
Certainty	Least effective	Second highest effectiveness (given 2015 termination date for NEPM)	Highest effectiveness (equivalent to Options 2 and 4)	Highest effectiveness (equivalent to Options 2 and 3)
Competition	Lowest level of restriction on competition (Voluntary measure)	Equivalent to Options 3 and 4	Equivalent to Options 2 and 4	Equivalent to Options 2 and 3
Cost burden	Lowest direct cost	Equivalent to Options 3 and 4	Equivalent to Options 2 and 4	Equivalent to Options 2 and 3

The value of this analysis is that it provides a framework with which to determine which option is *most effective* in achieving the government objective (which has been identified as the objective through which benefits to society will be achieved).

On this basis, Option 1 performs well against the efficiency criteria or compliance costs and impact on competition but is the *least effective* option of the four assessed, as it provides the lowest level of firm response (participation) and weak certainty for firms. Importantly, there is significant doubt around the capacity of this option to deliver on the governments' objective and, while low cost (in terms of compliance costs and impact on competition in the market) this option is unlikely to generate outcomes that achieve significant and sustained unpriced social and environmental benefits.

These conclusions are consistent with the earlier discussion on comparative strengths and weaknesses of voluntary measures, as compared with regulated measures that mandate action by firms. Essentially, a voluntary measure will incur lowest cost, and have the smallest impact on the market in a competitive sense, but these outcomes are achieved because it has only a small impact in terms of changing behaviour. In some cases voluntary measures can be effective — such as where there are sufficient private benefits over time to encourage participation, or where there are strong collective benefits within a well organised industry which encourage industry-wide participation. These conditions do not currently apply within the packaging sector.

Of the NEPM-based regulated options, there are marginal differences in the design of the measures, which have been assessed to determine whether they lead to one particular design of a future NEPM which would be most cost-effective.

As shown in the assessment in Table 11, Option 2 is assessed as being equivalent to Options 3 and 4 in relation to compliance costs and competition impacts, but has a lower effectiveness in relation to participation and the level of certainty that it provides for investment for firms. This assessment is due to the inclusion of a termination date of 2015 for the NEPM. Under these conditions, it is expected that firms will have a diminished incentive to commit to medium or long term investment that relate to their NEPM obligations (i.e. their participation in the Covenant) until government informs them of the future regulatory structure (beyond 2015). Where firms decide to hold off on investment, there is likely to be flow-on impact on the effectiveness of the Covenant itself. Action under the Covenant will potentially be weaker as firms are less likely to be seeking out ways in which they can contribute to the Covenant target. For these reasons, Option 2 is assessed as being the weakest of the three NEPM options, primarily on effectiveness grounds.

Of the two remaining options, Options 3 and 4 are assessed as having equivalent levels of effectiveness and efficiency across the four assessment criteria used in this RIS, and are considered to provide an equal degree of effectiveness in meeting the government objective (and, therefore, delivering a net benefit to society). The key difference between these options is the value of a potential transition of the Covenant under the proposed Product Stewardship Framework Legislation. Further assessment on these specific issues would be undertaken in a regulatory impact assessment of moving the Covenant to a product stewardship framework.

## Chapter 7 Consultation

### 7.1 Introduction

This chapter outlines the consultation process and summarises the feedback received on the Consultation RIS. Outcomes of the consultation process have also been directly factored into other chapters in this document, in particular Chapter 6.

Also identified in this Chapter are earlier consultation processes relevant to considering the Covenant/NEPM arrangement. These include the consultation around the National Waste Report in 2009, the 2008 mid-term review of Covenant (2005-2010), consultation by Covenant Council in developing the Australian Packaging Covenant and the statutory requirement for consultation to vary the NEPM.

### 7.2 Other relevant consultation processes

#### **Mid-term Review of the Covenant (2005-2010)**

The mid term review addressed a requirement of the Covenant (2005-2010) for a comprehensive, independent evaluation of the progress against the Covenant's overarching targets. The review was conducted in 2008 and involved eight separate research investigations (for further detail see Chapter 3). Of relevance to this Chapter are the surveys and interviews with representative stakeholders to obtain signatory, stakeholder and community views of the performance of the Covenant. The findings of the review were provided to EPHC on November 7, 2008.

The mid-term review identified wide support for the current arrangements, stating that 'most signatories and other stakeholders would like to see a continuation of the Covenant beyond 2010, but with some important modifications to improve its effectiveness, efficiency and transparency' (Lewis 2008, p.4).

#### **Stakeholder consultation on the Australian Packaging Covenant**

The mid-term review was a catalyst for the development of the Australian packaging Covenant. Stakeholder input on the Australian Packaging Covenant was via a Covenant Council working group, with industry and community working group members responsible for consulting within their organisations and representing their views. The suggested modifications coming from the mid-term review, such as streamlined reporting requirements, were incorporated into the revised Australian Packaging Covenant.

The consultation ensured stakeholder views were considered and addressed in the Australian Packaging Covenant agreement and contributed to its high level of support.

#### **National Waste Policy**

The National Waste Policy was released in November 2009. This followed a nine-month consultation process with the states, local government, business, industry, and the community and conservation peak bodies. Development of the policy was evidence-based - involving extensive consultation and supported by comprehensive and key analytical work<sup>10</sup>.

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<sup>10</sup> There was comprehensive public consultation with 420 people. 210 submissions were received and 17 major pieces of research and analytical work based on robust data and evidence were commissioned from independent experts. Reports can be accessed [www.environment.gov.au/waste/policy](http://www.environment.gov.au/waste/policy)

Also developed as part of this process were two separate regulatory impact statements, the National Waste Policy Decision RIS<sup>11</sup> and the Computers and Televisions Product Stewardship Decision RIS<sup>12</sup>.

One of the key themes during this consultation was product stewardship, of which the National Packaging Covenant is one example. Suggestions made during the consultation process for the National Waste Policy informed development of the Australian Packaging Covenant.

### **Revised Used Packaging Materials NEPM (the NEPM)**

As outlined in Chapter 3, a minor variation to the NEPM is required to extend it beyond 30 June 2010 and align it with the provisions of the Australian Packaging Covenant (see Chapter 8). The changes do not alter the obligations on industry.

Consistent with the provisions of the NEPC Act 1994, separate public consultation on the NEPM minor variation took place in early 2010. A draft of the NEPM variation<sup>13</sup>, explanatory statement and a copy of the NEPM as it would appear if varied, were released for public consultation on 29 March 2010, with a closing date for submissions of April 27, 2010. The consultation period was advertised through publication of notices in national newspapers, the EPHC website, and through the stakeholder networks normally used in relation to waste issues and consumer packaging matters. No submissions were received.

## **7.3 The Consultation RIS**

The consultation period for this RIS closed on 18 May 2010. The Consultation RIS was widely advertised, including through:

- public notices in *The Australian* on 23 and 24 April 2010.
- details published on the EPHC and Covenant websites.
- email advice to the EPHC mailing list (651 people)
- email advice to the registry of Covenant signatories and interested parties (around 800 people and organisations), and follow-up reminder messages.
- NPCIA requested other Industry Associations to advise their members
- Other networks, including through the Waste Working Group of Standing Committee of the EPHC were also used.

27 responses were received, providing a representative range of individual business, industry, community, and government perspectives. This included 21 responses from signatories and 6 responses from non-signatories (or with unknown status). A full list of submissions is provided at Attachment D along with a summary of responses.

