



The National Packaging Covenant

National Packaging Covenant Council

Consultation Proposal

for

Strengthening the National Packaging Covenant

June 2004

PROPOSAL FOR CONSULTATION

PREFACE

This consultation proposal has been developed by the National Packaging Covenant Council and does not necessarily commit governments and/or industry to a specific course of action. The National Packaging Covenant Council released the consultation proposal to inform discussion on strengthening the National Packaging Covenant and to provide a basis for consultation and negotiation on the Covenant's future. Following input from stakeholders, the Council is aiming to provide its final proposal to governments in October 2004.

The consultation process will be undertaken during June, July and August 2004 and will include:

- Discussion paper available for comment from 25 June 2004
- Consultative workshops held in each State and Territory through July and August. (Dates and locations to be advised)
- Written Stakeholder submissions on the consultation proposal due by 6 August 2004 and addressed to:

Chief Executive Officer
National Packaging Covenant
Level 3, 15-17 Park St
South Melbourne Vic 3205

- National Packaging Covenant Council meeting on 8 September 2004 to finalise its proposal for submission to Governments in October 2004

Governments will then consider the results of this consultation process in order to inform a collective decision on the future of the Covenant by April 2005.

Further information on the National Packaging Covenant and the consultation process can be found at www.deh.gov.au/industry/waste/covenant

PROPOSAL FOR CONSULTATION

CONTENTS

Proposal for Strengthening the National Packaging Covenant	5
Strengthening the Strategic Framework	6
Strengthening Action Plans and Reports	7
Proposed Company and Government Specific KPI's	7
Strengthening Enforcement & Covenant Compliance	8
NPC Council.....	8
Application of the NEPM	8
Performance DATA	9
Funding the Next Phase of the Covenant	9
Program focus and funding	9
Program Funding	10
PART 1 - Strengthening the Strategic Framework.....	11
Covenant Performance Goals and Key Performance Indicators	11
Covenant Actions (deliverables) and KPIs	13
Scope and boundaries of consumer packaging covered by the Covenant	17
PART 2 - Strengthening Action Plans and Annual Reports.....	18
Monitoring and Review.....	19
Guidance and Education.....	19
Timeframes.....	19
Proposed Company Specific KPI's	19
Proposed Government Specific KPI's	20
PART 3 - Strengthening Enforcement & Covenant Compliance.....	21
Key areas for action	21
Specific issues and recommendations:	21
PART 4 - Funding a future Covenant	23
Background To current Funding Arrangements/Contributions.....	23
Funding to improve kerbside recycling efficiencies.....	23
Funding Groups.....	23
Covenant Evaluation.....	24
Areas and arrangements for funding under a future Covenant:	25
Administration Team.....	25
Communication/Support team.....	25
Program funding and focus	26

PROPOSAL FOR CONSULTATION

National Projects: 26
State based projects: 27
Program funding 27
ANNEXURE 128

PROPOSAL FOR STRENGTHENING THE NATIONAL PACKAGING COVENANT

At their April meeting, Ministers agreed to an interim extension of the Covenant to April 2005, in order to allow the National Packaging Covenant Council (NPC Council) time to develop a detailed proposal for future arrangements. Ministers anticipate that a fully formed and negotiated draft proposal will be submitted for consideration at their meeting in October 2004. Ministers also agreed to convene by teleconference in July 2004, to formally approve extending the associated NEPM¹ to July 2005, and to consider a progress report by NPC Council on the development of a strengthened Covenant.

This Proposal reflects the NPC Council's recommendations for concrete actions and changes to strengthen the Covenant taking into account the findings of recent reviews of the Covenant. The Proposal is presented as a starting point/basis for consultation and negotiation with key stakeholders over the coming months.

The findings of the Nolan Report² and the evaluations undertaken by the Australian Local Government Association (ALGA) and the NSW Nature Conservation Council (NCC) were consistent in identifying key areas for strengthening the operation of the current Covenant/NEPM model. The strengthened model must –

- Deliver **measurable outcomes** in managing the environmental impact of consumer packaging;
- Require signatory **action plans** and reports to contain detailed actions, outcomes, timelines and quantifiable performance measures;
- Better utilise the **NEPM** process by improving Covenant Council assessment processes and jurisdictional enforcement regimes; and
- Be adequately resourced and **funded**

Consistent with the Covenant evaluations, the NPC Council recommends the core of the policy package be retained.³ As much of the operational detail for the Covenant is contained in Schedules and associated documents, substantial improvements can be achieved in its implementation without alteration to the Covenant core document. This will avoid the potential need for a second signatory sign-up phase.

As with the Covenant document, NPC Council considers the core NEPM document does not require revision in order to address the recommendations made to strengthen its implementation and that strengthening can be achieved by improving the processes for implementation.

¹ National Environment Protection Measure for Used Packaging Materials (the NEPM)

² National Packaging Covenant Council – Evaluation of the Covenant, Nolan-ITU Pty Ltd, January 2004.

³ Nolan Report, page xi

PROPOSAL FOR CONSULTATION

The Nolan Report recommends the continuation of the Covenant for a minimum of three years. NPC Council therefore proposes that the strengthened Covenant/NEPM arrangement be extended for five years to 2010. This would ensure a sufficient time period for improvements to be developed and implemented, data collected and achievements analysed.

The NPC Council therefore proposes that consultation be initiated on the basis that:

1. The core Covenant document will be retained. Significant amendments will be made to substantially strengthen its operational components.
2. The core NEPM document be retained with the focus on substantially strengthening its usability for enforcement and compliance.
3. The strengthened Covenant arrangement continue for five years.

