REPORT

ON

A REVIEW OF THE NATIONAL PACKAGING COVENANT MARK I AND EXAMINATION OF ISSUES FOR FUTURE COVENANTS

NOVEMBER 2003

PREPARED BY THE

MUNICIPAL WASTE ADVISORY COUNCIL

"Getting the Environment Right"
ACKNOWLEDGEMENTS AND BACKGROUND

The Municipal Waste Advisory Council is a standing committee of the Western Australian Local Government Association with delegated authority to represent the Association in all matters relating to waste management.

The Municipal Waste Advisory Council has been formed through collaboration with Regional Waste Management Councils who are not ordinary members of the Association. The resulting body effectively represents the views of all Local Government bodies responsible for waste management in Western Australia.

Decisions and positions adopted by the Municipal Waste Advisory Council are considered by a board of elected member representatives from each member organisation who are supported by an Officers’ Advisory Group (OAG) which has officer representatives from each member organisation.

The Municipal Waste Advisory Council’s Regional Council members include:

- Eastern Metropolitan Regional Council
- Geraldton-Greenough Regional Council
- Mindarie Regional Council
- South East Metropolitan Regional Council
- Southern Metropolitan Regional Council
- Western Metropolitan Regional Council
Executive Summary

Covenant Background

The National Packaging Covenant is a national voluntary scheme designed to improve the management of problems associated with packaging waste. It involves Industry and all levels of government. The National Packaging Covenant (Mark I) expires in mid 2004 and will be under review leading up to this time to consider extending its operation for another 5 year period.

Positive Features of the Covenant

1. **Wide endorsement**
The Covenant boasts more than 600 signatures and the majority of industries involved in the packaging supply chain.

   Key Recommendation: That the Stakeholders continue to aspire to broad agreement and consensus

2. **Funding of programs to improve the efficiency of kerbside recycling**
Local Government bodies which have signed the Covenant have benefited from funds disbursed from the industry funds collected under the Covenant.

   Key Recommendation: That the Covenant continue to provide positive financial incentives to Local Government to improve the efficiency of recycling services.

3. **Engagement between diverse parties**
The Covenant provides an opportunity for the various arms of government to communicate with industry.

   Key Recommendation: That the Covenant retain structures and features which encourage communication and engagement between the parties to the Covenant.

4. **Specific innovations**
The Covenant may have stimulated a number of innovations including the development of new markets for recycled materials within the packaging industry and improved packaging designs.

   Key Recommendation: That the Covenant retain structures and features which encourage better design and market development for recycled materials.

5. **Economic assessment of the kerbside recycling system**
The first project of the Covenant Council was a review of the Kerbside Recycling System to obtain a quantitative picture of the costs and benefits associated with the Kerbside Recycling. The Review was fairly comprehensive and amounts to an important piece of research.
Key Recommendation: That the Covenant continue to encourage the Covenant Council to commission research into waste management as it relates to packaging.

Negative Features of the Covenant

1. **Poor process**
The First Covenant was hobbled by a process which failed to engage with Local Government. The outcomes produced by the Covenant have been compromised as a result.

   Key Recommendation: That the Stakeholders agree on a process that will permit Local Government a meaningful contribution at the levels of discussion, drafting and implementation of the Covenant.

2. **Cost to Councils of managing kerbside recycling**
The cost to councils of managing kerbside recycling remains great and there is little to suggest that improvements in the situation for Local Government have resulted from the Covenant.

   Key Recommendation: That the Stakeholders agree on a clear rationale for spending the monies raised by signatory contributions.

3. **Disparity of commitment to the problem of responsible management of packaging waste**
The Covenant may be argued to have produced a relatively neutral effect on the respective commitments of Local Government and Industry. It has left intact a status quo in which Local Government retains a disproportionately large commitment to packaging waste management.

   Key Recommendation: That the Stakeholders identify mechanisms to ensure that a commitment to specific recycling outcomes accompanies the status of signatory.

4. **Textual bias**
The Covenant extensively advertises the good work of industry in achieving better waste outcomes. Meanwhile nothing is said of the concurrent efforts of other sectors, nor of the central role of industry in generating the packaging waste problem.

   Key Recommendation: That the Stakeholders agree on a format which gives equivalent recognition to the contributions that all parties have made to packaging waste problems and their solution.

5. **Cost shifting**
Local Government spending on recycling packaging waste produces benefits for other sectors without fair contribution from those other sectors.

   Key Recommendation: That the Stakeholders review the responsibilities of the various parties with respect to the costs associated with the kerbside recycling system.

6. **The system distorts market signals and favours the generation of rubbish**
Cost shifting means that the packaging industry does not internalise the real cost of making, using and marketing packaging. This creates counter-productive market signals.

   Key Recommendation: That the Stakeholders investigate ways to neutralise and reverse incentives which work against good recycling outcomes.

7. **The cost of kerbside recycling suppresses other waste minimisation developments**
Significant opportunity costs result from Local Government using rates to pay for recycling services. In particular, resource recovery of biodegradables has been stalled by this expense.
Key Recommendation: That the Stakeholders consider both financial costs and opportunity costs, when assessing the appropriate level of support which should be provided to Local Government to operate this system.

8. Local Government inefficiency overemphasised
The Covenant belies a suspicion on the part of Industry that much of the cost of recycling services is a product of inefficiencies in the systems operated by Local Government. It is important that this not be used as a pretext for not funding kerbside recycling properly.

Key Recommendation: That the Stakeholders review the Covenant to ensure that it reflects an equal level of confidence in the commitment of all parties to efficiency.

9. Industry Action Plans have been slow to deliver significant change
A review in 2002 showed that Action Plans have resulted in minimal practical improvement while the process of creating Action Plans appears to have done little to raise awareness and understanding.

Key Recommendation: That the Stakeholders review the Covenant with the aim of developing clearer and stricter assessment procedures for Action Plans.

10. The Covenant gives too little guidance as to purpose, objectives and targets.
The Covenant does not articulate a set of final outcomes that it seeks to achieve. Nor has the Covenant specified outcomes for the major sectors participating in the Covenant. Finally, the Covenant process doesn't set specific goals for individual signatories. Success or failure is impossible to assess within this framework and significant outcomes are unlikely to result.

Key Recommendation: That the Stakeholders review the Covenant with the aim of clarifying the purpose of the Covenant and stipulating a range of key targets and performance indicators for each level within the system.

