Submission on the NPCC’s Consultation Proposal for Strengthening the National Packaging Covenant

PREPARED BY THE

MUNICIPAL WASTE ADVISORY COUNCIL
“Getting the Environment Right”

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EXECUTIVE SUMMARY

Position on the Proposal for Strengthening the Covenant
Overall, the Municipal Waste Advisory Council (MWAC) does not support the proposal. Primary among our objections are the facts that the proposal:

- Does not substantially redress the weak strategic framework of the Covenant;
- Does not integrate the quantifiable outcomes achieved by signatories with their ongoing eligibility to belong to the Covenant;
- Exacerbates confusion surrounding how the Covenant will be determined to have succeeded or failed; and
- Does not make a case for many of its recommendations.

We do support aspects of the proposal. In particular we support the following recommendations:

- Creation of a data-capture methodology and obligations for signatories to report against a range of consistent data categories;
- Strengthened action plan assessment processes;
- Rapid commencement of data-capture (to begin by Sept 2005); and
- Continuation of the NEPM.

We suggest a large number of changes to the Proposal including the following:

- A three year Covenant extension with a further 2 year extension subject to the achievement of a number of milestones.
- A range of goals for the Covenant to achieve which address issues of specific concern to Local Government
- A range of structural drivers for continuous improvement
- A wider range of actions be required in Action Plans to achieve benefits in several different areas.
- KPIs which mesh with the enforcement framework, to be considered when determining whether to suspend or expel.
- A framework for prioritising projects be adopted to facilitate comparative assessment of project proposals.
- Consistent guidance and devolved responsibility for the approval of projects

Additional Comments – Representation
We are concerned that the NPCC’s Proposal is silent on the question of reforming the representative structures of the Covenant. Local Government support for the Covenant will be difficult to win while the NPCC continues to be overly representative of the views and interests of industry while being under-representative of those of Local Government.

“Core Proposals”
The recommendations under this section seek to entrench the Covenant framework. We find this section of the proposal to be, on balance, unacceptable and it is our view that this set of
recommendations has the greatest significance out of all the recommendations made in the proposal.

“Strengthening the Strategic Framework”
The recommendations under this section attempt to improve the capacity of the Covenant to operate as a strategic framework, without touching the core document. On balance, this section of the proposal is unacceptable partly because it is constrained by the Core Proposals but also because it remains focused on form over function and documentation over outcomes.

“Strengthening Action Plans and Reports”
The recommendations under this section attempt to improve the quality of action plans and reports. Notwithstanding some satisfactory elements, on balance this section is unacceptable because it fails to link the eligibility of signatories (to remain within the Covenant) with the things they actually achieve under their Action Plans.

“Strengthening Enforcement and Compliance”
The recommendations under this section attempt to provide the missing link between failure to properly engage with the Covenant and liability under the NEPM. On balance, this section is not acceptable to Local Government, because it fails to link the physical performance of signatories with their liability to be expelled from the Covenant.

“Funding the Next Phase of the Covenant”
The recommendations under this section attempt to define where financial resources will be allocated under the Covenant. On balance, this section is acceptable to Local Government, but we consider that this section is largely peripheral to the operational elements of the Covenant system.
INTRODUCTION

The Subject of this Submission:

In late June 2004, the National Packaging Covenant Council (NPCC) circulated a proposal for strengthening the Covenant containing 29 recommendations, a list of 4 new goals, 11 actions and 29 key performance indicators (KPIs). The proposal is broken into “core proposals” and four other sections concerned with: strategic framework; action plans and reports; enforcement and compliance; and funding. This submission is the Municipal Waste Advisory Council’s formal response to this proposal.

The Format of this Submission:

This submission responds to the proposal by focussing on the 29 recommendations, while commenting on the other aspects where relevant. The Submission aims to be constructive in spite of the significant misgivings on the part of Local Government about the efficacy of the Covenant approach to managing packaging waste. Thus we commend the reader to recognise that our ‘take’ on the recommendations of the Proposal has several elements, namely:

Priority
Against each of the 29 recommendations is a designation ‘High Priority’ or ‘Low Priority’. This designation reflects the relative importance that we attach to the recommendation. We have made these designations to avoid an interpretation that our positions on the various recommendations have equivalent weight. In order to make the Covenant palatable to Local Government, we suggest that particular attention is paid to the positions on recommendations given high priority.

Position
Against each of the recommendations is a statement of position. The three possible positions we ascribed are “Recommendation Supported”, “Recommendation Not Supported” and “Concept Supported, Execution Not Supported”. We provide these concise position statements in the interests of concision. However, we caution that the designation “Concept Supported, Execution Not Supported” should not be read to convey support for a recommendation. Rather this designation indicates that with substantial redrafting or elaboration, the recommendation has the potential to be supported.

General Comments
We make comments against the recommendations in order to help the reader understand the context and background to our position and our reasons for suggesting changes. The comments sometimes range across a number of issues.

Suggestions
For many of the recommendations, we have suggested additions and or modifications. In many instances, it is these suggestions which define the pre-requisites for Local Government approval of the recommendation when our position is stated as “Concept
Supported, Execution Not Supported". That is, if the suggestions are adopted, our position becomes "Recommendation Supported". Whereas if the suggestions are ignored, our position defaults to "Recommendation Not Supported".
PART 1 “CORE PROPOSALS”

Summary
The three core proposals may be summarised as: keeping the existing core Covenant document; retaining the NEPM; and renewing the Covenant for 5 years. We do not support the first or the last of these recommendations but do support the retention of the NEPM. We found this section of the proposal to be, on balance, unacceptable and it is our view that this set of recommendations has the greatest significance out of all the recommendations made in the proposal.

Proposal Recommendation No. 1
The core Covenant document will be retained. Significant amendments will be made to substantially strengthen its operational components.

High Priority

Position:
Not Supported

General Comments:
The core Covenant document is poorly drafted and it requires substantial revision. The core document is unclear in its wording and unspecific about its objectives. The core document refuses to demarcate meaningful responsibilities and focuses unduly on motherhood statements and matters of philosophy. Moreover, the core document sets out no useful monitoring and review procedures and consequently these had to be conjured up in the final year of the Covenant. These facts are evident upon even the most cursory glance at the document.

On the one hand, the core document has not been written in the style of a contract. It does not clearly identify the consideration offered by the parties. It does not lend itself to unambiguous interpretation, such as might make its provisions enforceable. On the other hand, the core document stops short of being a strategic plan. It sets out no vision, its objectives are non-specific and partly miss the point, while it provides no means of assessing whether the instrument has succeeded or failed. No contracting party nor any strategic planner who forcefully desired to see substantial and sustained improvements in the management of packaging waste would have permitted the core document to be drafted in its current form.

The Covenant has clearly been drafted primarily to minimise objections from liable industries rather than to facilitate the achievement of objectives. This point lies at the heart of comments made by Gavin Williams of the Packaging Council who wrote in 2003 that “the beauty of the present Covenant (the key document) is that the wording itself has never been a problem for any party to
the Covenant.”¹ Frankly, we find this a ludicrous criterion on which to assess the document. The issues surrounding packaging waste are thorny. Tough decisions and actions are required to address them. To say that the document (upon which the entire national response is based) causes no problem for any of the parties is to concede that none of those parties were required to take tough decisions or actions.

It appears that all the parties can agree that the Covenant needs to undergo change if it is to become an effective instrument. The challenge for advocates of a voluntary approach is to demonstrate that their mechanisms for negotiation and consensus building can achieve the required depth of reform. The voluntary approach is yet to demonstrate that it can deliver significant improvements in the management of packaging waste. In view of this, we are drawn to question why should it be acceptable to plead that neither can the voluntary approach deliver a consensus on a substantially improved core document. It is our view that advocates of the voluntary approach must demonstrate that their approach can manage precisely this type of negotiation.

If apathy, delays and obstruction are characteristic of the negotiation process which encumbers the NPCC, then this must count towards the final assessment of the voluntary approach to managing packaging waste. If industry cannot broker sufficient voluntary support for an effective management regime, of which a properly constituted head document is an integral part, then it must be considered to have forfeited the right to manage itself. If industry is so divided and so lacking in commitment to tackling the problems of packaging waste that it can’t achieve consensus on a strengthened core document, then responsibility for tackling these problems must revert back to the regulator.

