



Mr David Fredericks PSM  
Secretary  
Department of Climate Change, Energy, the Environment and Water  
GPO Box 3090  
Canberra ACT 2601  
Submission via [online portal](#)

4 November 2024

Dear Mr Fredericks

**Re: National Reform of Packaging Regulation**

Thank you for the opportunity to provide feedback on the consultation paper prepared by the Department of Climate Change, Energy, Environment and Waste (DCCEEW) on the Reform of Packaging Regulation ("consultation paper"). The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body representing Australia's \$17 billion waste and resource recovery (WARR) industry. With more than 2,300 members from over 410 entities nationwide, we represent the breadth and depth of our essential industry, being representation from business organisations, the three (3) tiers of government, universities, and Non-Government Organisations (NGOs), including research bodies.

As noted in the consultation paper, the national co-regulatory framework for packaging - being the *National Environment Protection (Used Packaging Materials) (NEPM) Measure* as administered by the Australian Packaging Covenant Organisation (APCO) - has operated as an ineffective voluntary stewardship initiative that has created a lack of clarity for brand owners regarding their liability and obligations, enabled free riders, reduced industry confidence and participation and resulted in little or no data collection to measure and report on performance. There has been an obvious failure by APCO to facilitate the delivery of the 2025 targets of having 100% of packaging being reusable, recyclable or compostable, 70% of plastic packaging being recycled or composted, 50% of average recycled content included in packaging and the phase out of problematic and unnecessary single-use plastic packaging. It is vital that this review makes the necessary shifts to achieve a comprehensive regulated scheme that not only meets targets set, but also builds a safe circular system for packaging in Australia at scale.

Australia's inability to date, even with the NEPM (and its precursors) since 1998, to establish and fund a system that reduces the environmental impacts of packaging is of real concern to the WARR industry. This failure exemplifies the lack of systems thinking that has existed to date in Australia when considering the roles and responsibilities of those in the supply chain, the value of materials, and the need to keep materials circulating at their highest and best value for as long as possible in order to mitigate carbon. In 2021-2022, 6.98 million tonnes of packaging was placed on market in Australia, meaning it is likely present in every home, business and workplace in Australia. However, in spite of over 20 years of policy intervention and the existence of the packaging covenant, 2.5 million tonnes of packaging is currently being sent to landfill each year, clearly demonstrating that activity today is highly inadequate.

Packaging is arguably the product that has the greatest reach and touch in Australian daily life, it is present in all three (3) waste streams - municipal solid waste (MSW), commercial and industry (C+I) as well as construction and demolition (C+D) meaning the production, use and recovery of packaging within Australian is intrinsically linked to the WARR industry. Never was this more obvious than 2018 and China's National Sword raising public awareness of the Australia's reliance on overseas remanufacturers to utilise what was predominantly collected and sorted packaging materials as inputs into recycling supply chains, given the shortfall in market demand for these material in Australia and the resultant lack of processing capacity. China's National Sword highlighted the

clear need to ensure that there was a system in place to manage the entire lifecycle of packaging from design, through use and reuse to recovery and recirculation.

The decision of Australian governments in 2019 to develop and introduce export restrictions on what materials could be exported, increased the need for the system to be local to Australia (to manage our ‘waste’ at home) and the supporting Recycling Modernisation Funding (RMF) that was introduced highlighted a desire by government to invest and grow jobs in Australia. It is therefore surprising that there is no mention of any of the above (China’s National Sword, export restrictions and the RMF) in the consultation paper, and the options proffered do not consider their respective interrelationships with these existing policies and other relevant schemes, such as container deposit legislation which exists in the majority of states and territories at this time.

As fierce proponents of the resource and waste management hierarchy, WMRR advocates for beyond end-of-life material management and the reinvestment of valuable resources back into the economy in order that less can be used for longer. In our view, in order for Australia to achieve the targets set by the *National Waste Policy Action Plan*, and transition from a linear supply chain model that creates waste, to a circular economy that designs out waste and pollution as well as promotes the circulation of resources and reduces reliance on virgin materials, it is essential that the existing barriers to having the significant volumes of paper and cardboard, plastic and glass from packaging recovered and reinvested into the economy are removed as soon as practicable and a funded system is implemented to ensure the recovery of these valuable packaging materials at scale. To this end, WMRR notes that whilst the consultation paper notes at page 7 (section 3.3) that there is a need for more collection and recycling infrastructure, no option is actually provided for consideration that fully funds packaging recovery at scale to address this shortfall.