Based on the recommendations put forward by the Covenant evaluations, NPC Council has determined that the key issues raised relate to the following areas:

- Strengthening the Strategic Framework
- Strengthening Action Plans and Reports
- Strengthening Enforcement & Covenant Compliance
- Funding the next phase of the Covenant.

This Proposal recommends proposed actions in each of these key areas. Parts 1 to 4 of this Proposal discuss each of the key areas in more detail and will form the basis for consultation and discussion with stakeholders.

Proposals relating to each key area are summarised below.

Strengthening the Strategic Framework (see Part 1)

To ensure that any future Covenant arrangement can demonstrate real, measurable and sustainable environmental benefits, it is proposed that:

4. A number of environmentally focused performance goals, actions and key performance indicators be adopted across the full lifecycle of consumer packaging.
5. An approach based upon continuous improvement referenced against industry baseline data for the different packaging supply sectors in relation to key material types.
6. The scope and boundaries of consumer packaging covered by the Covenant be clarified to include collection systems to recover consumer packaging at public places, workplaces and commercial and industrial premises, in addition to kerbside and other domestic collection systems.
7. The range of consumer packaging materials under the Covenant be clarified to include distribution packaging and aspects of litter.

PROPOSAL FOR CONSULTATION

8. The inclusion of newsprint and magazines under the Covenant and any other consumer packaging materials not currently included be explored during the consultation process.

Strengthening Action Plans and Reports (see Part 2)

Action plans and reports play a critical role in the Covenant arrangement, however the current process has received strong criticism from the Covenant evaluations. The process can be burdensome for both signatories and the NPC Council administration, the quality of action plans is highly variable and generally action plans have not enabled quantifiable outcomes to be determined.

It is therefore proposed that:

9. Signatories report against agreed sector specific and overarching key performance indicators (KPIs) in a consistent, transparent and verifiable manner developed and monitored by NPC Council.
10. Signatories be encouraged to develop comprehensive three-year action plans including clear evidence that the Environmental Code of Practice for Packaging has been implemented and is incorporated into standard business practice and that the required data is being monitored and recorded.
11. Signatories report annually against relevant KPIs in subsequent years but not be required to submit annual action plans.
12. NPC Council develop and require the use of templates (dependent on both company size and sector) to standardise action plans and reports.
13. Action plan assessment includes strengthened audit, verification and review processes in order to ensure a high quality of action plans.
14. Industry revises the Environmental Code of Practice for Packaging, incorporating product stewardship guidelines, by April 2005.
15. Action Plan workshops be held across Australia to ensure effective communication of the strengthened requirements and KPIs.
16. The strengthened Action Plan process commence in July 2005, with baseline data due to be established by all signatories by September 2005.

These proposals will reduce the administrative burden on signatories while ensuring that companies provide consistent and robust data. It will also simplify the action plan process. The action plan development kit would need to be revised to reflect these changes.

PROPOSED COMPANY AND GOVERNMENT SPECIFIC KPI'S

Company and Government specific KPI's will be further developed through the consultation process.

Examples of proposed company specific KPI's include:

- Proportion of recycled content used per annum in packaging by material type;

PROPOSAL FOR CONSULTATION

- Weight and type of packaging material sent to landfill and recycling, respectively, from company factory operations

Examples of proposed government specific KPI's include:

- Weight of packaging material sent to landfill;
- Weight of packaging material recycled, by material type;
- Diversion rates from landfill of the various recycling systems

Strengthening Enforcement & Covenant Compliance (see Part 3)

The NEPM for Used Packaging Materials provides the regulatory underpinning to the Covenant arrangement. The Covenant evaluations have suggested that the weakness in the current NEPM model rests not with its structure or design but rather with its current implementation and application. The following proposals are therefore designed to strengthen Government's combined ability to use the current NEPM instrument more effectively.

Key areas to be actioned include:

NPC COUNCIL

It is proposed that NPC Council:

17. Adopt a clear and transparent process/mechanism to review and recommend whether signatories are no longer exempt from the provisions of the NEPM on the basis that they are failing to fulfil their obligations under the Covenant⁴.
18. Establish a transparent mechanism for suspending or expelling signatories to ensure the Covenant does not tolerate non-performers and that non-compliant signatories are subjected to the stringent requirements under the NEPM.
19. Develop a clear process for the referral of non-signatories to the relevant jurisdictions.

This proposal for transparent Council decision-making processes relating to non-compliance will enhance each jurisdiction's ability to pursue rigorous enforcement action under the NEPM by providing a clear 'trigger' for application of the NEPM.

APPLICATION OF THE NEPM

20. It is recommended that the current 1% market share interpretation agreed by jurisdictions for exemption under the NEPM be retained, however a process for substantiating this claim by brand owners must be developed. This could be achieved, for example, by requiring statutory declarations.

⁴ NEPM, clause 11

PROPOSAL FOR CONSULTATION

PERFORMANCE DATA

The lack of performance data has been a critical issue identified in all evaluations. The NPC Council therefore proposes-

21. That a minimum standard data reporting be required from all industry signatories to be provided annually as a parallel process to that which is already in place for local government under the NEPM. This data set will be drafted for discussion and agreement as part of the consultation process.

Funding the Next Phase of the Covenant (see Part 4)

The Covenant reviews raised a number of issues concerning:

- The effectiveness of the administration of the Covenant process
- The inadequate communications and promotion activities
- The ad hoc approach to training and education
- The lack of resources for Action Plan support and evaluation

It is proposed, subject to adequate funding being made available -

22. That both Administration and Communications be allocated specific funding and personnel under a future Covenant. Notional staffing numbers will need to be agreed for each area following further discussion and completion of a workflow analysis.
23. That the Administration and support teams should be located together (location and premises to be agreed) and provide nation-wide assistance and support.
24. That the Administration and support teams be jointly funded by all jurisdictions including the Commonwealth, and industry on a 50/50 basis.

