

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

## Final Report

Prepared for the Department of Agriculture, Water and the  
Environment

September 2021

© Matthews Pegg Consulting Pty Ltd. 2021

### Ownership of intellectual property rights

Unless otherwise noted, copyright (and any other intellectual property rights) in this publication is owned by Matthews Pegg Consulting Pty Ltd.

### Creative Commons licence

All material in this publication is licensed under a [Creative Commons Attribution-Non Commercial-No Derivatives 4.0 International License](#) except content supplied by third parties, logos and the Commonwealth Coat of Arms.

Inquiries about the licence and any use of this document should be emailed to [copyright@awe.gov.au](mailto:copyright@awe.gov.au).



ISBN: 978-1-76003-506-8

### Cataloguing data

This publication (and any material sourced from it) should be attributed as: Matthews Pegg Consulting Pty Ltd. 2021, *Review of the co-regulatory arrangement under the National Environment Protection (Used Packaging Materials) Measure 2011 – Final Report*, prepared for the Department of Agriculture, Water and the Environment, Canberra, September. CC BY-NC-ND 4.0.

This publication is available at [awe.gov.au/publications](http://awe.gov.au/publications).

Matthews Pegg Consulting Pty Ltd.  
PO Box 1013  
Collingwood VIC 3066

### Disclaimer

The views and opinions expressed in this publication do not necessarily represent the views of the Australian Government or the portfolio ministers for the Department of Agriculture, Water and the Environment.

The content of this publication does not constitute advice to any third party. Although due care and skill has been applied in the preparation and compilation of the information and data in this publication, no reliance may be placed on it by any other party. No representation expressed or implied is made as to the currency, accuracy, reliability, completeness or fitness for purpose of the information contained in this publication. The reader should rely on its own inquiries to independently confirm any information and comment on which they may intend to act.

The Commonwealth of Australia, its officers, employees, agents and the other parties involved in creating this report disclaim, to the maximum extent permitted by law, responsibility to any other party for any liability, including liability for negligence and for any loss, damage, injury, expense or cost incurred by any person as a result of accessing, using or relying upon any of the information or data in the publication.

### Acknowledgements

This report was funded by the Department of Agriculture, Water and the Environment.

### Acknowledgement of Country

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

# Table of Contents

<b>Executive summary .....</b>	<b>4</b>
<b>Summary of Review outcomes .....</b>	<b>6</b>
What did the Review find? .....	6
What does the Review recommend? .....	6
<b>Terms and acronyms used in this Report .....</b>	<b>7</b>
<b>Chapter 1 – About this Review .....</b>	<b>9</b>
Scope of the Review.....	9
Approach to the Review.....	9
<b>Chapter 2 – Packaging in Australia.....</b>	<b>12</b>
Context.....	12
Packaging .....	12
Strategies to address the adverse impacts of packaging .....	12
The packaging chain.....	15
<b>Chapter 3 – The co-regulatory arrangement for used packaging.....</b>	<b>17</b>
<b>Chapter 4 – Key findings of the Review.....</b>	<b>19</b>
Context.....	19
Effectiveness of the co-regulatory arrangement in advancing the overarching environment protection goal .....	20
Consistency of implementation .....	22
Stakeholder understanding of the co-regulatory arrangement .....	24
Clarity regarding liable brand owners under the co-regulatory arrangement .....	26
Clarity and appropriateness of the obligations imposed on liable brand owners through the co-regulatory arrangement .....	27
Extent to which the co-regulatory arrangement offers flexibility for different brand owners to meet their obligations.....	30
Effectiveness of monitoring and enforcement of the co-regulatory arrangement.....	31
Funding of the co-regulatory arrangement and efficiency of the arrangement in terms of costs to government and business .....	33
Recent changes to the co-regulatory arrangement .....	34
<b>Chapter 5 – Review recommendations .....</b>	<b>36</b>
Goal of the used packaging scheme .....	37
National agreement .....	38
Liable parties under the used packaging scheme and their obligations .....	39
Liable parties.....	39
Obligations of liable parties .....	42
Centralised administration and coordinated enforcement of the used packaging scheme .....	45
Centralised administration .....	45
Coordinated monitoring and enforcement .....	46
Funding the used packaging scheme .....	46
Implementation approaches .....	47
<b>Attachment A: Terms of reference for the Review .....</b>	<b>52</b>
<b>Attachment B: Summary of state and territory arrangements.....</b>	<b>54</b>
<b>Bibliography .....</b>	<b>55</b>

## Executive summary

---

Waste is a significant global issue with countries continuously striving to improve waste avoidance and the recovery of waste through recycling, and to promote a circular economy to benefit businesses, society and the environment.

Used packaging is one source of waste that has captured the attention of governments, businesses and consumers alike, with strong momentum for change to address the impact of packaging on the environment. Momentum lies in the desire to move away from the linear take-make-waste model to fundamentally rethink the way packaging is designed, used and reused.

An important piece of Australia's framework for regulating packaging waste is the co-regulatory arrangement described in the [National Environment Protection \(Used Packaging Materials\) Measure 2011](#) (UPM NEPM). The co-regulatory arrangement comprises the UPM NEPM, legislation and policy in participating states and territories to give effect to the UPM NEPM ('state and territory arrangements') and the [Australian Packaging Covenant](#) (the Covenant).

The co-regulatory arrangement is aimed at minimising the environmental impacts of packaging materials through requiring certain companies (brand owners) to improve design (optimising packaging to use resources more efficiently), recycling (efficiently collecting and recycling packaging) and product stewardship (demonstrating commitment by industry).<sup>1</sup>

The Review has identified that key elements of the UPM NEPM have not been implemented or have not been operationalised effectively. This has created a lack of clarity for brand owners, enabled free-riders, reduced confidence in the scheme and meant that there is limited data available about the success of the co-regulatory arrangement.

Despite this, most stakeholders continue to support the central tenet of the scheme; that participants in the packaging supply chain who can influence the design, procurement and use of more sustainable packaging should:

- re-design packaging to improve sustainability
- optimise recovery of packaging, minimise waste and reuse or repurpose packaging materials
- collaborate across the packaging chain to support a circular economy
- be accountable for the achievement of the above (noting that different parties will innovate in different ways in order to achieve the outcomes).

This Review makes a range of recommendations for reform. These are designed to ensure that the scheme is fit-for-purpose into the future; there are clear goals and performance indicators; there is clarity regarding who the scheme applies to (and their obligations); there is accountability for outcomes; and that there is effective monitoring and enforcement.

Achievement of these outcomes depends on governments working together to agree roles and responsibilities, funding for the scheme and a preferred implementation approach. In the interim,

---

<sup>1</sup> Australian Government (Terry Bailey), July 2019, *Independent review of the National Environment Protection Council Act*, p. 17.

the Review recommends actions to continue to build on the significant momentum for change and to support Australia to meet agreed 2025 National Packaging Targets.

## Summary of Review outcomes



### What did the Review find?

1. There are challenges measuring the effectiveness of the co-regulatory arrangement because there are no clear KPIs and data is either not available or not consistently collected and reported.
2. The UPM NEPM has not been consistently implemented or operationalised by states and territories, impacting brand owner understanding of their liability and obligations under the co-regulatory arrangement.
3. The co-regulatory arrangement is not well understood by stakeholders, including liable brand owners who are not clear as to the mandatory obligations imposed by the co-regulatory arrangement.
4. There is a lack of clarity regarding the definition of a liable brand owner under the co-regulatory arrangement and businesses are not always clear whether they are subject to the arrangement.
5. While the obligations described under the Covenant are broadly appropriate, these obligations are not consistently applied or understood across the co-regulatory arrangement.
6. While there is flexibility in the co-regulatory arrangement, the system of exemptions is not well understood, consistently applied or transparent.
7. Limited (or absent) monitoring and enforcement has undermined confidence in the co-regulatory arrangement, enabled free riders and disincentivised participation in the Covenant.
8. A lack of coordinated funding of the co-regulatory arrangement has impacted effective implementation and outcomes.



### What does the Review recommend?

1. Establish a clear goal and associated KPIs for a reformed used packaging scheme.
2. Establish a national agreement (defining goals, principles, roles, timeframes, funding and accountabilities) that forms the basis of a reformed used packaging scheme.
3. Clarify the liable parties under a reformed used packaging scheme.
4. Establish a nationally consistent set of obligations for liable parties based on those currently described in the Covenant, that enables flexibility as to how outcomes may be demonstrated.
5. Centralise administration of a reformed used packaging scheme.
6. Coordinate and strengthen monitoring and enforcement of a reformed used packaging scheme.
7. Governments fund the implementation of a reformed used packaging scheme, with ongoing costs associated with the scheme funded by industry.
8. Governments agree a preferred implementation approach for a reformed used packaging scheme.
9. While changes are being made to legislation to make the used packaging scheme sustainable into the future, governments take interim actions to reinforce the ongoing expectation that parties who can influence the design, procurement and use of more sustainable packaging will re-design packaging to improve sustainability, optimise recovery and reuse, collaborate across the packaging chain and be accountable for the achievement of outcomes.

## Terms and acronyms used in this Report

Noting that different terminology is often used to describe key elements of used packaging regulation, for the purposes of this Report, terms and acronyms have the following meaning.

Term	Meaning for the purposes of this Review
<b>ANZSIC</b>	Australian and New Zealand Standard Industrial Classification
<b>APCO</b>	Australian Packaging Covenant Organisation Ltd
<b>ARL</b>	Australasian Recycling Label
<b>ART</b>	Annual Reporting Tool (the ART) is an online platform through which brand owner signatories complete both their annual report and action plan each year. It allows brand owner signatories to monitor and track their packaging sustainability progress over time by reporting against, and selecting commitments in line with, the Packaging Sustainability Framework
<b>B2B</b>	Means business to business in the context of business to business packaging
<b>brand owner</b>	Means: <ul style="list-style-type: none"> <li>• a person who is the owner or licensee in Australia of a trademark under which a product is sold or otherwise distributed in Australia, whether the trademark is registered or not, or</li> <li>• 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</li> <li>• in the case of a product which has been imported, the first person to sell that product in Australia, or</li> <li>• in respect of in-store packaging, the supplier of the packaging to the retailer, or</li> <li>• 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</li> </ul>
<b>brand owner signatory</b>	A liable brand owner that is a signatory to the Covenant
<b>co-regulatory arrangement</b>	Includes the Covenant and the Commonwealth UPM NEPM and state and territory legislation and/or policy giving effect to the UPM NEPM (the 'UPM NEPM arrangements')
<b>Covenant</b>	Australian Packaging Covenant (the Covenant is one arm of the co-regulatory arrangement)
<b>EPA</b>	Environment Protection Authority
<b>GOG</b>	Government Officials Group
<b>liable brand owner</b>	A brand owner that has obligations under the UPM NEPM arrangement as a consequence of meeting the threshold
<b>NEPC</b>	National Environment Protection Council

<b>NEPC Act</b>	<i>National Environment Protection Council Act 1994</i>
<b>participants</b>	Refers to businesses that play a role in the packaging chain (only some of whom are brand owners)
<b>POM</b>	Placed on the market
<b>RAWR Act</b>	Refers to the <i>Recycling and Waste Reduction Act 2020</i>
<b>scheme (or used packaging scheme)</b>	Refers to the used packaging scheme generally and is agnostic as to how any such scheme may be implemented in regulation
<b>SMEs</b>	Small to medium enterprises
<b>SPGs</b>	Sustainable Packaging Guidelines (the SPGs) are a publicly available resource used to assist in the sustainable design and manufacture of packaging in Australia. The purpose of the SPGs is to assist Australian organisations in integrating ten key principles into their operations
<b>state and territory arrangements</b>	Collective term used to describe the legislation and/or policies that states and territories have put in place to give effect to the Commonwealth UPM NEPM
<b>UPM NEPM</b>	<i>National Environment Protection (Used Packaging Materials) Measure 2011 (Cth)</i>
<b>UPM NEPM arrangement</b>	Collective term used to describe the Commonwealth UPM NEPM and the state and territory arrangements (legislation and policy). Together these 'UPM NEPMs' form one arm of the co-regulatory arrangement, with the other being the Covenant



## Chapter 1 – About this Review

---

### Scope of the Review

In line with the requirement for five yearly review of the co-regulatory arrangement<sup>2</sup> and the desire of governments to evaluate the effectiveness of the arrangement, the Department of Agriculture, Water and the Environment (the Department) engaged mpconsulting to conduct an independent review of the co-regulatory arrangement.

This is the first review of the UPM NEPM, and the co-regulatory arrangement more broadly, since the UPM NEPM commenced in 2011.

The Terms of Reference for the Review required mpconsulting to examine:

1. The extent to which the NEPM and Covenant are achieving the national environment protection goals set out within them.
2. The need for variation or amendments to the NEPM and/or the Covenant.
3. The resources available for implementing the NEPM and Covenant.
4. The interaction of the NEPM with other Commonwealth legislation.
5. Any other matters including environmental, cost and regulatory issues relevant to the optimal operation of the NEPM and Covenant.

### Approach to the Review

To inform the Review, mpconsulting:

- reviewed the legislation and documents underpinning the UPM NEPM, including:
  - the [National Environment Protection \(Used Packaging Materials\) Measure 2011](#)
  - the [Australian Packaging Covenant](#)
  - the [National Environment Protection Council Act 1994](#) (NEPC Act)
  - the relevant state and territory arrangements (See Attachment B)
- reviewed key documents guiding the implementation of the co-regulatory arrangement, including:
  - [Intergovernmental Agreement on the Environment](#)
  - the [APCO Strategic Plan and Statement of Intent](#)
  - [Sustainable Packaging Guidelines \(SPGs\)](#)
- analysed relevant data, including:
  - data and trends relating to activities undertaken by APCO and each state and territory, including data on compliance action, data in relation to material flow and consumption of packaging and outcomes for brand owner signatories in relation to their performance against Covenant obligations

---

<sup>2</sup> Clause 22, *National Environment Protection (Used Packaging Materials) Measure 2011*.

- reviewed other state, territory and Commonwealth legislation and documents relevant to waste, including:
  - [National Waste Policy and Action Plan](#)
  - state and territory waste strategies
  - state and territory single use plastic and container deposit scheme legislation
  - Commonwealth [Recycling and Waste Reduction Act 2020](#) (RAWR Act)
- conducted interviews with a range of stakeholders to understand the issues, challenges and opportunities in relation to the operation of the co-regulatory arrangement. Interviews were conducted with a number of:
  - Commonwealth Government representatives
  - state and territory agencies
  - industry and peak body representatives
  - brand owners
  - non-government bodies
- developed a Consultation Paper to provide a high-level overview of the operation of the co-regulatory arrangement, including a summary of the broader environmental protection policy landscape and the issues that were raised during preliminary engagement. The Consultation Paper sought stakeholder views on the strengths, limitations and issues experienced with the operation of the co-regulatory arrangement, including any ways the co-regulatory arrangement could be improved (or how used packaging could be otherwise regulated) to affect better environmental protection from used packaging
- developed a survey to accompany the Consultation Paper, seeking stakeholder feedback on:
  - the issues with the co-regulatory arrangement, including clarity regarding who is a liable brand owner, the clarity of obligations under the co-regulatory arrangement and issues associated with monitoring, enforcement and free riders
  - the impact of issues on brand owners' businesses/operations and the broader achievement of waste and environmental goals
  - the key considerations of reform
  - the broad areas of reform identified in the Consultation Paper.

