



Our ref: AA1000695  
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29 May 2025

Carolyn Oddie  
Allens  
Level 28, Deutsche Bank Place  
126 Phillip Street  
SYDNEY NSW 2000

*By email*

Dear Carolyn

**Re: Soft Plastic Stewardship Australia application for authorisation AA1000695**

I refer to Soft Plastic Stewardship Australia Limited's (**SPSA's**) application for revocation and substitution lodged with the Australian Competition and Consumer Commission (**ACCC**) on 18 March 2025.

To assist the ACCC's consideration of SPSA's application for substitution, we request that SPSA provide further information as set out in attachment A to this letter by 5 June 2025.

This letter, including Attachment A, will be placed on the ACCC's [Authorisations Public Register](#). A copy of SPSA's response will also be placed on the Authorisations Public Register, subject to any request to exclude certain information from the public register. For further information please refer to the [ACCC's Guidelines for excluding information from the public register](#).

If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact Hannah Craig on [REDACTED] or [exemptions@acc.gov.au](mailto:exemptions@acc.gov.au).

Yours sincerely

*Naomi Menon*

Naomi Menon  
Director  
Competition Exemptions

## **Attachment A**

### **Soft Plastic Stewardship Australia Limited application for authorisation AA1000695- ACCC request for information**

**29 May 2025**

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#### **SPSA and the Australian Packaging Covenant Organisation (APCO)**

1. On 9 May 2025 SPSA and APCO issued a [joint communication](#) about the authorisation application.
  - a. Explain which, if any, aspects of the conduct described in the joint communication is proposed to be covered by the authorisation, including the persons for whom authorisation is sought (and in particular whether this includes APCO).
  - b. To the extent conduct described in the joint communication is proposed to be covered by the authorisation, explain what effect that conduct may have on the conduct for which authorisation is sought. In particular, please address how the Horizon 2 potential future state may affect the conduct for which authorisation is sought, noting the authorisation is sought for 8 years.
  - c. With regard to the levies in Horizon 1 and Horizon 2, it is proposed that APCO will collect voluntary fees from Scheme participants:
    - i. Can you confirm that APCO will be collecting fees from all Scheme participants or just those that are also members of APCO?
    - ii. In Horizon 2, is APCO proposed to be setting and collecting the levy from Scheme participants? What is the scope of this proposal?
    - iii. Is APCO setting levies for its members in relation to the Scheme independently from SPSA, or for all Scheme participants?
  - d. We note that a detailed term sheet is under development between the parties to formalise the proposed arrangements. When will this be available to the ACCC?
  - e. What governance role, if any, will APCO have in regard to SPSA?

#### **Scope of the Proposed Conduct**

2. Please confirm the intended scope of the Proposed Conduct as outlined at paragraph 5.1 of the application, and in particular address the following:
  - a. The precise conduct for which authorisation is sought (i.e. the conduct to which Division 1, section 45 and section 47 in Part IV of the Act would or might apply) and a brief explanation as to how the relevant provisions of Part IV would or might apply. For example:
    - i. In relation to dot point two under paragraph 5.1 of the application, what is intended to be captured by '*membership terms and conditions*'? Consider whether you wish to include as part of your response references to specific provisions of the Scheme Agreement and/or SPSA's Constitution for which authorisation is sought. Please identify how Part IV of the Act would or might apply to the membership terms and conditions; and
    - ii. In relation to dot point 5 under paragraph 5.1 of the application, precisely identify the services that will be arranged and acquired by the applicant.

Consider specifying the services without the use of an inclusive definition and identifying what is meant by “*other associated third-party logistics services*” as compared to the services already particularised in your response.

You should ensure that all conduct the applicant and/or members will engage in as part of the Scheme to which Part IV of the Act would or might apply and for which authorisation is sought is captured within the description of the Proposed Conduct.

- b. Who is proposed to engage in which aspects of the Proposed Conduct. Please consider clarifying the persons for whom authorisation is sought in relation to each element of the Proposed Conduct.