PROGRAM FOCUS AND FUNDING

25. It is proposed, subject to the availability of funds, that program funding be made available for specific programs which target the following:
 - Improving kerbside efficiencies to increase recovery of consumer packaging and paper;
 - Improving recovery of consumer packaging, distribution packaging and paper from public places and commercial and industrial premises;
 - Aspects of litter reduction for consumer packaging and paper; and
 - Sectoral or material specific partnership programs which address agreed barriers to recovery, reprocessing or utilisation of consumer packaging and paper.

PROPOSAL FOR CONSULTATION

PROGRAM FUNDING

26. It is proposed that a more flexible approach to program funding be adopted with the ability for sole industry or jurisdictional funding as appropriate and for joint industry-jurisdictional funding as appropriate.

[It should be noted that the basis for current Covenant funding is a 50:50 split between jurisdictions and industry.]

27. It is further proposed that future joint program funding be agreed between parties on the basis of:
- The establishment and implementation of a process by the NPC Council for identifying joint funding priorities from any or all of the areas listed above on an annual basis.
 - The development of clear funding guidelines, including funding criteria and monitoring, reporting and evaluation processes for each of the areas identified above.
 - That funding be considered on the recommendation of jurisdictional groups representing industry, Councils and state governments.
28. In relation to future funding under a strengthened Covenant, industry commits to rolling over any surplus funds from the current Covenant.
29. Future industry funding of programs will continue.

PROPOSAL FOR CONSULTATION

PART 1 - STRENGTHENING THE STRATEGIC FRAMEWORK

This section outlines specific actions for addressing key recommendations of the Nolan Report which focuses on significantly strengthening the Covenant's strategic framework.

To ensure that any future Covenant arrangement can demonstrate real, measurable and sustainable environmental benefits, the Nolan Report recommends the -

- Development of explicit, environmentally-focused performance goals;⁵
- Development of Key Performance Indicators (KPIs) that enable measurement of the efficacy of Covenant Plus over its duration;⁶ and
- Clarification of the scope and boundaries of consumer packaging covered by the Covenant, including the inclusion / exclusion of household paper.⁷

This section is divided into two parts – the first part covers Covenant performance goals and KPIs and the second part covers Covenant scope and boundaries. The KPI's proposed in this part aim to measure the effectiveness of the Covenant overall and will provide the basis for refining specific KPI's for inclusion in signatory Action Plans during the consultation process. Covenant KPI's will need to be modified as appropriate for addressing in individual Action Plans.

It is recognised that signatory performance in meeting their obligations under the Covenant cannot always be assessed purely based upon performance related to KPI's. Signatories may provide additional information in Action Plan Annual Reports to clarify performance in relation to KPI's, for example where overall environmental benefits of packaging changes can be demonstrated. Some suggested KPI's for signatory Action Plans are set out in Part 2 – 'Strengthening Action Plans and Annual Reports'.

COVENANT PERFORMANCE GOALS AND KEY PERFORMANCE INDICATORS

The Covenants stated objectives⁸ are -

- Establish a framework based on the principle of shared responsibility for the effective lifecycle management of packaging and paper products including their recovery and utilisation
- Establish a collaborative approach to ensure that the management of packaging and paper throughout its lifecycle and the implementation of collection systems including kerbside recycling schemes, produces real and sustainable environmental benefits in a cost effective manner

⁵ Nolan Report, A-2 at p63

⁶ Nolan Report, A-3 at p63

⁷ Nolan Report, A-5 at p64

⁸ Covenant Part 2 at p1

PROPOSAL FOR CONSULTATION

- 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

These objectives and related objectives are elaborated upon throughout the Covenant and can be distilled into four key goals –

To establish a national framework:

Goal 1: Based on the principles of product stewardship and shared responsibility;

Goal 2: Implemented through a collaborative approach between all participants in the packaging chain;

Goal 3: For the effective management of packaging and paper products throughout their lifecycle-

3.1 in a way that minimises adverse environmental impacts;

3.2 that supports viable market-based collection systems including national sustainable kerbside recycling schemes;

3.3 that encourages innovative design and material selection on merit which takes into consideration commercial and environmental implications arising from packaging and the associated product.

Goal 4: Which provides a forum for regular consultation and discussion of issues and problems affecting the effective lifecycle management of packaging and paper products.

To achieve these Covenant goals all participants in the packaging chain - raw material suppliers, designers, packaging manufacturers, packaging users, brand owners, retailers, consumers, all spheres of government, collection agencies:

- Accept responsibility for the environmental impacts associated with their sphere of activity;
- Work cooperatively to optimise environmental outcomes associated with their sphere of activity; and
- Support sustainable systems and practices that optimise reduction in resource use, increase resource recovery and reduce disposal of used packaging and paper.

The National Packaging Covenant Council will provide an effective forum to support a collaborative approach in resolving issues arising under the Covenant.

PROPOSAL FOR CONSULTATION

Covenant Actions (deliverables) and KPIs

In order to achieve the performance goals identified in the previous section, specific actions are needed as well as ways to measure their effectiveness. Proposed actions and key performance indicators (KPIs) for the Covenant are set out below. The information sought is designed to determine the total weight of material types flowing through the packaging supply chain rather than reporting on the performance of individual companies. To build an overall picture of Covenant effectiveness, it should be noted that company signatories throughout the packaging supply chain will be obliged to provide specific data to build this overall picture. Data requirements will need to be further developed and will be tailored to meet standard business practice without additional cost to industry. It is recognised that issues such as commercial in confidence exist and the use of aggregated reporting will be explored to overcome these concerns.

