

**Application for interim and final
authorisation under s88(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Soft Plastic Stewardship Australia Limited

18 March 2025

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1 Summary

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by Soft Plastic Stewardship Australia Limited (**SPSA**), on behalf of itself and the initial members of SPSA, being:

- ALDI Foods Pty Limited (**ALDI**);
- Coles Group Limited and its related bodies corporate (**Coles**);
- Woolworths Group Limited and its related bodies corporate (**Woolworths**);
- Nestle Australia Ltd (**Nestlé**);
- Mars Australia Pty Ltd (**Mars**); and
- McCormick Foods Australia Pty Ltd (**McCormick Foods**),

(the **Initial Members**).

SPSA and the Initial Members propose to establish and operate a voluntary, industry-led product stewardship scheme (the **Scheme**), managed by SPSA, to focus on recycling used soft plastic packaging materials. The Scheme is proposed to ultimately cover soft plastics collected through multiple channels, including instore collections, kerbside collections and other drop-off facilities and will build on the work undertaken to date by the Soft Plastics Taskforce (**Taskforce**) and the National Plastics Recycling Scheme (**NPRS**), run by the Australian Food and Grocery Council (**AFGC**).

SPSA is a not-for-profit entity, separate to the participants in the Scheme, that was established on 6 August 2024 to focus on product stewardship of soft plastics. All participants in the Scheme can join SPSA as members, but are not required to do so. The initial Board of SPSA currently includes a mix of brand owners and retailers, and SPSA is working to appoint independent directors in the near future as well as directors from industry associations and / or small-to-medium enterprises (**SMEs**).

SPSA will also be supported by a Stakeholder Advisory Council (**SAC**), which SPSA is currently working to establish. The SAC will comprise representatives from diverse stakeholder groups, such as processors and recyclers, government agencies, environmental non-governmental organisations (**NGOs**), consumer groups, brand owners, retailers, academics and independent experts, and will provide guidance, stakeholder insights and industry expertise to SPSA on activities and matters relevant to the efficient and effective development and operations of the Scheme. SPSA has undertaken substantial informal consultation with industry to inform the development of the Scheme, including engagement with processors, brands and retailers, government, the Australian Packaging Covenant Organisation (**APCO**) and environmental groups.

The proposed conduct that SPSA is seeking authorisation for is:

- setting and imposing the Levy Contributions (being the Scheme Levy and the Minimum Levy), which may be passed on by a Scheme Participant as part of their price;
- developing, setting and imposing membership terms and conditions for Scheme Participants;
- agreements between SPSA and the Taskforce or the AFGC (as required) to allow SPSA to take over and expand on the instore collection program being run by the Taskforce and the NPRS kerbside collection pilots being run by the AFGC, including transferring arrangements with service providers to SPSA;
- the sharing of operational information and data between SPSA and the Taskforce or the AFGC (as required) to facilitate SPSA's operations, including to transfer the arrangements for the Taskforce instore collection program and NPRS kerbside collection pilots to SPSA; and

- arranging for and acquiring services including entering into contracts for the collection, sortation, processing and recycling of used soft plastics and any other associated third-party logistics services,

(collectively, the **Proposed Conduct**).

The proposed Scheme will have substantial public benefits, including:

- environmental benefits, including by diverting soft plastics from landfill and transforming soft plastics into new products;
- fostering industry development, increasing innovation and stimulating end markets for recycling of soft plastics in Australia;
- creating new jobs to collect, process and recycle soft plastics;
- developing solutions to address soft plastics recycling in a more timely and effective manner;
- increasing community awareness about soft plastics recycling and alleviating concern about legacy stockpiles;
- achieving buy in from small retailers and consumer brands to drive environmental benefits at scale;
- supporting government policies and actions targeting the recycling of soft plastics; and
- aligning Australia with measures implemented in other jurisdictions to improve waste recovery of soft plastics.

Public detriments arising from the Proposed Conduct are very limited, including because:

- the Proposed Conduct does not prevent any individual Scheme Participant (being a retailer or consumer brand participating in the Scheme) from exploring or developing soft plastics recycling capabilities in their own right;
- the Proposed Conduct will not detract from or adversely impact the development of other soft plastics recycling solutions;
- the Proposed Conduct is not compulsory, and any Scheme Participant can opt out of any proposed collaboration the subject of this application;
- the Proposed Conduct does not involve any agreements on the price or supply of retail products or services sold by any of the Scheme Participants;
- if members choose to pass on the cost of the Scheme Levy, the potential levy impact compared to the cost of products that use soft plastic packaging would be minimal; and
- the acquisition of services by SPSA is required to provide the certainty in demand for soft plastics recycling that is necessary to develop end markets in Australia and overcome the current market failure.

SPSA seeks authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the Proposed Conduct described in section 5 of this application for a period of eight years. 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. SPSA will require an initial period to design and operate competitive tender processes, including a Request for Information (**RFI**) / Request for Proposal (**RFP**) process; and
- processors and recyclers to construct and commission infrastructure and gain the necessary regulatory approvals.

This will also allow for longer arrangements for collections and logistics, a long-term focus for the proposed Scheme and for SPSA to make a contribution to the REDcycle stockpile costs.

SPSA also seeks interim authorisation as set out in section 10 of this application.

SPSA requests that any authorisation granted by the ACCC apply, in addition to the Initial Members, to any current or future participants in the Scheme (**Future Members**) being a class of persons within the meaning of section 88(2)(c) of the CCA.

2 Parties to the Proposed Conduct

2.1 Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Description of business activities
Soft Plastic Stewardship Australia Limited ACN 679 696 998 Suite 3.18, Level 3 22-36 Mountain Street Ultimo NSW 2007	Barry Cosier, Interim Co-CEO [REDACTED] Dee Milosevic, Interim Co-CEO [REDACTED]	Operation of a voluntary, industry-led product stewardship scheme to collect and recycle used packaging materials, specifically soft plastics collected through instore collections, kerbside collections and other drop-off facilities.

2.2 Email address for service of documents in Australia

Carolyn Oddie
Partner
Allens
Carolyn.Oddie@allens.com.au
(02) 9230 4203

2.3 Other persons who propose to engage in the Proposed Conduct

Numerous retailers and consumer brands supply products in soft plastic packaging, including plastic bags, food wrappers, plastic film, pouches, and other flexible packaging. Soft plastics are commonly used for packaging of products such as snack foods, personal care items and household goods across multiple industry sectors.

Retailers including ALDI, Coles and Woolworths, together with consumer brand owners including Nestlé, Mars and McCormick Foods are the Initial Members of SPSA and will be participants in the Scheme. Contact details for the Initial Members are contained in Schedule 1.

The intention is that the Scheme will eventually have broad industry participation across retailers and consumer brands that supply products with soft plastic packaging, to maximise the Scheme's impact and effectiveness. Therefore, it is likely that Future Members of the Scheme will also engage in the Proposed Conduct and authorisation is sought for both the Initial Members and Future Members.

3 Background

3.1 Soft plastics recycling in Australia

Packaging is essential to the storage, preservation and transportation of consumer goods. It helps maintain the quality and safety of food, personal care, and home care products and can help maintain freshness, extend shelf life and reduce food waste. Packaging is also used to provide important consumer information, including product descriptions, origin information and instructions for safe use and disposal.

Manufacturers often prefer using soft plastic packaging for its barrier properties, strength, versatility and lightweight nature. However, soft plastics recycling is not widely available across Australia.

In 2018, the Commonwealth Government established the ambitious 2025 National Packaging Targets (**2025 NPTs**). The four targets to be achieved by the end of 2025 are:

- 100% of packaging being reusable, recyclable or compostable;
- 70% of plastic packaging being recycled or composted;
- 50% average recycled content included in packaging; and
- The phase out of problematic and unnecessary single-use plastic packaging.¹

In addition to the 2025 NPTs, other policies, commitments and action plans further demonstrate the Commonwealth Government's intent for industry to take responsibility for plastic waste and improve waste recovery for plastics. These include:

- the plastic waste export ban for mixed plastics, which commenced on 1 July 2021 under the *Recycling and Waste Reduction Act 2020* (Cth);
- targets in the National Waste Policy Action Plan,² including to reach an 80% average resource recovery rate from all waste streams by 2030, and phase out problematic and unnecessary plastics by 2025;
- actions outlined in the National Plastics Plan 2021,³ including investing in the National Product Stewardship Investment Fund to establish new plastics product stewardship schemes and expand existing schemes;
- creation of the Recycling Modernisation Fund Plastics Technology stream to deliver national solutions for hard-to-recycle plastics, such as soft plastics;⁴ and
- a commitment to developing a global plastic treaty. In 2022, Australia, together with 174 other United Nations Member States, endorsed a resolution at the United Nations Environment Assembly to develop a legally binding agreement on plastic pollution. Australia has been participating in the negotiation of this global treaty itself and as part of the High Ambition Coalition to End Plastic Pollution.⁵

Despite these commitments, in the financial year ending 30 June 2023, only 6% of soft plastic packaging placed on market in Australia was recovered.⁶ The total amount of plastic packaging

¹ The 2025 NPTs have been included in the National Waste Policy Action Plan 2019 and the National Plastics Plan 2021.

² DCCEEW, National Waste Policy Action Plan 2019: <https://www.dcceew.gov.au/sites/default/files/documents/national-waste-policy-action-plan-2019.pdf>; DCCEEW, National Waste Policy Action Plan 2024: <https://www.dcceew.gov.au/sites/default/files/documents/national-waste-policy-action-plan-2024.pdf>.

³ DCCEEW, National Plastics Plan 2021: <https://www.dcceew.gov.au/sites/default/files/documents/national-plastics-plan-2021.pdf>.

⁴ DCCEEW, The RMF Plastics Technology stream: <https://www.dcceew.gov.au/environment/protection/waste/how-we-manage-waste/recycling-modernisation-fund/plastics-technology-stream>.

⁵ DCCEEW, An international approach to plastic pollution (May 2024): <https://www.dcceew.gov.au/about/news/international-approach-to-plastic-pollution>.

⁶ APCO, Australian Packaging Consumption & Recovery Data 2022-23 (December 2024), page 127:

<https://documents.packagingcovenant.org.au/public-documents/APCO%20Australian%20Packaging%20Consumption%20and%20Recovery%20Data%202022-23>.

placed on market in Australia in that financial year was estimated at 1,265,000 tonnes, with approximately 45% (540,000 tonnes) of this being soft plastic packaging.⁷ In the same year, just 234,000 tonnes of plastic packaging was recovered (approximately 19% of plastic packaging placed on market),⁸ with 34,000 tonnes of soft plastic packaging recovered (only 6% of soft plastic packaging placed on market).⁹

There are a number of reasons for the low level of soft plastics recycling in Australia. These include the following:

- Most local councils in Australia do not accept soft plastics, such as food packaging and plastic bags, through kerbside recycling. This is because there is a high cost of collecting, sorting and reprocessing mixed consumer soft plastics, which exceeds the value of the recovered materials.
- There is insufficient processing infrastructure for soft plastics in Australia and inadequate end markets for recycled soft plastics. Further, loose, unbagged soft plastics are incompatible with the majority of current material recovery facility processes.
- Despite ongoing developments in advanced recycling,¹⁰ capacity at a commercial scale for the recovery of waste plastic is still in its early stages in Australia.¹¹ Although recent years have seen some progress, including government investment of over \$40 million in advanced recycling technology,¹² it will take time for new processes to be fully adopted and scaled in Australia.

Until late 2022, Australian households had access to soft plastic collection channels through the REDcycle program. This program was suspended in early November 2022 when it came to light that REDcycle's recycling partners were no longer in a position to accept and process soft plastics through the program and that REDcycle had been holding stock in warehouse storage facilities temporarily until it could be processed. The issues which contributed to REDcycle's collapse are complex and multifaceted. Key contributing factors included:

- inadequate investment for the required infrastructure and end markets for soft plastics recycling in Australia, leading to insufficient funding to cover the cost of collection, transport and recycling for the REDcycle program;

⁷ APCO, Australian Packaging Consumption & Recovery Data 2022-23 (December 2024), page 2-3; page 36; page 120:

<https://documents.packagingcovenant.org.au/public-documents/APCO%20Australian%20Packaging%20Consumption%20and%20Recovery%20Data%202022-23>.

⁸ APCO, Australian Packaging Consumption & Recovery Data 2022-23 (December 2024), page 5; page 19:

<https://documents.packagingcovenant.org.au/public-documents/APCO%20Australian%20Packaging%20Consumption%20and%20Recovery%20Data%202022-23>.

⁹ APCO, Australian Packaging Consumption & Recovery Data 2022-23 (December 2024), page 127:

<https://documents.packagingcovenant.org.au/public-documents/APCO%20Australian%20Packaging%20Consumption%20and%20Recovery%20Data%202022-23>.

¹⁰ Advanced recycling is also referred to as feedstock, molecular or chemical recycling. According to the CSIRO, advanced recycling 'encompasses a range of technologies that may involve chemical, thermal or biological processes to convert waste plastics into chemical building blocks' and 'converts waste polymers into their original monomers, oligomers, hydrocarbons, or other valuable chemicals, such as energy and fuels, which can be reused as raw materials for the production of new plastics': see CSIRO, Advanced recycling technologies to address Australia's plastic waste (August 2021), page 17. Report available at:

<https://www.csiro.au/en/news/all/articles/2021/august/advanced-recycling-plastic-waste>.

¹¹ CSIRO, Advanced recycling technologies to address Australia's plastic waste (August 2021), page 5. Report available at:

<https://www.csiro.au/en/news/all/articles/2021/august/advanced-recycling-plastic-waste>.

¹² See for example: DCCEEW, The Hon Tanya Plibersek MP, Joint media release: New soft plastic recycling technology for South Australia (July 2024): <https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-new-soft-plastic-recycling-technology-south>;

[australia#:~:text=Joint%20media%20release%3A%20New%20soft%20plastic%20recycling%20technology%20for%20South%20Australia,-](https://www.dcceew.gov.au/plibersek/media-releases/joint-media-release-3a-new-soft-plastic-recycling-technology-for-south-australia#:~:text=Joint%20media%20release%3A%20New%20soft%20plastic%20recycling%20technology%20for%20South%20Australia,-)

[16%20July%202024&text=More%20than%2014%2C000%20tonnes%20of%20technology%20by%20the%20Australian%20Government;](https://www.dcceew.gov.au/plibersek/media-releases/joint-media-release-156-million-boost-victoria) DCCEEW, The Hon Tanya Plibersek MP, Joint media release: Soft plastic recycling gets \$15.6 million boost in Victoria (August 2024):

<https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastic-recycling-gets-156-million-boost-victoria>;

DCCEEW, The Hon Tanya Plibersek MP, Joint media release: Soft plastics recycling in NSW gets major new investment (December 2024): <https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastics-recycling-nsw-gets-major-new-investment-0>.

- the significant growth in consumer participation in the program (an estimated increase of 300% between 2019-2022);
- an oversupply of recovered plastic material in Australia due to changes in export regulations;
- the closure of the major recycling provider due to a facility fire; and
- a global downturn in market demand for recycled plastic products.

While there are some limited soft plastic collection and recycling programs available to households in specific local government areas in Australia, including bagged soft plastic in kerbside recycling for households in the NSW Central Coast Council area, these are local systems that are not broadly available to most Australian households.¹³

Shortly after the collapse of the REDcycle program, APCO released its review of the 2025 NPTs with four key findings:¹⁴

- While the 2025 NPTs are driving a transformation in packaging in Australia, they are not on track to be met by 2025, with the target of recycling or composting 70% of plastic packaging presenting the biggest challenge;
- While the 2025 NPTs continue to be a catalyst for a circular economy for packaging, it is necessary to establish consensus on post-2025 goals to enable long-term investment and innovation;
- Urgent and synchronised policy and programmatic action is needed to address the crucial deficiencies in the circularity of essential packaging materials and formats; and
- Collaboration and cooperation between industry and government, across the entire packaging system, is critical to overcoming barriers to progress. This final point is also supported by a recent CSIRO report which found that:

For advanced recycling to be economically viable, there is a need for supply chain collaboration between manufactures, waste managers, advanced recycling technology owners and operators. In particular, there is a need for collaborative supply chain partnerships to be established with refinery or chemical manufacturing companies, as pursuing a plastics-to-plastics pathway depends on access to existing infrastructure to process the oil or gas outputs from advanced technologies.¹⁵

APCO has since published the overview in **Figure 1** below outlining progress towards the 2025 National Packaging Targets.

¹³ Curby, Curby soft plastics program opens for all Central Coast residents (August 2021): <https://www.curbyit.com/2021/08/09/curby-soft-plastics-program-opens-for-all-central-coast-residents/>.

¹⁴ APCO, Review of the 2025 National Packaging Targets: Final Report (April 2023): <https://documents.packagingcovenant.org.au/public-documents/Review%20of%20the%202025%20National%20Packaging%20Targets>.

¹⁵ CSIRO, Advanced recycling technologies to address Australia's plastic waste (August 2021), page 51. Available at: <https://www.csiro.au/en/news/all/articles/2021/august/advanced-recycling-plastic-waste>.

Figure 1: Summary of the 2025 National Packaging Targets and Progress to 2022-23

Target	Target	2017–18 result	2018–19 result	2019–20 result	2020–21 result	2021–22 result	2022–23 result
100% of all Australia's packaging will be reusable, recyclable or compostable	100%	88%	89%	86%	86%	84%	86%
70% of Australia's plastic packaging will be recycled or composted	70%	16%	18%	16%	18%	20%	19%
50% average recycled content will be included across packaging ^a	50%	35%	38%	39%	39%	40%	44%
Problematic and unnecessary single-use plastic packaging will be phased out ^{b,c}	Reduction in priority items	Baseline	-41%	-31%	-28%	-33%	-40%

a) Post-consumer recycled content only. Does not include wood or manufacturing scrap (pre-consumer) recycled content.
b) Priority items considered include PVC, PS, EPS, oxo-degradable plastics, and retail shopping bags POM.
c) These estimates are subject to a relatively large accuracy range and high year-on-year reporting volatility. Estimated value is relative to the baseline year (2017–18).

Source: APCO, Australian Packaging Consumption & Recovery Data 2022-23 (December 2024)

APCO reported that plastic packaging with a good recycling potential classification has decreased from 59% in 2017–18 to 46% in 2022–23, but would have been around 68% if not for the collapse of the REDcycle program.¹⁶ This demonstrates the higher recyclability level when a soft plastic scheme was in place, subject to availability of end markets.

3.2 Government investment and reform of packaging regulations

Recently, the Federal Government has made significant investments in advanced and innovative recycling technology that aims to divert 69,000 tonnes of soft plastics from landfills each year. The investment of over \$40 million will fund six projects, delivered in partnership with the South Australian, Victorian and NSW Governments, under the new Recycling Modernisation Fund Plastics Technology stream to work on solutions for hard to recycle plastics, including soft plastics.¹⁷

The Federal Government is also currently considering the options for reforming Australia's packaging regulations, including the regulation of plastic packaging.¹⁸ On 27 September 2024, the Commonwealth Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) opened a consultation to explore the best way to reform Australia's existing packaging regulations. The consultation paper presents three regulatory options. The proposed SPSA-led Scheme could operate within each of these proposed options; further detail is set out in Schedule 8.

SPSA has been consulting with government and APCO in relation to future possibilities for working together. Government has encouraged SPSA to restore and expand soft plastic recycling services as soon as possible and work with APCO to deliver efficiencies for industry.

¹⁶ APCO, Australian Packaging Consumption & Recovery Data 2022-23 (December 2024), page 36:

<https://documents.packagingcovenant.org.au/public-documents/APCO%20Australian%20Packaging%20Consumption%20and%20Recovery%20Data%202022-23>.

¹⁷ DCCEEW, The Hon Tanya Plibersek, Joint media release: New soft plastic recycling technology for South Australia (July 2024):

[https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-new-soft-plastic-recycling-technology-south-australia#:~:text=Joint%20media%20release%3A%20New%20soft%20plastic%20recycling%20technology%20for%20South%20Australia,-16%20July%202024&text=More%20than%2014%2C000%20tonnes%20of,technology%20by%20the%20Australian%20Government;DCCEEW, The Hon Tanya Plibersek, Joint media release: Soft plastic recycling gets \\$15.6 million boost in Victoria \(August 2024\):](https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-new-soft-plastic-recycling-technology-south-australia#:~:text=Joint%20media%20release%3A%20New%20soft%20plastic%20recycling%20technology%20for%20South%20Australia,-16%20July%202024&text=More%20than%2014%2C000%20tonnes%20of,technology%20by%20the%20Australian%20Government;DCCEEW, The Hon Tanya Plibersek, Joint media release: Soft plastic recycling gets $15.6 million boost in Victoria (August 2024):)

[https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastic-recycling-gets-156-million-boost-victoria;](https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastic-recycling-gets-156-million-boost-victoria;DCCEEW, The Hon Tanya Plibersek, Joint media release: Soft plastics recycling in NSW gets major new investment (December 2024):)

[https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastics-recycling-nsw-gets-major-new-investment-0.](https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastics-recycling-nsw-gets-major-new-investment-0)

¹⁸ DCCEEW, 'Reform of Packaging Regulation Consultation paper', available at: <https://consult.dcceew.gov.au/reform-of-packaging-regulation>.

4 Scheme Design

4.1 Rationale

In light of the challenges and government action outlined in section 3 above, the Scheme is intended to bring together retailers and consumer brand owners that supply products with soft plastic packaging to:

- rapidly and significantly reduce the volume of soft plastics being disposed of as waste to landfill; and
- maximise resource recovery by increasing collection and recycling rates and developing domestic soft plastics recycling capacity and end markets for recycled materials.

4.2 Initial steps

At the time the REDcycle program was suspended, Coles, Woolworths and ALDI applied to the ACCC for urgent interim authorisation and final authorisation to form the Soft Plastics Taskforce and allow the major supermarket retailers to work together to explore solutions for managing the immediate effects of the suspension of the REDcycle program, including the remediation of the soft plastics stockpiles (which Coles and Woolworths have now assumed responsibility over) and to restore public access to household soft plastics recycling. The ACCC granted conditional authorisation to the Taskforce to undertake this work¹⁹ and, on 27 February 2025, authorised this continued collaboration until 31 July 2026.²⁰

The Taskforce has been meeting regularly since 1 December 2022, with a focus on recommencing instore collections and remediating the stockpiles of soft plastics collected through the REDcycle program. As part of the work of the Taskforce, in February 2024, Coles, Woolworths, ALDI, the AFGC and Planet Ark agreed to form an Interim Management Group to guide the development and establishment of a Soft Plastics 'Producer Responsibility Organisation' (**PRO**). On 6 August 2024, SPSA was incorporated to fulfil this function. Planet Ark played an important role in the lead up to the incorporation of SPSA, bringing together and managing the relevant stakeholders and providing input and guidance on the governance framework for the Scheme. Since incorporation, Planet Ark has been a key advisor to SPSA and it is intended that Planet Ark will play an ongoing role in the establishment and development of the Scheme.

In addition to this, in 2022-23, the AFGC's NPRS undertook kerbside collection trials, focusing on taking hard-to-recycle soft plastic packaging out of the waste stream and recycling it into new products, including food-grade material. These activities were supported by funding from both the Federal Government's National Product Stewardship Investment Fund and a range of leading brands. Since the trials, larger scale pilots have been rolled out in selected local government areas. As part of the Scheme, SPSA's intention is to build on these trials and pilots where feasible to further assess community behaviour, participation and material contamination over a longer period of time (eg, 12-18 months). This is described in greater detail in section 4.3 below.

As the work of the NPRS was always intended to be handed off to a separate PRO, the AFGC also undertook initial work to develop the design of a soft plastics recycling scheme, including engaging independent experts to recommend scheme design principles based on global best practice and engaging in discussions with a number of international organisations including Nedvang (Netherlands packaging PRO), FostPlus (Belgium packaging PRO), Ecosurety (UK packaging PRO),

¹⁹ ACCC, Determination: Application for authorisation AA1000627: https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%2030.06.23%20-%20PR%20-%20AA1000627%20Coles%20%26%20Ors_0.pdf?ref=0&download=y.

²⁰ ACCC, Determination: Application for revocation of AA1000627 and the substitution of authorisation AA1000673: <https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%2027.02.25%20-%20PR%20-%20AA1000673%20Coles%20%26%20Ors.pdf?ref=0&download=y>.

Valpak (UK packaging PRO), the Extended Producer Responsibility Alliance (or EXPRA), CeFLEX, Ellen MacArthur Foundation, UK Food and Drink Federation and WRAP (UK). The learnings from this work were incorporated into the scheme design for the SPSA Scheme.

Figure 2 below highlights the brand owners who are active leaders in soft plastics recycling, through their participation in the Taskforce and NPRS, illustrating the support from industry to deliver a solution:

Figure 2: Taskforce members and NPRS supporters



4.3 Description of proposed Scheme activities

SPSA and the Initial Members propose to establish and operate a voluntary, industry-led product stewardship scheme, managed by SPSA, to recycle soft plastic packaging. Schedule 3 provides an overview of the soft plastic packaging intended to be in-scope for recycling through the Scheme at commencement. The Scheme is proposed to cover soft plastic packaging collected through multiple channels, including instore collections, kerbside collections and potentially other drop-off facilities. Collections will be scaled up as more processing capacity comes online, with the use of multiple collection channels to enhance access for consumers and cater for different preferences, thereby maximising the recycling of soft plastics.

The initial focus of the Scheme will be on post-consumer soft plastic packaging, such as shopping bags, fresh produce bags and food wrappers, bags and pouches. The Scheme may ultimately expand to include other plastic materials over time. For example, the Scheme may also review whether the market continues to effectively manage recycling of commercial and industrial (C&I) shrink and pallet wrap and consider inclusion within the Scheme.

SPSA is a not-for-profit entity, separate to the participants in the Scheme, that was established on 6 August 2024 to focus on product stewardship of soft plastic packaging. All participants in the Scheme can join SPSA as members but are not required to do so. All current SPSA members are funding the establishment of the Scheme.

The initial Board of SPSA includes a mix of brand owners and retailers. SPSA is working to appoint independent directors in the near future as well as directors from industry associations and/or SMEs (as contemplated by SPSA's Constitution). SPSA has set up a Nominations Committee for this purpose, which has met a number of times throughout February and March 2025.

SPSA's objects, as set out in its Constitution, are to:

- (a) develop, implement and support the overall operation of the Scheme to:
 - (i) collect and recycle Used Packaging;
 - (ii) minimise as far as reasonably practicable environmental damage from disposal of Used Packaging through waste minimisation, reuse and recycling;
 - (iii) result in a net environmental benefit targeting Used Packaging;
 - (iv) support recycled material being made available for producing food grade and other contact-sensitive packaging; and
 - (v) support the re-manufacture of plastic packaging in Australia;
- (b) determine the governance of the Scheme;
- (c) monitor and report to Scheme Participants and, to the extent necessary, regulators on the Scheme;
- (d) promote improvements in the end-to-end operation of the Scheme, including in order to minimise costs, promote efficiency and drive end markets;
- (e) support research and market development in relation to product stewardship of Used Packaging;
- (f) undertake education, awareness and information activities to promote the Scheme;
- (g) promote or support any changes to the law designed or likely to help all or any of the objects of the Company;
- (h) collect and administer levies in connection with the Scheme;
- (i) contract and administer payments for services necessary for the implementation of the Scheme;
- (j) as appropriate, support provision of contracted services to assist with plastic packaging stockpile management or other aspects of Used Packaging stewardship;
- (k) ensure confidentiality of Members' commercially sensitive data; and
- (l) do all such lawful things deemed necessary to achieve the objects of the Company, including all things incidental or conducive to achieving these objectives.

A copy of SPSA's Constitution is at Schedule 4 and a draft of the Scheme Agreement governing the Scheme is at Schedule 5.²¹

SPSA intends to drive change from the current state of the market, being a linear economy, to a circular economy. Currently, the lack of soft plastic recycling capacity and end market demand results in material being landfilled as detailed in **Figure 3** below.

²¹ SPSA's Constitution may be amended to reflect any changes to the Scheme Agreement once finalised. Amendments to the Constitution require a special resolution of members.