#### **Covenant Signatories (21)**

- 3 industry associations
- 3 local government associations
- 13 brand owners (varying sizes/sectors)
- 1 non-brand owner
- 1 community group

#### **Non-signatories/or unknown (6)**

- 1 industry association
- 4 individuals
- 1 local council

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<sup>11</sup> The Allen Consulting group 2009

<sup>12</sup> <http://www.ephc.gov.au/taxonomy/term/51>

<sup>13</sup> Two minor variations (as alternates) were prepared for public consultation. The first minor variation sought a 12 month extension of the NEPM in the event that the Australian Packaging Covenant was not able to commence from 1 July 2010. The second minor variation, aligned the NEPM with the Australian Packaging Covenant from 1 July 2010.



## Consultation Feedback

85 per cent of submissions (21) identified a preferred option, with over 70 per cent supporting the continuation of a co-regulatory Covenant/NEPM arrangement (as outlined in Options 2, 3, 4).

Other key issues covered in the submissions related to the benefits and risks of different options and the efficiency and effectiveness of the Covenant/NEPM framework

## Preferred Options

There was a clear preference for a co-regulatory arrangement, with the majority of submissions also supporting an on-going co-regulatory arrangement (Table 12).

- The largest support shown for any single option was for Option 4 - 37 per cent of submissions expressed a preference for Option 4, including 4 submissions from non-signatories to the Covenant
- Over 60 per cent of submissions nominated an on-going measure (Options 3 and 4)
- 8 submissions (almost 30 per cent) indicated they did not want a regulated arrangement, or did not identify a preferred option. Those who did not indicate a preference raised concerns about the ability of the current arrangements to deliver outcomes.

**Table 12: Consultation feedback - preferred options**

Preferred option	No of signatories	No of non signatories	total
Option 4	6	4	10
Options 3 or 4	5		5
Option 3	2		2
Options 2, 3 or 4	1		1
Option 2	1		1
Option 1	2	1	3
No regulatory action	1		1
No preference nominated	3	1	4
<b>Total</b>	<b>21</b>	<b>6</b>	<b>27</b>

Support for an ongoing measure (Options 3 and 4) was spread across all sectors (Table 13), with the exception of the community group submission which supported Option 2 on the basis that it provided an enhanced opportunity for review and scrutiny.

- all 4 local government submissions preferred Option 4.
- the three signatory industry associations support either 3 or 4, including the NPCIA, which supports Option 3.

**Table 13: Consultation feedback - preferred options by sector**

Preferred option	Packaging industry*	Industry Association	Local Government	Community group	Individual	Total
Option 4	3		4		3	10
Options 3 or 4	3	2				5
Option 3	1	1				2
Options 2, 3 or 4	1					1
Option 2				1		1
Option 1	2	1				3
No regulatory action	1					1
No preference indicated	3				1	4
<b>Total</b>	<b>14</b>	<b>4</b>	<b>4</b>	<b>1</b>	<b>4</b>	<b>27</b>

## **Efficiency of Covenant/NEPM framework**

Key issues raised in submissions related to:

- Costs and benefits
- Non-quantifiable benefits of Covenant participation
- Flexibility of the arrangements

Submissions expressed a range of opinions about the relative costs versus benefits of the Covenant/NEPM mechanism and some also noted non-quantifiable benefits such as increased collaboration and benefits to reputation. Two submissions indicated that administrative/compliance costs outweighed the benefits gained (Nos. 15, 24), while others expressed concern about the increased costs associated with regulatory uncertainty (e.g. 12 and 26)

## **Effectiveness of the Covenant arrangements**

There was a clear difference in perceptions of the environmental effectiveness of the Covenant between those who supported Option 1 and those who supported continuation of a co-regulatory arrangement (Options 2, 3 and 4).

Positive environmental benefits that respondents identified from their participation in the Covenant included that the reporting arrangements generated greater awareness, with the result of 'more informed discussions with partners in the supply chain including packaging manufacturers, retailers and re-processors' (No. 12) and reduced use of packaging materials (No. 20), and improved packaging design, minimisation and recyclability (No. 23).

## **Flexibility**

Three submissions commented favourably on flexibility in the Covenant, including that action plans are able to reflect business priorities and relative position in the packaging supply chain, and that it facilitates and encourages improved packaging design (Nos. 13, 17, 20).

Four submissions commented on the threshold (the annual turnover required for a brand owner to come under the Covenant/NEPM).

- Two brand owners (Nos. 5, 20) suggested the threshold is appropriate. One of these advocated investigating the effectiveness of raising the threshold.
- Two brand owners (Nos. 15, 19) stated the threshold is too low.

## **Other issues**

Submissions also covered a range of other issues:

- Five submissions noted that currently there is insufficient acknowledgement of signatories and reward for good practice.
- Eight submissions suggested additions to what the Covenant covers - four submissions advocated complementary mechanisms such as extended producer responsibility, and three submissions advocated container deposit legislation.
- Three signatory brand owners suggested changes to how the Australian Packaging Covenant measures eligibility for Covenant contributions or NEPM coverage.
- Four signatories identified the need for the special needs of industries or of individual situations be taken into account in Covenant design, and a further three submissions suggested specific improvements in Covenant operations, for example online reporting to reduce costs.

## **Chapter 8 Implementation and Review**

### **8.1 Implementation**

The NEPM and Covenant (2005-2010) will both expire on 30 June 2010. Action to implement the preferred options would entail extending and revising the NEPM and implementing the Australian Packaging Covenant. The new NEPM would need to be in place by 30 June 2010.

#### **The NEPM**

In November 2009, NEPC agreed to initiate a minor variation process for the Used Packaging Materials NEPM to either (a) extend the duration of the current NEPM for twelve months until 30 June 2011 to allow time for finalisation of the Australian Packaging Covenant or (b) align the NEPM with the Australian Packaging Covenant should it be ready for endorsement by 1 July 2010 (see below in relation to the Covenant).

Consistent with this decision, two variations to the NEPM were prepared and circulated for public consultation.

The variation outlined in (b) above is consistent with the preferred options discussed in this RIS, i.e. continuation of the NEPM without a termination date but with a requirement to review the NEPM every five years. It also includes the other minor changes to ensure consistency between the NEPM and the Australian Packaging Covenant. The minor variations to align the NEPM with the Australian Packaging Covenant involve changes to the duration, revised definitions, updated background information and the inclusion of a review provision. The inclusion of the review provision reflects the removal of the termination provision in the current NEPM. These changes do not involve a significant change to the effect of the NEPM and do not alter the obligation on industry which it imposes.

#### **State and territory regulations**

Under the preferred options (Options 3 and 4) Queensland, South Australia and the ACT will need to amend the regulatory instrument that enacts the NEPM. The changes required to each instrument will vary. No action is required by NSW, Victoria, Tasmania or WA. The Northern Territory is not a signatory to the Covenant.

#### **NEPM enforcement**

Under the preferred options (Options 3 and 4) state and territory governments will continue to enforce the NEPM through state/territory mirror regulation.

Changes under the Australian Packaging Covenant will make this process more efficient and effective. The Australian Packaging Covenant Council ('Covenant Council') will assume greater responsibility for compliance, including identifying brand owners through periodic surveys of packaging that enters the waste stream, making the initial contact with firms to invite them to become signatories, monitoring the performance of signatories, and following up with firms not meeting requirements.

