



Australian Packaging Covenant

1 January 2017

Replaces the Australian Packaging Covenant 2010

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INTRODUCTION

The Australian Packaging Covenant (Covenant) has been the principal national instrument to reduce the environmental impacts of Consumer Packaging in Australia since 1999, complementing the work the States and Territories have undertaken on packaging and litter.

The Covenant is agreed between the Australian Packaging Covenant Organisation Ltd. (APCO), representing industry participants in the packaging supply chain, and commonwealth, state and territory governments, and endorsed by environment ministers.

The Covenant aims to reduce the environmental impacts of Consumer Packaging by supporting two goals:

- **Optimising resource recovery of Consumer Packaging through the supply chain**
by adopting approaches that make changes in the way we design use and buy packaging and packaged products so that packaging uses less resources and is more easily recycled, and enable packaging materials to be returned to the economy thereby minimising waste associated with the generation and consumption of Consumer Packaging across the supply chain.¹
- **Preventing the impacts of fugitive packaging on the environment**
by adopting approaches that support new innovations and find solutions to capture packaging materials or waste before it enters the environment, or support the adoption of new or alternative types of packaging.²

The Covenant supports an industry-led component of a co-regulatory arrangement underpinned by the *National Environment Protection (Used Packaging Materials) Measure 2011* (NEPM). It embodies product stewardship and shared responsibility approaches that are founded on seven principles:

1. The Covenant provides public benefit by reducing the environmental impacts of packaging.
2. Participation in the Covenant delivers benefit across all relevant industries and all types of packaging, including business-to-business packaging.
3. Decisions and actions are evidence-based and draw on the best available expertise and knowledge of leading practice in Australia and overseas.
4. As a national-level, industry-driven arrangement, the focus of the Covenant is on strategies that deliver national-level outcomes that industry is better able than governments to deliver.
5. Actions taken under the Covenant have measurable outcomes and targets and align with the strategic goals.

¹ Actions taken under this goal could support: improvements in packaging design to increase the recycled content or recyclability of packaging; strengthening supply chain collaboration; generating wealth from waste opportunities by improving the recovery of packaging materials and developing new market opportunities for packaging materials; identifying ways to reduce Consumer Packaging consumption where appropriate; identifying recycling infrastructure improvements to better handle the diversity of packaging materials in the markets so they can be reused; and establishing consistent product labelling.

² Actions taken under this goal could support new innovations for new or alternative types of packaging and packaging materials. For example, reducing or excluding hazardous substances, or improving the compostability or biodegradability of materials used in packaging, and the identification of solutions to capture packaging waste before it enters the environment.

6. Information on the work and outcomes of the Covenant, including performance against targets, are reported publicly and has applicability across Australia.
7. The governance of the Covenant is apolitical and includes independent representation.

The Covenant applies to businesses in a supply chain that are consumers of packaging or packaged products that have an annual turnover of \$5 million or more. These businesses are required to choose between becoming a Signatory to the Covenant, and contributing to collective national efforts in managing packaging waste, or meeting compliance obligations under the NEPM, which are implemented by the laws and other arrangements of participating states and territories where a business sells or distributes its products. The NEPM thus provides free-rider protection to ensure Signatories are not competitively disadvantaged by participating in the Covenant.

The Covenant is supported by a five-year Strategic Plan that is developed and implemented by the Australian Packaging Covenant Organisation Ltd (APCO), in consultation with commonwealth, state and territory governments. Signatories contribute membership fees that support the administration of the Covenant, the provision of services to Signatories and projects. An independently audited annual report on the performance of the Covenant is provided to environment ministers.

The information contained in the Covenant is set out in four parts:

- **Part A Legislative framework and history** sets out the policy and legislative framework for the Covenant and the development of the Covenant over time.
- **Part B Covenant implementation** provides information supporting the delivery of the Covenant.
- **Part C Signatory eligibility and obligations** sets out the eligibility criteria for Signatories to the Covenant and their obligations in participating in the Covenant.
- **Part D Schedules** contains information on the definitions used in the Covenant, operations of the governing bodies for the Covenant, and compliance procedures for Signatories.

PART A - LEGISLATIVE FRAMEWORK AND HISTORY

1 LEGISLATIVE FRAMEWORK

The legislative framework for the Covenant, shown in Figure 1, arises from an agreement between the commonwealth, state and territory governments, and local government through the *Intergovernmental Agreement on the Environment in 1992* (Agreement). This Agreement provides a mechanism in which to facilitate:

- a cooperative national approach to the environment
- a better definition of the roles of the respective governments
- a reduction in the number of disputes between the commonwealth and the states and territories on environment issues
- greater certainty of government and business decision making, and
- better environment protection.

Figure 1 Legislative framework for the Australian Packaging Covenant



The Agreement forms the basis for the development of the *National Environment Protection Council Act 1994*. This Act contains provisions to enable the National Environment Protection Council, consisting of commonwealth and state and territory environment ministers, to develop National Environment Protection Measures for the re-use and recycling of used materials.³

³ Paragraph 14(1)(f) of the *National Environment Protection Council Act 1994*.