WMRR strongly believes that a systemic approach to all products and waste materials is necessary in Australia, meaning a ‘waste directives’ approach – similar to that in place by the EU – as opposed to the current product by product approach, which is lengthy and time consuming and fails to establish the higher order system for all in the value chain, including those that import. The lack of a directives framework also results in producers having to comply with potentially multiple scheme coordinators (eg APCO and Paintback) which is both confusing and costly, and it is disappointing that the consultation paper does not appear to have given any consideration to the interrelationships of any other schemes or regulation.

However, in the absence of such higher order thinking and action, a mandatory scheme that includes funding of full lifecycle and design standards must be adopted by the Commonwealth to enforce and incentivise packaging companies to make decisions based on the principle that landfilling of discarded materials is the least desirable outcome. A regulated scheme for packaging must however fully fund the entire lifecycle of packaging at scale in Australia including actual recovery of the material and remanufacture. Any less than an end-to-end system will fail to create the desired circular economy for packaging stated in the objectives. To this end, it is not enough that packaging is theoretically recyclable, and it will only be in placing the obligation on addressing the shortfall in local domestic reproduction on packagers that this shortfall will be met. Australia can no longer continue with “recyclable” being the measure of packaging success- it must be actually ‘recycled’, which means real requirements on producers to fund infrastructure and buy back local packaging materials with financial and regulatory incentives in place to ensure that this occurs.

In WMRRs view, there is huge potential for national packaging reform to truly shift the dial on Australia’s plastic and waste problems. Effective steps have been taken by states and territories to change the behaviours of the community and consumer markets to assist with product choices that avoid the creation of waste via single use plastic bans and phase outs. The focus must now be on making safe and genuine recoverable packaging and placing liability on producers for the packaging and waste materials they produce across all streams including C+I not simply the ongoing focus of MSW. A complete change in approach is necessary. The national packaging reforms must inherently focus on mandatory circularity, infrastructure investment and market development, as well as the avoidance of waste.

The WARR industry has long pushed for packaging reforms that mandate companies producing packaging taking full responsibility for their waste, which necessitates design requirements and including manufacturing and remanufacturing investment to prefer locally sourced recycled materials over virgin products - being the adoption and implementation of Option 2 and a vastly improved Option 3 in the consultation paper.

*i. Consideration of the proposed options*

The consultation paper identifies that packaging reform seeks to support the transition to, and maintenance of, a circular economy for packaging in Australia, where packaging is designed to reduce waste and be recyclable, is collected and recycled at scale, and circulated in the economy for as long as possible at its highest value and best use. Three (3) potential options for reforming packaging regulations are proposed for comment:

- Option 1 Strengthening the administration of the existing co-regulatory arrangement with APCO;
- Option 2 – National mandatory requirements for packaging, and
- Option 3 – An extended producer responsibility scheme for packaging.

The packaging reforms would include requirements of packaging to be designed to be recycled at scale, (implemented through early bans on problematic packaging formats, chemicals of concern and additives), minimum recycled content thresholds and mandatory recyclability labelling. The consultation paper also outlines the packaging obligations that could apply to varying extents including improving packaging design, improving recyclability labelling and implementing recycled content thresholds. As mentioned above, WMRR is of the view that no option presented is adequate in and of itself in achieving the outcomes stated, nor do they appear to consider or address, other current policy settings that exist such as export restrictions and existing container deposit regulations (CDS) across Australia.

