



The Hon Sussan Ley MP  
Minister for the Environment  
Department of Agriculture, Water and the Environment  
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CANBERRA ACT 2601

Email: [wastepolicy@environment.gov.au](mailto:wastepolicy@environment.gov.au)

12 March 2021

Dear Minister Ley

**Re: Review of the co-regulatory arrangement under the *National Environment Protection (Used Packaging Materials) Measure 2011***

Thank you for the opportunity to provide feedback as part of the review of the co-regulatory arrangement under the *National Environment Protection [NEPM (Used Packaging Materials)] Measure 2011*. The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body for all stakeholders in Australia's \$15.5 billion waste and resource recovery (WARR) industry and we have more than 2,000 members from over 500 entities across the breadth and depth of the sector, within business organisations, the three (3) tiers of government, universities, and NGOs. WMRR's purpose is to lead the success of the industry while ensuring that the environment and community are protected through the safe and responsible management of waste.

WARR is an essential service, as well as being an economic and job multiplier for the Australian community; a strong remanufacturing and recycling base has the potential to create over three (3) times more jobs than landfilling or exporting, and we know that 9.2 jobs are created for every 10,000 tonnes of waste recycled compared to 2.8 jobs for the same volume sent to landfill<sup>1</sup>.

Today, the WARR industry employs approximately 50,000 full-time employees in a range of important activities, including (but not limited to) the manufacture of valuable products from resource recovered materials, recycling, energy recovery, and responsible management of residual materials including energy from waste. In 2018-19, Australia generated 74 million tonnes of waste, of which 63% was recovered, including recycling and energy recovery<sup>2</sup>; these figures, alongside Australia's adopted national waste targets, represent a significant opportunity to improve our efforts in an integrated WARR management, aligned to the waste hierarchy that preferences waste avoidance. The latter can be best achieved through improved product design, repair, the sharing economy and more considered consumption.

The federal government has undeniably made progress in its efforts to bolster the WARR industry and drive circularity over the last two (2) years, evidenced by the development of number of policy and regulatory reforms such as the COAG waste export bans, National Waste Action Plan, and National Plastics Plan, to name a few; these are backed by funding matched by state governments and industry, such as the Recycling Modernisation Fund (RMF), as well as initiatives on a state level, with jurisdictions ramping up efforts in material management through single-use plastics policies, container deposit schemes, ongoing R&D work and trials, and more. These initiatives, whilst welcome, largely tackle materials at their end of life and the industry that receipts them – i.e., they continue to focus on the end-of-pipe solution for products that are already circulating in society. WMRR

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<sup>1</sup> Access Economics 2009

<sup>2</sup> National Waste Report 2020

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submits that the time has now come for the Australian government to drive further improvement at the top rung of the waste hierarchy, that of avoidance.

Thus, this review is significant, and it comes at a pivotal point in Australia's journey towards circularity; in order to have the best chance at success, and to ensure that we maximise the collective efforts and investments of all stakeholders in the WARR industry to-date, including governments, community, and industry, we must enable a paradigm shift in the area of packaging materials.

While credit is given to governments for turning their attention and efforts towards improved reuse, reprocessing, and recycling, what is still not fully understood is how Australia can truly transition to a circular economy. The missing piece in the puzzle, and one which is key to how a true circular economy functions, is that of designing waste and pollution out of the system in the first instance.

A circular economy focuses on issues such as material selection, design for re-use and avoidance of the creation of waste. If these elements occur, we will transition towards polluters/generators taking greater responsibility for the cost of managing their materials as well as re-using post-consumer recyclate in product design. In understanding this concept, it then becomes evident that the 20-year NEPM and the Australian Packaging Covenant Organisation (APCO) have not been successful to-date (irrespective of the stated claim that APCO has recently made some positive changes), and if allowed to continue on in its current form, will likely fail to facilitate the achievement of the 2025 national packaging targets, much less the national waste targets. In the area of plastics packaging alone, Australians used 3.5 million tonnes of plastics in 2018-19 and of that, only 13% were recycled<sup>3</sup> (the target being 70% of Australia's plastic packaging being recycled or composted by 2025).

