

Submission C: The Draft National Packaging Covenant

This submission focuses on wording changes necessary for the new Draft National Packaging Covenant. Notwithstanding the inclusions below, we feel that in the form of an agreement between all parties, the NPC document itself fails as a contract. While enshrined as an agreement of shared responsibility, it fails to designate or adequately describe the specific responsibilities of each group of signatories. This discourages participation by key service providing stakeholders such as the Waste Management and Resource Recovery industries.

Further, the 'system boundaries' within which each signatory agrees to participate in the Covenant are poorly framed, leaving each sector lacking any certainty in either the process or progress towards an outcome. This is an appalling environment for industry and government alike. It neither assists in risk management or the ability to make adequate forward financial and infrastructure planning.

Penalties, compliance regimes, standards of performance, baselines for Key Performance Indicators, baseline data on consumption and recycling for proposed targets remain unclear, despite the fact that the Covenant framework has been established for over 5 years.

Finally, the Covenant highlights the somewhat philanthropic agreed minimum industry contributions of three million dollars per annum, and agreement of jurisdictions to match this funding. But it fails to identify the important and valuable contribution already made by local governments in terms of existing expenditure to collect packaging materials through kerbside recycling, manage packaging waste through street rubbish bins, and collect packaging litter.

We recommend that a law firm be engaged to both reword the NPC document so it forms a clear agreement between each party and that an immediate process to better define responsibilities, actions, liabilities, and risk/exposure issues be clearly outlined by January 2007 at the latest.

OVERARCHING TARGETSⁱ

Key Targets

The following disaggregated targets to be included in Introduction and Schedule 1:

- Increase the amount of all packaging materials being recycled in 2010 to 65%.
Specific disaggregated targets for the most common materials will be:

MATERIAL	%
Packaging & Industrial Paper	73%
Glass Packaging	70%
Steel Cans	70%
Aluminium Containers	73%
PET	70%
HDPE	70%

- Increase in the use of recycled material in new packaging to 20% by 2010;

- All common packaging materials (including composite packaging and each type of plastic that contributes in excess of 5,000 tonnes of packaging consumption per annum) must achieve a minimum 30% recycling rate by 2010; and
- A 50% reduction in the amount of packaging material found in the litter stream.

Targets must be disaggregated

All mention of targets as they are applied to proposed recycling rates must be changed to read 'disaggregated targets'. Fully disaggregated targets by material type are essential to focus action on poorly performing materials and to reward well-performing sectors.

COVENANT PERFORMANCE GOALSⁱⁱ

Covenant Performance Goals fall short by failing to include specific environmental goals which can be directly measured by the disaggregated targets. The goals of resource efficiency and maximum resource re-utilisation should not be integrated with the goals of product protection, safety and hygiene. Without specific resource efficiency and maximum resource re-utilisation goals, targets used to measure the Covenant Performance against the Goals will not have traction. The first Covenant Performance Goal should therefore be altered to read:

'1. Packaging optimised to achieve maximum resource efficiency and maximum resource re-utilisation without compromising protection, safety or hygiene.'

Under the paragraph (P11) which states "To assist the Covenant's capacity to deliver on these goals, the scope of the Covenant has been broadened to include" should be amended as follows:

- the first dot point should read "Overarching and specific disaggregated material targets to be used to measure the outcomes of the Covenant".

THE OBJECTIVE AND SCOPE OF THE COVENANT

The Covenant Objective

The current objective falls short of ensuring a reduction in the environmental degradation caused by used consumer packaging. The focus on 'encouraging' the reduction, re-use and recycling of used packaging materials is inadequate to reflect changed attitudes and more specific goals of the Covenant. It also fails to address litter. The new objective should therefore read:

'The objective of this Covenant is to reduce environmental degradation arising from the disposal of used consumer packaging and conserve resources through:

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

KEY PERFORMANCE INDICATORS

In order to maximise the link between KPIs and the Covenant Goals, it is essential that KPIs reflect target goals as much as possible. Targets have therefore been linked to Specific Actions and KPIs below.