If these procedures are not successful, non-signatory and non-compliant brand owners will be referred to state and territory governments for action in each jurisdiction. Therefore, jurisdictions will only be required to take action under the NEPM as a 'last resort'.

## **The Australian Packaging Covenant**

If the Australian Packaging Covenant is approved by EPHC prior to 30 June 2010 it will commence on 1 July 2010. As soon as it is approved the Covenant Council will advise all current signatories that they will be expected to re-sign the Covenant and to submit a new action plan within 3 months. Signatories will be provided with information on revised action plan and reporting requirements.

The Covenant Council will also commence work on implementing its strategic plan. Current signatories will be required to report as usual in October 2010 for final year of the National Packaging Covenant.

## **8.2 Review**

### **Review of the NEPM**

The minor variation to the NEPM (as outlined in (b) above) includes a review provision which states that the measure 'will be subject to review every five years as part of any comprehensive evaluation of the Covenant'. The criteria for evaluation are specified in the NEPC Implementation Reporting Protocol.

Under Option 3 the first major review would occur by 2015. Under Option 4, the first review will consider the transition of the Covenant to the new product stewardship legislation. This legislation will be in place in 2011. The first products to be covered under the framework will be televisions and computers. Packaging could be considered in 2012-13.

### **Review of the Covenant**

The Australian Packaging Covenant will be reviewed every five years as part of the Covenant Council's strategic planning process. To assist this process, the Covenant Council will annually collect data on each of the Covenant's key performance indicators. Where necessary, the Covenant Council will seek to develop and improve methodologies for collecting and analysing performance data.

## Chapter 9 Conclusion

This chapter summarises the key findings and conclusions of the Decision RIS.

Packaging waste is identified in the National Waste Policy as a key strategy. Since 1999 co-regulatory arrangements, the Covenant and NEPM, have been the primary national mechanism for managing the environmental impacts of packaging. These arrangements lapse on 30 June 2010.

In relation to packaging, the price signals which flow to both producers and consumers are incomplete, and therefore not effective in driving the better management of packaging to improve the use of resources, reduce the environmental impacts of packaging design, enhance away from home recycling and reduce litter.

This Decision RIS assessed four options for managing packaging waste, in terms of their efficiency and effectiveness in addressing governments' objectives and their associated costs. A range of qualitative and quantitative factors have been considered in the impact analysis to provide an 'on-balance' assessment of the comparative strengths and weakness of each option.

Option 1 represents a voluntary approach without underpinning free rider regulation. Firms could join the Covenant, conduct their own voluntary action or do nothing. Options 2, 3 and 4 represent the continuation of the Covenant with free rider regulation through the NEPM. These options provide variations in the duration of the measure and include the potential for the transition of packaging regulation under the Commonwealth Product Stewardship Framework Legislation once it is implemented.

The analysis indicates that the benefits of continuing the current co-regulatory Covenant/NEPM arrangement (Options 2, 3 and 4) outweigh the costs. Option 1 is considered the lowest cost but least effective option in delivering on governments' objective. Further, the assessment identifies Options 3 and 4 as equally preferred options in terms of the criteria applied. The analysis found no discernable difference between Options 3 and 4. Both options are assessed as having equivalent levels of effectiveness and efficiency in meeting governments' objective and, therefore, delivering a net benefit to society.

Consultation comments supported Options 3 and 4 as the preferred approach. However, Option 4 provides an added opportunity for improved harmonization through consistency with the Commonwealth Product Stewardship Framework Legislation.

## Attachments

### **Attachment A: The National Packaging Covenant and the Australian Packaging Covenant**

#### *History of the Covenant*

The Australian Packaging Covenant, which is expected to be introduced from July 2010, will be the third agreement between the packaging supply chain and governments. The essential elements of the Covenant have remained unchanged since it was first signed in 1999, but there have been minor changes in emphasis (Table A1).

When the Covenant (1999-2005) was negotiated in the mid-1990s the costs of kerbside recycling were escalating and commodity prices were falling. There were concerns within government, particularly local government, about the financial viability of recycling and the need for increased support from industry. As a result, the priority was to establish a collaborative and shared responsibility framework for recycling. Financial support was provided by firms in the packaging supply chain, matched by state governments, to improve the kerbside collection infrastructure and develop new markets for collected materials.

The Covenant (2005-2010) built on these achievements and the collaborative relationships that had been established between stakeholders. More emphasis was placed on reducing the life cycle environmental impacts of packaging, for example by reducing material or energy consumption through better design, rather than the impacts at end of life. Financial contributions from industry and government signatories have continued to be invested in recycling infrastructure, but with a shift in focus from kerbside collection to 'away from home' recycling. This reflects the high recovery rates that are already being achieved for most forms of rigid packaging consumed at home. Recycling targets were also introduced for 'recyclable' and 'non-recyclable'<sup>14</sup> packaging materials (Table A1).

A mid-term review of the Covenant (2005-2010) was undertaken in 2008 (Box A1). This concluded that significant progress had been made towards the achievement of the Covenant's overarching targets through a combination of regulatory action by jurisdictions, market forces and Covenant projects.

The mid-term review found that the overall recycling level for post-consumer packaging had increased from 40 per cent in 2003 to 56 per cent in 2007, and that the 65 per cent target for 2010 (Target 1) was likely to be met. The mid-term review found that the recycling rate for plastics which were designated as 'non-recyclable' had increased from 11 per cent in 2003 to 24 per cent in 2007, and hence the 25 per cent target for these materials (Target 2) was also considered likely to be met by 2010. There had been no increase in the amount of packaging disposed to landfill (Target 3) over the period 2003 to 2007, and therefore this target would also be met.

The mid-term review also concluded that it was difficult to establish the extent to which the Covenant (2005-2010) has been responsible for outcomes such as improvements in packaging efficiency and increased levels of recycling, which have also been influenced by

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<sup>14</sup> Non-recyclable materials were defined as materials that were not recycled or recycled at very low rates at the time the Covenant was negotiated (2004-2005). They include plastics coded 4 – 7 (LDPE, PP, PS and 'other') and non-recyclable paper and cardboard packaging.

commercial, political and economic factors. However, progress to date appeared to have been driven, at least in part, by the cooperative efforts of signatories to improve the recyclability and recycled content of packaging and to improve collection and reprocessing systems for post-consumer packaging. The review noted that Covenant-funded projects are expected to make a significant contribution to the amount of recyclable material which will be diverted from landfill by 2010.

A survey of stakeholders undertaken for the mid term review found that most stakeholders would like to see a continuation of the Covenant beyond 2010, with some important modifications to improve its effectiveness, efficiency and transparency. These concerns have been specifically addressed in the design of the Australian Packaging Covenant.

#### **Box A1 The mid-term review of the Covenant (2005-2010)**

Covenant (2005 – 2010) included the requirement for a comprehensive, independent evaluation of progress against the Covenant's overarching targets by the end of 2008.

The mid-term review was undertaken by independent consultants as a number of separate components:

- A summary document (Lewis, 2008)
- An evaluation of Covenant action plans and annual reports by RMIT University (Verghese et al., 2008)
- A review of Covenant-funded projects by Covec (2008)
- An evaluation of stakeholder views by Hyder Consulting (2008b)
- A contextual review by Hyder Consulting (Hyder Consulting, 2008a)
- A survey of community views by Woolcott Research (2008)
- A report on enforcement of the NEPM by jurisdictions by the Victorian EPA (Victorian EPA, 2008)
- Analysis of Covenant signatories by the Covenant Council (NPCC, 2008).