Together, the *National Environment Protection (Used Packaging Materials) Measure 2011* (NEPM) and Australian Packaging Covenant establish the co-regulatory arrangements for managing packaging waste in Australia. The Covenant aims to ensure that all involved in the Consumer Packaging supply chain play their part in managing packaging waste, and pursues the National Environment Protection Goal of the NEPM:

to reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the re-use and recycling of used packaging materials by supporting and complementing the voluntary strategies in the Covenant and by assisting the assessment of the performance of the Covenant.

The NEPM supports and complements the voluntary strategies in the Covenant, ensuring that Signatories to the Covenant are not unfairly disadvantaged in the market place. In providing the regulatory underpinning for the Covenant, the NEPM includes guidance on the scope of the Covenant and specifies Signatory commitments. It also provides guidance on compliance measures for Brand Owners (see Section 10) who are not Signatories to the Covenant or fail to comply with the requirements of the Covenant (see Section 11). This provides a regulatory safety net for those businesses participating in the Covenant in preventing eligible businesses in the Consumer Packaging supply chain that choose not to participate in the Covenant from gaining a competitive advantage as free-riders.

The compliance measures in the NEPM are enforced by the laws and other arrangements in each of the states and territories where a business distributes or sells its products. The NEPM is therefore enforced by the relevant regulatory authority in each of the states and territories participating in the Covenant.

Signatories fulfilling their obligations under the Covenant are exempt from the NEPM requirements of participating jurisdictions, as are industries or industry sectors that achieve equivalent outcomes to the Covenant (see Section 9).

2 HISTORY OF THE COVENANT

Discussions on the need for a Covenant commenced in 1996, and in 1999 the first Covenant was endorsed as the lead national instrument for managing packaging waste in Australia. Now in its fourth iteration, the focus of the Covenant has changed overtime in response to ongoing challenges in the management of packaging waste. The history of these developments is as outlined below.

1996-1999

In 1996, the Australian and New Zealand Environment and Conservation Council (ANZECC) directed its Standing Committee on Environment Protection to commence negotiations on a national packaging agreement based on the principle of shared responsibility. ANZECC determined that the agreement should cover the question of the distribution of responsibilities and costs and aim to secure the kerbside system.

In 1997, ANZECC Ministers resolved to endorse the development of the first National Packaging Covenant involving all parts of the packaging supply chain.

1999-2005

In 1999, ANZECC endorsed the first National Packaging Covenant. The Covenant was built on earlier strategies, guidelines and agreements and took into account the Intergovernmental Agreement on the Environment and the National Strategy for Ecologically Sustainable Development. It addressed problems being experienced with the management and disposal of used packaging and paper, particularly through the kerbside recycling system, and established the basis for voluntary participation by businesses operating in the packaging supply chain.

The NEPM was also made in 1999 by the National Environment Protection Council. Both the Covenant and NEPM expired in July 2005.

2005-2010

The Environment Protection and Heritage Council, incorporating the National Environment Protection Council, endorsed the second National Packaging Covenant in July 2005 and agreed to amend the NEPM so that it aligned more closely with the Covenant.

The revised Covenant, supported to 2010, focussed on building recycling infrastructure and incorporated the outcomes of an extensive review undertaken in 2004.

In June 2006, the National Environment Protection Council endorsed an application threshold for Brand Owners (see Section 10) in Australia with an annual turnover of \$5 million or greater, to be subject to obligations under the NEPM. The threshold was set on the basis that it was not the intent of the NEPM to unduly penalise those who do not contribute to the packaging waste stream.

2010-2015

In June 2010, the Environment Protection and Heritage Council, incorporating the National Environment Protection Council, endorsed the third Covenant as the Australian Packaging Covenant. A minor variation to the NEPM was also endorsed at this time.

The third Covenant was an on-going arrangement, supported by a five-year Strategic Plan that was reported against annually. It set clear goals for packaging design, recycling and product stewardship, and had an increased focus on workplace and public place recycling and litter reduction programs. It also significantly reduced the administrative burden on Signatories, and strengthened governance and compliance procedures.

The Sustainable Packaging Guidelines (see Section 3), which replaced the Environmental Code of Practice for Packaging, were incorporated into the new Covenant. The Guidelines were developed to assist Signatories and others to review and optimise Consumer Packaging to make efficient use of resources and reduce environmental impact without compromising product quality and safety.

The NEPM was amended in 2011 to address identified administrative issues and ensure that it continued to provide a satisfactory regulatory underpinning of the Covenant.

2016

In November 2016, the National Environment Protection Council reached consensus in favour of the fourth Australian Packaging Covenant. This improved Covenant refocused the goals to areas where industry could have the most influence, such as sustainable packaging design and supply chain collaboration.

The governance arrangements were modified to achieve greater transparency and accountability in the delivery on the work of the Covenant and account for industry forming APCO, a company limited by guarantee registered under Australian Securities Investment Commission. Operational features of the Covenant were removed to improve efficiencies in delivery. For example, the Sustainable Packaging Guidelines and details on Signatory action plans and annual reports were removed from the 2017 Covenant and no longer require environment ministers to endorse amendments to them.

PART B - COVENANT IMPLEMENTATION

3 SUPPORTING DOCUMENTATION

Implementation of the Covenant is supported by a Strategic Plan and two-year Statement of Intent. Sustainable Packaging Guidelines assist in optimising the outcomes from the Covenant.

Strategic Plan

The Strategic Plan identifies strategies in priority areas that align with the aim and goals of the Covenant over a five-year period.