The online consultation was open from 5 February 2021 to 12 March 2021, and 48 responses were received either directly or through the online platform.

Stakeholders responding to the Consultation Paper included a cross section of:

- consumers, brand owners, packaging manufacturers, businesses in the waste and recycling sector, and local, state and territory governments
- different types of brand owners (including those who identified as retailers and packaging manufacturers)
- brand owners who were signatories to the Covenant or meeting their obligations under the state or territory arrangements
- brand owners with different levels of turnover (of the respondents who identified as brand owners, the majority had a turnover over \$750 million, with others falling in the \$5 million to \$750 million bracket)

- businesses with registered head office locations in all states and territories (except the Northern Territory). Of the respondents who identified as brand owners, the majority had a registered head office in Victoria or New South Wales, and all operated in more than one jurisdiction.

**We sincerely thank the many consumers, brand owners and representatives from government and industry who have shared their experiences and expertise and provided valuable information to inform the Review. We also extend our gratitude to the Department and the Government Officials Group for their contribution to the Review.**

## Chapter 2 – Packaging in Australia

### Context

To understand the effectiveness of the co-regulatory arrangement, it is useful to understand the context in which it operates. This chapter describes at a high level:

- the role of packaging
- the range of strategies that have been implemented to reduce the adverse impact of used packaging
- the complexity of the packaging chain and the importance of collective action in addressing packaging waste.

### Packaging

Packaging has several important functions in our modern lifestyle. For example, it:

- plays a significant role in reducing food waste and increasing the lifespan of perishables (preventing loss through spoilage)
- protects products during transportation (preventing loss through breakage)
- ensures product security and reduces the risk of tampering prior to consumer use
- ensures food and therapeutic goods remain safe for consumption
- manages hazardous goods
- provides information about the products
- can provide information about how to recycle the packaging and/or product
- enhances the appearance of products
- provides a convenient means for consumers to carry products.

However, packaging is also often made from finite resources and the treatment of packaging at the end of life can have significant adverse impacts on the environment.<sup>3</sup> Estimates from 2018-19 suggest that in Australia:

- a total of 5.92 million tonnes of packaging was placed on the market (POM)<sup>4</sup>
- 89% of packaging POM had good recyclability (5.3 million tonnes)
- 50% of packaging POM was disposed to landfill over this period.<sup>5</sup>

### Strategies to address the adverse impacts of packaging

Worldwide, governments, industry and consumers have been focused on:

- increasing the reusability, recyclability and compostability of packaging

<sup>3</sup> Canadian Council of Ministers of the Environment, February 2009, *Discussion Document: Towards A Proposed Canada-Wide Strategy For Sustainable Packaging*, p. 3.

<sup>4</sup> Australian Packaging Covenant Organisation Ltd. (APCO), January 2021, *Australian Packaging Consumption and Recycling Data 2018-19*, p.5.

<sup>5</sup> Australian Packaging Covenant Organisation Ltd. (APCO), January 2021, *Australian Packaging Consumption and Recycling Data 2018-19*, pp. 12, 14.

- increasing the recycled content in packaging
- phasing out unnecessary single use plastic packaging.

For example:

- The UK has adopted a 'polluter pays principle' through extended producer responsibilities, including obligations to contribute to the costs of collecting packaging waste.
- In Germany, producers and other participants are required to contribute to environmental costs, reduce packaging waste and increase recycling and reutilisation rates through the purchase of packaging licenses reflective of the volume of packaging POM.

Likewise in Australia, a number of different strategies have been implemented by governments, industry and consumers to address the adverse impacts of used packaging.

For example:

- The Commonwealth Government:
  - introduced a National Waste Policy agreed in 2018, which sets the direction for waste management in Australia until 2030 through five key principles and 15 strategic areas and a National Waste Policy Action Plan in 2019, which implements the Policy through seven overarching national targets
  - introduced the 2025 National Packaging Targets (NPTs) agreed by all States and Territories through the Environment Ministers in 2018
  - released a new National Plastics Plan in 2021 that identifies actions across five key areas (including prevention of plastic waste, recycling, consumer education, ocean pollution and research).
- The Commonwealth Government has increased investment in recycling and environmental initiatives. For example:
  - \$59.6 million has been invested in the implementation of the National Waste Policy Action Plan (including to assist with data capture) and \$190 million over four years for new infrastructure to sort, process and remanufacture waste such as mixed paper, plastics, tyres and glass through the Recycling Modernisation Fund (RMF)<sup>6</sup>
  - under the Government's Environment Restoration Fund many grants were made, including a \$1.1 million grant to APCO to develop the [National Consumer Education Campaign](#) to enable the development of a consistent national approach to consumer education on reducing, reusing and recycling packaging<sup>7</sup>
  - Through the 2021-22 Federal Budget, \$5.9 million over four years was allocated to conduct a further grant round of the National Product Stewardship Investment Fund and \$5 million over three years to support small businesses to adopt the Australasian Recycling Label.<sup>8</sup>
- State and territory governments have funded and implemented a range of measures and waste strategies including waste management and resource recovery strategies, container deposit

---

<sup>6</sup> [Joint Media Release: \\$1 billion waste and recycling plan to transform waste industry](#), July 2020; Budget 2020-21: [Transforming Australia's waste and recycling industries](#).

<sup>7</sup> Australian Packaging Covenant Organisation - Answers to questions on notice at public hearing 29 July 2020 (received 19 August 2020); Department of Agriculture, Water and the Environment website – [Environment Restoration Fund](#).

<sup>8</sup> Budget Paper No. 2, Budget Measures 2021-22, p. 57.

schemes, single use plastics legislation, changes to kerbside recycling, plastic pollution reduction plans and programs and campaigns to educate consumers and businesses about waste avoidance and recycling.

- Individual companies have significantly hastened their efforts to change packaging. Through the Review, numerous examples were provided of how businesses have committed to targets, driven their own reviews and changes to their packaging and supply chains and developed sustainability programs.
- Industry has taken the lead on the establishment of initiatives designed to support greater collective action and increased consumer awareness, including:
  - the creation of the [Australasian Recycling Label](#) and PREP Tool by APCO, PlanetArk and PREP Design (currently available to brand owner signatories)
  - the establishment of the [ANZPAC Plastics Pact](#) by APCO; an initiative designed to bring together businesses, governments and packaging chain stakeholders to accelerate the transition towards a circular economy for plastics in the Oceania region, focusing on plastic packaging
  - the operation of the [Australian Circular Economy \(ACE\) Hub](#) run by Planet Ark for the purpose of sharing information and best practice on the circular economy, supported by funding through the Government's Environment Restoration Fund
  - agreement to develop a Plastics Recycling Results Roadmap, to be led by the Australia Council of Recycling, that will identify practical and policy requirements for meeting the NPTs 70% plastics recycling target, and to develop an industry plan for consumer and corporate engagement and education on plastics recycling and recovery<sup>9</sup>
  - the Australian Food and Grocery Council's (AFGC) collaborative development of the National Plastics Recycling Scheme (NPRS). The NPRS aims to bring the food and grocery supply chain together to deliver a national scheme to enhance the collection and processing of soft plastics. The initial focus is on the diversion of soft plastics, such as bread, cereal and frozen vegetable bags, confectionery wrappers and toilet paper wrapping, from landfill to complement existing initiatives already in the market (such as [RedCycle](#), the [Plastic Police](#), the [Curby Bag](#) kerbside recycling program, and the soft plastic kerbside collection trial run by Nestlé and partners.<sup>10</sup>
- Industry-led arrangements offer liable brand owners opportunities to manage systemic recovery of certain packaging through initiatives like [Paintback](#) and [Big Bag Recovery](#).
- Consumers are increasingly aware of packaging and many are seeking out products with sustainable and recyclable features.
  - This increased awareness of packaging waste has influenced some businesses to enhance their focus on corporate social responsibility, including to improve environmental outcomes. For example, businesses interviewed as part of a behavioural analysis study conducted by the Department spoke about the need to respond to their customers (including where

---

<sup>9</sup> For further information, see <https://wanless.com.au/news/plastics-recycling-results-roadmap/> and <https://wastemanagementreview.com.au/acor-and-evans-to-develop-plastics-recycling-roadmap/>.

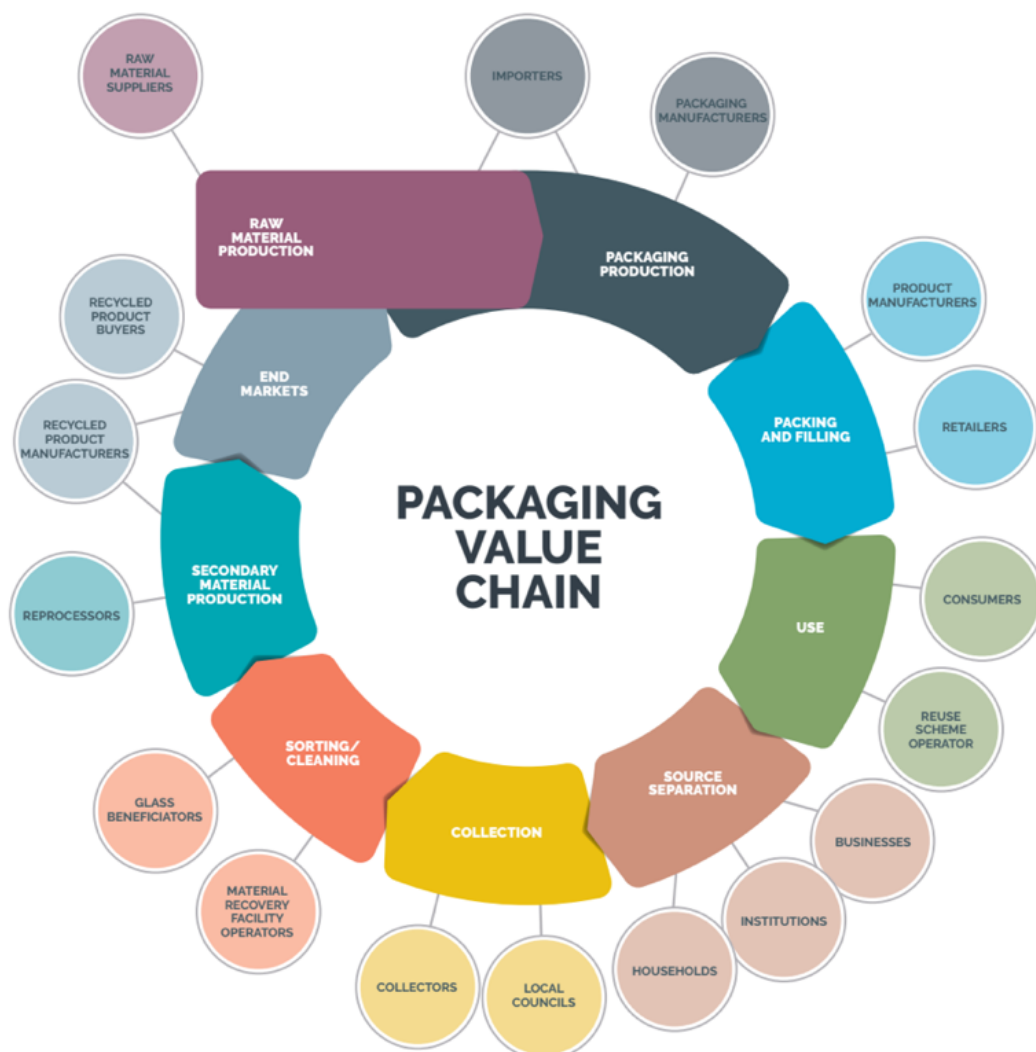
<sup>10</sup> The AFGC was awarded a grant under the Government's National Product Stewardship Investment Fund of \$985,866 to develop the NPRS. The project was undertaken in collaboration with CurbCycle, iQ Renew, Licella, Viva Energy Australia, LyondellBasell, REDcycle, Taghleef Industries and Amcor. More information on other successful grant recipients can be found on the [National Product Stewardship Investment Fund](#) website.

retailers have increasing expectations of sustainability from the brands they carry), acknowledging that they largely see sustainability change as driven by customer demand.<sup>11</sup>

## The packaging chain

As reflected in Figure 1, there are many participants in the packaging chain.

**Figure 1: Packaging value chain<sup>12</sup>**



This highlights the need for a range of different measures to address the problems associated with used packaging, as well as the importance of co-ordinated effort. This point was recently reinforced by APCO:

*“Our vision is a packaging value chain that collaborates to keep packaging materials out of landfill and retains the maximum value of the materials, energy and labour within the local economy. Achieving this vision will require fundamental changes to the way packaging is manufactured, used, collected and reprocessed into new packaging or products.”*

<sup>11</sup> Behavioural analysis, May 2020, *Business decisions about signing up to the Australian Packaging Covenant*.

<sup>12</sup> Australian Packaging Covenant Organisation (APCO), April 2020, *Our Packaging Future*, p. 8.

*Delivering such systemic transformation will require a highly inclusive approach that drives participation from a diverse range of stakeholders from across Australia's complex packaging value chain. It is vital that these organisations commit to a common agenda to address this complex social, economic and environmental issue. Stakeholders cannot work in isolation to solve these problems.”<sup>13</sup>*

This sentiment was also reiterated in numerous submissions to the Review. Stakeholders highlighted that:

- used packaging measures should form part of a broader integrated strategy focused on a circular economy and end-to-end waste management<sup>14</sup>
- national consistency is essential for any policy, as is collaboration, negotiation and coordination between state and territory governments to enable industry to create practical, viable and commercially-aware outcomes for all<sup>15</sup>
- there must be recognition of the interdependencies across used packaging waste material value chains when measuring the success of the co-regulatory arrangement and liable brand owners<sup>16</sup>
- product stewardship is an important tool that can drive resource recovery and the circular economy in Australia.<sup>17</sup>

While the Review recognises the importance of collective impact and the roles that different participants in the supply chain play, the focus of this Review is the co-regulatory arrangement, which specifically deals with the regulation of one set of contributors to the packaging chain – brand owners (discussed in more detail below).

While the focus of the Review is narrow (in line with the terms of reference), the recommendations are designed to ensure that any changes made in respect of the co-regulatory arrangement integrate with, and support, other initiatives, contribute to overall targets and reinforce the importance and value of collective impact.

**A holistic approach to used packaging is required, focusing on product stewardship, collective impact and a circular economy.**

<sup>13</sup> APCO website – [Driving the collective impact model](#).

<sup>14</sup> Australian Information Industry Association submission to the Review, p. 5.

<sup>15</sup> National Retail Association submission to the Review, p. 5.

<sup>16</sup> Drawn from confidential submission from large retailer.

<sup>17</sup> National Waste and Recycling Industry Council submission to the Review, p. 2.



## Chapter 3 – The co-regulatory arrangement for used packaging

---

The UPM NEPM was introduced in 1999 and is one of seven instruments created under the [National Environment Protection Council Act 1994](#) (NEPC Act) with the aim of achieving more consistent environmental protection measures between states, territories and the Commonwealth on issues of national environment protection.