*ii. The failure of the existing scheme (Option 1)*

In WMRR's view, it is inappropriate to provide any further consideration to Option 1 at all. Strengthening the administration of the existing ineffective co-regulatory scheme with APCO will not improve outcomes as it inherently lacks the necessary "systems thinking" needed to achieve a circular economy. In particular:

- The voluntary scheme does not at all align with other parts of the resource supply chain - such as the constituent materials for kerbside recycling collections, fails to understand or address that packaging exists in the C+I stream and that material flow and analysis as well as solutions for this pathway are required, regulations pertaining to thresholds for health and environmental contaminants have never been achieved (or well understood), or funded recycling initiatives (ie: whilst \$250M has been invested into the Recycling Modernisation Fund, only 42% of packaging materials are deemed to have good recyclability.)
- Plastics are a particular problem with a low 20% recovery rate and forming over 80% of litter. 30% of plastics used by Australians are packaging. Further, the consultation paper notes that that plastic packaging has the highest usage of virgin materials, comprising 92% of the total plastic packaging on the market, with recycled plastic resin being over 50% more expensive than virgin plastics in some cases. APCO has not been able to take the steps needed to bring about opportunities for recycled and virgin plastics to compete on an even playing field, or perhaps more pertinently, for recycled materials to be preferred within supply chains.
- The scheme largely exists in isolation from initiatives aimed at reducing plastic pollution, such as the single use plastics bans and CDS schemes, which have been rolled out by separate jurisdictions. Confusing and unclear labelling protocols have further undermined collected recycling streams, with "green" coloured packaging and misleading marketing claims like "50% biodegradable" resulting in the contamination of recyclable streams by well-meaning consumers.
- Perhaps most importantly, there are no measurable financial or legal incentives for packaging producers to participate in the current scheme. Instead, it creates opportunities for free-riders to not implement any measures to manage packaging waste, and maintain an unfair advantage over

competitors who “do the right thing”. Further there is no understanding or consideration given to other product stewardship schemes that involve packaging of products and how these schemes will operate together to place clear and consistent obligations on producers and generators. Whilst CDS has been mentioned at length, this is also the case for other schemes such as Paintback and Mobile Muster.

Such a piece meal approach to resource recovery of recycled material is never going to achieve an optimal result. Instead, to successfully transition to a successful and safe circular economy there must be a systems approach inclusive of:

- a stronger focus on design, to eliminate the creation of hard-to recycle and/or single-use materials;
- a precautionary approach to harmful chemicals. It will not be possible to reach resource recovery targets (in any area) with the ongoing inclusion of chemicals such as PFAS in products sold in Australia. They must be designed out as a matter of priority;
- support and investment in re-use systems; and
- an engagement strategy delivered to empower community and business to avoid purchasing products that are not designed for circularity.

Australia’s packaging reforms must establish clear and certain market and regulatory settings including mandating all packaging producers participating in Australian markets with a legal responsibility to create circular products by design, implementing extended producer responsibility (EPR) laws to hold manufacturers accountable (legally and financially) for the end-of-life management of their products, and motivating packaging producers to ‘do better’ with economic incentives (eco-modulated fees) under a mandatory EPR scheme promoting higher use recyclability of packaging materials.

*iii. WMRR’s recommendation for mandatory national design requirements and EPR scheme for all packaging placed on the Australian market (Options 2 and improved 3 combined)*

It is WMRR’s firm belief that Australia requires an overarching systems approach, akin to the *EU Waste Directives Framework*, that makes clear the order of preference for managing waste and which places obligations squarely on those that produce and place products on market, i.e. creating a real paradigm of extended producer responsibility (EPR) and mandatory sustainable product design requirements, eco-modulated fees are set at a level that reinforce this obligation by charging fees that reflect and support actually recovered materials.

The 2.5 million tonnes of packaging that currently goes to landfill in Australia does so given poor design and inability to recover (e.g. composite packaging such as *Pringles* containers that have paper, plastic and metal all in one (1) packaging format, low value materials such as PVC packaging), the lack of recovery / collection facilities at scale and the lack of market demand for those materials, as well as in some instances the regulatory barriers that prevent access to overseas markets. This is why packaging reform requires robust systems that squarely place responsibility (financial and legal) on packaging producers to design out waste and embrace circular design of any unnecessary packaging across all stages of the supply chain. This systems change must be enforced by legislation and reinforced and buoyed by market incentives and obligations (e.g. recycled content requirements). Given Australia’s Environment Ministers have agreed to establish a circular economy, packaging producers must be held financially and legally responsible, to ensure that the materials on market are actually circular.