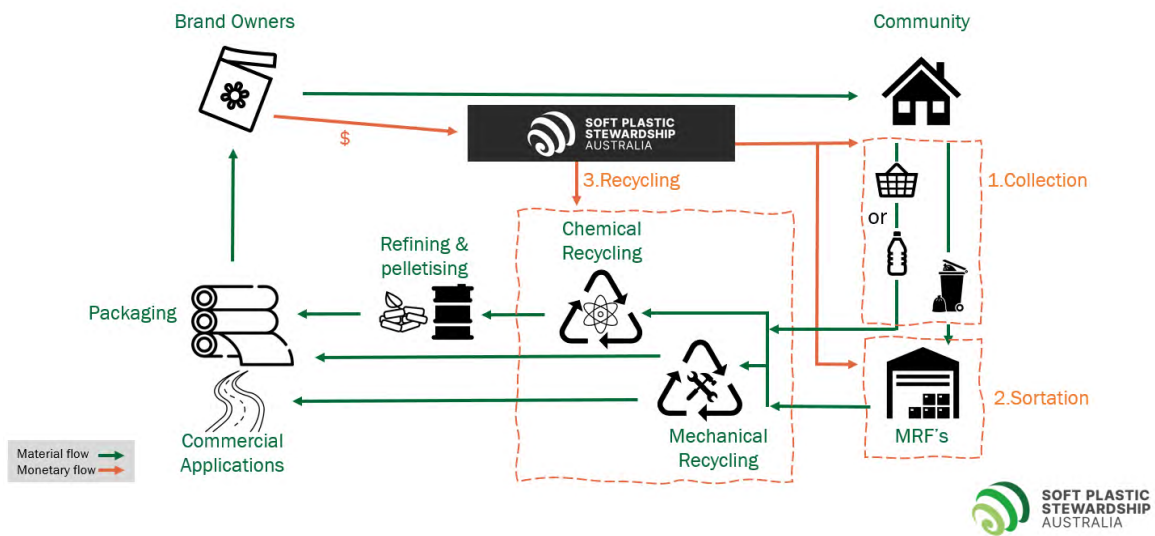
Figure 3: Current state of the market – Linear economy

SPSA plans to develop an effective and efficient Scheme by leveraging existing collection systems and sortation infrastructure. SPSA proposes to use levy funds to pay for the net incremental costs of collection, sortation, processing and recycling, as well as research and development in order to stimulate investment confidence to develop recycling capability.

Figure 4 highlights the following:

- Proposed collection pathways may include, but are not limited to, bagged soft plastics in kerbside collection or drop off at retail stores or container deposit depots (subject to contracting multiple recycling providers). Levy funds could, for example, cover incremental costs such as manufacturing and distributing household starter packs.
- Kerbside collected material would be sorted at material recovery facilities (**MRFs**) and drop off material would be delivered directly to recyclers. Levy funds could, for example, cover incremental costs such as additional staff at pre-sort to remove the bagged plastics, or capital funds for MRF modifications.
- Intermediate processors (eg, recyclers) would be paid from levy funds to decontaminate, sort, wash, flake and/or pelletise into various fractions to meet the quality needs of various end markets, including:
 - High grade material – Advanced chemical recycling to be recycled into food grade resin and packaging;
 - Medium grade material – Advanced mechanical recycling where it could be recycled into non-food grade films such as agricultural plastics, or builders film; and
 - Lower grade material – Recycled into long-term use industrial or commercial products such as lumber substitutes or bitumen additives, and non-food grade plastic film such as builders film.

Figure 4: Desired state of the market and proposed material and monetary flow of Scheme – Circular economy



(a) Scheme operations

(i) Collection channels

It is intended that SPSA will be appointed to operate and expand on the existing pilots for instore collections of soft plastics currently being managed by the Taskforce. These pilots are currently underway at Coles, Woolworths and ALDI stores in Victoria, launched in February 2024, and at Woolworths and ALDI stores in NSW, launched in August 2024.²² This may involve SPSA:

- identifying and contracting with third parties for the transport, storage, processing and recycling of materials collected for the instore collection programs;
- engaging with Coles, Woolworths, ALDI, and any other future retail store participants regarding the collection logistics and end-to-end management of the materials from stores;
- communicating with the public regarding the instore collection program, including providing recycling directions for soft plastics packaging in respect of the instore collection program; and
- development of business models and end to end management approach for instore collection activities.

The Taskforce is currently authorised under authorisation AA1000673 to take certain steps to remediate the REDcycle stockpile and reestablish instore collections. The SPSA-led Scheme is the next step beyond this; with wider industry support and participation (including the possibility of industry-wide Scheme participation), SPSA's intention is to expand its collection program as the SPSA Scheme matures (as a national scheme with diversified collection and processing streams). It is contemplated that the Taskforce authorisation will remain in place while the instore collection arrangements are transitioned to SPSA and the Taskforce completes remediation of the REDcycle stockpile.

²² The pilot program for the recommencement of an instore soft plastics collection program commenced on 7 February 2024 in 12 Victorian stores (5 Coles stores, 5 Woolworths stores and 2 ALDI stores). The Taskforce subsequently launched the pilot program in 31 stores in NSW located around Newcastle through to the Mid North Coast (26 Woolworths stores and 5 ALDI stores) on 12 August 2024. As at 4 October 2024, approximately 36 tonnes of soft plastics have been collected at participating stores across Victoria and NSW. The instore collection pilot has allowed industry participants to work together to develop solutions for the collection of soft plastics. At this stage, there is no end date for the pilot program. Woolworths also expanded the pilot program to an additional 80 stores in NSW on 25 November 2024.

Importantly, under the Taskforce authorisation, all contracts, arrangements or understandings entered into in reliance on the authorisation are required to provide for immediate termination on expiry or revocation of the authorisation, requiring short-term contracting. Conversely, SPSA plans to develop and run a competitive tender process, offering longer term contracts (eg, 6+ years) to recyclers and other Scheme delivery partners. This longer-term approach will provide greater investment certainty for recyclers, which is important in a nascent market, as well as for other partners such as collection operators and logistics providers.

It is proposed that SPSA will also take on responsibility for, and later expand on, the kerbside collection pilots currently being undertaken by the NPRS. SPSA's intention is that, with the support of government, these pilots will be expanded into long term kerbside collection arrangements in the future, including in other jurisdictions across Australia.

The key goals of the current pilots are to assess:

- community attitudes and actions relating to kerbside and other collection options;
- the feedstock potential of kerbside and other collection options;
- the operational impacts on MRFs;
- the material quality, in particular as household participation increases; and
- the incremental costs the SPSA Scheme will need to fund in the longer term.

These pilots build on the previous kerbside collection trials undertaken by the NPRS,²³ targeting a comparable group of councils to assess community behaviour, participation and material contamination over a longer period of time (eg, 12-18 months). SPSA will operate the pilots in a similar manner to the earlier trials and current NPRS pilots, where:

- Councils contact a defined group of residents, inviting them to participate in a short-term pilot.
- Residents either collect specifically designed collection bags from a nominated location or elect to have the bags posted to their homes.
- SPSA supplies the bags to the council or arranges for delivery to the participating homes.
- SPSA provides instructions to participants on how to fill the bags, close them and put them in their yellow-lid kerbside recycling bin.
- Residents place filled bags in their fortnightly recycling collection.
- The material is then sorted at the relevant MRF and sent to recyclers participating in the trial.
- SPSA reimburses the local councils, MRFs and recyclers for incremental costs incurred in the pilot.
- Surveys, bin inspections and audits are contracted to provide learnings and insights to inform subsequent pilot phases.
- High level results (de-identified and aggregated) of the pilots are shared with councils, MRFs, recyclers and state and local governments to inform recycling investors and regulators.
- Collection streams and pilots are assessed by SPSA based on feasibility and scaled up in line with soft plastic recycling capacity.

In order to transition the current activities of the Taskforce and NPRS to SPSA (which will allow SPSA to expand on these activities at a later stage), the parties will need to share operational

²³ Australian Food & Grocery Council, National Plastics Recycling Scheme: <https://www.afgc.org.au/industry-resources/national-plastics-recycling-scheme>.

information and data, such as information regarding contracts with service providers for logistics, storing, collections, processing and recycling of soft plastics as well as data on collection channel performance. Only information that is required for SPSA to consider how best to transition the current activities to SPSA and further the proposed Scheme will be shared between the parties. SPSA expects to form new agreements with service providers through the RFI and competitive tender process, however, sharing of this information would allow SPSA to commence centralised procurement planning and consider next steps for contracting processes as well as improve visibility over the proposed Scheme's expected cost structure.

It is contemplated that the contracts which the Taskforce have in place under authorisation AA1000673 would be terminated once SPSA has its own contracts in place or when that authorisation expires (as required under authorisation AA1000673). Similarly, new contracts would be entered into with NPRS program service providers, again with the contracts being shared to inform immediate next steps and a smooth transition to SPSA. SPSA is seeking interim authorisation for this conduct (see section 10 below).

When considering future soft plastics recycling trials and pilot programs, SPSA will assess the scale and breadth of coverage provided by return-to-store, container deposit sites and kerbside recycling collection, in order to provide consumers with convenient access to recycle their soft plastic at, or away from, home. These collection channels provide the potential to significantly increase the amount of soft plastic being recycled over time.

(ii) Stockpile management

Since the ACCC granted authorisation for the Taskforce to develop a stockpile remediation action plan, which included undertaking safety risk assessments and identifying safe storage, processing and transport options for stockpiled materials, the Taskforce has undertaken significant consolidation and relocation activities of stockpiled soft plastics across Australia. Approximately 11,000 tonnes of soft plastics have been relocated to secure environment protection authority and council approved facilities in New South Wales, Victoria and South Australia (as well as small volumes in WA and Tasmania). Processing of these materials is underway, with completion dates dependent on the availability and capacity of processors and offtake solutions. As at January 2025, it is expected that the vast majority of stockpiles will be processed by the end of 2025.²⁴ While substantial work has been undertaken to have the stockpiled materials processed as quickly as possible, estimated completion dates may continue to change or be extended as a result of factors outside of the Taskforce's control, including obtaining regulatory and commercial approvals, supply chain disruptions and arrangements with downstream customers / end markets.

The Taskforce will continue to manage the processing and recycling of the stockpiles until the stockpile has been remediated. However, some of the costs of remediating the stockpiles will be included in the SPSA-led Scheme. This reflects the fact that the stockpile contains soft plastic packaging from a range of grocery brands and retailers as well as from other retail channels. Additionally, the stockpiles have acted as foundational feedstock for the Scheme, providing an initial level of investment security to processors and recyclers by making a certain amount of baled feedstock available to test infrastructure, inform decisions regarding commercialisation and incentivise new entry. SPSA considers that this has accelerated the Scheme's ability to establish processing and recycling arrangements. Once operational, SPSA will then be able to provide continued and expanded volumes of soft plastics to processors and recyclers. Further detail on how some of the costs of remediating the stockpiles will be included in the Scheme is set out in section 4.3(b) below.

²⁴ As at January 2025, estimated completion dates for each of the stockpiles were as follows: Victoria: mid 2025; NSW: April 2025; South Australia: first half of 2026.

Further, as above, to assist SPSA in establishing arrangements with service providers, SPSA is seeking authorisation for the sharing of operational information and data between SPSA and the Taskforce, such as information regarding contracts with service providers for logistics, storing, collections and reprocessing of soft plastics. Only information that is required for SPSA to further the proposed Scheme will be shared between the parties.

(iii) Service providers

SPSA will contract with service providers to acquire various services, including collection, processing and recycling of soft plastics.

As suggested above, SPSA intends to:

- engage the service providers currently being used by the Taskforce and NPRS (particularly in the short term while the market is nascent, and processing capacity is coming online); and
- conduct competitive tender processes to contract collection, logistics, sortation, processing and recycling services under long term arrangements to stimulate investment confidence.

SPSA expects to appoint a range of service providers through this process, including a portfolio of processors and recyclers to deliver enhanced Scheme sustainability.

Importantly, SPSA maintains a technology-neutral stance, meaning that it is open to considering and supporting a range of technologies as they become available. This will ensure that the Scheme remains adaptable and can leverage the most effective solutions for addressing plastic waste and advancing recycling efforts.

In the longer term, service providers will be required to be accredited by a third-party traceability provider in support of the National Framework for Recycled Content Traceability, endorsed by Australia's Environment Ministers in November 2023.²⁵ This will allow transparency of recycling outcomes for Scheme Participants, councils and community members.

(b) Funding

(i) Proposed Scheme Levy

The proposed Scheme Levy will be paid by all Scheme Participants, unless they are eligible to pay the Minimum Levy.

The proposed Scheme Levy aims to:

- be an equitable basis for sharing costs across Scheme Participants, scaling proportionately to the volume of soft plastics placed on the market by Scheme Participants;²⁶
- be simple, encouraging participation in the Scheme by the broader industry;
- deliver a sustainable funding model which is scalable in line with the Scheme's proposed future activities; and
- provide transparency for all participants in the supply chain about the funding being paid to operate the Scheme.

The Scheme Levy amount (per tonne) will be determined prior to the end of each financial year by the SPSA Board. The SPSA Board reserves the right to amend the Scheme Levy at any other time deemed necessary by the Board, subject to providing Scheme Participants with a minimum of three months' written notice prior to the date when such change takes effect.

²⁵ DCCEEW, National Framework for Recycled Content Traceability (December 2023):

<https://www.dcceew.gov.au/sites/default/files/documents/national-framework-recycled-content-traceability.pdf>.

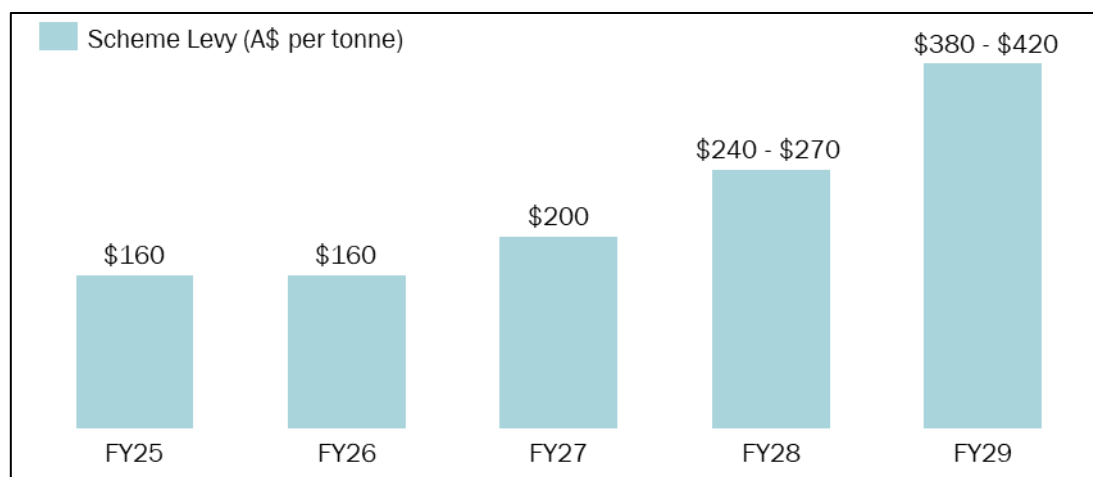
²⁶ At a high level, soft plastic packaging is 'placed on market' when it is sold to an Australian wholesaler or retailer. Disposal occurs following the intended full use of the packaging, which can then be considered 'post-consumer'.

In determining the Scheme Levy amount for a given year, the Board will have regard to the anticipated total Scheme costs for the relevant year (including the gradual payment to Woolworths and Coles for a portion of the costs incurred in remediating the REDcycle stockpile). In effect, the Board will determine the Scheme Levy by dividing the total anticipated Scheme costs for the relevant year by the total tonnes of soft plastic packaging placed on the market by Scheme Participants in the previous calendar year. This gives SPSA the ability to scale up its activities as participation in the Scheme increases and more processing capacity comes online. Importantly, as a not-for-profit, the purpose of the Scheme Levy is to cover SPSA's cost of operating the Scheme and not to deliver a profit to SPSA.

Subject to ACCC authorisation, it is proposed that the initial Scheme Levy will be \$160 per tonne of packaging placed on the market at the commencement of the Scheme (ie, from the time of ACCC authorisation) through to 30 June 2026. Dependent upon processing capacity, end markets and Scheme participation from retailer and consumer brand owners, it is estimated the Scheme Levy will rise to \$200 per tonne of soft plastic packaging placed on market from 1 July 2026 to 30 June 2027 for the second full year of operations. The additional funding will drive increased collection and recycling activity, and the stepped timeline will allow Scheme Participants to prepare for an increased levy. Estimates for FY28-FY29 are based on further recycling capacity and end markets coming online, facilitating collection growth and increased recycling activity, combined with ongoing growth in brand owner participation.

An overview of the estimated Scheme Levy during the first five years of the proposed Scheme's operations (including part of the FY25 year, subject to ACCC authorisation) is summarised in **Figure 5** below, with further information on the underlying assumptions set out in Schedule 9.

Figure 5: Estimated Scheme Levy (FY25-FY29)



Importantly, there is no duplication of the levies payable by brands and retailers, as levies are only payable by manufacturers or 'first suppliers' (a concept used in the Container Deposit Scheme). This is because Scheme Participants are required to exclude third party products from their Packaging Reports (which determine the amount of the levy payable). In short, retailers will only be liable to pay the Scheme Levy on 'own brand' products that use soft plastic packaging.

Table 1 provides an example of which entity will be responsible for paying the Scheme Levy.

Table 1: Scheme Levy liability

Entity	Entity responsible for the Scheme Levy
Proprietary brand owner (eg: Doritos)	Proprietary brand owner (eg: PepsiCo)
Retailer own brand (eg: Coles Corn chips)	Retail brand owner (eg: Coles)
Contract packer (eg: ACME chip company)	Retail brand owner who contracted manufacturing (eg: Coles)

The current Scheme Levy profile does not incorporate the proposed packaging regulation reform that is currently being considered by the Australian Government. If the proposed Scheme incorporates mandatory participation from brand owners in the future, the Scheme Levy may:

- remain in line with estimates – additional funding from Scheme Participants could be used to accelerate collections and broader implementation of the proposed Scheme, subject to processing capacity and end markets; or
- decrease – through higher Scheme participation, on a unit cost basis, the Scheme Levy paid by individual Scheme Participants would reduce, if processing capacity or end markets remain limited.

(ii) Indicative potential impact of Scheme Levy is minimal

If the Scheme Levy is passed through the supply chain, the potential levy amount compared to the cost of common food and grocery products would be minimal. The potential levy impact on a number of common household items with soft plastic packaging (at an individual product level) is summarised below.²⁷ These examples are indicative only.

Table 2 indicates the potential levy impact at \$160/tonne, being the proposed Scheme Levy at the commencement of the Scheme.

Table 2: Potential Scheme Levy impact at \$160/tonne (individual food and grocery products)

Packaging item examples	Packaging item examples – indicative price ranges	Packaging weight range	Estimated Levy per item
Small snack foods (eg, chocolate bars)	\$2-3	0-90 grams	≤1 cent
Frozen vegetables; rice; cheese; pasta	\$3-11		
Medium dry pet food (1.8kg); protective film from sectors including department and discount stores, fashion, hardware, nursery, automotive, homewares, whitegoods and electrical.	\$11-20+		
Large dry dog food bags (8-12kg); protective film from sectors including department and discount stores, fashion, hardware, nursery, automotive, homewares, whitegoods and electrical.	\$35-100+	90-180 grams	1-3 cents

Table 3 indicates the potential levy impact for certain packaging weights at \$420/tonne, being the upper end of the estimated Scheme Levy in FY29.

²⁷ For completeness, if manufacturers / brand owners choose to pass through the Scheme Levy, they may do so at a wholesale shipping carton level (ie, the Scheme Levy does not need to be passed through based on individual products). Tables 2 and 3 are simply to show the estimated Scheme Levy for certain weights of packaging compared to the cost of products that use soft plastic packaging.

Table 3: Potential Scheme Levy impact at \$420/tonne (individual food and grocery products)

Packaging item examples	Packaging item examples – indicative price ranges	Packaging weight range	Estimated Levy per item
Small snack foods (eg, chocolate bars)	\$2-3	0-90 grams	≤4 cents
Frozen vegetables; rice; cheese; pasta	\$3-11		
Medium dry pet food (1.8kg); protective film from sectors including department and discount stores, fashion, hardware, nursery, automotive, homewares, whitegoods and electrical.	\$11-20+		
Large dry dog food bags (18kgs); protective film from sectors including department and discount stores, fashion, hardware, nursery, automotive, homewares, whitegoods and electrical.	\$35-100+	90-180 grams	4-8 cents

(iii) Minimum Levy

Where the annual packaging placed on market by a relevant Scheme Participant is below a certain threshold (**Minimum Levy Threshold**), an annual minimum levy (**Minimum Levy**) will be payable instead of the Scheme Levy per tonne. At Scheme commencement, it is proposed that:

- the Minimum Levy Threshold will be less than or equal to 10 tonnes; and
- the Minimum Levy will be \$1,600.

The Minimum Levy Threshold and the amount of the Minimum Levy will be determined prior to the end of each financial year by the SPSA Board and is proposed to vary proportionately to adjustments to the Scheme Levy.

The Minimum Levy aims to simplify administration and compliance for smaller retailers and consumer brands and increase their participation in the Scheme, and therefore reduce free rider risk (see further detail below).

The Scheme Levy and Minimum Levy are referred to together as the **Levy Contributions**.

(iv) Voluntary cost pass through

Whether Scheme Participants pass on the cost of the Scheme Levy through the supply chain is voluntary and is intended to be determined independently by each Scheme Participant. Scheme Participants may choose to do so in order to more closely reflect the full cost of a product (including the cost of recycling).

There are a number of ways that the Scheme Levy could be passed through the supply chain from manufacturers to retailers transparently. For example:

- **Method 1: Scheme Levy cost included in the bill of materials.** Scheme Participants may elect to include the Scheme Levy cost in their bill of materials when periodically assessing product cost changes and setting new wholesale pricing. The new wholesale price would be included in periodic price change processes with wholesale and retail customers.
- **Method 2: Scheme Levy cost included on invoices.** The cost of the Scheme Levy could be provided on the supplier's invoice.

(v) Use of Levy Contributions

SPSA proposes to use the Levy Contributions to fund the activities of the Scheme, including those that will support gaps in the current soft plastic recycling supply chain. Key items that the Levy Contributions will fund include:

- net incremental collection, transport, sorting, processing or other direct operational costs associated with various soft plastics recycling trials and programs;
- certain management and processing costs associated with the foundational feedstock / REDcycle stockpile (see below);
- market research and development of additional processing and end markets;
- marketing and communications about the Scheme, to promote participation; and
- operations of SPSA, including finance and administration functions.

The Levy Contributions are proposed to cover a portion of the verified processing, logistics and warehousing costs associated with the foundation feedstock / REDcycle stockpile. The incorporation of these costs into the Scheme is an important aspect of effective product stewardship, acknowledging that:

- the availability of this foundation feedstock is critical in assessing and accelerating the establishment of new processing capacity, recycling arrangements and end markets for the Scheme;
- this aligns to the equitable cost sharing principle essential to product stewardship, with a large amount of the soft plastics that were part of the REDcycle stockpile originating from a range of different industry participants; and
- the knowledge and expertise acquired by the Taskforce in managing and processing the stockpiles is expected to contribute significantly to the design and accelerated implementation of the Scheme, benefiting all Scheme Participants.

SPSA acknowledges the leadership shown by the Taskforce in taking responsibility for the legacy REDcycle stockpile to date, ensuring the stockpile has been managed responsibly. Subject to ACCC authorisation, SPSA is proposing to contribute \$16 million to the estimated total soft plastics feedstock / stockpile costs (ie, costs which have been incurred by Coles and Woolworths to date through to completion of processing of the stockpiled materials). The remainder of the stockpile costs, which are currently expected to total over \$25 million, will continue to be borne by Coles and Woolworths. As above, Coles and Woolworths will continue to be liable for the soft plastics stockpiles until processing is complete.

The payment of \$16 million would be subject to one or more contractual agreements between SPSA, Coles and Woolworths. It is proposed that SPSA's contribution will be by way of set off (separately for Coles and Woolworths) and recovered over the eight-year authorisation period sought, facilitating more equitable cost sharing as participation in the Scheme increases, therefore lowering the impact of the contribution on individual Scheme Participants. As SPSA's contribution will be by way of set off, payment is conditional upon ongoing Scheme participation from each of Coles and Woolworths respectively.

(vi) Reducing free riders through levy design

There is limited incentive to act unilaterally to fund the collection, processing and recycling of soft plastics alone, especially for smaller retailers or consumer brands, which may lack the resources and capabilities to individually pursue environmentally sustainable outcomes.

Scheme Participants want to ensure that free rider issues are adequately dealt with in the design of the SPSA-led Scheme. The SPSA levy structure aims to reduce the likelihood of free riders and achieve long-term Scheme sustainability, including through the use of the Minimum Levy, auditing processes and the amortisation of Scheme establishment costs over the initial eight years of the Scheme. This is intended to minimise the administrative burden for smaller brand owners and retailers and reduce the cost burden for initial Scheme Participants, therefore encouraging early participation in the Scheme by smaller retailers and consumer brands.

(vii) Potential for eco-modulation

The intention is that, in the future, levies may be eco-modulated to incentivise design for recyclability and increased use of recycled content above any minimum thresholds, through adjustments in the levy structure (eg, discounts could be provided to Scheme Participants for packaging which meets certain design guidelines including recyclability and recycled content). This will be further considered by SPSA once the Scheme is operational.

(viii) Other funding

While the Scheme is intended to be funded primarily through the Levy Contributions, funding may also be sought from other sources such as grants from the Federal or State governments for specific projects to accelerate the Scheme's effectiveness. For example, SPSA recently received a grant from the Queensland Government to conduct a recycling pilot in Queensland.²⁸

(c) Government and stakeholder relations

(i) Government relations

SPSA has been and will continue to proactively engage with local, state and Federal governments in relation to soft plastics recycling. Among other things, this engagement is intended to ensure that the Scheme is aligned with the policies of DCCEEW, policies of state environmental protection agencies and other local council initiatives in relation to soft plastics.

Recent government initiatives and announcements in relation to soft plastics include the following:

- The Environment Ministers' Meeting communique published on 21 June 2024, which states:

States and territories noted progress on a roadmap to staged improvement in the harmonisation of kerbside collection to report back to Environment Ministers by the end of 2024. This roadmap will address a pathway and criteria to soft plastics collection that considers national design standards currently under development, different collection approaches across metropolitan, regional and remote locations and national processing capacity. The roadmap may incorporate different timelines in different jurisdictions.²⁹

The Ministers also reiterated the intention to set recycled content targets for packaging.
- The Environment Ministers' Meeting communique published on 10 December 2024, which states that the Ministers agreed in principle to a roadmap to harmonise kerbside collection systems and agreed to release a summary of the National Roadmap: Harmonising action on problematic and unnecessary plastics.³⁰
- The Victorian government releasing a state kerbside collection standard, which includes soft plastics, for consultation.³¹

²⁸ Queensland Government, Media release, 'Soft plastics recycling trial to kick off' (30 September 2024): <https://statements.qld.gov.au/statements/101539#:~:text=The%20government%20has%20committed%20%241.to%20return%20soft%20plastic%20packaging>.

²⁹ DCCEEW, Environment Ministers Meeting Communique (21 June 2024): <https://www.dcceew.gov.au/sites/default/files/documents/emm-communique-21-june-2024.pdf>.

³⁰ DCCEEW, Environment Ministers Meeting Communique (10 December 2024): <https://www.dcceew.gov.au/sites/default/files/documents/emm-communique-10-dec-2024.pdf>.

³¹ Engage Victoria, Standardising recycling at home across Victoria: <https://engage.vic.gov.au/sorting-household-recycling>.

- The Federal Government investing over \$40 million in advanced and innovative recycling technology to divert over 69,000 tonnes of soft plastics from landfills every year.³²

DCCEEW has been provided with ongoing updates about the Scheme's development, including through supply chain visits under the NPRS program, the DCCEEW Resource Recovery Reference Group and at meetings of the Soft Plastics Taskforce. Further, the Hon Tanya Plibersek MP recently encouraged SPSA to continue driving industry action on soft plastics and build on the work of the Taskforce and NPRS. Given this support, SPSA may also receive funding from government to deliver pilot programs in certain council areas. As mentioned above, the Queensland Government has already demonstrated its support for the Scheme, committing \$1 million in investment to support the roll-out of a soft plastics recycling pilot in Queensland managed by SPSA.³³

(ii) Targets and Reporting to Members

SPSA will set both annual and long-term targets for the Scheme in relation to the volume of recovered recyclable material, expanding soft plastics processing and recycling capacity and expanding the number and geographic coverage of collection points (among other targets).

Each year, SPSA will prepare and publish on its website an annual report for the Scheme over the year ending 30 June. The annual report will be published no later than 31 December each year. The annual report will include an update on the following matters (at a minimum):

- progress towards SPSA's annual targets;
- number of Scheme Participants;
- information on SPSA's recycling partners (eg, number of collectors and recyclers involved in the Scheme);
- number of collection points and geographic coverage of collection points;
- recovery and processing amounts during the preceding 12-month period (being the volume of soft plastics collected and sent to processors under the Scheme);
- total levy funds collected under the Scheme;
- a breakdown of how levy funds were spent during the relevant year; and
- an explanation of how the funds being spent are contributing to achieving the Scheme's objectives.

SPSA will also provide quarterly reporting to Scheme Participants with an update on the operations of SPSA, including the volume of packaging that has been recovered in the relevant period. These quarterly reports will be published on SPSA's website to keep Scheme Participants, stakeholders and the broader public apprised of the progress of the Scheme.

SPSA will also provide the following annual reports to Scheme Participants:

- audited financial statements for SPSA; and
- any other financial information that the Board may from time to time determine to provide.