Actions – Overarching	KPIs	Responsibility
1. Maximise Covenant participation rate across packaging supply chain	<ul style="list-style-type: none"> • Sector market share represented by signatories for material types 	<ul style="list-style-type: none"> • National Packaging Covenant Council
2. Develop nationally consistent data collection methodology and key indicators to measure the source and generation of packaging materials, the utilisation of recovered materials by secondary markets and the disposal of residual packaging to landfill	<ul style="list-style-type: none"> • Data collection methodology developed • Data collection methodology implemented 	<ul style="list-style-type: none"> • National Packaging Covenant Council • All signatories
3. National Packaging Covenant Council to provide an effective forum for consultation and discussion of Covenant issues	<ul style="list-style-type: none"> • Council membership to include representation of all key stakeholder groups • Council to regularly report on- <ul style="list-style-type: none"> -application of Covenant funds and outcomes of projects -achievements in meeting Covenant objectives -Council meetings and recommendations • Council to publish an Annual Report 	<ul style="list-style-type: none"> • National Packaging Covenant Council

PROPOSAL FOR CONSULTATION

Actions - Specific ⁹	KPIs	Responsibility
1. Packaging designed and manufactured so as to minimise the amount of material essential to guarantee the protection, safety and hygiene of the product, including distribution.	<ul style="list-style-type: none"> • Total weight of packaging (primary, secondary & distribution) used per annum (domestic and imported) in proportion to (total weight of) the products packaged • Continuous improvement by reference to industry baseline data¹⁰, for reduced materials use to be determined for material types 	<ul style="list-style-type: none"> • Packaging Supply Chain • Packaging Supply Chain
2. Packaging designed/manufactured to optimise the amount of post-consumer recycled content	<ul style="list-style-type: none"> • Proportion of recycled content used per annum in packaging by material type (including plastic bags)¹¹ • Continuous improvement by reference to industry baseline data, to be determined for post-consumer content for key material types 	<ul style="list-style-type: none"> • Packaging Supply Chain • Packaging Supply Chain
3. Packaging designed and manufactured to optimise its recoverability through collection systems including kerbside recycling schemes	<ul style="list-style-type: none"> • Reduction in new and existing product packaging unable to be recovered and re-utilised. • Reduction in contamination rates for collection and material recovery systems • Total weight of packaging disposed to landfill (per tonne) • Continuous improvement by 	<ul style="list-style-type: none"> • Packaging Supply Chain • All signatories • All signatories • Packaging Supply Chain

⁹ KPIs 1 –7 based upon NPC Part 4 Product Stewardship

¹⁰ To facilitate development of aggregate data to determine Covenant progress against its objectives

¹¹ It is recognized that packaging products will only be one of a number of potential markets for recycle

PROPOSAL FOR CONSULTATION

	reference to industry baseline data, to be determined for recovery rates for material types	
4. Secondary market creation supported for recovered packaging material	<ul style="list-style-type: none"> • Total weight of packaging material reutilized by type and end market • Diversion rates of recovery systems for material types eg. domestic, public place, commercial & industrial • Continuous improvement by reference to baseline data, to be determined for packaging material re-utilisation rates by material types¹² • Total resource allocation for research and development to address agreed barriers • Proportion of Buy Recycled purchasing policies: <ul style="list-style-type: none"> - Aust. Government agencies - State/Territory Government - Local Government - Industry 	<ul style="list-style-type: none"> • All signatories • State & Local governments • All signatories • All signatories • All signatories
5. Minimise environmental hazards associated with disposal.	<ul style="list-style-type: none"> • Quantity of packaging in litter stream (by material, weight and volume) • Continuous improvement by reference to baseline data, • Total resource allocation for education, and research and development to identify and 	<ul style="list-style-type: none"> • National Packaging Covenant Council • All signatories • All signatories

¹² This KPI aims to help track market development for key materials and does not indicate a preference for any particular material or market

PROPOSAL FOR CONSULTATION

	address/reduce environmental impacts	
6. Adoption of Environmental Code of Practice for Packaging	<ul style="list-style-type: none"> • Number of signatories who have formally adopted the Code and developed systems for implementation 	<ul style="list-style-type: none"> • Packaging Supply Chain
7. Develop, monitor and implement preferred best practice collection principles (including kerbside)	<ul style="list-style-type: none"> • Number of Councils operating according to best practice collection principles 	<ul style="list-style-type: none"> • State and Local Governments
8. Provision of Collection Services	<ul style="list-style-type: none"> • Proportion of households covered by kerbside collection systems • Proportion of households covered by other collection systems • Proportion of commercial & industrial premises covered by collection systems • Proportion of councils providing public place recycling infrastructure • Proportion of Government agencies providing in-house recycling facilities 	<ul style="list-style-type: none"> • State and Local Governments

PROPOSAL FOR CONSULTATION

SCOPE AND BOUNDARIES OF CONSUMER PACKAGING COVERED BY THE COVENANT

The second stated Covenant objective refers to '...implementation of collection systems including kerbside recycling schemes.'¹³. While the focus of the Covenant's first term has been on residential kerbside collection systems the Covenant is not limited to kerbside systems. It is proposed that the Covenant be clarified to encourage a focus on a broader range of recycling collection systems to recover consumer packaging at-

- Public places;
- Workplace/commercial premises; and
- Industrial premises.

Over the term of the current Covenant the range of consumer packaging materials has been interpreted to include litter (where relevant to recovery of packaging materials through kerbside collection systems). Distribution packaging is also commonly addressed in signatory Action Plans while not being explicitly included within 'consumer packaging' under the Covenant.

It is proposed that the scope of consumer packaging materials covered by the Covenant be clarified to include these materials.