Regarding Alleged Impediments to Changing the Core Document

It has been suggested that changing the Covenant core document is unworkable because it is this document to which signatories have given their signature. According to this argument, changing the core document would necessitate a process of resigning all of the existing signatories. We strongly disagree with this argument and in forming this opinion, we note several points:

a) The schedules to the Covenant form part of the undertakings of the signatories. It would be an absurdity if the core document obliged signatories to comply with the Environmental Code of Practice for Packaging if the signatories were later able to claim that the Code of Practice had no effect because they had not signed it. Schedule documents are inherently no more or less binding than those of the core document. Yet the NPCC claims authority to revise the Schedule without requiring a resigning process.

b) Section 7 of the core document states that the Covenant can “…be amended by agreement of ANZECC [now EPHC] and unanimous agreement of the Covenant Council…”2. In this section, no mention is made of the need for subsequent re-signing. Notwithstanding that the amendment process may have been envisaged to be distinct from the negotiation of a successor Covenant, this section clearly indicates that signatories have accepted that changes may be required to the Covenant. Moreover, section 7 doesn’t even distinguish between the core document and its schedules – it refers merely to the ‘Covenant’.

c) The process proposed for carrying over signatories is to allow signatories to opt out but not require them to opt in3. This kind of ‘rollover’ procedure is common to many types of agreements. Signatories will no doubt opt out of the revised Covenant if they disagree with the new terms. This discretion is in no way compromised by alterations to the core document.

d) If signatories are ‘scared off’ by a more onerous framework then they can opt out and accept the privations of the NEPM system. Perhaps there is benefit in retaining signatories. However, it is completely unacceptable to allow the threat of losing signatories to prevent necessary improvement and strengthening to occur.

Local Government is asked to accept arbitrary constraints on how the Covenant will be permitted to evolve on the basis of a spurious, formalistic argument. The distinction between the core document and the schedule has no theoretical or practical basis and should be dropped.

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2 Page 7 of The National Packaging Covenant.
3 As explained by Gavin Williams on the Packaging Council Website, see http://www.packcoun.com.au/opinions/opinion_williams.htm
Proposal Recommendation No. 2

The core NEPM document be retained with the focus on substantially strengthening its usability for enforcement and compliance.

Position:

Supported

Suggestions

2A. That measures for strengthening the usability of the NEPM be developed as soon as practicable and before commencement of the next Covenant.

2B. That measures for strengthening the usability of the NEPM be provided to Local Government in draft form for discussion, prior to their adoption.

2C. The measures for strengthening the usability of the NEPM include a formal agreement between the NPCC and each jurisdiction, setting out what the respective parties to the agreement undertake to do when the question of non-compliance with the Covenant or the NEPM arises.4

4 It is important that the time delays observed with the development of the NEPM framework not be repeated when the opportunities to apply it arise.
Proposal Recommendation No. 3

The strengthened Covenant arrangement continue for five years.  

High Priority

Position:

Not Supported

General Comments:

Quoting from the NPCC Consultation Proposal for Strengthening the National Packaging Covenant:

“The Nolan Report recommends the continuation of the Covenant for a minimum of three years. NPC Council therefore proposes that the strengthened Covenant be extended for five years to 2010.”

We include this quotation to open our remarks on this proposal because it neatly illustrates a broader trend in the way the NPCC has directed the Covenant review process. The Nolan Report provides no basis for the proposal that the Covenant be granted another 5 year term. At best the Nolan Report recommendation does not contradict the NPCC’s proposal, but at worst the NPCC has wilfully ignored the substance of the Report’s recommendations. Specifically, the Report sets out a three year roadmap for strengthening the Covenant. This roadmap does not accord with the designs of key Covenant proponents and hence it has been ignored. The NPCC proposal then invokes the Report as if it lends independent support to the 5 year extension proposal, which it clearly does not.

We take the view that the failure of the Covenant to achieve any significant and demonstrable improvement in the management of packaging waste detracts from the case for a five year term. This failure invites a presumption that external scrutiny of the next Covenant needs to be brought to bear sooner than 2010. We suggest that a strong argument needs to be mounted to over-turn the presumption and yet no arguments and no evidence have been provided in support of this proposal.

It is our view that the Covenant should be broken into periods, somewhat like many modern service contracts. A 3 year Covenant with a 2 year extension subject to the achievement of key performance benchmarks seems to us an obvious way to drive the Covenant and its signatories towards continuous improvement. We submit that two years is long enough to develop solid data-capture methodologies, long enough to capture baseline data and long enough to set a few key targets for the packaging supply chain to achieve. A third year should be sufficient to identify whether the targets have been met. Meeting the target could be agreed to secure automatic renewal of the Covenant for a further two years. Importantly, the extension ought to be collectively

earned by all Covenant signatories, after all, they stand to retain indemnity from the NEPM for their efforts.

A suggested modification, which will be developed under Recommendation 5, is to break down Covenant performance on a sector by sector basis and grant Covenant renewals to well performing sectors. By way of illustration, under such a system, if the PET sector were achieving good improvements over the first three years of the Covenant, it would not suffer cancellation of its NEPM indemnity, simply because the mixed plastics and glass sectors were underachieving.7 Under such a framework, the NEPM indemnity would have to be collectively earned by the members of the specific sector – a smaller and more manageable unit than the entire pool of industry signatories.

Suggestions

3A. That the strengthened Covenant continue for three years during which time the framework for performance measurement be developed and implemented.
3B. That during the first year of the Covenant a series of targets be developed with reference to the Covenant goals (objectives) and KPIs and that these targets be adopted for specific packaging sectors to achieve in years two and three of the Covenant.8
3C. That responsibility for determining whether the targets have been met by each sector rest with the EPHC and not be delegated to the NPCC or any other forum in which Industry is over-represented.
3D. That the Covenant be automatically extended for a further two years for each sector that meets its targets.
3E. That those sectors which are found not to have met their sector specific targets over years 2 and 3 of the new Covenant, be rolled into the NEPM framework for jurisdictional action.

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7 See Recommendation 5 for discussion of ‘modular’ sector-based Covenant framework.
8 see Recommendation 5 for discussion of goals and KPIs
PART 2 “STRENGTHENING THE STRATEGIC FRAMEWORK”

Summary
The Strategic Framework proposals may be summarised as: defining goals, actions and KPIs; adopting a continuous improvement philosophy; expanding the scope of the Covenant to incorporate non-household post consumer waste, to incorporate litter and distribution packaging and to incorporate newspapers etc. We support many of the concepts introduced by the proposal but cannot support the manner in which the proposal gives effect to those concepts in its recommendations. Most importantly, we are not satisfied with the proposed set of goals, actions and KPIs. We also find the recommendations to expand the scope of the Covenant problematic in light of the lack of strategic direction exhibited by the Covenant. On balance, this section of the proposal is unacceptable. The strategic framework is the basis for achieving improvement through a voluntary mechanism and the proposal does not sufficiently strengthen the strategic framework of the Covenant.

Proposal Recommendation No. 4

A number of environmentally focused performance goals, actions and key performance indicators be adopted across the full lifecycle of consumer packaging.

High Priority

Position:
Concept Supported, Execution Not Supported

General Comments:

Comments on the proposed goals and actions

The proposal explicitly keeps the core document off-limits. Therefore the goals, actions and KPIs outlined in the proposal form the highest level of strategic reform available within the current Covenant revision process. In making our comments against the goals, actions and KPIs we have attempted to set aside our conviction that retaining the poorly drafted core document sabotages these subordinate strategic elements.

No coherent explanation is provided to link the goals to the existing Covenant objectives. Indeed, the description of two of these items as ‘goals’ is inaccurate. Moreover, the status of these goals is

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9 Goal 1: “[to establish a national framework] based on the principles of product stewardship and shared responsibility;” provides a statement of the principles which should be applied but principles are not goals.
Goal 2: “[to establish a national framework] implemented through a collaborative approach between all participants in the packaging chain;” provides a statement of a strategy by which outcomes might be pursued but strategies are not goals.
unclear – we are told only that they have been ‘distilled’ from the objectives. This does not
reveal, for instance, whether the assessment of the next Covenant be conducted against the goals
or against the objectives or both.

We also note that goals 1, 2 & 4 have already been achieved. The existing Covenant establishes
precisely the type of ‘national framework’ envisioned by these three goals. It was acknowledged by
NPCC representatives at the recent Covenant consultation forum that the Covenant must do much
more. This begs the question, why set goals for the Covenant which are merely descriptors of the
status quo? If these goals were to be used to measure the performance of the Covenant, Local
Government would need to be assured that all four goals will not receive equal weighting in the
final assessment of Covenant. Otherwise the next Covenant could be declared 75% successful
before it's even implemented.

There exists substantial room for improvement in drafting of the goals and actions. Words such as
increase and reduce are preferred for use in framing goals and actions. Words such as support,
maximise, minimise and optimise should be clarified by interpretation notes, since these terms are
likely to be qualified by circumstances such as business impacts of increasing or decreasing key
parameters. If this is to be the case, then the nature of such qualifications should be defined.