WMRR's full submission can be found below; however, in summary, WMRR is advocating for a system that involves of the entire supply chain – from packaging designers and product manufacturers, to community, all levels of government, and the WARR industry, given that this is an issue that requires a collaborative and integrated approach. This proposed model, more of which can be found in WMRR's submission below, must encompass a mandated extended producer responsibility scheme and have in place an independent Board representative of the entire supply chain, to provide oversight and ensure transparency across all operations, including policy, financial, and regulatory. There are numerous benefits to be had in overhauling the current system for used packaging including:

- The opportunity to develop a nationally consistent policy and regulatory framework with clear, concise, and harmonised definitions and standards. A national framework, which can then be cascaded down by each jurisdiction, provides certainty and eliminates confusion for all stakeholders – making it easier to do business as a start, given many companies operate on a national (and international) level – while also ensuring that community is clear on their obligations and choices.
- The development of nationally consistent pathways and actions that will ensure we meet our targets, making these a reality and not simply an aspiration.
- A concerted national effort to tackle material streams, as is the pathway being undertaken in the National Plastics Plan and COAG waste export bans. A large proportion of materials that are captured in these policies and regulations are packaging materials and are currently imported. Thus, every effort currently being made to tackle these materials at end-of-life must be matched with efforts to ensure that we avoid and redesign these materials at the start of the product lifecycle.

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<sup>3</sup> National Plastics Plan 2021.



- Ensuring a true polluters-pay model, as seen in the EU and UK, to put the onus on waste generators to take responsibility for the lifecycle of materials that they produce, including the costs of managing; doing so will shift the dial on the way materials are designed, produced, and remanufactured.
- Genuine and independent governance to allow for improved transparency in operations, data collection (which is sorely lacking), and enforcement of non-compliance.

Please do not hesitate to contact the undersigned if you would like to discuss WMRR's submission further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Gayle Sloan'.

Gayle Sloan  
**Chief Executive Officer**  
Waste Management and Resource Recovery Association of Australia

**SUBMISSION**

Question	WMRR's response
<i>Chapter 3 – key issues for consultation</i>	
<p>1. How should the effectiveness of the UPM NEPM arrangement be measured?</p> <p>2. Is there clarity regarding who are liable brand owners? If not, what are the impacts of this?</p> <p>3. Are the obligations of brand owners well understood and appropriate? If not, what are the impacts of this?</p> <p>4. What are some of the issues associated with monitoring, enforcement and free riders? What are the impacts of this?</p> <p>5. What other issues have you identified or experienced with the UPM NEPM and/or the covenant?</p> <p>6. What is the impact of any issues on your business/operations/broader achievement of Australia's waste and environment goals?</p>	<p>The goal of the NEPM (UPM) is to “reduce environmental degradation arising from the disposal of used packaging and conserve virgin materials through the encouragement of waste avoidance and the reuse and recycling of used packaging materials by supporting and complementing the voluntary strategies in the Australian Packaging Covenant and by assisting the assessment of the performance of the Covenant.” However, by the paper’s own observations, which WMRR believes have succinctly captured the ongoing issues, the NEPM and its instruments, have so far failed to adequately meet this goal.</p> <p>WMRR agrees that the key issues include:</p> <ul style="list-style-type: none"> <li>• The lack of high-level targets (NEPM) and KPIs (NEPM and APCO);</li> <li>• No clear KPIs for liable brand owners and no clear definition of liability, i.e., brand owners may exclude liability if their activities are beyond their operational control, for instance, if packaging is outsourced to a third party;</li> <li>• The severe lack of reliable and robust data across the supply chain, in particular around production, import, consumption, and reuse/remanufacturing by packagers - this cannot continue to rely heavily on self-reported data;</li> <li>• No compliance data or enforcement to-date of non-compliance;</li> <li>• General confusion and complexity related to the lack of a nationally consistent standards, definitions, and liabilities; and</li> <li>• Free-rider issues with no mandates for participating.</li> </ul> <p>There are further issues that are not captured adequately in the paper, which must be considered in this review:</p> <ul style="list-style-type: none"> <li>• The need for an independent Board overseeing the Covenant that reflects the entire supply chain, providing knowledge and robust oversight of data gathered and projects undertaken to ensure the packaging objectives are pursued. The co-regulatory approach appears to often result in</li> </ul>