The review was presented to Environment Ministers on November 7, 2008. As a result of the review Ministers requested the Covenant Council prepare a framework for an extended Covenant beyond June 2010.

**Table A1 History of the Covenant, 1999 - 2010**

<b>Covenant</b>	<b>Time period</b>	<b>Objective</b>	<b>Priorities</b>	<b>Targets</b>
Covenant (1999-2005) (National Packaging Covenant)	September 1999-June 2005	<p>To establish a framework based on the principle of shared responsibility for the effective lifecycle management of packaging and paper products...</p> <p>To establish a collaborative approach to ensure that the management of packaging...and the implementation of collection systems including kerbside recycling schemes, produces real and sustainable environmental benefits in a cost effective manner</p> <p>To establish a forum for regular consultation and discussion of issues and problems affecting the recovery, utilisation and disposal of used packaging and paper, including costs</p>	<p>Kerbside recycling infrastructure</p> <p>End markets for 'non-recyclable' materials (mainly plastics coded '4' to '7')</p>	No targets
Covenant (2005-2010) (National Packaging Covenant)	July 2005 – June 2010	<p>To improve the total environmental performance and lifecycle management of consumer packaging and paper by pursuing the following ...performance goals:</p> <p>Packaging optimised to integrate considerations of resource efficiency, maximum resource re-utilisation, product protection...</p> <p>Efficient resource recovery systems for consumer packaging and paper.</p> <p>Consumers able to make informed decisions about consumption, use and disposal of packaging of products.</p> <p>Supply chain members and other signatories to demonstrate how their actions contribute to goals (1) to (3) above.</p> <p>All signatories demonstrate continuous improvement in their management of packaging...</p>	<p>'Away from home' recycling infrastructure</p> <p>End markets for 'non-recyclable' materials and glass</p> <p>Design for the environment</p>	<p>A recycling rate for post consumer packaging of 65% by 2010</p> <p>A recycling rate for 'non-recyclable' packaging of 25% by 2010</p> <p>No new packaging to landfill</p>
Covenant (2010 - ) (Australian Packaging Covenant)	July 2010 –	<p>To minimise the overall environmental impacts of packaging by pursuing these performance goals:</p> <p>Design: optimise packaging to use resources efficiently and reduce environmental impact without compromising product quality and safety.</p> <p>Recycling: efficiently collect and recycle packaging.</p> <p>Product stewardship: demonstrate commitment by all signatories.</p>	<p>'Away from home' recycling infrastructure</p> <p>Litter: infrastructure, enforcement, education</p> <p>Design for sustainability</p>	<p>100% of signatories in the supply chain implementing the Sustainable Packaging Guidelines by 2010</p> <p>Continuous improvement in the recycling rate</p> <p>100% of signatories with formal processes in place to work with others to improve packaging design and recycling, by 2010</p> <p>Continuous reduction in the number of packaging items in litter</p>



### *The Australian Packaging Covenant*

The Australian Packaging Covenant (commencing 2010) will continue to focus on the collection and recycling of packaging consumed away from home, i.e. in public places and workplaces. Targets have been retained but now reflect the increasing focus of the Covenant on packaging design and product stewardship as well as recovery at end-of-life. An ongoing target of 'continuous improvement' in the recycling rate will be supported by more specific targets in the Covenant Council's strategic plan<sup>15</sup>. This addresses concerns raised by the Productivity Commission (Productivity Commission, 2009)<sup>16</sup> about the need to reduce the compliance burden for business.

The design guidelines have been revised to reflect international developments, including the need to address social sustainability issues<sup>17</sup>. The Covenant will also place a higher priority on litter in response to a request by Ministers.

A number of other changes have been made to the Covenant to reduce the administrative burden on signatories, particularly small to medium sized firms. These include:

- a simplified statement of objective
- simplified and a reduced number of goals
- a reduction from 29 to 8 key performance indicators
- removing the requirement for signatories to report consumption data as this data was not robust and not an effective measure of progress against the goals
- streamlined action plans and reporting requirements for signatories.

These changes address concerns raised by the Productivity Commission and some industry associations that the Covenant's current reporting requirements impose an unnecessary burdens on firms (Productivity Commission, 2009, pp. 168-9).

More effective participation in the Covenant by industry signatories will be promoted through a range of capacity-building activities (particularly in design for sustainability) and the introduction of an auditing program. These initiatives are being introduced in response to recommendations from the mid-term review, which identified problems with compliance. All signatories are required to submit an action plan that outlines what they intend to do to contribute to the Covenant's objective and goals and to report annually on progress. In particular, they must implement the Sustainable Packaging Guidelines for design and procurement of packaging; implement policies to buy products from recycled materials; establish collection and recycling programs for packaging materials generated on-site; and take action, where appropriate, to reduce litter. Covenant signatories, with the exception of local government associations and community groups, also agree to make an annual contribution to the Covenant Fund<sup>18</sup>.

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<sup>15</sup> There is no longer a target for 'non-recyclable materials' because most rigid plastics (including those coded 4 - 7) are now included in kerbside collection systems.

<sup>16</sup> Targets were described as aspirational and potentially unachievable, noting the lack of economic analysis which went into their development. The difficulty of setting appropriate targets has been acknowledged in the drafting of the Australian Packaging Covenant. The Australian Packaging Covenant has continuous improvement or 100 per cent signatory participation as its target. If required, specific targets can be set with the agreement of EPHC as part of the Covenant five year strategic plan, or annual business plans.

<sup>17</sup> For example it is recognised that 'openability' is becoming an increasingly important issue due to the ageing population and the high proportion of consumers with disabilities such as arthritis. The name of the guidelines has changed, from the Environmental Code of Practice for Packaging (ECoPP) to the Sustainable Packaging Guidelines.

<sup>18</sup> The fund is used for capacity-building activities to assist signatories meet their Covenant obligations; projects to increase recovery and recycling of used packaging and to reduce litter, and Covenant administration.