Local Government Goals

To understand the predicament of Local Government requires an understanding of two things.
Firstly, community values dictate that recycling packaging is less and less a discretionary activity.
We note that, as part of a strategy to diffuse community concern about packaging products, the
packaging industry cultivates a community expectation that comprehensive kerbside recycling
services will be provided. This is just as true in WA as in any other Australian State. Secondly, the
market for recycled materials remains highly variable in terms of price, specification and quantity.
This is especially true in WA. The consequence of these two facts is that Local Government in WA
is precarious in respect of its kerbside recycling services. It cannot stop recycling and it
cannot rely on the market to consistently support its recycling activities.

Complicating these matters is the fact that the recyclables market, for a range of reasons, does not
operate in precisely the same way as a normal market. Whereas the market price would ordinarily
provide an authoritative picture of the strength of demand for a given type of recyclate, it is clear
that other variables are manipulated within the market for recyclables according to how interested
reprocessors are in receiving the product. Thus while prices may remain stable, reprocessors may
specify that less material will be accepted or may more stringently enforce the purity specifications.

Therefore, key issues which Local Government would wish to see addressed though the Covenant
include:

• Volatility in market prices for recyclables

10 Proposal p12
11 For example: Action 2 (Proposal p14) “Packaging designed / manufactured to optimise the amount of post-consumer
recycled content”. If markets for recycled materials are to be strengthened through the Covenant, a key action must be
to increase the amount of post-consumer recycled content in packaging. An implicit “no-net-disadvantage” test may
often show that a sector is already achieving an optimal level of post-consumer content, notwithstanding the technical
feasibility of pushing the level higher. This qualification must be made explicit.
• Variation in the application of consignment specifications – high market prices lead to lax application of specifications; low market prices lead to tighter application of specifications
• Variation in the quantity of material which will be accepted
• ‘Laggard’ material types which still have not established significant recycling streams which WA can access – eg mixed plastics.
• Inequities in the level of support provided by industry to the different states.  

From these issues we can distil a number of goals which go to the heart of how Local Government will ultimately judge the success of the Covenant. We submit in the “Suggestions” section the five key goals which Local Government needs to see incorporated into the Covenant

Comments on the proposed KPIs
The proposed KPIs address some, but not all of the concerns of Local Government about the performance measurement mechanisms incorporated into the Covenant. Many of the KPIs listed on pp 14 – 16 of the proposal would, if properly implemented, lead to the capture of some extremely useful data. Acquiring the capacity to quantitatively measure the various dimensions of packaging waste issues would be a significant improvement on the present situation.

Notwithstanding the benefit in implementing some of the measurement mechanisms (listed as KPIs on pp13-16 of the proposal), we question whether KPIs exist at the appropriate point within the strategic framework. The proposal specifies KPIs against the 11 proposed actions. Obviously, the KPIs are intended to be used to determine whether and/or to what extent the actions have been implemented. However, the most important role of KPIs in strategic planning is to assist in determining whether the objectives have been met. The allocation of KPIs against the actions and not against the objectives or goals begs the question – will they be of any use in years to come for the purpose of assessing the Covenant’s performance? When assessing the success of the Covenant will the key question be whether the Covenant system implemented the promised actions or whether it achieved the promised outcomes? We submit that the material question should be the latter.

Local Government KPIs
We submit in the “Suggestions” section below the KPIs which we consider necessary to assess the achievement of the 5 goals for Local Government. We emphasise that these KPIs form the basis for an assessment of the achievement of the goals, not actions. They therefore provide the basis for an assessment of whether the Covenant succeeded or failed for Local Government.

Suggestions

The goals and KPIs necessary for inclusion in the next Covenant from the perspective of WA Local Government are as follows:

4A. Local Government Goal One: Reduce the volatility in the price of each of the major categories of recyclables.

\[12\] WA is not as well serviced as are other states, yet we can imagine the outcry on the part of the packaging industry were they required to inform consumers that packaging was ‘less recyclable’ in WA.
KPI (i) Fluctuations in the local market prices as a function of time, location and quantity of material recovered

4B. Local Government Goal Three: Achieve a minimum quantity of purchases for the major material types.
   KPI (i) Magnitude and Frequency of fluctuations in the quantity of materials purchased by reprocessors – measured for each of the major material categories.
   KPI (ii) Total quantity of material purchased – measured for each of the major material categories

4C. Local Government Goal Four: Substantially increase the quantity and value of recycling streams for 'laggard' materials like mixed plastics.
   KPI (i) Total quantity of material purchased per year – measured for each of the laggard material categories
   KPI (ii) average price offered for each of the laggard materials

4D. Local Government Goal Five: Maintain an equitable relationship between the markets for recyclables in each state.
   KPI (i) Differential between the prices offered for different material types across different states and territories.

4E. Monitor and report on the variability in the application of consignment specifications by reprocessors.

NOTE: irrespective of the final form of the Covenant, Local Government will look to these goals and KPIs over the coming years to assess the performance of the Covenant.
Proposal Recommendation No. 5
An approach based upon continuous improvement referenced against industry baseline data for the different packaging supply sectors in relation to key material types.

Low Priority

Position:
Concept Supported, Execution Not Supported

industry baseline data for the different packaging supply sectors in relation to key material types.

General Comments:

Comments on Continuous Improvement
Continuous improvement is a concept imported from strategic planning and quality assurance fields. The applicability of the continuous improvement approach depends on the extent to which improvement has a driver.

It may be that direct profit from improved processes is a common driver in other contexts. However, in relation to packaging design, manufacture and marketing the Covenant is supposed to be a tool to achieve benefits primarily external to the private company. For example, the more recycled content a manufacturer incorporates into their packaging the stronger will be the markets for recyclate – a benefit to Local Government. We submit that continuous improvement in designing, manufacturing and marketing packaging is at best only weakly driven by the profit motive.

The threat of bad publicity generated by poor performance may be an alternative driver for continuous improvement. As has been recognised by NPCC representatives, the Covenant does not currently permit us to quantitatively identify good and bad performers (Cordner, 2004 pers comm). We therefore suggest that a key design criterion for the measurement framework will be whether it provides opportunities for the comparative assessment of performance. That is, the performance of individual signatories against their nearest peers – probably based on material-type sectors and the performance of the different material-type sectors against one another.

We note that “continuous improvement” is mentioned several times as a KPI. Perhaps it is intended that the new Covenant will require signatories to continuously improve against a number of KPIs or be expelled. In other words, perhaps a signatory-specific baseline will be set by that signatory’s performance in the previous year. This would be an improvement, although we doubt that the NPCC really intends to modify the Covenant such that failure to continuously improve would denote non-performance which in turn would require expulsion. In any event, continuous improvement is less favoured by Local Government compared to the option of creating quantitative targets associated with each of the KPIs. Such a framework would specify the magnitude of improvement required.

13 Light-weighting and transport reform are exceptions to this rule and have proven spontaneously popular among industry signatories to the Covenant.
Comments on Distinguishing between Packaging Sectors

Taking cue from the Proposal’s recommendation to collect baseline data based on “the different packaging supply sectors in relation to key material types” we submit that there is substantial scope to improve the Covenant by distinguishing between sectors based on material types. We note that there is considerable variation between different packaging material types in terms of readily they are recycled, how easily collectors are able to satisfy reprocessor specifications and in terms of the prices obtainable. Consequently, the variation in recycling rates for different material types is also substantial. In turn this suggests to us that the Covenant should refine its focus to place greater emphasis on the performance of the packaging industry, sector by sector.

While the Covenant was originally conceived as an instrument to cover packaging materials generally, the NPCC has recommended that it be expanded to include newsprint and magazines. This suggests to us that the Covenant lends itself to modular modifications. If the Covenant can be expanded to include other materials, why should it not be reduced to exclude materials which it currently covers? It is suggested that there exist a number of justifications for taking such an approach.

Firstly, the Covenant currently lumps all industry signatories into one large group. As a consequence of poor performance, individual signatories can either be expelled or the entire Covenant could fall over. This arrangement generates little incentive for signatories to undertake substantial activities aimed at improving the management of packaging waste. To avoid individual expulsion, a few modest commitments are necessary, rather than substantial effort. On the other hand, no single signatory can, by their own efforts alone, noticeably improve the management of packaging waste in its entirety. Were the threat of sectorial expulsion to be introduced then each signatory has a more direct incentive to improve their performance. This is because the threat is more imminent, any improvement is more easily discerned (and hence credited) and it is more practical to achieve coordination between a smaller group of signatories.