³² DCCEEW, The Hon Tanya Plibersek, Joint media release: New soft plastic recycling technology for South Australia (July 2024): <https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-soft-plastics-recycling-nsw-gets-major-new-investment-0.>

³³ Queensland Government, Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation, The Honourable Leanne Linard, 'Soft plastics recycling trial to kick off' (30 September 2024): <https://statements.qld.gov.au/statements/101539#:~:text=The%20Miles%20Government%20is%20partnering.approaches%20to%20recycle%20the%20waste.>

(iii) Stakeholder Advisory Council

SPSA has undertaken substantial informal consultation with industry to inform the development of the Scheme, including engagement with:

- processors and recyclers, including Cleanaway, IQ Renew, Australian Paper Recycling (APR), Amcor, Sealed Air, Licella, Plastic Energy and Plastoil;
- brands and retailers including those listed as Initial Members in the application and others involved in the AFGC;
- government (local, state and federal), including through DCCEEW, Minister Plibersek, Queensland Department of Environment, Tourism, Science and Innovation, Victorian Department of Energy, Environment and Climate Action, Sustainability Victoria, Recycling Victoria, Green Industries South Australia and New South Wales Environment Protection Authority;
- various associations and organisations including APCO, the Australian Council of Recyclers (**ACOR**), the Australian Local Government authority (**ALGA**), Chemistry Australia, Australian Institute of Packaging (**AIP**), National Retailers Association (**NRA**) and Australian Retailers Association (**ARA**);
- local and global product stewardship experts including Ecosurety, Valpack, Verpack, Fost Plus, RePak, Helen Lewis consulting, RPS consulting, One Planet consulting, MRA consulting, EXPRA; and
- environmental groups, including Planet Ark and Boomerang Alliance.

To formalise industry's role in providing guidance, stakeholder insights and industry expertise to develop the Scheme, SPSA is working to establish the SAC to inform and assist SPSA fulfil its role in Australia's transition to a circular economy for soft plastics through the successful development and operation of the Scheme.

The SAC will comprise representatives from diverse stakeholder groups, including for example, processors and recyclers, government agencies, environmental NGOs, consumer representatives, brand owners, retailers, academics and independent experts. A designated director of the SPSA Board will be on the SAC with up to 12 other representatives appointed by SPSA based on their expertise, experience and stakeholder representation.

Meetings of the SAC are intended to be held no less than once every quarter. Matters that the SAC may consider include, but are not limited to, collection methods, recycling, policy and strategy, market development, stakeholder engagement and public communications and education. The aim is that the SAC will provide insights from a range of diverse and informed perspectives on substantive technical and operational challenges that SPSA may face in making the Scheme a success. To facilitate a productive and collaborative exchange of dialogue and support, SPSA may periodically seek the SAC's recommendations or feedback on specific matters, and the SAC will be encouraged to do the same.

For further information, see the SAC Charter and Terms of Reference at Schedule 6, which sets out the composition, responsibilities and operation of the SAC.

(d) Outreach and business development

As outlined above, it is intended that the Scheme will eventually have broad industry participation, across retailers and consumer brands that supply products with soft plastic packaging, to maximise the Scheme's impact and effectiveness.³⁴ Therefore, a key function of SPSA will be to actively

³⁴ SPSA aims to gain the support of as many brand owners as possible, across a range of industries including food and grocery, e-commerce, route trade, pharmacy, department stores, fashion, hardware, nursery, automotive, homewares, whitegoods and electrical.

engage with industry stakeholders which are not involved with the Scheme and to encourage them to join the Scheme as a participant. This may involve meetings with individual organisations, presentations at industry events, webinars and so on, however, joining the Scheme will remain entirely voluntary.

In addition to collaborating with industry associations through the scheme development phase, SPSA plans to reach out to SMEs via associations with SME members, including APCO, AIP, NRA and ARA.³⁵ Combined, these associations are estimated to reach over 90% of potential Scheme Participants.

SPSA will develop and circulate a variety of different forms of marketing and communications to progress the Scheme's objects. This includes developing the following:

- brand related material for the Scheme including information for prospective Scheme Participants, as well as for interactions with the various levels of government (local, state and federal);
- education and awareness material which promote the Scheme and provide details on the benefits of soft plastics recycling generally and parties who are Scheme Participants; and
- guidelines for advertising and branding associated with the Scheme.

(e) Governance and resourcing

To ensure the Scheme's success, it is proposed that SPSA will undertake a number of governance and resourcing related tasks. These include:

- appointing an experienced board, including independent directors, and executives with industry experience to guide SPSA's operational expansion, financial stability and attainment of recycling targets. SPSA is prioritising the appointment of independent directors and has commenced this process;
- ensuring that SPSA has sufficient staff to adequately operate the Scheme. This will include directly hiring staff to work for SPSA, as well as arranging for secondments from either the Initial Members or Future Members;
- preparing a forward-looking budget each financial year for the forthcoming 12-month period which details the expected costs of the Scheme and required Levy Contributions from the Scheme Participants;
- providing annual reporting to members and the public on key Scheme metrics;
- identifying, procuring and implementing appropriate banking and finance systems to, among other things, invoice Scheme Participants in relation to funding contributions, receive funding contributions from the Scheme Participants and pay any service providers that SPSA engages to complete work for the Scheme;
- carefully managing confidential information, including implementing a protocol to minimise receipt of commercially sensitive information by SPSA (including its board) appointing a third party to establish 'blackbox' arrangements for the Scheme to ensure that all confidential information provided by the Initial Members or Future Members remains confidential and is not disclosed unless in accordance with the Scheme Agreement, including reports on soft plastic packaging placed on the market by a Scheme Participant; and
- identifying, procuring and implementing appropriate technology and software systems or service providers for the Scheme including IT, HR and payroll systems.

³⁵ It has been proposed that NRA and ARA will amalgamate in early 2025.

(f) Independent review of the Scheme

The Board of SPSA will appoint an independent, external consultant to conduct a full review of the operation of the Scheme in the third and seventh year of the Scheme's operations. The review must be completed within six months and a report published on SPSA's website that covers the following (at a minimum):

- the success of the Scheme in meeting its annual targets;
- the level of industry participation in the Scheme;
- quality of data collected under the Scheme;
- financial transparency; and
- recommendations for any improvements to the Scheme's operation.

5 Proposed Conduct

5.1 Proposed Conduct

The operation of the Scheme involves conduct which may be prohibited under the CCA.

In particular, SPSA is seeking authorisation for:

- setting and imposing the Levy Contributions which may be passed on by a Scheme Participant as part of their price;
- developing, setting and imposing membership terms and conditions for Scheme Participants;
- agreements between SPSA and the Taskforce or the AFGC (as required) to allow SPSA to take over and expand on the instore collection program being run by the Taskforce and the NPRS kerbside collection pilots being run by the AFGC, including transferring arrangements with service providers to SPSA;
- the sharing of operational information and data between SPSA and the Taskforce or the AFGC (as required) to facilitate SPSA's operations, including to transfer the arrangements for the Taskforce instore collection program and NPRS kerbside collection pilots to SPSA; and
- arranging for and acquiring services including entering into contracts for the collection, sortation, processing and recycling of used soft plastics and any other associated third-party logistics services,

(collectively, the **Proposed Conduct**).

The Proposed Conduct:

- does not prevent any individual Scheme Participant from exploring or developing soft plastics recycling capabilities in their own right;
- is not compulsory, and any Scheme Participant can opt out of any proposed collaboration the subject of this application;
- does not involve any agreements on the price or supply of retail products or services sold by any of the Scheme Participants. Whether or not Scheme Participants pass on the Scheme Levy is voluntary and is intended to be determined independently by each Scheme Participant;
- could only have a minimal impact on the cost of products that use soft plastic packaging if members choose to pass on the cost of the Scheme Levy; and

- is required to provide the certainty in demand for soft plastics recycling that is necessary to develop end markets in Australia and assist existing government efforts to overcome the current market failure.

5.2 Relevant provisions of the CCA which might apply to the Scheme

In the absence of authorisation, the Proposed Conduct risks giving rise to contraventions of the CCA, including provisions of the CCA relating to:

- cartel conduct (Division 1 of Part IV), in that it may involve contracts, arrangements or understandings containing provisions which have the purpose or effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price or a discount, allowance, rebate or credit in relation to goods or services supplied, acquired or likely to be supplied or acquired by the parties (eg, setting and imposing the Levy Contributions);
- cartel conduct (Division 1 of Part IV), in that it may involve contracts, arrangements or understandings containing provisions which have the purpose of preventing, restricting or limiting the acquisition or supply or likely acquisition or supply of goods or services by the parties (ss 45AD(2), 45AD(3), 45AF, 45AG, 45AJ, and 45AK of the CCA); or
- contracts, arrangements, understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1) and 47(1) of the CCA).

5.3 Term of authorisation sought

SPSA seeks authorisation for the Proposed Conduct for an initial period of eight years from the date of a final determination by the ACCC. This period is necessary to allow SPSA to enter into processing and recycling contracts with a sufficiently long term (five to eight years minimum) to provide investment confidence to processors and lower the cost implications for the community by providing a sufficient period in which processors can amortise infrastructure establishment costs (usually a minimum period of 8-10 years for a given asset). SPSA will require an initial period to develop and operate competitive tender processes, including an RFI / RFP process.

SPSA believes this will allow time for regulatory approvals, construction and commissioning of infrastructure, noting that chemical recycling design and construction requires approximately three to four years prior to operations.

An eight-year authorisation will also allow for:

- longer arrangements for kerbside and other collection channels, which may be preferable to councils and the wider waste management sector;
- SPSA to demonstrate a long term focus for the proposed Scheme, providing confidence to industry and consumers around the Scheme's longevity and future outlook; and
- SPSA to make a contribution to the REDcycle stockpile costs, based on the principle of equitable cost sharing and the benefit to the Scheme, without unduly burdening early Scheme Participants.

If government regulation occurs within this term and affects the Scheme, SPSA may seek to revoke or vary the authorisation as appropriate.

6 Persons who may be directly impacted by the Proposed Conduct

The persons who may be directly impacted by the Proposed Conduct include:

- consumers wishing to recycle their soft plastics;

- retailers and brands that supply products with soft plastics packaging;
- entities which collect, process and recycle soft plastic packaging;
- local councils that facilitate recycling collection services, including local councils to be involved in any trials or pilots conducted by the Scheme; and
- industry groups which may be or become involved in the Scheme or contribute to the Scheme from time to time.

As set out in section 3.2 above, the Scheme will also be complemented by actions from governments responsible for policy settings and funding for industry development.

7 Counterfactual

While Scheme Participants have been able to take some steps to date, including through the NPRS trials and work of the Taskforce, the proposed Scheme would enable cross-industry collaboration and is likely to result in greater impetus for industry to address soft plastics recycling.

In the absence of the Proposed Conduct, 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. In particular, the Scheme Participants as a group would not be able to agree a levy to enable funding of the Scheme collectively or acquire processing and recycling services, which would result in the Scheme not proceeding.

Further, concerns about competition law risks may discourage some Scheme Participants from participating in the establishment of the Scheme at all or alternatively, if the Scheme proceeded, it would work in a substantially less effective and timely manner than if Scheme Participants were permitted to engage in the coordination as outlined in this application.

8 Public benefit

Notwithstanding the efforts of the community, government and industry to reduce the use of soft plastics, there is still a significant amount of soft plastics used in Australia, most of which will go to landfill if they are not recycled.

As described above, packaging is essential to the storage, preservation and transportation of consumer goods. It helps maintain the quality and safety of food, personal care, and home care products and can help maintain freshness, extend shelf life and reduce food waste. Packaging is also used to provide important consumer information, including product descriptions, origin information and instructions for safe use and disposal. Manufacturers often prefer using soft plastic packaging for its barrier properties, strength, versatility and lightweight nature.

REDcycle was the primary recycling program for soft plastics in Australia. The suspension of the REDcycle program in early November 2022 removed this established recycling pathway for local communities and created significant community concern about existing stockpiles and how they can recycle soft plastics going forward. As discussed above, while some households in specific local government areas have access to soft plastic recycling in their local area, collection systems are not available to most Australian households. SPSA and the Initial Members submit that the Proposed Conduct will give rise to significant public benefits, including:

- creating environmental benefits;
- fostering industry development, increasing innovation and stimulating end markets for recycling of soft plastics in Australia;
- creating jobs;
- developing solutions in a more timely and effective manner;

- increasing community awareness through marketing and education;
- achieving buy in from small retailers and consumer brands to maximise Scheme impact;
- supporting government policies and targets; and
- aligning with international developments.

8.1 Creating environmental benefits

As set out in Section 3 above, in FY 2022-23, only 19% of the total amount of plastic packaging placed on market in Australia was recovered for conversion into reusable material, with the recovery rate for flexible plastic packaging being only 6%.

The majority of Australians (91%) agree that they are concerned about the environmental impact of packaging,³⁶ with 81% of Australians believing that businesses that produce and/or use plastic packaging are responsible for reducing plastic waste.³⁷

The Scheme will result in environmental benefits by:

- helping reduce the amount of soft plastic packaging going to landfills;
- facilitating the transformation of soft plastics into new products, which contributes to:
 - conservation of resources (including conserving virgin and finite resources). Plastic is usually made from non-renewable resources, such as oil and natural gas. Recycling soft plastic packaging means they are reused rather than extracting more resources from the earth; and
 - reduction in pollution. Producing new plastics involves processes that release pollutants into the air and water. Recycling helps reduce the demand for new plastics and therefore mitigates such pollution; and
- helping reduce plastic litter and pollution, including through increased recycling rates and the use of 'bag in bin' recycling processes, which prevent litter from becoming windblown when being tipped into recycling trucks or at landfills and from going into waterways or oceans.³⁸

8.2 Fostering industry development, driving innovation and stimulating end markets for recycled soft plastics in Australia

APCO has found that, to date, an effective market for recycled plastic packaging has failed to form due to 'poor enabling components and investment certainty for both producers and users of recycled material'³⁹ and that \$810 million in investment is required to achieve the infrastructure needs associated with achieving National Packaging Target 2 for 70% of plastic packaging to be recycled or composted.⁴⁰ The Australian Government has also acknowledged that a lack of end markets is a key barrier to investment in recycling infrastructure, with virgin plastic cheaper to use than recycled plastic.⁴¹

³⁶ Pact Group, 'End of Waste: A White Paper' (2021), page 6: https://pactgroup.com/wp-content/uploads/2021/08/Pact-End-of-Waste_A-White-Paper.pdf.

³⁷ L Anderson and N Gbor, The Australia Institute, 'Plastic Waste in Australia and the recycling greenwash' (January 2024), page 2. Report available at: <https://australiainstitute.org.au/report/plastic-waste-in-australia/>.

³⁸ This is particularly important given over 800 animal species are already known to be affected by marine debris. See Secretariat of the Convention on Biological Diversity, 'Marine Debris: Understanding, Preventing and Mitigating the Significant Adverse Impacts on Marine and Coastal Biodiversity', Convention on Biological Diversity Technical Series No. 83 (2016): <https://www.cbd.int/doc/publications/cbd-ts-83-en.pdf>.

³⁹ APCO, Review of the 2025 National Packaging Targets: Final Report (April 2023), page 8:

<https://documents.packagingcovenant.org.au/public-documents/Review%20of%20the%202025%20National%20Packaging%20Targets>.

⁴⁰ APCO, '2030 Strategic Plan' (15 August 2024), page 14: <https://documents.packagingcovenant.org.au/public-documents/2030%20Strategic%20Plan>.

⁴¹ DCCEEW, 'Reform of Packaging Regulation: Consultation paper': https://storage.googleapis.com/files-au-climate/climate-au/prj309de1e89171c2b4c52be/page/Reform_of_Packaging_Regulation_Consultation_paper.pdf.

In terms of soft plastic packaging, the primary market failure is the high cost of collecting, processing and recycling mixed consumer soft plastics, which exceed the value of the recovered materials. As a result, there is no financial incentive for local councils, commercial waste management companies, MRF operators or re-processors to collect, process and recycle these materials or invest in the development of relevant technologies. As such, processing and recycling infrastructure and end markets for soft plastics recycling are still in their infancy in Australia.

The Scheme will allow for the ongoing collaboration and cooperation between all relevant stakeholders that is necessary to support the recycling of soft plastics and growth and continuity of demand for recycled products. This is because the Scheme will provide:

- **Increased soft plastics collection and recycling services.** As set out above in section 4.3 above, the Scheme aims to expand on the kerbside trials run by the NPRS as well as the work of the Taskforce to (i) progress remediation of the stockpiled materials from the suspension of the REDcycle program, and (ii) develop the instore soft plastics collection program that is currently being progressed by the Taskforce. As above, when considering future soft plastics recycling trials and pilot programs, SPSA will assess the scale and breadth of coverage provided by return-to-store, container deposit sites and kerbside recycling collection, in order to provide consumers with convenient access to recycle their soft plastic at, or away from, home.

By establishing systems that can provide a significant volume of soft plastics, as well as certainty in the volume of soft plastics that the Scheme will be able to provide to processors and recyclers, the Scheme will underpin and accelerate further recycling and processing capacity coming online and support new entrants to the market.

As an example of how the Scheme is necessary to increase processing and recycling capacity, in April 2024, Viva Energy and Cleanaway announced that they had entered into an agreement to undertake a prefeasibility assessment of a circular solution for soft plastics and other hard-to-recycle plastics currently sent to landfill. The announcement for this project acknowledged that *'Implementation of the packaging reform with mandatory obligations and a product-stewardship scheme for soft plastics are critical to enable this investment'*.⁴² Other industry players have expressed similar sentiments to SPSA.

- **Incentives for increased innovation in soft plastics recycling.** The Scheme will likely drive innovation in relation to the recycling of household soft plastics, as it will facilitate:
 - the collection of increased volumes of soft plastics, which will render increased investment in innovation by processing and recycling companies more worthwhile, including to achieve economies of scale;
 - the collection of accurate, industry-wide data, which (when aggregated) can be used to provide investment certainty for processing and recycling companies; and
 - market research and development in relation to soft plastics recycling, including to identify and develop markets for end-of-life products.
- **A pathway to increase recyclability and recycled content of packaging and phase out problematic packaging components.** Through the collaboration facilitated by the Scheme, processors of soft plastic will be able to communicate requirements to packaging suppliers and brand owners to fast-track the phase out of problematic and nonrecyclable packaging components.

⁴² Cleanaway, Viva Energy and Cleanaway team up to address hard-to-recycle plastic waste (15 April 2024): <https://www.cleanaway.com.au/sustainable-future/viva-energy-cleanaway-trial/>.

SPSA will also consider labelling to indicate support for the Scheme, such as the use of the Australasian Recycling Label (see further detail at Section 8.5 below), and complement any recyclability, recycled content and labelling standards ultimately adopted by the Federal Government as part of the packaging reforms it is currently considering.⁴³

In the future, eco-modulation of the Scheme Levy may be used to incentivise more sustainable packaging alternatives with increased recyclability and recycled content (ie, through discounts to be provided for packaging meeting certain design guidelines).

This could include the following types of incentives:

- eco-modulation for recyclability using the APCO or CEFLEX guidelines;⁴⁴ or
- eco-modulation for post-consumer recycled content to incentivise higher levels of recycled content as the availability of post-consumer recyclables increases.

In this way, eco-modulation of the Scheme Levy could stimulate end markets for recycled soft plastics.

Eco-modulation of the Scheme Levy would also assist in preparing industry for any mandatory regulation of packaging design and minimum recycled content standards. This will further drive the demand for post-consumer recyclables.

Accordingly, the Scheme will provide market certainty to grow Australia's domestic capability for processing and recycling soft plastics, support new entrants to the market, deliver incentives for substantial investment and innovation by industry and stimulate end markets for recycled soft plastics.

8.3 Creating jobs

The Scheme will encourage strong job creation through the development of end markets for soft plastics recycling in Australia. There is clear evidence that recycling materials such as soft plastics creates substantially more jobs than if those materials are disposed of in landfill. In this regard, a report commissioned by the Department of the Environment, Water, Heritage and the Arts (now DCCEEW) found that the estimated direct Full Time Equivalent (FTE) employment per 10 000 tonnes of waste is 9.2 for recycling, compared with just 2.8 for landfill disposal.⁴⁵ The strong level of job creation from increased recycling was recently acknowledged by Minister Plibersek in support of Federal Government investment in new recycling projects through the Recycling Modernisation Fund.⁴⁶

The types of jobs that are likely to be created include:

- construction and engineering positions to build new recycling collection systems (including advanced recycling facilities) and to upgrade existing MRFs;
- roles to operate and maintain new and upgraded recycling facilities; and
- research and development positions which focus on how to effectively utilise recycled soft plastics.

⁴³ DCCEEW, 'Reform of Packaging Regulation': <https://consult.dcceew.gov.au/reform-of-packaging-regulation>.

⁴⁴ CEFLEX is a collaborative initiative of a European consortium of companies representing various parts of the flexible packaging value chain. The initiative is committed to avoiding waste and pollution by redesigning consumer flexible packaging and ensuring appropriate collection and recycling infrastructure in all European countries. See: CEFLEX, 'About CEFLEX': <https://guidelines.ceflex.eu/about-ceflex/>.

⁴⁵ DCCEEW, Employment in waste management and recycling (2009):

<https://www.dcceew.gov.au/environment/protection/waste/publications/employment-waste-management-and-recycling>.

⁴⁶ In support of investment in six new recycling projects in Victoria, Minister Plibersek stated: 'This is great for the environment, but it's also great for the Victorian economy. For every job in landfill, there are 3 jobs in recycling'. See The Hon Tanya Plibersek MP, Joint media release: Six new projects to increase Victoria's recycling capacity (5 March 2024):

<https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-six-new-projects-increase-victorias-recycling-capacity>.

8.4 Developing solutions in a more timely and effective manner

The Scheme is likely to develop solutions to soft plastics recycling in a more timely and efficient manner than if the Scheme Participants were required to act independently. This is because:

- there is limited incentive to act unilaterally to fund the collection and processing of soft plastics, as this would result in a competitive disadvantage due to increased cost;
- there are complex and multi-faceted challenges in relation to soft plastics recycling in Australia, which no individual Scheme Participant can solve alone; and
- the availability of increased and consolidated volumes of soft plastics collected through the Scheme will provide the investment certainty required to encourage processing and recycling capacity to come online more quickly than if Scheme Participants were to provide these volumes independently.

As recognised in APCO's review of the 2025 NPTs (see Sections 3 and 8.2 above), this kind of collaborative and urgent action is required to address market failures and overcome barriers to progress.

8.5 Increasing community awareness about soft plastics recycling and alleviating concern about legacy stockpiles

Consumer knowledge around recycling remains a major issue; 28% of Australians find recycling confusing and 40% want clearer product labelling.⁴⁷

The Scheme will result in increased community awareness regarding the benefits of soft plastics recycling and how to recycle soft plastics, which will in turn increase levels of soft plastics recycling. This is because:

- the Levy Contributions will fund marketing and education for consumers, which will lead to increased public awareness of:
 - how to recycle soft plastics, through participation in the Scheme; and
 - the importance of recycling soft plastics and the environmental benefits of recycling soft plastic packaging.
- SPSA will consider labelling to indicate support for the Scheme, including support for the use of the Australasian Recycling Label (**ARL**), which is a voluntary label available to APCO members. The ARL provides consumers with easy-to-understand instructions on how to dispose of all parts of packaging. The ARL educates consumers and reduces contamination in the recycling stream and has been acknowledged in the National Waste Policy Action Plan and National Plastics Plan as a key action to improve consumer awareness and recycling rates.⁴⁸ In particular, the Scheme will support the use of the 'Check Locally' logo for soft plastic packaging (**Soft Plastics ARL**), which APCO launched in July 2023. The Soft Plastics ARL informs consumers of locations where they can recycle soft plastic packaging within their council area. It is envisaged that all brands using the Soft Plastics ARL would remain participants of APCO. This will reduce cost impacts and transition time of relabelling that could potentially cost industry significant amounts.

The Scheme's activities will also assist in alleviating community concern about the stockpiles and the suspension of the REDcycle program. In particular, by facilitating collaboration across the packaging supply chain, SPSA will instil greater confidence in the community that the REDcycle legacy stockpile is being managed appropriately. Collaboration by the Scheme Participants will facilitate

⁴⁷ Cleanaway Waste Management, 'Recycling Behaviours Report 2024' (May 2024):

https://cleanaway2stor.blob.core.windows.net/cleanaway2-blob-container/2024/05/CWY_RBR2024_Report_7MAY2024-FINAL.pdf.

⁴⁸ Australasian Recycling Label, 'About the Australasian Recycling Label (ARL) Program': <https://arl.org.au/about>.

clear and consistent messaging to the public and other stakeholders such as local councils and environmental organisations about the steps being taken after the suspension of REDcycle's program.

8.6 Achieving buy in from small retailers and consumer brands to maximise Scheme impact

There is limited incentive to act unilaterally to fund the collection, processing and recycling of household soft plastics alone, especially for smaller retailers or consumer brands, which may lack the resources and capabilities to individually pursue environmentally sustainable outcomes.

Having a coordinated, collective approach to address soft plastics recycling through the Scheme is likely to generate efficiencies through economies of scale, which would encourage buy in from smaller retailers and consumer brands. This will maximise the Scheme's impact and effectiveness by further contributing to the scale of soft plastics required to drive investment by processors and recyclers.

In addition, the use of the Minimum Levy and the potential for eco-modulation in the future encourages buy in from small retailers and consumer brands and has the potential to increase the uptake of recyclability and recycled content standards across the industry.

8.7 Supporting government policies, actions and targets

As outlined in Section 3 above, the Federal Government has demonstrated a clear intent to improve waste recovery for soft plastics across Australia.

The SPSA-led Scheme would align with this intent and support the various government policies and actions targeting the recycling of soft plastics. In particular, the SPSA-led Scheme would support the National Packaging Targets, National Waste Policy Action Plan, National Plastics Plan, global treaty on plastic pollution and further initiatives being developed by Australia's Environment Ministers as well as government investment in industry-led initiatives to divert soft plastics from landfill, including through the Recycling Modernisation Fund. Further detail on how the SPSA-led Scheme would support these initiatives is set out in Schedule 6.

Additionally, as set out at section 3.2 above, the proposed SPSA-led Scheme could operate within each of the Federal Government's proposed packaging reform options. Further detail is set out in Schedule 8.

8.8 Aligning with international developments

The Scheme would help to align Australia with measures implemented in other jurisdictions to improve recycling and recovery of soft plastics, including:

- Flexible Plastic Fund FlexCollect (**FPF FlexCollect**) (United Kingdom). FPF FlexCollect is a three-year project investigating the best way to incorporate flexibles into existing collection services ahead of the introduction of mandatory kerbside collection of soft plastics by 2027. The project is trialling both retail collections and bag in bin kerbside collections.⁴⁹ It is managed by a consortium comprising government and various industry participants.⁵⁰
- The Love NZ Soft Plastic Recycling Scheme (New Zealand): This scheme is a government accredited voluntary product stewardship program run by The Packaging Forum.⁵¹ The Love NZ Scheme is supported by brand levies. It initially commenced a return to store program

⁴⁹ Flexible Plastic Fund, Household collections with FPF FlexCollect: <https://flexibleplasticfund.org.uk/flexcollect>.

⁵⁰ These industry participants include EcoSurety (one of the largest packaging producer responsibility organisations in the UK), the Flexible Plastic Fund, Recoup, Suez, UK Research and Innovation, Wrap and Zero Waste Scotland.

⁵¹ The Packaging Forum, Soft Plastics Recycling Programme: <https://www.packagingforum.org.nz/soft-plastics-recycling-programme/>.

and recently commenced trials for bag in bin kerbside collections with local councils and receiving sorting facilities.⁵²

The Scheme could provide a springboard for any government mandated scheme in Australia in the future, similar to those which operate in other jurisdictions. For example:

- The Netherlands has a legislated mandatory scheme for all packaging placed on market, which is managed by a co-regulatory industry board and an entity contracted by the national government (Verpact).⁵³ The Netherlands has some of the highest recovery, recycling and recycled content rates in the world, and the scheme provides for strong traceability, reporting and disclosure and alignment to national government targets.⁵⁴
- Similar to the Netherlands, Belgium has two legislated mandatory schemes: Fost Plus (for business-to-consumer packaging) and Valipak (for business-to-business packaging). As in the Netherlands, Belgium also has world-leading recovery, recycling and recycled content rates as well as strong traceability, reporting and disclosure and purpose alignment to national government targets. Fost Plus also invested in major upgrades and new sorting facilities to match the increase in collection recovery with sorting and recycling capacity.

9 Public detriments

SPSA and the Initial Members submit that the Proposed Conduct will result in a significant net public benefit and is unlikely to result in any significant public detriments for the following reasons:

- The Proposed Conduct does not prevent any individual Scheme Participant from exploring or developing soft plastics recycling capabilities in their own right.
- The Proposed Conduct will not detract from or adversely impact the development of other soft plastics recycling solutions such as:
 - the proposed inclusion of soft plastics in kerbside recycling bins under new standards being developed by the Victorian Government. In June 2024, the Victorian Government announced that it would be standardising household waste and recycling services across the state, implementing a four-stream system with soft plastics being included in the proposed standards.⁵⁵
 - action by APCO to convene a Flexible Plastics Materials Stewardship Committee, which is intended to play 'a convening and advisory role...to identify and deliver legitimate and sustainable pathways to effective flexible packaging recycling and circularity',⁵⁶ or
 - Increased kerbside recycling by local councils or the development of additional soft plastics recycling capacity.

