Deputy Chair Mick Keogh
Chair, Competition Exemptions Committee
Australian Competition & Consumer Commission
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Submission by online portal

7 April 2025

Dear Mr Keogh

Re: WMRR submission opposing the Soft Plastics Stewardship Australia (SPSA) Limited Application for Authorisation (AA1000695)

Thank you for the opportunity to provide feedback on the Soft Plastic Stewardship Australia Limited Application for Authorisation for interim and final authorisation under s88(1) of the *Competition and Consumer Act* 2010 (Cth). The Waste Management and Resource Recovery Association of Australia (WMRR) is the national peak body representing Australia's $17 billion waste and resource recovery (WARR) industry. With more than 2,300 members from over 410 entities nationwide, we represent the breadth and depth of the sector, including representation from business organisations, the three (3) tiers of government, universities, and Non-Government Organisations (NGOs), including research bodies. As fierce proponents of the resource and waste management hierarchy, WMRR advocates for beyond end-of-life material management and the reinvestment of valuable resources back into the productive economy in order that less can be used for longer. In WMRR's view, for Australia to achieve the *National Waste Policy Action Plan* targets, and transition from a linear supply chain model that creates waste, to a circular economy that designs out waste and pollution that supports the circulation of resources, reducing reliance on virgin materials, it is essential that those that place materials and products on market are held accountable for ensuring the circularity of these materials and products.

It therefore follows, that single use, poorly made, mass produced products that cannot be safely or economically reprocessed or recycled, should not be the responsibility of the WARR industry to try to 'divert from landfill'. Emphasis must be placed on the sustainable design of products as the first step in the supply chain, in order that materials can safely and practically be reinvested into the productive economy. Schemes that propose to simply collect and aggregate existing problematic materials, that do not have a viable market for recycling, remanufacturing or reuse, should not be able to claim they are 'product stewardship' schemes if they do not take full responsibility for the entire supply chain, including demonstrating investment of improving the safe and effective recoverability of the material they are placing on market.

Soft plastic packaging materials are ubiquitous in Australia. A significant amount of the over 450,000 tonnes placed on market each year in Australia, has been designed for food grade use (thereby including chemicals such as PFAS to ensure water and grease resistance), contain inks and adhesives for branding purposes, and are often made from many different polymers like polyethylene (PE) and polypropylene (PP) that aren't easily processed. They are light and flexible – which can cause issues for waste processing and composting sorting technologies, as well as litter. Due to being used for food and liquids, it is frequently contaminated with organic material. Subsequently, soft plastics often act as a contaminant and in most jurisdictions in Australia efforts have been made where possible to design them out, meaning also there is limited to no market demand for these materials in Australia, particularly given the significant presence of rigid plastics available for remanufacturing in Australia follow the imposition of export restrictions. As such, there is not yet an effective, at scale, commercial process for recycling soft plastic packaging in Australia, with a handful of smaller facilities, currently accommodating some small volume pilot schemes, primarily in NSW and Victoria. The experience with RedCycle demonstrates that collecting soft plastics is achievable however there has been little to no progress in developing either markets for this recycled material or remanufacturing capacity.This is despite the Australian Food and Grocery Council (AFGC) indicating in 2020 that Australia would have 600,000 tonnes of capacity for soft plastics processing in coming years given the interest they had.

The need for a solution to the soft plastics problem

The collapse of RedCycle in 2022 brought into sharp focus the urgent need for national leadership and action to hold brand owners and the packaging industry to account. For too long, these producers and generators of these materials have avoided responsibility for end-of-life product management, hiding behind an ineffective packaging covenant. Councils and communities at the end of the chain are often left to deal with the challenges and costs of a growing stream of low value, high complexity materials. WMRR has continually urged the Commonwealth Government to use its powers under the *Recycling and Waste Reduction Act* 2020 (and with the support of state and territory ministers) to establish a mandatory product stewardship scheme for all packaging - including soft plastics - that is fully funded by those importing, producing, and selling the material, accessible to the community via a comprehensive network of retail and community drop off points; supported by mandatory design standards and national packaging targets, including stronger enforceable targets for Australian recycled content and supported by mandatory labelling on all consumer packaging. Despite commitments by the current federal government to introduce packaging reforms, extensive consultation has not led to any action at a national level.