11. The review and auditing of Action Plans are not attached to specified consequences
Non-compliance with the Covenant does not attract specified consequences. Expulsion from the Covenant is unworkable and the Covenant Council is not granted authority to impose financial penalties.

Key Recommendation: That the Stakeholders review the Covenant with the aim creating a feasible sequence of consequences for non-compliance

12. The legislative framework is a tool to increase participation in the Covenant rather than recycling per se
For a number of reasons the NEPM is unlikely to ever be triggered and its true function must be seen as ensuring that all industry parties sign the Covenant.

Key Recommendation: That this analysis of the NEPM should inform the Stakeholders in their review of compliance and penalty procedures in the Covenant.

13. The Covenant Cannot Fail
The Covenant provides no opportunity to rationally assess whether it has succeeded. A risk exists that the Covenant will be retained even if though it may not result in significant improvements in packaging waste problems.

Key Recommendation: That the Stakeholders identify clear criteria on which to assess the success or failure of the Covenant and clearly define the consequences of the Covenant failing.
Municipal Waste Advisory Council
Report into the Review of the National Packaging Covenant Mark I and Examination of Issues for Future Covenants

Background

What is the Covenant?

To quote Environment Australia:

“The National Packaging Covenant is the leading instrument for managing packaging waste in Australia. It was signed by the Australian and New Zealand Environment and Conservation Council Ministers, [some] Local Governments and a broad range of industries in the packaging supply chain on 27 August 1999.”¹

The Covenant is sometimes referred to as an instrument for 'self-regulation', based on the notion of participants and contributors to the packaging waste stream all playing an individual and non-prescribed role in managing the problems associated with packaging waste. The agreement lasts for five years and it will be reviewed shortly by ANZECC and its successor considered.

What is Local Government’s Interest in Packaging Waste?

Local Government’s budget for recycling is spent, in major part, recycling post-consumer packaging. Community expectations dictate that indiscriminately landfilling this material is not acceptable. Likewise, the packaging industry is eager to see its products collected for recycling because this diffuses community concern.

about their products. Independent of these pressures, Local Government must respond to the increasing cost of landfill space by finding ways to divert solid waste, of which packaging is a large component, from landfill.

Thus, a range of forces converge to effectively prescribe that packaging recycling will be a waste management priority for Local Government. Consequently councils are tied to dealing with packaging waste using recycling programmes, which consume a large proportion of their individual waste management budgets. Put simply, abandoning recycling is not among the range of alternatives open to Local Government as it tries to better manage limited waste management resources. Nevertheless, Local Government continues to seek ways of making packaging recycling more sustainable and less of a financial burden upon the waste management budget.

**Who does the Covenant Include?**

The Packaging Council maintains a website listing the current signatories to the Covenant. Among the signatories are the Federal Government, all State Governments, the ACT Government, the Local Government Associations of Victoria and Queensland, a number of individual councils, many industry associations and many businesses involved in the packaging supply chain. Among the parties which have not signed the Covenant are the NT Government and the Local Government Associations of WA, NT, SA, Tas, ACT and NSW. All together, the Covenant has been signed by more than 600 parties, most of which are commercial interests. A comprehensive appendix of Signatories is attached.²

Local Government Perspectives on Present and Future Covenants

A Note on Format

The following information is arranged into positive and negative aspects of the Covenant system. The positive features are not discussed at length simply because Local Government feels that these features may be retained. The format in which the positive features are presented provides a summary of the present situation, followed by a recommendation about how this feature might feed into the Covenant Mark II. The format in which the negative features are presented provides a summary of the present situation, followed by some discussion about how the framework might be modified to address the problems identified in the summary and then one or more recommendations for the Covenant Mark II.

Positive Features of the Covenant

1. Wide Endorsement

a) Description of Present Situation:

The Covenant has received the endorsement of a large number of industry parties including a significant number of industry associations. To date the signatures of this type number in excess of six hundred. The Covenant Council makes the point in their 2000 Annual Report that, despite the opposition of the Australian Local Government Association and the Local Government Associations of a majority of states, that “over one third of local government councils now participate in Covenant activity through the Municipal Association of Victoria and the Local Government Association of Queensland”³.

b) **Recommendation for Covenant Mark II:**

- That the Stakeholders continue to aspire to broad agreement and consensus, though not at the expense of establishing significant targets.

2. **Funding of Programs to Improve the Efficiency of Kerbside Recycling**

a) **Description of Present Situation:**

Local Government bodies which have signed the Covenant have benefited from funds disbursed from the industry funds collected under the Covenant. The Covenant Council points to Victoria where it claims “$6.1 million of covenant funding will have been spent by the end of 2003.” The Covenant Council points to a decrease in the per tenement cost of recycling in Victoria of around 6% as a tangible effect of covenant funding. The types of projects which continue to be contemplated by the funding bodies responsible for the disbursement of Covenant funds are typically those which aim to upgrade the Kerbside recycling systems, provide public education or develop markets for recycled materials. For example in Victoria, the Best Practice Kerbside Recycling Program, is funded under the Covenant and provides a financial incentive for councils to implement preferred service standards in respect of contracting, containerisation and service operation for kerbside recycling. It may be reasonable to conclude that the Covenant has contributed to more efficient recycling systems in Victoria, which to date has been the only jurisdiction to benefit from funding under the Covenant.

b) **Recommendation for Covenant Mark II:**

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5 Victorian Jurisdictional Recycling Group May 2002
➢ That the Covenant continue to provide positive financial incentives to
Local Government to improve the efficiency of recycling services.

3. Engagement between diverse parties

a) Description of Present Situation:

The Covenant provides an opportunity for the various arms of government to communicate with industry. It is of course difficult to point to specific outcomes which have flowed from having the Covenant as a conduit for information exchange between Government and Industry. However, the two Local Government associations which have signed the Covenants, LGAQ and MAV, emphasise the significance of having “a seat at the table” as a reason for signing the Covenant and a continued benefit of being a signatory. It is noted that Local Government en bloc stands to gain no additional representation on the Covenant Council if more of Local Government signs the Covenant. This is because Local Government is mandated to fill only two of the twelve seats on the Covenant Council and both of these are now filled.

b) Recommendation for Covenant Mark II:

➢ That the Covenant retain structures and features which encourage communication and engagement between the parties to the Covenant.
➢ That the Covenant remove structures and features which discourage communication and engagement.
➢ That the Stakeholders review the structure of the Covenant Council and consider increasing the representation of Local Government to more than two seats.