The Scheme will be developed alongside these other soft plastics recycling initiatives and will not prevent other initiatives progressing simultaneously, with the potential for a wider co-regulatory scheme to be established in the future.

⁵² Nelson City Council, Packaging Forum Soft Plastics Kerbside Collection Trial: <https://www.nelson.govt.nz/services/rethink-waste/recycle/packaging-forum-soft-plastics-kerbside-collection-trial/>.

⁵³ Verpact, We are Verpact: <https://www.verpact.nl/nl/wij-zijn-verpact>.

⁵⁴ Expra, Afvalfonds/KIDV (THE NETHERLANDS) Update 2023 KIDV Recycle Check Flexible Plastic Packaging (3 September 2023): <https://expra.eu/2023/09/03/afvalfonds-kidv-the-netherlands-update-2023-kidv-recycle-check-flexible-plastic-packaging/#:~:text=The%20sorting%20processes%20have%20been,adjusted%20in%20the%202023%20version>.

⁵⁵ Victorian Government, 'Standardising household recycling across Victoria' (18 June 2024): <https://www.vic.gov.au/Standardising-household-recycling-across-Victoria>. See also The Hon Jacinta Allan MP, 'Rolling Out Nation-First Recycling Reform' (29 September 2022): <https://www.premier.vic.gov.au/rolling-out-nation-first-recycling-reform>.

⁵⁶ See Flexible Plastic Packaging Materials Stewardship Committee Charter: <https://documents.packagingcovenant.org.au/other-public-documents/Flexible+Plastic+Packaging+MSC+Committee+Charter>.

- The Proposed Conduct is not compulsory, and any Scheme Participant can opt out of any proposed collaboration the subject of this application.
- The Proposed Conduct does not involve any agreements on the price or supply of retail products or services sold by any of the Scheme Participants. As above, whether or not Scheme Participants pass on the Scheme Levy is voluntary and is intended to be determined independently by each Scheme Participant.
- If Scheme Participants choose to pass on the cost of the Scheme Levy, the potential levy impact compared to the cost of products that use soft plastic packaging would be minimal. The proposed Scheme Levy at commencement is \$160 per tonne of soft plastics placed on the market in the first year of operations. For packaging on many consumer food and grocery products (where packaging is 90 grams or less), this represents a potential impact of less than 1 cent. Further, even if the Scheme Levy is passed on to consumers, this is likely to lead to greater efficiency as consumers will pay closer attention to the full social cost of products supplied with soft plastic packaging and therefore more resources will be allocated to its recycling.
- It is proposed that the Scheme will appoint suppliers to provide services, including soft plastics collection, processing and recycling. This will involve acquisition of services which may otherwise be acquired individually by some Scheme Participants and may result in the appointment of a limited number of suppliers. However, to date, the market for processing and recycling soft plastics has struggled to develop and without this joint acquisition it is not likely that the services would be acquired by the Scheme Participants on an individual basis or that individual Scheme Participants would be able to provide sufficient volume to warrant investment by suppliers.

In these circumstances, there is little room for detriment to arise.

10 Urgent interim authorisation

SPSA and the Initial Members seek urgent interim authorisation to:

- transfer the arrangements that the AFGC has in place with councils, MRFs and recyclers to allow SPSA to manage the small-scale kerbside pilots currently run under the NPRS in NSW, Victoria and South Australia. The AFGC has communicated to SPSA that it does not want to continue managing the pilots and would like SPSA to take them over so there is continuity. The AFGC was not anticipating having to run the NPRS pilots beyond 2024. If interim authorisation is not granted to allow these arrangements to be transferred from the AFGC to SPSA, there is a concern that these pilots may cease until SPSA can take them over, which may diminish the positive momentum built to date in understanding consumer behaviour in engaging with household soft plastics recycling, and will adversely impact the development of the Scheme as the data and insights collected through the pilots will be incomplete, which will diminish their overall value and SPSA's ability to leverage them for future operations. If SPSA is granted interim authorisation to take over the pilots, the learnings from these pilots will inform ongoing government priorities such as the development of a soft plastics roadmap, federal kerbside harmonisation, federal packaging design standards, the Recycling Modernisation Fund and Victorian kerbside standards, by:
 - assessing community soft plastic collection preferences and behaviours;
 - assessing community participation and tonnage collected per collection option;
 - assessing remote and regional community collection options;

- assessing impacts on the supply chain, including potential contamination of other materials;
 - enabling the development of a roadmap matching collection, sortation, recycling and end market demand to minimise the risk of stockpiling or underutilised recycling infrastructure; and
 - informing government of optimal soft plastic collection methods and infrastructure requirements.
- establish and collect the initial Scheme Levy and Minimum Levy. To date, SPSA has been supported by voluntary contributions from a small subset of brands and retailers. Interim authorisation to establish and collect the levy is important to ensure the Scheme's ongoing financial viability and for SPSA to be able to increase its potential member base, funding, operations and environmental outcomes. It is difficult for SPSA to recruit further members without the levy in place, creating an unfair burden on the initial scheme supporters that is not sustainable, with significant costs involved in Scheme establishment activities. If granted, interim authorisation to establish and collect the levy would allow SPSA to commence operations more quickly which is important to provide investment certainty to soft plastics processors and recyclers, enable the acceleration of future expanded collections, processing and recycling and realise the public benefits listed in section 8 above sooner. A key factor in the continued and expanded operation of soft plastics recycling infrastructure is SPSA being able to provide ongoing volumes from an early stage.

If the ACCC ultimately did not grant authorisation, the levy collections could cease.

SPSA and the Initial Members request that the ACCC consider expanding any grant of interim authorisation at the draft determination stage, once the ACCC has had more time to conduct its analysis, to include:

- SPSA issuing a RFI and, subsequently, RFP to third-party collection, processing and recycling service providers and negotiating potential contracts for these services. This will enable SPSA to formally assess the industry's processing and recycling capacity and preferred operating models, ensure the proposed Scheme engages with the supply chain in the most appropriate manner, and inform SPSA's next steps to progress the establishment of the Scheme. SPSA considers that limited (if any) anti-competitive detriment would arise from this conduct, as it would only involve SPSA receiving and analysing information from the market and considering the terms on which contracts might be awarded. Execution of any final agreements with service providers under this process would not occur until final authorisation; and
- sharing of operational information and data between SPSA and the Taskforce to allow SPSA to prepare to take over the operation of the instore collection pilot program and expand on these pilots. In particular, SPSA would require information regarding contracts between the Taskforce and service providers for logistics, storing, collections, reprocessing and end markets of soft plastics so that SPSA can consider how arrangements with service providers could be transitioned if final authorisation is received. Only information that is required for SPSA to consider how best to transition the current activities to SPSA and further the proposed Scheme will be shared between the parties. Sharing of this information would allow SPSA to commence centralised procurement planning and consider next steps for contracting processes as well as improve visibility over the proposed Scheme's expected cost structure. SPSA considers that once it can take over these pilots it will be able to accelerate the expansion of the program, as the cost will be shared by industry. This would

result in increased community access to collection points, reduced landfill and increased feedstock availability and recycling.

If interim authorisation is granted, SPSA considers that:

- as the Scheme is voluntary, other industry participants may choose whether or not to participate in the Scheme; and
- in terms of any potential impact on the Scheme Participants' products and customers, it is up to Scheme Participants as to whether they pass on the cost of the Scheme Levy. Further, the Scheme Levy is modest, and any minimal increase in price would better reflect the full social cost of products supplied with soft plastic packaging.

11 Relevant market participants

See Schedule 2.

12 Declaration by applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Barry Cosier

Interim Co-CEO, Soft Plastic Stewardship Australia Limited

18 March 2025



Dee Milosevic

Interim Co-CEO, Soft Plastic Stewardship Australia Limited

18 March 2025

Schedule 1: Contact details for Initial Members

Name, ACN, address (registered office) and telephone number	Contact person's name, position, telephone number and email address	Description of business activities
<p>ALDI Foods Pty Limited (ACN 086 210 139)</p> <p>Locked Bag 56 St Marys Delivery Centre, NSW 2760 13 25 34</p>		Acquisition and retail supply of retail products through supermarkets.
<p>Coles Group Limited (ACN 004 089 936) and its related bodies corporate</p> <p>800 Toorak Road Hawthorn East, VIC 3123 (03) 9829 5111</p>		Acquisition and retail supply of retail products through supermarkets, liquor and convenience outlets and online.
<p>Woolworths Group Limited (ACN 000 014 675) and its related bodies corporate</p> <p>1 Woolworths Way Bella Vista, NSW 2153 (02) 8885 0000</p>		Acquisition and retail supply of retail products through supermarkets, convenience outlets and online.
<p>Nestlé Australia Ltd (ACN 000 011 316)</p> <p>Building D, 1 Homebush Bay Drive Rhodes NSW 2138 (02) 8756 2000</p>		Food, beverage and pet food manufacturer.
<p>Mars Australia Pty Ltd (ACN 008 454 313)</p> <p>1 Petcare Place Wodonga VIC 3690</p>		Food and pet food manufacturer.
<p>McCormick Foods Australia Pty Ltd (ACN 004 763 259)</p> <p>71 Fairbank Road Clayton South VIC 3169</p>		Food company that manufactures spices, seasoning mixes, condiments and other flavouring products.

Schedule 2: Contact details for interested parties**Table 1: Market participants – soft plastics manufacturers, processors and recyclers**

Contact details for the entities which manufacture, process and recycle soft plastics are provided below.

Name, ABN, address (registered office) and telephone number	Contact person's name, position, telephone number and email address	Description of business activities
<p>Amcor (ABN: 62 000 017 372) Level 11, 60 City Road, Southbank VIC 3006 (03) 9226 9000</p>		<p>Plastic packaging manufacturer focused on developing and producing responsible packaging for food, beverage, pharmaceutical, medical, home and personal-care and other products.</p>
<p>APR Plastics Pty Ltd (ABN: 75 654 365 536) 1-7 Villas Road, Dandenong South VIC 3175</p>		<p>Provider of recycling solutions for soft plastics including plastic to oil processing, soft plastic collections, and repurposing into builder's film.</p>
<p>Cleanaway Operations Pty Ltd (ABN: 40 010 745 383) Level 4, 441 St Kilda Road, Melbourne VIC 3004</p>		<p>Leading waste management and resource recovery company, and an active participant in NPRS trials. JV partner with Viva Energy on feasibility study to construct a chemical recycling facility in Geelong.</p>
<p>iQRenew Pty Ltd (ABN: 57 622 865 365) 13 Lucca Road, Wyong NSW 2259 (02) 9119 4950</p>		<p>Recycling group conducting various activities, including an advanced mechanical recycling plant for soft plastics. iQRenew has made significant investments in developing a commercial-scale research and development facility and commissioned the Soft Plastic Engineered Commodity (SPEC) facility based on the mid-north coast of NSW in 2024, which is capable of recycling soft plastics into high-quality plastic flakes and pellets.</p>
<p>Licella (ABN: 28 129 936 063) 7/140 Arthur St, North Sydney NSW 2060 (02) 9119 6050</p>		<p>Biotechnology company specialising in advanced recycling solutions using its Catalytic Hydrothermal Reactor (Cat-HTR) technology.</p>

Name, ABN, address (registered office) and telephone number	Contact person's name, position, telephone number and email address	Description of business activities
<p>PreOne (ABN: 39 669 481 190) 1800 773 663</p>		<p>Company specialising in advanced recycling technologies.</p> <p>In July 2024, PreOne partnered with Recycling Plastics Australia to establish a new processing facility in Kilburn, South Australia.</p>
<p>RecycleSmart www.recyclesmart.com</p>		<p>Technology platform which provides collection options to business and consumers for hard to recycle products, including soft plastics.</p>
<p>Repeat Plastics Australia (ABN: 86 096 146 342) 15 Buontempo Road, Carrum Downs VIC 3201 1800 737 527</p>		<p>Australian recycled plastic products manufacturer.</p>
<p>Viva Energy (ABN: 46 004 610 459) Level 16, 720 Bourke Street, Docklands VIC 3008 (03) 8823 4444</p>		<p>Manufacturer of polypropylene, a base material used to produce plastic products, and major importer of polyolefins and solutions.</p> <p>JV partner with Cleanaway on feasibility study to construct a chemical recycling facility in Geelong.</p>
<p>3RG Recycling Pty Ltd (ABN: 77 667 029 021) 44 Aquarium Avenue, Hemmant QLD 4174</p>		<p>Australian company within a global recycling group, specialising in the recycling of soft plastics, glass and solar panels.</p>

Table 2: Other interested parties

Name, ABN, address (registered office) and telephone number	Contact person's name, position, organisation, telephone number and email address	Description of business activities
Brands		
<p>Essity Australasia (ABN: 55 005 442 375) 30-32 Westall Road, Springvale VIC 3171 1300 276 633</p>		<p>Manufacturer of Tork, Tena, Libero, Libresse, Bodyform, Saba, Nosotras, TOM Organic, Modibodi, Knix, Leukoplast, JOBST, Delta-Cast, Cutimed, Actimove, Lotus, Zewa, Tempo brands.</p>
<p>Sanitarium (ABN: 63 096 452 872) 1 Sanitarium Drive, Berkeley Vale NSW 2261 (02) 4348 7777 1800 673 392</p>		<p>Manufacturer of brands including Weet-Bix, UP&GO, So Good, and Vegie Delights.</p>
<p>Metcash (ABN: 32 122 073 480) 1 Thomas Holt Drive Macquarie Park NSW 2113 (02) 9741 3000</p>		<p>Wholesale distribution company behind independent retail brands including IGA and Foodland</p>
<p>Pepsico (ABN: 31 057 976 940) Level 4, Tower 2, 799 Pacific Highway, Chatswood NSW 2067 (02) 9951 1799</p>		<p>Manufacturer of brands including Pepsi, Lipton, Gatorade, Doritos, Cheetos, Burger Rings, Nobby's, Red Rock Deli, Sakata, and Smith's.</p>
<p>Simplot Australia (ABN: 81 074 453 768) 2 Chifley Drive, Mentone Victoria 3194 1800 061 279</p>		<p>Manufacturer of brands including Birds Eye, Edgell, John West, and Leggo's.</p>

Name, ABN, address (registered office) and telephone number	Contact person's name, position, organisation, telephone number and email address	Description of business activities
<p>Unicharm (ABN: 33 006 884 546) 1 Hargrave Place, Mentone, Victoria 3194 Australia 1800 224 332</p>		<p>Manufacturer of brands including BabyLove and Ezi-LockOdour.</p>
<p>Unilever (ABN: 13 614 413 179) 219 North Rocks Rd, North Rocks NSW 2151 1800 888 449 1800 061 027</p>		<p>Manufacturer of brands including Ben & Jerry's, Comfort, Cornetto, Dove, Magnum, Omo, Rexona, and Vaseline.</p>
Registered charities and non-government organisations		
<p>Australian Packaging Covenant Organisation (ABN: 99 056 538 480) Suite 1101 Level 11, 55 Clarence Street, Sydney NSW 2000 (02) 8381 3700</p>		<p>Not for profit, co-regulatory organisation focused on the development of a circular economy for packaging in Australia.</p>
<p>Boomerang Alliance (ABN: 33 484 952 023) PO Box K61, Haymarket NSW 2130 (02) 9280 2130</p>		<p>Alliance of environmental groups giving local communities power and influence to manage local waste. Comprises of 55 national, state and local allies.</p>

Name, ABN, address (registered office) and telephone number	Contact person's name, position, organisation, telephone number and email address	Description of business activities
<p>Planet Ark (ABN: 26 057 221 959) Suite 3.16 & 3.17, 22-36 Mountain Street, Ultimo NSW 2007</p>		<p>Not-for-profit environmental organisation involved in the formation of SPSA.</p>
Industry associations		
<p>Accord Australasia Limited (ABN: 83 205 141 267) (02) 9281 2322</p>		<p>Industry association representing manufacturers and suppliers of hygiene, personal care and speciality products, their raw material suppliers and service providers.</p>
<p>Australian Food and Grocery Council (ABN: 23 068 732 883) Unit 5G, 65 Canberra Avenue, Griffith ACT 2603 (02) 6273 1466</p>		<p>Industry association representing the food and grocery supply industry.</p>
<p>Australian Institute of Packaging (ABN 35 092 354 071) PO Box 400, Mount Ommaney QLD 4074 (07) 3278 4490</p>		<p>Professional body for packaging education and training in Australasia.</p>
<p>National Retail Association (ABN: 44 009 664 073) Level 3, 67 St Pauls Terrace, Spring Hill QLD 4000</p>		<p>Peak body for retail operators in Australia across fashion, groceries department stores, household goods, hardware, fast food, cafes and services.</p>
<p>Australian Council of Recycling (ABN: 60 574 301 921) Level 23, 520 Oxford Street, Bondi Junction NSW 2022 (02) 8074 7007</p>		<p>Industry forum for resource recovery, recycling and remanufacturing, leading Australia's transition to a circular economy.</p>

Name, ABN, address (registered office) and telephone number	Contact person's name, position, organisation, telephone number and email address	Description of business activities
Australian Local Government Association (ABN: 31 008 613 876) 8 Geils Court, Deakin ACT 2600 (02) 6122 9400		Federation of state and territory local government associations, representing 537 councils across the country.
Chemistry Australia (ABN: 77 063 335 615) 11/10 Queen Street, Melbourne VIC 3000 (03) 9611 5400		National body that represents the chemistry industry, working with state and federal governments and departments to promote conditions for growth, jobs and investment in the industry and its supply chains.
Government departments		
Department of Climate Change, Energy, the Environment and Water GPO Box 3090, Canberra ACT 2601		Federal Government department working to protect the state's environment and heritage.
Green Industries SA (ABN: 76 149 388 126) Level 4, 81-95 Waymouth St, Adelaide SA 5001 (08) 8204 2051		South Australian state government department supporting the development of the circular economy.
Sustainability Victoria (ABN: 62 019 854 067) Level 12, 321 Exhibition St, Melbourne VIC 3000 (03) 8626 8700		Statutory agency of the Victorian Government designed to partner across industry and the community as a transition broker for the circular economy.
Local councils		
Macedon Ranges Shire Council (ABN: 42 686 389 537) 129 Mollison St, Kyneton VIC 3444 (03) 5422 0333		Council participating in the NPRS trials and pilots.

Name, ABN, address (registered office) and telephone number	Contact person's name, position, organisation, telephone number and email address	Description of business activities
<p>Albury City Council (ABN 92 965 474 349)</p> <p>553 Kiewa St, Albury NSW 2640</p> <p>(02) 6023 8111</p>		<p>Council participating in the NPRS trials and pilots.</p>
<p>Ballarat City Council (ABN: 37 601 599 422)</p> <p>The Phoenix, 25 Armstrong Street, South Ballarat VIC 3350</p> <p>(03) 5320 5500</p>		<p>Council participating in the NPRS pilots.</p>
<p>Brisbane City Council (ABN: 72 002 765 795)</p> <p>GPO Box 1434, Brisbane QLD 4001</p> <p>(07) 3403 888</p>		<p>Council included in Queensland Department of Environment, Science Tourism and Innovation grant funded pilot program.</p>
<p>Central Adelaide Waste and Recycling Authority (ABN: 18 645 346 724)</p> <p>25 Mill Ct, Kilburn SA 5084</p> <p>0477 464 866</p>		<p>Local government regional subsidiary arising from a joint initiative of the Cities of Charles Stuart and Port Adelaide Enfield that owns a material recovery facility that receives and processes kerbside recyclable material from 12 councils. Participant in NPRS trials and pilots.</p>
External consultants and experts		
<p>MRA Consulting (ABN: 13 143 273 812)</p> <p>Suite 408 Henry Lawson Building 19 Roseby Street, Drummoyne NSW 2047</p> <p>(02) 8541 6169</p>		<p>Environmental consultancy firm specialising in all aspects of waste and recycling.</p>

Name, ABN, address (registered office) and telephone number	Contact person's name, position, organisation, telephone number and email address	Description of business activities
<p>Product Stewardship Centre of Excellence (ABN: 33 669 035 652) www.stewardshipexcellence.com.au</p>		<p>An independent, not for profit charity that seeks to reduce waste generation and create positive environmental and social outcomes through sustainable product design, resource conservation, product reuse, and recycling.</p> <p>Helps businesses, industries, and product stewardship organisations adopt a product stewardship approach to deliver their ESG and circular economy objectives.</p>
<p>Helen Lewis Consultant and Convenor of Circular Plastics Illawarra</p>		<p>Circular Plastics Illawarra is a local community action group of citizens and leaders in the environmental and research field from the Illawarra.</p>
<p>Extended Producer Responsibility Alliance (EXPRA) https://expa.eu/</p>		<p>An alliance of over 32 packaging and packaging waste recovery and recycling organisations from 30 countries acting as the authoritative voice and common policy platform representing the interests of all its members.</p>

Schedule 3: Soft Plastic Packaging

In-Scheme Packaging	Out-of-Scheme Packaging
<p>Soft plastics or flexible plastics that can be scrunched into a ball, such as:</p> <ul style="list-style-type: none"> • Shopping bags; • Fresh produce bags; • Food wrappers, bags and pouches; • Lidding film; • Over-wrap; • Cling film; • Sandwich bags; • Bags and wrap for clothing, household goods, and hardware etc; • Postal bags; • Bubble wrap; • Plastic sleeves intended to be removed by the consumer; and • Multipack wrap (ie, plastic wrap used to group multiple sales units intended to be taken home by the consumer). 	<p>Business-to-business packaging and soft plastic labels, such as:</p> <ul style="list-style-type: none"> • Plastic labels on rigid packaging (such as plastic, glass or cardboard packaging); • Stickers on fresh produce; • Shrink wrap or pallet wrap, including shrink wrap used for shelf-ready packaging intended to be removed by the retailer prior to sale; • Packaging on Products being exported from Australia; and • Pre-consumer / waste packaging at factories.

Schedule 4: SPSA Constitution

Constitution of Soft Plastic Stewardship Australia Limited

The Corporations Act

A public company limited by guarantee

Registered in New South Wales

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Constitution of Soft Plastic Stewardship Australia Limited, a not-for-profit public company limited by guarantee.

General

1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

Board means all or some of the Directors for the time being acting as a board.

Brand Owner means:

- (a) a person who is the owner or licensee in Australia of a trade mark under which any Product is sold or otherwise distributed in Australia, whether the trade mark is registered or not; or
- (b) a person who is the franchisee in Australia of a business arrangement which allows that person to operate under the name of an already established business which sells or otherwise distributes Products; or
- (c) in the case of a Product that has been imported, the first person to sell that Product in Australia; or
- (d) any Retailer who provides plastic bags to the consumer for the transportation of products purchased by the consumer at the point of sale; or
- (e) the Holding Company of any group of companies conducting any of the activities contemplated by paragraphs (a) to (d).

Business Day means a day which is not a Saturday, Sunday or a public holiday in New South Wales.

By-Laws means the by-laws adopted and amended by the Board from time to time in accordance with rule 54.

CC Act means the *Competition and Consumer Act 2010* (Cth).

Chief Executive Officer means the chief executive appointed by the Board under rule 44.

Committee means a committee of the Board.

Company means Soft Plastic Stewardship Australia Limited.

Constitution means this constitution.

Corporations Act means the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth).

Director means a person appointed or elected to the office of director of the Company in accordance with this Constitution and, where appropriate, includes an alternate Director.

Directorship Category means, in respect of a Director, a Proprietary Brand Owner Director, Retail Brand Owner Director, Industry Association Proprietary Brand Owner Director or Industry Association Retail Brand Owner Director (as the case may be) (together the **Directorship Categories**).

Governmental Agency means a government or a governmental, semi-governmental or judicial entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

Holding Company has the meaning given in the Corporations Act.

Independent Director means a Director who is not an employee of the Company or any Member and who is free of any business or other relationship that could materially interfere with, or could reasonably be perceived to materially interfere with, the independent exercise of their judgment.

Industry Association means a body corporate registered under Australian law representing the interests of Brand Owners.

Industry Association Member means a Member meeting the criteria set out in 7.1(c) and such other criteria determined by the Board under rule 7.2.

Industry Association Proprietary Brand Owner Director means a Director who is either:

- (a) employed by, or is an Officer of, an Industry Association Member that represents Proprietary Brand Owners; or
- (b) a Proprietary SME Member Representative,
elected in accordance with rule 38.

Industry Association Retail Brand Owner Director means a Director who is either:

- (a) employed by, or is an Officer of, an Industry Association Member that represents Retail Brand Owners; or
- (b) a Retail SME Member Representative,
elected in accordance with rule 38.

Letter of Support means a letter supporting a person's nomination for a vacant directorship in a certain Directorship Category, as signed by:

- (a) in the case of a person nominating to be a Proprietary Brand Owner Director, a Proprietary Brand Owner Member (other than an SME Member);
- (b) in the case of a person nominating to be a Retail Brand Owner Director, a Retail Brand Owner Member (other than an SME Member);
- (c) in the case of a person nominating to be an Industry Association Proprietary Brand Owner Director, a Proprietary Brand Owner Member that is also an SME Member;
- (d) in the case of a person nominating to be an Industry Association Retail Brand Owner Director, a Retail Brand Owner Member that is also an SME Member.

Levy Contribution has the meaning given to that term in the Scheme Agreement.

Member means a person admitted to the membership of the Company in accordance with the provisions of this Constitution and **Membership** has the corresponding meaning.

Member Fee has the meaning given to that term in the Scheme Agreement.

Member's Guarantee Amount means the amount referred to in rule 9.

Member Present means, in connection with a general meeting, a Voting Member present for the meeting, in person or by proxy, by attorney or by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

Officer has the same meaning as defined in section 9 of the Corporations Act.

Packaging means packaging which is used for the containment, protection, marketing, handling or distribution of consumer products and/or business-to-business products.

Product means a product sold or supplied in Packaging to a business or consumer, where that Packaging (once used) is Used Packaging that is covered by the Scheme..

Proprietary Brand Owner means a Brand Owner that does not derive the majority of its Revenue from Retailing. For the avoidance of doubt, Proprietary Brand Owner includes Brand Owner corporations that predominantly use third parties to sell their products, such as manufacturers.

Proprietary Brand Owner Director means a Director who is employed by, or is an Officer of, a Proprietary Brand Owner Member (other than an SME Member) and elected in accordance with rule 38.

Proprietary Brand Owner Member means a Member meeting the criteria set out in rule 7.1(a) and such other criteria determined by the Board pursuant to rule 7.2.

Proprietary Brand Owner Member Present means, in connection with a general meeting, a Proprietary Brand Owner Member present for the meeting, in person or by proxy, by attorney or by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

Proprietary SME Member Representative means a person who is employed by, or an Officer of, an SME Member, and that SME Member is a member of an Industry Association Member that represents Proprietary Brand Owners.

Register means the register of Members to be kept pursuant to the Corporations Act.

Registration means registration of the Company as a body corporate by the Australian Securities and Investments Commission.

Representative means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate, as described in rule 12.

Retail Brand Owner means a Brand Owner that derives the majority of its Revenue from Retailing. For the avoidance of doubt, Retail Brand Owner includes supermarkets, department stores, general stores and other retailers that predominantly sell direct to consumers.

Retail Brand Owner Director means a Director who is employed by, or is an Officer of, a Retail Brand Owner Member (other than an SME Member) and elected in accordance with rule 38.

Retail Brand Owner Member means a Member meeting the criteria set out in rule 7.1(c) and such other criteria determined by the Board pursuant to rule 7.2.

Retail Brand Owner Member Present means, in connection with a general meeting, a Retail Brand Owner Member present for the meeting, in person or by proxy, by attorney or by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Directors in accordance with this Constitution).

Retail SME Member Representative means a person who is employed by, or an Officer of, an SME Member, and that SME Member is a member of an Industry Association Member that represents Retail Brand Owners.

Retailing means the selling of products directly to the public, whether in store or online and **Retailer** means a person engaged in doing so.

Revenue means in respect of a Brand Owner, the total gross revenue, as stated in that Brand Owner's audited financial statements, for a particular financial year.

RWR Act means the *Recycling and Waste Reduction Act 2020* (Cth).

RWR Rules means the *Recycling and Waste Reduction (Product Stewardship – Accreditation of Voluntary Arrangements) Rules 2020*.

Scheme means the product stewardship scheme for Used Packaging which may be regulated by the RWR Act and RWR Rules and which, subject to ACCC authorisation, is to be established under the Scheme Agreement.

Scheme Agreement means the agreement which, subject to ACCC authorisation, is to be entered into between the Company and the Scheme Participants, as amended from time to time.

Scheme Participant has the meaning given to that term in the Scheme Agreement.

Secretary means a person appointed as, or to perform duties of, secretary of the Company.

SME means an entity that has an annual turnover of less than \$50 million in the immediately preceding financial year.