The co-regulatory arrangement is given effect through legislation and/or policies implemented in each state or territory, forming a mandatory regulatory framework. Liable brand owners can elect to comply with the relevant state or territory arrangements or to become signatories to the Covenant.

In summary, the co-regulatory arrangement:

- **acknowledges the Covenant that describes the commitments of brand owner signatories**
  - The Covenant is an agreement between governments and businesses in the packaging chain and is administered by APCO, a national not-for-profit organisation.
  - The Covenant obliges brand owner signatories to:
    - submit an action plan and an annual report. Such reporting relates to the actions taken in line with the SPGs and their progress against the Packaging Sustainability Framework (Packaging Sustainability Framework)
    - publish the action plan and annual reports on the brand's website
    - implement design and procurement processes that drive sustainable design of packaging, consistent with the SPGs. The SPGs set out 10 principles for designing, creating and choosing sustainable packaging including the use of compostable, re-usable and recyclable materials
    - co-operate with APCO, including to allow independent audits of annual reports and the implementation of action plans and assist APCO in responding to complaints
    - pay a membership fee to APCO.
  - If brand owner signatories do not comply with their obligations under the Covenant, APCO refers them to the relevant state or territory for compliance action.
- **requires states and territories to establish comparable obligations on liable brand owners (and penalties for failure to comply) to ensure that signatories to the Covenant are not competitively disadvantaged**
  - Six of the eight states and territories have passed specific legislation to give effect to the UPM NEPM. Tasmania has adopted the UPM NEPM as a state policy which is enforceable under state-based legislation. The Northern Territory has not enacted legislation that reflects the UPM NEPM.
  - The precise obligations vary between jurisdictions but generally include obligations to collect and retain records of recovery data, draft and submit action plans that detail performance in respect of the use, recovery, re-use and recycling of materials, proposed actions and performance indicators for achieving targets and obligations to review packaging design.
  - Liable brand owners may choose between meeting the obligations described in the state and territory arrangements or becoming a brand owner signatory to the Covenant and meeting their obligations as a signatory as described in the Covenant.

- **includes requirements relating to data collection and reporting**
  - For example, the UPM NEPM requires states and territories to collect certain data relating to, for example, recovery of used packaging and kerbside recycling collection.

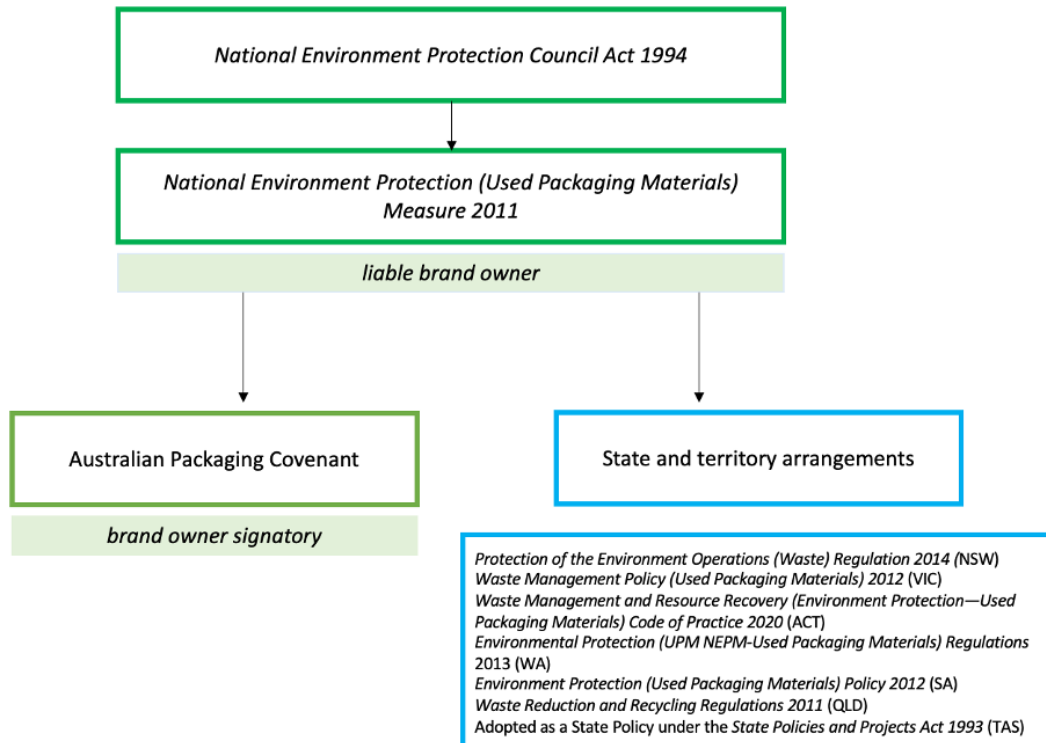
Relevant information about the co-regulatory arrangement is collected by states, territories and APCO and consolidated into an annual report published by the NEPC. The [NEPC annual report](#) includes information about, for example, complaints received, investigations and prosecutions undertaken, the number of brand owner signatories and the recovery and utilisation rates reported by brand owner signatories in accordance with their annual report and action plans under the Covenant.

Progress towards the 2025 National Packaging Targets (NPTs) is also monitored through APCO's annual consumption and recycling data report and material flow analysis and APCO reports against the milestones set out in the [2025 Monitoring Program](#).

The operation of the co-regulatory arrangement is overseen by the National Environment Protection Council (NEPC), which includes the Commonwealth, state and territory environment ministers and is supported by the Government Officials Group (GOG), comprising senior officials from all jurisdictions.

The following diagram depicts the co-regulatory arrangement.

**Figure 2: Diagram depicting the co-regulatory arrangement**



## Chapter 4 – Key findings of the Review

### A note about terminology

Stakeholders refer to the different elements of the co-regulatory arrangement in a variety of ways. For the purposes of this Report, the following terms have been used.

The **UPM NEPM** is the Commonwealth instrument made under the NEPC Act that establishes the framework for the co-regulatory arrangement. The UPM NEPM provides the foundation on which participating jurisdictions can establish a statutory basis for implementing the UPM NEPM at the state or territory level.

**State and territory arrangements** is the term used in this Report to collectively describe the various ways participating jurisdictions have implemented the UPM NEPM.

The **Covenant** refers to the Australian Packaging Covenant, which is established under the UPM NEPM to set out how governments and businesses across Australia share responsibility for managing the environmental impacts of packaging. The Covenant is the voluntary arm of the co-regulatory arrangement and it sets out the obligations of liable brand owners who are signatories to the Covenant.

The Report also refers to the **UPM NEPM arrangements** to describe all of the instruments that form one arm of the co-regulatory arrangement (i.e. the Commonwealth, state and territory legislation and policies that describe the obligations of liable brand owners who are not signatories to the Covenant).

Together the UPM NEPM arrangements and the Covenant form the **co-regulatory arrangement**.

### Context

The central purpose of the Review is to examine the effectiveness of the co-regulatory arrangement. To this end, the Review examined:

- the extent to which the co-regulatory arrangement has advanced the overarching environment protection goal (to reduce environmental degradation and conserve virgin materials)
- the implementation of the UPM NEPM including the extent to which it has been consistently implemented across all jurisdictions
- stakeholder understanding of the co-regulatory arrangement (which directly impacts compliance and therefore achievement of the overarching goals)
- the extent to which there is clarity regarding liable brand owners who are subject to the co-regulatory arrangement
- the clarity and appropriateness of the obligations imposed on liable brand owners through the co-regulatory arrangement
- the extent to which the co-regulatory arrangement offers flexibility for different brand owners to meet their obligations

- the effectiveness of monitoring and enforcement (including to minimise the risk of free riders and the creation of an uneven playing field)
- the resourcing of the co-regulatory arrangement and the efficiency of the arrangement in terms of costs to government and business
- recent changes to the co-regulatory arrangement (noting that any benefits of such changes may not yet have been realised).

This chapter describes the Review findings in relation to each of these issues.

### Effectiveness of the co-regulatory arrangement in advancing the overarching environment protection goal

The goal stated in the UPM NEPM is 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”.<sup>18</sup>

However, the UPM NEPM does not include any specific targets or KPIs to assist with the measurement of the goal and data is not consistently collected or reported against the goal, presenting challenges for assessing its effectiveness.

For the purposes of the Review, we have therefore examined different sources of data to try to present a picture of performance through four different lenses:

- the impact on packaging (whether the arrangement has influenced the amount of packaging POM, the recycled content of that packaging and the amount recovered)
- participation in the co-regulatory arrangement (whether the number of brand owners who elect to be signatories or who identify as non-signatories under the states and territory arrangements is increasing)
- performance of liable brand owners (whether there has been an improvement in the performance of brand owner signatories under the Packaging Sustainability Framework)
- compliance (what monitoring and compliance activity tells us about overall levels of compliance with the requirements of the arrangement).

Based on the data available to the Review<sup>19</sup> it appears that:

- there has been a **6% increase in the total packaging POM** in Australia between 2017-18 and 2018-19
- there has been a **small increase in the packaging that is reusable, recyclable or compostable**
- there has been an **increase of 12% in the quantity of consumer packaging recovered** between 2017-18 and 2018-19

<sup>18</sup> Clause 6, *National Environment Protection (Used Packaging Materials) Measure 2011*.

<sup>19</sup> Australian Packaging Covenant Organisation (APCO), December 2019, *Consumption & Recycling Data – 2017-18 Baseline data*; Australian Packaging Covenant Organisation Ltd. (APCO), January 2021, *Australian Packaging Consumption and Recycling Data 2018-19*; Australian Packaging Covenant Organisation Ltd. (APCO), *Annual Report 2019-20*; Australian Packaging Covenant Organisation Ltd. (APCO), October 2020, *2025 Monitoring Program*; Australian Packaging Covenant Organisation (APCO), April 2020, *Our Packaging Future*.

- there has been a **small increase in Australia's post-consumer recycled content** of packaging including in plastic packaging over 2017-18 and 2018-19
- there has been a significant increase in participation in the Covenant, with the **number of APCO members increasing by 73% since 2017**.<sup>20</sup> As of 30 June 2020, APCO had 1,511 members (of which 1,451 were brand owner signatories), that collectively represented an 'estimated 75% of Australia's packaging market share'<sup>21</sup>
- there is no reliable data about the number of non-signatory brand owners across the state and territory arrangements
- over the last two years, there has been a **small but steady improvement to brand owner signatory performance** against the Packaging Sustainability Framework<sup>22</sup>
- there is no available data that reflects the performance of non-signatory brand owners.

While APCO collect information from brand owner signatories about their performance against the Packaging Sustainability Framework and some metrics,<sup>23</sup> there are some significant limitations with the co-regulatory arrangement regarding KPIs, collection of data and reporting. For example:

- the high level environment protection **goal in the UPM NEPM is not readily measured** and the UPM NEPM does not include any high level targets
  - The environment protection goal refers to reducing environmental degradation and conserving virgin materials; however, there are no measures within the UPM NEPM on how to meet this goal. Rather, there is a statement that this be achieved 'through the encouragement of waste avoidance and the re-use and recycling of used packaging materials'. There is no further link within the UPM NEPM as to how encouragement will be enacted beyond 'supporting and complementing the voluntary strategies in the Covenant and by assisting the assessment of the performance of the Covenant'.
  - Stakeholders submitted that the high level expression of the goal restricted the ability to measure progress against it.
  - Since the introduction of the UPM NEPM, the NPTs have been developed and the 2025 Monitoring Program has been put in place by APCO with milestone targets to support their achievement in the lead up to 2025. While these targets have also been adopted as part of the 2019 National Waste Policy Action Plan, they do not form part of the UPM NEPM.
  - Some stakeholders have identified progress against the NPTs as a good proxy for measuring the effectiveness of the co-regulatory arrangement. Others have noted that narrow application of the co-regulatory arrangement (to liable brand owners) means there are limitations to drawing this link because the achievement of the NPTs reflects the collective effort of many participants in the packaging chain across Australia (rather than the efforts of an individual brand owner) and because the scope of brand owner influence does not extend to all four NPTs.

<sup>20</sup> Number of members in 2017-18 was 874; 1467 in 2018-19 and 1511 in 2019-20.

<sup>21</sup> Australian Packaging Covenant Organisation (APCO), April 2020, *Our Packaging Future*, p. 7.

<sup>22</sup> Information about the performance of brand owner signatories against the Packaging Sustainability Framework is presented through APCO's annual reports. APCO reported a positive increase across all existing APCO members (small, medium and large members) in the 'average score' in all 13 criteria in the period between 2019 and 2020.

<sup>23</sup> For example, type of packaging material produced and total tonnes of packaging for each material type produced put on the market during the previous 12 month reporting period. APCO asks members to provide best estimates (where accurate data is not available), and information about the accuracy of the data provided. This enables APCO to provide support to organisations who may need additional help and determine the level of confidence it has in data collected.

- **reliable, comparable data about consumption, recycling and recovery is not available across the co-regulatory arrangement**
  - Though the UPM NEPM requires states and territories to ensure that they are able to collect certain information set out in the UPM NEPM from liable brand owners and local governments (or their agents) and ‘adopt a common approach to interpretation of data gathered’, this has not occurred in practice.
  - The NEPC annual report noted that while local governments report collected data on the composition of kerbside recycling waste, ‘the amount and type of data collected in each jurisdiction varies and, therefore, no direct comparison between jurisdictions can be made’.<sup>24</sup>
  - While states and territories may also request data from liable brand owners, this has not routinely occurred and there are no agreed data collection, sharing and management protocols.
  - The statistics used above (relating to annual packaging consumption and recycling) were provided by APCO and are estimates that draw on a range of information sources including: government data; national surveys of participants in the packaging chain; and audits of packaging component weights.<sup>25</sup>
  - No comparable data is available for the period prior to 2017-18.<sup>26</sup>

Clear KPIs, collection of reliable data and transparent reporting are critical to any co-regulatory arrangement. These foundation stones inform policy decisions, enable industry to benchmark (to drive continuous improvement) and provide confidence to all stakeholders that the arrangement is operating effectively. To-date, this has not been successfully achieved in relation to the UPM NEPM.

**FINDING 1: There are challenges measuring the effectiveness of the co-regulatory arrangement because there are no clear KPIs and data is either not available or not consistently collected and reported.**

### Consistency of implementation

In accordance with subclause 9(1) of the UPM NEPM, participating jurisdictions are required to establish a statutory basis for ensuring signatories to the Covenant are not competitively disadvantaged in the market by meeting their commitments under the Covenant.

While not required to be implemented as mirror legislation, the UPM NEPM has not been enacted consistently across all states and territories. For example:

- Seven of the eight states and territories have legislation that implements the UPM NEPM. The Northern Territory has not enacted legislation to reflect the UPM NEPM.

<sup>24</sup> National Environment Protection Council, *Annual Report 2018-19*, p. 46.

<sup>25</sup> Australian Packaging Covenant Organisation (APCO), December 2019, *Consumption & Recycling Data – 2017-18 Baseline data*; Australian Packaging Covenant Organisation Ltd. (APCO), January 2021, *Australian Packaging Consumption and Recycling Data 2018-19*.