4. Specific innovations

a) Description of Present Situation:
A number of product specific achievements are held up by both the Covenant Council and some industry associations. Examples of these include the development of new markets for recycled materials within the packaging industry and improved packaging designs which reduce the quantity of materials used at the source\textsuperscript{6}. Research into recycling polystyrene is cited as an example of the efforts to develop secondary markets for recyclate\textsuperscript{7}. One manufacturer’s shift from packaging chickens using both a bag and a Styrofoam tray to using a bag alone, thereby eliminating around 3 million trays per year, is cited as an example of source reduction of packaging waste\textsuperscript{8}. It appears likely that a number of innovations have flowed from the impetus created by the Covenant to create better outcomes for packaging waste management.

\textit{b) Recommendation for Covenant Mark II:}

- That the Covenant retain structures and features which encourage better design and market development for recycled materials.
- That the Covenant remove structures and features which discourage better design and market development.
- That the Covenant extend or improve the structures and features which will encourage better design and market development.

5. Economic Assessment of the Kerbside Recycling System

\textit{a) Description of Present Situation:}

The first project of the Covenant Council was a review of the Kerbside Recycling System to obtain a quantitative picture of the costs and benefits associated with the Kerbside Recycling. The Review was fairly comprehensive

\textsuperscript{6} Gavin Williams, 2003, available online at \url{http://www.packcoun.com.au/03.03.Qld.ppt} accessed 19/06/2003; Joy 2003;


\textsuperscript{8} Collins, 2002, p26
and amounts to an important piece of research which would have been difficult to Local Government to fund. The Review found that Kerbside Recycling provided a net economic benefit to the Australian Community

b) **Recommendation for Covenant Mark II:**

- That the Covenant continue to encourage the Covenant Council to commission research into waste management as it relates to packaging.
Negative Features of the Covenant

1. Poor Process

a) Description of Present Situation:

When the Covenant was negotiated in 1999, Local Government expressed disappointment with the process employed by the other parties to the Covenant. At the same time, Local Government pointed out that a range of its key concerns had not been addressed by the Covenant. It was apparent to Local Government that the Covenant had been handicapped by the fact that the problems it was supposed to address had been poorly defined. From the perspective of Local Government, this handicap was the inevitable result of a lack of engagement with an absolutely central stakeholder – Local Government. The large majority of Local Government subsequently chose not to sign the Covenant because of the view that the Covenant didn't address the needs and interests of the sector. Today, Local Government remains mindful of the process used for the first Covenant for one very practical reason – process was a key factor undermining the outcomes from 1999.

b) Discussion of Appropriate Response:

Local Government is a key stakeholder in the management of packaging waste. The process employed for the negotiation of the second Covenant must honour this proposition. Local Government should have input into the process of identifying the core objectives of the Covenant, the undertakings that are appropriate to achieve those objectives and the means by which the performance of signatories is assessed. Local Government involvement would help to ensure that a second Covenant does not emerge which again largely fails to address the particular concerns and interests of Local Government. Furthermore, a process which incorporates Local Government
views and wishes will make a substantial contribution to securing Local Government goodwill towards a second Covenant.

c) **Recommendations for Covenant Mark II:**

➢ That the Stakeholders agree on a process that will permit Local Government a meaningful contribution at the levels of discussion, drafting and implementation of the Covenant.

2. **Cost to Councils of Managing Kerbside Recycling**

a) **Description of Present Situation:**

In the late 1990’s Local Government across Australia was collectively spending an estimated 100 million dollars on kerbside recycling\(^9\). This liability for Local Government has been partially mitigated through the renegotiation of waste management contracts by Local Government throughout Australia. The risks associated with volatile markets for recyclables have been partially mitigated by these measures. However, there is nothing to suggest that the Covenant has made any significant impact on this cost to councils.

b) **Discussion of Desirable Responses:**

The existing Covenant includes an undertaking by industry to purchase recyclables at market prices and to foster markets for recycled materials. Schedule 3, Part B, of the existing Covenant outlines a number of industry undertakings in respect of the twin problems of assuring income for Councils from the sale of recyclables and stimulating demand for recyclables. These were the key components of the Industry Strategy to support the kerbside recycling system operated by Local Government.

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\(^9\) ALGA media releases 1999
This section of the Covenant requires attention in a number of aspects from the point of view of Local Government. Firstly, with respect to commodity price fluctuations, no binding undertakings are offered by industry and the tone of the section is more that of a discussion paper which provides a number of potential strategies for the parties to consider. In addition, this “industry strategy” devotes significant attention to the measures which other parties should be implementing.

Thus a revised Covenant should specify an industry response to the problem of commodity price stability that is more detailed and which is focussed and binding specifically upon Industry.

Secondly, the average price for recyclables remains low compared with the average cost of collection. The shortfall is covered by council rates. As has been discussed, this amounts to a substantial dedication of funds and serves to squeeze out additional waste management developments like the recovery of bio-degradable resources (Point No.7). The strategy specifically precludes the use of industry money to “subsidise prices or disposal costs” yet provides no rationale for this preclusion. Thus a revised Covenant would ideally identify the philosophical basis for making Local Government financially responsible for the kerbside recycling system.

Thirdly, the undertaking to pay market prices for recyclables is likely to coincide with continued growth in the recycling of materials which are already profitable to recycle, such as PET plastic. The policy is unlikely to facilitate growth in the recycling of materials for which markets have been traditionally weak. This shortcoming of the present Covenant has prolonged the insulation of packaging manufacturers from considerations of ‘recyclability’. The revised Covenant should provide more aggressive mechanisms to address the problem of manufacturers using materials which are especially uneconomic to recycle.

\[c\)  Recommendations for Covenant Mark II:\]
➢ That the Stakeholders review the “Industry Strategy” to make it more specific to industry and better adapted to delivering tangible reductions in recycling costs.

➢ That the Stakeholders review the basis on which funding is provided to signatories in order to establish a clear rationale for spending the monies raised by signatory contributions and that this rationale be explicitly identified in the document.

➢ That the Stakeholders consider mechanisms for internalising into the decision making structures of the packaging supply chain, considerations of ‘recyclability’.

3. Disparity of commitment to the problem of responsible management of packaging waste

a) Description of Present Situation:

Notwithstanding the refusal of the majority of Local Government organisations to sign the Covenant, this sector has continued to strive to improve recycling in line with best-practice. Non-engagement by Local Government in the Covenant has not prevented Local Government from achieving the basic targets established for it under the Covenant. Therefore the Covenant might be described as redundant as a means of building a commitment on the part of Local Government to improving the management of packaging waste.

