

ACCC ref: AA1000695
 Contact officer: Hannah Craig
 By email

26th June 2025

Dear Hannah,

RE: APCO response to ACCC Request for Information for Soft Plastic Stewardship Australia application for authorisation AA1000695

APCO appreciates the opportunity to provide further clarity in relation to the Soft Plastic Stewardship Australia's (SPSA) application for authorisation. We remain committed to working collaboratively to achieve optimal outcomes for packaging sustainability in Australia.

Our responses to your request for information dated 16 June 2025 are set out below.

1.a. What materials/types of packaging is APCO referring to when using the term flexible plastic packaging in the 'Flexible Plastic- Consumption and Recovery' fact sheet?

The term "flexible plastic packaging" in APCO's "Flexible Plastic - consumption and recovery" fact sheet is intended to refer to packaging made from various plastic polymers that are characteristically soft and pliable, often in film or sheet form. Based on data collected by APCO during the period 2022-23 (APCO Collection and Recovery Report), the primary polymer types identified as "flexible plastic" packaging placed on the market are:

Type of flexible plastic packaging	Percentage	Uses
LDPE (Low-Density Polyethylene)	53%	Bags, films and liners
PP (Polypropylene)	16%	Chip packets, bread bags and some pouches
HDPE (High-Density Polyethylene)	14%	Heavy duty bags and films
PET (Polyethylene Terephthalate)	3%	Films or laminated structures
Other	4%	Polymers and multi-material laminates
Bioplastic	<1%	Shopping bags
Unidentified	10%	Various

Examples of common flexible plastic packaging types include:

- Plastic bags (e.g., shopping bags, produce bags)
- Food wrappers (e.g., confectionery wrappers, snack food packets, fresh produce bags)
- Plastic film (e.g., cling wrap, pallet wrap, industrial films)
- Pouches (e.g., stand-up pouches for snacks, pet food, liquid detergents)
- Packaging used for personal care items and household goods
- Laminated or multi-layer plastics, which combine different polymers or materials to achieve specific barrier properties

1b. Is the term flexible plastic packaging interchangeable with the soft plastic packaging such as that identified as in-scope of SPSA's scheme?

Yes, the term "flexible plastic packaging" is intended to capture the same range of plastic packaging materials as the term "soft plastic packaging".

2. In its submission, APCO indicates that 'multiple schemes operating with overlapping but inconsistent mandates could result in duplication of levies, fragmented data systems and competing reporting mechanisms.' Please advise:

2.a. How does APCO consider that fee setting, data collection and performance reporting are duplicated through SPSA's Scheme?

As part of APCO's existing role as co-regulator under the *National Environment Protection (Used Packaging Materials) Measure 2011 (NEPM)* and the administrator of the Australian Packaging Covenant (**Covenant**) it has responsibility for fee setting, data collection and performance reporting in relation to packaging recycling. SPSA's Scheme may duplicate these activities for the following reasons:

i. Fee Setting:

- Under the Covenant and NEPM, APCO is the recognised entity responsible for setting and collecting member fees to support packaging sustainability outcomes across all materials, including soft plastics.
- SPSA's proposal to implement its own Scheme Levy may result in participating businesses, many of whom are already APCO Members, being charged two separate levies for potentially overlapping activities or activities perceived to be overlapping. This could include those businesses being charged twice for the same packaging placed on the market.
- APCO's proposed EPR fee, scheduled to commence from 1 July 2026, has been paused, pending further consultation with its members and given current regulatory uncertainty. The emergence of the overlapping SPSA Scheme is also likely to duplicate the intended EPR fee given the EPR fee is intended to cover investment in collection, sorting and processing systems covering all forms of packaging.

ii. Data Collection:

- APCO collects detailed packaging data from its 2,400 members, including material types, formats, weights, and supply chain details. This data collection is a core obligation under the Covenant and directly supports APCO's statutory reporting requirements under the NEPM.
- APCO has built a comprehensive national dataset using data collected for over a decade and is subject to structured validation, assurance protocols, and alignment with government expectations. It is likely that any data which SPSA collects will already be subject to the data which APCO collects, however, any such parallel or uncoordinated data collection by SPSA could cause conflict with APCO's dataset and collection activities and which might degrade the quality and credibility of APCO's system-wide reporting framework.