SME Member means an SME that has, in the immediately preceding financial year, placed on the Australian market no more than a specified number of tonnes (as determined by the Board acting in good faith) of Used Packaging covered by the Scheme.

Special Resolution of Directors means a resolution passed by at least 75% of the votes cast by Directors entitled to vote on the resolution.

Special Resolution of Members means a resolution passed by at least 75% of the votes cast by Members Present.

Used Packaging means Packaging that has reached the end of its initial useful life, or such other materials determined by the Board from time to time, subject to the RWR Act and RWR Rules. For the avoidance of doubt, Used Packaging includes used plastic packaging.

Voting Member means each Proprietary Brand Owner Member and Retail Brand Owner Member (together the **Voting Members**).

2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iii) A reference to *dollars* or \$ is to Australian currency.
 - (iv) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a rule is a reference to a rule of this Constitution.
 - (vi) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (vii) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

3 Replaceable Rules

The replaceable rules contained in the Corporations Act do not apply to the Company.

Objects

4 Objects of the Company

The objects of the Company are to:

- (a) develop, implement and support the overall operation of the Scheme to:
 - (i) collect and recycle Used Packaging;
 - (ii) minimise as far as reasonably practicable environmental damage from disposal of Used Packaging through waste minimisation, reuse and recycling;
 - (iii) result in a net environmental benefit targeting Used Packaging;
 - (iv) support recycled material being made available for producing food grade and other contact-sensitive packaging; and
 - (v) support the re-manufacture of plastic packaging in Australia;
- (b) determine the governance of the Scheme;
- (c) monitor and report to Scheme Participants and, to the extent necessary, regulators on the Scheme;
- (d) promote improvements in the end-to-end operation of the Scheme, including in order to minimise costs, promote efficiency and drive end markets;
- (e) support research and market development in relation to product stewardship of Used Packaging;
- (f) undertake education, awareness and information activities to promote the Scheme;
- (g) promote or support any changes to the law designed or likely to help all or any of the objects of the Company;
- (h) collect and administer levies in connection with the Scheme;
- (i) contract and administer payments for services necessary for the implementation of the Scheme;
- (j) as appropriate, support provision of contracted services to assist with plastic packaging stockpile management or other aspects of Used Packaging stewardship;
- (k) ensure confidentiality of Members' commercially sensitive data; and
- (l) do all such lawful things deemed necessary to achieve the objects of the Company, including all things incidental or conducive to achieving these objectives.

5 Application of Income and Property to Objects

- (a) Subject to rule 5(b), the assets and income of the Company must only be used to further the objects of the Company set out in rule 4 and no portion of that income or property may be paid or transferred, directly or indirectly, to any Member by way of dividend, bonus or otherwise.
- (b) Rule 5(a) does not prevent the Company from making a payment in good faith to a Member:
 - (i) of reasonable and proper remuneration for services provided to the Company;
 - (ii) for goods supplied in the ordinary course of business;
 - (iii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company by a Member;

- (iv) of reasonable and proper rent for premises let by a Member; or
- (v) of any surpluses or profits, so long as the Member has objects similar to the objects of the Company.

Membership

6 Members of the Company

- (a) The Company must have at least one Member.
- (b) A Member must be a body corporate incorporated in Australia.
- (c) The Members are those persons admitted to the membership of the Company whose names are entered into the Register.
- (d) On Registration of the Company the Members will be those persons set out in the schedule.
- (e) Any body corporate is eligible to apply to become a Member if the body corporate:
 - (i) agrees to assume the liability to pay the Member's Guarantee Amount;
 - (ii) satisfies the criteria for the relevant class of Membership in accordance with rule 7;
 - (iii) agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
 - (iv) submits a written application in accordance with rule 10; and
 - (v) subject to rule 13(c), pays any Member Fee and/or Levy Contribution due and payable as determined by the Board in accordance with rule 13.
- (f) Each Voting Member will be entitled to vote at all general meetings.
- (g) The Board may determine from time to time any additional benefits that shall attach to Membership.

7 Members and Classes of Membership

7.1 Membership classes

There shall be the following classes of Membership:

- (a) **Proprietary Brand Owner Members**

Proprietary Brand Owner Members:

 - (i) must be bodies corporate which are Proprietary Brand Owners;
 - (ii) when the Scheme is established, must be Scheme Participants; and
 - (iii) shall be entitled to vote on all resolutions concerning the Company at general meetings.
- (b) **Retail Brand Owner Members**

Retail Brand Owner Members:

 - (i) must be bodies corporate which are Retail Brand Owners;
 - (ii) when the Scheme is established, must be Scheme Participants; and
 - (iii) shall be entitled to vote on all resolutions concerning the Company at general meetings.

(c) **Industry Association Members**

Industry Association Members:

- (i) must be bodies corporate which are Industry Associations registered or active in Australia;
- (ii) must be aligned with the objects of the Company and have a demonstrated track record of alignment, as determined by the Board;
- (iii) must have as part of their membership:
 - (A) Members of the Company; and
 - (B) at least 25% of members who are SMEs; and
- (iv) shall not be entitled to vote on any resolution concerning the Company at general meetings, unless otherwise required by law.

7.2 Membership matters reserved to the Board

Without limiting the Board's powers more generally, the Board may determine from time to time, acting in good faith:

- (a) additional restrictions to or qualifications and criteria for admission to each Membership class which restrictions, qualifications or criteria must be set out in a Membership By-Law;
- (b) the rights attached to each Membership class which rights must be set out in a Membership By-Law;
- (c) the Membership class best applicable to any body corporate applying for Membership pursuant to rule 10; and
- (d) whether a Member should be transferred to another Membership class because of a change in their circumstance or status.

8 Limited Liability of Members

The liability of the Members is limited.

9 Members' Liability on Winding Up

Each Member undertakes to contribute to the assets of the Company in the event of it being wound up while they are a Member, or within one year after they cease to be a Member, for payment of the debts and liabilities of the Company and of the costs, charges and expenses of winding up, such amount as may be required not exceeding \$100 (***Member's Guarantee Amount***).

10 Admission as a Member

- (a) Except for the initial Members set out in the schedule, a person, who must be a body corporate, who wants to apply for Membership must submit a written application to the Secretary signed by the applicant in the form determined by the Board.
- (b) An application for Membership of the Company must:
 - (i) be made in writing in the form prescribed by the Board from time to time, which may include an online form;
 - (ii) specify the class of Membership being applied for by the applicant;
 - (iii) include a signature, or equivalent acknowledgement by the applicant evidencing that the applicant agrees to be bound by the Constitution;

- (iv) be accompanied by any Member Fee and/or Levy Contribution payable at that time pursuant to rule 13; and
 - (v) be lodged with the Secretary.
- (c) At the next Board meeting after the receipt of an application for membership, the Board will consider the application and decide whether or not to admit the applicant in their absolute discretion (including whether that applicant satisfies any eligibility criteria set out in the Scheme Agreement).
- (d) If the Board decides not to admit an applicant to the Membership, it does not have to give any reasons for its decision.
- (e) As soon as practicable after the Board makes a determination under rule 10(c), the Secretary must:
 - (i) notify the applicant, in writing, that the Board approved or rejected the application (whichever is applicable); and
 - (ii) if the Board approved the application, as soon as possible after receipt by the Board of a signed Deed of Accession (as that term is defined in the Scheme Agreement), enter the applicant's name and class of Membership in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
 - (iii) if the Board rejected the application, refund any Member Fee and/or Levy Contribution to the applicant.

11 Membership Entitlements not Transferable

A right, privilege or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

12 Representative

- (a) Each Member must appoint as its Representative a natural person.
- (b) The name and address of the Representative will be entered in the Register as the representative of the Member.
- (c) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Member which is represented by that particular Representative.
- (d) If the appointment of a Representative by the Member is made by reference to a position held, the appointment must identify the position.
- (e) A Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.
- (f) A signature by a Representative of a Member on behalf of that Member is taken to be the signature of that Member for the purposes of this Constitution.
- (g) Any power or right of a Member as granted by this Constitution can be exercised by the Representative of that particular Member.
- (h) Members are represented at meetings of Members by their Representatives, subject to the right of a Member Representative to appoint a proxy pursuant to rule 35.

- (i) The actions of a Representative bind the Member which is represented by that particular Representative.
- (j) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

13 Member Fees and Levy Contributions

- (a) There may be a Member Fee and/or Levy Contribution payable by each Member to the Company, including by way of annual subscription, as provided in the Scheme Agreement when it is finalised.
- (b) Subject to rule 13(c), the amount of the Member Fee and/or Levy Contribution shall be payable by Members at such times, in such amounts and in such manner as determined by the Board from time to time.
- (c) The Board may, by a Special Resolution of Directors:
 - (i) determine that no Member Fees and/or Levy Contributions are payable by a Member or Members (in whole or in part) in a given year; and
 - (ii) extend the time for payment of Member Fees and/or Levy Contributions by any Member.
- (d) No part of any Member Fee and/or Levy Contribution shall be refunded to a Member who ceases to be a Member in accordance with rule 17.

14 Resignation of a Member

A Member may resign from the Company by giving at least 30 days' prior written notice to the Secretary. The resignation will be effective from the date it is received by the Secretary.

15 Misconduct of a Member

- (a) The Board may expel from the Company any Member:
 - (i) who does not comply with the provisions of this Constitution;
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company; or
 - (iii) at the written request of at least 50% of Members,and remove the Member's name from the Register.
- (b) At least 21 days before the Board meets to expel a Member the Board must send a notice to the Member that states:
 - (i) all relevant information, including any allegations against the Member;
 - (ii) the proposed resolution for the Member's expulsion;
 - (iii) that the Member has an opportunity to address the meeting, before the passing of the resolution, either orally or in writing and provide any explanation or defence the Member thinks fit; and
 - (iv) that the Member may elect to have the question of expulsion dealt with by the Company in general meeting, with the notice of meeting to enclose a copy of the notice sent to the relevant Member and such relevant information as the Member reasonably requests, provided that the Member notifies the Secretary in writing, at least 48 hours before the meeting at which the resolution is to be considered by the Board.

- (c) If an election is made under rule 15(b)(iv):
 - (i) a general meeting must be convened and the resolution considered; and
 - (ii) the Company must expel the Member and remove the Member's name from the Register where the resolution is passed at the meeting for the expulsion of the Member by a majority of no less than two-thirds of those present and voting (such voting will be by ballot).

16 Liability after a Person Ceases to be a Member

A person who ceases to be a Member must pay to the Company:

- (a) all Member Fees, Levy Contributions or other amounts owing to the Company that are due and unpaid at the date that the person ceases to be a Member; and
- (b) any amount that the Member is or may become liable to pay under rule 9.

17 Ceasing to be a Member

A Member's membership of the Company will automatically cease on the date:

- (a) that the Secretary receives written notice of resignation from that Member under rule 14;
- (b) determined by the Board passing a resolution that the Member no longer satisfies the criteria for its respective class of Membership (unless transferred to another class of Membership by the Board);
- (c) determined by the Board passing a resolution that the Member's Membership ceases because that the Member has:
 - (i) failed to pay a Levy Contribution or Member Fee within thirty (30) days after it falls due (taking into account any decisions of the Board with respect to that Member's Member Fee and/or Levy Contribution under rule 13(c)); and
 - (ii) subsequently failed to rectify this default within thirty (30) days of being notified by the Company;
- (d) that the Member is expelled from the Company under rule 15;
- (e) a liquidator is appointed in connection with the winding up of the Member; or
- (f) an order is made by a court for the winding up or deregistration of the Member.

18 Register of Members

The Register of Members must be kept by the Secretary and must contain the full name and address of each Member and any other information required by the Board.

19 Address of Members

If a Member informs the Secretary in writing of any change in their address, the Secretary will enter any such change of address in the Register. The latest address in the Register is deemed to be the Member's registered address.

General Meetings

20 General Meetings

- (a) At least 50% of Directors may convene a general meeting of the Company whenever they think fit to be convened at a time and:
 - (i) at one or more physical venues;

- (ii) at one or more physical venues and using virtual meeting technology; or
 - (iii) using virtual meeting technology only,
- provided that, in each case, Members as a whole are given a reasonable opportunity to participate in the meeting.
- (b) If virtual meeting technology is to be used for a general meeting of the Company, the Board will determine the type of virtual meeting technology to be used, which may include any combination of telephone, video conferencing, messaging, smartphone application or any other audio or visual device which permits instantaneous communication.
 - (c) Any Director may cancel or postpone any meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed general meeting.

21 Notice of General Meetings

- (a) Where the Board has called a general meeting, notice of the meeting may be given in the form and manner in which the Board determines, subject to the Corporations Act, and provided not fewer than 60 days' notice is given.
- (b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

22 Meetings Requested by Members

- (a) If the Board receives a request from Members with at least 5% of the votes that may be cast at a general meeting to call and arrange to hold a general meeting, the Board must give notice of a general meeting within 21 days after the date of receipt of that request.
- (b) A request made under rule 22(a) must:
 - (i) detail any proposed resolution;
 - (ii) include the names of the Members making the request; and
 - (iii) be signed by all of the Members making the request. For the avoidance of doubt, signatures for this purpose may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

23 Business of Annual and Other General Meetings

- (a) The business of an annual general meeting of the Company includes:
 - (i) to receive and consider the accounts and reports required by the Corporations Act to be laid before each annual general meeting;
 - (ii) to elect Directors (including as required pursuant to rule 38);
 - (iii) when relevant to appoint an auditor and to fix the auditor's remuneration; and
 - (iv) to transact any other business that, under this Constitution or the Corporations Act, is required to be transacted at any annual general meeting.

The business of an annual general meeting may also include any other business that may be transacted at a general meeting.

- (b) No person may move at any general meeting either any resolution (except in the form set out in the notice of meeting) or any amendment of any resolution, except with the approval of the Board, with the permission of the chair of the meeting or under the Corporations Act.

24 Right of Others to Attend General Meeting

- (a) A Secretary, Chief Executive Officer or Director who is not a Member is entitled to be present at and, at the request of the chair of the meeting, to speak at any general meeting.
- (b) Any other person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present and, at the request of the chair of the meeting, to speak at that general meeting.

25 Quorum for General Meetings

- (a) No business may be transacted at any general meeting except, subject to rule 26, the election of a chair of the meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 10 Members Present constitutes a quorum, unless there are fewer than 15 Voting Members, in which case a quorum is 50% of Voting Members.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the chair of the meeting or the Board adjourns the meeting to a date, time and place determined by that chair or the Board. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (d) Nothing in this Constitution limits the Company's power to pass a resolution without a general meeting in accordance with the Corporations Act.

26 Conduct of General Meetings

- (a) Subject to rule 26(b), the chair of the Board is entitled to preside as chair at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no chair of the Board; or
 - (ii) the chair of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to act as chair of the meeting,

the deputy chair of the Board is entitled to chair the meeting or, if the circumstances in rule 26(b)(i) or 26(b)(ii) apply to the deputy chair of the Board, the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present may elect one of their number to be chair of the meeting.

- (c) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.

- (d) The chair of a general meeting of the Company may make rulings without putting the question (or any question) to a vote if that chair considers action is required to ensure the orderly conduct of the meeting.
- (e) If at any time the chair of a general meeting of the Company considers it necessary or desirable for the proper and orderly conduct of the meeting, that chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (f) Any determination by the chair of a general meeting in relation to matters of procedure (including any procedural motions moved at, or put to, the meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, the meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard a vote may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (g) If a person purports to cast a vote at a general meeting in contravention of the Corporations Act, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (h) Nothing contained in this rule limits the powers conferred on a chair of a general meeting by law.

27 Acting Chair

- (a) If during any general meeting the chair of the meeting acting under rule 26 is unwilling to chair any part of the proceedings, that chair may withdraw during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chair of the meeting during the relevant part of the proceedings. On the conclusion of the relevant part of the proceedings the acting chair of the meeting is to withdraw and the chair of the meeting acting under rule 26 is to resume to chair the meeting.
- (b) Where an instrument of proxy appoints the chair of a general meeting as proxy for the part of the proceedings for which an acting chair of the meeting has been nominated, the instrument of proxy is taken to be in favour of that acting chair for the relevant part of the proceedings.

28 Adjournment of General Meetings

- (a) During the course of a general meeting the chair of the meeting may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by that chair.
- (b) If the chair of a general meeting exercises a right of adjournment of the meeting under rule 28(a), that chair has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless that chair exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (c) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

29 Voting

29.1 Voting at General Meetings

- (a) Subject to the requirements of the Corporations Act and rule 29.2, any question submitted to a general meeting is to be decided by a simple majority of votes validly cast on the question at the meeting.
- (b) Subject to the requirements of the Corporations Act, any question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members Present and entitled to vote, unless a poll is demanded.
- (c) Unless a poll is demanded, a declaration by the chair of a general meeting following a vote on a show of hands at the meeting that a resolution has been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (d) At any general meeting, a poll may be demanded by a Member in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of the meeting or, unless that chair otherwise determines, the adjournment of the meeting. A demand for a poll may be withdrawn.

29.2 Voting by special resolution

- (a) In addition to any decisions that require a Special Resolution of Members at law and any decisions which the Scheme Agreement requires to be passed by a Special Resolution of Members, the following decisions must be passed by a Special Resolution of Members:
 - (i) any decision to amend or repeal this Constitution;
 - (ii) any decision to create a new class of Membership;
 - (iii) any decision to materially change the nature of the business of the Company;
 - (iv) any decision to change the Company name or type (other than to the extent required by law); and
 - (v) any decision to make an application or commence any proceedings or take any other steps for the winding up, dissolution, or appointment of an administrator of the Company.

30 Special Meetings

All the provisions of this Constitution as to general meetings apply to any special meeting that may be held under the operation of this Constitution or the Corporations Act.

31 Procedure for Polls

- (a) When demanded at a general meeting, a poll may be taken in the manner and at the time that the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chair of the meeting considers appropriate.
- (c) The result of a poll is the resolution of the meeting at which the poll was demanded.

- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. Subject to rules 27 and 29.1(d), a poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

32 Chair Does Not Have Casting Vote

In the case of an equality of votes on a show of hands or on a poll at a general meeting of the Company, the chair of the meeting does not have a casting vote in addition to any vote to which that chair may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.

33 Representation and Voting of Members

- (a) Subject to this Constitution and any rights or restrictions for the time being placed on any Member:
- (i) at meetings of Members, each Voting Member entitled to attend and vote may:
 - (A) attend and vote in person; or
 - (B) be represented and vote by proxy, by attorney or by representative,
 - (ii) a Voting Member may only vote by one of the permitted methods in rule 33(a)(i) although, without limiting rule 36(b), a Voting Member may attend and participate in a meeting even though the Voting Member has previously appointed a proxy or attorney in respect of that meeting; and
 - (iii) each Voting Member has one vote both on a show of hands and a poll, subject always to the voting entitlements attached to their Membership class.
- (b) No person other than:
- (i) a Voting Member;
 - (ii) a Representative of a Voting Member;
 - (iii) a proxy or attorney of a Voting Member;
 - (iv) a proxy or attorney of a Representative of a Voting Member,
- shall be entitled to vote at a general meeting.

34 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the chair whose decision shall be final and conclusive and a vote allowed by the chair shall be valid for all purposes.

35 Form of Proxy

- (a) A Member who is entitled to attend and vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) A Voting Member may appoint one proxy. A proxy need not be a Member.
- (c) An appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) that the Board may prescribe or accept.

- (d) If a proxy appointment is not properly executed or validated, incomplete or unclear, the following provisions apply. Nothing obliges the Board or the Company to do anything referred to in those provisions.
 - (i) If the name of the proxy is not included, the appointment of proxy is taken to be given in favour of the chair of the meeting.
 - (ii) If the appointment has not been duly signed or validated, the Company may:
 - (A) return the appointment to the appointing Member;
 - (B) request that the Member sign or validate the appointment and return it to the Company within a period decided by the Board (which may be later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
 - (iii) If the appointment is otherwise incomplete or unclear, the Company may, by written or oral communication, clarify with a Member any instruction on the appointment and complete or amend the contents of any appointment to reflect any clarification in instruction received from the Member (which completion or amendment may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments). For this purpose, the Member appoints the Company as its attorney.
- (e) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment lodged at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the Company and validated by the Member if there is compliance with the requirements set out in the notice.

36 Validity of Proxies, Attorneys and Representatives

- (a) A vote exercised in accordance with the terms of a proxy appointment, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal; or
 - (ii) the revocation of the appointment, power or instrument (or of the authority under which it was made or given),if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the Company at its registered office at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act) before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- (b) A proxy appointment or power of attorney (subject to its terms) is not revoked by the principal attending and taking part in the relevant meeting unless the principal actually votes at the meeting on a resolution for which the proxy appointment or power of attorney is proposed to be used.
- (c) Voting instructions given by a Voting Member to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy. If a Voting Member wishes to give a Company Proxy appointed by the Member new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the Company at least 48 hours before the meeting or adjourned meeting by a notice in writing signed by the Voting Member or they are otherwise validated by the Voting Member in a

manner acceptable to the Board in its discretion prior to the commencement of the meeting.

Appointment, Removal and Remuneration of Directors

37 Number of Directors

- (a) All Directors are to be natural persons.
- (b) The number of Directors (not including alternate Directors) must not be fewer than four (4) nor more than ten (10) (or, subject to rule 39(d), such lower number that the Board may determine from time to time in accordance with the Corporations Act, provided that the Board may not reduce the number below the number of Directors in office at the time of the reduction).
- (c) The Board must be made up of:
 - (i) up to three Proprietary Brand Owner Directors, appointed in accordance with rule 38;
 - (ii) up to three Retail Brand Owner Directors, appointed in accordance with rule 38;
 - (iii) up to one Industry Association Proprietary Brand Owner Director, appointed in accordance with rule 38;
 - (iv) up to one Industry Association Retail Brand Owner Director, appointed in accordance with rule 38; and
 - (v) up to two Independent Directors, appointed in accordance with rule 39.
- (d) On incorporation of the Company, the initial Board comprises:
 - (i) William Heague and Sandra Edit Martinez Penaloza, each a Proprietary Brand Owner Director; and
 - (ii) Brooke Frances Donnelly and Lorenzo Kozlovic, each a Retail Brand Owner Director.

38 Nomination and election process for appointment of Directors in each Directorship Category

38.1 Nomination process

- (a) In advance of the Company's annual general meeting each year, the Secretary is to notify Members of the number of vacant directorships in each Directorship Category which may be filled at the next annual general meeting. This notice is to be issued no later than 60 days prior to the annual general meeting, and if there is a vacancy the notice must include information on eligibility and the nomination process.
- (b) Nominations for each Directorship Category may be submitted by any person, provided such nomination is:
 - (i) in writing and signed by the proposer and (if not identical to the proposer) the nominee for election;
 - (ii) accompanied by a consent to act as a Director signed by the nominee for election, as required under the Corporations Act;
 - (iii) accompanied by a statement that they are:
 - (A) supportive of the objects of the Company set out in rule 4; and

- (B) not disqualified from becoming a Director under the Corporations Act;
 - (iv) accompanied by a nomination form identifying the Directorship Category for which nomination is made, and addressing core criteria, as determined by the Board in the By-Laws from time to time;
 - (v) accompanied by a valid Letter of Support; and
 - (vi) received by the Secretary no later than 20 days after the Secretary issues the notice under rule 38.1(a).
- (c) A nomination may be withdrawn by the relevant nominee for election at any time prior to the relevant annual general meeting by giving written notice to the Secretary.

38.2 Election process for vacant directorship(s) in a certain Directorship Category

- (a) If, at the date of the annual general meeting, the number of persons who have nominated for a vacant directorship in a certain Directorship Category is equal to the number of vacant directorships in that Directorship Category at the relevant time, the chair of the meeting must declare such persons elected to such vacant directorship(s) in that Directorship Category.
- (b) If, at the date of the annual general meeting, the number of persons who have nominated for a vacant directorship in a certain Directorship Category is more than the number of vacant directorships in that Directorship Category at the relevant time, a ballot must be held in accordance with rule 38.3 to determine who shall be elected to such vacant directorship(s) in that Directorship Category.

38.3 Ballot for vacant directorship(s) in a certain Directorship Category

- (a) If a ballot is required for the election of a certain vacant directorship(s) in a certain Directorship Category, the Secretary must conduct the ballot for such vacant directorships in that Directorship Category.
- (b) The election must be by secret ballot.
- (c) If the election is held in person, the Secretary must give a ballot paper to:
 - (i) each Eligible Member Present at the annual general meeting; and
 - (ii) if relevant, each proxy appointed by a Eligible Member Present,where **Eligible Member Present** means, in relation to a vacant directorship which relates to:
 - (iii) a Proprietary Brand Owner Director, each Proprietary Brand Owner Member Present that is not an SME Member;
 - (iv) a Retail Brand Owner Director, each Retail Brand Owner Member Present that is not an SME Member;
 - (v) an Industry Association Proprietary Brand Owner Director, each Proprietary Brand Owner Member Present that is an SME Member (or, if there are no Proprietary Brand Owner Members Present that are SME Members, each Proprietary Brand Owner Member Present); and
 - (vi) an Industry Association Retail Brand Owner Director, each Retail Brand Owner Member Present that is an SME Member (or, if there are no Retail Brand Owner Members Present that are SME Members, each Retail Brand Owner Member Present),at such annual general meeting.

- (d) If the ballot is for a single vacant directorship in that Directorship Category, the Eligible Members Present must write on the ballot paper the name of the candidate for whom they wish to vote.
- (e) If the ballot is for more than one vacant directorship(s) in that Directorship Category:
 - (i) the Eligible Members Present must write on the ballot paper the name of each candidate for whom they wish to vote;
 - (ii) the Eligible Members Present must not write the names of more candidates than the number to be elected.
- (f) Ballot papers that do not comply with rule 38.3(e)(ii) are not to be counted.
- (g) Each ballot paper on which the name of a candidate has been written counts as one vote for that candidate.
- (h) The Secretary must declare elected the candidate or, in the case of an election for more than one vacant directorship in that Directorship Category, the candidates, who received the most votes.
- (i) If the Secretary is unable to declare the result of an election under rule 38.3(h) because two or more candidates received the same number of votes, the Secretary must:
 - (i) conduct a further election for the position in accordance with rules 38.3(b) to 38.3(h) to decide which of those candidates is to be elected; or
 - (ii) with the agreement of those candidates, decide by lot which of them is to be elected.
- (j) If the election is not held in person, the Secretary must conduct the process in rules 38.3(b) to 38.3(g) via a secure electronic voting platform.

39 Appointment and Removal of Independent Directors

- (a) For the avoidance of doubt, this rule 39 applies only to Independent Directors.
- (b) The Members Present at a general meeting may by resolution:
 - (i) appoint any eligible person as an Independent Director either to fill a casual vacancy or as an addition to the Board, provided that the number of Directors (not including alternate Directors) does not exceed the maximum number determined under rule 37(b) and the number of Independent Directors does not exceed the maximum number specified in rule 37(c)(v); and
 - (ii) remove any Independent Director from office.
- (c) No person other than an Independent Director vacating office under rule 42 is eligible to be elected an Independent Director at any general meeting unless a notice of the person's candidature (signed by the person) is given to the Company at its registered office at least 35 Business Days before the meeting (or, in the case of a meeting that Members have requested the Board to call, 30 Business Days).
- (d) The Board may at any time appoint a person with the skills and experience described in rule 39(e) as an Independent Director either to fill a casual vacancy or as an addition to the Board, provided that the number of Directors (not including alternate Directors) does not exceed the maximum number determined under rule 37(b) and the number of Independent Directors does not exceed the maximum number specified in rule 37(c)(v).
- (e) Any Independent Director appointed by the Board must be a person who will bring skills and experience to the Board to enable the Board to advance the objects of the Company.

40 Term

- (a) Directors who are not Independent Directors shall hold office for a term of three (3) years but shall be eligible for re-election for a further term of three (3) years.
- (b) Directors who are not Independent Directors shall not hold office for more than six (6) consecutive years.
- (c) Independent Directors shall hold office for a term of up to three (3) years but shall be eligible for reappointment:
 - (i) for a further term of up to three (3) years; and
 - (ii) for two further terms of one (1) year each.
- (d) Once a Director has served the maximum consecutive term, the Director is not eligible for reappointment or re-election to the Board until after a period of at least two (2) years has expired since the expiry of the Director's previous term on the Board.

41 Remuneration of Directors

- (a) No Director who is not an Independent Director is entitled to be paid a fee for their service as a Director.
- (b) Independent Directors will be remunerated for their services as Directors by such amount or value of remuneration each year (if any) as the Board may determine by resolution of at least fifty one percent (51%) of Directors voting on the resolution.
- (c) Any remuneration for Independent Directors must be a fixed amount or value and not a commission of any nature.
- (d) The Directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Board or of a committee of the Board or any general meeting of the Company, or otherwise in connection with the business or affairs of the Company, where the amount payable has been approved by the Board.
- (e) Subject to the Corporations Act, a Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be determined by the Board.