It would appear that the industry focus with respect to improving environmental outcomes in their packaging activities will be to find opportunities to reduce costs by reducing the amount of packaging they use.\(^\text{10}\) No criticism of these efforts is proffered here, but it is suggested that this focus raises questions about the relevance of the Covenant in modifying industry behaviour. The profit motive ought to operate to encourage these

\(^{10}\) See Williams 2003; National Packaging Covenant, Schedule 3
efforts in any event, since private enterprises would be expected to seek out and exploit any measure which reduces costs. The commitment to profit may lead business to employ strategies which simultaneously serve other goals, like reduced use of virgin materials.

Thus the Covenant formalises an existing commitment on the part of Local Government to constant improvement in recycling systems, while it reaffirms the commitment of Industry to increase efficiency. In light of this, the Covenant may be argued to have produced a relatively neutral effect on the respective commitments of Local Government and Industry. It can scarcely be denied that under the status quo Local Government has demonstrated a disproportionately large commitment to packaging waste management. The key conclusion that emerges then from the redundancy just described is that the Covenant is being oversold as a mechanism for cultivating commitment within industry to better recycling outcomes.

b) Discussion of Desirable Responses:

It is submitted that the Covenant must increase the commitment of Industry to improving recycling outcomes. Synergies should be exploited and better communication about the opportunities for ‘win–win’ improvements might be a tangible benefit of the Covenant. However many changes which benefit recycling will involve substantial costs to businesses and in these instances, commitment of a business directly to the goal of improving recycling outcomes will be necessary. It is clear to Local Government that businesses must do more than undertake to identify opportunities for ‘no net disadvantage’ changes.

Schedules 1 and 3 of the Covenant, covering Action Plans and The Industry Strategy for Sustainable Recycling respectively, need to be revised to sharpen the commitment of industry to better recycling outcomes. That is, substantially improved performance with respect to recycling, needs to be made a compulsory requirement of Covenant membership. This suggests that instruments like the “packaging checklist” described in the Industry Strategy
must come to be reinforced by measures that will compel signatories to move beyond the low hanging fruit.

For instance, under the present regime, a signatory might have exploited most of the opportunities for lightweighting. It may be that substantial gains can be made by switching to more easily recycled containers, perhaps by moving from tinted to clear PET bottles. This step may involve market risks or forgo opportunities for distinctive branding. The signatory then is likely not to take the step and may simply decide to undertake to implement another minor lightweighting measure. While currently the checklist may help this producer to recognise a new option, what the Covenant must do in future is create positive pressure upon producers, probably through the imposition of targets, such that they must give serious consideration to these kinds of options. Until the packaging industry and brand owners begin implementing these types of more onerous measures, their commitment to the problems of managing packaging waste will be visibly incomplete.

c) Recommendations for Covenant Mark II:

- That the Stakeholder identify mechanisms to ensure that a commitment to specific recycling outcomes accompanies the status of signatory.

4. Textual Bias

a) Description of Present Situation:

Rather than acknowledge the benefits which accrue to industry from the present arrangement, the Covenant instead lists the past and existing endeavours of the packaging industry with respect to supporting recycling and minimising packaging waste. Schedule 3 is particularly effusive in promoting the packaging industry as committed to better recycling outcomes. Recognition within the Covenant of the significance of kerbside recycling systems to the environmental performance of the Packaging Industry is
largely implicit. Moreover, the Covenant does not refer at all to the ongoing allocation of resources by Local Government to maintain, expand and improve the Kerbside Recycling System.

b) Discussion of Desirable Responses:

If a second Covenant is to honour industry once again, it would be appropriate that it also recognise, in a more explicit manner, that packaging waste management problems are a by-product of that same set of businesses. Again if the Covenant is to retain references to the social context and importance of packaging, it would be appropriate to clearly identify that packaging benefits are accompanied by packaging waste management costs. Furthermore, according to this format, the Covenant should make mention of the efforts of parties other than industry in tackling the problems created by post-use packaging. Alternatively, these tracts within the Covenant could be removed altogether. It is suggested that either of these measures could assist in generating confidence within Local Government, that the Covenant is an honest collaboration, dedicated to tackling the thorny issues surrounding packaging waste management.

c) Recommendations for Covenant Mark II:

- That the Stakeholders agree on a format which gives equivalent recognition to the contributions that all parties have made to packaging waste problems and their solution.

5. Cost Shifting

a) Description of Present Situation:

Local Government spending on recycling packaging waste produces benefits for other sectors without anything approaching a commensurate contribution
from those other sectors. This is a classic example of cost shifting, by other levels of government and by industry. The arrangement allows other levels of government to argue that the waste stream is being responsibly managed and therefore requires little additional contribution of funds. Moreover, the arrangement allows industry to continue to manufacture their products without bearing the cost of disposal or suffering a depression in sales which might flow from increased community concern about the downstream impact of their packaging.

The Covenant is not aimed at changing this arrangement. The provision of ‘transitional funding’ is directed at making improvements in recycling systems. Under the Covenant, the onus for absorbing the ongoing costs of running an existing kerbside recycling operation clearly lies with Local Government. In any event, the money earmarked for the transitional fund amounted to an industry commitment of less than $3.5 million for each of the five years of the Covenant. This figure was the financial support offered in response to Local Government calls for industry to address a shortfall of around $100 million per annum.

The lack of Local Government involvement in the Covenant has resulted in much of the money for transitional funding remaining unspent. This is regrettable and no doubt it has resulted in a number of lost opportunities to improve recycling services in Australia. It would be spurious though, to suggest that Local Government has therefore rejected a measure to reduce some of this cost-shifting. The Covenant explicitly precludes the interpretation that any of the funding it provides is designed to contribute to the costs of operating the Kerbside Recycling System. Moreover, even if the Covenant was providing the monies as a subsidy, the amount involved is too small a proportion of the total cost (~3.5%).

b) Discussion of Desirable Responses:
It is clear that Industry has been and will continue to be unwilling to accept financial responsibility for any part of the kerbside recycling system. The Covenant makes clear that Local Government is responsible for the cost of the kerbside recycling system. The Covenant further makes it clear that the transitional funding is not to be used as a subsidy. However, the Covenant does not explain the basis for deciding what Industry should and shouldn’t fund. The principle of ‘shared responsibility’ as defined in the Covenant, sheds no light on this question and it would be helpful to Local Government to see this matter explicitly addressed in the text of the Covenant.