It is further proposed that the inclusion of newsprint and magazines under the Covenant and any other consumer packaging materials be explored during the consultation process.

¹³ Covenant Part 2, second dot point at p1

PART 2 - STRENGTHENING ACTION PLANS AND ANNUAL REPORTS

The Action Plan development and assessment process has been strengthened significantly over the life of the Covenant. This has resulted in an increased burden on both the signatories and the NPC Council administrations but has not improved the quality of many of the plans, nor are quantifiable outcomes able to be determined. Recent Covenant evaluations were also critical of the action plan process and a number of recommendations were put forward to improve and strengthen the process.

The proposals in this section take into account the experience of the Secretariat, incorporate recommendations (Annexure 1) of the Covenant evaluations and put forward for consideration the preferred option for improving the action plan process.

A number of action plan options were considered including the existing arrangements and the elimination of action plans altogether. The recommended approach incorporates elements of both as follows:

- Action Plans to be for a term of 3 years, rather than annual.
- At the beginning of the first year, a company Action Plan is submitted which clearly demonstrates the Environmental Code of Practice for Packaging has been implemented and is incorporated into standard business practice (Code is to be revised and include product stewardship guidelines) and that the required data is being monitored and recorded.
- In subsequent years, signatories are expected to report against relevant KPIs and other actions annually. No new annual action plan is required.
- Annual Reports against relevant KPIs must be submitted by September – non-submission of data would be grounds for a determination of Covenant non-compliance.
- If there is a change of circumstances eg. acquisition, divestment etc., a revised plan can be submitted.
- If a signatory wishes, a revised plan can be submitted at any time, but the relevant KPI's and reporting requirements remain unchanged.
- NPC Council to develop and require use of templates (dependent on both company size and sector) to standardise action plans and reports.

Covenant KPIs identified in Part 1 of this Proposal will provide the basis for identifying and developing specific KPIs for inclusion in Action Plans of signatories during the consultation process.

This approach will reduce the resource burden of annual action plan preparation, assessment, review, compliance etc (less intensive for signatory and Secretariat). Regular reports will ensure continuous action and continuous improvement and data collection will be streamlined with data provided at specified times. This will put the focus back on reporting and outcomes and quality of actions and outcomes.

PROPOSAL FOR CONSULTATION

It is further proposed that all action plans will include strengthened requirements, including:

- A mandatory requirement that all action plans must address appropriate KPI's;
- Sector specific and overarching KPIs to be reported against annually (baseline data to be developed and provided in the Action Plan);
- Adherence to the Environmental Code of Practice for Packaging;
- Sign-off by CEO;
- Companies to report on and explain specific changes to packaging affecting weight, compound or material changes. Eg. Shelf life, cost, technology, environmental benefit, OH&S. (Commercial in confidence will be respected);
- A mandatory requirement that records are kept on reported data for the term of the Covenant.

MONITORING AND REVIEW

- Strengthened audit, verification and review processes to be implemented and funded by the NPCC;
- Nationally consistent methodologies for data collection and reporting be developed.

GUIDANCE AND EDUCATION

- Environmental Code of Practice for Packaging to be revised by industry and include Product stewardship guidelines;
- Action Plan workshops will be held across Australia to ensure the communication of strengthened requirements and KPI's;
- SME action plan guidelines to be developed;
- Sector specific assistance, guidance and training to be provided.

TIMEFRAMES

- Strengthened Action Plan process to be implemented from July 2005;
- Baseline data for KPI's due September 2005 (first reporting milestone);
- Revise Environmental Code of Practice for Packaging by April 2005;
- Conduct a series of Action Plan workshops between April – June 2005.

PROPOSED COMPANY SPECIFIC KPI'S

- Proportion of recycled content used per annum in packaging by material type;
- Company recycled content goals or objectives for future years;

PROPOSAL FOR CONSULTATION

- Weight of product produced or imported for use in the Australian market per annum;
- Weight of packaging used (domestic and imported) per annum to package products (primary, secondary & distribution) by material type;
- Weight and type of packaging material sent to landfill and recycling, respectively, from company factory operations;
- Resources allocated to research & development and education to address agreed barriers to secondary market creation and to reduce environmental impacts (eg. litter);
- Implementation of the Environmental Code of Practice for Packaging;
- Weight of new and existing product packaging unable to be recovered and reutilised;
- Existence of Buy Recycled purchasing policy;
- Existence of in-house recycling facilities.

PROPOSED GOVERNMENT SPECIFIC KPI'S

Note – Refers to all levels of government. Part of the government reporting will be through Action Plans and part through NEPC Reporting.

- Weight of packaging material sent to landfill;
- Weight of packaging material recycled, by material type;
- Diversion rates from landfill of the various recycling systems;
- Regular litter surveys conducted and results reported using nationally consistent and agreed methodology;
- Existence of Buy Recycled purchasing policy;
- Existence of in-house recycling facilities;
- Local Government operating according to nationally consistent best practice principles;
- Proportion of households covered by kerbside collection systems;
- Proportion of households covered by other collection systems;
- Proportion of commercial & industrial premises covered by collection systems;
- Proportion of councils providing public place recycling infrastructure; and
- Resources allocated to research & development and education to address agreed barriers to secondary market creation and to reduce environmental impacts (eg. litter).

PART 3 - STRENGTHENING ENFORCEMENT & COVENANT COMPLIANCE

KEY AREAS FOR ACTION

Based on the Covenant evaluations, actions in relation to the NEPM broadly fall into three key areas:

- Strengthening the role of the NPC Council in assessing performance of signatories and determining whether they are meeting their obligations and commitments as signatories. Implementing a more streamlined process for feedback to signatories and referral to jurisdictions where necessary.
- Strengthening the enforcement regimes of jurisdictions and improving monitoring and reporting of this.
- Reviewing the current application and breadth of the NEPM, for example with regard to market share triggers for brandowners, franchises and other parts of the packaging chain besides brandowners.