Whilst effective steps have been taken by states and territories to change the behaviours of the community and consumer markets to promote product choices that avoid the creation of waste via single use plastic bans and phase outs, there have been no mandatory phase outs introduced for soft plastics. WMRR continues to advocate for comprehensive mandatory product stewardship to make generators responsible for the products they place on market to ensure sustainable design and lifecycle management.

The proposed scheme

WMRR understands that 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'. The Scheme is to be funded through the imposition of a levy on scheme participants based on how much soft plastic they place on the market. Placed on the market means the first-time soft plastic packaging is supplied by the manufacturer to the supermarket. Scheme participants may decide to pass on the cost of the levy through the supply chain, including to consumers– as such it is unlikely to be borne by the scheme participants. The Scheme levy will be initially calculated at the rate of $160 per tonne of soft plastic placed on the market by the scheme participant (with a minimum levy of $1,600 per year) and the levy is expected to increase over time. This is interesting to note given the landfill levy rates for NSW – the jurisdiction with the highest landfill levies – are currently sitting at $170.10 per tonne (in the metropolitan areas) and $97.90 per tonne (in regional areas). Given their light weight, any economic driver to get soft plastics out of landfill is relatively low.

SPSA's application describes plans to develop "an effective and efficient Scheme by leveraging existing collection systems and sortation infrastructure". Levy funds for the Scheme will be directed to offset the costs of securing a recycler (something that can be achieved through an authorised joint tender process). The proposed scheme talks to utilising existing kerbside collections suggesting that councils and consumers will be expected to cover much of the cost and all the risk of managing this challenging feedstock. There are no commitments by the members to purchase back the recycled content and close the loop. There is no suggestion of a 'take back' provision - like that applied with Coca Cola bottles and recycling the PET at their Albury facility.

As aforementioned, there are provisions in the application, for the major retailers to claw back the costs of clearing the legacy stockpile from the 2022 failure of the Redcycle scheme. As mentioned above, over 450,000 tonnes placed on market each year, however RedCycle only had at best 10,000 tonnes of processing capacity- which was significantly hampered when export restrictions commenced, and Australia had an increase in readily available rigid plastics for recovery. However, brands continued to promote all soft plastics could go through this scheme, leaving consumers confused and angry when it collapsed, even though it was never able to manage the volume placed on market, and was never able to grow given lack of onshore demand for the recyclate from those that make it refusing to take it back. As such, WMRR holds significant concerns about the ongoing lack of reprocessing infrastructure or entire supply chain proposal that supports this application - with the missing piece for developing such a solution being market demand for the end product - which is why RedCycle failed. The obvious market is 'take back' by those that make it, however the focus in this application is not buying their material back, but claiming back the losses they incurred through the RedCycle scheme – a scheme that they promoted. RedCycle, however was never going to address the volume of soft plastics producers placed on market, yet all soft plastics were branded as capable of going through the scheme.

Further, the proposal places no obligations on the Scheme participants to design their products for circularity or even adopt international design standards such as CEFLEX to ensure their safety and suitability for recycling into secondary materials at future built or existing facilities. This is despite AFGC receiving a million dollars from the Federal government to develop a stewardship scheme in 2020, including reprocessing capacity for 189,700 tonnes. The Scheme should not be authorized by the ACCC (or any government body) as a product stewardship scheme given its lack of demonstrating a genuine whole of supply chain solution. SPSA seeks authorisation for eight (8) years, in which time it seeks to tender for a recycling / processing solution. Given the time taken to remediate the RedCycle stockpile, which is ongoing and substantial – as noted by the request in the application to claw back $16 million to continue addressing the existing stockpile - it is interesting to note that the Scheme, by its very authorisation, will 'rapidly and significantly reduce the volume of soft plastics being deposited at landfill'. This would indicate a warehousing solution in the interim, and WMRR notes the problematic fire hazard that stockpiling soft plastics can cause and the fact that almost all state-based EPAs do not support stockpiling of this material.