42 Vacation of Office of Director

- (a) In addition to the circumstances in which the office of a Director becomes vacant:
 - (i) under the Corporations Act; and
 - (ii) under rule 39(b)(ii),the office of a Director becomes vacant with immediate effect if the Director:
 - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (iv) resigns by notice in writing to the Company;
 - (v) is absent without the consent of the Board from meetings of the Board held during a continuous period of six months;
 - (vi) dies; or
 - (vii) in the case of a Director in a Directorship Category, that Director:
 - (A) ceases to be employed by, or an Officer of, a Member; or

- (B) becomes employed by, or becomes an Officer of, an entity that is already represented on the Board in any Directorship Category;
 - (viii) in the case of a Retail Brand Owner Director, that Director ceases to be employed by, or an Officer of, a Retail Brand Owner Member that is not an SME Member;
 - (ix) in the case of a Proprietary Brand Owner Director, that Director ceases to be employed by, or an Officer of, a Proprietary Brand Owner Member that is not an SME Member;
 - (x) in the case of an Industry Association Retail Brand Owner Director, that Director ceases to be either:
 - (A) a Retail SME Member Representative employed by a Retail Brand Owner; or
 - (B) employed by, or an Officer of, an Industry Association that represents Retail Brand Owners;
 - (xi) in the case of an Industry Association Proprietary Brand Owner Director, that Director ceases to be either:
 - (A) a Proprietary SME Member Representative employed by a Proprietary Brand Owner; or
 - (B) employed by, or an Officer of, an Industry Association that represents Proprietary Brand Owners; or
 - (xii) in the case of an Independent Director, that Director becomes employed by, or becomes an Officer of, a Member.
- (b) If a vacancy arises in a Directorship Category more than 60 days before an annual general meeting, the Board may appoint a person (being a person eligible to stand for election in that Directorship Category) as a Director to fill that casual vacancy. Any Director appointed under this rule must retire at the next annual general meeting, and may stand for election at that meeting in accordance with rule 38.
- (c) The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in rule 37(b) the Board may only act:
- (i) for the purpose of:
 - (A) increasing the number of Directors to the minimum; or
 - (B) convening a general meeting; or
 - (ii) in emergencies (as determined by the Board from time to time).

43 Alternate Directors

Subject to this Constitution, each Director may appoint a person with the skills and experience described in rule 39(e) approved by a majority of the other Directors to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the registered office of the Company or to a meeting of the Board. The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of the Company of notice in writing signed by the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
- (d) the alternate Director is entitled to be reimbursed under rule 41(b) as if the alternate Director were a Director;
- (e) unless previously terminated, the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

CEO and Powers of the Board

44 Appointment of Chief Executive Officer

- (a) The Board may appoint a person to the office of Chief Executive Officer of the Company for the period and on the terms as it determines.
- (b) Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke any such appointment, with or without cause.
- (c) An exempt Chief Executive Officer is not subject to election and re-election. An exempt Chief Executive Officer is a Chief Executive Officer designated by the Board to be an exempt Chief Executive Officer.

45 Powers of the Board and Chief Executive Officer

- (a) The business of the Company is managed by the Board, which may exercise all powers of the Company that are not, by the law or this Constitution, required to be exercised by the Company in general meeting.

- (b) The Board may, on the terms and conditions and with any restrictions as it determines, delegate to the Chief Executive Officer any of the powers exercisable by it and may at any time withdraw, suspend or vary any of those powers conferred on the Chief Executive Officer. Giving powers to the Chief Executive Officer does not prevent the exercise of those powers by the Board.

Proceedings of the Board

46 Proceedings of the Board

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it determines.
- (b) Until otherwise determined by the Board, 51% of Directors form a quorum.
- (c) A Director may at any time, and a Secretary upon the request of a Director must, convene a meeting of the Board. A meeting of the Board may also be convened in any other manner determined by the Board from time to time.
- (d) Reasonable notice must be given to every Director of the place, date and time of every Board meeting. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission or other electronic means to the usual place of business or residence of the Director or at any other address given to a Secretary by the Director or by any technology agreed by all the Directors.

47 Meetings of the Board by Technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) any other technology that permits each Director to communicate with every other Director; or
 - (iv) any combination of these technologies.A Director may withdraw the consent given under this rule in accordance with the Corporations Act.
- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
 - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating Directors were physically present in the one location.

48 Chair of the Board

- (a) The Board must elect one of the Independent Directors as chair of the Board and the other as deputy chair of the Board and may decide the period for which that chair and that deputy chair are to hold office as chair and deputy chair, respectively.

- (b) In the absence of a sufficient number of Independent Directors to hold the offices of chair and deputy chair, the Directors must elect one Director as the chair and/or deputy chair until sufficient Independent Directors are appointed to hold such offices.
- (c) Where a meeting of the Board is held and:
 - (i) a chair of the Board has not been elected as provided by rule 48(a); or
 - (ii) the chair of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to chair the meeting,the deputy chair of the Board is entitled to chair the meeting or, if the circumstances in rule 48(c)(i) or 48(c)(ii) apply to the deputy chair of the Board, the Directors present may elect one of their number to chair the meeting.

49 Directors' Voting Rights and Exercise of Powers

- (a) Without limiting rule 52, a meeting of the Board of which notice has been given to all Directors and at which a quorum is present, is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board. Nothing in this rule 49(a) limits the exercise of any authority, power or discretion of the Board which has been delegated by the Board in accordance with law or this Constitution.
- (b) Subject to this Constitution, questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting.
- (c) In addition to any decisions which the Scheme Agreement or this Constitution require to be passed by a Special Resolution of Directors, the following decisions of the Board must be passed by a Special Resolution of Directors:
 - (i) making a repayment or prepayment of Member debt;
 - (ii) entering into, varying or terminating any agreements or arrangements with a Member or a related body corporate of a Member;
 - (iii) varying the terms of appointment of a Director;
 - (iv) creating new legal entities which are subsidiaries of the Company;
 - (v) making an application or submission to a Governmental Agency (for example, an application for voluntary product stewardship accreditation under the RWR Act and RWR Rules, or an application for authorisation (including an interim authorisation) pursuant to section 88 of the CC Act), except for routine reporting;
 - (vi) amending the Scheme name or logo;
 - (vii) borrowings or other forms of financial accommodation (other than credit in normal course of business);
 - (viii) commencing, conducting or settling any litigation, arbitration or other legal proceedings for more than \$500,000 (other than routine debt collection proceedings);
 - (ix) appointing or revoking the appointment of a Chief Executive Officer in accordance with rule 45; and
 - (x) expanding the scope of the Scheme or implementing a new product stewardship scheme.

- (d) In the case of an equality of votes on an ordinary resolution at a meeting of the Board, the chair of the meeting has a casting vote in addition to that chair's deliberative vote, unless only two Directors are present and entitled to vote at the meeting on the relevant question.
- (e) Subject to rule 50 and the Corporations Act (which has a number of provisions directed at avoiding conflicts of interest), a Director:
 - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Board and be counted as part of the quorum;
 - (ii) may enter into contracts with, or otherwise have dealings with, the Company;
 - (iii) may hold any other office or place of profit in the Company, except as auditor; and
 - (iv) may hold any other office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind.
- (f) A Director is not disqualified from the Director's office by contracting with the Company in any capacity by reason of holding the office of Director.
- (g) A Director is not liable to account to the Company for any profit realised by any contract, dealings, office or place of profit contemplated by rule 49(e), by reason only of holding the office of Director or of the fiduciary relationship established by the office of Director.
- (h) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the Company of financial products.
- (i) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

50 Material Personal Interests of Directors

- (a) In relation to a contract or arrangement in which a Director has a material personal interest:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (b) Nothing in this rule 50 affects the duty of a Director:
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Board, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Corporations Act or any other law.

51 Committees of the Board

- (a) The Board may delegate any of its powers to committees consisting of any one or more Directors or any other person or persons as the Board thinks fit and may revoke that delegation. In the exercise of delegated powers, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not in conflict with or superseded by any regulations made by the Board under rule 51.
- (c) Nothing in this rule 51 limits the power of the Board to delegate.

52 Written Resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if all Directors, or a majority of the Directors (where notice of the resolution has been given to all Directors), who are entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A Director may signify assent to a document under this rule 52 by signing the document or by notifying a Secretary of the assent of the Director by any technology including fax or email. The resolution is passed when the last of the Directors constituting a majority (as applicable), has assented to the document.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (d) For the purpose of this rule 52, the references to Directors include any alternate Director appointed by a Director who is not available to assent to the document or is otherwise unable to assent to the document within a reasonable time, but do not include any other alternate Directors.

53 Defects in Appointments of Directors

- (a) All actions at any meeting of the Board or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

54 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.

- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on the Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Members all By-Laws, amendments and repeals.

Secretaries and Other Officers

55 Secretaries

- (a) A Secretary holds office on the terms and conditions as to remuneration, and otherwise, as the Board decides.
- (b) The Secretary may be, but need not be, a Director.
- (c) The Board may at any time terminate the appointment of a Secretary.

56 Other Officers

- (a) The Board may from time to time:
 - (i) create any other position or positions in the Company with the powers and responsibilities as the Board may from time to time confer; and
 - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 56(a)(i).
- (b) The Board may at any time terminate the appointment of a person holding a position created under rule 56(a)(i) and may abolish the position.

Commercially Sensitive Information

57 Principles and Protocol Regarding Commercially Sensitive Information

- (a) As soon as reasonably practicable after Registration, the Board must implement a protocol to minimise the receipt by the Company of commercially sensitive information of Members, which protocol may include the appointment of a collection agent.
- (b) The Members and the Board agree that in implementing the objects of the Company, to the extent practicable and to the extent permitted by law, any financial record or other record of the Company that contains commercially sensitive information of a Member must be managed in accordance with the protocol adopted by the Board in accordance with rule 57(a).

Execution of Documents

58 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.

- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

Accounts and Inspection of Records

59 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Members.

60 Minutes and records

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
 - (i) proceedings and resolutions of meetings of the Company's Members;
 - (ii) proceedings and resolutions of Board meetings;
 - (iii) resolutions passed by Members or the Board without a meeting; and
 - (iv) such other matters as are required by the Corporations Act to be recorded in the record books of the Company.
- (b) Minutes of meetings must be signed by the chairperson of the meeting or a Director within a reasonable time after the meeting is held, or by a Director in the case of a written resolution.
- (c) Minute books must be kept at the Company's registered office or its principal place of business in this jurisdiction.
- (d) Minute books that relate to Members' meetings and Members' resolutions passed without meetings must be available for inspection by Members, free of charge. Members may send a written request to the Company for a copy of those minutes. The Company must provide, free of charge, copies of any minutes made pursuant to this rule within 14 days after receipt of a written request for a copy of those minutes.

Seals

61 Seals and Their Use

The Company may have a common seal and a duplicate common seal. If the Company has any such seal:

- (a) it may only be used with the authority of the Board; and

- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

Service of Documents

62 Service of Documents

In this rule 62, a reference to a document includes a notice. Subject to the Corporations Act:

- (a) Any Member who has not left at or sent to the registered office, a place of address or an electronic address (for registration in the Register) at or to which all documents of the Company may be served or sent is not entitled to receive any document.
- (b) A document may be given by the Company to any Member by, in the Company's discretion:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address as shown in the Register or the address nominated by the Member to the Company for the giving of documents;
 - (iii) sending it to the fax number nominated by the Member to the Company for the giving of documents;
 - (iv) sending it electronically (including by providing a URL link to any document or attachment) to the electronic address nominated by the Member to the Company for the giving of documents or by other electronic means nominated by the Member;
 - (v) by sending a document by any of the means referred to in rules 62(b)(i) to (iv) that notifies the holder of the electronic address where the primary notice can be accessed; or
 - (vi) serving it in any manner contemplated in this rule 62(b) on a Member's attorney as specified by the Member in a notice given under rule 62(d).
- (c) This rule 62 applies to any notice given under this Constitution, the Corporations Act and any other notice that the Company is required to, or may elect to, give to any Member.
- (d) By written notice to the Secretary left at or sent to the registered office of the Company or, a Member may request that all documents to be given by the Company or the Board be served on the Member's attorney at an address, or by electronic means, nominated in the notice and the Company may do so in its discretion.
- (e) A document may be sent to a Member whose address for documents is outside Australia by airmail, air courier or fax or otherwise be sent or made available electronically (including as contemplated by rule 62(b)(iv)).
- (f) Any document sent by post is conclusively considered to have been served at the expiration of five (5) days after the envelope containing the document is posted and, in proving service, it is sufficient to prove that the envelope containing the document was properly addressed and posted. Any document served on a Member personally or left at the Member's address is conclusively considered to have been served when delivered. Any document sent to a Member by fax or other electronic means is conclusively considered to have been served when the fax or other electronic transmission is sent. Any document made available to a Member by electronic means as contemplated by

rule 62(b)(iv) is conclusively considered to have been served when notification that the document is available for access by that means is sent.

- (g) A document served in accordance with this Constitution is (despite the fact that the Member is then dead and whether or not the Company has notice of the Member's death) conclusively considered to have been properly served. The service is sufficient service of the document on the Member's personal representative.

Winding Up of the Company

63 Winding Up or Revocation of Endorsement

- (a) On the winding up or dissolution of the Company, any property whatsoever that remains, after satisfaction of all debts and liabilities, must not be paid to or distributed among the Members but must be given or transferred to one or more organisations which has:
- (i) objects similar to the objects of the Company set out in rule 4;
 - (ii) a constitution which requires its income and property to be applied solely in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by rule 4.
- (b) The identity of the corporation(s) or institution(s) referred to in rule 63(a) is to be determined:
- (i) by the Board; or
 - (ii) if the Board does not decide or does not wish to decide, then by the Member(s), in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

64 Amalgamation

Where it furthers the objects of the Company to amalgamate with any one or more organisations having similar objects to the objects of the Company, the other organisation or organisations must have rules prohibiting the distribution of its income and property to Members.

Indemnity

65 Indemnity of Officers, Insurance and Access

- (a) The Company indemnifies each officer of the Company and, if the Board considers it appropriate, any officer of a wholly-owned subsidiary of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or the wholly-owned subsidiary (as the case may be) or in or arising out of the discharge of the duties of the officer.
- (b) Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a wholly-owned subsidiary of the Company, provided that such terms are not inconsistent with this rule 65.
- (c) Where the Board considers it appropriate, the Company may:
- (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a wholly-owned subsidiary

- of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or the wholly-owned subsidiary (as the case may be) or in or arising out of the discharge of the duties of the officer; and
- (ii) bind itself in any contract or deed with any officer of the Company or a wholly owned subsidiary of the Company to make the payments.
- (d) Where the Board considers it appropriate, the Company may:
- (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 65:
- (i) **officer** means:
 - (A) a director, secretary, other officer or senior manager; or
 - (B) a responsible manager; or
 - (C) a person appointed as a trustee by, or acting as a trustee at the request of, the Company or a wholly-owned subsidiary of the Company,and includes a former officer.
 - (ii) **responsible manager** means any responsible manager appointed under the terms of an Australian financial services licence.
 - (iii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, a subsidiary of the Company to any other corporation.
 - (iv) **to the relevant extent** means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
 - (D) in the case of a responsible manager who is not a director, secretary or senior manager, to the extent that the conduct of the responsible manager did not constitute serious and wilful misconduct.
 - (v) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.


Schedule 1**Consent to Terms of this Constitution****Initial Members**

Each of the people named below as a Member consents to becoming a Member and agrees to the terms of this Constitution.

Name	Address
ALDI Foods Pty Limited (ACN 086 210 139)	1 Sargents Road, Minchinbury, NSW 2770
Coles Group Limited (ACN 004 089 936)	800-838 Toorak Road, Hawthorn East, VIC 3123
Mars Australia Pty Ltd (ACN 008 454 313)	1 Petcare Place, Wodonga, VIC 3690
McCormick Foods Australia Pty Ltd (ACN 004 763 259)	71 Fairbank Road, Clayton South, VIC 3169
Nestlé Australia Ltd (ACN 000 011 316)	1 Homebush Bay Drive, Rhodes, NSW 2138
Woolworths Group Limited (ACN 000 014 675)	1 Woolworths Way, Bella Vista, NSW 2153

EXECUTION PAGES FOLLOW

Signed for ALDI Foods Pty Limited by its attorneys under powers of attorney dated 5 July 2010 and 16 December 2022:



Attorney
Oliver Bongardt

Print Name



Attorney
Jordan Lack

Print Name

Signed on behalf of **Coles Group Limited** by
its authorised representative:

A solid black rectangular box redacting the signature of the authorised representative.

Signature

Leah Weckert

Print Name

Executed in accordance with section 127 of the
Corporations Act 2001 by **Mars Australia Pty
Ltd:**



Director

William Heague

Print Name



Secretary

Stephen Torney

Print Name

Executed in accordance with section 127 of the
Corporations Act 2001 by **McCormick Foods
Australia Pty Ltd:**



Director

PARIS GOLDEN

Print Name



Secretary

THUAN DUONG

Print Name

Executed in accordance with section 127 of the
Corporations Act 2001 by **Nestlé Australia Ltd:**



Director

JOHN DAVIS

Print Name



Director/Secretary

Michael Antas

Print Name

Signed for Woolworths Group Limited by its attorney under power of attorney dated 1 May 2023:



Attorney

Michelle Hall

Print Name

Company Secretary

Schedule 5: Draft Scheme Agreement



Scheme Agreement
Soft Plastics Stewardship Scheme

Parties

- 1 **Soft Plastic Stewardship Australia Limited** (ACN 679 696 998) of Suite 3.18, Level 3, 22-36 Mountain St, Ultimo 2007 (**SPSA**).
- 2 The Scheme Participants.

Background

- A SPSA is a packaging stewardship organisation that is a not-for-profit company limited by guarantee, established to implement and manage the Scheme.
- B The Scheme is a product stewardship scheme to manage the collection and recycling of used soft plastic packaging in Australia, funded by contributions from Scheme Participants. The Scheme is subject to authorisation by the Australian Competition and Consumer Commission (**ACCC**).
- C The Scheme intends to take a stewardship approach to managing soft plastic packaging in Australia and will operate to:
 - 1 collect and recycle Used Packaging;
 - 2 minimise as far as reasonably practicable environmental damage from disposal of Used Packaging through waste minimisation, reuse and recycling;
 - 3 result in a net environmental benefit targeting Used Packaging;
 - 4 support recycled material being made available for producing food grade and other contact-sensitive packaging; and
 - 5 support the re-manufacture of plastic packaging in Australia.
- D Scheme Participants will support the Scheme by paying levies.
- E This Agreement sets out the structure of certain aspects of the Scheme, the levies and obligations of SPSA and each Scheme Participant.

It is agreed as follows.

1 Scheme Commencement

The Scheme and the terms of this Agreement will not come into effect until each condition referred to below has been fulfilled:

- (a) **(ACCC authorisation)** The ACCC grants an authorisation to give effect to the Scheme pursuant to section 88 of the CCA.
- (b) **(Board resolution)** The Board being satisfied that the Scheme is ready for implementation and passing a Special Resolution of Directors to implement the Scheme, provided that (without limiting other relevant considerations by the Board) the ACCC authorisation referred to in clause 1(a) has been obtained.

2 SPSA obligations and reporting

2.1 General obligations

SPSA will:

- (a) be responsible for implementing and managing the Scheme in accordance with this Agreement, the other Scheme Documents and all applicable laws, including by

determining the governance of the Scheme, setting, collecting and administering levies in connection with the Scheme and contracting for the services necessary to implement the Scheme (including independent verification of material flows for contracts with third parties involved in collection, recycling and other management of Used Packaging); and

- (b) develop Scheme branding and marketing materials and undertake education, awareness and information activities to promote the Scheme and to recognise Scheme Participants who have joined the Scheme.

2.2 Reporting

- (a) SPSA will prepare and provide to each Scheme Participant as soon as practicable after the end of each financial year (but no later than 31 December each year):
 - (i) audited financial statements for SPSA; and
 - (ii) annual reports for SPSA, which will also be made publicly available on SPSA's website.
- (b) SPSA will prepare and provide to each Scheme Participant as soon as practicable after the end of each fiscal quarter a report providing an update on the operations of SPSA including, without limitation, the volume of Packaging that has been recovered. These reports will also be made publicly available on SPSA's website.

2.3 Levy and in-scope Packaging

- (a) Subject to clause 2.3(b), the Board by a Special Resolution of Directors:
 - (i) will, prior to the end of each financial year, set the Scheme Levy, Minimum Levy and the Minimum Levy Threshold for the immediately following financial year;
 - (ii) may amend the Scheme Levy at any other time deemed necessary by the Board where there has been or it is anticipated that there will be a material change to circumstances since the Board determination in clause 2.3(a)(i); and
 - (iii) may amend the Packaging that is in-scope (or out-of-scope) of the Scheme.
- (b) SPSA will provide at least three months' written notice to Scheme Participants of any change to the Scheme Levy, Minimum Levy, Minimum Levy Threshold or Packaging that is in-scope (or out-of-scope) of the Scheme. Any change will become effective from the date of expiry of this notice period (or such later date approved by the Board). Provided SPSA gives notice in accordance with clause 15, if a Scheme Participant does not receive that notice, such non-receipt or any accidental omission by SPSA to give a notice to a Scheme Participant under this clause 2.3(b) will not invalidate or delay the implementation of a change.

3 Participation in the Scheme

3.1 Becoming a Scheme Participant

- (a) The initial Scheme Participants as at the date of this Agreement are listed in Schedule 2.
- (b) An entity which is not a Scheme Participant may become a new Scheme Participant if it:
 - (i) places Packaging on the Australian market;
 - (ii) satisfies any additional eligibility criteria, including in relation to that entity's financial standing and position within its broader corporate group, for a new Scheme Participant determined by the Board by Special Resolution of Directors from time to time;

- (iii) executes a Deed of Accession in the form contained in Schedule 4; and
 - (iv) is accepted by SPSA as a Scheme Participant and, on or after the date of execution of the Deed of Accession, its name is entered on the register of Scheme Participants, as notified by SPSA in writing to that entity.
- (c) Any eligibility criteria for new Scheme Participants determined by the Board will be:
 - (i) made publicly available;
 - (ii) objective; and
 - (iii) applied consistently.
- (d) The new Scheme Participant's obligations under this Agreement, including its obligation to pay its Levy Contributions, will commence on the later of:
 - (i) the date in SPSA's notice under clause 3.1(b)(iv); or
 - (ii) the commencement date of the Scheme.

3.2 Register of Scheme Participants

- (a) SPSA will maintain a register of Scheme Participants.
- (b) Where relevant, the register will specify the Subsidiaries or business divisions that are included in the Scheme Participant Group's Packaging Report.

4 Scheme Participant's obligations

4.1 Obligations in relation to the Scheme

Scheme Participants must:

- (a) comply with this Agreement and any other Scheme Documents notified to the Scheme Participants from time to time, including any Scheme Advertising and Branding Guidelines;
- (b) comply with the reasonable and lawful directions of SPSA regarding the implementation of the Scheme;
- (c) not engage in activities or conduct contrary or prejudicial to the interests of the Scheme or SPSA; and
- (d) comply with all applicable laws when performing any obligations and exercising rights under this Agreement, including not acting in a manner which is likely to bring SPSA or a Scheme Participant into public disrepute, scandal or ridicule or diminish or impair the reputation of SPSA or a Scheme Participant.

4.2 Packaging reports and levy payments

- (a) A Scheme Participant must:
 - (i) provide the Scheme Participant Group's Packaging Report each year in accordance with Schedule 3; and
 - (ii) pay its Levy Contributions, when due and payable, as calculated and collected in accordance with Schedule 3.
- (b) No Scheme Participant is obliged under this Agreement to provide any capital (whether debt or equity) to SPSA or to give any guarantee or indemnity in respect of any of SPSA's

liabilities (other than, in respect of a Scheme Participant who is a Member, the Member's Guarantee Amount as defined under the Constitution).

5 REDcycle Stockpile Costs

- (a) The Scheme Participants acknowledge that \$16 million of the total costs associated with managing and remediating the soft plastics stockpiles that resulted from the collapse of the REDcycle soft plastics recovery program (**REDcycle Stockpile Costs**) will be paid by SPSA as a contribution to Coles Group Limited (**Coles**) and Woolworths Group Limited (**Woolworths**) over a period of eight years through the Scheme, subject to ongoing Scheme participation from each of Coles and Woolworths respectively.
- (b) Further terms on which the REDcycle Stockpile Costs will be paid to Coles and Woolworths will be subject to one or more contractual agreements between SPSA, Coles and Woolworths. SPSA will provide at least three months' notice to Scheme Participants of these terms or any change to these terms.

6 Amendments to this Agreement

- (a) The Scheme Participants acknowledge that this Agreement is subject to review and amendment by the Board by Special Resolution of Directors over time in accordance with the terms of this clause 6.
- (b) SPSA will provide at least three months' notice to Scheme Participants of any change to this Agreement, other than changes that are of a minor, technical or administrative nature. The changes will become effective from the date of expiry of this notice period (or such later date approved by the Board). Provided SPSA gives notice in accordance with clause 15, if a Scheme Participant does not receive that notice, such non-receipt or any accidental omission by SPSA to give a notice to a Scheme Participant under clause 6(a) will not invalidate or delay the implementation of a change.
- (c) Any amendments to this Agreement will be subject to the limitations or conditions imposed by any ACCC authorisation to give effect to the Scheme pursuant to section 88 of the CCA.

7 Audits

The Board will implement a program to audit Scheme Participants. The requirements of any audit program implemented by SPSA are set out at Schedule 6.

8 Confidentiality

- (a) Scheme Participant information relating to the Scheme Participant's business, operations, products, Packaging, Packaging Placed on Market and Levy Contributions will be confidential to that Scheme Participant (**Participant Confidential Information**).
- (b) SPSA will implement a protocol in relation to the collection and processing of Participant Confidential Information and minimise receipt by SPSA of this information (**Confidentiality Protocol**).
- (c) The Confidentiality Protocol will also apply to audits of individual Scheme Participants.
- (d) The Confidentiality Protocol will include appointment of the Collection Agent to perform the role of calculating, invoicing and/or collecting Levy Contributions and (where applicable) Audit Invoices (as that term is defined in Schedule 6).
- (e) Participant Confidential Information must not be disclosed or used by SPSA, the Collection Agent or the Auditors (as applicable) except in accordance with:

- (i) all applicable laws; and
 - (ii) with the Confidentiality Protocol for the purposes of reviewing compliance with the Scheme Participant's commitments under the Scheme Documents, calculating the Scheme Participant's Levy Contribution, calculating Audit Invoices and/or implementation of this Agreement.
- (f) In addition, Participant Confidential Information may be disclosed or used by SPSA, the Collection Agent and/or the Auditors where:
- (i) the Participant Confidential Information is de-identified and disclosed or used in aggregate form only, such that no Scheme Participant is referred to by name or in any other way which would enable it to be identified;
 - (ii) required by law or by request or order of any court, arbitrator, mediator or regulatory agency;
 - (iii) the Participant Confidential Information is in the public domain (other than as a result of a breach of a confidentiality obligation); or
 - (iv) prior written consent to disclosure or use has been obtained from the relevant Scheme Participant.
- (g) SPSA will include conditions relating to confidentiality and compliance with the Confidentiality Protocol in its contracts with the Collection Agent and Auditor.

9 Advertising and Branding Guidelines

- (a) SPSA will develop Scheme Advertising and Branding Guidelines.
- (b) Each party to this Agreement agrees to abide by the Scheme Advertising and Branding Guidelines in force from time to time.

10 Intellectual Property

- (a) Each party agrees that the Scheme brand, Scheme Advertising and Branding Guidelines, any communication materials and all intellectual property created in relation to the development, implementation, operation and promotion of the Scheme (**Scheme Branding Materials**) will be owned by SPSA and each Scheme Participant hereby assigns all their existing and future intellectual property rights (whether or not registered) in the Scheme Branding Materials to SPSA.
- (b) SPSA grants to Scheme Participants a non-transferable, non-exclusive, royalty-free licence to use Scheme Branding Materials to the extent necessary for the purposes of exercising any of their rights or performing any of their obligations under this Agreement. This is subject to SPSA's reasonable directions from time to time and the Scheme Advertising and Branding Guidelines.
- (c) This Agreement does not impact ownership of a Scheme Participant's intellectual property rights in its Packaging or Packaging Placed on Market information, which will remain the property of the relevant Scheme Participant.
- (d) Each Scheme Participant represents and warrants to SPSA that it will not use the Scheme Branding Materials for any purposes other than in accordance with this clause 10 or as otherwise authorised by SPSA.
- (e) SPSA represents and warrants to the Scheme Participants that, to the best of its knowledge, the use of the Scheme Branding Materials in accordance with this clause 10 or as otherwise authorised by SPSA will not infringe any intellectual property rights of any third party.

11 Resignation and Termination

11.1 Scheme Participant may resign from the Scheme

- (a) A Scheme Participant may resign as a participant of the Scheme by giving SPSA at least two months' written notice (**Resignation Notice Period**). The resignation will take effect on expiry of the Resignation Notice Period and the Scheme Participant must continue to pay Levy Contributions and otherwise comply with this Agreement until the expiry of the Resignation Notice Period.
- (b) If a Scheme Participant is also a Member, its resignation from the Scheme will not become effective until it also ceases to be a Member.
- (c) For the avoidance of doubt, if SPSA exercises its rights to terminate a Scheme Participant under clause 11.2, the Scheme Participant's participation in the Scheme terminates with effect on and from the date set out in the written notice provided by SPSA, subject to the terms of this clause 11.