### **Counterfactual**

3. The application indicates various scenarios for the future without the Proposed Conduct. Please provide further information in relation to each of these including the likelihood of each:
  - a. There would be material restrictions on the ability of the Scheme participants to work together to establish and operate an industry-wide soft plastics product stewardship scheme, particularly as Scheme participants would be unable to agree on a levy
  - b. Concerns about competition law risks may discourage some Scheme participants from participating in the establishment of the Scheme at all
  - c. If the Scheme proceeded, it would work in a substantially less effective and timely manner.
4. In the future without the Proposed Conduct, how likely is it that Scheme participants would unilaterally engage with processors and service providers of transport, collection, sorting and storage of soft plastics (for example, still continue with in-store collections and processing)? If so, what would be the disadvantages of doing so instead of collectively through the Scheme?

### **Reporting**

5. What information under the Proposed Conduct will SPSA make available to consumers that otherwise would not be available, as consistent or as accessible?
6. The application indicates that an annual report will be published on SPSA’s website and will include ‘recovery and processing amounts during the preceding 12-month period’, being the volume of soft plastics collected and sent to processors under the Scheme.
  - a. Will SPSA publish aggregated total volume of soft plastics placed on the market by participants and volume of soft plastics actually diverted from landfill through Scheme activities? If not, why?
  - b. Will this reporting contain details of downstream end market outcomes, including reporting of tonnes of recycled content re-entering the market, procurement of Scheme recycled materials by Scheme participants, and metrics on newly generated end markets? If not, why?

### **Representations to consumers**

7. What governance arrangements/mechanisms are in place to deter SPSA members/ Scheme participants from representing that they are supporting better environmental outcomes when in practice the Scheme may not divert material quantities from landfill?

8. How does SPSA plan to develop communications under the Proposed Conduct, noting that there are limited geographical areas that the Scheme will operate in initially? Will there be any restrictions/protocols on communications by Scheme participants regarding the Scheme?
9. The application states SPSA 'will consider labelling to indicate support for the Scheme, including support for the use of the Australasian Recycling Label (ARL)...In particular, the Scheme will support the use of the 'check locally' logo for soft plastics packaging'<sup>1</sup> and that levy funds will be used for consumer education.<sup>2</sup>
  - a. Is the Scheme considering new labelling unique to the Scheme in addition to or instead of 'check locally'?
  - b. How will the Proposed Conduct inform consumers about recycling options for soft plastic packaging?

### **End markets**

10. The application states 'there is insufficient processing infrastructure for soft plastics in Australia and inadequate end markets for recycled soft plastics.'<sup>3</sup> The application estimates an increased levy in FY28-29 based on 'further recycling capacity and end markets coming online, facilitating collection growth and increased recycling activity.'
  - a. What has changed in end markets since the collapse of REDcycle? If there have been changes, please indicate which of those changes you consider to be attributable or related to the collapse of REDcycle.
  - b. Will the Proposed Conduct result in faster or otherwise enhanced development of end markets? If so, how?
  - c. Under the Proposed Conduct:
    - i. who will own the soft plastic material (input) prior to processing?
    - ii. who will own the recycled soft plastic material (output) after processing?
    - iii. will Scheme participants be required to buy back or take back the recycled material?
  - d. What is the current AUD monetary value of 1 tonne of recycled soft plastics for each grade listed on page 13 of the application?

### **Scope of soft plastic waste captured by the Scheme**

11. How does the Scheme plan to treat soft plastic waste that is collected, transported, and upon sorting is found to be:
  - a. Soft plastic that is out-of-scope as per Schedule 5 of application?
  - b. Soft plastic packaging that is in-scope as per Schedule 5, but placed on market by a non-Scheme participant?
  - c. Soft plastic packaging that is in-scope but not recyclable?

### **Diversion of soft plastics from landfill**

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<sup>1</sup> SPSA application, page 32.

<sup>2</sup> SPSA application, pp. 32-33.

<sup>3</sup> SPSA application p. 7.

12. The application states an estimated 540,000 tonnes of soft plastic packaging was placed on the market in 2022-23 and 34,000 tonnes was recovered,<sup>4</sup> which we note likely includes business to business packaging. Figure 2 in *Schedule 9: key assumptions* of the application<sup>5</sup> estimates collection volumes with and without the Scheme up to FY29.
- a. Of the total packaging placed on the market, please state the estimated volume and proportion of soft plastic packaging covered by the in-scope packaging.
  - b. Please state the estimated volumes and proportion of total packaging placed on the market that SPSA expects will be diverted from landfill through the Proposed Conduct each year during the 8 year period of authorisation sought
  - c. Please provide the underlying data used to construct Figure 2.