	<p>justification of activities as opposed to a clear willingness to reform.</p> <ul style="list-style-type: none"> <li>• The lack of robust tracking of the entire lifecycle of packaging materials, including the true financial cost of managing, a great deal of which is externalised to third parties, in particular, local councils. The process and fate of materials are not appropriately tracked from when products are placed on a shelf to their end destination, specifically, if these are then reused and/or reprocessed into packaging material. If this remains unclear, how will Australia even begin to undertake action to meet its 2025 target of 50% average recycled content being included in all packaging? Moreover, there needs to be greater clarity, in light of the COAG waste export bans, how and if these materials will be processed and used onshore. At present, these targets do not stipulate where recycled content needs to be sourced from or how it will be measured.</li> <li>• The paper touches on the lack of compliance, due to factors such as little (if any) enforcement of non-compliance, the voluntary nature of APCO, confusion around differing state/territory obligations, and more. The one significant factor that has been missed however, is that there is simply no independent governance of the NEPM UPM.</li> <li>• The data used to-date to determine the NEPM UPM's effectiveness is neither robust nor reliable, considering the figures are self-reported (with no transparency or independent oversight of the reporting process) and importantly, with these numbers continuing to be based on benchmarks that are misleading, including "packaging that is reusable, recyclable or compostable", "technically recyclable", "good recyclability", etc. These do not give a clear indication of how much packaging has genuinely been recycled or reused, only that there may be potential for these materials to be recycled or reused.</li> <li>• There is a lack of genuine independent oversight of APCO and its operations, leading to a lack of robust testing of data produced. It is also increasingly resulting in projects being undertaken that are arguably outside of the</li> </ul>
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	<p>Covenant’s scope; for example, should APCO be assisting with placing poor packaging in roads or should the Covenant actually focus on genuinely sustainable packaging? This inability of APCO to focus on what should be seen as its ‘core business’ - for example eliminating problematic packaging nationally - has led to some states stepping in and commencing bans on single-use plastics. The issue that is now developing, which could have been avoided as we have a national body, is that of differing schemes across Australia, as seen with container deposit schemes.</p> <ul style="list-style-type: none"> <li>• APCO also has little understanding of the barriers to collection, reprocessing and reuse of packaging due to it not having representative supply chain oversight. A clear example of this is compostable packaging which is now a national target though there is very limited infrastructure nationally to make this target achievable. A review of standards across the states pertaining to the use of end-of-life materials (e.g., NSW’s RROs, Queensland’s end of waste codes) is imperative; compostable packaging is not accepted in many states at this time in the kerbside green bin, and there is very little public place infrastructure for take-away compostable packaging throughout Australia, which leaves this material with no other home apart from the residual stream. What this effectively means is that compostable materials are often used once then disposed of to landfill, much like other single-use plastics. If we do not have collection, reprocessing/recycling/reuse pathways, and end markets for these, they are materials that may need to be phased out or appropriately managed through extended producer schemes, similar to other materials such as paint or waste oil.</li> </ul> <p>The NEPM UPM, including its instruments, has had two (2) decades to prove its effectiveness and meet its goals, but it hasn’t and the impacts are clear:</p> <ul style="list-style-type: none"> <li>• Australia continues to put complex, unrecyclable packaging on the shelf, with confusing messages to consumers (e.g., the Australian Recycling Label) that does little to impact or influence</li> </ul>
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	<p>consumption choices in order to reduce waste generation.</p> <ul style="list-style-type: none"> <li>• There is no clear understanding of the realities of the WARR system and what it can and cannot accomplish with complex composite packaging. As such, there remains a high level of greenwashing – intentional or unintentional – in the upstream supply chain where materials that are “technically recyclable” continue to be produced, with PREP not being able to satisfy the ACCC green claim requirement for “recyclable” by demonstrating where this packaging will in fact be recycled.</li> </ul>
<p><i>Chapter 4 – opportunities for reform</i></p>	
<p>7. Are the broad considerations appropriate for guiding areas of reform?</p> <p>8. Are there are key considerations appropriate for guiding areas of reform?</p> <p>9. For each of the broad areas numbered 1-9 support/not support for further consideration and why?</p> <p>10. Are there other key areas of reform to support the achievement of used packaging goals?</p> <p>11. Are there alternative arrangements or mechanisms that could better support the achievement of used packaging goals?</p>	<p>As noted above, WMRR believes that there are clear pathways for reform that the federal government needs to undertake, and would make the following recommendations:</p> <p>(a) WMRR continues to advocate for the development of a mandatory product stewardship scheme for packaging, including plastics, and as part of this work, nationally consistent and clear definitions of all liabilities and material streams must be determined in consultation with jurisdictions. It has been proven that a voluntary, packaging industry-led approach to packaging has failed and we now need a proven model governed by an independent Board to provide business certainty nationally across the supply chain in order to increase investment, jobs, growth of new industries, and ultimately, the protection of human and environmental health by meeting the original objective of the NEPM UPM.</p> <p>What is required is a national mandatory product stewardship with a nationally harmonised regulatory framework that must include targets and requirements for these materials to manage free-rider issues, provide the incentive to rethink packaging design and end-of-life material management and use, allow for better collection and analysis of data (as there will be national parameters set for data collection), and sets penalties for non-compliance. Not only will a mandatory scheme drive the success of existing and forthcoming state-based plastics plans, policies, and regulations (e.g., single-use plastics bans across the states/territories), it is the logical and requisite model to mirror the COAG waste export bans. Moreover, it puts the onus on the polluter – the packager – to pay a part of the cost of managing its end-of-life products which will first and foremost provide financial</p>