### *Covenant (2005-2010) participation*

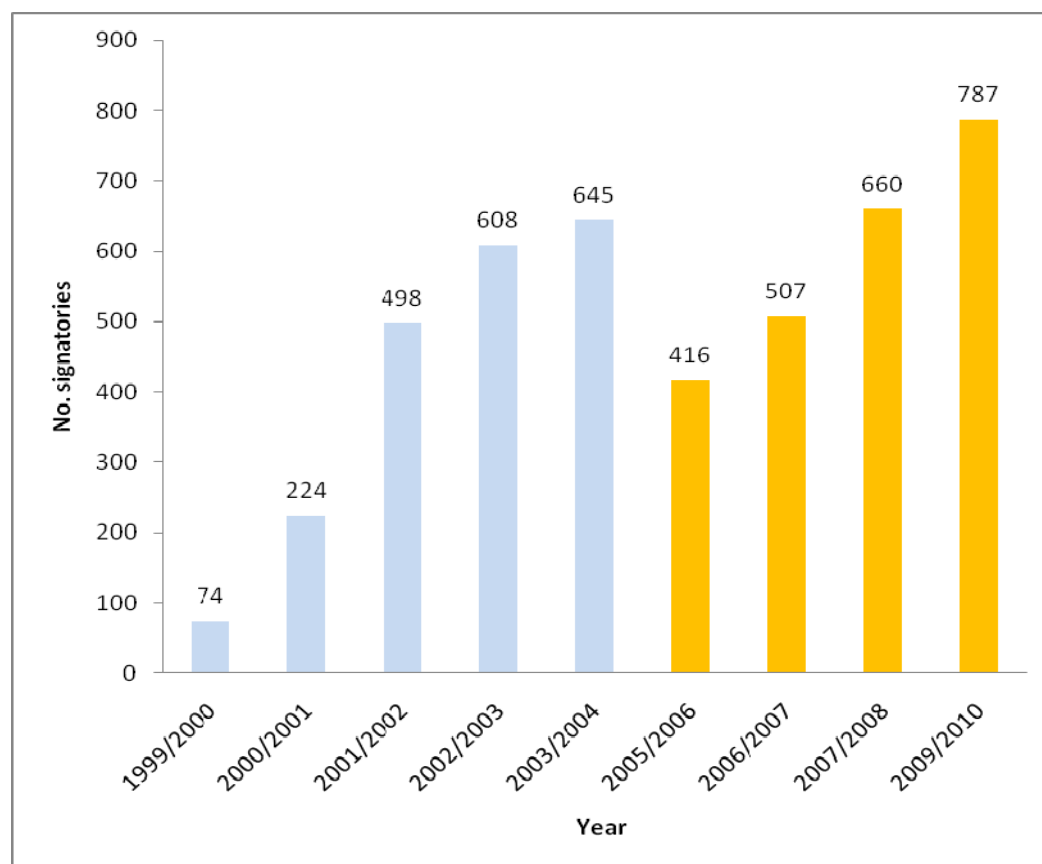
Covenant signatories include organisations at every stage of the supply and recovery chain (Table A2). As at March 2010 there were 787 signatories representing approximately 90 per cent of the packaging produced in Australia and 80 per cent of packaged consumer brands sold in Australia. The combined annual turnover of industry signatories was approximately \$164 billion.

**Table A2: Covenant signatories by sector, March 2010 (NPCC, 2010a)**

Sector	Number
Raw material suppliers	7
Packaging suppliers	58
Brand owners	624
Retailers	49
Waste management firms	14
Community groups	3
Governments	15
Industry associations	16
Other	1
<b>Total</b>	<b>787</b>

The number of Covenant signatories has increased from 74 in 1999-2000, the first year of the Covenant (1999-2005) to 787 in the final year of the Covenant (2009-10) (Figure A1).

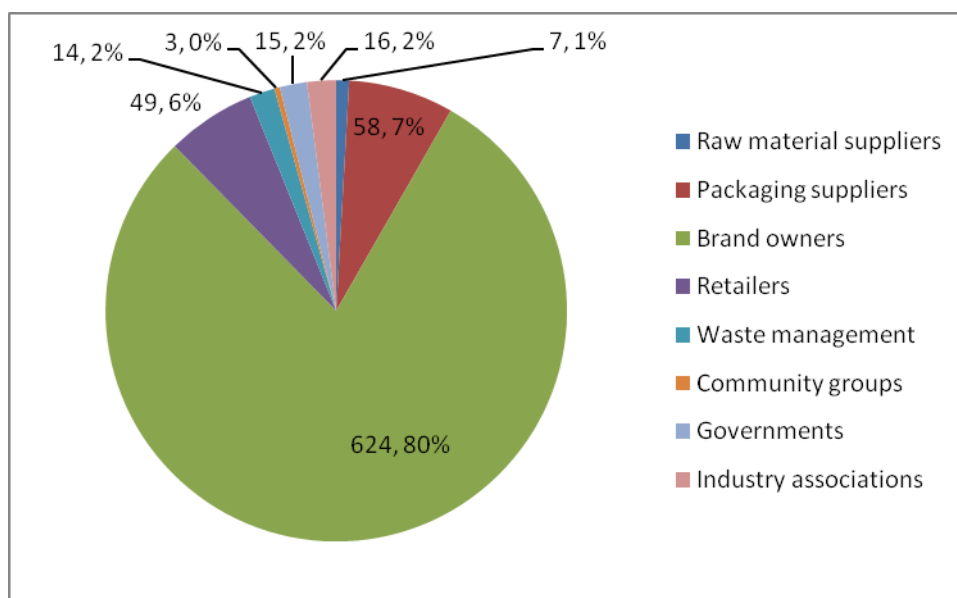
**Figure A1: Covenant signatories, 1999-2000 to 2009-2010<sup>19</sup>**



<sup>19</sup> Data for 1999-2000 to 2008-2009 is from Covenant Council Annual Reports and numbers are for June of the financial year. The only exception is for 2009-2010: this is based on unpublished data from the National Packaging Covenant (30 March 2010).

Overall participation in the Covenant has increased and spread across a wider range of business organisations (Figure A2). In October 2000 the Covenant had 131 signatories, of which 93 were businesses (that is, not community groups, government or industry associations). In June 2006 there were 416 signatories of whom 374 were businesses. In March 2010 there were 787 signatories, of whom 752 were businesses (including 624 brand owners)<sup>20</sup>.

**Figure A2: Covenant (2005-2010) signatories, March 2010**



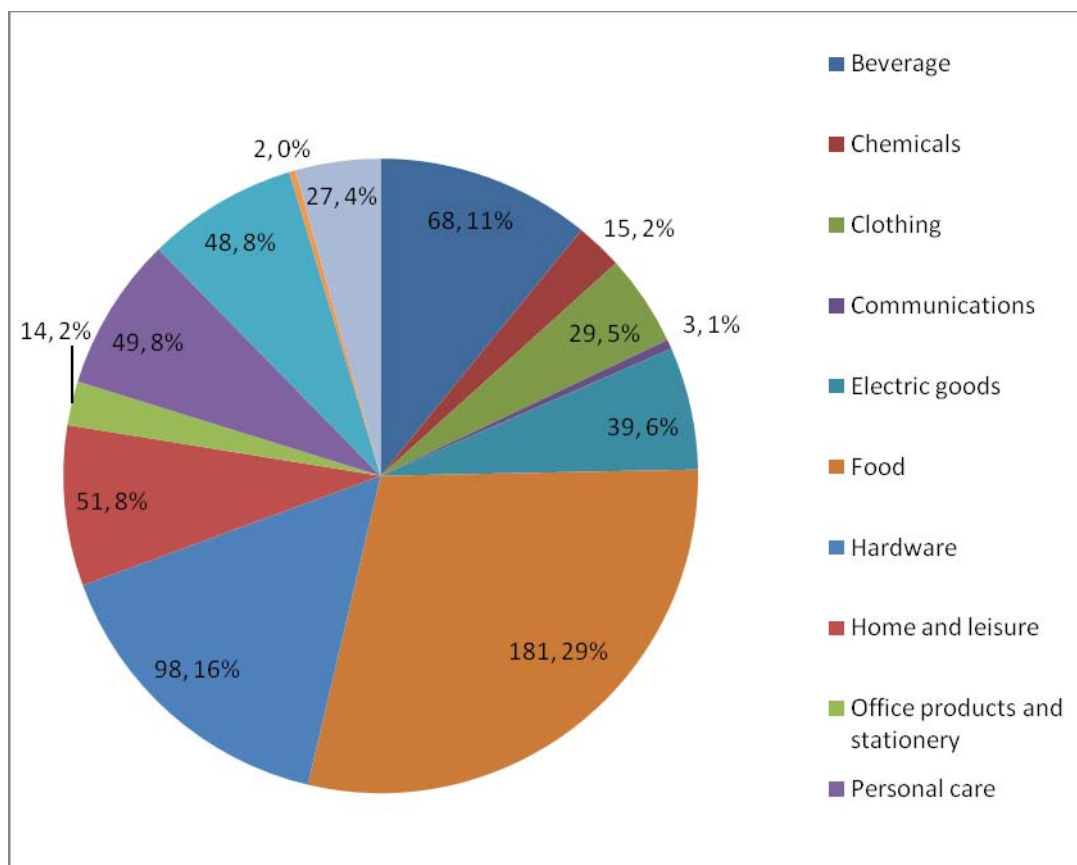
There is a wide range of businesses participating in the Covenant in 2010. While brand owner participants in the Covenant (1999 – 2005) were predominantly beverage and food businesses, there has been increasing participation from clothing, electric goods, hardware, home and leisure, personal care and pharmaceuticals brand owners since 2005. The current spread of brand owner signatories is shown in Table A3 and Figure

