



David Fredericks PSM
Secretary
Department of Climate Change, Energy, the Environment and Water
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By email: PackagingReform@dcceew.gov.au

Dear Secretary

Thank you for the opportunity to provide feedback on options to reform Australia's current national co-regulatory framework for packaging under the *National Environment Protection (Used Packaging Materials) Measure 2011* (NEPM). The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy, and affordable dispute resolution services to small businesses across NSW.

Designing regulatory approaches which meet small business needs

Packaging plays a vital role in the food and beverage industry and across a number of different industries in which small businesses operate. Regulatory frameworks (including co-regulatory models) should not advantage larger businesses because they are more adept at absorbing compliance costs and navigating regulatory obligations. For this reason, the Commission supports retaining a tiered approach to regulating packaging stewardship, recognising that smaller entities are not significant contributors to packaging waste and that more complex regulatory arrangements can be disproportionately onerous for small businesses.

Small businesses are often owner-operated, with responsibility for a wide range of tasks, including bookkeeping, legal and regulatory compliance and business operations. Due to their limited resources, small businesses often face significant disadvantages in becoming acquainted with new regulatory frameworks compared to their larger counterparts.

The Commission supports maintaining the \$5 million turnover threshold, through the NEPM under enhanced enforcement arrangements (Option 1) or options that mandate new obligations (Options 2 and 3). The Commission does not support expansion of data and reporting arrangements for businesses below this threshold, as was foreshadowed in the Consultation Paper (p.30). Requiring businesses below the \$5 million threshold to participate in a new regulatory reporting regime is unlikely to have significant benefits, while the associated financial and operational costs could be substantial.

The Commission also supports maintaining the principle set out in 12(1) of the NEPM which states it is not the intention to impose enforceable obligations on brand owners that do not significantly contribute to the waste stream, and for this to guide the development of any changes to the packaging stewardship model. The Commission's 2024 report [Rightsizing regulation](#) discusses tiered regulation and factors to consider when exploring small business exemptions. It highlights the need to justify any new obligations imposed on smaller businesses, even if benefits outweigh costs for the industry as a whole. The Commission encourages specific and detailed consideration of the substantial financial and operational impacts on small business of any regulatory options that would mandate new or additional requirements for industry, particularly if they impose new obligations on entities below the \$5m threshold.

Strengthening administration of the co-regulatory arrangement

The Commission notes the Consultation Paper does not consider non-regulatory options but examines the merits of strengthening the administration of the co-regulatory arrangement. Option 1 would strengthen the current co-regulatory arrangement through the Australian Packaging Covenant Organisation (APCO) and the NEPM through improved compliance and enforcement.

The benefits of the current co-regulatory model should be comprehensively understood before recommending mandated approaches, which may prevent innovation and reduce industry flexibility. The case for more interventionist regulatory options needs to be carefully considered as overly complex and bureaucratic regulatory approaches have the potential to stifle innovation and the ability for small businesses to compete with larger firms which are more adept at navigating complex requirements.

Industry-led regulation and co-regulatory models are generally more adaptable, foster innovation, and are focused on outcomes rather than 'tick the box' compliance. While limitations with the existing framework were identified in the 2021 independent review of the NEPM, there is merit in providing an opportunity for a strengthened co-regulatory model to address some of the identified concerns rather than abandoning co-regulatory approaches. Mandated options could be considered should strengthened arrangements prove inadequate to address the identified concerns.

Extended producer responsibility

Option 3 would establish a national extended producer responsibility (EPR) regulated packaging scheme using financial mechanisms and regulatory obligations. If implemented, an EPR scheme will make industry responsible for the packaging placed on the market. This option may require the greatest adjustment for individual businesses, due to the complexity of the EPR fee system. Some potential challenges for SMEs include being able to access affordable recycled content as well as traceability and verification issues in the supply chain.

While small businesses may support the circular economy principles underpinning packaging reform, they would be substantially impacted by the proposed EPR fees and associated compliance costs. The Commission observes that container deposit schemes - cited as an example of effective product stewardship - are capital intensive, costly for both users and producers (who incur time costs to return containers compared to improved kerbside recycling options) and result in deadweight welfare losses.

The Commission encourages careful consideration of the costs and benefits of such schemes, taking into account the practical realities of smaller entities that might be required to comply.

Thank you for the opportunity to make a submission.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

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