Secondly, the dynamics of different sectors are different. Glass is a market dominated by one company, whereas the mixed plastics market has many players. PET is a relatively high value product whereas some other plastics have limited market value. In addition, the different materials have different physical properties in the waste stream and cause different waste management impacts. All these factors suggest that a single approach to managing these waste types may not be appropriate. Indeed, whereas a voluntary program may be well suited to one sector, perhaps in other sectors it is not appropriate. It would not be fair to make this assessment for all sectors – by discarding the Covenant entirely – if it were the case that some sectors in the packaging industry were performing well and achieving marked improvement within the Covenant framework.

Finally, we have submitted in the past that the NEPM is not a practical instrument to apply to individual companies.14 This is because it would have an impractically harsh impact on the viability of any company if it was individually applied – impractical because the competitive disadvantage that the company would suffer by comparison to its indemnified peers would drive it out of

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business. On the other hand, where an entire sector has failed to perform sufficiently to justify the continued operation of a Covenant framework for that sector, the NEPM could provide an enforcement regime to cover that sector, without compromising the viability of individual companies vis-à-vis their sector peers. Any disadvantage that the sector might experience in respect of other sectors still covered by the Covenant would be a reasonable consequence of the failure of the disqualified sector to perform.

Suggestions

Note: suggestions 5A – 5B provide for a system of external scrutiny of claims made by signatories that they are continuously improving.

5A. That the NPCC make publicly available industry baseline data for the different packaging supply sectors in relation to key material types in a format which permits cross-sectoral comparisons of recycling performance.
5B. That the continuous improvement philosophy be supported by reporting guidelines which facilitate publicly available comparisons between the improvements achieved by signatories within the same material sector.

Note: suggestions 5C – 5E might serve as an alternative to using external scrutiny as a driver for continuous improvement. Here the driver would be the threat of expulsion, subject to the internal scrutiny of the NPCC.

5C. That continuous improvement against the ‘specific actions’ KPIs be required in order to remain a signatory to the Covenant.
5D. That guidelines for proving continuous improvement be incorporated into the enforcement mechanisms.
5E. That independent auditing of action plans and annual reports be undertaken frequently to assess whether continuous improvement has in fact been achieved.

Note: suggestions 5F – 5I relate to differentiation between sector types and developing a modular approach to the NPC

5F. That performance of packaging sectors, based on material type, be assessed against sector specific targets and KPIs
5G. That failure by a sector to achieve its sector specific targets (our preferred performance threshold) or failure to continuously improve (our less preferred performance threshold) result in expulsion of the sector from the Covenant.
5H. That expelled sectors be made immediately liable to the NEPM
5I. That exclusion from the Covenant continue for a minimum period of time.
Proposal Recommendation No. 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.

Low Priority

Position:

Supported

General Comments:

The Institute for Sustainable Futures Report identified that “the [current] emphasis on kerbside collection in the Covenant system means there are no adequate mechanisms or strategies to increase recovery in the away-from-home sector” (ISF, 2004, p22). Local Government would welcome recognition for alternative waste collection strategies, particularly to the extent that this permits access to transitional funds for enhancing and supporting these strategies.

Local Government notes that kerbside recycling has traditionally had a strong association with Council-based waste management services. Local Government also notes that a similar link to Councils may be absent in the case of alternative collection systems. Therefore it appears sensible to address the question of who is likely to support or provide the alternative collection systems. This might take the form of a set of criteria for assessing who would be an appropriate provider of an alternative collection system. Locating responsibility for some alternative collection systems outside of Local Government would be a positive step towards dispelling the suspicion that the ‘shared responsibility’ model simply entrenches Council responsibility for their ‘sphere of activity’.

Suggestions

6A. That studies designed to quantify the amounts of consumer packaging disposed of outside the household and beyond the reach of the kerbside recycling system, be funded through the Covenant

6B. That such studies also assess the most appropriate mechanisms for capturing the consumer packaging in each case.

6C That the revision of the scope and boundaries of consumer packaging be accompanied by statements recognising that new systems may need to be developed to capture consumer packaging in a broader range of contexts and that such systems may need to be operated by parties to the Covenant which are not presently taking responsibilities for waste management.
Proposal Recommendation No. 7

The range of consumer packaging materials under the Covenant be clarified to include distribution packaging and aspects of litter.

Low Priority

Position:

Concept Supported, Execution Not Supported

General Comments:

It is clear that consumer products generate packaging wastes at several stages throughout their lifetimes. Strategies directed at the impacts of distribution packaging would appear to be a sensible addition to the range strategies which could be pursued under the Covenant to mitigate the packaging waste impacts of consumer products. Similarly, litter is a packaging waste impact which is probably sensible to include within the ambit of the Covenant.

It has been suggested by officers within Local Government that spreading the focus of the Covenant will stretch financial and administrative resources and may hamper the achievement of significant progress within any one area of activity.

In addition, Local Government wishes to see the Covenant become an instrument which compels its signatories to undertake actions in all relevant areas. Thus, Local Government is concerned that expanding the scope of the Covenant may provide its signatories with further opportunities to select the least onerous set of actions for inclusion in their action plans. For example, Company X’s consumer packaging is still only recycled at a rate of around 20% but under the new Covenant it may choose to target litter abatement as a priority because it considers it can implement some actions at low cost and obtain some positive publicity in the local community as a bonus.

If additional areas of activity are to be introduced into the Covenant, it will be necessary to safeguard against this ‘cherry-picking’ effect. The pursuit of actions in these additional areas must not be permitted to provide an excuse for not striving to improve in the areas currently focussed upon in the existing Covenant.

Suggestions

7A. That Schedule 1 “Action Plans” be tightened to substantially constrict the discretion currently granted to signatories in respect of the matters they can choose to address in their action plans.\(^{15}\)

7B. That signatories be provided with a series of options, organised into sets, and be required to undertake at least some actions from each set.

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\(^{15}\) While the list of options might remain discretionary, the Schedule must provide some form of objective test for the purpose of determining whether the signatory is doing enough to address the range of waste issues associated with their consumer packaging.
7C. That additional areas of activity such as distribution packaging and litter be added to the list contained in Schedule 1 within the tighter framework as set out above in 7A and 7B.
Proposal Recommendation No. 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.

Position:

No proposal regarding the Covenant itself is proposed under this recommendation. Therefore no Local Government position is offered here.

General Comments:

Expanding the focus of the Covenant risks spreading the resources of the Covenant too thin and providing too much discretion as to which issues signatories may choose to address. This risk might be mitigated by requiring that the dues paid by packaging companies be hypothecated to packaging-oriented projects and likewise for newly signed newspaper and magazine companies. Industry spending, through the Covenant on packaging waste management should be maintained in real terms. The total value of Covenant funding would obviously need to increase in this case, as funding commitments from newspaper and magazine companies would be expected to be in addition to the dues paid by current signatories.

Suggestions:

8A. That other material streams under the Covenant only be included if the NPCC is confident of the following:
   • Industry funding for the management of packaging waste can be maintained;
   • funds for packaging and funds for newspaper and magazines can be managed through separate, hypothecated streams; and
   • the administrative resources of the Covenant can cope with the additional demands caused by the suggested expansion.
PART 3  “STRENGTHENING ACTION PLANS AND REPORTS”

Summary
The recommendations for Strengthening Action Plans and Reports may be summarised as: requiring consistent quantitative reporting by signatories; an option for 3 year action plans; templates for action plans, strengthened action plan audit and review; revision of the Environmental Code of practice; education strategy; and a data-capture deadline of Sept 2005. We are able to support a number of recommendations vis-à-vis action plans, in particular the recommendations for strengthened audit and review procedures and for an early data-capture deadline. The other recommendation we support in this section, are of limited importance to Local Government. We are very disappointed that Recommendation 9 does not extend the data-capture methodology to provide the basis of a performance assessment tool for the purposes of determining Covenant compliance. Notwithstanding some satisfactory elements, on balance this section is unacceptable because it fails to link the eligibility of signatories (to remain within the Covenant) with the things they actually achieve under their Action Plans.

Proposal Recommendation No. 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.

High Priority

Position:
Concept Supported, Execution Not Supported

General Comments:
The issues raised by this recommendation overlap with those associated with recommendations 4, 5 and 21 and we refer the reader to those sections also.

