

Zero Waste Victoria – topics of concern

- Public Benefit vs Public Detriment
- Consider the full Lifecycle
- Polluter Pays Principle
- Costs recovery
- Governance



Public Detriments

The ACCC has identified potential public detriments including:

- Crowding out alternative stewardship arrangements.
- Increased barriers to entry for service providers not contracted by SPSA.
- Risks of competitors sharing commercially sensitive information.

Public Detriments also include

- Passing costs to consumers rather than producers meeting their own obligations under the polluter-pays principle.
- Reduced incentives for packaging innovation and waste reduction.
- Accountability compromised by governance dominated by commercial and collective industry interests.

Recommendation

ACCC should re-review SPSA's application, weighing recycling benefits against public detriments—particularly:

- Governance dominated by plastic producers
- Reduced incentives for innovation
- Costs passed to consumers

Collaboration should only be permitted if it **clearly delivers full public benefit and protects consumers, the environment and public interests.**

Consider the full lifecycle of your product or service

Products and services have different environmental impacts across different stages of their life cycle. For example, there may be different environmental impacts associated with the manufacture of a product, compared with its use or disposal.

It is important to consider the effect of the total life cycle of your product, or overall activities, before making any environmental claims. There are a range of aspects that may be important for you to consider, including:

- the raw materials used (including how they are sourced)
- the component parts
- the manufacturing processes and location
- any waste or by-products
- the packaging
- how the product is used
- the end-of-life options and disposal
- whether the product has an overall negative impact on the environment.

Supply chain – full lifecycle

- Upstream (production of plastics)
Brands make the decisions about the use of the plastic
- Midstream (use in packaging and retail distribution)
What governance mechanisms ensure that brands and retailers are accountable for the entire lifecycle of packaging, not just collection?
- Downstream (post-consumer collection and recycling/reuse)
The “last third” of the supply chain must be secured — or the scheme risks becoming PR, with no net benefit.

Greenwash risks

Principle 3: Do not hide or omit important information

In many cases, giving consumers incomplete information or hiding important information is also misleading. If you provide some information, but leave out important details which might contradict or qualify the environmental claim, you might create an incorrect impression. This may also happen when information is buried in fine print, away from the headline claim.

For example, highlighting the positive aspects of your product, service, or business while omitting information about the negative aspects can give consumers the impression that your business, product, or service has a lower environmental impact overall than it really does.

ACCC – Making Environmental Claims – a guide for businesses- December 2023

Recommendations

There must be strict conditions for

- Full lifecycle consideration
- Genuine producer accountability
- Greenwash risks

Or the ACCC risks endorsing misleading claims and eroding public trust in both current and future stewardship schemes.

Polluter Pays Principle

4.101. The ACCC considers that the Proposed Conduct is unlikely to result in public detriment due to:

- with the above condition, crowding out an alternative stewardship arrangement for soft plastics
- barriers to entry and expansion for service providers who do not win SPSA contracts
- facilitating the sharing of commercially sensitive information and/or market sharing between competitors.

4.102. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct

The polluter pays principle is not being applied.

Instead of producers paying for the environmental costs of the plastic they create, the proposal shifts costs onto customers

- **Levy Funding and True Cost Recovery:** The scheme proposes a levy based on the volume of soft plastics placed on the market. This cost will likely be passed on to consumers, but there's limited transparency about how levy amounts are set, how they will be reviewed, or how scheme costs and outcomes will be communicated to the public.

Zero Waste Victoria, May 3

- 29 SPSA is a not-for-profit entity, separate to its members and Scheme Participants, and the purpose of the Scheme Levy is to cover SPSA's cost of operating the Scheme and not to deliver a profit to SPSA. SPSA is committed to transparency in setting and imposing the Scheme Levy, and will be publicly accountable for how it sets the Scheme Levy and the costs of its operations. As above, the quantum of the Scheme Levy will depend on Scheme participation and the anticipated costs of the scheme for a given year. Building flexibility into the Scheme Levy is important to ensure that the Scheme Levy is appropriately priced year-on-year by giving SPSA the ability to scale up its activities as participation in the Scheme increases, more recycling capacity comes online and end markets grow.

SPSA, June 12

Polluter Pays Principle

- The scheme risks shifting costs to consumers, not producers.
- Weakens incentives for packaging innovation and waste reduction.