The Strategic Plan is developed by APCO (see Section 4), on behalf Covenant Signatories, and agreed with Commonwealth, state and territory governments, and endorsed by environment ministers.

APCO is responsible for the delivery of the Strategic Plan. The Government Officials Group provides advice to environment ministers on the suitability of any five-year Strategic Plan in meeting the Covenant's aim.

The Strategic Plan includes:

- strategies that have been guided by adequate consultation with Signatories to the Covenant, and domestic and international movements and trends
- strategies and actions that are nationally applicable, to provide leadership in finding solutions to better manage packaging so it doesn't become waste, and to provide benefits to all Signatories that contribute membership fees to the Covenant
- performance indicators, to monitor whether the Plan is achieving its desired outcomes, which must be meaningful, measurable and can be evaluated
- how the Strategic Plan is to be evaluated and reported, and
- an indication of the level of funding to support the activities to be undertaken.

Annual reporting against the performance indicators in the Plan are provided to environment ministers by APCO through the Government Officials Group (refer Section 4).

The Strategic Plan and its annual reports are made publicly available, in an easily accessible form, by APCO.

The Strategic Plan may be updated within its five-year period. Environment ministers are to be notified of any changes to the Plan. Endorsement by Environment ministers is required for any significant change the endorsed Plan.

A formal independent review of the Strategic Plan is to occur in year five of its implementation, to assess the success of its delivery. The review is to be conducted by APCO and provided to environment ministers.

Statement of Intent

A rolling two-year Statement of Intent (Statement) supports the implementation of the Strategic Plan by providing further information on how APCO intends to deliver on the Strategic Plan over a two year period.

The Statement is developed, reviewed and updated annually by APCO. In any five-year period, the first Statement is to be provided with the Strategic Plan to environment ministers. Subsequent Statements are to be provided to the Government Officials Group.

Sustainable Packaging Guidelines

The Sustainable Packaging Guidelines (the Guidelines) have an essential role in optimising the outcomes of the Covenant. The aim of the Guidelines is to assist in the design and manufacture of packaging that meets the sometimes conflicting demands of the market, consumer protection and the environment.

Packaging design is a critical element in achieving the Covenant's objective. In applying the Guidelines, the aim for Signatories is to reduce packaging waste at the design stage by minimising materials used, optimising recyclability or re-use and reducing the potential for fugitive packaging.

The Guidelines include advice on a process that companies can apply to review their packaging and demonstrate that it has been designed for resource efficiency and reduced environmental impact. The application of the Guidelines varies depending on the nature of Signatories' operations.

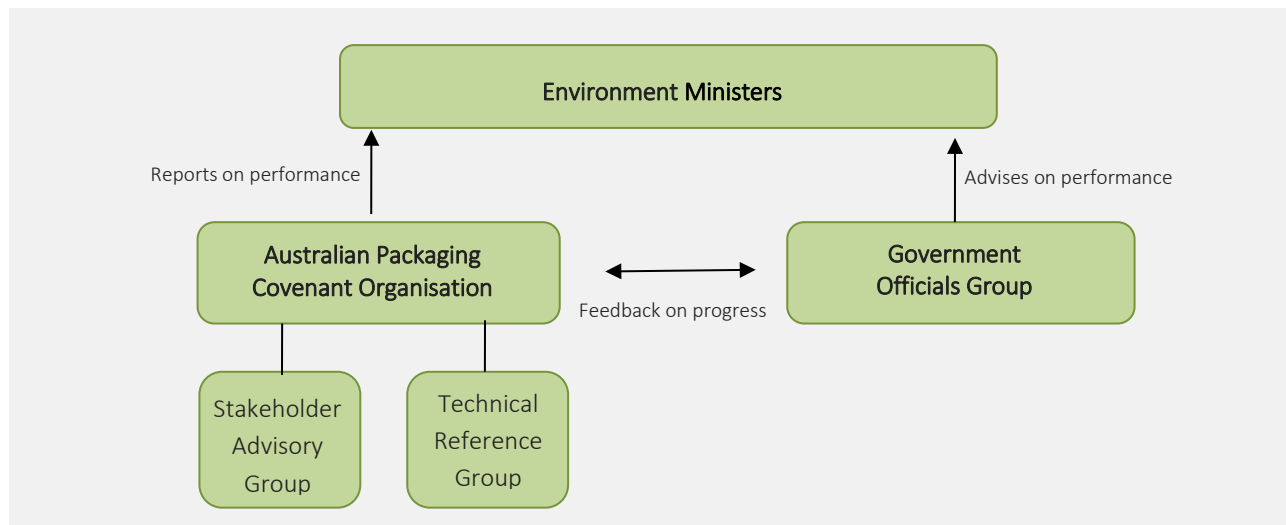
APCO retains responsibility for maintaining and updating the guidelines and providing information on the changes to the Government Officials Group.

A summary of Signatory obligations as they relate to the Guidelines are set out in Section 10.

4 GOVERNANCE ARRANGEMENTS

The governance arrangements supporting the implementation of the Covenant are as set out in Figure 2. The governance and operation of the Covenant is apolitical to ensure that there is no bias against, or favour of, any industry sector, to ensure the goals of the Covenant are met.