Recommendation 9 does not make clear what it proposes to do over and above support the development of a data collection mechanism. The role of KPIs in a strategic planning process is to assist with the assessment of whether something is performing well or not. It is only sensible to assess performance if an alternative strategy or approach can be countenanced where performance is found to be poor. It is our understanding of the proposal that signatories who incorporate all of the required components in their action plans and provide regular reports against all of the KPIs will be deemed compliant with the Covenant. Signatories will not be forced to do anything on the basis of their performance as measured by the proposed KPIs. In this context, KPI becomes an impressive name for data collection.
We submit that a data collection mechanism could become a system of KPIs if it were agreed that the collected data would be used to measure the substantive contribution being made by a given signatory to the management of packaging waste. This requires clear benchmark values for each KPI which a signatory must meet or exceed in order to be said to be ‘performing’. The proposal has not outlined benchmarks of this nature. By neglecting to link performance with quantitative benchmarks the proposal will limit the Covenant to using superficial performance criteria with limited relevance to the goals like Goal 3 of the proposal.16

Suggestions:

9A. That the KPIs proposed both by the Municipal Waste Advisory Council and the NPCC be designed to mesh with the enforcement framework, such that signatory performance against the KPIs is able to be considered when determining whether to suspend or expel.

16 Proposal p12
Proposal Recommendation No. 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.

Position:

Concept Supported Execution Not Supported

General Comments:

It is common for strategic planning to be conducted on a multi-annual basis with annual reporting against a plan with a life-span of 2 or more years. The recommendation presents little difficulty for Local Government and if it presents real advantages for signatories, then it may be a very sensible reform. However, we note that the proposal for a 5 year term to the Covenant is a poor fit with 3 year action plans.

Local Government may form the view that the Covenant proposal implicitly contemplates a 5 year Covenant with a 1 year extension – tallying to an effective Covenant lifetime of 6 years. Alternatively, it is possible to cynically imagine that delays at the start and the end of an Action Plan’s 3 year term are expected to consume the remaining 2 years. Neither of these interpretations flatter the proposal or its author and an explanation would be warranted if this 3 year / 5 year arrangement is to win Local Government support.

An additional issue arises by virtue of the non-mandatory language used in Recommendation 10. It is not clear whether the phrase “be encouraged to develop” relates only to the 3 year action plan option or to the rest of the recommendation as well. We submit that it should be mandatory for signatories to include “clear evidence” demonstrating conformity with the Code of Practice and data monitoring and recording requirements.

Suggestions:

10A. That, where a signatory elects to implement an action plan 2 or 3 years in duration, and where the action plan will lapse before the end of the Covenant’s five year term, the signatory be required to submit additional action plan(s) of appropriate duration to ensure that the remaining years of the operation of the Covenant are covered.

10B. That a framework be developed for objectively determining whether the Code of Practice has been implemented and data monitoring and recording requirements met.
Proposal Recommendation No. 11

Signatories report annually against relevant KPIs in subsequent years but not be required to submit annual action plans.

Position:

Supported

General Comments:

As indicated in the Comments relating to Recommendation 10, Local Government would be supportive of improving the framework for strategic planning delivered through the development action plans. However, Local Government would wish to be assured that the suggested change would not affect the responsibility of each signatory to report in each of the 5 years of the new Covenant.
Proposal Recommendation No. 12

NPC Council develop and require the use of templates (dependent on both company size and sector) to standardise action plans and reports.

Low Priority

Position:

Concept Supported, Execution Not Supported

General Comments

Templates are likely to be a useful tool to assist signatories to standardise their action plans and cover all the relevant matters while reducing the administrative burden associated with repeatedly sending action plans back to authors for re-writing. Templates without content requirements are likely to have minimal impact on the quality of action plans in terms of their contribution towards the goals of the Covenant.

We propose that templates be developed which incorporate content requirements and that Schedule 1 is overhauled to constrict the discretion of signatories to select from a smorgasbord of possible actions. For example, there are several different areas in which signatories can assist with managing packaging waste. Schedule 1 and associated templates could require signatories to undertake at least one activity in each of these areas. Thus every industry signatory might have to undertake data collection activities\(^{17}\), activities which support markets for recyclables\(^{18}\), activities which increase consumer awareness of packaging waste issues\(^{19}\) and activities to enhance non-signatory compliance with the Code of Practice\(^{20}\). Such a system would not overcome the Covenant's undue emphasis on form over substance but it might encourage signatories to make a more well-rounded contribution to achieving the objectives of the Covenant.

Suggestions:

12A. That Schedule 1 be modified to recognise a number of outcome areas into which most actions can be categorised.
12B. That Schedule 1 and associated templates incorporate the criterion that a signatory must undertake actions in each of the key outcome areas.

\(^{17}\) It is understood that this will be a requirement under the existing proposal.

\(^{18}\) Eg: increasing recycled content or funding research into alternative, high value uses for recycled materials.

\(^{19}\) Eg: education activities which support recycling – assisting consumers to distinguish between packaging types.

\(^{20}\) The companies with <1% of market share
Proposal Recommendation No. 13

Action plan assessment includes strengthened audit, verification and review processes in order to ensure a high quality of action plans.

High Priority

Position:

Supported

General Comments:

It is important to Local Government that the framework for action plans is substantially tightened. A shift in focus away from participation towards substantive achievement would be marked by greater scrutiny of the content of signatory action plans.

The Municipal Waste Advisory Council remarked in its 2003 evaluation of the Covenant 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.” 21 However, consultants GHD reported in 2002 that the action plans produced by signatories were, in the main, not meeting even the modest expectations of the Covenant. 22 In light of these observations, it is apparent that a strengthened action plan assessment framework must be made a priority.

It is of concern to Local Government that the assessment of action plans developed under the first Covenant placed so much emphasis on matters of form. This emphasis leads the NPCC to scrutinise action plans for motherhood statements, citations of the Code of Practice and declarations of commitment to continuous improvement.

We submit here that the appropriate questions to ask of any signatory’s action plan are two-fold. Firstly, will the actions contained in an action plan make a substantial and sufficient contribution to achieving the Covenant objectives in light of the magnitude of this signatory’s contribution to packaging waste generation? Secondly, does the action plan permit an unambiguous determination of whether the actions have been implemented and the targets achieved?

We anticipate that the next Covenant will not permit the NPCC to make a rigorous assessment of either of these questions. Such a function would be resource intensive and would probably be argued to offend the Covenant philosophy of being ‘non-prescriptive’. However, at the 28 July workshop it was suggested that there would be some form of qualitative assessment of signatory ‘commitment to the Code of Practice’ which would go beyond a mere statement to this effect.

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This was in spite of the consultants using a remarkably generous scoring system which under-emphasised the importance of allocating resources, setting targets and collecting data in favour of heavily weighting ‘general intent’ and the naming of ‘detailed actions’.
(Williams, pers comm.). It is important that Local Government be given an opportunity to review
the assessment methodology which is proposed.

The existing Covenant provides no discernable facility for determining that a signatory has
substantially failed to achieve or implement the actions listed in their action plan. A framework to
permit this retrospective assessment is necessary as is a clear procedure for penalising signatories
which are found to have failed this test. Without these changes, it is inevitable that many
signatories will comply with front end requirements regarding the content of their action plans and
compensate by neglecting to implement important actions.

Suggestions:

13A. That the concept of ‘quality of action plans’ be better defined with reference to the capacity of
an action plan to substantially and sufficiently contribute to the achievement of the Covenant
objectives.

13B. That the notion of a ‘substantial’ and ‘sufficient’ contribution be recognised to be dependent
upon the extent to which a signatory contributes to packaging waste problems.23

13C. That action plan assessment include assessments of the extent to which signatories have
substantially implemented the actions outlined in their action plans. This may include, but
should not be limited to auditing of signatory annual reports.

23 For instance – one would expect that a signatory which produces or uses difficult to recycle materials should
undertake to make a greater contribution through the Covenant that a signatory which uses readily recyclable materials
in their packaging.
Proposal Recommendation No. 14


Low Priority

Position:

Supported

General Comments:

A key Local Government complaint in respect of the Covenant is that it provides too much discretion to signatories. It is unrealistic to expect signatories to undertake onerous activities when they can remain compliant with the Covenant without undertaking those activities. Likewise with the Code of Practice – it highlights important issues but introduces no mechanism to encourage a given signatory to modify their existing practices.

The Code of Practice provides little more than a list of things which a packaging manufacturer or user should consider. Yet Recommendation 10 proposes to make implementation of the Code of Practice a requirement of Action Plans. It appears to us that for the sake of a modest amount of documentation each signatory will be able to write an action plan which demonstrates that the Code of Practice has been implemented and this in turn will be credited towards their performance. It is not difficult to predict that extensive ‘implementation of the Code of Practice’ will, in 2010, be heralded as a major achievement of the Covenant.

The Code of Practice is a tool to assist the packaging industry to identify opportunities for improving their environmental performance. However, the act of making documentary reference to the Code of Practice provides no evidence of that improvement. While there may be potential benefit in industry refining and promoting its own code of practice, the EPHC or NPCC must show how implementation of the Code of Practice can be linked to substantive improvements in the management of packaging waste. We submit that in order for signatories to earn credit for ‘implementing the Code of Practice’ the document should be redrafted to sharpen the focus on substantive outcomes.

