

National Packaging Covenant – Mid Term Review Jurisdictional NEPM(UPM) Enforcement Report

6.1 Background: National Environment Protection (Used Packaging Materials) Measure

The National Packaging Covenant is the voluntary component of a co-regulatory model designed to reduce the environmental impacts of consumer packaging. The regulatory component is enacted under the National Environment Protection (Used Packaging Materials) Measure (NEPM). It supports the Covenant by providing a framework to ensure that signatories to the Covenant do not suffer a market disadvantage by fulfilling their commitments under the Covenant. It also ensures that individual non-signatory brand owners contribute to environmental outcomes for packaging that are at least equivalent to those delivered under the co-operative Covenant model.

Brand owners that choose to be regulated under the NEPM are subject to more onerous performance and reporting obligations than those required under the Covenant. They must individually achieve material recovery targets that are over and above those targets collectively set under the Covenant, and report periodically. Clause 9 of the NEPM states: that participating jurisdictions should oblige brand owners to

- (a) undertake or assure the systematic recovery of consumer paper and consumer packaging in which the brand owner's products are sold; and
- (b) undertake or assure the re-use, recycling or energy recovery of consumer paper and consumer packaging in which the brand owner's products are sold; and
- (c) demonstrate that all materials that have been recovered by them or on their behalf have been utilised through (in order of preference):
 - (i) re-use in the packaging of the brand owner's own products (if applicable); or
 - (ii) use within Australia as a secondary resource; or
 - (iii) export as a secondary resource; and
- (d) demonstrate that reasonable steps have been taken to ensure that consumers are adequately advised as to how the packaging is to be recovered.

The National Environment Protection Council made a variation to the NEPM in July 2005 to extend it to 2010. In October that year it endorsed a threshold exempting brand owners with annual revenues of under \$5 million in Australia from the NEPM obligations.

All state governments in Australia that are signatories to the Covenant are required to enact the NEPM in their jurisdiction. This is done through the appropriate laws of participating jurisdictions. Table 1 shows the name of each jurisdiction's regulatory instrument and the date it was introduced.

Jurisdiction	Name of NEPM Instrument	Date Introduced
Queensland	Environmental Protection (Waste Management) Regulation 2000	December 2005
Victoria	Waste Management Policy (Used Packaging Materials)	March 2006
Tasmania	Environment Protection Notice	May 2006
New South Wales	Part 5B of the Protection of the Environment (Waste) Regulation	September 2006
ACT	Waste Minimisation (Used Packaging Materials Industry Waste Reduction Plan) Approval 2006 (No 1)	November 2006
South Australia	Environmental Protection (Used Packaging Materials) Policy 2007	March 2007
Western Australia	Environmental Protection (NEPM –UPM) Regulations 2007	April 2007

Table 1: NEPM (UPM) Instruments

6.2 Brand Owner Identification

In order to assist the implementation of the NEPM, participating jurisdictions are required to identify potential free-riders. This is achieved through a brand owner audit as outlined under Clause 18 of the NEPM:

At least once every year, participating jurisdictions shall carry out surveys of packaged products sold by retailers and/or surveys of brand owners represented in materials recovery systems to ascertain the effectiveness of the Measure in preventing free riding.

Jurisdictions have agreed to a robust methodology for the brand owner audits. It aims to identify the maximum number of non signatory brand owners from a range of locations, product categories and retail sectors. Audits conducted between July 2006 and January 2007 identified over 1000 non-signatory companies. Audits conducted in early 2008 identified a further 625 companies to whom them NEPM may apply.

Non-signatory brand owners who are identified in the audits are contacted by the Covenant secretariat in the first instance. Companies who do not respond are referred back to jurisdictions for potential regulatory action under the NEPM.

Jurisdictions may also receive brand owner details by direct referral from other sources such as Covenant signatories and Non Government Organisations.

6.3 NEPM Enforcement

6.3.1 Enforcement Process and Resource Requirements

Jurisdictions actively implement the NEPM, with the highest level of activity occurring in those jurisdictions where the majority of brand owners are registered. The specific implementation process varies between jurisdictions due to different enforcement policies and procedures, however NEPM implementation generally consists of several pieces of written correspondence followed by formal compliance or enforcement action. Initial approaches to brand owners encourage participation in the Covenant rather than the stricter compliance regime of the NEPM.

In Victoria, non-signatories are first contacted by mail to advise the company of their options and obligations (to either sign the Covenant or be subject to the regulations) under the Policy¹. If a company fails to comply with the requirements of the first notice within 28 days, the EPA issues a draft Pollution Abatement Notice requesting specific information for each packaging material used for a financial year. Companies must demonstrate a recovery/reutilisation rate for each material that is greater than the recovery targets set under the Covenant. If a company again fails to comply, the EPA then issues a Pollution Abatement Notice to enforce compliance.