It is reasonable to seek a fuller explanation for why Industry considers it acceptable to leave the costs of operating the kerbside recycling system to Local Government. The reason might be, for example, that Industry is not able to afford these costs. It is also reasonable to expect an explanation of how the industry commitment to fund particular kerbside recycling projects fits within the wider conviction that industry should enjoy financial indemnity from the costs of kerbside recycling. The reason might be, for example, that Industry is not obliged to fund any of these activities but is engaging in an act of charity, consistent with the philosophy of good corporate citizenship.

Including in the Covenant a discussion of these matters will not actually address the cost shifting itself, but Local Government realises that Industry will not, as an outcome of a voluntary framework, commit to subsidising the kerbside recycling system. Local Government would be pleased, nevertheless, to see frank discussion about the current apportioning of responsibilities. Honest engagement by industry with the questions raised by Local Government would give this sector greater confidence to participate in the Covenant process.

c) Recommendations for Covenant Mark II:
➢ That the Stakeholders review the basis upon which contributions are made by the various parties to the cost of operating, maintaining and improving the kerbside recycling system.

➢ That the Second Covenant include an explanation of the philosophical basis for the funding arrangements which it creates.

6. The system distorts market signals and favours the generation of rubbish

a) Description of Present Situation:

Cost shifting means that the packaging industry does not internalise the real cost of making, using and marketing packaging. Increased packaging and greater heterogeneity are favoured within this system over minimalism and improved recycleability. A disposable container, at the point of sale, holds out the waste management services of Local Government to the consumer as if those services were part of the product itself. This disposability is a selling point for the product, which owes its promise of convenience and hygiene to the fact that Local Government empties the householder’s bin each week and assumes responsibility for its contents. It is clear that if the waste management services were removed, consumers would quickly turn off packaging. The consumer eventually pays for the services through their rates, but the link is so far removed as to have no impact on consumer behaviour.

With waste issues resolved, industry will perceive an incentive, in the form of improved marketability, to make packaging disposable, to make more things packaged and to make more packaging unique in some way. This has profound implications not only for the quantity of packaging material entering the waste stream, but also for its heterogeneity and ultimately the feasibility of recycling that material. Crucially, these are not problems which the producers and users of packaging will face directly. Under the present arrangements, industry experiences virtually no financial disincentive for manufacturing decisions that increase the cost of managing packaging waste. Consequently,
even the promise of only small competitive advantages to be gained through changes in packaging may be sufficient to persuade the manufacturer of the merit of such changes.

b) Discussion of Desirable Responses:

A Second Covenant should not be made subject to the present requirement that it not discriminate between packaging materials. All forms of packaging are not equal in respect of their intrinsic recyclability. For example, there is a great disparity between the economics of recycling PET plastic as compared to plastic types 5 through 7. A more salient example might be the different profitability of recycling coloured versus clear PET plastic. In light of distinctions that clearly exist along market and technological lines, it is difficult to see why the Covenant should retain its impartiality with respect to packaging types. Local Government would like to see this commitment reversed to create an undertaking that signatories will be more discerning in their packing choices according to recyclability criteria.

The point has been made that in respect of choosing a packaging type, a big disadvantage in recyclability terms can be out-weighed by a small and probably temporary competitive advantage. Conversely, a competitive disadvantage may be perceived if another less scrupulous business opts for the less recyclable packaging. The second Covenant must incorporate some mechanism to reverse the effect of this incentive. It might be that the schedule of contributions could be revised so as to weight the contributions of signatories making or using less recyclable packaging. Alternatively the Covenant Council could be empowered to seek a pan-industry undertaking to move away from particular packaging types. Collective action such as this would be an achievement truly worthy of the description “self-regulation”.

c) Recommendations for Covenant Mark II:

11 Section 1 of Covenant contains the words “the Covenant should not discriminate between different forms of packaging”. Significantly, the peak packaging industry lobby group in the European jurisdiction
That the Stakeholders investigate ways to neutralise, and preferably reverse, incentives which work against good recycling outcomes.

That the Stakeholders review the requirement that the Covenant not discriminate between packaging materials.

7. The cost of kerbside recycling suppresses other waste minimisation developments

a) Description of Present Situation:

While recycling programmes embody some laudable principles, they have effectively excluded other waste management projects of comparable merit. This is an important response to the argument that the costs of recycling are simply passed on to the ratepayer and therefore recycling is cost-neutral for councils. Since the rates levied by Councils have to be kept feasible for households, there are significant opportunity costs inherent in Local Government using rates to pay for recycling services.

An illustration of this is the delayed implementation of resource recovery systems such as composting or pyrolysis. Putrescible and many biodegradable wastes are patently different in nature to packaging waste such that it would be unfeasible to introduce mechanisms for producer responsibility for these wastes. These wastes may have direct environmental impacts which rival or surpass those associated with packaging waste. Biodegradable wastes take up a great deal of volume in land fills. Moreover, it is these wastes, rather than packaging wastes, which account for methane emissions and acid leachates from landfill.

Thus Local Government spends close to $100 million annually on the management of the packaging waste stream, being a waste stream for which there is an easily traced link between producer and waste. Only now are the most financially robust regional councils embarking upon resource recovery
programs, while in some rural and remote municipalities, recycling systems are still to be developed while resource recovery lie far beyond the horizon. However the biodegradable waste stream requires urgent attention and is much less amenable to product stewardship than packaging.

b) Discussion of Desirable Response:

The recycling services provided by Councils are frequently so expensive as to exclude other waste management initiatives that would be of benefit to the community and to Local Government. Indeed, the environmental and community benefits of resource recovery may outweigh those of kerbside recycling. Therefore the cost of operating kerbside recycling services should include the difference in terms of net benefit to the community, between these services and resource recovery systems. The opportunity cost of operating recycling services is important to the debate about what is reasonable for each party to contribute under a Covenant framework. Of course, at present the net benefits and contributions obtained and made under the Covenant are not quantified. However it would be appropriate for the Covenant negotiation process to consider both the financial contributions made by the parties and the non-financial costs and benefits of the system.

c) Recommendations for Covenant Mark II:

- That the Stakeholders consider both the financial costs and the opportunity costs associated with operating the Kerbside Recycling System, when assessing the appropriate level of support which should be provided to Local Government to operate this system.