Contravenes **polluter pays principle** and **EPBC Act s.3A**:

- Integrate economic, environmental, and social considerations
- Apply precautionary principle
- Uphold intergenerational equity
- Conserve biodiversity
- Use fair pricing & incentives mechanisms

Recommendation

SPSA should be required to demonstrate that the scheme design aligns with

- polluter pays principles
- precautionary measures
- equitable cost allocation

Taking into account the public benefit

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Costs Recovery

- 11 In any event, SPSA submits that the proposed contribution is entirely reasonable for the following reasons:
- (a) While the supermarkets have obligations to remediate the stockpiles, this is not merely a legacy responsibility for Coles and Woolworths. The REDcycle stockpiles contained soft plastics from a wide range of sources, including commercial and industrial sources, and the majority of the packaging contained in the stockpiles were not from retailer-owned brands. Accordingly, the wider industry has a role to play in taking ownership of this issue. By incorporating some of the costs of the stockpile remediation into the overall Scheme costs, SPSA can socialise these costs across industry participants in alignment with the equitable cost sharing principle that is essential to product stewardship. The contribution is proposed to be spread over eight years, weighted towards the later part of that period in order to distribute these costs across a broader group of Scheme Participants. It is currently estimated that the contribution in the initial years will only represent approximately \$10-\$15 per tonne of the total Scheme Levy.

Coles and Woolworths offer to take responsibility for massive REDcycle plastic stockpile

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Coles and Woolworths offer to ensure stockpiled plastic rubbish does not go into landfill

The supermarket chains say they will take responsibility for the 12,000 tonnes of waste stockpiled after the collapse of the REDcycle recycling scheme

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Coles and Woolworths offer to take on tonnes of soft plastic after REDcycle collapse

By Yara Murray-Atfield and staff

Environment

Fri 24 Feb 2023



The storage and management of the stockpiled material would be paid for from a Soft Plastics Recycling Contribution Fund to which Coles and Woolworths will each provide an initial multi-million-dollar contribution. The supermarkets welcome contributions from brand and packaging members of the REDcycle program, whose products have been collected by the scheme. The Fund is intended to address the existing REDcycle stockpiles while industry and government continue to work on long-term future soft plastics waste solutions.

Brad Banducci, Woolworths Group Chief Executive Officer said: "We know Australians have been let down. We were very disappointed to learn that REDcycle hasn't been recycling the soft plastics they collected from our stores, and we are working to make it right.

"Coles and Woolworths have taken this step to provide reassurance to the public that the soft plastics they took the effort to deposit in REDcycle's bins won't be unnecessarily sent to landfill.

"We know this may take some time. We hope REDcycle will allow us to help get the best outcome for the environment, and restore community trust in our recycling systems."

Matt Swindells, Coles Chief Operations and Sustainability Officer said the offer put to REDcycle is reflective of the commitment by both supermarkets to find the best environmental outcomes for the stockpiles and their customers.

<https://www.woolworthsgroup.com.au/au/en/our-newsroom/latest-news/2023/coles-and-woolworths-offer-to-save-redcycle-stockpiles-from-land.html>

SPSA 12 June

- 39 Some interested party submissions raise concerns about SPSA's proposed financial contribution to the foundation feedstock / remediation of the REDcycle stockpile. For example, the Australian Dairy Products Federation writes "*The new scheme should not be unfairly lumbered with funding remediation of any legacy stockpiles (regardless of whether brands did have historical agreements with RedCycle, given those arrangements likely gave brands no control of the actual management of the scheme).*"²⁴
- 40 The REDcycle stockpiles contain soft plastic packaging from a range of retail channels and sectors and are not limited to grocery brands and retailers. **As acknowledged in the submission by Central Adelaide Waste and Recycling Authority, the incorporation of these costs into the Scheme aligns to the equitable cost sharing principle essential to effective product stewardship.**²⁵

Central Adelaide Waste and Recycling Authority, 4 April

Proposed refund payment to retailers

The ACCC application proposes that the retailers that have funded the processing of the RedCycle stockpile receive a portion of that funding as a refund from the proposed new scheme in future years. **While we appreciate this is an attempt to provide equity across all of those involved, it reduces funding available to the expanding soft plastics recycling sector over time.**

CAWRA will explore these and other issues further prior to making our more detailed submission to the ACCC by 22 April.

\$16 million clawback = eroding public trust



Latest News

Woolworths Coles and Woolworths offer to save REDcycle stockpiles from landfill

Media release from members of the Soft Plastics Taskforce - Coles and Woolworths

<https://www.woolworthsgroup.com.au/au/en/our-newsroom/latest-news/2023/coles-and-woolworths-offer-to-save-redcycle-stockpiles-from-land.html>

Recommendation

- The ACCC should ensure any approval of collaboration between supermarkets and brands prioritizes the public interest.
- Proposals that shift costs onto consumers to reimburse past costs undermines fairness, equity, and public trust ought to be disallowed.

Example – claims that are likely to be false or misleading

Waste and recycling infrastructure varies significantly between different geographical regions.