<sup>26</sup> In relation to brand owners signatories, benchmarking data prepared by APCO is available for 2017-18, along with comparable data for 2018-19 (published January 2021). Data for 2019-2020 is not yet available.

- There is variation in relation to key aspects of the UPM NEPM across the jurisdictions including in relation to central definitions, brand owner obligations, the application of exemptions and penalties. For example:
  - State and territory arrangements specify differing obligations regarding a range of matters such as action plans, records, reporting for franchisors and reporting based on head office location.
  - While some jurisdictions have implemented arrangements with civil penalty provisions, these vary in size and application. In addition, two jurisdictions (South Australia and Tasmania) can impose criminal penalties in respect of non-compliance.
  - Stakeholders (particularly brand owners that operate across multiple jurisdictions) consistently reported that the variations cause confusion and add complexity to the operation of the state and territory arrangements. One stakeholder summarised this sentiment, noting:

*“It is not possible to have clarity regarding who is a liable brand owner when the definitions and requirements vary within the [UPM] NEPM and across jurisdictions and there is no common approach to franchisees”*

Implementation and administration of the UPM NEPM also varies:

- In effect there are **nine different administrators of the co-regulatory arrangement** (including each of the participating jurisdictions and APCO), which creates significant issues for consistency and practical challenges for stakeholders in navigating the co-regulatory arrangement. See table below.

**Table 1: Administrators of the co-regulatory arrangement**

Scope	Administrator
<b>Commonwealth</b>	Department of Agriculture, Water and the Environment
<b>Victoria</b>	Victorian Environment Protection Authority
<b>New South Wales</b>	New South Wales Environment Protection Authority
<b>Australian Capital Territory</b>	Transport Canberra and City Services Directorate
<b>Western Australia</b>	Western Australia Department of Water and Environmental Regulation
<b>South Australia</b>	South Australia Environment Protection Authority
<b>Tasmania</b>	Tasmanian Environment Protection Authority
<b>Queensland</b>	Queensland Department of Environment and Science
<b>Northern Territory</b>	Not applicable – UPM NEPM not implemented
<b>Nationally</b> (for those brand owners who become signatories to the Covenant)	APCO

- The **different administrators communicate differently** (and inconsistently) with regulated entities. For example:
  - The various administrators of the co-regulatory arrangement publish differing levels of information regarding the relevant regulation.
- **States and territories do not consistently collect and report critical information** relating to the performance of brand owners.



- For example, while all states and territories provide high level reporting through the NEPC (as part of their responsibilities under the UPM NEPM), states and territories do not request information held by non-signatory liable brand owners about their performance under the state and territory arrangements. While each jurisdiction (with the exception of the Northern Territory, which has not implemented the UPM NEPM) has obligations to record and keep information, requests for and auditing of this information from states and territories does not occur in practice. This is in contrast to APCO, which requires all signatories to report annually on their progress under the Packaging Sustainability Framework using the online Annual Reporting Tool (ART).

While it is recognised that some of these issues are a result of Australia's federated system of government, the inconsistency of implementation across Australia has hindered how the arrangement has been operationalised, which in turn has impacted stakeholder understanding of the co-regulatory arrangement.

**FINDING 2: The UPM NEPM has not been consistently implemented or operationalised by states and territories, impacting brand owner understanding of their liability and obligations under the co-regulatory arrangement.**

### Stakeholder understanding of the co-regulatory arrangement

Overall, the Review found that the co-regulatory arrangement is not well understood by stakeholders. This was evidenced by:

- **discussions with stakeholders**
  - It was observed that even those familiar with the Covenant and operation of APCO were not always aware of the underpinning UPM NEPM, nor the mandatory obligations that sat alongside the Covenant as part of state and territory arrangements.
  - A large peak body described that the Review was the first time many businesses realised they had mandatory obligations under the co-regulatory arrangement and that key businesses are operating largely unaware of the UPM NEPM arrangements.
- **submissions to the Review**
  - Stakeholder submissions broadly highlighted that the co-regulatory arrangement is restricted in its effectiveness by the lack of clarity regarding whether the arrangement is mandatory, who the liable brand owners are and what their obligations are.
  - Stakeholders variously noted:
    - "The scheme currently has layers of complexity that are impossible for businesses to understand"
    - "There is little awareness and understanding of the UPM NEPM by brand owners, regardless of whether the brand owner is a signatory to the Covenant"
    - "Anecdotal comments from some SMEs indicate they do not understand the mandatory nature of the co-regulatory framework and the magnitude of obligations for those choosing to be directly regulated by governments. This has led to some brand owners believing that reporting to state EPAs is an easy option or taking no action at all"
    - "Feedback from our members confirms that the current system is complex and not easy to understand, especially in the case of SMEs, and we believe that this may be a barrier



to participation. Clarity of rules and consistency of application across all jurisdictions might be a useful step towards encouraging increased participation”.

- **behavioural analysis study conducted by the Department**
  - In May 2020, the Department undertook a behavioural analysis study designed to provide insights into the motivations and barriers for different types of brand owners when they consider signing up to the Covenant.
  - Interviewed non-signatory businesses reported that they “knew of the Covenant but had little or no understanding of the UPM NEPM”, their liability or the obligations it entailed.<sup>27</sup>
- **the outcomes of APCO’s Brand Owner Audit**
  - In 2018, APCO conducted a Brand Owner Audit to identify potentially liable brand owners that were neither signatories to the Covenant nor acquitting their obligations through the state and territory arrangements.
  - Through this process, APCO identified that many liable brand owners were unaware of their obligations under the co-regulatory arrangement. APCO noted that the “complexity of the wording of the framework, including the need to consider concepts that are worded differently in the UPM NEPM and the Covenant, created a communication challenge for APCO, companies and governments”.<sup>28</sup>
- **feedback from states and territories**
  - In discussions, state and territory representatives acknowledged they had not tended to promote the UPM NEPM arrangements and had only more recently started to engage with APCO and the Department to deliver webinars and letters to liable brand owners to inform them of their obligations and options under the co-regulatory arrangement.

While APCO has a range of resources and guidelines for members, limited information is made available to brand owners operating under state and territory arrangements. Overall, there has been less education and promotion of the UPM NEPM arrangements than the operation and role of the Covenant.

Stakeholders variously reported:

- being directed to read the UPM NEPM and any existing legislation relevant to their jurisdiction, and not having sufficient support to comply
- that existing information and resources for liable brand owners is technically complex and overwhelming, and that SMEs have not been captured in government or APCO communication strategies about the NPTs or UPM NEPM arrangements
- that a lack of education and support are barriers to compliance, despite recent updates provided by some states and territories. Concerns were raised regarding the capacity of states and territories to provide resources to support non-signatories with compliance (in terms of both personnel and materials/guidance documents)
- that the poor centralisation of information about the co-regulatory arrangement inhibits liable brand owner’s capacity to fully understand their obligations.

<sup>27</sup> Behavioural analysis, May 2020, *Business decisions about signing up to the Australian Packaging Covenant*.

<sup>28</sup> APCO submission to the Review, p.17.

**FINDING 3: The co-regulatory arrangement is not well understood by stakeholders, including liable brand owners who are not clear as to the mandatory obligations imposed by the co-regulatory arrangement.**

#### Clarity regarding liable brand owners under the co-regulatory arrangement

The obligations described in the UPM NEPM are intended to apply to brand owners with an annual turnover of \$5 million or more. Brand owners with annual revenue of under \$5 million in Australia are exempt from the UPM NEPM obligations.<sup>29</sup>

There are three main issues with respect to businesses intended to be captured by the co-regulatory arrangement:

- **the definition of ‘brand owner’ differs between jurisdictions, creating complexity for businesses operating across Australia.** For example:
  - Despite a definition of ‘brand owner’ being set out in the UPM NEPM, the same term is defined differently across state and territory arrangements.
  - In South Australia, the suppliers of plastic bags are included as brand owners (where it would otherwise only be the importer, manufacturer, or retailer under the UPM NEPM).
  - In New South Wales, a brand owner is a ‘brand owner of products’, which more broadly includes a business that owns the ‘product name’ (which includes a trademark, brand name or trade name). The definition does not cover importers or manufacturers of plastic bags (as per the UPM NEPM) but rather, specifies ‘retailers’ as being solely responsible for this type of packaging.
  - In Victoria, Queensland, the Australian Capital Territory (the ACT) and Tasmania the definition of brand owner as set out in the UPM NEPM is applied.
- **the concept of liable brand owner obligations is linked to the concept of ‘consumer packaging’ but there is confusion regarding this concept**
  - The UPM NEPM arrangements and Covenant refer to consumer packaging while also stating that this includes primary, secondary and tertiary packaging. However, amongst brand owners there is confusion about whether the co-regulatory arrangement covers both consumer facing and business to business (B2B) packaging, and both imported packaging and packaging manufactured in Australia.
- **a brand owner is only liable if it meets the \$5 million threshold; however, there is a lack of clarity regarding the operation of the threshold**
  - There appears to be some confusion about how the \$5 million threshold applies.
  - Throughout the Review, stakeholders noted the slightly different definitions in state and territory arrangements (referring variously to annual revenue, turnover or value of annual sales). Some also noted the stated intent described in the UPM NEPM (‘it is not the intention that enforceable obligations will be placed on brand owners that do not significantly contribute to the waste stream’), proposing that the threshold should apply in respect of the value or amount of packaging placed on the market rather than turnover.

<sup>29</sup> [National Environment Protection \(Used Packaging Materials\) Measure 2011 – Application thresholds](#), 23 June 2006.

- In its response to questions posed by the Senate Environment and Communications Legislation Committee inquiry into the *Recycling and Waste Reduction Bill 2020*, APCO noted that “some liable parties have had difficulty establishing whether they are brand owners as defined in the UPM NEPM, and how the concept of ‘annual turnover’ applies to their business”.<sup>30</sup>
  - While stakeholders identified common issues with the current threshold, they were polarised as to the solution, with mixed responses as to whether the threshold should relate to annual turnover, or if it should include, or be directly related to, the value or amount of packaging POM. For those who supported a threshold based on annual turnover, suggestions as to what is an appropriate threshold ranged between \$1 million and \$50 million; with those at the higher end indicating that this would alleviate regulatory burden on SMEs. Different factors by which to determine liability were also proposed, including the relative maturity of a business and recyclability of packaging.
  - APCO noted in its submission to the Review that “much time and effort [is] spent discussing liability rather than working towards outcomes”.
- **the total number of brand owners captured by the co-regulatory arrangement is not fully understood**
    - Through the 2018 Brand Owner Audit<sup>31</sup>, APCO identified approximately 30,000 businesses with an annual turnover of \$5 million or more. This was narrowed to 5,106 businesses using ANZSIC codes (and filtering to remove, for example, brand owner signatories and businesses that had ceased to trade). Of these businesses, 569 became brand owner signatories and 1,919 were identified as potentially liable under the co-regulatory arrangement.
    - While this Brand Owner Audit provided an indication of the potential number of liable brand owners, the actual number is not known.

**FINDING 4: There is a lack of clarity regarding the definition of a liable brand owner under the co-regulatory arrangement and businesses are not always clear whether they are subject to the arrangement.**

**Clarity and appropriateness of the obligations imposed on liable brand owners through the co-regulatory arrangement**

The obligations of liable brand owners differ depending on whether the brand owner is a signatory to the Covenant or is instead choosing to meet the obligations set out under the state or territory arrangements.

As described above, the Covenant obligations for signatories include, among other things, requirements to submit an action plan and an annual report. Such reporting relates to the actions taken in line with the SPGs and their progress against the Packaging Sustainability Framework.

<sup>30</sup> APCO documents submitted to Senate Environment and Communications Legislation Committee inquiry into the *Recycling and Waste Reduction Bill 2020*, ‘Answers to questions taken on notice at public hearing on 18 September 2020’.

<sup>31</sup> Brand Owner Audits were not conducted in 2019 or 2020 given concerns around state and territory resources to accommodate the number of identified possible liable brand owners.

The Review considers that these obligations are largely appropriate for driving outcomes, noting that they:

- provide a structured and comprehensive framework to enable benchmarking of performance
- drive review of business practices against key criteria under the Packaging Sustainability Framework, including the SPGs
- go beyond simply reporting packaging tonnage and metrics, to advance outcomes in relation to industry leadership, closed loop collaboration and consumer engagement
- require evidencing through submitted annual reports
- permit self-assessments of performance, which can be reviewed through verification audits undertaken by APCO
- have been researched and refined by APCO and the Institute for Sustainable Futures<sup>32</sup>
- are reported through a streamlined online platform, the ART.

In contrast, obligations on liable brand owners (non-signatories) vary between jurisdictions. While this offers choice for liable brand owners, it also creates some confusion and challenges, particularly for those businesses operating across borders.

For example, some of the issues identified by stakeholders include:

- **brand owner obligations are expressed differently in different jurisdictions** including in relation to matters such as action plans, record keeping and reporting.
  - For example, four of the seven states and territories have differentially referenced the SPGs:
    - Victoria refers to the SPGs in the context of the Covenant obligations and does not otherwise expressly apply the same obligations to non-signatory liable brand owners.
    - New South Wales requires the keeping of records in relation to “the percentages of existing and new packaging for which the person is responsible that is reviewed using the [SPGs], and any improvements made to the design of that packaging”.
    - the ACT requires the keeping of records relating to “the percentages of existing and new packaging for which the brand owner is responsible that is reviewed using the [SPGs]”.
    - South Australia requires the preparation of an action plan that is “consistent with the [SPGs]”.
- **there is confusion relating to businesses operating in more than one jurisdiction or as a franchisee**
  - States and territories have not adopted a consistent approach to franchisees, such that there is a lack of clarity regarding whether each franchisee is required to separately report to states and territories (and provide action plans) or whether the franchisor is responsible for reporting.
  - Similarly, the UPM NEPM intends that where liable brand owners operate across jurisdictions, the brand owner should report in the jurisdiction in which it has its registered

---

<sup>32</sup> Kelly S, Lewis H, Atherton A and Downes J, 2017, *Packaging Sustainability Framework for APC Signatories: Final Report to the Australian Packaging Covenant Organisation*, Institute for Sustainable Futures, University of Technology Sydney.

office.<sup>33</sup> However, not all jurisdictions have reflected this in their arrangements, such that there is confusion for brand owners operating across different states and territories about whether they have met their obligations across all by reporting in one jurisdiction. Some therefore seek to comply with multiple jurisdictions in respect of the one business (creating unnecessary regulatory burden). While liable brand owners could avoid this by becoming a signatory to the Covenant, some may not wish to do this for a range of reasons (for example, time and resource constraints, membership fees and uncertainty about the business value of joining).<sup>34</sup>

- **that the complexity of the co-regulatory arrangement and the burden created by some of the obligations may discourage small and medium sized business from participating**
  - Some businesses noted that obligations under the co-regulatory arrangement are burdensome and time consuming<sup>35</sup>, particularly for SMEs.
  - Stakeholders noted that most SMEs do not have dedicated resources and personnel to develop policies and research materials, redesign products, renegotiate contracts, and transform their supply chains.
  - For large businesses, or those with customers who highly value sustainable packaging or those exposed to international supply chains and regulation (where there is a greater expectation of packaging sustainability), significant internal resources are dedicated to packaging design, efficient use of resources and resource recovery. However, for smaller businesses or those less motivated around sustainable packaging, the requirements of the co-regulatory arrangement may appear daunting and the reporting obligations onerous.
  - For this reason, some businesses may choose not to become signatories to the Covenant. As discussed below, there is little consequence for these businesses because there is limited monitoring and enforcement under state and territory arrangements.
- **that the performance of liable brand owners is not consistently measured and reported across the co-regulatory arrangement**
  - Some states and territories have implemented high level recovery targets however these differ between the jurisdictions.
    - For example, while New South Wales and Queensland have high level targets regarding the percentage of packaging to be recovered, states such as Western Australia, Victoria and the ACT use recovery targets specific to each type of material (aluminium, glass, paper and cardboard etc).
  - States and territories do not routinely request evidence that liable brand owners have met these targets or met any other obligations imposed. For example, some state and territory arrangements provide for that state or territory to request documents such as action plans, but this does not consistently occur.
  - In comparison, brand owner signatories are:
    - measured through the Packaging Sustainability Framework of which the outcomes from the SPGs form a part of the criteria
    - required to report annually against the Packaging Sustainability Framework, which includes 13 criteria relating to matters such as packaging sustainability, closed loop

<sup>33</sup> Clause 16(5), *National Environment Protection (Used Packaging Materials) Measure 2011*. While this clause cross-references clause 17, the substance of the clause appears to relate to the obligations created in clause 16 with respect to record keeping and reporting by brand owners.