Overarching and Disaggregated Targets	Individual Actions	Individual KPIs	Responsible for specific data collection/reporting
Reduction in packaging (as measured by weight) compared to sales of the relevant product. Reduction in packaging disposed of to landfill.	1. Packaging designed, manufactured, distributed and marketed to minimise the amount of material and other resources essential to guarantee the protection, safety or hygiene of the product.	As is	As is
Increase in the use of recycled material in new packaging to 20% by 2010.	2. Packaging designed and manufactured to optimise the amount of post-consumer recycled content.	As is	As is
Increase the amount of all packaging materials being recycled in 2010 to 65%. All packaging materials (including composite packaging and each type of plastic that contributes in excess of 5,000 tonnes of packaging consumption per annum) must achieve a minimum 30% recycling rate by 2010.	3. Packaging designed and manufactured to optimise its recoverability through collection systems including kerbside recycling schemes.	As is	As is
Increase the amount of all packaging materials being recycled in 2010 to 65%.	4. Secondary market creation supported for recovered packaging material.	As is	
Increase the amount of all packaging materials being recycled in 2010 to 65%.	5. Minimise hazards associated with disposal. 6. Adoption of Environmental Code of Practice for Packaging.	As is As is	All signatories
Increase the amount of commonly recycled packaging material types being recycled by 2010 to the rate per material as shown in the Introduction and Schedule 1.	7. Develop, monitor and implement good practice for collection and recovery systems for packaging and litter management	As is	

Overarching and Disaggregated Targets	Individual Actions	Individual KPIs	Responsible for specific data collection/reporting
A 50% reduction in packaging litter (target 1.1.7).	8. Provision of recycling collection services for packaging and paper.	As is	
A 50% reduction in packaging litter (target 1.1.7).	9. Change in consumer behaviour (purchase, use disposal).	As is	
Increase in the amount of individual packaging material types being recovered to 65% per material by 2008 (target 1.1.1). Reduction in packaging litter (target 1.1.7).	PROPOSED NEW ACTION 10. Implementation of systems to increase away-from-home used packaging recovery.	Percentage of packaging provided for by away-from-home systems.	State and territory governments, packaging manufacturers, fillers and brand owners.
All targets	PROPOSED NEW ACTION 11. Regulation of NEPM for non-signatories and non-compliance.	Amount of companies failing to become signatories or failing to comply with Covenant requirements. Amount of signatories regulated under the NEPM.	State and territory governments, NPCC. Individual State and Territory governments.

SETTING THE CONTEXT – FORCES OF CHANGEⁱⁱⁱ

This section in the Draft NPC sets out recent developments that have affected the management and disposal of used packaging. The section fails to mention the recognition by the community that despite the successes of kerbside recycling, the system only has the potential to collect around 50% of used packaging. It also fails to mention the community's call for improved environmental performance of packaging. These are significant issues that have affected ongoing negotiations on the NPC and should be included in the context-setting section 'Forces of Change'. Two new points should therefore be added, to the effect of:

- ***Recognition on the part of consumers that the kerbside recycling system only has the potential to capture less than 50% of used packaging.***
- ***Increasing calls by the community for improved performance on packaging waste.***

The current Draft NPC maintains that the Covenant 'must avoid discrimination between different forms of packaging'.^{iv} This is an untenable position that would entrench environmentally damaging and non-recyclable materials and thwart improved environmental performance. Environmental criteria must enable biases against and towards materials depending on their environmental impact. The second dot point in the section titled 'The signatories to this Covenant also acknowledge' should therefore be changed to read:

That the Covenant must ensure that environmental criteria are set to deliver a bias towards more sustainable forms of packaging and materials.

The fourth dot point should read:

That strong community support for materials recovery requires that the financial responsibility for increased collection and recycling rates lies with those who benefit from the production and consumption of packaging.