For example, some products that are fully recyclable in Sweden have no appropriate recycling streams in Australia and will be sent to landfill when sold here. A product manufactured in Sweden has the claim “100% recyclable packaging”. The product is also sold in Australia, where recycling facilities for this type of plastic do not exist. The claim is likely to mislead consumers in Australia and contravene the ACL.

In Australia, waste and recycling infrastructure are regulated by local government and councils and are operating in conjunction with the Australian Recycling Label (ARL).

However, there are still differences across Australia on the scope of recycling operations and there can be significant differences between local council areas. What is compostable in Food Organics and Green Organics (FOGO) in one state or council may not be accepted in another. Some compostable claims on products may therefore be true in one location, but not in another. Businesses should therefore be careful if they choose to make any compostable claims that they are accurate for all locations in which the products are sold.

Before making an environmental claim, you should ask yourself if there are any conditions that need to be met or steps that need to be taken for the claim to be true. You should consider:

- how consumers normally use the product or service
- the normal conditions where the product or service is usually sold
- any access to infrastructure, technology and resources that are required for the environmental benefits to be realised.

Wave of Surging Plastic Recycling Plant Closures Hits Europe

The European plastic recycling industry is facing imminent collapse. The surge in low-priced imports of recycled plastics, the consequent decrease in the demand for EU-made recyclates, mounting economic pressures and excessive red tape are driving an increasing number of EU recyclers out of business. This is leading to a decrease in production and recycling capacity, compromising the survival of this strategic sector.

By the end of 2025, the territory is expected to have lost recycling facilities, amounting to almost one million tonnes of recycling capacity since 2023. Between January and July 2025, alone, almost the same amount of capacity as in the whole of 2024 was lost, and, by the end of this year, the closures could be three times higher than in 2023. Forecasts for 2025 indicate zero net growth after years of rapid expansion, which signals a critical decline in momentum in the transition to a circular economy. The Netherlands, Germany and the United Kingdom have been the most affected by this downward trend.

These figures are proof of the damaging effects of the recession on the European plastics recycling sector. To revive demand for EU recyclates and prevent further closures, policymakers must urgently implement trade and market defence mechanisms, ensure consistent EPR rules, and strictly enforce third-party certification and harmonised penalties for non-compliant materials.

<https://www.plasticsrecyclers.eu/news/wave-of-surging-plastic-recycling-plant-closures-hits-europe/>

Australian Charities and Not-for-profits Commission (ACNC)

Not-for-profit clause

This clause sets out how the organisation's assets and income are to be used and distributed.

'The assets and income of the organisation shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to the members of the organisation except as genuine compensation for services rendered or expenses incurred on behalf of the organisation.'

<https://www.acnc.gov.au/>

- 4 As set out in SPSA's Application, the proposed contribution is subject to ongoing Scheme participation from each of Coles and Woolworths respectively. In other words, if Coles or Woolworths cease to be a Scheme Participant at any time during the term, they will not receive the stockpile contribution amount for the relevant year(s) that they are not Scheme Participants.

SPSA 21 July

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.

SPSA application 18 March

(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;

19.6.2025

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Constitution of Soft Plastic Stewardship Australia Limited

- (iv) of reasonable and proper rent for premises let by a Member.

Membership

ACNC 23rd June

Governance

SPSA's constitution provides that *the board must have a minimum of 4 directors and a maximum of 10 directors, comprised as follows:*

- *Up to 3 proprietary brand owner directors*
- *Up to 3 retail brand owner directors*
- *Up to 1 industry association proprietary brand owner director*
- *Up to 1 industry association retail brand owner director*
- *Up to 2 independent directors*

- (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;

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.

19 Further, contrary to Zero Waste's submission:

- (a) SPSA has a conflict of interest policy which, together with the obligations in SPSA's constitution and the Corporations Act (including directors' duties), provides for appropriate management of conflicts of interest; and

Recommendation

ACCC require, as a condition of any authorisation, that SPSA:

- Publish its full conflict-of-interest policy; and
- Submit the policy for review prior to acceptance, to ensure it is capable of delivering a genuine public benefit.
- Consider the public detriment of SPSA's requirements to protect member interests
- SPSA to explicitly define what is commercially sensitive information

Proposed Governance Safeguards

- **Independent Directors** – At least 50% of the board should consist of independent, non-industry representatives, appointed through a transparent process. These directors should have no current financial or governance ties to SPSA members.
- **Government or Regulatory Oversight** – A representative from a government agency or regulator could be appointed as a non-executive director or formal observer. While not participating in day-to-day voting, this role should include the power to veto any and all board decisions that present clear conflicts of interest or that fail to demonstrate public benefit.
- **Conflict-of-Interest Safeguards** – Any board member with a conflict of interest must declare it and not participate in discussions or votes on that matter. These conflicts and how they were managed should be documented in board minutes and reported publicly.