<sup>34</sup> Behavioural analysis, May 2020, *Business decisions about signing up to the Australian Packaging Covenant*.

<sup>35</sup> Behavioural analysis, May 2020, *Business decisions about signing up to the Australian Packaging Covenant*.

collaboration and packaging design. There are seven core criteria that all brand owner signatories must report against and six recommended criteria that are encouraged. Each criterion has five levels of performance ranging from 'getting started' to 'beyond best practice'. Brand owner signatories assess their performance against each criterion and an overall performance level/score is calculated. See table below.

- Over the last two years, there has been a small but steady improvement in brand owner signatory performance against the Packaging Sustainability Framework. The aggregated data from brand owner signatories shows a small increase in average scores over time, suggesting increasing engagement of signatories in actions to improve packaging sustainability.
- However, there is no overall nor individual target for brand owner signatories and no comparable framework for engaging, monitoring and reporting of non-signatories.

**Table 2: 13 criteria set out in the Packaging Sustainability Framework**

Categories	Leadership	Outcomes	Operations
<b>Core criteria</b>	1.1 Packaging sustainability strategy 1.2 Closed loop collaboration	2.1 Packaging design and procurement 2.2 Packaging materials efficiency 2.3 Recycled and renewable materials 2.4 Post-consumer recovery	3.1 Business to business packaging
<b>Recommended criteria</b>	1.3 Consumer engagement 1.4 Industry leadership	2.5 Consumer labelling 2.6 Product packaging innovation	3.2 On-site waste diversion 3.3 Supply chain influence

**FINDING 5: While the obligations described under the Covenant are broadly appropriate, these obligations are not consistently applied or understood across the co-regulatory arrangement.**

#### Extent to which the co-regulatory arrangement offers flexibility for different brand owners to meet their obligations

Under the co-regulatory arrangement, a liable brand owner may be exempt from the obligations described in the applicable UPM NEPM arrangements if the relevant jurisdiction is satisfied that arrangements exist for the industry or industry sector that produce equivalent outcomes to those achieved through the Covenant.<sup>36</sup>

The Covenant recognises this exemption and provides that 'where signatories consider that they can achieve equivalent outcomes to the SPGs based on alternative guidelines and assessment processes, they are required to:

- demonstrate in their first action plan under the Covenant that these achieve equivalent outcomes to the SPGs, and

<sup>36</sup> Clause 11, *National Environment Protection (Used Packaging Materials) Measure 2011*.

- report annually on progress and achievements against these commitments'.<sup>37</sup>

Allowing for exemptions in this way provides flexibility for industry and enables liable brand owners to instead meet equivalent industry-specific requirements.

While the availability of these exemptions is desirable and was supported by submissions to the Review, the arrangements have not been clearly defined, or effectively or consistently implemented.

For example:

- most **states and territories do not indicate how an exemption can be sought** or the criteria for approval, which causes uncertainty about: how to apply for an exemption; whether an exemption granted by one jurisdiction is applicable in another; whether a liable brand owner's internal voluntary sustainability programs are equivalent to what is required under the Covenant; and whether all businesses will be consistently judged on what is an 'equivalent outcome'
  - APCO has noted that "a number of parties have delayed signing the Covenant, in some cases indefinitely, ostensibly on the grounds that they are considering the alternatives".<sup>38</sup>
  - Where a liable brand owner has multiple forms of packaging, there can also be a lack of clarity regarding whether exemptions apply to all packaging generated by that business or only certain types of packaging. This is particularly relevant for businesses with diverse interests and varied packaging.
  - Where liable brand owners sought exemptions based on actions focused on one part of the packaging chain, such as participation in an end-of-life recycling initiative, it is also unclear how the other Covenant obligations would apply.
- there is a **lack of transparency regarding the process to support exemptions** including how exemptions are applied for and decided across each state and territory, and the circumstances in which exemptions have been granted. As one stakeholder noted "key will be establishing that [alternative arrangements] meet clear criteria to demonstrate the achievement of equivalent outcomes" to those achieved through the Covenant.

**FINDING 6: While there is flexibility in the co-regulatory arrangement, the system of exemptions is not well understood, consistently applied or transparent.**

### Effectiveness of monitoring and enforcement of the co-regulatory arrangement

State and territory governments, as well as stakeholders more broadly, have acknowledged that, to date, there has not been a focus on monitoring brand owner compliance with the co-regulatory arrangements. There are several reasons for this including competing priorities and resource constraints.

<sup>37</sup> Australian Packaging Covenant Organisation Ltd. (APCO), January 2017, *Australian Packaging Covenant*, p 16.

<sup>38</sup> APCO documents submitted to Senate Environment and Communications Legislation Committee inquiry into the Recycling and Waste Reduction Bill 2020, 'Answers to questions taken on notice at public hearing on 18 September 2020'.



While APCO has some limited compliance powers (and can respond to non-compliance through the issuing of show cause notices and non-compliance notices), ultimately APCO's compliance activities can only result in the revocation of membership and referral to the relevant state and territory for action. Referral to the jurisdictions has occurred 113 times over the past three years.<sup>39</sup> While administrative action has been undertaken in some jurisdictions, no formal enforcement action (such as the imposition of penalties) has been reported by jurisdictions.

There are two key issues associated with limited (or no) monitoring and enforcement of the co-regulatory arrangement:

- **it can create a perception that compliance with the co-regulatory arrangement is voluntary**
  - A number of submissions to the Review noted the difficulty in understanding the practical application of the co-regulatory system and whether compliance is voluntary or mandatory.
  - Some brand owners interviewed through the Department's behavioural analysis study also stated that it appeared to them that participation with the Covenant was mandatory and that compliance with the state and territory arrangements could be elective.<sup>40</sup> Others have little awareness that the state and territory arrangements are mandatory and that there are penalties for non-compliance.
- **failure to enforce the state and territory arrangements undermines the effectiveness of the Covenant by reducing incentives for participation and increasing the likelihood of free riders**
  - The co-regulatory arrangement is meant to ensure that free riders do not gain a competitive or unfair advantage over brand owner signatories<sup>41</sup> (in that free riders avoid the need to invest in resources and mechanisms to meet the obligations).
  - The NEPC Act Review identified that "free riders benefit from the NEPC endorsed and industry led regulation associated with the Covenant, while not formally joining and paying for the benefit".<sup>42</sup>
  - Stakeholders were highly critical of the absence of state and territory monitoring and enforcement activity and described the impact of this as creating "an uneven playing field".
  - Stakeholders variously described that the arrangement was "seriously undermined" by the fact that there are "no ramifications" and that the lack of a regulatory 'stick' to encourage compliance incentivised the avoidance of participation; "only an onerous alternative will persuade free riders to accept the 'carrot' represented by the Covenant".

**FINDING 7: Limited (or absent) monitoring and enforcement has undermined confidence in the co-regulatory arrangement, enabled free riders and disincentivised participation in the Covenant.**

<sup>39</sup> Data provided by APCO; 38 referrals between 2017–18, 24 in the 2018-19 period and 51 in the 2019-20 period.

<sup>40</sup> Behavioural analysis, May 2020, *Business decisions about signing up to the Australian Packaging Covenant*.

<sup>41</sup> Australian Packaging Covenant Organisation Ltd. (APCO), January 2017, *Australian Packaging Covenant*, p. 15.

<sup>42</sup> Australian Government (Terry Bailey), July 2019, *Independent review of the National Environment Protection Council Act*, p. 23.



## Funding of the co-regulatory arrangement and efficiency of the arrangement in terms of costs to government and business

### Funding of the co-regulatory arrangement and costs to government

Commonwealth, states and territories make financial contributions towards the administrative costs of operating the NEPC. Funding covers a limited range of high-level objectives, such as supporting governance of the NEPC and enabling reviews of the NEPC legislation.

Governments also fund annual priority projects managed by APCO (such as projects relating to litter or container deposit scheme or funding of grants for projects like the National Consumer Education Program), but there is no dedicated funding for implementation or monitoring of the co-regulatory arrangement. States and territories bear the cost of administering the UPM NEPM arrangement in each of their jurisdictions and APCO's costs relating to administration of the Covenant are recovered from industry via membership fees.

While clause 10 of the UPM NEPM expressly states that "[j]urisdictions should allocate sufficient resources to enforce compliance with the [UPM NEPM]", states and territories acknowledged through the Review that there have been resource constraints in relation to implementing the co-regulatory arrangement and that jurisdictions are balancing competing priorities.

Across state and territory governments, responsibility for implementing and administering the state and territory arrangements sits within areas with broader environmental policy and/or operational responsibilities. As a result, most jurisdictions do not have dedicated teams responsible for the management of the state and territory arrangements including, for example, the ongoing education of stakeholders, communication with brand owners or compliance monitoring.

It is, however, acknowledged that there have been some significant changes in recent times, with jurisdictions taking collective action to implement a range of measures aimed at reducing packaging and waste more broadly in their jurisdiction (for example, container deposit schemes and single use plastic legislation).

Given the nature of the funding arrangements (and the absence of dedicated or discrete funding for implementation of the co-regulatory arrangement) the Review has not been able to assess the cost-effectiveness of the co-regulatory arrangement. However, the significant duplication of effort across jurisdictions (described in relation to previous findings) indicates that there is opportunity for improved cost efficiency.

### Costs to industry

Through submissions to the Review, stakeholders identified a range of direct and indirect costs associated with the co-regulatory arrangement. Some of these costs were acknowledged as a necessary part of meeting obligations such as:

- Membership fees payable to APCO which range between \$510 (for businesses with a turnover below \$5 million) and \$265,000 (for businesses with a turnover greater than \$15 billion).<sup>43</sup>

<sup>43</sup> Australian Packaging Covenant Organisation Ltd. (APCO), [Brand Owner Membership Fee Schedule](#).

- Costs and resources associated with reviewing business practices against the SPGs.
- Costs incurred in the research, development, redesign and procurement of alternative packaging materials in order to meet the SPGs.
- Costs associated with data collection across the packaging chain of a product for the purposes of complying with the obligations to record and retain information.
- Costs in administration including submitting annual reports and action plans to APCO.

However, stakeholders also noted unnecessary costs associated with lack of consistency and differences between the state and territory arrangements. For example:

- Costs (resource and time) associated with researching and understanding the co-regulatory arrangement, including the operation of the Covenant and the relevant state and territory arrangements in the locations in which a brand owner operates.
- Costs associated with engaging with the relevant state and territory agencies and APCO to understand liability and obligations.
- Costs in undertaking duplicative and varied reporting where a brand owner operates across multiple states and territories.

**FINDING 8: A lack of coordinated funding of the co-regulatory arrangement has impacted effective implementation and outcomes.**

**Recent changes to the co-regulatory arrangement**

Despite significant limitations, the co-regulatory arrangement does have some strengths and recent changes have improved elements of its operation.

Areas of strength noted by stakeholders include:

- the positive impact APCO has had in helping industry to move towards targets, including through “academic research, technical analyses, strategic plans, guidelines and reporting and assessment tools”<sup>44</sup>
- changes to APCO governance in 2016-2017
- a range of initiatives and interventions (focused on the whole packaging chain) that promote collective action, such as the SPGs, the ARL Program and APCO’s Recycled Content Pledge Program.

One stakeholder noted:

*“One of the Covenant’s stand out strengths is that it has a national outreach operating at a federal level bringing together states and territories as well as all parts of the packaging chain. This enables a cohesive approach with all participants working in collaboration to achieve common goals. This framework can reap the benefits of an organisation’s skill and scale, facilitating investment from signatories to implement positive change.”<sup>45</sup>*

<sup>44</sup> National Retail Association submission to the Review, p. 3.

<sup>45</sup> Australian Beverages Council Limited submission to the Review, p. 8.

There have also been improvements in data collection and analysis across packaging, including the annual consumption and recycling data and material flow analyses undertaken by APCO, to complement the [National Waste Reports](#) and [National Plastics Recycling Surveys](#).

In addition, governments have gained behavioural insights to understand what drives decisions about signing up to the Covenant, and what some of the barriers might be.

## Chapter 5 – Review recommendations

---

### A note about terminology

Chapter 5 focuses on the actions that the Review recommends be taken to address the significant limitations of the existing co-regulatory arrangement.

This chapter is future focused and outlines the various ways in which the recommendations could be implemented. For this reason, agnostic terminology has been used throughout to reflect that it is open to governments to consider the most efficient and effective means for implementing recommendations and optimising the regulation of used packaging, and that this will be the subject of future consultation.

Terminology of note to indicate this intent includes:

- the **scheme** or the **used packaging scheme**, which refers to a future used packaging scheme or regulation in whatever form it may take (for example, the term ‘scheme’ can equally refer to an improved co-regulatory arrangement, an entirely new legislative scheme or the creation of a new product stewardship scheme)
- **liable party(ies)**, which describes the businesses that are subject to any future used packaging regulation. The term also distinguishes a better defined and understood cohort of regulated business under any future scheme, from the currently described cohort of liable brand owners under the co-regulatory arrangement.

In developing recommendations to address the findings of the Review, mpconsulting has been mindful of the desire to:

- reduce the environmental impact of packaging
- achieve a nationally consistent approach to packaging regulation, while minimising unnecessary regulatory burden
- leverage the strengths of the current co-regulatory arrangement
- drive positive behavioural change (amongst existing brand owners and other participants)
- simplify and streamline the scheme consistent with clearer laws/policies to support stakeholders to comply
- maximise participation
- drive industry leadership and collaboration (across all business sizes, types and industries) to work together to achieve the positive environmental outcomes sought
- support an end-to-end system
- reinforce other initiatives with common objectives, including product stewardship
- ensure a sustainable and holistic approach to used packaging regulation.

The Review makes recommendations in the following key areas:

- goal of the used packaging scheme
- roles and responsibilities of stakeholders

- liable parties under the used packaging scheme and their obligations
- centralised administration and coordinated enforcement of the used packaging scheme
- funding
- implementation approaches.