These changes can be achieved through clearer processes and administrative arrangements to strengthen NEPM implementation and would involve little, if any, change to the actual NEPM document.

SPECIFIC ISSUES AND RECOMMENDATIONS:

1. Agree to develop a process for the NPC Council to review and recommend whether current signatories are fulfilling their obligations under the Covenant.

This task needs to be based on the specific KPIs and measurables developed for the Covenant and will need to reflect the new guidance material and requirements relating to Action Plans and reporting. This will enable the NCP Council to take a much-needed higher profile in providing feedback to those signatories who are not delivering.

2. Follow up of non-signatories to be based on identification and reporting to the NPCC. NPCC to develop and agree the process for referral to and regular feedback from, jurisdictions.

The identification of 'free riders' needs to be based upon an established referral process through the NPC Council to the relevant jurisdiction. A clear process and mechanism needs to be developed to facilitate this.

3. That the current NEPM focus on brand owners be maintained.
4. That the current 1% market share interpretation agreed by jurisdictions be maintained.

It is recognised that "grey areas" exist in the interpretation of which market a company operates in, measuring the size of the designated market and how a signatory demonstrates that the Covenant does not apply to them. Changing the

PROPOSAL FOR CONSULTATION

percentage will not address such issues and it is recommended that rather than change the 1% market share trigger that clarification be developed and agreed by jurisdictions and provided to industry on its application. This will ensure greater consistency and transparency in its application.

5. That the NPC Council require a minimum standard data set from all industry signatories to be reported annually as a parallel process to that which is already in place for Councils. This data set to be drafted for discussion and agreement as part of the consultation process.

Performance data has been a critical issue that has emerged in all of the Covenant evaluations. Development of agreed goals, actions and measures of performance will help to address this and it is recommended that a minimum data set (of quantitative data) be selected from these performance measures to be collated either on a sector wide or industry wide basis annually. This will provide a parallel data set and performance measure to the NEPM data, which is required to be submitted by Councils under the NEPM.

PART 4 - FUNDING A FUTURE COVENANT

BACKGROUND TO CURRENT FUNDING ARRANGEMENTS/CONTRIBUTIONS

Funding to improve kerbside recycling efficiencies

The need for funding arose from the agreement across all stakeholder groups that kerbside recycling was not currently operating effectively (having been through a number of severe market swings for various commodities during the mid 1990's). It was agreed that sustainable market basis for recycling in Australia required better market information and collection services operating at peak efficiency.

Industry signatories to the National Packaging Covenant agreed to contribute funding to a "Transitional Funding Arrangements" Fund to be managed by industry and used to contribute a 50% share (the remaining 50% provided by State Jurisdictions) to programs run at both national and jurisdictional level to achieve the "transition" to an effective market based system. A total of up to \$34.9 million was agreed by industry and governments to be made available initially for a period of 3 years – 1999 to 2002. The availability of funding from the Industry Fund was later extended for the current life of the Covenant.

In order to estimate the funding needed to achieve the transition to an efficient market based system, an estimate was made of broad program areas where work would be needed including estimated expenditure, deliverables and delivery dates. Notional programs included:

- Assistance to local government to meet standards;
- National market intelligence program;
- Economic study of recycling;
- Market development programs;
- Community Education;
- Development of service models;
- Development of price mechanism;
- Accreditation of collectors;
- National recycling audit; and
- Short term infrastructure support.

Available funding to support Covenant programs was calculated for each jurisdiction based on population. A small portion of the total was allocated for national programs and the balance allocated to jurisdictions. As of 31 May 2004, a total of \$9.6 million had been expended on Covenant programs.

Funding Groups

In addition to the transitional funding arrangements described above, the following groups currently provide financial and/or in-kind contributions to the administration and support of the Covenant. These are:

The Department of the Environment and Heritage provides the Covenant Secretariat of two people and is responsible for NPC Council business, registration of new signatories, assessing action plans and annual reports, undertaking the

PROPOSAL FOR CONSULTATION

Covenant compliance process and maintaining a database and other systems necessary to organise and keep track of over 600 Covenant signatories.

Industry signatories fund the NPC Industry Association and contribute funding for the Covenant Executive Officer and jointly fund 50% of KRG approved programs in each jurisdiction under the Transitional Funding Arrangements.

Industry and state jurisdictions provide secretariat for the Kerbside Recycling Group (KRG) on a rotational basis

Jurisdictions have generally provided resources for secretariat and project management support for Jurisdictional Recycling Groups (JRG's) as well as NEPM enforcement. They also fund 50% of approved programs to improve kerbside efficiencies under the Transitional Arrangements.

Industry Associations and Government Peak Bodies participate in national and jurisdictional Kerbside Recycling Groups, action plan review processes and projects on an as needed basis.

COVENANT EVALUATION

The Covenant reviews raised a number of issues concerning:

- The effectiveness of the administration of the Covenant process;
- The inadequate communications and promotion activities;
- The ad hoc approach to training and education; and
- The lack of resources for Action Plan support and evaluation

Each of these is dependent on a level of resourcing to provide these services. It is unanimously agreed that the current Covenant has been poorly resourced and that a future Covenant will need to rectify this.

The reviews also highlighted a number of issues that need to be resolved regarding the Transitional Funding Arrangements. These include:

- Mechanisms for supporting program implementation at national and jurisdictional level and in particular the need to prevent duplication and enhance a national approach.
- Consideration of broadening the scope of the transitional arrangements focus, which has been solely on kerbside programs to date to include recovery of consumer packaging and paper from public places and industry and commercial areas.