Figure 2 Governance structure to support implementation of the Covenant



Australian Packaging Covenant Organisation

APCO is a public company limited by guarantee registered under the Australian Securities Investment Commission. It manages the delivery of the Strategic Plan to support the achievement of the goals of the Covenant. It works with, provides feedback to, and seeks guidance from the Government Officials Group on a bi-annual basis to ensure the progress made against the Strategic Plan is aligning with the goals of the Covenant.

APCO enters into the Covenant on behalf of Signatories to the Covenant and is itself bound by its obligations under the Covenant.

APCO has two non-governance advisory groups to support its work:

- **Stakeholder Advisory Committee**, to inform the APCO Board and management of broader views and insights across the community to help inform their decisions, and
- **Technical Reference Group**, consisting of subject matter experts that provide advice to APCO management on technical packaging sustainability issues and assessment of research and project proposals.

The work of APCO is overseen by a Board, with an independent Chair, independent, Brand Owner and industry association representatives. The roles and responsibilities of APCO under the Covenant are set out in Schedule 3.

Government Officials Group

The Government Officials Group is represented by senior officers in each participating jurisdiction. It is responsible for:

- reporting annually to ministers on APCO's progress against the Strategic Plan
- working with, providing feedback to, and giving guidance to APCO on a bi-annual basis to ensure the progress made against the Strategic Plan aligns with the Covenant goals, and
- providing feedback to APCO on compliance issues and NEPM regulation and enforcement.

The roles and responsibilities for the Government Officials Group are set out in Schedule 4.

5 FUNDING

Funding of the Covenant is determined by APCO as set out in the Strategic Plan and endorsed by environment ministers. The funds are administered by APCO.

The funds are used to support the administration of the Covenant, services to Signatories, and projects, or activities, that support the delivery of the Covenant's aim and strategies within the Strategic Plan.

Governments, and other parties, can co-fund projects that align with the Strategic Plan and as agreed with APCO.

APCO is to undertake an annual assessment of whether the funding identified in the Strategic Plan is adequate to fulfil the work to support the strategies, and update the Government Officials Group on the outcomes of this assessment.

Membership Fees

Industry's contribution is obtained through APCO membership fees. The fees are set out in a schedule of fees determined by APCO.

A membership fee applies only to Signatories that are Brand Owners (see Section 10), businesses involved in the packaging supply chain and industry associations. Local government associations and community groups who choose to support the Covenant as Signatories are not required to contribute to the Covenant's funds.

Review

The allocation of funds is reviewed annually as part of APCO's planning processes, and feedback provided to the Government Officials Group.

A review of industry's financial commitment to the Covenant may occur where new regulation is imposed that will have a significant impact on Signatories to the Covenant, or achieving the goals of the Covenant. APCO and the Government Officials Group are to notify environment ministers of any changes to the financial commitment.

Funding activities

The following principles underpin the funding of Covenant activities:

- all funding must contribute to the goals of the Covenant, and the priorities set out at a high level in the Strategic Plan and Statement of Intent.
- in the event that a competitive process for the funding of projects occurs, all projects are to support the strategies in the Strategic Plan, and be assessed in accordance with the process established by APCO with a set of guidelines, including assessment criteria that are made publicly available.
- funding of projects in a competitive process is not to be provided retrospectively. That is, funds are not provided for projects that are already under way at the time of application, or to projects that have already been completed.
- funding is not provided to non-compliant Signatories, nor is it provided to non-Signatories (other than contracted service providers, such as consultants and research institutions).
- funding of any state-based projects supported by government funds are to be agreed between APCO and the state or territory in which the project funds are to be spent.

All activities funded through the Covenant Fund are managed by APCO and the outcomes reported to environment ministers, through the annual reporting process.

6 COMPLIANCE

The Commonwealth is responsible for providing APCO, on an annual basis, a list of possible Brand Owners that may be eligible under the Covenant, from available Commonwealth sources.

APCO is responsible for the following compliance matters relating to Signatories, or potential Signatories to the Covenant.

- Maintaining and publishing a register of Signatories that are compliant with the requirements of the Covenant, and publishing Signatory action plans and annual reports on its website.
- Maintaining and publishing a register on its website of Brand Owners that have ceased to be a Signatory to the Covenant.
- Monitoring Signatory compliance with the requirements of the Covenant.
- Administering procedures to address Signatory non-compliance.

- Undertaking independent audits of Signatory annual reports and action plans, including the implementation of the Sustainable Packaging Guidelines (see Section 10), based on a robust method for the random selection of participants and ensuring proportional representation of different types and sizes of businesses in the audit.
- Undertaking a national Brand Owner audit of packaging annually, in accordance with the methodology agreed with governments, to identify Brand Owners that are not Signatories and to enable the compliance options open to these Brand Owners to be highlighted.
- Maintaining a process for receiving and responding to complaints.
- Reporting non-compliance matters to the states and territories.

The Government Officials Group is responsible for overseeing all state and territory compliance matters under the NEPM and responding to any compliance issues referred from APCO.

Each participating jurisdiction is responsible for reporting to APCO companies that are compliant in their jurisdiction under the NEPM and therefore potentially not requiring further follow up.

Non-compliance

Signatories found to be non-compliant are removed from the register of Signatories. Non-compliant Brand Owner Signatories are referred to the states and/or territories in which the Brand Owner's products are distributed and sold, and are subject to the regulations or policies of the relevant state and/or territory (see Section 1).