## Goal of the used packaging scheme

As discussed previously, the environment protection goal set out in clause 6 of the UPM NEPM is:

*“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 environment protection goal is supported by the Covenant which itself has two goals that embody product stewardship and shared responsibility:

- optimising resource recovery of consumer packaging through the supply chain, and
- preventing the impacts of fugitive packaging on the environment.

Since the drafting of the UPM NEPM in 1999, there have been significant changes to the waste and recycling landscape, and overarching goals have been further articulated through revisions to the Covenant, the NPTs and the National Waste Policy and Action Plan.

**Table 3: 2025 National Packaging Targets**

2025 National Packaging Targets
100% of packaging to be reusable, recyclable or compostable
70% of plastic packaging recycled or composted
50% average recycled content across all packaging, with specific targets for certain material types
Phase out of problematic and unnecessary single-use plastic packaging through redesign, innovation or alternative delivery methods

It is recommended:

- the goal of the used packaging scheme be revised. For example, consideration could be given to developing a goal that incorporates the following aspects:
  - minimising waste associated with packaging across the packaging chain
  - re-designing packaging to improve sustainability (e.g. designed for recovery, material efficiency and reduction of waste)
  - optimising recovery of packaging
  - reusing or repurposing packaging materials
  - reducing packaging waste sent to landfill
  - strengthening collaboration across the packaging chain to support circular economy principles
  - increasing the value of end markets and utilisation of recycled content.

- the goal be underpinned by the NPTs as high level indicators for measuring the success of the scheme
- that the high level goal and targets be further supported by more detailed KPIs specific to the relevant obligations of different parties regulated under the scheme (discussed in further detail below). Such KPIs should be:
  - based on identified data sources to ensure ongoing and reliable measurement of progress against the KPIs
  - relevant to the performance of the scheme overall and clearly connected to the goal of the scheme
  - drawn from data about the individual contributions of liable parties
  - suitably flexible to respond to new opportunities and innovation
  - aligned to existing frameworks internationally (so as to provide the opportunity to create international benchmarking and efficient reporting for businesses who operate across countries)
  - phased in to accommodate transition to a reformed scheme.

This approach:

- modernises the goal of used packaging regulation to contribute to broader waste and recycling aspirations
- supports the contemporary policy position (as set out in the National Waste Policy and Action Plan) regarding principles of circular economy and waste avoidance<sup>46</sup>
- is consistent with the intent of *Our Packaging Future – a Collective Impact Framework* (April 2020) to achieve the NPTs
- is consistent with the two goals of the Covenant
- reflects the outcomes of consultation that informed the Review. Many stakeholders noted the importance of:
  - greater certainty about what the purpose of the scheme is
  - clear, well-defined targets to balance aspirational outcomes.

**Recommendation 1:** Establish a clear goal and associated KPIs for a reformed used packaging scheme.

## National agreement

As described in Chapter 2, many stakeholders have a role in the packaging chain and in the management of used packaging waste. This includes governments, industry bodies, waste and recycling service providers, manufacturers, brand owners and consumers.

The UP NEPM creates a platform for co-operation between the Commonwealth and states and territories, but it only describes liabilities and obligations with respect to a narrow sub-set of participants in the packaging chain (brand owners). It also commits jurisdictions to collect data from other participants such as local governments, but this has not been effectively implemented. The

<sup>46</sup> The waste hierarchy provides a set of priorities and an order of preference for managing waste that underpins the National Waste Policy, with waste avoidance being the most preferred option and waste disposal the least.

Covenant also articulates a range of governance and accountability measures underpinning the co-regulatory arrangement.

However, there is no single agreement that reflects a shared view of all jurisdictions as to:

- the role of the Commonwealth, states and territories in relation to used packaging (noting the broader context within which the regulation of used packaging sits)
- the role of APCO
- the obligations of liable parties as distinct from other participants in the packaging chain (such as local councils and other waste collection service providers).

The goal of any used packaging scheme can only be achieved through coordinated action of the many who influence the packaging lifecycle.

Achievement of the NPTs relies on the coordinated effort of a wider range of stakeholders than those described in the UPM NEPM. Commonwealth, state and territory agreement on roles and responsibilities is critical to the achievement of agreed goals (and NPTs) and also for providing clarity to stakeholders about accountabilities under any reformed scheme.

It is recommended that jurisdictions establish a national agreement reflecting:

- the agreed goal of the reformed used packaging scheme
- agreed principles and objectives of a reformed used packaging scheme, including how the reformed scheme will contribute to the NPTs and intersect with other initiatives
- a statement of the roles and responsibilities of the Commonwealth, states and territories, APCO and others in relation to implementation of the reformed used packaging scheme
- timeframes for implementation of changes to give effect to the reformed used packaging scheme
- agreed funding arrangements between parties
- accountabilities of all parties (including reporting requirements).

There are a number of ways that a new national agreement could be developed and implemented. For example, this could be achieved through a national partnership agreement or through the agreement of Environment Ministers.

**Recommendation 2:** Establish a national agreement (defining goals, principles, roles, timeframes, funding and accountabilities) that forms the basis of a reformed used packaging scheme.

## Liable parties under the used packaging scheme and their obligations

### Liable parties

As discussed, there is currently a lack of clarity regarding liable brand owners and a lack of shared understanding about their obligations.

The Review considers that it continues to be important to describe a set of obligations for those participants in the packaging chain who can influence the design, procurement and use of more

sustainable packaging including because these businesses can directly influence the achievement of many of the NPTs. This is also well supported by stakeholders.

Noting the focus of this Review, the following recommendations relate to these participants and their obligations specifically, rather than to the complementary obligations of the much wider range of participants in the supply chain (such as local councils, material recovery facility operators, reprocessors etc.).

It is recommended that in any reformed used packaging scheme:

- The definition of liable parties be clarified with a focus on those participants in the packaging chain who can influence the design, procurement and use of more sustainable packaging.
  - Stakeholders reported that the term ‘brand owner’ often confuses parties within the packaging chain who have obligations under the scheme, but do not identify with the term. This is particularly so for those who do not own the trademark or license of a product such that their ‘brand’ is not displayed on the packaged product.
  - Any new definition should continue to incorporate owners of trademarks, licensees and franchisees but also extend to others who directly influence the design, procurement and use of more sustainable packaging.
  - This is consistent with the approach described in the SPGs, which recommends engaging a wider range of players in the packaging chain to identify opportunities to improve practices, including packaging suppliers and manufacturers, distribution and warehousing and those who import and sell pre-packaged products.
  - Any definition should refer to packaging (and not ‘consumer products’, ‘retail products’ or ‘consumer packaging’) such that there is clarity that regulation applies to packaging on individual consumer products and B2B packaging, including distribution packaging.
    - Many stakeholders identified that the term ‘consumer packaging’ led them to believe that B2B packaging was not covered by the co-regulatory arrangement.
    - Application to all packaging is also consistent with the SPGs, which should be applied to “all of the packaging manufactured or used by your organisation, including distribution and B2B packaging”.<sup>47</sup>
- The threshold for liability be increased, with the threshold continuing to be measured by reference to turnover per annum.
  - Different stakeholders had different views on how the threshold should be measured. Some suggested that the threshold should be expressed by reference to total turnover, while others suggested that the threshold be by reference to the value or amount of packaging waste.
  - As explored in the Consultation Paper, if the threshold were to be linked to the value or amount of packaging waste, this would require all liable parties to first determine their packaging metrics and to demonstrate whether the threshold applies to them.
  - Using turnover is therefore preferred, noting that turnover is easier to calculate in the usual course of a business and relies on easily accessible information to identify potentially liable parties.
  - In recommending a threshold based on annual turnover (rather than value or amount of packaging waste), the Review is also mindful that the method for identifying liable parties

---

<sup>47</sup> Australian Packaging Covenant Organisation Ltd (APCO), October 2020, *Sustainable Packaging Guidelines*, p. 28.



should be as simple and transparent as possible, removing barriers to engagement and maximising participation in the scheme.

- Increasing the threshold avoids a disproportionate impact on very small businesses; however, those smaller businesses could continue to be encouraged to participate even if they are not liable parties under the scheme.
- Governments and APCO are currently exploring the option of increasing the threshold to an annual turnover of \$50 million.
- Based on data as of 30 June 2020, the majority of brand owner signatories are businesses with an annual turnover of up to \$50 million (approximately 64% of brand owner signatories).

**Table 4: APCO size of brand owner signatories between 2019 and 2020**

Turnover	Number of brand owner signatories as of 30 June 2019	Number of brand owner signatories as of 30 June 2020
Greater than \$15 billion	2	3
\$5 - \$10 billion	6	6
\$3 - \$5 billion	3	6
\$1 - \$3 billion	32	39
\$750 - \$1 billion	19	18
\$500 - \$750 million	25	38
\$250 - \$500 million	82	84
\$100 - \$250 million	142	145
\$75 - \$100 million	68	67
\$50 - \$75 million	107	116
\$25 - \$50 million	236	255
\$10 - \$25 million	335	328
\$5 - \$10 million	227	226
\$5 - \$50 million	86	37
Up - \$5 million	52	83
<b>Total brand owner signatories</b>	<b>1,422</b>	<b>1,451</b>

- Alternatively, a \$10 million threshold would ensure that the majority of brand owner signatories continue to contribute towards outcomes and would be consistent with the ATO's definition of a SME, whilst focusing on larger businesses with greater resources and capacity to influence packaging design and production.
- As discussed below, with a renewed focus on the SPGs, there will be opportunities for businesses of different sizes (under \$50 million, between \$50 - \$750 million, etc.) to meet different levels of implementation against the SPGs.<sup>48</sup>
- Further modelling could be done to inform future consultation regarding how much of the packaging chain would be captured by the revised threshold and proposed changes to the definition of liable parties.

<sup>48</sup> For the different levels, see Australian Packaging Covenant Organisation Ltd (APCO), October 2020, *Sustainable Packaging Guidelines*, p. 4.

## Obligations of liable parties

As described in the previous chapter, different obligations are currently imposed on brand owners based on whether they choose to be signatories to the Covenant or to be regulated under relevant state and territory arrangements.

Different approaches to the administration of state and territory arrangements in different jurisdictions has also created the opportunity for some to avoid their obligations (free riders).

To address issues stemming from inconsistent obligations (and inconsistent monitoring and enforcement of those obligations), it is recommended that:

- a nationally consistent set of obligations for liable parties be based on those currently described in the Covenant. For example, all liable parties could be required to:
  - implement design and procurement processes that drive sustainable design of packaging, consistent with the SPGs
  - submit an action plan and an annual report
  - publish the action plan and annual report on their websites
  - report on the actions it has taken to implement the SPGs
  - allow independent audits of annual reports and the implementation of action plans and to assist in responding to and resolving complaints.
- the scheme would continue to provide flexibility and room for industry innovation such that where liable parties consider they can achieve equivalent outcomes to the SPGs, based on alternative guidelines and assessment processes, they may do so
  - As is currently the case for signatories to the Covenant, liable parties would be required to demonstrate in their action plan that these arrangements achieve equivalent outcomes to the SPGs and report annually on progress and achievements against these commitments.
  - Rather than having separate approaches to equivalency and exemptions across different jurisdictions, there would be a single approach applicable to all liable parties and administered by a single administering body. An assessment would be based on known processes, principles and criteria to drive consistent assessment outcomes in line with the overall goal of the scheme.
  - For example, a liable party may design their own sustainability program, or become a member of a product stewardship arrangement that enables the liable party to meet or exceed some or all of their obligations under the used packaging scheme.
  - This would ensure liable parties have flexibility to innovate in line with contemporary technology, knowledge, policies, terminology and industry conditions, and ensure that the scheme remains responsive to changing dynamics and opportunities in the contemporary packaging sector by recognising alternative ways in which liable parties can demonstrate outcomes.
  - It is proposed there be public reporting of alternative measures recognised by an administering body (discussed below) as producing equivalent outcomes (to support transparency).

- KPIs or targets be developed to enable performance against the obligations to be measured.
  - Introducing KPIs that enable the individual performance of liable parties, or performance at a sector level, to be measured against the obligations makes liable parties accountable for their contribution towards reaching the scheme’s goal.

This proposal was canvassed with stakeholders as part of the consultation that informed the Review. This approach was broadly supported by stakeholders who confirmed:

- a core set of obligations could overcome the current problems regarding inconsistency
- the SPGs have played a “fundamental role in driving sustainable design practices across the packaging industry”<sup>49</sup>
- formally implementing the SPGs into the scheme will have a “transformative impact on industry”, in particular, providing access to leading best practice, with the least cost and resources for businesses.

***Why base obligations around the SPGs? What are the advantages of the SPGs and regular reporting against the Packaging Sustainability Framework?***

The SPGs are:

- a comprehensive and publicly available resource that has existed since 2011 to assist in the sustainable design and manufacture of packaging in Australia
- regularly reviewed in consultation with government and industry, with the current version produced in 2019
- agreed by all state and territory governments<sup>50</sup>
- referenced in four of the seven states and territory arrangements
- able to be measured through the ART that centralises the consolidation of brand owner signatory self-assessments and annual reporting against the Packaging Sustainability Framework
- linked to the Packaging Sustainability Framework criteria across all core criteria and some recommended criteria (specifically criteria 1.1, 1.2, 2.1 – 2.5, 3.1 and 3.3)
- supported by existing resources that complement the SPGs, including Checklists and QuickStart guides that provide [further guidance](#) for brand owner signatories to assess and improve their practices
- flexible, rather than ‘one-size-fits-all’, to allow for the vastly different packaging types and sectors
- able to accommodate businesses of different sizes (under \$50 million, between \$50 - \$750 million, etc.) permitting business to meet different levels against the SPGs along the pathway to implementation
- encourage equivalency, noting that brand owner businesses’ sustainability programs may exceed what is set out in the SPGs

<sup>49</sup> <https://www.foodprocessing.com.au/content/sustainability/news/feedback-invited-on-sustainable-packaging-guidelines-73618244>.

<sup>50</sup> <https://apco.org.au/sustainable-packaging-guidelines>.

- reviewable through an existing program of randomly selecting brand owner signatories for auditing self-assessments against the obligations and Packaging Sustainability Framework through APCO's annual verification audits.<sup>51</sup>

### ***Should obligations also include labelling requirements?***

As part of the consultation to inform the Review, stakeholder views were sought regarding the value of packaging labelling being incorporated into the obligations of liable parties (with a focus specifically on the ARL).

While some stakeholders supported adoption of the ARL (particularly highlighting the value of the PREP Tool for assisting businesses to critically examine their packaging), others identified challenges associated with requiring liable parties to label in accordance with the ARL. Some of these included:

- the cost implication of mandatory labelling
- that the SPGs already provide a flexible framework for labelling by requiring liable parties to measure and monitor how many of their SKUs have consumer labelling on-pack (reported under criteria 2.5 of the Packaging Sustainability Framework)
- the lack of standardised recycling collection systems across Australia and the intersection of labelling obligations with state and territory consumer education and awareness initiatives
- the use of apps such as [Recycle Mate](#) and QR codes may be a preferable way to communicate with and provide current information to consumers
- different users of packaging may benefit from different types of information, not all of which is best communicated via the label.