- If SPSA were to independently collect data on soft plastic packaging from the same businesses, this would introduce:
 - Duplicated reporting obligations and system entry points for businesses, creating additional administrative burden and cost for those businesses, including APCO members.
 - Inconsistent or incompatible data standards between schemes, resulting in fragmented national datasets.
 - Confusion among stakeholders, including APCO members and a reduced ability for government and industry to form a coherent and consistent view of soft plastic consumption and recovery.

iii. Performance Reporting

- APCO is responsible to its members and government partners for reporting on the performance of the national packaging system, including progress toward the National Packaging Targets.
- These performance reporting metrics are utilised in government decision making and regulatory oversight as well as for industry and public transparency. If SPSA were to seek to utilise its own data collection methodology for its performance reporting, this would result in duplication of such collection as noted above. In particular, as specified in SPSA's application, SPSA would prepare and publish an annual report which would include information relating to the progress towards the targets for the Scheme.
- If SPSA establishes separate performance indicators and reporting cycles for soft plastics packaging, this may result in:
 - Duplicative reports which may contain competing or contradictory public claims on recovery outcomes.
 - Additional resources to review and consider such reporting and cause confusion in government decision-making and regulatory oversight, in particular where APCO and SPSA produce conflicting performance outcome reports.
 - Inconsistent reporting outcomes and cause disruption to national packaging metrics, which rely on consolidated, assured, and consistent data from across the packaging system.

2.b. *What would be the impacts on APCO's ability to perform its activities in relation to the NEPM and Australian Packaging Covenant if SPSA performed these functions?*

The performance by SPSA of these functions would materially impact on and impair APCO's ability to fulfil its statutory responsibilities under the NEPM and its administrative obligations under the Covenant.

In addition to the concerns and issues raised above, the impact on APCO include, but are not limited to:

i. Fragmentation of a National Framework

- APCO's role and responsibility under the NEPM is to deliver a unified, national co-regulatory framework for packaging. This includes managing a single point of compliance, assurance, and reporting for obligated businesses across all materials streams (including soft plastics).
- If SPSA were to operate a parallel system for soft plastics, it could fragment the governance structure and create a precedent for other broad ranging material-specific schemes operating outside APCO's oversight. This would limit the ability for a whole of industry national system and reduce APCO's ability to ensure alignment, equity, and transparency across all packaging types.
- As the government and industry transition to EPR schemes, the optimal position for industry and government is to create a central measurement, administration and compliance framework guided by APCO to reduce duplication, reporting and administrative burden on industry.

ii. Importance of maintaining Data Integrity and System Reporting

- Data provided by APCO Members under the Covenant forms the evidentiary basis for Australia's packaging policy and regulatory reporting under the NEPM. It supports:
 - Monitoring of national performance,
 - Progress against packaging reduction and recovery goals, and
 - Assurance of member compliance.
- While SPSA and APCO have sought to reach an agreement on how they may collaborate with each other to avoid duplication or to ensure consistency approaches taken, if SPSA were to collect and hold soft plastics data separately, this would reduce APCO's visibility over system-wide performance and consequently affect APCO's reporting to governments and the quality of public disclosures as well as APCO's ability to ensure fair and consistent treatment over packaging across the market.