In NSW referred companies are initially contacted by mail seeking information on turnover and brand owner status to determine if they are captured by the regulation. If a company is captured under NSW's Waste Regulation it is sent a Notice to Provide a Waste Action Plan. This plan must detail the actions it will take to ensure compliance with the Regulation. Waste Action Plans are assessed by DECC. A Notice to Amend Waste Action Plan can also be served by DECC detailing areas of an Action plan that need improvement. In order to comply with the NSW Regulation companies need to demonstrate that the waste materials arising from their packaging are recovered in accordance with material specific targets published by DECC. These targets mirror the Covenant targets. Substantial fines may be applied for non-compliance with the NSW Regulation.

¹ Waste Management Policy (Used Packaging Materials)

In Queensland and South Australia, an initial advisory / fact finding letter is sent to non-signatory companies. If companies do not respond within 28 days and remain non-compliant, it is assumed that they wish to be regulated and a second letter is sent seeking a copy of their action plan under the Regulation². If they do not provide a copy of their action plan or demonstrate compliance by other means, a legal Notice is issued to the company to enforce compliance.

Resourcing requirements for NEPM implementation vary significantly between jurisdictions. Eastern states responsible for managing hundreds of companies employ 0.5 - 1 full time equivalent staff members, while the requirements are less in smaller jurisdictions. All jurisdictions require additional support such as legal, prosecutions, management and administrative services.

6.3.2 Enforcement Activities and Outcomes

This section provides details of jurisdictional enforcement activities and outcomes to date³.

Since July 2005, 1,053 companies have been referred to jurisdictions for follow-up under the NEPM. In the first instance each company is referred to the jurisdiction where their head office is located. Of these, 983 have been investigated, and most have been approached except in the event that company details are unknown and/or the company has ceased trading. EPA Queensland approached more companies than the number provided to them as they also made contact with some companies registered outside their jurisdiction. The following table provides a state breakdown.

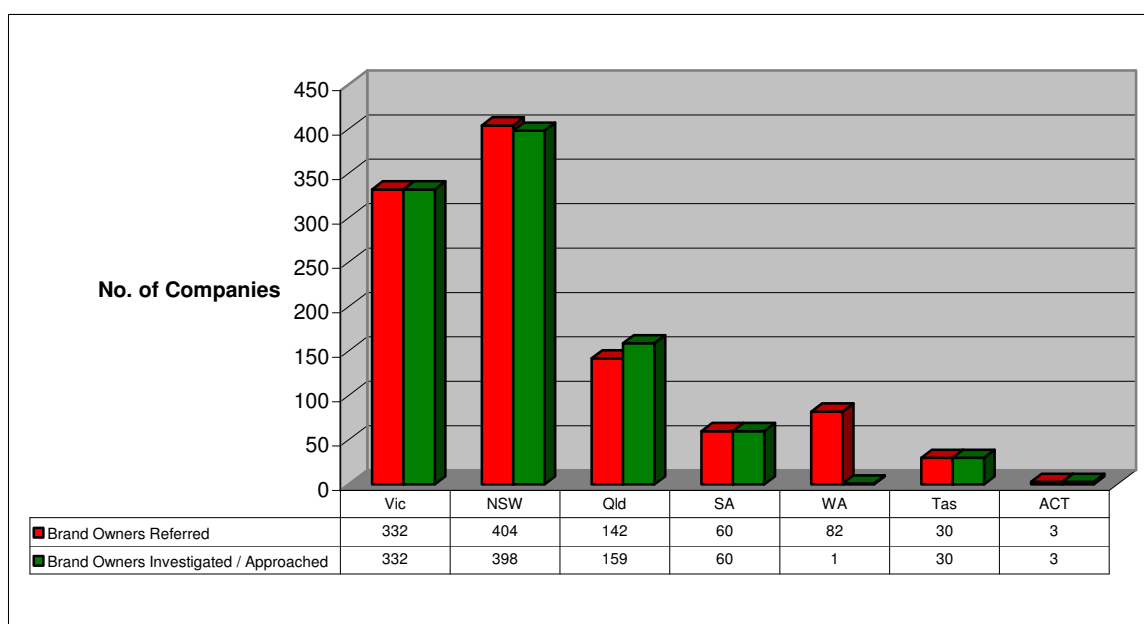


Figure 1: Non-signatory referrals to jurisdictions; Non-signatories investigated and approached.

Of the 983 companies investigated and approached by jurisdictions, 272 have signed the Covenant and 111 are confirmed as exempt under the \$5 million turnover threshold.