The packaging reforms must ensure that linear products are not able to participate at all in a circular economy. This must include:

- Mandatory packaging requirements that ensure design for actual recycling in Australia (given export regulations), including:

- restrictions on potentially harmful chemical and physical contaminants (that can hinder options for re-use, recycling and re-manufacturing).  
A good example of suitable legislation is the EU *Packaging and Packaging Waste Directive* (PPWD – Directive 94/62/EC) which lays down measures to prevent the production of packaging waste, and to promote reuse of packaging and recycling and other forms of recovering packaging waste. To prevent adverse health effects, the text includes a ban on the use of so called “forever chemicals” (per- and polyfluorinated alkyl substances or PFASs) above certain thresholds in food contact packaging; and
- minimum thresholds for the use of locally sourced recycled content.  
It is not enough to separate, stockpile and ‘collect’ recoverable material if there is no demand for that material to be used. Australia has already learnt this lesson through the collapse of RedCycle. In WMRR’s view, it is essential that the packaging reforms create demand for recycled packaging materials by committing to using Australian recycled content and not imported recycled content.
- Mandatory labelling requirements to enhance community and industry awareness of materials and hold packaging producers liable for misleading information placed on packaging to avoid opportunities for greenwashing and contamination of feedstocks collected by recycling and composting waste streams. The ability to effectively source separate components for reuse is crucial as issues with contamination can undermine design efforts, and
- A mandatory EPR scheme to make packaging producers responsible for their products’ complete recyclability or remanufacturing.

WMRR believes that a robust approach to the packaging problem is needed given the lack of progress with existing mechanisms and time and resources wasted. The EPR scheme not only complements requirements to design for optimal recovery and continual reinvestment of that material in the circular economy, but further incentivises packaging companies to ‘do better’ through eco-modulated fees that favour improved recovery outcomes with end-market demand.

Given the shortfall of infrastructure noted in the paper, there must also be a clear obligation to fund this entire system to ensure that the packaging can be actually recycled at scale across Australia, not simply in theory. Further, in order to address ACCC Greenclaims, producers must ensure not only are there facilities to do the sorting/ reprocessing to actually recycle, but there is a system that ensures that the material can actually be received at this facility. This includes packaging that is also available in C+I streams. Hence, for many reasons the APCO measure of ‘recyclability’ being accepted by local governments is completely unacceptable given it fails to meet ACCC requirements or understand C+I material flows that often are deposited in public places where there is limited recycling infrastructure at scale.

The Commonwealth should enforce EPR and eco-modulated fees that address the entire system from design through to recovery and remanufacture, by appointing an independent scheme coordinator to identify and register all obligated companies, collect fees, establish and maintain infrastructures for (separate) collection, sorting and recycling and remanufacture of packaging material, and monitor volume flows. Funds collected from the scheme must be reinvested back into the packaging circular economy – for example, into recycling infrastructure, education campaigns and research.

Consideration must also be given to ensuring the total system is funded. As well as funding facilities as mentioned above, and this will include looking at:

- actual recovery of materials, to ensure that those producers that are placing materials on market that are demonstrably recovered are receiving the benefit of a lesser fee. An example of a model for this is the Packaging Recovery Notes (PRN) system that is in place in the United Kingdom.
- funding kerbside recovery, given at present, local councils are currently covering this through their rates basis and there is no mention in the paper of how this will be managed going forward. There is a real risk if the whole-of-system is not funded that there will be ongoing challenges of identifying what is classified for funding under this scheme, verse existing kerbside, verse CDS.

The proposed regulated approach of combining Option 2 with an improved Option 3 presented by the consultation paper is necessary to ensure that we take this opportunity to address the entire packaging system, create a level playing field for producers, reduce confusion for the community and bring Australia into line with global approaches and regulation. Whilst it is disappointing that the consultation paper did not address a number of other relevant issues (export regulations, C+I materials, CDS, funding the entire supply chain to name a few), WMRR appreciates the opportunity to provide meaningful comment and we trust that DCCEEW will take WMRR's comments into consideration and welcome opportunities to engage further to assist in the design of the reforms.

Please contact the undersigned if you wish to further discuss WMRR's submission.

Yours sincerely



Gayle Sloan

**Chief Executive Officer**

Waste Management and Resource Recovery Association of Australia