ROLES AND UNDERTAKINGS^v

Targets

The meeting of targets must be enshrined as a key undertaking in this section. To facilitate this, the third dot point^{vi} in the section entitled 'All signatories will:' should be changed to include targets and should read as follows:

All signatories will:

- 1. Adopt appropriate waste management pricing policies and provide appropriate financial and other support to optimise materials recovery systems and to meet the overarching and disaggregated targets as set out in Schedule 1.***

Ability of Government agreements/plans to override the Covenant

Commonwealth, State and Territory Governments must be able to implement waste reduction management agreements, plans and schemes if the Covenant fails to deliver on its objectives, goals and targets. This fall-back position is essential to ensure community confidence in the Covenant.

The fifth dot point^{vii} in the section on 'Commonwealth, State, Territory and Local Governments' should therefore be deleted to enable Commonwealth, State or Territory based waste reduction agreements or plans to operate outside the Covenant if necessary. Similarly the related points on pages 3 (second bullet point) and 15 (second bullet point, Roles and Undertakings) should be amended.

Implementing the NEPM for failure to comply with Covenant

The current Draft NPC places an undertaking on Commonwealth, State and Territory Governments to implement the National Environment Protection (Used Packaging Materials) Measure for non-signatories. It falls short by failing to extend that undertaking to Covenant signatories that fail to fulfill their obligations. This effectively renders the Covenant a shelter for all those who have signed up, regardless of whether or not they have fulfilled their responsibilities under the Covenant.

A new dot point should therefore be added to the section entitled 'Commonwealth, State and Territory Governments will,'^{viii} that reads:

Commonwealth, State and Territory Governments will:

- Implement the National Environment Protection (Used Packaging Materials) Measure for those parties that fail to comply with their Covenant requirements under Schedule 2 of the Covenant, as notified by the NPCC.***

Responsibilities of the packaging supply chain

This section fails to reflect the adoption of targets and the related specific requirements of the packaging supply chain being negotiated. In order to reflect these, the following dot points should be added under the section entitled 'The Packaging Supply Chain will':^{ix}

- Take all necessary steps and measures to ensure its packages reach disaggregated recycling targets as outlined within the NPC;
- Ensure that through growth, materials switching, or other action, the overall level of packaging materials to landfill by either weight or volume will not increase;
- Unless prohibited for reasons of product safety and hygiene, increase the use of reusable (multi-use) packaging;
- Unless prohibited for reasons of product safety and hygiene, increase the use of recycled material in new packaging to 20% by 2010;
- Ensure that by 2010, the packaging materials selected will achieve a minimum 30% recycling rate or switch to a material that can achieve these levels;
- Adopt a materials selection policy and assist in the recovery of packaging litter to achieve an overall reduction of at least 50%; and
- Design and use packaging that is compatible with resource recovery and recycling systems and does not jeopardise their viability.

PACKAGING GOOD PRACTICE VERSUS INTERNATIONAL BEST PRACTICE

The current Draft NPC repeatedly refers to the goal of 'good practice'. 'Good practice' is a poor descriptor that cannot be measured and allows a lower standard of performance open to subjective perceptions. 'International best practice' or 'Australian best practice' is more appropriate to accurately describe an improved NPC that conforms to higher community standards and achievable outcomes.

MONITORING AND REVIEW

Composition of NPCC

Environment groups should be represented on the NPCC to ensure that a fair and transparent negotiation framework is in place, and to increase community confidence in the NPC. At least one seat on the NPCC should be reserved for the environment sector. Financial support should be provided for the involvement of environment groups in this process, and to facilitate internal consultation within the sector. The third paragraph under the heading 'Monitoring and Review' should therefore read:

'The Council will act as a forum to consider issues, exchange information and address any problems that arise with the Covenant itself. The Council will comprise senior representatives of signatories from Australian jurisdictions of the EPHC, local government, the packaging supply chain and representatives of the environment NGOs.'