8. Local Government Inefficiency Overemphasised

a) Description of Present Situation:
The recycling of post consumer packaging incurs a net financial cost to Local Government in Australia. The Covenant belies a suspicion on the part of Industry that much of this cost was likely a product of inefficiencies in the systems operated by Local Government. For example, the Covenant sets out a range of fairly demanding requirements of Local Government including reporting provisions and best practice implementation, by contrast the provisions relating to industry are quite non-prescriptive.

The provisions pertaining to industry appear to reflect a confidence that industry achieves efficient outcomes as a matter of course. The provisions relating to Local Government belie a belief that in Local Government, efficiency will be lacking and in order to attain it Local Government must be closely monitored. Perhaps a suspicion of Local Government inefficiency is one of the grounds on which Industry objects to funding the kerbside recycling system.

b) Discussion of Desirable Response:

Local Government would like to see the Covenant revised to reflect a greater level of confidence in the commitment and capacity of Local Government to continue to practice efficient waste management. Local Government would also like to see industry disavow the view that Local Government inefficiency might constitute grounds for not contributing to the cost of providing kerbside recycling services. Were Industry unwilling to do this, Local Government would respond on two levels.

The first level of response involves defending the criticism and probing deeper into the reasons behind the high cost of recycling. Local Government has done much to improve efficiencies in kerbside recycling systems, though better technology, improved contracting practices and better data collection. Local Government, thereby has significantly reduced its costs. Though diminished, the net cost of recycling remains high and meanwhile, the revenues generated from the sale of recycled materials continue to be extremely modest. The key
reforms required to narrow the gap between costs and revenue in the kerbside recycling system lie on the demand side, not the supply side. Inefficiencies in Local Government recycling practices simply aren’t substantial enough to explain the size of the gap.

The second level of response asks the question: If Local Government management of recycling systems significantly inflates the cost of recycling, would industry management of these systems be preferred? Some European jurisdictions have taken this route and require Brand Owners to take responsibility for recycling the packaging in which their products are marketed. For instance in Germany the Green Dot system has operated for more than a decade. This scheme is based upon an industry operated cooperative responsible for recycling all of the packaging of subscribing brand owners. These brand owners display the Green Dot insignia on their products and pay the operating costs of the cooperative12.

Support for an industry operated recycling system is unlikely to come from the packaging industry itself. Indeed Local Government does not advance support for this option either. The point is that direct industry management is a viable alternative to management by Local Government. And if industry backs away from accepting direct involvement in the recycling system, it should not be permitted to cite inefficiency as grounds for refusing to adequately fund Local Government recycling programs. Furthermore, by giving Local Government operated kerbside recycling systems pre-eminence as the recycling mechanism of choice, industry has arguably conceded that Local Government is ‘up to the job’. In which case Local Government is entitled to enjoy the fiscal confidence of industry.

c) Recommendations for Covenant Mark II:

➢ That the Stakeholders review the Covenant to ensure that it reflects an equal level of confidence in the commitment of all parties to efficiency.

9. Industry Action Plans have been slow to deliver significant change

a) Description of Present Situation:

The Action Plans were reviewed in a report to the Covenant Council in November 2002. Although careful to avoid underscoring the deficits it uncovered, the Review clearly identifies a number of worrying trends among the Action Plans. In the main, the Action Plans tended to avoid specific commitments, showed little or no awareness of the relevant Environmental Code of Practice and limited understanding of the expected content of the Action Plans. In addition, a significant number of Action Plans suggested themselves to the reviewers as ‘cut and paste’ productions on account of their resemblance to the plans provided by industry associations.

The Review found that the Action Plans generally fell short of tackling the issues of data collection, measuring and reporting progress and assigning resources. These items are arguably among the most useful measures required of industry to reduce packaging waste and improve recycling outcomes. Measures of this type are also likely to be the most onerous, but the professed commitment with the packaging industry to better recycling outcomes might have been expected to overcome this disincentive. Drawing together the Review’s criticisms of the Action Plans, it can be seen that a general reluctance to commit to measurable outcomes was matched by a general lack of bona fide engagement in the process. Therefore, the Action Plans themselves resulted in minimal practical improvement while the process of creating Action Plans appears to have done little to raise awareness and understanding.

At present, the Covenant Council initially examines new Action Plans for compliance with the Covenant on the basis of whether they mention the
various undertakings and philosophies contained in the Covenant. Of the Action Plans received, around 20% are reviewed for the purpose of checking whether the substantive commitments are sufficient for the given signatory\textsuperscript{13}. The criteria used to assess the question of sufficiency have not been made clear by the Covenant Council.

It is worth remembering that the commitment to generate and implement an Action Plan is the cornerstone of the Covenant framework and represents the main mechanism driving industry-side improvement. Whereas the financial dues required of signatories are a tiny fraction of business revenue\textsuperscript{14}, an Action Plan could conceivably assign considerable resources to improving recycling outcomes. And it will be the Action Plan which substantially determines the quality of contribution that a signatory makes to reducing waste from packaging or improving recycling outcomes. However, the results of the Review suggest that the Covenant’s most powerful tool remains gravely under-utilised.

\textit{b) Discussion of desired response:}

Local Government believes that the Covenant Council (or another body) needs to become more closely involved in the process by which individual signatories establish their objectives. The Covenant Council must advocate more strongly for the objectives of the Covenant to be achieved. It could do this by being more rigorous and more demanding of the Action Plans and Action Plan Reports submitted to it by signatories. Where currently only 1 in 5 new Action Plans are submitted to close scrutiny by the Covenant Council to assess whether they make a sufficient contribution to the Covenant, this type of assessment should be extended to every new Action Plan.

\textsuperscript{13} Secretariat, National Packaging Covenant Council, August 2003.
\textsuperscript{14} National Packaging Covenant, Schedule of Contributions: NPC Contribution Schedule – New Signatories.doc
More interference by the Covenant Council is likely to incur the displeasure of signatories, who may feel that this makes the process more onerous. Perhaps all parties would benefit from a clause within the Covenant explicitly establishing that the loyalty of the Covenant Council must lie firstly with the Covenant rather than the signatory. This would serve to remind the parties that the self-interest of a signatory may be quite different to the interests of the Covenant. It is noted that in order for such a clause to be useful, less emphasis would have to be given to achieving the highest rates of participation as an indicator of the success of the Covenant. That is the Covenant Council must be free to conclude that strict enforcement of Covenant requirements may lie in the best interests of the Covenant even if this convinces some parties to withdraw or not sign.

c) Recommendations for Covenant Mark II:

- That the Stakeholders review the Covenant with the aim of developing clearer and stricter assessment procedures for Action Plans.
- That the Stakeholders review the Covenant with the aim of clarifying for the Covenant Council, its hierarchy of loyalties and its obligations to review and audit Action Plans and Action Plan Reports.