² Environmental Protection (Waste Management) Regulation 2000

³ Excludes 2008 brand owner audit data.

The NEPM applies to 112 brand owners. Jurisdictions are at various stages of their compliance and enforcement activities with these companies. Table 2 shows a status summary resulting from investigations and approaches made by jurisdictions.

Status	Vic	NSW	Qld	SA	WA	Tas	ACT	Total
Signed NPC	78	92	74	12	1	15	0	272
Exempt ⁴	38	38	23	11	0	0	1	111
Pending ⁵	93	206	5	12	0	10	0	326
NEPM Applies	26	24	45	12	0	5	0	112
Unknown Company ⁶	52	12	3	3	0	0	1	71
Not Applicable ⁷	45	26	9	10	0	0	1	91
Total	332	398	159	60	1	30	3	983

Table 2: Company status following investigations / approaches made by jurisdictions: Jurisdictional Breakdown

Figure 2 represents the above information for all jurisdictions.

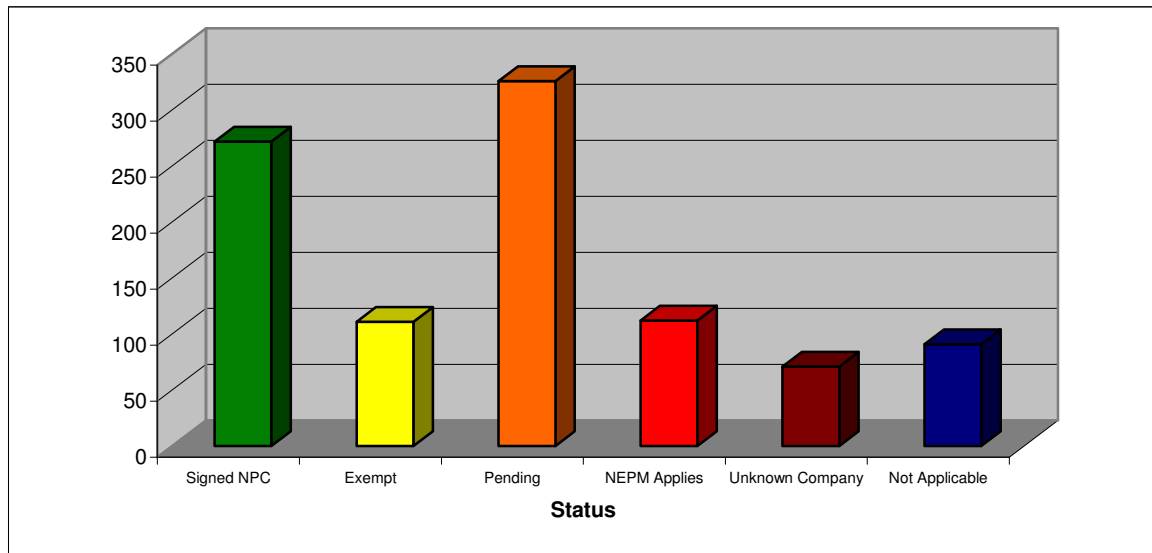


Figure 2: Company status following investigations / approaches made by jurisdictions: Total

It is important to recognise that due to the majority of large brand owners already being signatories to the Covenant, brand owner audits tend to identify significant numbers of smaller companies. Non-signatories can generally be explained by:

- The \$5 million exemption threshold;
- Those companies not defined as brand owners as per Part 1 (3) of the NEPM (UPM) and therefore not subject to the NEPM;
- Unidentified companies, often due to ceased trading.

⁴ Exempt: Under the \$5 million turnover threshold

⁵ Pending: Waiting on additional information

⁶ Unknown Company: Ceased trading or not identified

⁷ Not Applicable: NEPM(UPM) does not apply

6.4 Conclusions

Jurisdictions continue to actively implement the NEPM, with 983 of the 1,053 (93%) of referred companies investigated and where possible, contacted as at May 30 2008. Activity is more extensive in the eastern states where the majority of brand owners are registered.

NEPM implementation has directly resulted in 272 companies signing the Covenant. A further 273 companies are either exempt (under the \$5 million turnover threshold), unknown (ceased trading/not identified), or have demonstrated that the NEPM does not apply. Of the 326 companies pending, many have claimed an exemption under the threshold but have yet to provide formal evidence. Others in this category continue to be followed up by jurisdictions.

The NEPM applies to 112 companies, and jurisdictions are at various stages of their enforcement process.

The NEPM appears to provide sufficient incentive to encourage the majority of non-signatory brand owners to sign the Covenant (or demonstrate an exemption). This contributes to better environmental outcomes for packaging, and ensures that signatories are not disadvantaged by fulfilling their Covenant obligations.