Agreement is needed about changes and the level of support to be provided in each of the areas described above. Following this, an appropriate amount of funding can be determined.

PROPOSAL FOR CONSULTATION

Other issues for resolution relate to the way in which funding will be provided/shared between industry and jurisdictions to deliver resourcing and programs in the agreed areas and who approves project funding (for example, should a subgroup of the NPCIA have the role of approving contributions from industry funding for proposed state-based projects).

This section addresses these issues and puts forward recommendations for addressing them.

AREAS AND ARRANGEMENTS FOR FUNDING UNDER A FUTURE COVENANT:

Two elements need to be considered for future funding:

- (i) Funding to support administrative, monitoring, reporting and communication tasks which are critical to the success of a strengthened Covenant model; and
- (ii) Funding of future projects, both national and state- based.

In relation to (i) above, the following roles and tasks have been identified. The extent of required staffing numbers will be agreed jointly between industry and governments following a thorough needs assessment including a work-flow analysis.

1. It is proposed that the following areas need to be allocated specific funding and personnel under a future Covenant:

Administration Team

An administration team will deliver:

- General administrative and secretariat support to the NPC Council and KRG
- Other Committees as agreed by the NPC Council
- Monitoring of action plans
- Reporting against the agreed goals and KPI's
- Liasing with jurisdictions to gather NEPM enforcement information, project reports and deliverables

Communication/Support team

This team would:

- Maintain the website
- Be responsible for regular communication to all stakeholders about Covenant outcomes and progress
- Draft the NPC Annual report
- Run training/education/information sessions as agreed by the NPC Council via an Annual work Plan
- Manage media (both proactive and re-active)

PROPOSAL FOR CONSULTATION

2. It is proposed that the Administration and support teams should be located together (location and premises to be agreed) and provide nation-wide assistance and support.
3. It is proposed that the Administration and support teams be jointly funded by all jurisdictions including the Commonwealth, and industry on a 50/50 basis.

Program funding and focus

In relation to (ii) above, it is proposed that a broader range of programs be eligible for funding and that a decision about priorities be reviewed, agreed and published annually by the NPC Council.

4. It is proposed that program funding be made available for specific programs which target any of the following:
 - Improving kerbside efficiencies to increase recovery of consumer packaging and paper;
 - Improving recovery of consumer packaging, distribution packaging and paper from public places and commercial and industrial premises;
 - Reducing littering or the impacts of littering of consumer packaging and paper; and
 - Sectoral or material specific partnership programs which address agreed barriers to recovery, reprocessing or utilisation of consumer packaging and paper.

Funding requirements for program support (separate from resourcing the support functions described above) is difficult to assess given the wide variety in expenditure over the past 5 years and the proposed extension of areas for funding. The introduction of a more rigorous budgeting and program approval process would assist all parties to assess and commit funding to proposed projects. The Timing of the Work Plan would need to take account of government and industry budgeting processes.

It is proposed that a more flexible approach to program funding be adopted with the ability for sole industry or jurisdictional funding as appropriate and for joint industry-jurisdictional funding as appropriate.

National Projects:

National program priorities would be considered for joint funding by industry and governments on a 50/50 basis. Recommendations for national programs would be evaluated by the National Kerbside Recycling Group and recommended to the NPC Council for endorsement through presentation of an annual Work Plan. The KRG would be responsible for coordinating implementation of national projects.

PROPOSAL FOR CONSULTATION

State based projects:

Development of proposals and consideration of state based program priorities would remain the responsibility of a jurisdictional group with cross-sectoral representation.

The National Kerbside Recycling Group, in consultation with the NPCIA, will retain its overseeing capacity for evaluating and approving state based programs to ensure the sharing of outcomes and to avoid duplication of effort. Supporting the KRG with improved communication processes and administrative resources as outlined above should ensure that past problems are overcome.

Program funding

5. It is proposed that future joint program priorities and funding be agreed between parties on the basis of:
 - The establishment and implementation of a process by the NPC Council for identifying joint funding priorities from any or all of the areas listed above, on an annual basis;
 - The development of clear funding guidelines, including funding criteria and monitoring, reporting and evaluation processes for each of the areas identified above.
6. In relation to future funding under a strengthened Covenant, industry commits to rolling over any surplus funds from the current Covenant.
7. Future industry funding of programs will continue.

ANNEXURE 1

Key evaluation recommendations addressed through the proposed approach outlined in Part 2 of this paper

Nolan Report

B-1 Using the current Environmental Code of Packaging as a starting point and via a Covenant Council-managed process, develop a Product Stewardship for Packaging Guideline. Take guidance from the European standard on prevention by source reduction (EN 13428:2000) which provides company assessment procedures for determining whether a pack's volume and/or weight are at the minimum level required to maintain the pack's functionality, safety, hygiene and consumer acceptability.

(The Guideline should clearly set out expectations of company signatories, provide them with strong encouragement and guidance in terms of eco-design, and advise them on the "trade offs" involved in different packaging choices and environmental strategies.)

B-2 Amalgamate the new Product Stewardship for Packaging Guideline directly into Covenant Plus and any future action plan preparation advice.

B-4 Develop and enshrine protocols in the Product Stewardship Guideline for Packaging to assist companies and stakeholders with the introduction of new packaging with potential implications for post-consumer management systems, including consultation requirements

(In the consultation process, a company should be required to demonstrate and certify through an independent party that its new packaging - if the product is primarily directed at household consumption - is recoverable in the majority of Municipal recycling systems in Australia and that viable reprocessing opportunities exist. Alternatively, the company must demonstrate and certify through an independent party that the net environmental benefits of its new packaging (and/or product) "compensate" for potential impacts on post-consumer management systems. (see above)

If the company cannot successfully demonstrate net environmental benefit, and where the product is not currently recoverable and/or adds to the overall cost of reprocessing, the company must demonstrate how it will provide and fund alternative post-consumer management arrangements, including infrastructure. Standardisation of collected materials on the part of Councils is also critical in this regard.)