Further detail on Signatory compliance is set out under Signatory obligations in Section 10, with compliance procedures set out in Schedule 5.

7 PERFORMANCE ASSESSMENT AND REPORTING

Monitoring

APCO is responsible for the management of the Covenant and therefore the ongoing monitoring and improvements to the delivery of services to Signatories, administration of the Covenant's activities, and improvements to methods for collecting and analysing performance data. Any significant changes to the agreed methods for collecting performance data are discussed with the Government Officials Group.

The activities of the Covenant are to be monitored in accordance with the monitoring and evaluation framework agreed between APCO and the Government Officials Group.

Progress reporting

APCO and the Government Officials Group are to meet bi-annually to discuss the progress against the Strategic Plan, compliance, market and sustainability trends and general insights to guide the success of the Covenant.

Annual assessment and reporting

The performance of the Covenant in working towards its aim is evaluated on an annual basis against the key performance indicators set out in the Strategic Plan, which are updated every five years or more often if required (refer Section 3).

APCO is responsible for collecting and analysing information and data, which includes:

- information from Signatories against key performance indicators set by APCO.
- outcomes of projects and other activities and how they contribute to the achievement of the performance indicators set out in the Strategic Plan.
- the effectiveness of services and training provided to Signatories by APCO.

APCO is to prepare an annual report that shows the performance of the Covenant against the key performance indicators set out in the Strategic Plan. The report is to be provided to environment ministers and be made available to all Signatories and the public.

The Government Officials Group is to provide environment ministers with an assessment of the annual report in achieving the Covenant's aim.

Five-year evaluation and reporting

An independent evaluation of the Covenant's performance is to be undertaken by APCO before the end of the fifth year of the Strategic Plan's implementation and the outcomes reported to environment ministers.

The Government Officials Group is to provide ministers with an assessment of the five-year evaluation in achieving the Covenant's aim.

8 AMENDMENTS AND TERMINATION

Any amendments to the Covenant, including its Schedules, are subject to the approval of environment ministers.

Environment ministers or industry may, with 12 months notice, terminate the Covenant.

PART C - SIGNATORY ELIGIBILITY AND OBLIGATIONS

9 ELIGIBILITY

The Covenant applies to all participants in the packaging supply chain, including businesses that sell packaging or packaged products to other businesses or individuals. In the context of the Covenant, a consumer is the final purchaser of the product, including packaging. The following sets out the requirements to become a Signatory to the Covenant and where a business may be considered a non-Signatory.

Brand Owner Signatory

A Brand Owner Signatory is a business with an annual turnover of \$5 million or more, as specified in the schedule of fees prepared by APCO, and:

- is either in the supply chain of Consumer Packaging, e.g. an importer, supplier of raw material, manufacturer, wholesaler, or
- is a retailer that is a manufacturer, wholesaler or importer, or offers its branded products to consumers.

Brand Owners that become Signatories to the Covenant pay an annual membership fee to APCO (see Section 5) and are required to meet the requirements of the Covenant, including the submission of an action plan and annual reports. Brand Owner Signatories are exempt from the obligations under the NEPM.

More detail on the obligations for Brand Owner Signatories is provided in Section 10. A definition of Brand Owner as identified in the NEPM is provided in Schedule 1.

Supporter Signatories

Supporter Signatories are local government associations, academia, community groups, and other non-industry organisations that have agreed to support the purpose of the Covenant, but are not required to:

- contribute funds to the Covenant
- submit an action plan or annual report, or
- meet obligations under the NEPM.

Non-Signatories

A business is a non-Signatory where it meets the criteria that apply to a Signatory but has not joined the Covenant. There are two types of non-Signatory:

- a free-rider that does not implement measures to manage packaging, thereby having an unfair advantage over competitors, and
- an industry or industry sector that can demonstrate that it achieves equivalent outcomes to the Covenant under the NEPM.⁴

In each state and territory where a non-Signatory's products are distributed or sold, the non-Signatory is required to comply with the laws, policies or other arrangements that implement the NEPM (see Section 1). Where a Brand Owner has been removed from the register of Signatories for non-compliance (see Sections 6 and 10), it may seek to address its failings and renew its compliance with the Covenant or it may seek to achieve compliance with the NEPM in the relevant state or territory where its products are distributed or sold.

10 OBLIGATIONS

To comply with the Covenant, Brand Owner Signatories are required to take the following actions:

- within three months of becoming a Signatory, submit an action plan that sets out what the Signatory proposes to do to contribute to the Covenant's aim and meets the obligations published by APCO
- by 31 March each year, commencing in the financial year following the year in which a company becomes a Signatory, submit an annual report that outlines performance against all of the action plan commitments and meets the reporting obligations as published by APCO
- publish the action plan and annual reports on its website in a prominent and readily identifiable way.
- make annual financial contributions in the form of membership fees payable to APCO (see Section 5)
- implement policies or procedures to buy products made from recycled materials
- establish collection and recycling programs for used packaging materials generated on-site
- take action, where appropriate, to reduce litter
- allow independent audits of annual reports and the implementation of action plans, including allowing access to relevant supporting documentation demonstrating application of the Sustainable Packaging Guidelines, or an alternative to the Guidelines, and
- assist APCO to respond to complaints from the public about the design and use of packaging materials.