**Table A3: Covenant (2005-2010) brand owners by business type, March 2010 (NPCC, 2010a)**

Brand owner sector	
Beverage	68
Chemicals	15
Clothing	29
Communications	3
Electric goods	39
Food	181
Hardware	98
Home and leisure	51
Office products and stationery	14
Personal care	49
Pharmaceutical	48
Plastics	2
Other	27
Total	624

<sup>20</sup> Source National Packaging Covenant Council Annual Reports and web site

**Figure A3: Covenant brand owners by business type, March 2010**



Source: NPCC (2010a)

Signatories frequently report that participation in the Covenant drives benefits as the fundamental requirements to measure packaging use, publicly commit to improved life cycle actions and report progress raises opportunities for improvement.

## **Attachment B: Case studies of Covenant (2005-2010) costs and benefits**

### **Owens-Illinois (O-I)**

O-I is a global glass packaging manufacturer that has developed and released the Lean and Green™ wine bottle which has significant lifecycle benefits over alternative packaging. O-I attributes the development partly to the Covenant but overall to “the need for sustainable innovation in the Australian wine industry”. The company reports that its involvement in the Covenant raised awareness of the complex nature of packaging decisions through the packaging and product supply chains which assisted in the Lean and Green™ development.

As stated on its website:

“Demands from local and export markets for more sustainable manufacturing and continual innovation need solutions. O-I believes leaning and greening our products helps partner customers and the Australian wine industry to provide answers. The Lean and Green™ range of lightweight wine bottles will:

- Maintain the premium image of the Australian wine industry;
- Help protect the industry against bottling moving away from its source;
- Protect, control and secure your brand; and
- Continue supporting Australian wine and related industries.

This process not only delivers lighter containers, but also provides significant energy and water efficiencies per bottle. So choosing leaner and greener wine bottles means improved environmental outcomes for your business and your customers - without compromising the premium look and feel of your products.”

As documented in its Covenant report for 2008-2009, the Lean and Green™ has delivered the following:

- 18 to 28 per cent reduction in bottle weight
- almost 20,000 tonnes of glass saved
- 20per cent reduction in energy use per bottle
- greenhouse gas savings of 11,130 tonnes CO2-e per annum
- 12per cent reduction in water use per bottle
- increased shipping efficiency of 6.25per cent.

O-I reports that the development and equipment required a \$6.5 million investment in 2009 but that it was part of a \$240 million investment in its Adelaide facility since 2000.

At the launch of the Lean and Green™ range in 2009 O-I Asia Pacific President Greg Ridder said that the benefits of the development went beyond life cycle improvement of packaging and highlight how packaging plays a role in the sustainability of whole industries. He said the premium image and environmental benefits of the Lean and Green™ range will help the Australian wine industry meet environmental demands of European markets and secure local benefits that would otherwise be lost to bulk wine export and bottling overseas.

The company reports that it deliberately focussed on product re-design that would maintain the same functionality and premium look as it is of the view that environmental improvements that make wine packaging look lower quality will result in consumers not buying the product, and therefore are not sustainable. O-I claims that despite the significant changes in this bottle, consumers cannot tell the difference.

While not commenting on O-I specifically, The Hon Tony Burke MP, Commonwealth Minister for Agriculture, Fisheries and Forestry commented on the wider impacts of packaging when he made the following observation on 2 March 2010 at the Australian Bureau of Agricultural and Resource Economics Outlook Conference.

“Wine bottles are now about 20per cent lighter than they used to be – making a massive difference on freight charges and associated costs in overseas exports. The new light-weight bottles are also stronger, therefore reducing shrinkage. All of that is incredibly powerful and the benefits float all the way back to the grape growers. At a time where we had such a massive oversupply of wine grapes, every efficiency anywhere along the value chain needs to be found.”

## **Wesfarmers**

Wesfarmers Ltd is Australia’s largest diversified company employing 207,000 people and with revenue exceeding \$50 billion. The company is engaged in the Covenant through its businesses Coles, Bunnings, Officeworks, Target, K Mart, Industrial and Safety and Australian Vinyls.

Wesfarmers Sustainability Manager Cameron Schuster estimates compiling the group report takes two people a total of three days full time work each year, but that is possible only because of the on-going data collection and reporting across the Wesfarmers business divisions. Mr Schuster says the ultimate benefit of the Covenant is in knowledge and communications.

“On-balance the Covenant is a good step forward”, he said. “Just the fact that you’re measuring your packaging and have an action plan to manage it means you’re going to get better.”

In the company’s 2009 Covenant report Wesfarmers Ltd Managing Director Richard Goyder wrote of that Covenant that “...applying the practices and disciplines that have been developed in the business, Wesfarmers will make a positive difference to the environment and the communities in which we operate, which in turn sustains our business.”

## **Anchor Foods**

Anchor Foods is a Western Australian based producer of flour, vinegar, herbs and spices, cordial and baking goods employing 120 people and with a turnover of \$40 in 2009. Anchor Foods reports that data collection and establishing a baseline on packaging use has been difficult and time consuming but now completed it has been integrated into the company IT system and other information gathering, ease of extraction and data integrity has improved. The company attributes reductions in production waste, cost savings and sales increases to the Covenant.

A three year program implementing new packing equipment has reduced wastage and increased efficiency in their operations and also enabled product changes. The product changes have increased the product to packaging ratio about 20per cent and enabled light weight recyclable paper to replace heavier plastic packaging.

A negative trend Anchor Foods reports is that the demand from retailers for shipping cartons to contain fewer single packaged units and be shelf-ready means the company is using more outer packaging per product for many of its consumer lines.

## **Belkin International**

Belkin International is a technology company providing products to computer and consumer electronics users. It is an importer of packaged goods and has used the Covenant to facilitate supplier relations to improve the lifecycle management of its packaging.

The company reports that best opportunities for packaging improvements arise during re-branding and new product design.

In 2009 the company reported its overall product to packaging ratio was 1.98:1 compared with 1.60:1 in 2008. The company reduced packaging waste to landfill from 47.5 tonnes in 2008 to 24.9 tonnes in 2009 and reduced total packaging from 130 tonnes to 127.2 tonnes in the same period.

Belkin reports that the Covenant has assisted its Australian operations to engage with its United States parent company in the product development and design phase, leading to better understanding of how packaging is used and can be changed. Belkin has adopted its parent company's sustainable packaging guidelines and incorporated it into Covenant action plan and reporting.

