

12 March 2021

Department of Agriculture, Water and Environment
Environment Protection
GPO Box 858
Canberra ACT 2601

RE: ASBG's Submission on Review Of The Co-Regulatory Arrangement Under The Used Packaging Materials NEPM (UPM NEPM)

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *draft Review of the co-regulatory arrangement under the National Environment Protection (Used Packaging Materials) Measure 2011 (UPM NEPM)*.

ASBG is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 100 members comprising of Australia's largest manufacturing companies and other related businesses.

ASBG welcomes the review as it comes at a critical time where recycling is undergoing major changes and requires significant upgrades to its infrastructure. At the root of this issue is the impact [China's National Sword policy](#) has impacted on the international circular economy, forcing a significant shift on on-shoring of recycling and waste management. ASBG considers the main issues, which are related to the mpconsulting's paper questions include:

- The performance of the Australian Packaging Covenant Organisation (APCO) and its future role
- Need for nationally consistent definitions for the UPM NEPM and for all wastes and recycle in general
- Jurisdiction's role in the management of the UPM NEPM
- Improving the existing framework to boost the performance of the UPM NEPM and waste management

Current and Future of the Australian Packaging Covenant Organisation

The measure of the performance of the APCO in the report has been summed by Table 1 which shows a modest improvement over one year. There are a number of issues which need to be address when considering such outcomes including:

- The APCO has over the last few years has undergone major reforms with significantly increased requirements on its signatories. New and improved systems include ANZPAC Plastic Pact, National labelling program (ARL), recycled content used in packaging, education, phase out of single use & problematic packaging, designing for recyclability.
- Such changes will require time to be set up, but these are in place to increase performance further.

- Complicating future performance is the transitioning to a new set of recycling infrastructure, which is tied to developing Government legislation and policy.
- New recycling infrastructure and its need for certain inputs will drive changes in packaging material usage across Australia, but these types of materials are currently not very clear and represent commercial risks.
- APCO has always permitted signatories to identify where they have reduced and recycled other non-packaging wastes, which addresses overall waste reduction to landfill targets. These gains are generally not well recognized, especially in the Review. Such gains are not a core UPM NEPM it does indicate other improvements by APCO signatories.

The last point demonstrates how APCO signatories link into the larger wastes streams made from business activities and end of life products. General waste minimization action was recognised early on in the Covenant as an alternative means in which signatories can reduce and or recycle any of their waste streams. Many brand owners have little control over their packaging, as it is often dictated from overseas, either as an imported package or by the design systems governed by overseas corporate offices which govern product and packaging development. While this is not a core requirement of the UPM NEPM, such savings in terms of weight of factory and warehouse generated waste can exceed the amount of packaging in the market for some signatories. As a consequence, APCO provides an effective one-stop-shop to reach brand owners and their ability to effect better Product Stewardship schemes, even perhaps assisting material choices for both packaging and products. This flow on effect is or can be much larger in terms of tonnes recycled or minimized than packaging alone could ever achieve.

Overseas packaging control has two sides to it which need recognition and consideration. OECD countries and more are also grappling with the impacts resulting from China's National Sword policy. As a consequence, many corporations across the world are re-looking at their packaging, its materials and how it can be minimized and recycled. While Australia tends to be a brand taker, there are considerable international resources working on packaging and product design, especially the materials used, and how these can be minimised captured, recycled etc. Innovative process, more effective recycling chains are being developed, but require all parties to work together, are opportunities for Australia to consider and adopt where appropriate.

The UP NEPM focuses on the performance of *brand owners* more than other stakeholders. At its core a brand is a key market identifier, in which consumers assess the brand on a variety of issues: value for money, quality, etc. and environmental performance. Governments often cite market forces as a key means in which to drive environmental improvements. The UPM NEPM and the APCO is particularly well set up to do this and achieves this to a degree. However, increasing the market's knowledge of a poor performer, such as being a free rider, has been poorly supported by the jurisdictions. As a consequence, ASBG considers the performance of non-performing *brand owners* should be publically known. Publically shaming free riders is considered a key means in which to raise APCO signatory numbers and improve its overall performance, where the consumer drives this.