10. The Covenant gives too little guidance as to purpose, objectives and targets.

a) Description of Present Situation:

The aim of not impeding the ability of industry to find specific, customised solutions seems to have been given top billing at the expense of the goal of making substantive improvements to the recycling performance of industry. An illustration of this emerges from inspection of Schedule 1 of the Covenant which includes among its ‘menu’ of options the suggestion that an Action Plan “should address as appropriate” the establishment of “measurable performance objectives and mechanisms to monitor their achievement”. It is
submitted here that such an item ought to be a mandatory component in any Action Plan.

Irrespective of whether a company establishes measurable targets and mechanisms for assessing the achievement of targets, there remains the question of whether the targets were significant. This issue appears to lie at the heart of problems with the Action Plans. The difficulties which Local Government perceives with respect to the Action Plans ultimately relate back to a lack of purpose on the part of the Covenant. The results of this are manifest in Action Plans without clear and significant goals, in the Covenant Council’s continued emphasis upon participation rates rather than outcomes and in the omission from the Covenant of any useful measure of its own success.

This problem of a lack of purpose has a series of levels. The Covenant does not articulate a set of final outcomes that it seeks to achieve. Nor has the Covenant specified outcomes for the major sectors participating in the Covenant. Finally, the Covenant makes no direct provision for establishing what outcomes are appropriate to expect from individual Action Plans. While the Covenant provides a list of undertakings for all signatories and some of these are specific to sectors, these undertakings are generally linked to an outcome only implicitly and the outcome is difficult to define. By failing to provide these things, the Covenant fails to supply the necessary reference points against which to assess the performance of an Action Plan.

b) Discussion of Desirable Response:

Local Government’s most direct criticism of Action Plans under the present Covenant is that signatories are given too much latitude to determine their own objectives. It is suggested that flexibility as to means has been confused within the Covenant framework with flexibility as to ends. It may be appropriate that businesses be given the latitude to analyse their own operations to identify the best strategies for achieving waste minimisation or
recycling related outcomes. However, the process must be more tightly controlled with respect to the setting of targets and the measurement of whether targets have been met. Local Government could see here a role for a third party, such as the Covenant Council.

For a voluntary approach to work, the parties choosing to come on board must agree to measurable targets of real significance. However, assessing whether targets are of real significance will only be possible if the Covenant is redrafted to supply the clarity of purpose presently missing at multiple levels. A new Covenant must be much clearer about what it seeks to achieve and what targets must be collectively met. This must occur at the level of all signatories and at the level of individual sectors. In turn, the Covenant must then give guidance upon how these objectives and outcomes are to be applied to determine whether the sum of targets set in an individual Action Plan are sufficient.

For example, the Covenant might set a target for a reduction of packaging waste heading to landfill of 2% for a given period. This ‘meta-target’ would be the responsibility of all signatories but the industry sector might be required to achieve a proportion of this reduction through reduced packaging material use or reduced non-recyclable material use. The absolute reduction required of an individual signatory could be determined by reference to their relative contribution to the waste stream, then this figure would form a hard target for that particular signatory.

This section will not consider what the consequences should be for individual failure to meet a target, although this is a question requiring attention. The more pressing item is to consider what should be the consequences of the Covenant failing to meet its ‘meta-targets’. It is suggested that the key to focussing the attentions of all parties on achieving meaningful change is to put the Covenant itself on notice that it must perform to a certain standard or lapse. In other words, make the Covenant’s continued operation subject to the signatories meeting a set of collective targets. Local Government is more
concerned that the Covenant system be made conditional upon performance than with promoting a particular alternative, but one such alternative could be a container deposit scheme.

c) Recommendations for Covenant Mark II:

- That the Stakeholders review the Covenant with the aim of clarifying the purpose of the Covenant and stipulating a range of key targets and performance indicators for each level within the system.
- That the Stakeholders review the Covenant with the aim of establishing a clear path to an alternative system, consequent upon the Covenant failing to achieve a minimum level of performance as determined by reference to the key targets and performance indicators.
- That the Stakeholders review the Covenant with the aim of setting objectives and stipulating a range of key targets and performance indicators for individual sectors.
- That Stakeholders review the Covenant with the aim of clarifying for the Covenant Council, its powers to compulsorily include or modify targets in individual Action Plans.

11. The Review and Auditing of Action Plans are not Attached to Specified Consequences

a) Description of Present Situation:

Schedule 1 of the Covenant grants the Covenant Council the discretion to review an Action Plan and the discretion to audit a signatory’s performance against the undertakings contained in an Action Plan. The Covenant Council is empowered to review or audit an Action Plan, yet Schedule 1 is silent on the question of what consequences shall follow if a signatory is found wanting after a review or audit has been conducted. For reasons set out below (point 12), it is very difficult to imagine that the Covenant Council would declare the signatory non-compliant, since this declaration would subject the signatory to
the NEPM and thereby to enormous commercial hardship. If exile from the Covenant is not a realistic consequence of non-compliance, it is difficult to discern from inspection of the Covenant and the NEPM, what consequences were contemplated by those responsible for drafting these documents.

b) Discussion of desired response:

It is apparent that a simple, uncontroversial penalty procedure would be a useful addition to the Covenant. Failure by a signatory to comply with the Covenant would be determined by reference to explicit terms in the Covenant or to measurable targets contained in an Action Plan or to the findings of an Auditor. Then the Covenant Council would be obliged to apply a penalty as prescribed by the Covenant. The magnitude of the penalty would ideally be proportional to the revenue of the signatory, but importantly the entire process and the size of the penalty should be predetermined and carefully prescribed. The paucity of detail provided in the present Covenant in respect of assessment and non-compliance procedures would invite obstructionism and lobbying. For the assessment and penalty provisions to operate without relying heavily on the discretion of the Covenant Council, it is clear that the ability to determine and measure targets is a matter which must be given prior attention in any future Covenant.

c) Recommendation for Covenant Mark II

- That the Stakeholders review the Covenant with the aim of establishing a creating a feasible sequence of consequences for non-compliance.
- That the Stakeholders attempt to establish a process which minimises the opportunity for argument in the event that a party is deemed non-compliant.

12. The legislative framework is a tool to increase participation in the Covenant rather than recycling per se
a) Description of Present Situation:

For a number of reasons the NEPM is unlikely to ever be triggered, and its true function must be seen as ensuring that all industry parties sign the Covenant.