## **Attachment C: Prices and trends for recyclables in Australia (April 2010)**

Used packaging materials are globally traded commodities. Prices are set by supply and demand linked to the virgin prices for the same materials, further influenced by a wide range of external factors (everything from freight availability to natural disasters such as the 2010 Chile earthquake to large cultural events such as Ramadan and the Lunar / Chinese New Year).

Since 1999-2000 prices in Australia for used paper, cardboard, plastics and metals have been strongly influenced by demand from South –East Asia, and China in particular (used glass packaging has not been so influenced, it is the least volatile and generally lowest price commodity and has traditionally had very limited international trading opportunities).

From 2000 demand from South-East Asia, and again China in particular, drove volumes of materials recovered in Australia to grow faster than domestic recycling and reprocessing capacity. In used paper and cardboard between 2000 and 2009 total volumes of packaging and non-packaging recovery grew from about 1.5 to 2.67 million tonnes, domestic recycling capacity increased from 980,000 to 1.3 million tonnes and exports from 350,000 to 1.2 million tonnes.

In mid to late 2008 Australian prices for recycled materials dropped between 55per cent and 75per cent ( different rates for different materials)as the global financial crisis precipitated contraction of manufacturing, domestically and in South-East Asia.

Industry reports are that mixed paper and old corrugated containers (cardboard) fell from \$115 to \$135 per tonne in early 2008 to \$33 to \$38 per tonne in late 2008 and early 2009. Prices have generally rebounded quickly and started increasing steadily from mid 2009. Published reports are that used paper prices for de-inking grade old newsprint in Australia have moved from \$178 per tonne in March 2008, to \$90 per tonne in March 2009 and \$208 per tonne in March 2010.<sup>21</sup>

Industry reports for mixed paper and old corrugated cartons are that prices have moved from \$115 to \$135 per tonne in March 2008, to \$45 to \$55 in March 2009 and \$100 to \$120 in March 2010. Industry reports for mixed plastics and PET indicate a similar trend but have not returned to pre crash levels as some paper and cardboard grades have. Prices for used mixed plastics in mid 2008 were \$525 to \$565 per tonne, in early 2009 were \$200 to \$235 per tonne and in early 2010 were \$295 to \$310 per tonne. Prices for used PET in mid 2008 were \$790 to \$880 per tonne, in early 2009 were \$480 to \$510 per tonne and in early 2010 were \$425 to \$460 per tonne.

International reports are similar. In the United Kingdom used cardboard moved from £19 (\$AU40.30) per tonne of material in November 2008 to £59 (\$AU122.54) per tonne in May 2009, compared to the 2004-2008 average price of £53 (\$126.14) per tonne. PET plastic moved from £75 (\$AU159.08) per tonne in November 2008 to £195 (\$AU405.02) per tonne in May 2009, compared to the 2004-2008 average of £156 (\$AU371.28) per tonne.<sup>22</sup>

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<sup>21</sup> Pulp & Paper Edge Intelligence Report, Industry Edge, March 2009, March 2010.

<sup>22</sup> Financial Times, 15 May 2009, "Waste outshines gold as prices surge". Currency conversion using Oanda International data, oanda.com (November 2008 £1=\$AU2.121, May 2009 £1=\$AU2.077, 2004-2008 average £1=\$AU2.38)



## Attachment D: Submissions to the Consultation RIS - List of Submitters and Summary of Responses

Submitter Number	Submitter	Type
1.	WALGA	Local government signatory
2.	Mike Ritchie	Individual
3.	West Cape Howe	Brand owner signatory
4.	Brand owner (Confidential)	Brand owner signatory
5.	Hamilton Laboratories	Brand owner signatory
6.	Skye Group	Brand owner signatory
7.	True Alliance	Brand owner signatory
8.	Individual (Confidential)	Individual
9.	Solutions in Store	Brand owner signatory
10.	Webb Distributors	Brand owner signatory
11.	Veolia	Non-brand owner signatory
12.	Australian Food & Grocery Council	Industry association signatory
13.	SCA Hygiene Australasia	Brand owner signatory
14.	Local Government Association of Queensland	Local government signatory
15.	Kenkay Pharmaceuticals	Brand owner signatory
16.	Carter Holt Harvey	Brand owner signatory
17.	Australian Industry Group	Industry association signatory
18.	Manly Council	Local government
19.	Caltex Australia	Brand owner signatory
20.	Sugar Australia	Brand owner signatory
21.	Keelah Lam	Individual
22.	National Association of Retail Grocers of Australia	Industry association
23.	Total Environment Centre	Community group signatory
24.	QANTAS	Brand owner signatory
25.	Dr Patricia Phair	Individual
26.	National Packaging Covenant Industry Association	Industry association signatory
27.	Municipal Association of Victoria	Local government signatory

## Summary of responses to the Consultation RIS

### *Discussion of options*

Over 70% of responses support the Covenant and NEPM (Options 2, 3, 4) and that 'regulatory underpinning is important' (No. 11). Reasons include:

- the Covenant codifies a shared responsibility approach for waste between brand owners, the whole supply chain and government (e.g. Nos. 4, 12, 13).
- there is risk and uncertainty if the NEPM is eliminated (Option One) (see submission 23 and discussion of Options 3 and 4 below).
- a permanent co-regulatory framework helps ensure that 'standards can be increased and laggards brought up to standard. The likelihood of a level playing field developing is improved over the longer term' (No. 19)

Options 3 and 4 were supported in a clear majority of submissions.

- Eight respondents (Nos. 5, 9, 12, 13, 17, 20, 26, 27) identified *greater certainty for business* as a reason to support these options in preference to Options 1 and 2.
- Five parties, including two industry associations supported both options equally (Nos. 9, 12, 13, 16, 17).

Ten submissions expressed a clear preference for Option 4, which will investigate aligning the Covenant/NEPM to the proposed National Product Stewardship framework (Nos. 1, 4, 8, 14, 18, 19, 20, 21, 25, 27). Reasons include:

- clear benefits from streamlining co-regulatory requirements with a unified national approach replacing existing multiple sets of legislation at the State level underpinning the NEPM (Nos. 1, 4, 12, 13, 19, 20 and 27).
- Caltex Australia (19) noted favourably that this approach would also make its treatment of packaging 'consistent with Caltex's current handling of used lubricating oils'.

Two parties had a clear preference for Option 3, citing increased business certainty and the presence of a mechanism for review.

Option 2 was ranked as the highest priority by the community group, since it 'places the new approach 'on trial', that is the pressure is on proven performance' (23).

Three submissions chose Option 1 (Nos. 6, 15, 22).

- No. 22 was sceptical of possible benefits from the Covenant/NEPM, stating that unfettered market forces would do a similar job.

One party preferred no Covenant and letting the NEPM lapse (No. 3).

Four submissions did not express a preference (Nos. 2, 7, 10 and 24).

- submissions 2, 7 and 10 expressed concern about the ability of the Covenant and NEPM to deliver.
- submission 7 requested better education of companies rather than the co-regulatory option.