iii. Impact on APCO's Assurance, Funding, and Enforcement Functions

- Under the NEPM and Covenant, APCO is responsible for setting and enforcing packaging-related obligations, and under its 2030 Strategic Plan, includes collecting fees to fund system-wide improvements.
- In the absence of a formalised agreement between SPSA and APCO, opportunities to coordinate funding flows to accelerate high priority system interventions, including APCO's ability to promote investments in downstream system interventions would be diminished.
- It may also impact on APCO's capacity to implement its proposed eco-modulated fees under the period referred to as "Horizon 2" (as set out in APCO's 9 May 2025 submissions), which are designed to incentivise better packaging design and fund recovery infrastructure equitably across materials, including soft plastics. This is because brand owners may seek to only contribute to and comply with one of the competing schemes.

iv. **Regulatory Uncertainty**

- If core system functions are performed outside the national co-regulatory framework, it increases the possibility of inconsistency with future government regulations, including those emerging from the current national packaging reform process. This may prevent APCO from effectively implementing any future packaging reform process where SPSA has established an alternative soft plastics stewardship scheme.

2.c. What would be the impacts on APCO members if SPSA performed these functions?

APCO members would likely be significantly impacted by SPSA performing these functions as they overlap with the compliance and reporting obligations members are required to fulfil under the Covenant and the NEPM. In addition to the matters discussed above, the impact on APCO members would also include:

i. Increased Cost and Compliance Burden

- Members may be required to pay two separate fees for the same packaging placed on market, one to APCO under the Covenant and one to SPSA under SPSA's voluntary Scheme.
- This would result in financial duplication and an unnecessary administrative burden to manage compliance with two potentially competing models, particularly for national companies already engaged in multiple sustainability programs.
- APCO members would also be subject to additional compliance costs as a result of duplicative system onboarding, data formatting, and audit or assurance processes across two schemes.

ii. System Confusion and Operational Inefficiency

- Members would need to distinguish between two regulatory or quasi-regulatory frameworks: APCO under the NEPM and SPSA under a separate, ACCC-authorized voluntary scheme.
- This could result in:
 - Uncertainty about which obligations apply to which materials.
 - Differing timelines, definitions, and thresholds.
 - Complex internal reporting structures that add cost without improving environmental outcomes.

While the parties will continue to engage with each other to limit these issues, APCO submits that any authorisation granted by the ACCC should specify the scope of the activities which are permitted under SPSA's Scheme and require that SPSA consult with APCO to ensure consistency with the NEPM and APCO's role under the Covenant.

iii. Erosion of Fairness and a Level Playing Field

- If only some businesses (who are APCO members) choose to engage with SPSA and join SPSA's voluntary Scheme while others remain solely with APCO this is likely to limit the effectiveness of SPSA's Scheme.

- Further, if fee levels, data expectations or performance requirements differ, this creates imbalances as well as potential conflicts between the two schemes. While APCO and SPSA would seek to limit such differences and conflicts, ultimately, it will be for APCO members to decide how they are to meet their compliance requirements.
- There may be increased incentives for businesses to adopt a “freerider” position given the potential disincentive of joining both schemes. APCO members seeking to join both schemes would then be subsidising those freerider business across multiple schemes.
- Where there is inconsistency in the performance of SPSA’s functions, which results in businesses being treated differently between the schemes, this may reduce overall trust in the packaging system for APCO members.

iv. Disruption to the Development of Eco-Modulated Fees

- APCO is in the process of consulting with APCO members on the introduction of EPR/eco-modulated EPR fees, designed to reward improved packaging design and fund recovery solutions.
- If soft plastics are removed from this framework and managed separately, it will:
 - Weaken the ability to apply consistent incentives across material types.
 - Reduce scheme efficiency by requiring separate funding and investment models.
 - Undermine the integrated pricing signals required to drive circular economy outcomes.
- The above could result in potentially increased and inefficient EPR/eco-modulated EPR fees for APCO members.

3. APCO and SPSA’s joint communication dated 9 May 2025 indicates that both parties are engaged in ongoing discussions about APCO’s potential future role in SPSA’s scheme. Please advise:

3.a. Assuming APCO was responsible for setting and collecting levies in relation to SPSA’s scheme, would APCO require SPSA scheme participants to also become APCO members?