⁴ Paragraph 11 of the *National Environment Protection (Used Packaging Materials) Measure 2011*.

Consideration of the Sustainable Packaging Guidelines

Signatories are required to undertake the following in relation to the Sustainable Packaging Guidelines (see Section 3):

- implement design and procurement processes that drive sustainable design of packaging, consistent with the Guidelines
- apply the Guidelines to all new packaging
- commit to reviewing all existing Consumer Packaging within a reasonable timeframe in accordance with the Guidelines, and
- report on the actions they have taken to implement the Guidelines, including reporting on the outcomes of self-assessment, leading to:
 - the design of packaging that is more resource efficient and more recyclable and increase in the recovery and recycling of used packaging from households and away-from-home sources, and
 - action that reduces the incidence and impacts of litter.

Where Signatories consider that they can achieve equivalent outcomes to the Guidelines based on alternative guidelines and assessment processes are required to:

- demonstrate in their first action plan under the Covenant that these achieve equivalent outcomes to the Guidelines, and
- report annually on progress and achievements against these commitments.

Non-compliance

Signatories are considered to be non-compliant if they fail to carry out one or more of the following actions:

- submit an action plan within three months of becoming a Signatory, that includes the information required by APCO
- implement their submitted action plan and the Sustainable Packaging Guidelines
- by 31 March each year, commencing the financial year following the year in which a Brand Owner becomes a Signatory, submit an annual report that includes the information required by APCO
- maintain and make available records of the implementation of action plans which can validate the data submitted in annual reports
- pay the required contribution to APCO (see Schedule 5)
- assist APCO in responding to complaints about action plans or the design and use of packaging, and
- prepare clear documentation of (a) their process for reviewing their packaging and (b) the initiatives they undertake to make their packaging more sustainable. Failure to provide documented evidence of compliance with these requirements to an auditor can result in a show-cause letter to the Signatory.

Further detail on the compliance procedures are set out in Schedule 5.

11 WITHDRAWING FROM THE COVENANT

A Brand Owner can at anytime withdraw from the Covenant by giving written notice to APCO. After ceasing to be a Signatory the Brand Owner is then subject to the NEPM regulatory or policy requirements that apply in each of the states and territories where the Brand Owner's products are distributed or sold (see Section 1).

PART D - SCHEDULES

SCHEDULE 1 – DEFINITIONS

The definitions set out in this Schedule apply to terms and acronyms that are used for the purposes of the Covenant.

ANZECC

Australian and New Zealand Environment and Conservation Council

APCO

Australian Packaging Covenant Organisation Limited (ACN 614 026 587)

Brand Owner

Brand Owner is defined in the NEPM to mean:

- a person who is the owner or licensee in Australia of a trade mark under which a product is sold or otherwise distributed in Australia, whether the trade mark is registered or not; or
- a person who is the franchisee in Australia of a business arrangement which allows an individual, partnership or company to operate under the name of an already established business; or
- in the case of a product which has been imported, the first person to sell that product in Australia; or
- in respect of in-store packaging, the supplier of the packaging to the retailer; or
- in respect of plastic bags, the importer or manufacturer of the plastic bags or the retailer who provides the plastic bag to the consumer for the transportation of products purchased by the consumer at the point of sale.

Business

Any activity or enterprise entered into for profit.

Community group

An organisation representing consumer or public interests.

Consumer

Final purchaser of packaging or a packaged product.

Consumer Packaging

Consumer Packaging is defined in the NEPM to mean all packaging products made of any material, or combination of materials, for the containment, protection, marketing or handling of consumer products. This includes distribution packaging.

For clarity, Consumer Packaging includes primary, secondary and tertiary packaging, including plastic bags.

Primary packaging is the container directly containing the product.

Secondary packaging includes the materials used to contain single or multiple primary packed products.

Tertiary packaging includes materials used to distribute packaged and unpackaged products, including pallets, wrapping stretch film, shippers, shrink film, strapping, and cartons.

Free rider

Free rider is defined in the NEPM to mean a brand owner or organisation that is a participant in the packaging chain and is not a signatory to the Covenant, and is not producing equivalent outcomes to those achieved through the Covenant.

For clarity, a free rider is a Business that is a Brand Owner that, although required to, is not a signatory to the Covenant nor complied with the NEPM or relevant state or territory instruments.

Fugitive packaging

Packaging that is littered or leaked from collection systems such as recycling or landfill.

Industry

Industry is defined in the NEPM to mean any manufacturing, industrial, commercial, wholesale, or retail activity or process that can result in the generation, recycling, treatment, transport, storage, or disposal of Consumer Packaging waste.

In-store packaging

Packaging provided by a Retailer to contain a product that is not otherwise packaged, e.g. delicatessen items, take-away food and drinks, fruit and vegetables, hardware items such as nails.

Jurisdiction

A Commonwealth, state or territory government in Australia.

Kerbside recycling collection

Kerbside Recycling Collection is defined in the NEPM to mean roadside collection of domestic solid waste separated for the purpose of recycling.

Key performance indicators

The agreed, quantifiable measurements that reflect the critical success factors of the Covenant.