WMRR's concerns

WMRR does hold serious concerns that the application from the 'Soft Plastics Stewardship' is misleading. True product stewardship manages a product's environmental and human health impacts throughout its entire lifecycle, from design and production to use and disposal, aiming to minimise negative impacts and promote sustainability. The proposed scheme from SPSA is silent on design requirements for soft plastics, and fails to address the critical but obvious issue that soft plastics – by their very nature – are currently designed for single use, cheap manufacture and mass production. Their very design goes against the principles of what product stewardship is supposed to achieve (ie: generators taking responsibility for the ongoing sustainability of the materials they put on market). As we strive for a circular economy and set Australia on the path to Net Zero and 80% resource recovery by 2035 under the Circular Economy Framework, it makes little sense for our major food and grocery industry players to be putting their weight behind a scheme that does not address this fundamental problem of flawed product design.

WMRR is concerned that the Scheme - having been built on the positive work of RedCycle to instill community behaviour that returns source-separated, soft plastics to point of purchase, for the cost shifting of placing material in kerbside - does not address the flawed design of soft plastics and has not addressed the fundamental lack of processing or market failure. Put simply, there is no point collecting something for recycling or re-processing, if there is no market for that secondary material. The proposed aggregation of soft plastic materials under the Scheme does not address whether soft plastic materials can be safely and effectively recovered at

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scale – and instead, the application proposes to go to tender for collective processing, albeit AFGC having had funding for this proposal for almost five (5) years. The Scheme places no liability on producers for the packaging and waste materials they produce and instead calls on processors to competitively tender a solution 'end -of-pipe'. WMRR holds concerns that the Scheme enables initial members to claim back ordinary disposal and management costs through a 'scheme levy' that is then passed on whilst enabling 'greenwashing' to consumers.

The proposed scheme does not impose any clear or enforceable obligations on its members. It does not place any obligation on soft plastics producers to utilise Australian recycled content collected or adhere to the CEFLEX design standard. The Scheme fails to address the most difficult and challenging part of the system - namely the creation of demand and end markets for the Australian collected material. Simply focusing on the collection systems, without putting equal or greater focus on waste avoidance and minimisation at the design and production stages, and on end market development including the use of Australian recycled materials – is not product stewardship.

WMRR appreciates that the proposed scheme references the recent federal consultation on packaging reform, and states it will support any mandatory requirements for recyclability of soft plastic packaging, the points out that Scheme Levy 'may 'be eco-modulated in the future to incentivise designing packaging with increased recyclability and recycled content. However, by the same token, increases in scheme costs are likely to be passed through. The proposed scheme does not place the costs of managing problematic 'soft plastic' materials on those that produce them, and instead, collects a levy to fund the recycling of the existing materials – the burden of which is squarely place back on the WARR industry to manage and try and find a re-processing or recycling solution to make poorly designed, mass-produced materials marketable. This is diametrically opposed to the idea of generator responsibility that is engrained in the very idea of product stewardship.

Inevitably, the proposed scheme goes against the very principles of the adopted waste management hierarchy that seeks to avoid waste and improve resource recovery for reinvestment back into economy. It is WMRR's grave concern that the approval of authorisation for schemes like these – which are not addressing the start of the supply chain for a circular economy, are short-sighted and merely lead to a patchwork of voluntary schemes being created. Not only will this be confusing for consumers – who may not have the technical insight to appreciate which soft plastics are scheme participants or not – but will also hinder further product stewardship schemes if the integrity of these is questioned as "greenwashing".

WMRR cannot, in good faith, support the interim or draft authorisation, and considers any approval could amount to 'greenwashing' a flawed proposal leading to ongoing consumer confusion. As WMRR continues to advocate, systems thinking is necessary to ensure that collection schemes are not misleadingly labelled as 'product stewardship' scheme. Generator responsibility for the entire lifecycle of the product - from product design through to end-of life – must be mandated. Only when these conditions are met can we start confidently seeing generators drive investment in sufficient reprocessing capacity and matching demand for Australia recycled products. The ability to collect at retail outlets without sufficient reprocessing and minimal offtake capacity was the significant factor in the RedCycle collapse. WMRR reiterates that these elements must be in place to genuinely solve this challenge, not simply the collection system. Please contact the undersigned if you wish to further discuss WMRR's submission.

Yours sincerely

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