We suggest that implementation of the Code of Practice must become a question of fact which is answered with reference to the Covenant goals and objectives. In other words the Code of Practice must import the goals and objectives of the Covenant such that actions framed with reference to the Code must be shown to produce outcomes consistent with the goals and objectives of the Covenant.

Suggestions:

14A. That the revised Code of Practice incorporate statements to the effect that implementation of the Code of Practice is only demonstrated by showing how the outcomes achieved by using the Code of Practice are consistent with the goals and objectives of the Covenant.
14B. That the revised Code of Practice and the proposed framework for measuring signatory commitment to the Code of Practice be made available as soon as possible to permit comment.

14C. That Industry's revision of the Code of Practice take effect only after it has been approved by the EPHC (or properly representative delegate).
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<th>Proposal Recommendation No. 15</th>
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<td>Action Plan workshops be held across Australia to ensure effective communication of the strengthened requirements and KPIs.</td>
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**Position:**

Supported
Proposal Recommendation No. 16

The strengthened Action Plan process commence in July 2005, with baseline data due to be established by all signatories by September 2005.

High Priority

Position:

Supported

General Comments:

We interpret the concept of baseline data to be a reference to data gathered by signatories about their own operations. We further understand this to mean that the data will relate a number of standard measurements required to be undertaken by all signatories or in some cases specific to particular categories of signatories. Local Government is supportive of rapid implementation of an effective data capture framework, and hence of this recommendation.

We consider that it is necessary to assure the quality of the data captured and the integrity of the performance assessment framework. To do this will require some form of external scrutiny of the data being captured and reported. Consequently, we wish to see provision made for random, independent auditing of the baseline data supplied by various signatories.

Suggestions:

16A. That random, independent auditing of the baseline data provided by various signatories be included.
PART 4 “STRENGTHENING ENFORCEMENT AND COMPLIANCE”

Summary
The recommendations for Strengthening Enforcement and Compliance may be summarised as: adoption of an assessment mechanism to determine whether to send signatories to the NEPM; establishment of an expulsion mechanism; retention of the 1% market share criterion; and development of a standard for industry data reporting. We support the recommendations under this section except the most important two – recommendations 17 & 18. Our position on these recommendations is based once again on our wish to see the Covenant scrutinise signatories with a view to retaining or expelling them according to their performance against the KPIs. As in the other sections of the proposal this section fails to link the KPIs and the liability of signatories to be expelled from the Covenant. On balance, this section is not acceptable to Local Government. However, mechanisms for expulsion are long overdue and will be welcome.

Proposal Recommendation Nos. 17 & 18

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 Covenant24.

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.

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<th>Position:</th>
<th>Concept Supported, Execution Not Supported</th>
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General Comments:

Recommendations 17 and 18 are highly desirable strengthening measures. A well designed enforcement mechanism would begin to atone for the dismal failure of the first Covenant to produce such a mechanism in the 5 years of the Covenant’s operation. This failure ensured that the so called ‘co-regulatory’ framework was in fact a fiction. Even in those jurisdictions which implemented the NEPM in a timely fashion, there was little prospect of a signatory falling within the ambit of the NEPM without the mechanisms outlined in Recommendations 17 and 18.

Local Government support for the recommendation will depend upon the inclusion of outcome-based criteria to be used for determining whether a signatory has failed to fulfil Covenant obligations. We refer the reader to the comments made in response to Recommendation 9 for further discussion on this point. Our concern is that an efficient expulsion mechanism is of little use

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24 NEPM, clause 11
if the Covenant has not first provided a sound basis for determining that signatories are not performing.

18A. That the mechanism for assessing signatory performance include a system for determining whether actions have been executed and a threshold rate of failure to implement actions.  
18B. That the KPIs are incorporated into the mechanism for assessing signatory performance for the purposes of suspension and exclusion.  
18C. That the definitions and practical impact of suspension and expulsion be clarified, along with the different circumstances in which each of these penalties is to be applied.  
18D. That a compulsory exclusion period be defined during which an expelled signatory will not be permitted to re-enter the Covenant framework and will be expected to comply with the NEPM.  
18E. That the effect of an NPCC determination to suspend or expel a signatory be clarified prior to implementation of the Covenant by means of a formal agreement between the NPCC and each jurisdiction as explained in suggestion 3C.

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25 In other words if a signatory fails to implement some proportion of their actions (say 30% of their actions or more) they are deemed non-compliant and expelled from the Covenant.  
26 It is important to avoid exploitation of a framework which is demonstrably slow to react. For instance it is entirely conceivable that a jurisdiction would take two years to impose the NEPM against an expelled, former signatory. Expelled signatories should not be permitted to duck back into the Covenant system after serving an exile too short to permit the NEPM to be imposed.
Proposal Recommendation No. 19

Develop a clear process for the referral of non-signatories to the relevant jurisdictions.  

High Priority

Position:

Supported

General Comments:

It is not clear whether this recommendation refers to expelled former signatories or to parties which are recognised as not having signed but are liable under the NEPM. The former interpretation would appear to be redundant since the mechanism proposed under recommendation 18 would be expected to include such a process. The latter interpretation would be approved of by Local Government.

We suggest that the NPCC should not take responsibility for making a rigorous assessment as to whether a non-signatory would actually be liable under the NEPM. Rather, Local Government would prefer to see the NPCC refer on the basis of a prima facie determination that a company meets the following criteria: non-signatory; around 1% market share; and a brand-owner. In particular, Local Government would not like to see the NPCC making any assessment of whether a given company might be granted exemption under the NEPM on the basis of achieving equivalent performance to Covenant signatories – this must be left to the Jurisdiction.

Suggestions:

19A. That the process for referral be set out in the agreements between the NPCC and each of the jurisdictions as proposed in Suggestion 3C.

19B. That the NPCC automatically refer any non-signatory to the relevant Jurisdiction where there is evidence to suggest that the non-signatory has around 1% market share and is a brand-owner.
Proposal Recommendation No. 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.

Low Priority

Position:

Supported

General Comments:

The threshold of 1% of market share may have a sound basis and we acknowledge that it is not practical for the Covenant to liaise with all brand owners. However, since it is important to see all consumer packaging waste better managed, a review of the threshold is warranted to determine how much of the consumer packaging market is covered by this definition. If it is the case that a significant amount of the total share of the market is exploited by brand owners below the 1% threshold, then the Covenant needs to incorporate aggressive strategies to ensure that the objectives of the Covenant are promoted among these non-signatories. We anticipate that supply chain pressure will be the most significant driver of non-signatory performance improvement, under the Covenant system. For this reason, Recommendation 7A should be adopted to ensure that all industry action plans include activities to promote support for the Covenant objectives among non-signatory brand owners.

Suggestions:

20A. That a study be commissioned in the first year of the Covenant to establish what proportion of Brand Owner market share is controlled by Brand Owners with less than 1% of the total market.

20B. That strategies be developed to promote activity among brand owners with <1% of market share and signatories be required to undertake activities which encourage non-signatories to adopt and comply with the Code of Practice.
Proposal Recommendation No. 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.

High Priority

Position:

Supported

General Comments:

If the Covenant achieves nothing but the establishment of a comprehensive data collection mechanism which provides accurate snap-shots of ‘packaging flows’ with good temporal and spatial resolution, it will have achieved far more than it did in its first five years. The provision of the necessary data by all signatories should be an absolute requirement of the next Covenant.

A question requiring clarification is how the process of developing a data collection methodology is intended to be managed. One of the overarching Actions mentioned in the proposal is to “develop a nationally consistent data collection methodology...” The proposal also indicates that by September 2005, all signatories will be required to have established baseline data27.

It appears that the development of this data collection methodology would be deferred until the commencement of the new Covenant – since it sits as an Action under the Covenant. On the other hand the methodology will have to be ready by the time the Covenant commences if there is to be any chance of meeting the baseline data timeframe. Moreover, it is unclear whether the opportunity for discussion and agreement of the data set was wrapped up in the July Consultation Forum. If this is the case, the consultation process was manifestly inadequate and this issue will need to be revisited.

Among the design specifications which Local Government would wish to see incorporated into the development of the data collection methodology and the data set are:

- Interoperability with the NEPM data.
- Facilitation of mass balance analysis
- A non-negotiable core data set which all signatories are required to report against.28

A further concern of Local Government in relation to the data collection issue relates to delays in the implementation of the data capture systems and delays in achieving the consistency required for compilation of the data. Annual reporting deadlines can be expected to be pushed back and

27 Proposal #16 – p7 of the proposal.
28 Confidentiality issues must be surmounted – whether by contracting for confidential and independent data collation or by other mechanisms. It is not acceptable to permit individual signatories to jeopardise the development of a comprehensive data collection system.
the of bugs can be expected to take several reporting periods. In order to avoid the situation whereby these delays prevent a meaningful assessment of the performance of the Covenant in year 3, Local Government would strongly prefer to see the data reporting period shortened to 6 months.