11.2 Misconduct of a Scheme Participant

SPSA may suspend or terminate a Scheme Participant as a participant under this Agreement by giving written notice to that Scheme Participant if:

- (a) where the Minimum Levy Threshold does not apply, the Scheme Participant has not paid its Levy Contribution for two quarters in any 12-month period (whether consecutive or otherwise) by the due date and fails to remedy that breach within 20 Business Days after receiving a notice from SPSA of the overdue payment;
- (b) the Scheme Participant has not paid any shortfall amount or Audit Invoice (as that term is defined in Schedule 6) required to be paid following an audit under this Agreement, and fails to remedy that breach within 20 Business Days after receiving a notice of the overdue payment;
- (c) where the Minimum Levy Threshold applies, the Scheme Participant has not paid the Minimum Levy for a financial year by the due date and fails to remedy that breach within 20 Business Days after receiving a notice from SPSA of the overdue payment; or
- (d) if SPSA's Board determines, acting reasonably and in good faith, that:
 - (i) the Scheme Participant is in material breach of a Scheme Document; or
 - (ii) the Scheme Participant's conduct or continued participation in the Scheme is contrary or prejudicial to the interests of the Scheme, including, but not limited to, the Scheme Participant intentionally or recklessly misrepresenting their Packaging Placed on Market or otherwise providing false or materially incomplete information in its Packaging Report,

provided that:

- (iii) SPSA has given notice to the Scheme Participant setting out the relevant circumstances and stating an intention to suspend or terminate the Scheme Participant as a participant under this Agreement;
- (iv) SPSA has given the Scheme Participant an opportunity to respond to the notice (either orally or in writing) and to provide any explanation or defence the Scheme Participant thinks fit; and
- (v) in SPSA's opinion, the relevant circumstances have continued to exist for at least 20 Business Days from the time that notice is given.

11.3 Termination of this agreement

This Agreement:

- (a) terminates automatically on the date (if any) on which ACCC authorisation to give effect to the Scheme ceases to be in force under the CCA if still required; or
- (b) may be terminated with approval of the Board by a Special Resolution of Directors.

11.4 Effect of resignation or termination

- (a) If a Scheme Participant resigns, is suspended or terminated, or if this Agreement is terminated, then each relevant Scheme Participant is required to:
 - (i) pay any outstanding Levy Contribution due and payable up to and including the termination date or resignation date (as applicable). To the extent a Scheme Participant ceases to be a Scheme Participant during a fiscal quarter, any outstanding Levy Contribution instalment for that quarter will be calculated on a pro rata basis for that quarter; and
 - (ii) cease exercising all rights of a Scheme Participant under the Scheme Documents, including removing all branding and advertising relating to the Scheme from the Scheme Participant's advertisements and publicly available materials as soon as practicable and otherwise as reasonably directed by SPSA.
- (b) SPSA will not be required to reimburse a Scheme Participant for any Levy Contributions that have already been paid.
- (c) The termination of this Agreement, however caused, will:
 - (i) be without prejudice to any obligations of the parties which has accrued prior to that termination or cessation and which remain unsatisfied; and
 - (ii) not affect any provision of this Agreement, which is expressed to come into effect on, or to continue in effect after, that termination or cessation.

12 Dispute resolution

12.1 Negotiation

Except as is expressly provided for in this Agreement, if there is a dispute or difference between two or more of the parties arising out of or in connection with this Agreement (**Dispute**), then within 10 Business Days after a party notifies the other parties in writing of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

12.2 Mediation

- (a) If the Dispute is not settled within 10 Business Days after notification under clause 12.1 the parties will, if mutually agreed, submit the Dispute to mediation administered by the Resolution Institute.
- (b) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the Board.
- (c) Any mediation meetings and proceedings under this clause must be held in New South Wales, Australia.
- (d) All communications during the mediation are confidential and must be treated as made in the course of compromise and settlement negotiations for the purposes of the applicable rules of evidence and any professional secrecy protections provided by applicable law.

12.3 Dealing with third party claims

The Board may, by passing a Special Resolution of Directors, determine how any third party claims against SPSA, or directly against a Scheme Participant in relation to the Scheme, may be dealt with and defended.

12.4 Court proceedings and other relief

A party may not start court proceedings in relation to a Dispute until it has exhausted the procedures in this clause, unless the party seeks injunctive or other interlocutory relief.

12.5 Continuation of rights and obligations

Despite the existence of a dispute or difference each party must continue to perform this Agreement.

13 Representations and warranties

Each party warrants to each other party that (except as expressly disclosed in this Agreement or consented to by the other party) each of the following statements is true and correct:

- (a) **(authorisations)** It has taken all necessary action to authorise the entry into and performance of this Agreement and each Scheme Document to which it is expressed to be a party and to carry out the transactions contemplated by this Agreement and those Scheme Documents.
- (b) **(transactions permitted)** The execution and performance by it of this Agreement and each Scheme Document to which it is expressed to be a party and each transaction contemplated under this Agreement and those Scheme Documents did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a government or governmental authority or agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement that is binding on it or its assets.

14 Relationship of the Scheme Participants

- (a) Neither this Agreement nor the Constitution is to be interpreted as constituting:
 - (i) a relationship of partnership, quasi partnership, fiduciary, association or any other relationship between any Scheme Participants pursuant to which one or more of the Scheme Participants may (except as specifically provided for in this Agreement) be liable generally for the acts or omissions of any other Scheme Participant; or
 - (ii) any Scheme Participant as the general agent or representative of any other Scheme Participant or of SPSA.
- (b) No Scheme Participant has the authority to pledge or purport to pledge the credit of any other Scheme Participant or SPSA or to make or give (or purport to make or give) any representations, warranties or undertakings for or on behalf of any other Scheme Participant or SPSA.

15 Notices

- (a) A notice under this agreement must be in writing and may be given to the addressee by:
- (i) delivering it to the address of the addressee;
 - (ii) sending it by pre-paid registered post to the address of the addressee; or
 - (iii) sending it by email to the email address of the addressee.
- (b) The notice will be deemed to have been received by the addressee:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by pre-paid registered post, 6 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
 - (iii) if by email, when the sender receives an automated message confirming delivery; or three hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- (c) A Scheme Participant must provide its address and notice details to SPSA when it becomes a Scheme Participant or, in the case of the initial Scheme Participants, at the time of signing this Agreement. It is the Scheme Participant's responsibility to notify SPSA of any changes to its address or notice details.

16 General

16.1 Governing Law

- (a) This Agreement is governed by and is to be construed in accordance with the laws of New South Wales, Australia.
- (b) With respect to any legal action or proceedings arising out of or in any way related to this Agreement or its subject matter, each party irrevocably and unconditionally:
- (i) submits to the non-exclusive jurisdiction of the courts with jurisdiction in New South Wales, Australia; and
 - (ii) waives any right to object to the venue on any ground.

16.2 GST

In relation to any goods & services tax (**GST**) payable for a taxable supply by a party under this agreement, the recipient of the supply must pay the GST subject to the supplier providing a tax invoice in accordance with applicable laws relating to GST.

16.3 Execution and counterparts

- (a) This Agreement may be executed electronically and may be executed in counterparts.
- (b) Where a person signs this Agreement electronically, the electronic signature is an effective binding signature, and the electronic document containing it can be an effective electronic counterpart of this Agreement. In addition, the person intends that any printout of the signature will also constitute an effective original signature, so that the printout will also be an executed original counterpart of this Agreement.

16.4 Assignment

A party cannot assign, novate or otherwise transfer or deal with any of its rights or obligations under this Agreement without the prior written consent of a Special Resolution of Directors.

16.5 Entire agreement

This Agreement and each other Scheme Document contain the entire agreement between the parties as at the Effective Date with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. None of the parties has relied on or is relying on any other Conduct in entering into this Agreement and each Scheme Document and completing the transactions contemplated by it.

16.6 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

16.7 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

16.8 Remedies cumulative

The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.

16.9 Several obligations and rights

The obligations of the parties under this Agreement are several and not joint or joint and several. Where the parties have rights under this Agreement or a party owes any of the other parties an obligation under this Agreement those rights, or the benefit of that obligation, is held or given to each party separately.

Schedule 1: Definitions and Interpretation

1 Definitions

In this Agreement these terms have the following meanings:

Auditors has the meaning given to that term in Schedule 6.

Board means the board of Directors of SPSA, from time to time.

Business Day means a day which is not a Saturday, Sunday or a public holiday in New South Wales.

CCA means the *Competition and Consumer Act 2010* (Cth).

Collection Agent means any independent third party appointed by SPSA for the time being to perform the role of calculating, invoicing and/or collecting Levy Contributions and who has appropriate reputation and standing to perform such role.

Confidentiality Protocol has the meaning given to that term in clause 8(a).

Constitution means the constitution of SPSA, as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth).

Deed of Accession means the deed of accession in the form set out in Schedule 4.

Director means a person appointed or elected to the office of director of the Company in accordance with the Constitution and, where appropriate, includes an alternate Director.

Levy Contribution means, in respect of a Scheme Participant, the levies (whether based on the Scheme Levy or Minimum Levy) payable by the Scheme Participant, calculated and paid in accordance with Schedule 3, as amended from time to time in accordance with this Agreement.

Member means a person admitted to the membership of SPSA in accordance with the provisions of the Constitution.

Minimum Levy means, in respect of a Scheme Participant whose Packaging Placed on Market is less than the Minimum Levy Threshold, the minimum amount payable by that Scheme Participant as specified in the Levy Contributions table in clause 1 of Schedule 3, as amended from time to time in accordance with clause 2.3.

Minimum Levy Threshold means the amount specified in the Levy Contributions table in clause 1 of Schedule 3, as amended from time to time in accordance with clause 2.3.

Packaging means soft plastic or flexible packaging which is used for the containment, protection, marketing, handling or distribution of Products and is in-scope of the Scheme (as determined by the SPSA Board from time to time and notified to Scheme Participants in accordance with this Agreement). The initial Packaging that is in-scope and out-of-scope of the Scheme is described in Schedule 5.

Packaging Placed on Market has the meaning given to that term in Schedule 3.

Packaging Report means the Scheme Participant's report of Packaging Placed on Market provided in accordance with Schedule 3. The Packaging Report must be signed by an officer or authorised representative of the Scheme Participant and must include a declaration that the information in the report gives a true and fair view, in all material respect, of the Scheme Participant's Packaging Placed on Market.

Product means a product sold or supplied in Packaging to a business or consumer, where that Packaging (once used) is Used Packaging that is covered by the Scheme.

Scheme means the product stewardship scheme to manage the collection and recycling of Used Packaging, which, subject to ACCC authorisation pursuant to section 88 of the CCA and applicable regulations, is to be implemented by SPSA in accordance with the Scheme Documents.

Scheme Advertising and Branding Guidelines means SPSA's brand and advertising guidelines for use of Scheme branding.

Scheme Documents means this Agreement, the Confidentiality Protocol, the Scheme Advertising and Branding Guidelines, any new or amended guidelines developed by SPSA and notified to Scheme Participants over time, and in respect of Scheme Participants who are members of SPSA, the Constitution.

Scheme Levy means the amount per tonne of Packaging Placed on Market by the Brand Owner Group specified in the Levy Contributions table in clause 1 of Schedule 3, as amended from time to time in accordance with clause 2.3.

Scheme Participant means each of:

- (a) the initial Scheme Participants being those listed in Schedule 2, who are parties to this Agreement; and
- (b) any new Scheme participant who has become a party to this Agreement pursuant to clause 3,

(together, the **Scheme Participants**).

Scheme Participant Group means, in respect of a Scheme Participant:

- (a) the Scheme Participant; and
- (b) each Subsidiary of the Scheme Participant (if any),

unless otherwise agreed by SPSA in writing (acting reasonably).

Special Resolution of Directors means a resolution passed by at least 75% of the votes cast by Directors entitled to vote on the resolution.

Subsidiary has the meaning given in the Corporations Act, amended as necessary such that:

- (a) a body corporate, a trust, a partnership or other entity will also be taken to be a Subsidiary of a Scheme Participant if it is controlled by that Scheme Participant (as defined in section 50AA of the Corporations Act);
- (b) a trust, a partnership or other entity may be a Subsidiary, for the purpose of which a unit or other beneficial interest in the trust, partnership or entity will be regarded as a share (ignoring the operation of section 48(2) of the Corporations Act); and
- (c) an entity may be a Subsidiary of a trust, a partnership or other entity if it would have been a Subsidiary if that trust, partnership or entity were a body corporate.

Used Packaging means Packaging that has reached the end of its initial useful life, or such other materials determined by the Board from time to time.

2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.

- (c) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
- (i) The singular includes the plural, and the converse also applies.
 - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iii) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals, Schedules and Annexures to that agreement or document.
 - (iv) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns and any person who executes a Deed of Accession (and, where applicable, the party's legal personal representatives).
 - (v) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
 - (vi) A reference to financial year is to SPSA's financial year.
 - (vii) A reference to any professional body includes the successors of that body.
 - (viii) A reference to dollars or \$ is to Australian currency.
 - (ix) All references to time are to Sydney, New South Wales time.
 - (x) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (xi) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

3 Incorporation of schedules

Each schedule to this Agreement is incorporated by reference in this Agreement but if there is any inconsistency between any schedule and any provision of this Agreement, the provision of this Agreement prevails to the extent of the inconsistency.

4 Order of priority

To the extent there is any inconsistency between any provision of this Agreement and the Constitution or any other document in relation to the Scheme, the provision of this Agreement prevails to the extent of the inconsistency.

5 Consents or approvals

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

6 Best endeavours or reasonable endeavours

A reference to a party using or an obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
- (b) provide other valuable consideration to or for the benefit of any person;
- (c) agree to commercially onerous or unreasonable conditions; or
- (d) forego, sacrifice or prejudice their commercial, economic or operational interests.

Schedule 2: Initial Scheme Participants

- ALDI Foods Pty Limited (ACN 086 210 139);
- Coles Group Limited (ACN 004 089 936);
- Mars Australia Pty Ltd (ACN 008 454 313)
- McCormick Foods Australia Pty Ltd (ACN 004 763 259);
- Nestlé Australia Ltd (ACN 000 011 316); and
- Woolworths Group Limited (ACN 000 014 675).

Schedule 3: Levy Contributions and Packaging Reports

1 Levy Contributions – calculation and collection

Determination of Levy Contribution	<p>A Scheme Participant's Levy Contribution for a financial year will be calculated:</p> <ol style="list-style-type: none"> 1 using the Scheme Participant Group's Packaging Placed on Market data for the prior calendar year from their Packaging Report; 2 by SPSA's Collection Agent. <p>To the extent a Scheme Participant pays a Levy Contribution based on the Scheme Levy, that Scheme Participant will not be required to pay the Minimum Levy.</p>
Scheme Levy (at commencement)	<p>[\$[160] per tonne of Packaging Placed on Market in the prior calendar year (excluding GST) by the Scheme Participant Group.</p>
Minimum Levy (at commencement)	<p>[\$[1600] per annum (excluding GST)</p>
Minimum Levy Threshold (at commencement)	<p>The Minimum Levy will apply when the Scheme Participant Group's Packaging Placed on Market is less than 10 tonnes in the prior calendar year.</p>
Invoicing of Levy Contributions	<ol style="list-style-type: none"> 1 Levy Contributions will be invoiced by the Collection Agent. 2 Levy Contributions (excluding the Minimum Levy) will be invoiced in equal quarterly instalments each financial year. 3 The Minimum Levy will be invoiced on an annual basis. 4 Instalments will be calculated on a pro-rata basis where a Scheme Participant joins the Scheme or resigns part-way through a fiscal quarter. 5 Invoices issued by the Collection Agent will set out any applicable GST or other tax or duty applicable to the Levy Contribution. For the avoidance of doubt, in addition to the Levy Contribution and any other moneys payable under this Agreement by Scheme Participants, the Scheme Participants must pay the amount of any GST or other tax or duty applicable to that Levy Contribution.
Payment terms for Levy Contributions	<p>30 days from date of invoice.</p>
Late payment and interest	<p>Without limiting any other provisions in this Agreement:</p> <ol style="list-style-type: none"> 1 If a Scheme Participant fails to pay a Levy Contribution instalment by the due date and fails to remedy the late payment within 10 Business Days after receiving notice from the Collection Agent, interest will be payable on the overdue amount. 2 The interest payable will be the 24 hour delay rate displayed at or about 11am (AEST time) on the ASX benchmark rates page (or any successor page) for Australian bank bills of a three month tenor, plus 300 basis points, compounding for each day from the due date for payment until payment is made.

2 Packaging reports and Packaging Placed on Market

Packaging Report	<ol style="list-style-type: none"> 1 Scheme Participants must submit an annual report to the Collection Agent regarding their Packaging Placed on Market (if any) during the prior calendar year, together with a declaration that the information in the report provides a true and fair view, in all material respects, of the Scheme Participant's Packaging Placed on Market. 2 Reports must be for the Scheme Participant Group and be based on data for the prior calendar year in full. 3 The Packaging Report must be in the form and contain the information reasonably required by SPSA. This may include data by Packaging type. 4 Scheme Participants are responsible for providing accurate data on their Packaging Placed on Market.
What is Packaging Placed on Market?	<p>Packaging Placed on Market:</p> <ol style="list-style-type: none"> 1 means all Packaging used for Products supplied by the Scheme Participant Group to businesses or consumers in Australia (whether directly or through a third party); 2 excludes Packaging out-of-scope of the Scheme; and 3 for a Scheme Participant who is a Retailer, excludes any Packaging on third party Products where the third party uses the Retailer (or its Subsidiaries) to sell those Products to businesses or consumers. <p>Retailer means, in respect of the Scheme Participant Group, where that group that derives more than 50% of its total gross revenue (as stated in its audited financial statements for a particular financial year) from the selling of products directly to the public (whether in store or online). A Retailer includes supermarkets, department stores, general stores and other retailers that predominantly sell direct to consumers.</p>
Due date for Packaging Report	<ol style="list-style-type: none"> 1 31 March each year. 2 A new Scheme Participant's first Packaging Report is due within 60 days after they are registered as a Scheme Participant.
Ownership of Packaging data	<ol style="list-style-type: none"> 1 A Scheme Participant's Packaging Placed on Market data will remain the property of the Scheme Participant. 2 SPSA must ensure the Collection Agent is engaged on terms that include confidentiality obligations consistent with the Confidentiality Protocol.

Schedule 4: Deed of Accession

Deed of Accession dated [insert date]

Granted By: [Insert Company name and ABN] of [insert address] (*New Scheme Participant*)

In Favour of: Soft Plastic Stewardship Australia Limited ACN 679 696 998 (*SPSA*)
and each of the existing Scheme Participants under the Agreement
(together the *Existing Scheme Participants*)

Recitals

- A. SPSA and the initial Scheme Participants entered into a Scheme Agreement dated [insert date] (the *Scheme Agreement*).
- B. The New Scheme Participant has received a copy of the Scheme Agreement and wishes to become a Scheme Participant and a party to the Scheme Agreement.
- C. To become a party to the Scheme Agreement and a Scheme Participant, the New Scheme Participant must enter into this Deed.

With effect from the date of this Deed, the New Scheme Participant agrees with the Existing Scheme Participants and SPSA (as fully and effectively as if they were a party to this Deed) to:

- (a) become a party to the Scheme Agreement and a Scheme Participant; and
- (b) commit to the Scheme and be bound by the terms and conditions of the Scheme Agreement on and from the date of this Deed, as if references in the Scheme Agreement to Scheme Participants included references to the New Scheme Participant.

The address of the New Scheme Participant for Notices under the Scheme Agreement is:

[insert]

The New Scheme Participant will notify SPSA if these address details change.

This Deed is governed by the laws of New South Wales, Australia. This Deed may be executed electronically and may be executed in counterparts.

Executed and delivered as a deed poll.

[insert execution block for New Scheme Participant]

Schedule 5: Soft Plastic Packaging

Packaging in-scope of the Scheme	Packaging out-of-scope of the Scheme
<p>Soft plastic or flexible plastic packaging that can be scrunched into a ball, such as:</p> <ul style="list-style-type: none"> • Shopping bags; • Fresh produce bags; • Food wrappers, bags and pouches; • Over-wrap; • Cling film; • Sandwich bags; • Bags and wrap for clothing, household goods, and hardware etc; • Postal bags; • Bubble wrap; • Plastic sleeves intended to be removed by the consumer; and • Multipack wrap (ie, plastic wrap used to group multiple sales units intended to be taken home by the consumer). 	<p>Business-to-business packaging and soft plastic labels, such as:</p> <ul style="list-style-type: none"> • Plastic labels on rigid packaging (such as plastic, glass or cardboard packaging); • Stickers on fresh produce; • Shrink wrap or pallet wrap, including shrink wrap used for shelf-ready packaging intended to be removed by the retailer prior to sale; • Packaging on Products being exported from Australia; and • Pre-consumer / waste packaging at factories.

Schedule 6: Audits

1 Audit Program

- (a) SPSA may arrange for an audit of any or all of the Scheme Participants. Audits will be confidential and the scope of an audit will be limited to the relevant Scheme Participant's participation in the Scheme and its Levy Contributions, to ensure that the Scheme Participant is operating in accordance with their commitments under this Agreement.
- (b) Auditor(s) will be appointed by SPSA (**Auditors**) and must be of appropriate reputation and standing, have relevant experience in accounting and have no direct or indirect personal interest in the outcome of the audit.
- (c) SPSA must provide at least 20 Business Days' notice to a Scheme Participant prior to an audit being undertaken.
- (d) A Scheme Participant must, at its cost, provide full cooperation and all relevant documentation and access reasonably required by the Auditor to perform and complete the audit within the scope set out in this Schedule 6 .
- (e) Subject to clause 3 of this Schedule 6, SPSA will bear all other costs of the audit program.
- (f) This Schedule 6 will survive the expiry or termination of this agreement.
- (g) Each Scheme Participant must keep accurate and proper records for the period that it is a Scheme Participant and for at least 3 years after it ceases to be a Scheme Participant, regarding the Scheme Participant's Packaging Placed on Market.

2 Audit reports

- (a) The Auditors must provide a copy of an audit report to the relevant Scheme Participant at the conclusion of an audit. Otherwise, the Auditors must keep audit reports on Scheme Participants confidential and only use or disclose those reports to the extent permitted under this agreement (including to the Collection Agent in accordance with clause 3 below) or where required by law.
- (b) The Auditors may also provide aggregated and de-identified information about the audit program and audit outcomes to SPSA.

3 Audit Variances

- (a) An audit outcome will be satisfactory if it finds that a Scheme Participant's Levy Contributions have been correctly calculated and paid, or if any variances are within the threshold permitted by SPSA (as notified from time to time) (**Permitted Tolerance**).
- (b) The Auditors must notify the Scheme Participant in writing if an audit finds that a Scheme Participant's Levy Contributions have not been correctly calculated or paid and that variance is greater than the Permitted Tolerance (**Audit Notice**). The Audit Notice will be copied to the Collection Agent and must contain a summary report on the variance only and limit sharing of Participant Confidential Information.
- (c) Where the Audit Notice identifies a shortfall in the Levy Contributions, the Collection Agent will notify SPSA and SPSA or the Collection Agent will arrange for an invoice to be issued to the Scheme Participant for that shortfall. SPSA or the Collection Agent may also invoice the Scheme Participant for:
 - (i) interest on that shortfall amount (from the due date for payment until that amount is paid in full, using the interest rate set out in Schedule 3); and/or

- (ii) where a Scheme Participant intentionally misrepresents their Packaging Placed on Market, the costs of the audit; and/or
 - (iii) any legal expenses reasonably incurred by SPSA in connection with recovery of the amount owing,
- (together, the **Audit Invoice**).
- (d) The Scheme Participant must pay the Audit Invoice as a debt due within 20 Business Days after provision of the Audit Invoice, which is deemed to be final and binding, unless the Scheme Participant gives written notice that it disputes the Audit Invoice in accordance with this clause 3 of Schedule 6.
 - (e) Where an overpayment has been identified by the Auditors, SPSA must repay the Scheme Participant as soon as reasonably practicable (but in all cases subject to SPSA having the necessary funds).

4 Disputes about audit reports or variances

- (a) If a Scheme Participant disputes the results of an audit report or Audit Notice, the Scheme Participant must provide the Collection Agent with a written statement of reasons and copies of all information relied upon within 10 Business Days after receipt of the audit report or Audit Notice, as the case may be (**Audit Dispute**). The Collection Agent must notify SPSA of the Audit Dispute, limiting the sharing of any Participant Confidential Information in connection with the Audit Dispute.
- (b) For an Audit Dispute relating to a shortfall in the Levy Contributions, SPSA will arrange for an amended Audit Invoice to be issued when the Audit Dispute is resolved, which will be payable within 20 Business Days after receipt by the Scheme Participant.
- (c) If the Audit Dispute is not resolved within 20 Business Days after notification of the Audit Dispute to the Collection Agent, SPSA may refer the Audit Dispute to an expert appointed by SPSA to resolve the Audit Dispute. The expert must be of appropriate reputation and standing, have relevant experience in accounting, have no direct or indirect personal interest in the outcome of the Audit Dispute and not be an SPSA-appointed auditor or former auditor.
- (d) The determination of the expert as to the Audit Dispute will be final and binding on the relevant Scheme Participant and SPSA, in the absence of manifest error.
- (e) The cost of a determination by the expert must be borne by the Scheme Participant or as otherwise determined by the expert.
- (f) Despite the existence of a dispute or difference each party must continue to perform this Agreement.

Execution

Signed as an agreement

[Execution blocks to be inserted]

DRAFT

Schedule 6: Charter and Terms of Reference for the Stakeholder Advisory Council

STAKEHOLDER ADVISORY COUNCIL (SAC)

Charter & Terms of Reference

March 2025

Stakeholder Advisory Council (SAC) Charter and Terms of Reference Soft Plastic Stewardship Australia Limited

1. Introduction

This Charter and Terms of Reference (**Charter**) sets out the composition, responsibilities and operation of the Stakeholder Advisory Council (**SAC**) established by Soft Plastic Stewardship Australia Limited (**SPSA**).

SPSA is a not-for-profit Producer Responsibility Organisation (**PRO**) formed to operate a soft plastics product stewardship scheme (**Scheme**) in Australia, subject to regulatory approval from the Australian Consumer and Competition Commission (**ACCC**).

2. Purpose & Role

The SAC is intended to:

- (a) provide guidance, stakeholder insights and recommendations to SPSA, where requested, on substantive matters relevant to the efficient and effective development and operation of the Scheme to meet SPSA's objectives;
- (b) be a forum for exchange of information, insight, expertise and feedback between the SAC and the SPSA executive and Board on substantive matters relating to the Scheme, from a variety of informed perspectives and industry expertise; and
- (c) Matters to be considered may include, but are not limited to, collection methods, recycling, policy and strategy, market development, stakeholder engagement and public communications and education.

3. Composition of the SAC

- (a) SPSA's aim is to appoint members to the SAC from diverse stakeholder groups. These may include representatives from some or all of the following sectors:
 - (i) **Recyclers and plastic processors:** Experts from the recycling and reprocessing industry particularly specialising in the soft plastics value chain;
 - (ii) **Government Agencies:** Representatives from local, state, and federal government bodies involved in sustainability policies with a focus on recycling, circular economy and product stewardship;
 - (iii) **Environmental NGOs:** Members from environmental organizations advocating for circular economy outcomes and sustainable waste management practices;
 - (iv) **Consumer Representatives:** Individuals representing consumer interests and community groups;
 - (v) **Brand Owners:** Representatives from companies producing or selling products with soft plastic packaging. This excludes any company who is currently represented on the SPSA Board;
 - (vi) **Retailers:** Representatives from retailers involved in the sale of products packaged on soft plastics. This excludes any company who is currently represented on the SPSA Board; and

- (vii) **Knowledge sector:** representatives from the University, Research and Product Stewardship sectors.
- (b) The representatives on the SAC and sectors represented will be determined by the SPSA Board from time to time and will comprise up to thirteen (13) members (Members), being:
 - (i) one representative from the SPSA Board; and
 - (ii) up to twelve (12) other representatives appointed by the SPSA Board based on their expertise, experience, and stakeholder representation.
- (c) Members of the SAC must agree to comply with this Charter and any applicable SAC policies approved by the Board of SPSA from time to time and notified to the SAC, together with all applicable laws.
- (d) SAC members will be appointed by the SPSA Board for an initial period of up to two-years, with potential for reappointment.
- (e) The SPSA Board may revoke a SAC member's appointment by giving 30 days written notice to the member. A SAC member may resign at any time by giving 30 days written notice to the SPSA Board.