C-12 Require all future action plans to include detailed actions, targets or outcomes, timelines, responsibilities, funding allocations, measures to adopt the Product Stewardship Guideline for Packaging, and information on how data will be collected to measure performance.

(Since the Covenant itself cannot be definitive if it is to retain its broad application, voluntary nature and flexibility, the action plan and reporting system must provide the substantial drivers. After four years on the learning/experience curve, it is important that the system be refined so that the level of commitment required in action plans and the need for robust reporting based on measurable outcomes are clear and transparent.)

C-13 Require that all commitments given in action plans have quantifiable performance measures. (development of overarching and sectoral KPIs)

C-14 Require all action plans and action plan reports to be signed at CEO level.

C-15 Develop and apply an improved series of standardised checklists that: a) clearly

PROPOSAL FOR CONSULTATION

outline the compulsory components of any action plan and annual report; and b) provide specific guidance on how to comply with the Product Stewardship Guideline for Packaging according to the size of the company and their place in the supply chain (raw material supplier, packaging manufacturer, brand owner / filler, retailer, industry association).

C-17 Introduce a feedback loop into the action plan process to enable dialogue with companies about further improvements.

C-18 Review and clarify timeframes and procedures for preparation, submission, review, and acceptance of action plans and action plan annual reports.

C-19 Conduct comprehensive reviews of submitted action plans and action plan reports, including multi-stakeholder involvement. Enforce the capacity to penalise poor performance.

C-20 Develop and implement a process for the conduct of regular auditing of randomly selected action plan reports by an independent, multi-stakeholder expert working group. Encourage third party verification by companies of action plan annual reports.

C-21 Develop and implement an action plan annual report model to enable regular data collection, trend establishment, and public reporting. (The model should outline the "minimum standard" without discouraging enhanced reporting by companies. For example, some companies are now incorporating their action plan reports into broader sustainability reports.)

C-22 Develop and implement a framework for action plan sectoral benchmarking for individual packaging supply chain sectors, as well as all levels of Government and peak industry bodies. (It is suggested that a tiered approach be taken to account for the diversity in business size and type and that the guidance on environmental evaluation provided by the International Standards Organisation be followed.)

C-23 Require that all content of all action plans and action plan annual reports be publicly available. Develop a procedure / test to be used by the Covenant Council in deciding on applications by companies to treat certain material as commercial-in-confidence. Require all companies that have commercial-in-confidence components in their Covenant approaches to disclose this in their action plans.

C-24 Provide clear guidance on whether or not large corporations are required to submit one coordinated plan across all business units, rather than providing separate plans for each business unit. Similarly rule on franchises and branch offices in a variety of jurisdictions.

ALGA Review Recommendations

Support a material-based approach to used packaging material, with minimum targets for recovery and recycling of all packaging waste, together with targets for recovery and recycling of all packaging material.

Support a requirement for industry Action Plans to outline specific and quantifiable objectives, with appropriate penalties for non-achievement.

Support greater industry accountability, including data reporting consistent with Local Government requirements.

The framework should embed the principle of EPR more fully than current arrangements.

A stronger commitment by industry towards the lifecycle management of used packaging materials.

Key evaluation findings and recommendations addressed through the proposed approach outlined in Part 3 of this paper

A range of recommendations from the various evaluations is included below. The Covenant Council has identified these as illustrative of the key issues which must be addressed in strengthening this aspect of the Covenant.

Nolan Report

C-1 Identify all measures to expedite the timely redrafting and jurisdictional implementation of the National Environment Protection Measure for Used Packaging Materials (NEPM) following its current expiration date. Alternatively, consider extension of current NEPM by administrative amendment in any intervening period.

C-2 Strengthen the role of the Covenant Council in relationship to the NEPM, including a more pro-active performance / compliance assessment role, including clarifying and codifying the 'enforcement' role of the Covenant Council in suspending or revoking companies' Covenant membership.

C-3 Ensure maximum enforcement by jurisdictions of NEPM-related measures both in cases of non-participation and in cases where critical action plan and annual report outcomes are not being achieved.

C-4 Improve co-ordination in the identification and targeting of non-signatories, including the maintenance and potential publication of a central list for regular review by the Covenant Council.

C-5 Seek clarification of allegations that major brand owners outside of the Covenant have been reported to jurisdiction(s) by industry but that no enforcement action has been taken.

C-6 Regularly disclose enforcement activity undertaken by jurisdictions, including in the context of annual reporting by the Covenant Council. Conduct an annual conference to promote co-ordination in enforcement activity.

C-7 Invite the NEPC to jointly host a national workshop on the NEPM to examine its scope and limitations, including the brand owner and 1% market share limitations, and alternatives and to consider whether and how the NEPM might be broadened in scope to enable national approaches to be developed to packaging streams or problems where appropriate.

C-9 Propose to the NEPC that statutory declarations should be required from brand owners claiming less than 1% market share.

C-10 Develop a protocol for assessing company market share and propose it to NEPC.

ALGA

"There is a perception that controls and applicable legislation should be strengthened. It would be difficult to enforce the current NEPM requirements on industry and this has not happened to date. The NEPM is not currently seen as the "stick" that it was mooted to be."

NCC

Need a framework that delivers effective compliance, potentially using the NEPM including penalties/actions for non-compliant signatories. (summarised)