Suggestions:

21A. That development of the data set and data methodology incorporate consultation with key stakeholders, including Local Government before these matters are finalised.

21B. That the data set and methodology be designed to support the NEPM data and hence permit ongoing mass-balance style assessment of the generation, utilisation and disposal of packaging waste.

21C. That the data set and methodology be designed to address confidentiality concerns and then proceed to impose a mandatory reporting framework.

21D. That data is reported to the NPCC on a 6 monthly basis, while annual reporting to the public is permitted.
PART 5  “FUNDING THE NEXT PHASE OF THE COVENANT”

Summary
The recommendations for Funding the Next Phase of the Covenant may be summarised as: allocation of resources for staffing; joint industry/Commonwealth funding of admin teams; expanded range of project topics; adoption of a flexible approach to funding partnerships; adoption of protocols for joint funding; rollover of funds; and continuance of industry funding. We support most of the recommendations in this section. Recommendation 25 is problematic for us because it does not propose any means of distinguishing between funding areas and hence makes it even more difficult to determine funding priorities against the Covenant objectives. Recommendations 26 – 27 are generally acceptable except to the extent that a distinction is made between solely funded and jointly funded projects. On balance, this section is acceptable to Local Government, but we consider that this section is largely peripheral to the operational elements of the Covenant system.

Proposal Recommendation No. 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.

Position:
Supported

General Comments:
It has been intimated that the next Covenant will need to perform or perish (Mathew Warren, 2004, pers comm.). In making an assessment of whether the Covenant should be ditched, it would be desirable to avoid debate about whether the Covenant failed for lack of administrative support rather than for reasons relating to the strength of the model itself. Therefore the administrative and communications aspects of the Covenant should receive adequate funding.

Expanding the resourcing of the Covenant should be based on assessments of what is needed to better achieve the Covenant objectives. There remains significant concern within Local Government that the NPCC is primarily motivated to perpetuate the Covenant per se rather than being motivated to achieve its objectives and goals. In answer to these concerns, Local Government would wish to see some undertaking that money to be spent on administration and communication not be used to promote the Covenant for its own sake. For example an advertising campaign to increase public awareness of the Covenant as a co-regulatory scheme for managing packaging waste would need to make some demonstrable contribution towards achieving the Covenant objectives.
Suggestions:

22A. That the allocations be funded out of Covenant monies, rather than relying on Federal funding of these aspects.

22B. That expansion of the Covenant administrative and communication functions be assessed against the likely contribution this would make to achieving the objectives of the Covenant.
Proposal Recommendation No. 23

That the Administration and support teams should be located together (location and premises to be agreed) and provide nation-wide assistance and support.

Low Priority

Position:

Supported
Proposal Recommendation No. 24

That the Administration and support teams be jointly funded by all jurisdictions including the Commonwealth, and industry on a 50/50 basis.

Low Priority

Position:

Supported
Proposal Recommendation No. 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.

Position:

Concept Supported, Execution Not Supported

General Comments:

Local Government recognises the benefit in broadening the funding guidelines to permit the Covenant to support a wider range of activities. It is a welcome change that the Covenant will recognise the need for alternative strategies to recover packaging from public places and commercial and industrial premises. However, the broadened guidelines will sharpen the need for funding to be allocated in a more strategic and disciplined manner than in the past.

One of the most important deficiencies in the Covenant process is that it has never lent itself to effective strategic planning. The ambiguity of the Covenant’s objectives leads to uncertainty as to the most effective way to spend the funds available. Recommendation 25 outlines the types of things which might be appropriate to target through projects funded under the Covenant. Each of these categories appears reasonable but no consistent sense of purpose emerges from them collectively. How, for instance, would the NPCC be expected to answer the following questions:

- If limited funds are simultaneously called upon for “partnership programs to address agreed barriers” and for projects to improve “kerbside efficiencies” how is the contest to be resolved?
- If two “reprocessing” projects with different foci or objectives are proposed, on what basis should one to be favoured over the other?
- If money is to be spent on “aspects of litter reduction”, at what point will the NPCC (or its reference groups) determine that this area has received enough funding?

A strategic planning framework would go some way to resolving these questions by demanding prioritisation of actions on the basis of their relative importance for achieving the objectives. In the absence of such a framework (realistically speaking, this is presently the case) the Covenant will invite all involved parties to ‘cherry-pick’ the elements most convenient to them.
A similar point has already been made in relation to action plans under Recommendation 7.
Expanding the range of alternatives will not of itself lead to a more effective set of activities. If no clear framework for prioritising actions accompanies the broadening of the guidelines this measure may just complicate the exercise of the discretions vested in the NPCC and its reference groups.

**Suggestions:**

25A. That a Strategic Planning Framework within the Covenant is established as a priority.\(^{29}\)
25B. That the Strategic Planning Framework incorporate guidelines for prioritising projects which facilitates the comparative assessment of project proposals on the basis of their suitability to achieve the Covenant objectives and goals.

\(^{29}\) We note that this will require a substantial re-write of the Core Covenant Document.
Proposal Recommendation Nos. 26 & 27

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 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.

High Priority

Position:

Concept Supported, Execution Not Supported

General Comments:

We support recommendation 26 on the basis that flexibility in funding arrangements may permit a wider range of programs with faster implementation and better project ‘ownership’. In addition, Local Government would suggest that the process for approving jurisdictional work plans be streamlined by tasking the NPCC with establishing priorities and principles based on the Covenant then handing these to the JRG for guidance. The NPCC and KRG might then retain some form of power of review for future refinement of the system, but decisions of the JRG should be sufficient to ensure that projects can go ahead.

We note that in the past, there has been reluctance on the part of industry to accept that joint funding might be applied for by industry signatories in order to allow them to undertake actions under their individual Covenant action plan. It is submitted that the NPCC’s role is not to ensure a level playing field, although this may be desirable. Rather, it is the role of the NPCC to ensure that the Covenant joint funds are applied to best effect to achieve the Covenant objectives. As in other sections of this submission, we argue that where industry cannot overcome its own intrinsic propensity to think competitively and where this compromises the ability of the Covenant to achieve better outcomes – this must be considered as a black mark against the voluntary approach.

Suggestions:

27A That the NPCC identify priorities and principles for funding and devolve these to the JRGs to be applied in making decisions on the allocation of jurisdictional funding

27B That NPCC oversight of national projects be retained.

27C That guidelines be developed to assist the NPCC to overcome industry resistance to joint funding of signatory actions – where such actions are most appropriate to achieve the goals and objectives of the Covenant.
Proposal Recommendation No. 28

In relation to future funding under a strengthened Covenant, industry commits to rolling over any surplus funds from the current Covenant.

Position:

Supported

General Comments:

The practical effect of this proposal is not properly understood. Local Government support for the recommendation is offered subject to the following interpretation of the recommendation: Commitments from Industry and State for the 2005 – 2010 period would be calculated using similar schedules to those used for the 1999 -2004 period, with allowance made for CPI. Then, in addition to these prospective commitments, industry commits to roll over surplus funds from the current Covenant. Here surplus means 17.6 million in industry commitments minus actual industry spending on Covenant projects.
Proposal Recommendation No. 29
Future industry funding of programs will continue.  Low Priority

Position:
Supported

General Comments:
This does not appear to be a proposal for strengthening the Covenant, since it calls for the maintenance of an existing mechanism.
CONCLUSIONS

Proposal Not Supported

Having conducted a detailed review of the Proposal, the Municipal Waste Advisory Council concludes that it cannot support the Proposal. The Proposal does not address the key concerns of the Local Government in WA in respect of the management of packaging waste. Fundamentally, we do not support the proposal because it will perpetuate a framework in which industry remains insulated from any meaningful responsibility for the cost, performance and impacts of the systems which manage packaging waste. Principal among the features of the Proposal which lead us to this conclusion are the following:

- The Core Document is to be retained, and hence its weakly worded, non-specific statements above objectives and responsibilities will continue to provide the basis for the Covenant’s model of “Shared Responsibility for the lifecycle of [packaging] products”
- No clear framework for assessing the Covenant is proposed, and hence the problem of how to assess the Covenant in future years is not addressed, in fact it may be exacerbated by the Proposal’s bolt-on additions.
- Quantifiable outcomes are not proposed for either the Covenant or individual signatories and hence the substantive performance of neither the Covenant nor individual signatories will be scrutinised for the purposes of determining whether to continue the Covenant or expel a signatory.
- No mechanism is proposed to ensure that signatories undertake actions with the most significant benefits in terms of environmental impact or recycling system viability and hence the emphasis on signatories acting in good faith remains.