Landfill

Landfill is defined in the NEPM to mean waste disposal sites used for the authorised deposit of solid waste onto or into land.

Litter

Any item, including packaging removed from a product that is intentionally or unintentionally discarded outside the recycling or landfill waste streams, and instead is disposed of in the built or natural environment. This definition excludes items and packaging that are either disposed of lawfully or illegally dumped.

Local government association

A peak body representing a municipal corporation in a state and territory.

National Environment Protection Council

Comprising the environment ministers of the Commonwealth, State and Australian Capital Territory governments.

NEPM

National Environment Protection (Used Packaging Materials) Measure 2011

NGO

Non-government organisation.

Organisation

A group of people intentionally organised to accomplish an overall, common goal or set of goals, such as an association or a not-for-profit organisation.

Packaging manufacturer

A business that manufactures or, in the case of imported packaging materials, the business that imports those materials.

Product stewardship

An approach to reducing the environmental and other impacts of products by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products⁵.

Raw material supplier

A supplier of raw materials to businesses that manufacture product packaging.

Recyclable

A characteristic of a product, packaging or associated component that can be diverted from the waste stream through available processes and programs and can be collected, processed and returned to use in the form of raw materials or products⁶.

Recycle

In relation to a product, including packaging, to recover the product and use it as a raw material to produce another product.

Recycled material

Material that has been reprocessed from recovered (reclaimed) material by a manufacturing process and made into a final product or into a component for a product⁷.

Resource efficiency

The efficiency with which resources are used and environmental impacts are minimised throughout the lifecycle of a product or service, such as packaging.

⁵ *Product Stewardship Act 2011*.

⁶ Derived from AS/NZS ISO 14021: 2000, Environmental labels and declarations–Self-declared environmental claims

⁷ AS/NZS ISO 14021: 2000, Environmental labels and declarations–Self-declared environmental claims

Retailer

A business involved in retailing consumer packaged products.

Shared responsibility

The equitable distribution of responsibility for managing the environmental impacts of Consumer Packaging to the most appropriate participants within the packaging supply and recovery chains.

Signatory

A signatory to the Covenant.

Supply chain

All of the organisations and businesses that participate in creating, distributing and selling Consumer Packaging and/or products. These include but are not limited to:

- suppliers of raw materials for Consumer Packaging
- manufacturers of Consumer Packaging
- suppliers / distributors of Consumer Packaging
- manufacturers of consumer products
- fillers of Consumer Packaging, for example, contract packers
- Brand Owners of consumer products
- wholesalers / distributors of consumer products, and
- retailers of consumer products.

SCHEDULE 2 – ENVIRONMENT MINISTERS APPROVALS

The following are to be provided to environment ministers for endorsement or noting.

Environment ministers' endorsement is needed for

- a five-year Strategic Plan, including level of financial investment
- any significant changes to Strategic Plan within the five year period
- any amendments to the Covenant
- any decision by governments to terminate the Covenant, and
- any changes to the financial investment of the Covenant.

Environment ministers are to be provided for noting

- annual reports on the performance of the Covenant
- every five years, a report comprising an independent evaluation of the Covenant, and
- the first two-year rolling Statement of Intent to accompany each five-year Strategic Plan.

SCHEDULE 3 – ROLE AND RESPONSIBILITIES OF THE AUSTRALIAN PACKAGING COVENANT ORGANISATION

APCO manages the delivery of the work of the Covenant in accordance with the Strategic Plan, Statement of Intent and APCO's Business Plan. It is accountable to environment ministers on the delivery of the actions specified in the Strategic Plan and its obligations under the Covenant.

APCO is established by industry and is overseen by its Board. The roles and responsibilities of APCO as it relates to the Covenant are set out in this Schedule. APCO may determine, from time to time, that it will undertake amended or further responsibilities in support of the Covenant, provided that any such changes remain in compliance with the Covenant.

Roles and responsibilities

As part of this agreement, APCO agrees to fulfil the following roles and responsibilities.

Provide to environment ministers

- a five-year Strategic Plan, including level of financial investment, and first two-year Statement of Intent
- annual report on the performance of the Covenant
- any changes to Strategic Plan and industry's financial commitment
- any significant amendments to the five-year Strategic Plan, and
- any decision by APCO to terminate the Covenant.

Provide to the Government Officials Group for agreement

- changes to the monitoring and evaluation framework
- proposed changes to the Brand Owner Audit methodology for surveying potential signatories, and
- proposed amendments to the Sustainable Packaging Guidelines
- determinations as to whether proposed changes to the Strategic Plan are significant and therefore require endorsement by environment ministers.

Provide to the Government Officials Group for noting

- a rolling two-year Statement of Intent, and
- updates on the performance of the Covenant bi-annually.

Other roles and responsibilities

- Manage the monitoring and evaluation of the performance of the Covenant, including the collection of data against the key performance indicators in the Strategic Plan.