No, only organisations that already have an obligation under the NEPM would be expected to be members of APCO.

For businesses that do not meet the threshold for NEPM obligations but still participate in SPSA’s Scheme, APCO can undertake the administrative process relating to levy invoicing and collection without requiring those organisations to become APCO members. This approach reflects the framework referred to in the joint communication by APCO and SPSA dated 9 May 2025 and is currently the subject of more formal documentation to allow APCO to issue invoices and collect contributions from businesses nominated by SPSA, regardless of their membership status.

This approach ensures that:

- NEPM-regulated businesses can continue to meet their compliance obligations through formal APCO membership, and
- Non-obligated businesses can contribute to the operation of SPSA’s Scheme in a streamlined and accountable way, without triggering unnecessary regulatory burden.

This approach preserves flexibility, promotes equity across scheme participants, and supports the efficient delivery of soft plastics recovery outcomes.

3.b. *If APCO was responsible for setting and collecting levies of the SPSA scheme, how does it intend to set future fees?*

In such a scenario, APCO would determine future fees using a structured, evidence-based approach and in consultation with SPSA, that incorporates:

1. **Modulation by packaging attributes**, such as material type, recyclability, design features, and compatibility with Australian infrastructure.
2. **Packaging volumes placed on the market**, reported through member data aligned to Covenant obligations and subject to assurance protocols.
3. **Recovery and processing costs**, based on verified data from SPSA.
4. **Performance incentives**, with funding linked to the delivery of measurable environmental outcomes and continuous improvement in collection and recycling.
5. **Cost reflectivity**, to ensure each material type and format is levied in a way that reflects its end-to-end system cost.

The proposed fee framework will be refined over time based on the evolution of the national packaging regulatory framework. It is APCO's intent to ensure that all obligated producers contribute via a single, nationally consistent EPR fee methodology that aligns with:

- Government expectations for full cost recovery and freerider management;
- Industry expectations for fairness and accountability; and
- The public interest in an efficient and transparent packaging recovery system.

3.b. *(continued) What information would APCO require from the following parties to be able to set and collect levies in relation to SPSA's scheme:*

3.b.i. SPSA

In addition to the matters outlined above relating to how APCO intends to set fees, APCO would require the following specific information from SPSA:

- A list of SPSA Scheme participants to be invoiced, including:
 - Legal entity name and ABN
 - Billing and contact details
 - Indication of APCO membership status (member or non-member)
- Participant declared tonnage data, specifying the quantity of soft plastics placed on the market
- Details of the agreed collection and reprocessing targets and costs per-tonne processed (in respect of the scheme levy to apply for Horizon 1 determined by APCO and SPSA) to determine Scheme annual operating costs

- Written instructions identifying any APCO members from whom SPSA will seek any additional voluntary contributions from
- Quarterly reporting from SPSA on the following matters (which will influence the rate of the levy and any changes required for the levy):
 - Scheme establishment progress
 - Number and identity of signed-up participants
 - Emerging risks or implementation delays
 - Collection infrastructure (e.g., drop-off points, kerbside services)
 - Material volumes collected by jurisdiction
 - Downstream processing arrangements
 - Any further information reasonably required by APCO to confirm Scheme activity
- Reconciled financial reporting detailing how funds have been applied, in particular to activities under the Horizon 1 period

The parties are currently in discussions to document the above requirements in a formal agreement.