ASBG supports the proposed lite version of requirements for SMEs under the APCO, but this should be established under the APCO with its control over the design, implementation and enforcement.

Nationally Consistent Definitions

Since the 2009 National Waste Policy the issue of consistent waste definitions and measurement has been a repeated message in almost all Government discussion papers on waste. However, this issue remains and is a victim of Australia's Constitution and jurisdictional power structure. The Review cites the multiple definitions of "brand owner", but this is only the start of a long list of differing definitions regarding waste. This Review is not the forum to address this issue, but ASBG considers there is a solution for standardising

the definitions under the UPM NEPM. Let the APCO use its nationally consistent definitions, as stated in the recommendations below.

While jurisdictions may be reluctant to use an APCO definition, such as due to legal differences, their actions should be undertaken to support the APCO. The risk of a borderline brand owner arguing over a definition (e.g. taking this issue to court) is very low due to their costs, especially in comparison to being a signatory and high risk of losing.

Jurisdiction's Role In The Management Of The UPM NEPM

Australia's States and Territories have simply not played their part in the enforcement of the UPM NEPM nor collected the data required. So poor is jurisdictional involvement in assisting the APCO and complying with the UPM NEPM the Review states '*there is a perception that compliance with the UPM NEPM arrangement is voluntary*'. As such signatories and the APCO could be considered quasi-voluntary program and should be congratulated on its success virtually by itself.

The UPM NEPM also requires the jurisdictions to collect data and report on it under Part 4 UPM NEPM. Again this is very poorly undertaken. Government data if issued is fraught with large errors when compared to industry data.

Why are the jurisdictions not supporting the UPM NEPM? This is a complex question, but it can be put down to:

- Lack of resources, though s10(4) UPM NEPM states: Jurisdictions should allocate sufficient resources to enforce compliance with this Measure.
- Jurisdictions see the APCO as an issue to their control and management of waste and recycling.

Given the complexities in jurisdictional involvement, it is clear only minimal attention to assisting the APCO would achieve significant impacts on reducing free riders.

Improving The Existing Framework

No changes are considered required to the UPM NEPM as legislative frame work is there, it's simply not enforced and not well actioned. The APCO is an important conduit between Government, industry and importers where high efficiencies in terms of costs to consumers, improvements to the environment and reduction of waste can be achieved if all players are engaged.

Governments have a key role to play in effecting the transition from an international circular economy to one in which on-shore circular processing increases significantly. Noting that export of recycled materials must play major role in circulating waste from our significant reliance on imported goods back to the exporter where appropriate.

ASBG's summary recommendations:

- ***Permit the APCO to run its revised programs with a review after 5 years.***
- ***Align the expected performance of the APCO with the major changes being transitioned in the recycling sector, especially packaging material types that can be effectively recycled in Australia over the medium term.***
- ***Permit the APCO to set default definitions of brand owner and other key terms, which will be adopted in parallel with jurisdictional legal definitions.***

- ***Obtain agreements from the jurisdictions to use either APCO or UPM NEPM definitions as default to promote brand owners to become APCO signatories and manage other packaging issues.***
- ***Obtain agreements from the jurisdictions to provide letters to APCO exposed free riders with copies to APCO, so these can be legally published. Consumers will then be permitted to make purchase choices based on ACPO non-signatories affecting sales performance.***

ASBG envisages the last point could work along these lines:

- Jurisdictions to provide one officer with probably less than 10 hours per week to process requests on free riders by the APCO.
- The officer should take on the APCO with minimal checks, the accuracy of these requests and produce a Government letter to the free rider and the APCO signifying the need for the brand owner to become a signatory.
- Once such a letter is received APCO will publish the brand owner name on its website for shaming. Market forces supported in part by the media and others will pick up this and broadcast these brands.

Should you require further information, clarification or details on the submission please contact me on 02 9453 3348.

Yours Sincerely



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