4. Chair and Secretariat

- (a) The Chair of the SAC will be appointed by the SPSA Board. The Chair must be a SAC Member and must not be an employee or officer of SPSA or a company from the Brand Owner or Retailer sectors). The Chair will be appointed for an initial period of up to two-years, with potential for reappointment.
- (b) The SPSA Board may revoke the Chair's appointment by giving 30 days written notice to the Chair. The Chair may also resign from the role as Chair at any time by giving 30 days written notice to the SPSA Board.
- (c) SPSA will provide a Secretariat to support the operation of the SAC.
- (d) The Chair (in conjunction with the Secretariat) will set agendas, table minutes for approval and facilitate scheduled meetings of the SAC.

5. Meetings

5.1 General

- (a) Meetings of the SAC may be held in person, virtually, or as a hybrid of both.
- (b) The SAC must meet at least once every calendar quarter.
- (c) The SPSA CEO and/or senior executives of SPSA may attend SAC meetings to allow for direct dialogue. SPSA may also invite guests to attend a SAC meeting.
- (d) If unable to attend a meeting, a Member may request to appoint an alternate for that meeting. Members may also request to invite guests to attend a SAC meeting. Member requests to appoint an alternate, or to invite guests to meetings, must be notified in writing in advance to the Chair and Secretariat and are subject to prior approval of the Chair.

5.2 Agenda

- (a) The Secretariat in conjunction with the Chair will prepare the agenda and relevant materials for each SAC meeting. These will be sent electronically to each Member of the SAC approximately five (5) working days in advance of the meeting.
- (b) Each SAC Member is encouraged to propose items to the Chair for inclusion on the agenda for any SAC meeting and is free to raise at meetings any relevant matter that is not on the agenda, subject to time availability.
- (c) If a Member of the SAC requires clarification on information or material provided for a meeting, the Member should seek that information from the Chair or the Secretariat.

5.3 Quorum & adjournment of meetings

- (a) A quorum for a SAC meeting will be at least fifty percent (50%) of the current membership of the SAC. If a member is absent from a meeting and their approved alternate is present, then the alternate may be included in the quorum.
- (b) In the absence of a quorum within 30 minutes after the commencement time for the meeting, the meeting will be adjourned to a date, time and place determined by the Chair and notified to SAC members.

5.4 Minimum attendance expectations

- (a) Regular attendance at SAC meetings is important to maintain continuity and facilitate effectiveness and governance of the SAC. Members of the SAC are expected to attend at least sixty percent (60%) of SAC meetings in a 12-month period.
- (b) The SPSA Board may revoke a SAC member's appointment by giving written notice to the member if the member fails to attend the minimum number of meetings in a 12-month period as required under paragraph (a).

5.5 Conduct at SAC meetings

- (a) The Chair of the SAC (appointed by the SPSA Board) will act as chair at SAC meetings.
- (b) The Chair may nominate another Member of the SAC to act as chair of a meeting in their absence. If no acting chair is nominated by the Chair, then the Members present at a meeting may choose a Member to act as chair for that meeting only.
- (c) Minutes of proceedings of all SAC meetings will be taken by the Secretariat. A draft set of minutes will be circulated to Members of the SAC as soon as practical after the relevant meeting and will be tabled for approval at the next meeting of the SAC.
- (d) Each Member of the SAC will support the proper conduct of meetings by participating:
 - (i) efficiently and expeditiously, with due respect for the time and commitment of Members of the SAC; and
 - (ii) with proper regard to the views of various stakeholders (including, but not limited to, the views of all Members of the SAC regardless of whether they are in the majority or minority).

- (e) To facilitate the proper conduct of meetings, the Chair will have discretion to make, and require Members of the SAC to observe, rulings on questions of meeting procedure (subject to those rulings complying with this Charter and any other SAC policies that have been approved by SPSA and notified to the SAC).

6. Recommendations

- (a) Where SPSA requests the SAC to provide a recommendation, the recommendation should represent the broad consensus of SAC Members (where possible) as determined by the Chair.
- (b) If the Chair refers a matter to a vote at a SAC meeting, each Member of the SAC, or their alternate, will have one vote. Attendees who are not Members of the SAC may not vote. SAC Members can only vote in person or via proxy using the approved form.
- (c) A vote is passed if the majority (more than 50%) of SAC Members, including alternates, present or via proxy vote in favour of the determination.
- (d) Where a broad consensus cannot be reached, the Chair is expected to provide feedback to SPSA on the options assessed by the SAC, the respective positions of SAC members and an outline of their reasons.

7. Confidentiality

- (a) Information shared by SPSA or other parties at the SAC may be confidential and cannot be re-shared or used by SAC Members without permission of SPSA or the disclosing parties. SPSA may require Members of the SAC (and any alternate or guest) to sign confidentiality agreements in the form provided by SPSA.

8. Conflict of Interest

- (a) Each Member of the SAC must carry out their SAC responsibilities independently.
- (b) Any Member of the SAC who considers they have an actual, potential, or perceived conflict of interest must, as soon as possible, advise the Secretariat in writing.
- (c) Any actual, potential, or perceived conflict of interest shall be dealt with in accordance with the SAC Conflict of Interest Policy.

9. Remuneration

- (a) Members of the SAC will not be remunerated for their participation in the SAC.
- (b) Each Member of the SAC will be entitled to reimbursement of reasonable travel costs for attendance at in-person meetings, upon submission of receipts.
- (c) Membership of the SAC does not give rise to or evidence any partnership, joint venture or employment relationship with SPSA.

10. Review of Charter and SAC Performance

- (a) This Charter and any Board-approved SAC policies may be reviewed and amended by the Board of SPSA at any time. Amendments to the Charter and Board-approved SAC policies must be approved by SPSA's Board and notified in writing to the SAC.
- (b) SPSA will review the performance of the SAC in accordance with a review timetable and process approved by the SPSA Board. Members of the SAC are expected to participate in and provide all reasonable assistance to the performance evaluation process.

Approved by the SPSA Board of Directors: 21 February 2025

Annexure

Position statement: SAC Chair

Governance	Facilitate the effective operation of the SAC and provide leadership in formulating strategic direction of the SAC.
	Maintain a collaborative governance culture and apply appropriate governance principles.
	Seek to ensure the SAC is well informed on substantive matters referred to the SAC and has the opportunity to explore ideas, air differences of opinion, and reach collective views and decisions for the effective operation of the SAC.
Meetings	Chair SAC meetings and support the Secretariat to keep accurate and timely minutes.
Administration & Management	Work in conjunction with the Secretariat to seek to ensure there is effective collaboration between the SAC and SPSA.
	Support the Secretariat in the induction and training of SAC Members.
	Seek to ensure there are ongoing processes and procedures in place to evaluate the performance of the SAC by SPSA.
Other	As for SAC Members (below).

Position statement: SAC Member

General	On being appointed to the SAC, undertake induction and training procedures as provided by the Secretariat.
Governance	Consider, debate, and vote where required on issues before the SAC.
	Comply with the Charter any applicable SAC policies approved by the Board of SPSA and notified to the SAC.
Meetings	Attend all meetings or, if unavailable, advise of non-attendance promptly and in advance.
	Review and consider for approval proposals that have been presented to the SAC.
	Where SAC papers are circulated in advance of the SAC meeting, read papers and consider issues before the meeting
	Contribute to the discussion and resolution of issues at meetings and otherwise as appropriate.
Media	Immediately refer media enquiries in respect of the SAC to SPSA.
Ethical	Adhere to the SAC Conflict of Interest Policy; confidentiality obligations and all applicable regulations.
	At all times to act honestly, fairly, diligently, ethically, politely & with consideration for others and in accordance with all appropriate regulations.

Position statement: SAC Secretariat

Governance	With the Chair, foster a constructive governance culture and apply appropriate governance principles among SAC Members.
	With the Chair, seek to ensure effective communication with members of SAC regarding governance.
Meetings	In conjunction with the Chair, arrange meeting dates, prepare agendas, send out SAC meeting packs and keep and distribute minutes.
Administration & Management	Work in conjunction with the Chair to seek to ensure there is an effective collaboration between the SAC and SPSA.
	With the support of the Chair, arrange for the induction and training of SAC Members.
Other	As reasonably requested by the Chair.

Schedule 7: Government policies and commitments in relation to soft plastics

The following provides additional detail on how the Scheme will support certain government policies, action plans and targets.

- 1 **National Packaging Targets.** As recognised by APCO, the 2025 NPTs are unlikely to be met in the initial timeframe. To address the current impediments and market failure, APCO has recommended that industry and government collaboration and cooperation across the entire packaging system is required – the Scheme is uniquely placed to assist in this regard.
- 2 **National Waste Policy Action Plan.** The Scheme would support a number of actions of this plan. Relevantly, some of these include:
 - (a) **Action 1.4:** Build industry capacity and infrastructure to collect, separate, recycle and remanufacture recycled materials. In this regard, SPSA proposes to allocate a portion of the levy funds it collects from Scheme Participants to collections (diverse collection channels to suit communities and volumes), MRF sorting, recycler and manufacturer infrastructure and systems.
 - (b) **Action 3.21:** Deliver on the target of 70% of Australia’s plastic packaging being recycled or composted by 2025, as set out in the 2025 NPTs. The proposed Scheme aims to significantly increase the recycling rate of soft plastic packaging across the industry.
 - (c) **Target 4:** Significantly increase the use of recycled content by governments and industry. There is currently a global shortage of food grade recycled content.⁵⁷ The Scheme is specifically designed to facilitate an increased availability and use of food grade recycled content by stakeholders, as it will expand collections of soft plastics and incentivise investment in soft plastic processing and recycling at scale, including the development of local advanced recycling.
 - (d) **Target 5:** Phase out problematic and unnecessary plastics by 2025. Through the Scheme, in particular the SAC, processors of plastic will be able to communicate requirements to packaging suppliers and brand owners to fast-track the phase out of problematic and nonrecyclable packaging components. Further, in the future, eco-modulated levies could incentivise the adoption of packaging design standards to reduce problematic / unrecyclable polymers within soft plastics.
- 3 **National Plastics Plan:** The Scheme will support the actions set out in this plan, including prevention, recycling and consumer education in relation to plastics recycling. For example, the proposed Levy Contributions will fund the recycling of soft plastics, as well as marketing and education for consumers regarding the importance of soft plastics recycling.
- 4 **Global treaty on plastic pollution:** The Scheme would help deliver the aims of the proposed treaty which are to address the full life cycle of soft plastics and promote the design of reusable and recyclable products and materials.⁵⁸
- 5 **Initiatives being developed by Australia's Environment Ministers:** The Scheme is aligned with certain initiatives such as:

⁵⁷ Qenos, White Paper: Circular Polyolefin Capacity Set To Reach 1 Million Tonnes Globally In 2025 (March 2023): [https://www.qenos.com/internet/home.nsf/\(LUImages\)/White%20Paper%20-%20Circular%20Polyolefin%20Capacity/\\$File/259%20QEN%20WP%20Circular%20Polyolefin%20Capacity_P3.pdf](https://www.qenos.com/internet/home.nsf/(LUImages)/White%20Paper%20-%20Circular%20Polyolefin%20Capacity/$File/259%20QEN%20WP%20Circular%20Polyolefin%20Capacity_P3.pdf).

⁵⁸ United Nations Environment Assembly of the United Nations Environment Programme, Resolution adopted by the United Nations Environment Assembly on 2 March 2022: <https://wedocs.unep.org/xmlui/bitstream/handle/20.500.11822/39764/END%20PLASTIC%20POLLUTION%20-%20TOWARDS%20AN%20INTERNATIONAL%20LEGALLY%20BINDING%20INSTRUMENT%20-%20English.pdf?sequence=1&isAllowed=y>.

- (a) the development of a soft plastics roadmap. SPSA has been involved in discussions with DCCEEW to contribute and inform this process; and
- (b) a new mandatory regime for packaging, which DCCEEW has recently undertaken consultation on.⁵⁹ This could include design requirements such as recyclability, recycled content requirements and designing out chemicals of concern from packaging placed on the market. The Scheme's objects focus on recycling soft plastics and include supporting recycled material being made available for producing food grade and other contact-sensitive packaging and supporting the re-manufacture of plastic packaging in Australia. This will support any mandatory requirements for recyclability of soft plastic packaging. Further, the Scheme Levy may be eco-modulated in the future to incentivise designing packaging with increased recyclability and recycled content.

6 **Recycling Modernisation Fund grants:** The Scheme would support Federal Government investment in recycling projects through the Recycling Modernisation Fund by supplying the necessary tonnes of soft plastics to provide investment certainty.

7 **State Government grants:** The Scheme would support State Governments' commitment to moving towards a circular economy for soft plastic packaging. The Queensland Government has already demonstrated its support for the Scheme, committing \$1 million in investment to support the roll-out of a soft plastics recycling pilot in Queensland managed by SPSA.⁶⁰

⁵⁹ DCCEEW, 'Reform of Packaging Regulation': <https://consult.dceew.gov.au/reform-of-packaging-regulation>.

⁶⁰ Queensland Government, Minister for the Environment and the Great Barrier Reef and Minister for Science and Innovation, The Honourable Leanne Linard, 'Soft plastics recycling trial to kick off' (30 September 2024): <https://statements.qld.gov.au/statements/101539#:~:text=The%20Miles%20Government%20is%20partnering,approaches%20to%20recycle%20the%20waste>.

Schedule 8: Government reform of packaging regulations and the role of SPSA

The Federal Government is currently considering the options for reforming Australia's packaging regulations, including the regulation of plastic packaging.⁶¹ On 27 September 2024, DCCEEW opened a consultation to explore the best way to reform Australia's existing packaging regulations. The consultation paper presents three regulatory options. The proposed SPSA-led Scheme could operate within each of these proposed options:

Option 1: Strengthening administration of the co-regulatory arrangement

Key elements	Implications for SPSA
<ul style="list-style-type: none"> The co-regulatory arrangement remains unchanged. APCO implements its 2030 Strategic Plan to support industry to meet the goals of the Australian Packaging Covenant. Stronger compliance and enforcement of the <i>National Environment Protection (Used Packaging Materials) Measure 2011</i> (Cth) to reduce free riders. Increased education to support behaviour change and increased participation by industry and the community. 	<ul style="list-style-type: none"> As this is the base case with no change to the current legislation, SPSA could operate as a voluntary scheme under the <i>Recycling and Waste Reduction Act 2020</i> (Cth).

Option 2: National mandatory requirements for packaging circularity

Key elements	Implications for SPSA
<ul style="list-style-type: none"> Commonwealth legislation mandates packaging requirements on individual regulated entities including: (i) bans on problematic materials and chemicals of concern; (ii) progressive bans of packaging to mandate minimum recyclability performance; and (iii) minimum recycled content thresholds. Current co-regulatory arrangement ceases. 	<ul style="list-style-type: none"> As this option does not include any funding mechanism to drive improvements in the recycling system, it appears SPSA could operate in parallel to perform this function to assist government and industry in achieving recycling targets. Importantly, while the regulatory reform will take a number of years to implement, government has indicated that it expects SPSA to restore soft plastic recycling services as soon as possible.

⁶¹ DCCEEW, 'Reform of Packaging Regulation': <https://consult.dcceew.gov.au/reform-of-packaging-regulation>.

Option 3: An extended producer responsibility scheme for packaging

Key elements	Implications for SPSA
<ul style="list-style-type: none"> • Government establishes a national extended producer responsibility (EPR) scheme regulated packaging, with industry-level outcomes and mandated requirements on regulated entities. • Commonwealth legislation implements the EPR packaging scheme managed by an administrator. • Scheme fees, and EPR fees based on packaging placed on the market. EPR fees could support the administrator and industry to deliver EPR outcomes. • Mandatory obligations are similar to those in Option 2, with the exception of progressive bans, which would not be implemented. 	<ul style="list-style-type: none"> • As this option introduces EPR to fund and drive improved recycling outcomes, it aligns with the principles of the SPSA. While the consultation does not provide a detailed framework, it is envisaged that SPSA could report into, or provide PRO services and capability to the proposed EPR administrator. • Importantly, while the regulatory reform will take a number of years to implement, government has indicated that it expects SPSA to restore soft plastic recycling services as soon as possible.

Schedule 9: Key assumptions

Key assumptions in determining the Scheme Levy

1 Overarching assumptions

Figure 1 below sets out some of the key overarching assumptions for Scheme funding. These assumptions are estimates of the proposed Scheme growth and anticipated cost profile, which will be revisited by SPSA on an ongoing basis as the proposed Scheme develops.

Figure 1: Overarching assumptions for Scheme funding

Consideration	FY25(Q4) Development ¹	FY26 Implementation	FY27 Expansion	FY28 Expansion	FY29 Expansion
Feedstock supply (tonnes collected / processed) ²	<500	1,500 - 2,000	4,000 - 6,000	6,500 - 9,000	11,000 - 14,000
Collection options (by end of year) ³					
Drop-off points (no. locations)	-	c.500	c.500 - 1,000	c.1,000	>1,000
Other channels (no. households)	c.50,000	c.120,000	c.250,000	c.500,000	>1,000,000
Scheme cost base (\$ millions) ⁴					
Scheme costs	\$2.6m	\$9.9m	\$16.5m	\$23.5m	\$36.0m
Foundation feedstock repayment	\$2.6m	\$8.9m	\$15.5m	\$22.5m	\$34.0m
	\$-	\$1.0m	\$1.0m	\$1.0m	\$2.0m
Scheme revenue (placed on market volumes from participating brands, tonnes per annum)	50,000	70,000	90,000	c.93,000	c.95,000
Approx Scheme Price (levy \$ per tonne of soft plastic placed on market)	\$160	\$160	\$200	\$240-\$270	\$380-\$420

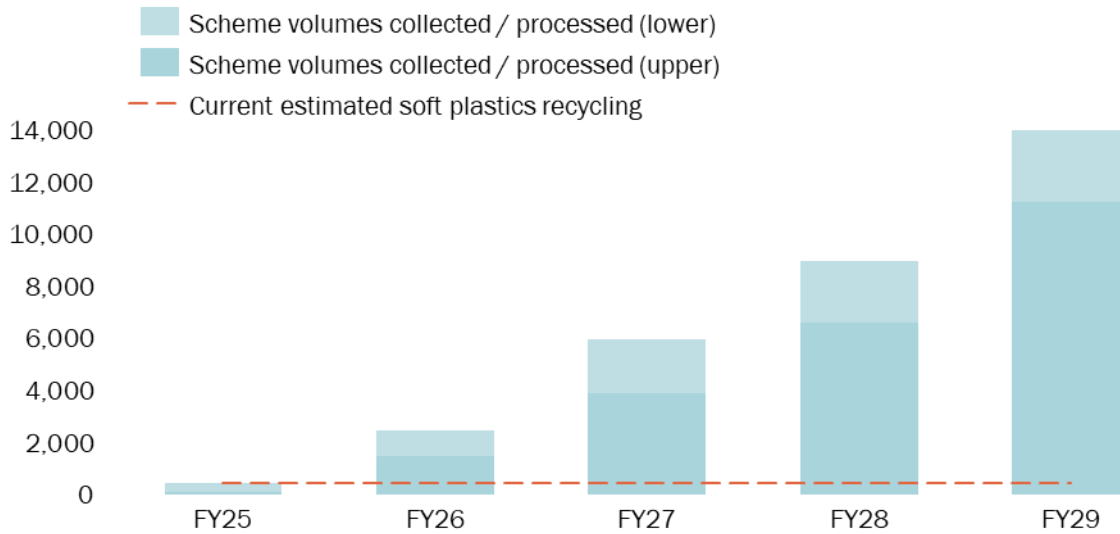
Notes: (1) FY25 values represent a part year, impacting comparability to latter periods (2) For the purpose of modelling Scheme funding, it has been assumed that tonnes collected are equal to tonnes processed; volumes could increase materially through increased Scheme participation and under favourable policy settings; (3) Drop-off points in FY25 remain within the Soft Plastics Taskforce remit; number of households relates to those able to participate within an overall region or regions; (4) Based on the most conservative collection volume estimate, with \$16m total costs of repayment of REDcycle stockpile / foundation feedstock costs over an eight-year period (subject to ACCC authorisation).

Further detail on the considerations underpinning these assumptions is set out below.

2 Estimated collection volumes

During the initial years of the proposed Scheme, the amount of soft plastics collected and processed through the Scheme are expected to increase as outlined in **Figure 2** below (subject to limitations from processing capacity, end markets and Scheme participation):

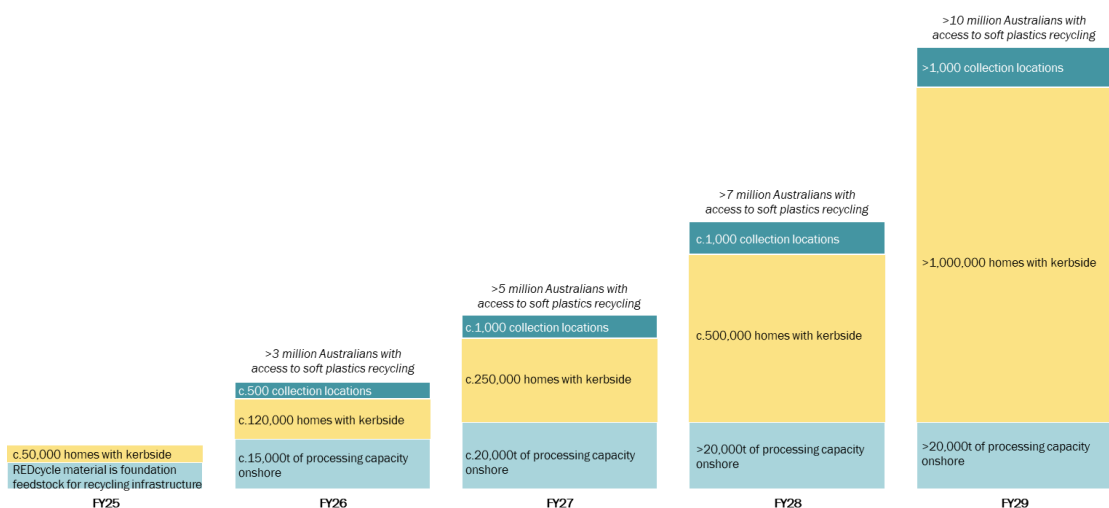
Figure 2: Estimated Scheme collection volumes against existing collection estimates without Scheme (tonnes)



As referred to in **Figure 1** and **Figure 2** above, all volumes collected are assumed to be processed for the purposes of modelling (with only minor timing differences). The Scheme is focused on ensuring collections do not exceed the processing capacity and end markets are able to consume that material, with a conservative estimate of collections (lower and upper range). By early FY26 the Scheme will surpass the current estimated level of consumer soft plastics recycling across Australia, and could expand more rapidly should funding, processing capacity, end markets and other factors allow.

Figure 3 summarises the anticipated ramp-up for collection points and community access to the Scheme, noting this relies heavily on available processing capacity and Scheme participation. FY25 comprises a part year utilised largely on Scheme establishment activities, whilst FY26 may facilitate implementation and a wider rollout in FY27 and beyond.

Figure 3: Assumptions regarding collection points and community access to the Scheme



3 Projected Scheme expenditure

As a voluntary Scheme, SPSA will focus on ensuring the Scheme is operationally viable, financially sustainable and desirable for customers. This leads to activity in the initial years being a balance between

the limited processing capacity and end markets, maximising participation in the Scheme from brand owners to increase revenue and increasing Scheme accessibility for customers.

As a not-for-profit organisation, SPSA has established the initial Scheme Levy based on the anticipated operational costs of the Scheme with consideration for issues such as appropriate Scheme cashflow, expected brand owner Scheme participation and estimated community participation.

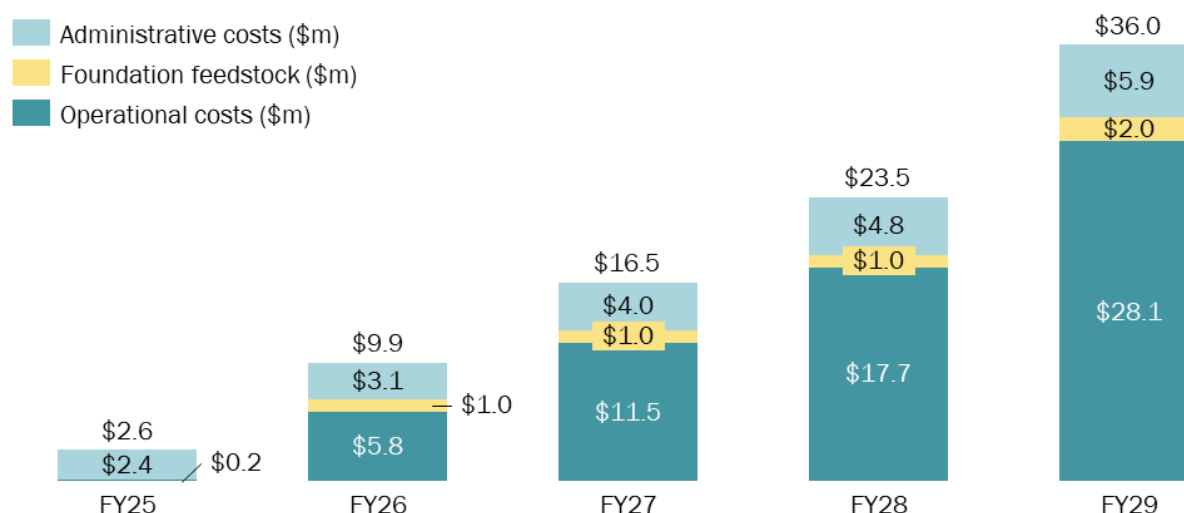
As the Scheme grows through community participation and collections, and processing capacity is operational with the associated end markets, Scheme expenditure will increase as a consequence. Conversely, the cost per tonne of material collected / recycled will reduce over time, as the Scheme leverages economies of scale and lower overheads (on a per tonne basis). SPSA acknowledges the logistical challenges with collecting soft plastics across Australia and expects to design tailored services which meet community needs and manage lower scale collections in regional and rural areas. The proposed Request for Information (RFI) process is expected to provide valuable insights over the expected Scheme operational costs.

Specifically, the primary costs for the Scheme include:

- 1 Operational costs – such as handling fees for collection points, incremental MRF costs, specially designed customer collection bags, transport for collected material to recyclers, processing collected material and converting into recycled products such as pellet, resin and end use products;
- 2 Foundation feedstock costs – over an eight-year period, amortisation of the REDcycle stockpile / foundation feedstock costs being used to accelerate required recycling infrastructure; and
- 3 Scheme administration costs – including brand, marketing, education, finance, systems and other overheads.

Figure 4 provides an overview of the expected annual costs of the Scheme.

Figure 4: Overview of expected annual Scheme costs (\$m)



Note: FY25 incorporates lower operational expenditure and higher relative administrative costs, reflecting the Scheme development phase and part year activity, prior to ACCC authorisation.

4 Estimated recycling capacity / throughput

Due to the nature of this emerging market, estimating the amount of recycling capacity and throughput in Australia is challenging. SPSA's initial assessment has considered a range of factors including headline infrastructure capacity, lead times for project delivery, approval status, the existence of end markets and recycled product demand, project financing, estimated ramp-up profile and other considerations.

In the next 2-3 years, SPSA estimates processing capacity and throughput of approximately 15,000 - 20,000 tonnes per annum to be online, including the potential for initial advanced chemical recycling capability. While this figure is expected to be materially influenced by the establishment of a producer responsibility scheme and various types of government support,¹ end market demand continues to be challenged, which influences SPSA's view on actual processing capacity and throughput which may be achieved.

Figure 5 below sets out initial estimated potential processing capacity between FY25-27, combined with an estimate of how SPSA may utilise that capacity. This accounts for the various factors impacting collections and capacity already mentioned above, whilst ensuring both a robust and sustainable program where collections do not exceed the actual capacity that comes online as well as sufficient investment confidence for processors. In order to successfully reach the upper estimate of the range, a high level of industry participation in the Scheme is required. This would be supported by favourable government policy settings, such as mandated scheme participation (among other factors). SPSA is working closely with government agencies, APCO and other parties on measures encouraging increased voluntary participation. Should this prove successful, incremental funding generated would be invested to accelerate collections highlighted by the green line in figures 5 and 6.

Figure 5: FY25-FY27 estimated potential processing capacity / throughput and 'unconstrained' high side (rolling annualised tonnes per annum)



Note: FY25 incorporates limited collection activity reflecting the Scheme development phase and part year activity, prior to ACCC authorisation, whilst processing capacity is largely consumed by the REDcycle stockpile, which will be undertaken by the Soft Plastics Taskforce.

SPSA's longer term view is that, during FY27-FY29, there is the possibility that, in addition to known mechanical recycling, initial chemical projects could be online.

Figure 6 below sets out estimated potential capacity per annum between FY25-FY29 (as at 30 June of each year), including the potential for advanced chemical recycling projects which could lead to circular packaging outcomes. The chart also highlights the potential industry opportunities under favourable policy settings, access to additional feedstock, and increased Scheme participation, generating incremental scheme funding. FY30 and beyond could then deliver significant scale, with several chemical recycling projects possible over the longer term.

¹ It is apparent through recent government communications, funding and consultations proposing to support product stewardship for packaging has stimulated investment confidence in soft plastic recycling.

Figure 6: FY25-FY29 estimated potential processing capacity per annum, 'unconstrained' high side and mechanical / chemical recycling (tonnes per annum)