3.b.ii. SPSA scheme participants who are not APCO members

For non-member participants nominated by SPSA, APCO would expect to receive:

- Written nomination from SPSA
- Basic participant information (entity name, ABN, contact details)
- Confirmed tonnage data for invoicing
- Authorisation to issue invoices on SPSA's behalf
- Notification of any changes to participation status

3.b.iii. SPSA scheme participants who are APCO members

For APCO members participating in SPSA's Scheme, APCO would require:

- Confirmation that the Member wishes to participate in the SPSA Scheme and/or confirmation of participation status from SPSA
- Soft plastics tonnage data relevant to the Scheme (as reported to APCO under member Covenant obligations)
- Member consent to incorporate the levy into APCO invoicing under Horizon 1
- Confirmation that they will contribute the additional voluntary contributions requested by SPSA

APCO would otherwise seek to leverage its existing APCO data systems to simplify integration with annual member reporting and invoicing processes.

3.c. What governance role, if any, will APCO have in relation to SPSA?

APCO does not intend or expect to assume any governance or supervisory role over SPSA or the operation of the Scheme during the period described as Horizon 1. The parties are currently in discussions to confirm that APCO's role under Horizon 1 will be limited to:

- Collecting and passing through contributions based on participant data provided by SPSA
- Receiving quarterly reports on Scheme implementation and levy use to reconcile expenditure of the fees with collection of those fees
- Participating in regular meetings to monitor progress and support coordination between APCO members and SPSA

While APCO has the right to request supporting documentation to verify that funds being expended during Horizon 1 are being applied appropriately, it does not direct or oversee SPSA's operations.

During Horizon 1, APCO intends working with SPSA to develop Scheme assurance and oversight arrangements in an operating model not dissimilar to the Interregional Packaging Commission (IRPC) and Fost Plus, during its establishment phase. Any oversight role would be subject to a separately agreed arrangement, likely supported by a stronger regulatory or Covenant mechanism.

The nature and content of that arrangement may be further informed by the progress and activities undertaken during Horizon 1. However, until such an agreement is reached, APCO's involvement remains facilitative and strictly limited to the scope set out above.

4. Have there been any developments in discussions between SPSA and APCO since the parties released the joint communication of 9 May 2025? When is the detailed term sheet expected to be finalised and available to the ACCC?

Yes, discussions between APCO and SPSA have continued actively and constructively since the joint communication of 9 May 2025. Both organisations remain committed to developing a collaborative and integrated model for soft plastic packaging stewardship, progressing through the **Horizon 1 and Horizon 2** phases.

These discussions are progressing well, focusing on the practical implementation details of a harmonised approach, with a primary focus on developing a mechanism for fee management that aligns with both organisations' mandates and minimises burden on industry, distinguishing between voluntary billing in **Horizon 1** and structured levies in **Horizon 2**.

Since the joint communication, the parties have decided to separate the documentation of **Horizon 1 and Horizon 2**. We are working diligently towards finalising an initial detailed agreement documenting the activities under **Horizon 1** with a framework for working towards documenting the detailed arrangements for the activities under **Horizon 2**. We will ensure the ACCC is promptly informed once this document is ready.

Conclusion and Closing Statement

APCO remains strongly committed to working constructively with SPSA to help address the urgent need for a viable, long-term soft plastics solution. We recognise the critical role SPSA will play in coordinating industry investment and action in this space and commend their progress to date.

Looking ahead, APCO is enthusiastic about building a collaborative and transparent relationship with SPSA in a way that plays to our respective strengths while maintaining the integrity of the co-regulatory arrangements. We are confident that, with the right governance and system settings in place, SPSA will become a valuable part of Australia's broader packaging stewardship framework.

Yours sincerely,



Chris Foley
Chief Executive Officer
Australian Packaging Covenant Organisation (APCO)

References:

1. APCO 2030 Strategic Plan <https://documents.packagingcovenant.org.au/public-documents/2030%20Strategic%20Plan>
2. Australian Packaging Consumption and Recovery Data 2021-22
<https://documents.packagingcovenant.org.au/public-documents/APCO%20Australian%20Packaging%20Consumption%20And%20Recovery%20Data%202021-22>
3. Review of the 2025 National Packaging Targets
<https://documents.packagingcovenant.org.au/public-documents/Review%20of%20the%202025%20National%20Packaging%20Targets>