	<p>incentives to collect and reprocess materials, and secondly, incentivise the packager to ramp up its circular efforts and encourage greater consideration in design, manufacturing, and recycling, all in all ensuring that what we have is a true extended producer responsibility scheme which has had proven success in the EU and the UK.</p> <p>Such a funded scheme may be the only way we will be able to fund necessary infrastructure to manage these materials and meet the national targets set by APCO and the federal government. Further, given that Australia imports a significant volume of packaging and many of these businesses are currently abiding by EU and UK's regulations, a move to a mandated product stewardship scheme in Australia is not a novel proposal to these packagers and may in fact alleviate operational complexity given the rules and regulations, while not identical, are similar in concept and ideology in developed countries.</p> <p>The other positive impacts of a mandatory product stewardship scheme for packaging are that it sets the framework for continued environmental performance and encourages domestic recycling and reuse of end-of-life materials.</p> <p>(b) While WMRR believes that the above will enable the greatest reform in packaging circularity, should the government decide to keep the NEPM UPM and its instruments, then it is absolutely vital that the government establishes a genuinely independent Board to govern and provide oversight of the model, ensuring that the NEPM UPM captures and considers the entire supply chain and not just packaging being overseen by packagers and brand owners, and importantly, that it drives transparency and accountability across all areas of operation, including setting and meeting all targets and KPIs, financial transparency, robust data collection and reporting, enforcement of the NEPM across all jurisdictions, and penalties for non-compliance.</p> <p>To facilitate this, the government must also establish a national tracking and enforcement plan, auditing schedule, nationally consistent definitions, liabilities and material streams that will be captured, determine robust metrics to specify the data that needs to be recorded, maintained and published, and a plan to phase out problematic plastics. These plans must be adhered to and all actions and outcomes governed by the Board.</p>
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	<p>(c) As highlighted above, there remain challenges with managing end-of-life compostable materials, the key being that there are no appropriate, at-scale collection pathways to effectively collect a clean stream of compostable packaging for potential reprocessing. The unintended consequences of what was meant to be an environmentally friendly alternative to single-use plastics is that there are, at present, few homes for these materials, with many ending up as residual waste to be disposed of in landfill. If we are to continue promoting the 100% compostability target, then we must ensure producers are responsible for these materials.</p>
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