Given these issues, the Review is not proposing that the ARL be mandated at this time (noting the Government's 2021-22 Budget measure to support SMEs to adopt the ARL), but instead, that the obligations on liable parties focus on requiring accurate and truthful environmental claims. Further, expanded application of the SPGs will increase visibility of liable parties, including consumer labelling on pack.

**Recommendation 3:** Clarify the liable parties under a reformed used packaging scheme.

**Recommendation 4:** Establish a nationally consistent set of obligations for liable parties, based on those currently described in the Covenant, that enables flexibility as to how outcomes may be demonstrated.

<sup>51</sup> Australian Packaging Covenant Organisation Ltd. (APCO), January 2020, *APCO Annual Audits*.

## Centralised administration and coordinated enforcement of the used packaging scheme

### Centralised administration

As detailed previously, one of the challenges of the co-regulatory arrangement is that, despite there being an overarching instrument (i.e. the UPM NEPM), in practice, there are a number of discrete arrangements.

This creates complexity for stakeholders in navigating the application of the co-regulatory arrangement based on their circumstances, and results in inconsistencies in administration. This is because each of these arrangements:

- has a different administrator with different approaches to administration of the arrangement, including how and when an exemption can be sought and how an equivalent outcome will be determined (as described in Finding 10)
- communicates with liable brand owners differently
- collects and reports data differently
- has a different approach to monitoring and enforcement.

While it is recognised that this outcome can be a function of a federated system, in this circumstance there is an opportunity to improve the operation of the used packaging scheme by centralising its administration.

Centralisation would involve a single administrator that could, for example:

- educate all liable brand owners about their obligations (discussed below)
- receive action plans and annual reports from all liable brand owners (not just brand owner signatories) on behalf of states and territories
- assess applications relating to equivalent outcomes on behalf of all states and territories and assess annual reports on the performance to ensure transparency and equitability of such arrangements
- monitor compliance on behalf of all states and territories (extending the functions already performed by APCO in relation to the Brand Owner Audit)
- take certain administrative actions in respect of non-compliance by any liable brand owner with the agreement of states and territories (noting that states and territories could retain the responsibility for issuing penalties and taking other enforcement actions under the applicable law).

Depending on the implementation approach adopted (discussed below), APCO could be appointed the centralised administrator. APCO would be well placed to do this because APCO:

- already plays a coordinating role and is well-recognised (noting that, in contrast to the low awareness of the UPM NEPM arrangements, many stakeholders were aware of the Covenant and APCO's role in relation to it)
- plays a valuable role in engaging multiple participants across the packaging chain

- performs functions that continue to be relevant under any reformed scheme, including collecting and collating data about performance and some packaging metrics, undertaking broader flow and consumption analysis and producing guidelines and education material about the SPGs
- leads the work on meeting and monitoring progress towards the NPTs.

If APCO were to perform a greater range of functions on behalf of states and territories, consideration would need to be given to the governance of APCO and also to cost recovery, including to ensure equitable treatment of brand owner signatories and others.

### Coordinated monitoring and enforcement

Many stakeholders advocated for ‘mandating’ or ‘strengthening’ the co-regulatory arrangement, including to ensure that free riders do not:

- gain a competitive or unfair advantage over brand owner signatories<sup>52</sup> who have invested in mechanisms to meet the requirements of the state and territory arrangements or the obligations of the Covenant
- avoid compliance and enforcement action.

Centralising the administration of the used packaging scheme would reduce the free rider effect by ensuring that liable parties are accountable to the same body.

This would mean that there would be centralised oversight of the participation and performance of all liable parties and that monitoring activity could be coordinated nationally against an agreed and nationally consistent compliance and enforcement policy.

While a central administrator could perform this enhanced role in relation to monitoring compliance and communicating with all liable brand owners, a central administrator could not necessarily undertake the full range of enforcement actions available to states and territories (such as the imposition of penalties) without legislative changes.

**Recommendation 5:** Centralise administration of a reformed used packaging scheme.

**Recommendation 6:** Coordinate and strengthen monitoring and enforcement of a reformed used packaging scheme.

### Funding the used packaging scheme

It is recommended that:

- In line with a national agreement (see Recommendation 2) governments contribute funding to support implementation and transition costs associated with a reformed used packaging scheme. Consistent with the current approach, governments may also choose to fund projects that align with their priorities.

<sup>52</sup> See Australian Packaging Covenant Organisation Ltd. (APCO), January 2017, *Australian Packaging Covenant*, p. 15.

- Once established, the costs associated with the ongoing administration of the scheme should be funded by industry. A cost recovery mechanism would ensure dedicated funding and resources are committed to the effective operation of the scheme, including for a central administrator to perform activities such as providing stakeholder education and awareness services, developing resources to support compliance, assessing applications for exemptions under the scheme and undertaking regulatory activities such as monitoring of compliance. The costs to be levied from industry to support the operation of the scheme could be applied on a proportionate basis, for example, tiered based on annual turnover.

This ‘waste creator’ pays principle would also be consistent with the ‘polluter pays’ principle adopted by other environmental schemes such as Queensland’s *Waste Reduction and Recycling Act 2011*, which states that ‘all costs associated with the management of wastes should, where practicable, be borne by the generator of the waste’.<sup>53</sup>

**Recommendation 7:** Governments fund the implementation of a reformed used packaging scheme, with ongoing costs associated with the scheme funded by industry.

## Implementation approaches

### Possible implementation approaches

There are a range of ways in which the recommendations of the Review could be implemented. For example, it is open to governments to:

- A. retain the UPM NEPM architecture with significant amendments (including to state and territory laws that give effect to the UPM NEPM) to implement the recommended improvements (as described in this chapter)
- B. create a state/territory-led national scheme that involves each state and territory revising their law (or implementing a new law) to implement the recommended improvements (replacing the existing UPM NEPM)
- C. create a Commonwealth-led national scheme that involves new subject specific Commonwealth legislation to implement the recommended improvements (replacing the existing UPM NEPM and associated state and territory laws)
- D. establish a co-regulatory product stewardship regime under the RAWR Act to implement the recommended improvements (either complementing, or replacing, the existing UPM NEPM and associated state and territory laws).

#### **A. Retaining the existing UPM NEPM architecture with significant amendment**

Retaining the existing architecture and legislative structure involves maintaining the UPM NEPM as part of the broader suite of NEPC Act environmental protection measures, with improvements to the scheme achieved through significant amendments to the UPM NEPM, which would in turn require amendments to state and territory laws.

<sup>53</sup> Clause 10, *Waste Reduction and Recycling Act 2011* (Qld).



Each state and territory could commit to making the necessary changes to their existing laws in line with a national agreement and a revised UPM NEPM, including to centralise administration of the scheme in the body agreed by Commonwealth, states and territories to perform this function (such as APCO).

## **B. Creating a state-led national scheme**

This approach involves each state and territory revising their laws to reflect agreed changes to the scheme. The UPM NEPM would be repealed, and regulation of used packaging would be removed from the NEPC Act framework. The state and territory laws could be revised in line with a national agreement and point to a centralised body with responsibility for administering the scheme. Enforcement powers could potentially remain with states and territories, with jurisdictions applying such powers in line with a co-ordinated enforcement policy (and on the basis of a referral from the centralised body) or be vested in the centralised body.

This approach could also be implemented through development of a new model law that could be collaboratively developed by all jurisdictions with one jurisdiction enacting the law and then other jurisdictions passing a ‘corresponding’ law using their own legislative power. This is akin to the approach where the Australian Health Practitioner Regulation Agency (Ahpra) oversees the corresponding laws across Australia based on Queensland’s Health Practitioner Regulation National Law.

## **C. Creating a new Commonwealth-state co-operative scheme based around a Commonwealth law**

A new Commonwealth-state cooperative scheme could be developed relying on Commonwealth legislation, referral of power to the Commonwealth, mirror legislation or complementary laws (based around a Commonwealth law).

This approach would mean repealing the UPM NEPM (and state and territory laws that give effect to the UPM NEPM), with the new Commonwealth-state cooperative scheme giving effect to the changes described in this report.

An example of this type of scheme is the regulation of gene technology whereby a Commonwealth law establishes a centralised body (the Gene Technology Regulator) and corresponding state and territory laws empower that regulator and ensure the consistent application of obligations of regulated entities.

## **D. Create a co-regulatory product stewardship regime under the RAWR Act**

This approach leverages product stewardship legislation passed by the Commonwealth Parliament in December 2020. The primary purpose of the RAWR Act is to establish a legislative framework to enable Australia to manage the environmental and human health and safety impacts of products and waste material more effectively, as well as the impacts of the disposal of waste.

The RAWR Act provides for three regimes relating to product stewardship, each of which is designed to encourage or require manufacturers, importers, distributors and other persons to take responsibility for products including, for example, through improved product design.

There may be opportunity to establish a new co-regulatory product stewardship regime (specific to used packaging) under the RAWR to give effect to the reformed used packaging scheme). Liable parties (as described in this report) could be required to become members of an approved co-regulatory arrangement, and APCO (or such other bodies) could be approved to administer that arrangement.

It may also be possible for regimes recognised by the RAWR Act to operate complementary to an enhanced used packaging scheme, where liable parties could submit their membership under different product stewardship arrangements as equivalent to some or all obligations required under a reformed used packaging scheme.

### Relevant implementation considerations

Under any of these approaches:

- legislative change would be required
- there would be a significant lead time for implementing the changes. This is because the changes necessarily require consultative processes and amendments to existing laws and/or development of, and agreement to, new laws
- successful implementation would depend on all governments collaborating and agreeing a national implementation approach.

Different approaches have advantages and disadvantages. A preferred approach will also necessarily be influenced by broader considerations of governments. For example:

- utilising the existing NEPC legislative framework eliminates the need to establish new legislation and new governance arrangements; however, significant changes to the UPM NEPM and corresponding state and territory legislation would be needed. Further, broader changes in response to the 2019 review of the NEPC Act<sup>54</sup> (which recommended reforms to address cooperation between jurisdictions, consistency of environmental protection across Australia, certainty for business) may impact the viability of this approach
- the RAWR Act is only in the early stages of implementation and it is not yet clear how a broadly-based scheme (such as that applying to used packaging) could operate. To date, a number of the schemes captured under the RAWR have been more narrowly focused. For example, the National Television and Computer Recycling Scheme (NTCRS) is a product specific scheme focused on recycling. By contrast, the used packaging scheme needs to apply to a wider range of parties and also needs to focus on end-to-end packaging considerations, as described in the SPGs
- a reformed used packaging scheme should not be seen in isolation of other measures (including other legislative schemes) designed to address waste and the environment more broadly. Over the course of the Review, significant changes were made in numerous jurisdictions that are

---

<sup>54</sup> Australian Government (Terry Bailey), July 2019, *Independent review of the National Environment Protection Council Act*.

directly relevant to the outcomes sought from the used packaging scheme. This Review does not have visibility of upcoming reforms by different jurisdictions, nor of changing responsibilities across the Commonwealth, states and territories. The broader environment will necessarily influence the preferred approach of governments in relation to used packaging. This reinforces the need for a national agreement (as described in Recommendation 2) regarding roles and responsibilities into the future

- while the obligations of liable parties could be the same under any of the approaches, the functions and governance of the centralised body would differ under each of the approaches, depending on whether the body was established in Commonwealth or state laws, approved under the RAWR (where there may be more than one body) or referenced in a reformed UPM NEPM
- consideration will need to be given to how to achieve cost recovery under a reformed scheme. The mechanism for applying cost recovery will differ depending on the implementation approach adopted. For example, if the UPM NEPM legislative framework continues to be used (or a regime is established under the RAWR) cost recovery may be achieved through fees paid to the centralised administering body. If the centralised administering body is established by law (under a state or Commonwealth-led cooperative scheme), charges could be levied under that law.

**Recommendation 8:** Governments agree a preferred implementation approach for a reformed used packaging scheme.

#### Interim action

While changes are being made to the legislative framework for used packaging (to make it fit-for-purpose for the future and to achieve greater national consistency, centralisation of the scheme and clarity for stakeholders), there needs to be ongoing communication with stakeholders to reinforce existing obligations, ensure a smooth transition and continue to build on existing momentum towards the NPTs.

There are several actions governments could take in the interim to drive increased participation by liable brand owners in the used packaging scheme, improve national consistency and provide greater visibility of sector performance.

For example, jurisdictions could collectively develop a **nationally agreed**:

- communication strategy regarding the expectations of liable brand owners
  - This could be implemented in all jurisdictions, increasing consistency of messaging to the sector. The strategy could: increase awareness of the Covenant; reinforce the importance (and value) of being a signatory to the Covenant (building on work that is already being done); and re-state the expectation that if liable brand owners are not signatories to the Covenant, they must still undertake action planning and reporting.

- approach to action plans and annual reporting
  - This could be based on the current framework used by brand owner signatories to report to APCO.
  - Consideration could also be given to APCO receiving action plans and annual reports from all liable brand owners (not just brand owner signatories) on behalf of states and territories.
- approach to equivalent outcomes
  - Jurisdictions could agree an approach to assessing equivalent outcomes, establish a cross-jurisdictional committee (including APCO) to consider such applications and communicate consistently with the sector regarding agreed equivalent outcomes.
- monitoring and enforcement strategy
  - Building on the Brand Owner Audit, APCO could strengthen its monitoring activity to identify liable brand owners who are not engaging with APCO or the relevant state/territories.
  - States and territories could commit to a nationally-agreed, high-level enforcement strategy. The purpose of the strategy would not be to ensure that all states and territories take the same action in the same circumstances (which would not be possible given the differences across the legislative schemes) but would rather be focused on ensuring that proportionate action is consistently taken to reduce the impact of the free-rider effect.

It will be important to highlight to stakeholders that this work is part of the transition to the reformed used packaging scheme and that there will be continuity in terms of broad government expectations of liable parties.

While there will be changes to governance and legislation to make the scheme sustainable into the future (and to provide clarity and national consistency), the central tenets of the scheme will remain. That is, there is an ongoing expectation that participants in the packaging supply chain who can influence the design, procurement and use of more sustainable packaging will:

- re-design packaging to improve sustainability (e.g. designed for recovery, material efficiency and reduction of waste)
- optimise recovery of packaging and minimise waste associated with packaging
- reuse or repurpose packaging materials
- collaborate across the packaging chain to support a circular economy
- be accountable for the achievement of the above (noting that different parties will innovate in different ways in order to achieve the outcomes).

This will directly support the work already being done by many individuals, businesses and other organisations to reduce environmental degradation. It will also ensure that momentum is not lost and that achievement of the NPTs is realised.

**Recommendation 9:** While changes are being made to legislation to make the used packaging scheme sustainable into the future, governments take interim actions to reinforce the ongoing expectation that parties who can influence the design, procurement and use of more sustainable packaging will re-design packaging to improve sustainability, optimise recovery and reuse, collaborate across the packaging chain and be accountable for the achievement of outcomes.