### **Scheme spend and outcomes**

13. For each year during the 8 year period of authorisation sought, please detail the proportion of Scheme revenue (expressed in dollar terms and as a total percentage of Scheme revenue) intended to be used to fund:
- a. promoting consumer participation in the Scheme / consumer education about the Scheme including how to recycle soft plastics. Please provide a breakdown by program/initiative, to the extent known.
  - b. instore collection
  - c. kerbside collection
  - d. sorting
  - e. transport of soft plastics to processing facilities from areas where this is uneconomic absent the Proposed Conduct
  - f. sponsoring new entry in processing
  - g. on shore processing
  - h. offshore processing
  - i. research and development including any relevant breakdown such as that to develop end markets for recycled soft plastics
  - j. other administrative and incidental Scheme costs
  - k. other uses of Scheme revenue that do not fit the descriptions at (a) to (j) above. Please provide a brief description of these uses.

### **Efficiencies**

14. In practice, how will the Proposed Conduct increase efficiency in (each of) the collection, transport, storage, sorting and/or processing of soft plastics (compared to the future without)? For example:
- a. Will there be better contractual outcomes and if so, how and in what ways?
  - b. Will there be increased collection points and/or transport of greater volume from locations that are distant from processing facilities?

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<sup>4</sup> SPSA application page 7.

<sup>5</sup> SPSA application Schedule 9, figure 2.

- c. Will the aggregation of volumes allow service providers to achieve lower per unit operating costs? If so, how?
  - d. Will there be reduced transaction costs for parties involved? If so, how and how significant are these savings?
15. SPSA has applied for authorisation for 8 years, and claims 'this period is required for SPSA to enter into processing and recycling contracts with a sufficient term to provide investment confidence to industry and allow for amortisation of infrastructure costs over a longer period, therefore reducing the cost implications for the community' and 'this will also allow for longer arrangements for collections and logistics'. For the supply of collection, transport, storage, sorting and processing services for soft plastics:
- a. What processing and/or recycling arrangements would not occur with a shorter, say 3 year, authorisation period?
  - b. How will longer contract terms reduce the cost implications for the community?
  - c. Schedule 9 provides a range of forecasts and estimates relating to collections and processing capacity. Can you please provide further future forecasts of capacity and collections beyond FY29 to FY34. Can you also please describe what additional investment in capacity/infrastructure would be required to deliver forecast capacity during this period.
16. With regard to the 3 options of government reform of packaging regulation outlined in Schedule 8, how will efficiency in (each of) the collection, transport, storage, sorting and/or processing of soft plastics be impacted under each option?

### **Restrictions or exclusivity**

17. Please explain:
- a. How frequently SPSA intends to re-contract for the supply of collection, transport, storage, sorting and processing services. Please specify for each type of contract.
  - b. Whether the Scheme restricts members/participants dealings with parties (such as suppliers or customers) who are not members/participants of the Scheme?
  - c. Will retailer or brand members/ Scheme participants require their suppliers to become a participant in the Scheme as a condition of being a supplier?
  - d. How likely is it that the contracts offered to processors (either in term, conditions or volume) will result in exclusive arrangements between SPSA and the processors it contracts with?
  - e. Are there any restrictions on members/Scheme participants entering other soft plastic stewardship schemes?
  - f. Will the Scheme still be viable if any of its current members were to withdraw from the Scheme?

### **Data sharing**

18. Please specify the nature of the data and/or information to be shared and the purpose for which it will be shared:
- a. Between members/Scheme participants.
  - b. Between SPSA and members of the soft plastics taskforce relating to transfer of the management of the instore collection pilot program.

- c. Between SPSA and APCO.
- d. Between SPSA and the stakeholder advisory council.
- e. Between SPSA and the AFGC and/or members of the NPRS, relating to the transfer of the NPRS pilot program.

### **Governance**

19. The initial board of SPSA includes a mix of brand owners and retailers and the application indicates that SPSA is working to appoint independent directors in the near future as well as directors from industry associations and/or small-to-medium enterprises. Please provide any further information as to SPSA's progress in recruiting independent directors.
20. Some interested parties have raised concerns that the board composition may favour brand owners and retailers, who may prioritise their own interests at the expense of other industry participants. How does SPSA intend to manage these concerns?

### **Funding**

21. For each year over the 8 year period of authorisation sought, what forecast levies, if any, will Coles and Woolworths each contribute after deducting the proposed set off (\$16m over 8 years).