Measuring Covenant performance against targets

The list of responsibilities of the NPCC fails to include evaluation of and reporting on the Covenant's progress against the targets to be set out in Schedule 1. This is essential for stakeholders and the community to assess the Covenant's effectiveness. The sixth dot point under the heading 'The Covenant Council will:' should therefore read:

'Evaluate and report annually each November on:

- achievements against disaggregated targets for each material type***
- achievements against Covenant goals and KPIs***
- instances of non-compliance by signatories.'***

EVALUATION

This section fails to adequately outline the process to evaluate the Covenant, and should read as follows:

"...Covenant Council will report on the findings of a comprehensive, independent evaluation of the progress of the Covenant against its overarching and disaggregated targets by 31 December 2008. This evaluation will also compare and contrast the NPC performance against fully costed and modelled alternative policy options.

At this time, should this evaluation clearly demonstrate that the Covenant/NEPM model has failed to achieve overarching and disaggregated targets, the EPHC or participating jurisdictions will immediately implement alternative policy options.

Further, jurisdictions reserve the right to pursue alternative policy options at any time, should key stakeholder participation for the NPC and compliance with both the NPC and ECoPP demonstrate that achievement of overarching and disaggregated be unlikely to be achieved.

Further there should not be an automatic extension of the NPC if satisfactory progress is found in 2008. Such an extension negates the necessity to upgrade the targets and mechanisms in 2010. Its current wording also reinforces a bias in this evaluation section as while an extension is easy to obtain from 2008, alternative policy options cannot take effect until after 2010.

COMPLIANCE ENFORCEMENT PROCEDURES^x

Company data sets must conform to Schedule 1 guidelines

The list of 'Covenant requirements' set out in Schedule 2 fails to include the provision of individual company data sets according to the guidelines set out in Schedule 1. The following dot point should therefore be added:

- ***'Submission of an individual company data set according to the guidelines set out in Schedule 1.'***

Measuring Covenant performance against targets

The under-enforcement of the NEPM to date has been chronic. To address this, the new KPI regarding regulation of the NEPM for non-signatories and non-compliance has been added.

GLOSSARY OF TERMS

Under "brand owner" the fourth dot point should read

- ***In respect of in store packaging; the retailer ...***

and add

- ***In respect of in store promotional material; the supplier of the material to the store ...***

The following term should be included in the Glossary of Terms to increase clarity:

"disaggregated targets" means a series of targets described separately according to distinct material types (e.g. glass, paper, PET etc.)

FOOTNOTES

ⁱ National Packaging Covenant Council (NPCC), *The National Packaging Covenant*, Draft – April 2005, Introduction, p. 11 and Schedule 1, p. 26.

ⁱⁱ National Packaging Covenant Council, *The National Packaging Covenant*, Draft – April 2005, Schedule 1, p. 10 – 11; 27.

ⁱⁱⁱ NPCC, *The National Packaging Covenant*, Draft – April 2005, Forces of Change, p. 13 – 14.

^{iv} NPCC, *The National Packaging Covenant*, Draft – April 2005, Forces of Change, p. 14.

^v NPCC, *The National Packaging Covenant*, Draft – April 2005, Roles and Undertakings, p. 16 – 19.

^{vi} NPCC, *The National Packaging Covenant*, Draft – April 2005, Roles and Undertakings, p. 17.

^{vii} NPCC, *The National Packaging Covenant*, Draft – April 2005, Roles and Undertakings, p. 17.

^{viii} NPCC, *The National Packaging Covenant*, Draft – April 2005, Roles and Undertakings, p. 18.

^{ix} NPCC, *The National Packaging Covenant*, Draft – April 2005, Roles and Undertakings, p. 18.

^x National Packaging Covenant Council, *The National Packaging Covenant*, Draft – April 2005, Schedule 2, p. 40.