## Attachment A: Terms of reference for the Review

---

### Scope

The independent review will evaluate a range of administrative, policy and legislative issues around the application, effectiveness and efficiency of the co-regulatory arrangement as a whole, including but not limited to:

1. The extent to which the UPM NEPM and Covenant are achieving the national environment protection goals set out within them.
2. The need for variation or amendments to the UPM NEPM and/or the Covenant.
3. The resources available for implementing the UPM NEPM and Covenant.
4. The interaction of the UPM NEPM with other Commonwealth legislation.
5. Any other matters including environmental, cost and regulatory issues relevant to the optimal operation of the UPM NEPM and Covenant.

For the purpose of the Review, the term ‘packaging’ will include consumer and business-to-business packaging.

### Matters covered by the Terms of Reference<sup>55</sup>

Matters to be covered under each scoping question are included below:

#### **1. The extent to which the UPM NEPM and Covenant are achieving the national environment protection goals set out within them**

The Review should consider:

- whether the goal(s) and scope of the UPM NEPM and the Covenant remain appropriate
- the suitability and effectiveness of existing and alternative legislative frameworks, including the appropriateness of the current co-regulatory approach
- whether the goal(s) could be more effectively achieved through alternative legislative frameworks, including a consideration of the potential costs and benefits of alternative models
- the appropriateness of the obligations of liable parties and the scope of activity to be delivered under the Covenant
- the ability of the co-regulatory arrangement to provide for the necessary compliance and enforcement arrangements, particularly in addressing free rider advantage.

#### **2. The need for variation or amendments to the UPM NEPM and/or the Covenant**

The Review should consider:

- changes that would improve the effectiveness and efficiency of the UPM NEPM and Covenant in achieving the national environment protection goals set out within them, in particular changes that would lead to greater reductions in packaging waste

---

<sup>55</sup> Agreed by the Government Officials Group in September 2020.

- the clarity of definitions, in particular ‘Brand Owner’, ‘threshold’, ‘consumer packaging’, and ‘distribution packaging’
- the national consistency and appropriateness of criteria and thresholds for determining liable parties
- whether packaging targets and performance indicators should be prescribed in the UPM NEPM
- whether the goal of the UPM NEPM should be expanded to include waste avoidance
- what transition actions can be implemented to progress any recommended changes to the UPM NEPM and Covenant
- any priority actions that can be taken in the short-term and which do not require changes to the regulatory framework, but which can assist in achieving the objectives of the UPM NEPM and Covenant in the interim, while regulatory reform is being considered.

### **3. A review of the resources available for implementing the UPM NEPM and Covenant**

The Review should consider the costs and benefits of existing and alternative arrangements (such as informal forums, policy agreements agreed by all Australian jurisdictions, or other Commonwealth-level legislation) to achieving the goal(s) of the UPM NEPM and Covenant.

### **4. The interaction of the UPM NEPM with other Commonwealth legislation**

The Review should consider:

- *The Product Stewardship Act 2011*, as well as the Final Report and recommendations of the review of the *Product Stewardship Act 2011* (July 2020)
- The proposed *Recycling and Waste Reduction Bill 2020*.

### **5. Any other matters including environmental, cost and regulatory issues relevant to the optimal operation of the UPM NEPM and Covenant.**

For example, the Review should consider:

- the national consistency of state and territory processes in identifying and supporting eligible brand owners to meet their obligations under the UPM NEPM (or produce equivalent outcomes to those achieved through the Covenant)
- the national consistency of state and territory compliance and enforcement processes and penalties
- the governance arrangements of the UPM NEPM and the Covenant, including the roles of APCO and the Australian Government
- the appropriateness of the administrative and reporting obligations of signatories, particularly in relation to small-to-medium sized enterprises
- whether the UPM NEPM functions consistently with contemporary technology, knowledge, policies, terminology, and industry conditions, in particular whether the co-regulatory arrangement supports and promotes the transition to a circular economy
- the level of actual and required agility of the UPM NEPM to respond to changing dynamics and opportunities in the contemporary packaging sector
- the appropriateness of data collection and auditing
- the consistency with and contributions of the UPM NEPM to national policies such as the National Waste Policy and Action Plan
- the degree to which the UPM NEPM interacts with other product stewardship schemes.

## Attachment B: Summary of state and territory arrangements

The following table (current as at 7 May 2021) outlines the relevant legislation and policy in each jurisdiction relevant to the operation of the UPM NEPM.

Jurisdiction	Equivalent UPM NEPM	Legislation
<b>Commonwealth</b>	<a href="#">National Environment Protection (Used Packaging Materials) Measure 2011</a>	Subsection 14 (1) of the <a href="#">National Environment Protection Council Act 1994</a>
<b>New South Wales</b>	Part 8, Recycling of Consumer Packaging, <a href="#">Protection of the Environment Operations (Waste) Regulation 2014</a>  <a href="#">Government Gazette No 324 of Friday 20 November 2020</a>	<a href="#">Protection of the Environment Operations Act 1997 (NSW)</a>  <a href="#">National Environment Protection Council (New South Wales) Act 1995</a>  <a href="#">Waste Avoidance and Resource Recovery Act 2001</a>
<b>Victoria</b>	<a href="#">Waste Management Policy (Used Packaging Materials) 2012</a>	Sections 16A(1) and 17A of the <a href="#">Environment Protection Act 1970</a>  <a href="#">Environment Protection Act 2017</a> ; section 96, <a href="#">Environment Protection Amendment Act 2018</a>  <a href="#">National Environment Protection Council (Victoria) Act 1995</a>
<b>Australian Capital Territory</b>	<a href="#">Waste Management and Resource Recovery (Environment Protection—Used Packaging Materials) Code of Practice 2020</a>	Section 60 (Codes of Practice – approval) of the <a href="#">Waste Management and Resource Recovery Act 2016</a> .  <a href="#">National Environment Protection Council (ACT) Act 1994</a>
<b>Western Australia</b>	<a href="#">Environmental Protection (UPM NEPM-Used Packaging Materials) Regulations 2013</a>	Section 37A, <a href="#">Environmental Protection Act 1986</a>  <a href="#">National Environment Protection Council (Western Australia) Act 1996</a>
<b>South Australia</b>	<a href="#">Environment Protection (Used Packaging Materials) Policy 2012</a>	Section 29 of the <a href="#">Environment Protection Act 1993</a>  <a href="#">National Environment Protection Council (South Australia) Act 1995</a>
<b>Tasmania</b>	Adopted Commonwealth <i>National Environment Protection (Used Packaging Materials) Measure 2011</i> as a State Policy under Section 12A of <i>State Policies and Projects Act 1993</i>	Section 12A of <i>State Policies and Projects Act 1993</i> Implemented under the <a href="#">Environmental Management and Pollution Control Act 1994</a>  <a href="#">National Environment Protection Council (Tasmania) Act 1995</a>
<b>Queensland</b>	Part 5A (Used Packaging Materials), <a href="#">Waste Reduction and Recycling Regulations 2011</a>	<a href="#">Waste Reduction and Recycling Act 2011</a>  <a href="#">National Environment Protection Council (Queensland) Act 1994</a>
<b>Northern Territory</b>	N/A	<a href="#">National Environment Protection Council (Northern Territory) Act 1994</a>  If necessary, provision under <a href="#">Waste Management and Pollution Control Act 1998</a>



## Bibliography

---

### Legislation

[National Environment Protection Council Act 1994 \(Cth\)](#)

[National Environment Protection \(Used Packaging Materials\) Measure 2011 \(Cth\)](#)

[National Environment Protection \(Used Packaging Materials\) Measure 2011 – Application thresholds, 23 June 2006](#)

[Protection of the Environment Operations \(Waste\) Regulation 2014 \(NSW\)](#)

[Government Gazette No. 72, 20 July 2018](#)

[Protection of the Environment Operations Act 1997 \(NSW\)](#)

[National Environment Protection Council \(New South Wales\) Act 1995 \(NSW\)](#)

[Waste Avoidance and Resource Recovery Act 2001 \(NSW\)](#)

[Environment Protection Act 1970 \(Vic\)](#)

[Environment Protection Act 2017 \(Vic\)](#)

[Environment Protection Amendment Act 2018 \(Vic\)](#)

[National Environment Protection Council \(Victoria\) Act 1995 \(Vic\)](#)

[Waste Management and Resource Recovery Act 2016 \(ACT\)](#)

[Waste Management and Resource Recovery \(Environment Protection – Used Packaging Materials\) Code of Practice 2020 \(ACT\)](#)

[Environmental Protection Act 1986 \(WA\)](#)

[National Environment Protection Council \(Western Australia\) Act 1996 \(WA\)](#)

[Environmental Protection \(NEPM-Used Packaging Materials\) Regulations 2013 \(WA\)](#)

[Environment Protection Act 1993 \(SA\)](#)

[National Environment Protection Council \(South Australia\) Act 1995 \(SA\)](#)

[Environment Protection \(Used Packaging Materials\) Policy 2012 \(SA\)](#)

[State Policies and Projects Act 1993 \(Tas\)](#)

[Environmental Management and Pollution Control Act 1994 \(Tas\)](#)

[National Environment Protection Council \(Tasmania\) Act 1995 \(Tas\)](#)

[Waste Reduction and Recycling Act 2011 \(QLD\)](#)

[National Environment Protection Council \(Queensland\) Act 1994 \(QLD\)](#)

[Waste Reduction and Recycling Regulation 2011 \(QLD\)](#)

[Waste Management and Pollution Control Act 1998 \(NT\)](#)

[Product Stewardship Act 2011 \(Cth\)](#) – now repealed

[Recycling and Waste Reduction Act 2020 \(Cth\)](#)

[National Environment Protection \(Ambient Air Quality\) Measure](#)

[National Environment Protection \(Diesel Vehicle Emissions\) Measure 2001](#)

## Publicly available documents

### Policy documents

---

Australian Government, State and Territories and the Australian Local Council Association, 2018, [\*National Waste Policy: Less waste, more resources\*](#).

Australian Government, State and Territories and the Australian Local Council Association, 2019, [\*National Waste Policy Action Plan\*](#).

Australian Government Department of Agriculture, Water and the Environment, December 2021, [\*National Plastics Plan 2021\*](#), Canberra.

### Relevant to APCO

---

Australian Packaging Covenant Organisation Ltd. (APCO), January 2017, [\*Australian Packaging Covenant\*](#).

Australian Packaging Covenant Organisation Ltd. (APCO), October 2020, [\*Sustainable Packaging Guidelines\*](#), version 3.

Australian Packaging Covenant Organisation Ltd. (APCO), January 2019, [\*Strategic Plan 2017-2022\*](#), version 2.

Australian Packaging Covenant Organisation (APCO), April 2020, [\*Our Packaging Future\*](#).

Australian Packaging Covenant Organisation (APCO), October 2020, [\*The 2025 Monitoring Program\*](#), version 2.

### Annual reports

---

Australian Packaging Covenant Organisation Ltd. (APCO), [\*Annual Report 2018-19\*](#).

Australian Packaging Covenant Organisation Ltd. (APCO), [\*Annual Report 2019-20\*](#).

Kelly S, Lewis H, Atherton A and Downes J 2017, [\*Packaging Sustainability Framework for APC Signatories: Final Report to the Australian Packaging Covenant Organisation\*](#), Institute for Sustainable Futures, University of Technology Sydney.

National Environment Protection Council, [\*Annual Report 2015-16\*](#).

National Environment Protection Council, [\*Annual Report 2016-17\*](#).

National Environment Protection Council, [\*Annual Report 2017-18\*](#).

National Environment Protection Council, [\*Annual Report 2018-19\*](#).

Planet Ark, 2020, [Frequently Asked Questions – Australasian Recycling Label](#), version 3.

### Senate reports and submissions to enquiries (available publicly)

---

APCO response to Senate Environment and Communications Legislation Committee inquiry into the Recycling and Waste Reduction Bill 2020, 'Answers to questions taken on notice at public hearing on 18 September 2020'.

Senate Environment and Communications References Committee, June 2018, [Never waste a crisis: the waste and recycling industry in Australia](#).

### Reviews, reports and recommendations

---

Australian Continuous Improvement Group, October 2017, *Evaluation of the National Television and Computer Recycling Scheme (NCRS)*, prepared for the Department of the Environment and Energy, <https://www.environment.gov.au/system/files/resources/407f8a95-080b-4daa-8189-747c000d5fa3/files/ntcrs-evaluation-report.pdf>.

Australia Government Department of Agriculture, Water and Environment, June 2020, [Review of the Product Stewardship Act 2011](#), Canberra.

Conran P, October 2020, [Review of COAG Councils and Ministerial Forums, Report to National Cabinet](#), Canberra, prepared for the Australian Government Department of Prime Minister and Cabinet.

European Union Commission, February 2020, [Effectiveness of the Essential Requirements for Packaging and Packaging Waste and Proposals for Reinforcement – Final Report and Appendices](#).

Equilibrium, *Audit and review of packaging environmental labelling and claims Australian Council of Recycling – Final Report*, 2020, [http://www.acor.org.au/uploads/2/1/5/4/21549240/acor\\_environmental\\_labelling\\_claims\\_final\\_report\\_28july20\\_1\\_1.pdf](http://www.acor.org.au/uploads/2/1/5/4/21549240/acor_environmental_labelling_claims_final_report_28july20_1_1.pdf)

National Environment Protection Council, December 2012, [Report of the Third Review of the National Environment Protection Council Acts \(Commonwealth, state and territory\)](#).

### Data

---

Australian Packaging Covenant Organisation Ltd. (APCO), December 2019, [Australian Packaging Consumption and Resource Recovery Data Report – 2017-18 Baseline Data](#).

Australian Packaging Covenant Organisation Ltd. (APCO), January 2021, [Australian Packaging Consumption and Recycling Data 2018-19](#).

Australian Academy of Technology and Engineering, November 2020, [Towards a Waste Free Future – Technology readiness in waste and resource recovery](#).

Blue Environment, November 2020, [National Waste Report 2020](#), prepared for the Australian Government Department of Agriculture, Water and the Environment.

Canadian Council of Ministers of the Environment, February 2009, [Discussion Document: Towards A Proposed Canada-Wide Strategy For Sustainable Packaging](#).

CSIRO, January 2021, [Circular economy roadmap for plastics, glass, paper and tyres – Pathways for unlocking future growth opportunities for Australia](#).

Madden B and Florin N, February 2019, [Characterising the material flows through the Australian waste packaging system](#), prepared by the Institute for Sustainable Futures, University of Technology Sydney for the Australia Packaging Covenant Organisation (APCO).

Productivity Commission, December 2006, [Waste Generation and Resource Efficiency Inquiry Report](#).

Submissions to the Productivity Commission Inquiry into Waste Generation and Resource Efficiency, February 2006.

White S, Cordell DJ, Lansbury N and Nheu N, February 2004, [Review of the National Packaging Covenant](#), version 1.4, prepared by the Institute for Sustainable Futures for the Nature Conservation Council of NSW.

## Submissions

In response to a Consultation Paper, 48 submissions were received from a range of stakeholders. These submissions informed the development of the findings and recommendations set out in this Report.

## Other

Australian Government (Terry Bailey), July 2019, *Independent review of the National Environment Protection Council Act*.

Australian Packaging Covenant Organisation Ltd. (APCO), *Non-compliance Procedure*, version 3.

Australian Packaging Covenant Organisation Ltd. (APCO), January 2020, *APCO Annual Audits*.

Behavioural analysis, May 2020, *Business decisions about signing up to the Australian Packaging Covenant*.