The Covenant is accompanied by a federal and state legislative framework which is described as a “complementary regulatory safety net affecting those who do not sign the Covenant”\(^{15}\). The interaction between the NEPM, the Covenant and the Covenant Council produces a legislative framework with a very different function to that of a safety net.

The NEPM is unlikely to be triggered in the first instance, because the NEPM indicates that the enacting government (the WA State Government for example) entirely defers to the judgement of the Covenant Council on the question of whether a signatory has complied with the Covenant and should therefore be exempted from the NEPM. Secondly the Covenant imposes a set of obligations upon industry signatories which are sufficiently vague to ensure that a ruling by the Covenant Council of non-compliance will be rare as a final outcome. Finally, the terms of the NEPM are so onerous as to make enforcement impossibly controversial. If a brand owner was subjected to the operation of section 9 of the NEPM, it would be forced out of the market. It is clear therefore that the NEPM serves to herd businesses into the Covenant and that it was never intended to operate as a fallback mechanism.

The diverse range of businesses which make and use packaging for consumer products have comprehensively embraced the Covenant. This fact is marketed by the Covenant Council as a major success of the first four years under the Covenant framework and is presented as evidence of the viability of a voluntary system. When the NEPM enters into force in Western Australia, firms not yet signed-up will face the decision about whether to sign

the Covenant or become subject to the regulatory system. At this fork in the road, a business will choose between the Covenant with the largely non-specific commitments that pave this route and the NEPM, with its promise of commercial oblivion.

No business will choose the latter option, but in opting to sign the Covenant, the business cannot be said to be evincing any substantive commitment to recycling. Nevertheless, the Covenant heavily relies on an existing commitment within each signatory organisation to strive for better recycling outcomes or reductions in packaging waste. This can be fairly asserted in the wake of the Independent Review of Action Plans and Annual Reports, which showed that Covenant does little to impose such a commitment. It should be noted therefore that the framework is highly coercive in inducing industry parties to sign the Covenant, but strikingly non-coercive in the manner in which it seeks to have signatories pursue the objectives of the Covenant. This fact is acknowledged by the Packaging Council of Australia\textsuperscript{16}, but not reflected in some of the terminology which still appears in relation to the NEPM, such as in the quotation presented above.

\textit{b) Discussion of Desired Response:}

At the most basic level, it seems appropriate that the language used to describe the NEPM be revised to reflect the true nature of the legislation. The expression “complementary regulatory safety net” is a misnomer and should be discarded, since it implies a complete regulatory system which in fact does not exist. The importance of this is acknowledged to be symbolic. Nevertheless, removing the fiction that two systems operate side by side would serve to clarify the fact that there is no alternative to the Covenant. It would help to make clear that if the Covenant fails to improve recycling outcomes or deliver reductions in packaging waste, nothing presently exists to take its place.

\textsuperscript{16} Williams, 2003
More significantly, the preceding analysis of the NEPM should inform the Stakeholders in their review of compliance and penalty procedures in the Covenant. The Covenant currently provides no tools to the Covenant Council which it may use to encourage compliance with the Covenant. At present the Covenant Council can only bring to bear whatever pressure is contained in the threat that poor performance will jeopardise the Covenant and thus risk the imposition of a legislative framework. It is simply not practical to threaten an obstinate industry signatory with exclusion from the Covenant, when the outcome would be to ruin the company. It is apparent that the Covenant requires revision so as to provide the Covenant Council with the tools that it presently lacks to penalise non-compliance.

c) **Recommendation for Covenant Mark II:**

- That Stakeholders review materials pertaining to the Covenant with the aim of clarifying the nature of the NEPM
- That the Stakeholders consider eliminating the use of numbers of signatures as a measure of support for the Covenant.

13. The Covenant Cannot Fail

a) **Description of Present Situation:**

There presently exists no clear criteria on which to judge the success of the Covenant. Neither the Covenant nor supporting documentation specify clear objectives and targets at any levels (see point 10). It is therefore impossible to judge whether the Covenant has succeeded or failed. The conclusions that one draws on this question will depend almost entirely upon the position one takes to begin with. Positive developments may be highlighted and the negative downplayed. The Converse is also true but neither perspective can prevail purely on the basis of rational debate. The perspective which prevails will ultimately be the one backed by more effective lobbying and political patronage.
By denying all stakeholders the opportunity to rationally assess whether the Covenant has succeeded, the risk exists that this instrument will be retained even if though it may not result in significant improvements in packaging waste problems. The ultimate consequence will be that packaging waste problems persist unabated and effective measures are deferred until such time as political pressure reaches the levels necessary to overcome the inertia associated with an entrenched status quo.

*b) Discussion of Desired Response:*

As was noted in the previous section, nothing presently exists to replace the Covenant. The Covenant was an agreement lasting five years and the parties merely agreed to discuss the options once more as the expiry date approached. When certain stakeholders presented the Covenant as their response to concerns about packaging waste it served to remove regulatory alternatives from the agenda. It is suggested here that it is more appropriate that Covenant negotiations are made contiguous with discussions about alternative regimes.

The next Covenant should be part of a larger framework, designed to ensure that the key concerns about packaging waste are addressed. The Covenant is properly viewed as a possible route to addressing a number of problems. Industry’s preference for this route is reasonable if it can show that these problems are being satisfactorily addressed. If the Covenant is shown to be failing in this respect, the larger framework must still be capable of succeeding. It is for this reason, that the discussion of alternative regimes is a key component of any holistic response to the packaging waste issue.

It is noted that the Covenant Council would enjoy a stronger negotiating position if it were able point to a credible threat that the Covenant might not continue to be the sole national scheme for regulation. This can only be said to exist if two conditions are met. The first condition is that the alternative is well defined and the resources and expertise to implement the alternative are identified. The second condition for a credible threat of alternative regulation is
the identification of clear criteria for the success or failure of the Covenant. Thus the Covenant Council will be able to apply greater pressure upon signatories if it can show them exactly what will replace the Covenant and under exactly what circumstances. Otherwise the Covenant Council will continue to rely largely on the commitment intrinsic to each signatory.

c) Recommendation for Covenant Mark II:

- That the Stakeholders identify clear criteria on which to assess the success or failure of the Covenant, including measurable targets and significant outcomes.
- That the Stakeholders identify clearly the consequences of the failure of the Covenant to succeed, as defined by the response to the previous point.