The omissions from the Proposal are sufficient in and of themselves to warrant a determination not to support the Proposal. However, the Proposal has also prejudiced itself by providing too little by way of explanatory detail and supporting arguments. Many of the recommendations require clarification and most of the recommendations are accompanied by no justification or very little. We submit that this is not a satisfactory approach to developing a document which is to underpin a national program with considerable significance for a large number of stakeholders.

Aspects Supported

The Municipal Waste Advisory Council supports a number of aspects of the Proposal. Features of the Proposal which are supported by the Municipal Waste Advisory Council include the following:

- Creation of a data-capture methodology and obligations for signatories to report against a range of consistent data categories;
- Strengthened action plan assessment processes;
- Rapid commencement of data-capture (to begin by Sept 2005); and
- Continuation of the NEPM.

The Municipal Waste Advisory Council strongly desires that this support not be taken out of context. The supported elements tend to be either minor elements of the overall Covenant
Opportunities for Improvement Identified

The Municipal Waste Advisory Council has provided a large number of suggestions for improving the NPCC Proposal. These suggestions reside at various points along a continuum stretching from 'radical overhaul' to 'fine tuning'. Some of the suggestions have the status of preconditions for the Municipal Waste Advisory Council to support given recommendations. Other suggestions are considered to be valuable additions to already acceptable recommendations. Among the suggestions that the Municipal Waste Advisory Council is particularly keen to see adopted are the following:

- That the strengthened Covenant continue for three years during which time the framework for performance measurement be developed and implemented and a series of targets be set for the parties to the Covenant to collectively achieve. That the Covenant be automatically extended for a further two years if the targets are met.
- That a range of goals of specific relevance to Local Government be incorporated into the Covenant.
- That a range of structural drivers for continuous improvement be incorporated into the Covenant.
- That signatories be directed to identify and undertake a wider range of actions to achieve benefits in several different areas.
- That KPIs mesh with the enforcement framework, such that signatory performance against the KPIs is able to be considered when determining whether to suspend or expel.
- That the NPCC quickly enter into agreements with each of the State signatories to ensure that the procedures and protocols for identifying non-compliant entities are clearly established.
- That a framework for prioritising projects be adopted to facilitate comparative assessment of project proposals to assess their suitability to achieve Covenant objectives and goals.
- That consistent guidelines for the approval, funding and management of projects conducted under the banner of the Covenant be adopted – irrespective of the source of funds.

Additional Remarks - Representation

Much of the comment within this submission has skirted around the issue of political representation within the Covenant framework. The NPCC is not an appropriate forum in which to outline in detail the issues which Local Government has with the representation structure adopted for the Covenant, nevertheless we wish to record two important points on this issue:

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30 See Introduction for explanation of this distinction.
Firstly, given that the Covenant secured ‘sole instrument’ status in 1999, we do not accept the proposition that signing the Covenant must be a pre-requisite for participating in the governance of packaging waste management nationally. On the contrary, Local Government’s claim to have a right to participate in such governance derives from its physical and financial commitment to packaging waste management around Australia.

Secondly, Local Government offers numerous suggestions on how to strengthen the Covenant which include the granting of additional roles and discretions to the NPCC. Clearly these suggestions assume a basic level of fidelity on the part of the NPCC to the aim of improving packaging waste management. This turns out to be a dangerous assumption if the NPCC continues to be overly representative of the views and interests of industry while being under-representative of those of Local Government.

Consequently, it amounts to a serious omission that the NPCC’s Proposal is silent on the question of reforming the representative structures of the Covenant. The suggestions made and the positions taken in this Submission will all need to be reviewed in light of how the NPCC and the EPHC chose to address this problem.
## APPENDIX – SUMMARY OF POSITIONS

<table>
<thead>
<tr>
<th>Recommendation (shading indicated ‘High Priority’)</th>
<th>Ref No.</th>
<th>MWAC Position</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>“Core Proposals”</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The core Covenant document will be retained. Significant amendments will be made to substantially strengthen its operational components.</td>
<td>1</td>
<td>Not Supported</td>
</tr>
<tr>
<td>The core NEPM document be retained with the focus on substantially strengthening its usability for enforcement and compliance.</td>
<td>2</td>
<td>Supported</td>
</tr>
<tr>
<td>The strengthened Covenant arrangement continue for five years.</td>
<td>3</td>
<td>Not Supported</td>
</tr>
<tr>
<td><strong>“Strengthening the Strategic Framework”</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A number of environmentally focused performance goals, actions and key performance indicators be adopted across the full lifecycle of consumer packaging.</td>
<td>4</td>
<td>Concept Supported, Execution Not Supported</td>
</tr>
<tr>
<td>An approach based upon continuous improvement referenced against industry baseline data for the different packaging supply sectors in relation to key material types.</td>
<td>5</td>
<td>Concept Supported, Execution Not Supported</td>
</tr>
<tr>
<td>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.</td>
<td>6</td>
<td>Supported</td>
</tr>
<tr>
<td>The range of consumer packaging materials under the Covenant be clarified to include distribution packaging and aspects of litter.</td>
<td>7</td>
<td>Concept Supported, Execution Not Supported</td>
</tr>
<tr>
<td>The inclusion of newsprint and magazines under the Covenant and any other consumer packaging materials not currently included be explored during the consultation process.</td>
<td>8</td>
<td>No Position</td>
</tr>
<tr>
<td><strong>“Strengthening Action Plans and Reports”</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>9</td>
<td>Concept Supported, Execution Not Supported</td>
</tr>
<tr>
<td>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.</td>
<td>10</td>
<td>Concept Supported, Execution Not Supported</td>
</tr>
<tr>
<td>Signatories report annually against relevant KPIs in subsequent years but not be required to submit annual action plans.</td>
<td>11</td>
<td>Supported</td>
</tr>
<tr>
<td>NPC Council develop and require the use of templates (dependent on both company size and sector) to standardise action plans and reports.</td>
<td>12</td>
<td>Concept Supported, Execution Not Supported</td>
</tr>
<tr>
<td>Action plan assessment includes strengthened audit, verification and review processes in order to ensure a high quality of action plans.</td>
<td>13</td>
<td>Supported</td>
</tr>
<tr>
<td>Industry revises the Environmental Code of Practice for Packaging, incorporating product stewardship guidelines, by April 2005.</td>
<td>14</td>
<td>Supported</td>
</tr>
<tr>
<td>Action Plan workshops be held across Australia to ensure effective communication of the strengthened requirements and KPIs.</td>
<td>15</td>
<td>Supported</td>
</tr>
<tr>
<td>The strengthened Action Plan process commence in July 2005, with baseline data due to be established by all signatories by September 2005.</td>
<td>16</td>
<td>Supported</td>
</tr>
<tr>
<td><strong>“Strengthening Enforcement and Compliance”</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recommendation</td>
<td>Ref No.</td>
<td>MWAC Position</td>
</tr>
<tr>
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</tr>
<tr>
<td>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 Covenant. 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.</td>
<td>17, 18</td>
<td>Concept Supported, Execution NotSupported</td>
</tr>
<tr>
<td>Develop a clear process for the referral of non-signatories to the relevant jurisdictions.</td>
<td>19</td>
<td>Supported</td>
</tr>
<tr>
<td>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.</td>
<td>20</td>
<td>Concept Supported, Execution NotSupported</td>
</tr>
<tr>
<td>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.</td>
<td>21</td>
<td>Supported</td>
</tr>
<tr>
<td><strong>“Funding the Next Phase of the Covenant”</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>22</td>
<td>Supported</td>
</tr>
<tr>
<td>That the Administration and support teams should be located together (location and premises to be agreed) and provide nation-wide assistance and support.</td>
<td>23</td>
<td>Supported</td>
</tr>
<tr>
<td>That the Administration and support teams be jointly funded by all jurisdictions including the Commonwealth, and industry on a 50/50 basis.</td>
<td>24</td>
<td>Supported</td>
</tr>
<tr>
<td>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.</td>
<td>25</td>
<td>Concept Supported, Execution NotSupported</td>
</tr>
<tr>
<td>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 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.</td>
<td>26, 27</td>
<td>Concept Supported, Execution NotSupported</td>
</tr>
<tr>
<td>In relation to future funding under a strengthened Covenant, industry commits to rolling over any surplus funds from the current Covenant.</td>
<td>28</td>
<td>Supported</td>
</tr>
<tr>
<td>Future industry funding of programs will continue.</td>
<td>29</td>
<td>Supported</td>
</tr>
</tbody>
</table>

**End of Submission**