



Re: Zero Waste Victoria Submission for Soft Plastic Stewardship Australia – Application for Authorisation AA1000695

Following SPSA's response to submissions from interested parties after the pre-decision conference, ZWV provides this brief response to key issues that SPSA raised in their response.

SPSA's latest submission largely sidesteps the concerns raised by ZWV, directing the ACCC to previous statements rather than addressing the core governance issues. Many of the concerns identified by ZWV arise directly from the same responses that SPSA continues to cite as justification.

Commercial Sensitivity

A key concern relates to SPSA's approach to managing commercially sensitive data. ZWV raised this issue ([29 September, p.13](#)) because without a clear definition of "commercial sensitivity," the term could be applied too broadly, enabling misapplication and limiting transparency. This creates a risk of confidentiality being misused to conceal information, thereby undermining transparency and accountability.

SPSA claimed that ZWV "fails to acknowledge the importance of protecting the confidentiality of members' data" ([10 October, p.7](#)). However, ZWV stated that "some level of protection is reasonable."

SPSA's board comprises competing supermarkets and major brands acting collectively rather than in competition. While a soft plastics scheme provides a genuine public benefit, participation also delivers shared reputational advantages for these corporations. In this context, there is a clear risk that invoking confidentiality claims beyond their intended scope could limit transparency and scrutiny of performance data. Without defined boundaries, confidentiality may be used to justify nondisclosure of underperformance or shortcomings, protecting brand or commercial interests, instead of ensuring accountability to the public and regulators.

Conflicted Decision Making

This reflects broader risks in SPSA's governance framework, where several constitutional objects, while reasonable for operational purposes, could be applied in ways that prioritise members' commercial and reputational interests over the scheme's public purpose.

Rule 49(e) of SPSA's constitution permits directors with a declared interest to vote on related matters, creating a governance framework that could enable decisions which conflict with SPSA's public purpose. Allowing conflicted directors to vote, while keeping the nature of those conflicts and related deliberations confidential from stakeholders, including regulators, undermines public confidence in the board's integrity and reinforces concerns that SPSA's governance lacks adequate safeguards to prevent decisions favouring members' interests.

Every argument SPSA makes regarding the \$16 million clawback demonstrates how conflicted decision making can favour member interests over the scheme's public benefit. The proposal to grant Coles and Woolworths a member entitlement to this clawback would not be endorsed by an independent board, as it diverts funding intended to expand Australia's soft plastics recycling capacity.

ZWV acknowledges that Coles and Woolworths have taken responsibility for the soft plastics stockpiles left by REDcycle. However, this does not justify transferring a corporate liability to a not-for-profit entity. While ZWV recognises the steps taken to establish SPSA as a voluntary stewardship scheme, its integrity as a not-for-profit entity is undermined if SPSA seeks exemptions that secure private benefits for supermarkets at the expense of environmental and public outcomes.

Public Confidence

Authorisation from the ACCC provides SPSA's members with legal protection from competition law to collaborate in governing the scheme. Granting such protection without appropriate conditions to ensure accountability, risks embedding governance that could lead to the prioritisation of member interests over public benefit.

An authorisation with strong conditions to ensure genuine public benefit is essential to maintain community confidence, not only in the scheme, but also the government agencies that may endorse or oversee it, including the Australian Charities and Not-for-profits Commission (ACNC) and the Department of Climate Change, Energy, the Environment and Water (DCCEEW). These agencies, like the ACCC, have a responsibility to ensure that compliance risks and misleading practices, intentional or otherwise, are mitigated.

Given that the majority of the SPSA board and its participants represent supermarkets and brands with significant market power, the governance framework is inherently conflicted. SPSA attempts to normalise these conflicts as acceptable practice rather than addressing them as

risks requiring mitigation. Without clear accountability, transparency, and independent oversight, the ACCC authorisation risks entrenching the dominance and influence of the very corporations it is meant to safeguard the public against.

SPSA's ongoing advocacy for authorisation in a form that could advantage its members reinforces concerns that its intent is to secure protection for a governance model that is structurally conflicted. In doing so, it risks further entrenching the market power of its members. We trust the ACCC will focus on preventing the misuse of market power and ensure that collaborations between competitors fully serve the public interest.

An ACCC authorisation should therefore only be granted with conditions that ensure the conduct demonstrably delivers a public, rather than private, benefit. ZWV members look forward to increased soft plastics recycling capacity but see no justification for privileging supermarkets or brands merely because they are now taking producer responsibility through a stewardship program, particularly one likely to become government mandated in the future.