## **Efficiency of Covenant/NEPM framework**

### *Costs and benefits*

Submissions expressed a range of opinions about the relative costs versus benefits of the Covenant/NEPM mechanism:

- A number of submissions stated that Covenant membership is cost effective (Nos. 9, 12, 13, 26)
- These submissions also stated that they valued taking shared responsibility and having a coordinated approach (the latter was also expressed by Nos. 17, 19 and 21).
- Submission 12 – a representative industry association – states: ‘this industry benefits from the economies of scale and efficiencies gained by a collective and cooperative approach like with the Covenant.’
- One recent signatory brand owner identified its costs as those of covenant membership and extra time costs in evaluating packaging options, anticipating a ‘minimal net financial impact’ from changes made to packaging (No. 5).
- Sugar Australia (No. 20) stated that the estimated costs were reasonable but that there were also significant indirect costs. They report that these costs were largely balanced by benefits, with the data they collect for Covenant reporting requirements a useful baseline against which to make informed decisions. Benefits have also been realised in a move toward standardised packaging which has decreased costs and improved flexibility. Some negative financial impacts were identified with projects such as on site recycling (even though these were considered necessary by the company).
- Two submissions state that, in their view, administrative/ compliance costs outweigh the benefits gained (Nos. 15, 24), with another requesting greater simplicity (No. 10).
- A number of submissions (e.g. Nos. 12 and 26) expressed concern about the increased costs associated with regulatory uncertainty.

## **Non-quantifiable benefits of Covenant participation**

Non-quantifiable benefits that were noted included that:

- the Covenant provides a ‘valuable forum’ (No. 12) for key stakeholders in industry, local, state and federal governments, and has increased collaboration throughout the supply/ recovery/ packaging chain (for companies which often would normally be competitors) (No. 26).
- participation has generated reputation benefits (20).
- the Covenant makes a positive contribution to addressing local government concerns that they bear an unfair burden for waste management.

## **Flexibility**

Three submissions (Nos. 13, 17, 20) favourably discussed the flexibility of the Covenant, with two stating that it enables flexibility to tailor action plans that reflect business priorities and relative position in the packaging supply chain (Nos. 13 and 17) and the other that it encourages improved packaging design.

## Effectiveness of the Covenant/NEPM framework

### *Covenant aims to achieve environmental outcomes*

The aim of the Covenant is to contribute to reducing the environmental impacts of packaging. Most respondents to the Consultation RIS agree that the Covenant plays a positive role in achieving these aims. Submission 12, for example, states: '[t]he improvements to the recycling rate over the last decade has been significant and while not absolutely or solely achieved as a result of the Covenant, there is no doubt the Covenant has contributed to the improvements.' The fact that most signatories continue to voice strong support to the Covenant is evidence that there is general agreement that the Covenant achieves positive results.

Data collection was an issue for submission 16, which requested better quantification of the relative influence of regulatory and non-regulatory/market drivers in packaging waste reduction.

There was a clear difference in perceptions of the environmental effectiveness of the Covenant between those who supported Option 1 (6, 15, 22), the alternative of no NEPM/Covenant (3), and some of those did not state a clear preference (2, 7, 10) on the one hand, and those who supported Options 2, 3, and/or 4 (1, 4, 5, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27) on the other.

Positive environmental benefits that respondents identified from their participation in the Covenant include the following:

- The Australian Food and Grocery Council (No. 12) stated that committing to the Covenant and its reporting arrangements generated greater awareness, with the result of 'more informed discussions with partners in the supply chain including packaging manufacturers, retailers and re-processors' (see also Nos. 9, 16 and 20).
- Respondents identified reductions in their use of packaging materials (No. 20), and 'improvements in packaging design, minimisation and recyclability' (No. 23).
- Use of project funding by local governments to develop projects to improve the collection of used packaging materials (No. 14).
- Net community benefits, due to the ability of signatories, through the funding arrangement, to contribute to 'waste and litter reduction projects in other parts of the supply chain and in the wider community' (No. 20).

Variables identified which impact on the Covenant's effectiveness include 'individual signatories' commitment to action within the covenant and their capability' (no. 19).

### *Covenant aims to provide effective industry coverage*

Relatively few submissions commented on the threshold (the annual turnover required for a brand owner to come under the Covenant/NEPM).

- Two brand owners (Nos. 5, 20) suggested the threshold is appropriate. One of these advocated an investigation into raising the threshold.
- Two brand owners (Nos. 15, 19) stated the threshold is too low.

A number of submissions commented on the existence of 'free riders'.

- No. 8 commented on the variable quality of action plans.
- No. 19 identified the real possibility of free riders if there is regulatory uncertainty.

## Other issues

### *Suggestions for future changes to the Australian Packaging Covenant*

A number of respondents noted that currently there is insufficient acknowledgement of signatories and reward for good practice:

- Submission 9 identified a need to promote the collective force of the Covenant better to the general public (See also Nos. 1, 16).
- No. 4 suggests signatories receive a clearer competitive advantage over those who do not sign up (e.g. when selling to Government institutions).
- No. 19 stated 'there is little or no credit for best practice organisations'.

Some submissions suggested additions to what the Covenant covers:

- Four submissions advocated complementary mechanisms such as extended producer responsibility (Nos. 1, 18, 21, 25).
- Three submissions advocated container deposit legislation (Nos. 1, 18, 21).

Three signatory brand owners suggested changes to how the Australian Packaging Covenant measures eligibility for coverage under NEPM regulation or Covenant contributions.

- No. 19 suggests targeting sectors, brand owners and retailers that generate the largest quantities of waste. It also suggests identifying and pursuing bad actor companies or products.
- Submission 24 suggests granting concessions to those who produce less than 100 Tonnes of packaging if the organisation can demonstrate continual improvement through internal waste reduction programs.
- Submission 4 suggested that Covenant contributions be based on the amount of packaging placed in the market (rather than on turnover) as a reward and encouragement for eco-design.

A number of signatories asked that the special needs of industries or of individual situations be taken into account.

- Some industries (e.g. the pharmaceutical industry (No. 5)) are impacted by tight standards about packaging, which means packaging changes are necessarily going to be few and costly.
- Submission 12 discussed the need of its industry to ensure the safety and quality of products through the supply chain, which may conflict with the aims of decreasing packaging.
- Submission 20 noted sometimes optimising business efficiency and reducing the overall environmental footprint through logistical flexibility and reducing product spoilage requires an increase in packaging.
- Submission 16 identified a risk in simply aiming at increasing recycling rates, since virgin fibre paper from purpose-grown forests has advantages in some industries and it may be that transporting materials a long way for recycling is counter-productive.

In addition:

- submissions 2 and 6 suggest that reduced packaging is better achieved through pressures on business to minimise freight costs.
- Two respondents suggested greater focus upon packaging, one requesting that manufacturers be held responsible for better design (25), and the other desiring more attention to the difficulties of separating out smaller packaging at recycling facilities (11).
- No. 10 suggested changing to a system of online reporting.
- No. 2 suggested that a new process for funding and overseeing projects is required.
- Two submissions (Nos. 16, 22) argue it would be more environmentally effective to introduce higher landfill taxes or fines for litter.
- One submission (No. 8) suggested that greater benefits would be derived from more regulation.
- Submission 11 supports the Australian Packaging Covenant's increase in 'away from home' recycling initiatives.
- A community member respondent (No. 25) asked that environmental impacts of recycling particular materials be considered.

### *Recycling Industry*

A number of comments were made about the impact of commodity prices and transportation costs on recycling.

### *Litter*

All saw litter as a separate issue requiring separate strategies to address.

### *National Waste Strategy*

Several submissions made connections between the objectives of the Covenant and the National Waste Strategy, stating that they regarded them as consistent (Nos. 13, 17, 21).

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