- Review, amend and maintain the Sustainable Packaging Guidelines, as deemed necessary.
- Collect membership fees from Signatories.
- Manage the communications on the work of the Covenant and Signatories efforts, including promotion of the Covenant and its activities.
- Manage projects funded under the Covenant.
- Undertake compliance measures for the Covenant, including
 - maintaining a register of Signatories
 - monitoring Signatory compliance with the requirements of the Covenant
 - administering procedures to address Signatory non-compliance
 - undertaking independent audits of Signatory annual reports and action plans, including the implementation of the Sustainable Packaging Guidelines
 - undertaking national Brand Owner Audit annually of packaged products and report non-compliant Brand Owners to relevant jurisdictions
 - maintaining a process for receiving and responding to complaints, and
- Consider requests from Brand Owners for confidentiality agreements to protect commercial-in-confidence information.
- Assist Brand Owner Signatories to fulfil their obligations under the Covenant, including training and reporting assistance.
- Publish on APCO's website
 - the Strategic Plan and Annual Reports of the Covenant's performance
 - Signatories' annual reports and action plans, and
 - register of Signatories and Brand Owners that have ceased to be Signatories to the Covenant.

SCHEDULE 4 – ROLE AND RESPONSIBILITIES OF THE GOVERNMENT OFFICIALS GROUP

The Government Officials Group is responsible for reporting to environment ministers on APCO's progress against the Strategic Plan in meeting the Covenant's aim. It also represents governments in meetings with APCO on a bi-annual basis, and provides feedback to APCO on any compliance issues, observations and guidance on progress against the Strategic Plan.

The Governance Officials Group consists of a minimum of one senior official representative from each participating commonwealth, state and territory government.

Roles and responsibilities

The Government Officials Group is required to fulfil the following roles and responsibilities.

Provide to environment ministers

- an assessment of the five-year Strategic Plan and Statement of Intent in meeting the Covenant's aim
- an assessment of the annual reports in meeting the Covenant's aim
- any significant amendments to the five-year Strategic Plan
- any amendments to the Covenant
- any changes to Strategic Plan and level of industry's financial commitment, and
- any decision by Government or industry to terminate the Covenant.

Agree with APCO:

- any amendments to the Covenant.

Advise APCO of

- any decision by Government to terminate the Covenant
- compliance reporting of non-Signatories with the NEPM
- any concerns on the performance of the Covenant, and
- any compliance amendments, issues or disputes.

Other roles and responsibilities

- Undertake compliance action under the NEPM.

SCHEDULE 5 – COMPLIANCE PROCEDURES

The compliance procedures have been developed to ensure that Brand Owner Signatories comply with their obligations. Those Signatories found to be non-compliant are subject to obligations under the NEPM (Section 1), implemented by the laws and other arrangements of the state or territory in which a business sells or distributes its products.

Brand Owner Signatories

The Commonwealth annually identifies, through its sources, potential Brand Owners that may be eligible under the Covenant and provides this information to APCO.

APCO undertakes annual Brand Owner audits of packaged consumer products, to identify businesses that are Brand Owners (see Section 9 and Schedule 1) and not registered as Signatories to the Covenant. Where a business is determined to qualify as a Brand Owner Signatory the following procedure is followed.

Step 1 – Invitation to become a Signatory

APCO writes to that business to:

- explain the national co-regulatory arrangements (Covenant and NEPM) for the sustainable management of packaging materials, and
- invite the business to become a Signatory within 40 days.

Step 2 – Notification of Referral

If the Brand Owner chooses not to become a Signatory within 40 days, APCO issues a notice to the Business Owner. The notice states that APCO intends to refer the details of the Business Owner to state and territory governments for action under the NEPM.

The notice states that it will have effect in 30 days.

If the Brand Owner fails to become a Signatory within the period of the notice, APCO refers the details of the business to all state and territory governments.

Non-compliant Signatories

The following procedures operate when there is evidence that a Brand Owner Signatory is not fulfilling one or more of its obligations under the terms of the Covenant as set out in Section 10.

Step 1 – ‘Show cause’ notice

Upon becoming aware that a Signatory has failed to meet its obligations under the Covenant, APCO gives notice to the Signatory asking it to show cause as to why it should not be deemed non-compliant with the Covenant’s obligations.

Within 30 days of the date of this notice, the Signatory is to provide a written response to APCO to show cause.

Step 2 – Non-compliance notice

If, within 30 days of the notice issued in Step 1, APCO:

- has not received a response to the notice issued in Step 1, or
- has not received a response to the notice issued in Step 1 that in APCO's opinion demonstrates a timely and appropriate approach to how and when the Signatory intends to comply with its obligations,

APCO gives a second notice to the Signatory stating that it intends to remove the business from the register of Signatories.

After the non-compliance notice is issued, the business may only continue to be a Signatory if APCO determines that the business has remedied its non-compliance with the Covenant.

Step 3 – Referral notice

Following the expiration of the period stated in a non-compliance notice to a Brand Owner, APCO notifies all state or territory governments that the business is no longer a Signatory.

Each state and territory governments then take action to ensure that the Brand Owner complies with the relevant legislation or other arrangements that implement the NEPM in its jurisdiction.

Step 4 – Re-compliance

A business that has received a non-compliance notice that has taken effect cannot become a Signatory until it has demonstrated to the satisfaction of APCO that it has complied with the Covenant and will continue to comply.

Dispute resolution

In the event that a dispute arises between two or more parties to this Covenant, then each of those parties may refer the dispute to the Government Officials Group for resolution.

Where a dispute is related to the rights and obligations of a Signatory, including but not limited to, matters of compliance with the Covenant, a Signatory shall be entitled to seek a resolution to that dispute through APCO's internal dispute resolution process.