



Australian Government

**Department of Climate Change, Energy,
the Environment and Water**

**Australian Government response to the independent review
of the co-regulatory arrangement under the *National
Environment Protection (Used Packaging Materials)*
*Measure 2011***

December 2022

INTRODUCTION

The Australian Government welcomes the release of the independent review of the *National Environment Protection (Used Packaging Materials) Measure 2011* (NEPM) and the Australian Packaging Covenant (Covenant).

Since 1999, the NEPM and Covenant have provided a co-regulatory framework for businesses and governments to share responsibility for reducing the environmental impacts of packaging in Australia.

A lot has changed since the co-regulatory arrangement was first established in 1999.

Growing consumer and industry awareness about the impacts of packaging waste on the environment is helping to drive a shift away from a linear ‘take, make and waste’ economy towards a circular economy that prioritises sustainable design, minimising waste and making better use of our resources.

While the current co-regulatory arrangement has some strengths, the review identified significant failures in the NEPM’s implementation and enforcement over the last two decades.

These limitations have created a lack of clarity for brand owners regarding their liability and obligations, enabled free riders, reduced industry confidence and participation and resulted in limited or no data collection to measure and report on performance.

The review makes nine recommendations to address these limitations and assist governments and industry to develop a reformed packaging scheme.

All Australian governments have considered the recommendations of the reviewer’s report and have endorsed the need for reform of Australia’s packaging regulation.

The Australian Government (the government) has provided detailed responses to the review’s recommendations below.

As a next step, the government will deliver economic modelling in 2022-23 to scope the potential benefits and impacts of packaging system reform for businesses and governments and to support government decision-making. Subject to consultation with state and territory governments and industry in 2023, the government will identify a preferred reform model for the consideration of all environment ministers. Reform processes will be undertaken in 2024-25 with a new regulatory scheme for packaging to be implemented by the end of 2025.

The independent review is available for download here on the Department of Climate Change, Energy, the Environment and Water website.

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION 1

Establish a clear goal and associated KPIs for a reformed used packaging scheme.

Response

The government **supports** this recommendation.

The government acknowledges the need for a reformed scheme to have a clear and quantifiable goal that is consistent with contemporary policy objectives and settings and that focuses on achieving a circular economy for packaging.

To enable the national performance of the scheme to be measured, the government notes the importance of the collection, reporting and sharing of consistent, targeted and up-to-date data, supported by coordinated and accessible data systems.

The government will consult with state and territory governments and industry on the goal, targets and appropriate Key Performance Indicators (KPIs) for the reformed scheme.

RECOMMENDATION 2

Establish a national agreement (defining goals, principles, roles, timeframes, funding and accountabilities) that forms the basis of a reformed used packaging scheme.

Response

The government **supports** this recommendation.

The government notes that the application of the co-regulatory arrangement differs between jurisdictions, and this creates confusion and complexity for businesses.

Australia's environment ministers have agreed foundational principles to guide the development of a reformed national regulatory arrangement that provide consistency and clarity to stakeholders about roles and responsibilities in meeting the agreed goal, targets and KPIs. The government will work with the states and territories to determine the preferred form and inclusions of a reformed scheme.

RECOMMENDATION 3

Clarify the liable parties under a reformed used packaging scheme.

Response

The government **supports** this recommendation.

Lack of clarity regarding the definition of a 'brand owner' under the current co-regulatory arrangement causes confusion for businesses about their liability and obligations.

The government will consult with state and territory governments and industry to agree appropriate definitions and application thresholds. It will be important that the definition of a liable party, as well as the packaging material within scope under the reformed scheme, is clear.

To inform this work, the government will undertake economic modelling during 2022-23 to scope the potential benefits and impacts of different threshold applications across the supply chain.

RECOMMENDATION 4

Establish a nationally consistent set of obligations for liable parties, based on those currently described in the Covenant, that enables flexibility as to how outcomes may be demonstrated.

Response

The government **supports** this recommendation **in principle**.

Different approaches to the administration of laws and arrangements across states and territories have created the conditions for some businesses to avoid their obligations under the co-regulatory arrangement ('free-riders'). Inconsistencies between the obligations imposed on Covenant signatories and those organisations regulated under state and territory arrangements, have caused confusion and created barriers to compliance.

Obligations for liable parties under the reformed scheme should be clear and nationally consistent, and performance measures should be targeted and proportionate.

The government will undertake economic modelling and will consult with state and territory governments and industry to determine obligations for liable parties, including consideration of those described in the Covenant, that are appropriate for meeting the agreed goal of the reformed scheme.

RECOMMENDATION 5

Centralise administration of a reformed used packaging scheme.

Response

The government **notes** this recommendation.

The government acknowledges that the different laws and arrangements across states and territories that give effect to the NEPM create complexity for stakeholders and result in inconsistency and inefficiency in the application and administration of the co-regulatory arrangement. Greater consistency in scheme administration could contribute to improving implementation, compliance monitoring and enforcement, data collection and reporting outcomes.

The government will consult with state and territory governments and industry on the most appropriate administration arrangements to achieve the goal of a reformed scheme.

RECOMMENDATION 6

Coordinate and strengthen monitoring and enforcement of a reformed used packaging scheme.

Response

The government **supports** this recommendation.

Lack of compliance monitoring and enforcement activity has undermined the effectiveness of, and confidence in, the mandatory co-regulatory arrangement and enabled some businesses to avoid their obligations.

An effective compliance monitoring and enforcement framework needs to clearly identify and communicate obligations and how to meet them, establish consistent reporting requirements, data collection and assessment processes, and set out enforcement activities and penalties.

The government will undertake economic modelling and will consult with state and territory governments to develop an effective and efficient monitoring and enforcement framework for the reformed scheme.

RECOMMENDATION 7

Governments fund the implementation of a reformed used packaging scheme, with ongoing costs associated with the scheme funded by industry.

Response

The government **notes** this recommendation.

Governments often recover costs of regulatory activities from the non-government sector. At a national level, the framework for the design, implementation and review of regulatory charging activities is set out in the Australian Government Cost Recovery Guidelines (the CRGs).

Under the current arrangement, costs associated with the Australian Packaging Covenant are recovered through membership fees, however, state and territory costs of administering the NEPM are not recovered from industry. A lack of dedicated resourcing has contributed to insufficient compliance monitoring and enforcement activity.

The government will consult with state and territory governments and industry in relation to funding mechanisms required to support implementation of a reformed regulatory arrangement.

RECOMMENDATION 8

Governments agree a preferred implementation approach for a reformed used packaging scheme.

Response

The government **supports** this recommendation.

All governments have a role to play in establishing a coordinated and effective, nationally consistent regulatory framework that enables Australia's transition to a circular economy for packaging. A reformed regulatory arrangement needs to be enforced, supported by efficient and effective compliance monitoring and provide for the costs associated with the administration of the framework to be recovered from industry.

Commencing in 2022, the government will undertake economic modelling of the feasibility and impacts of reform options and will consult with state and territory governments and industry to determine the appropriate model for a reformed regulatory scheme.

A new scheme should complement existing relevant Commonwealth and state and territory government programs and policies that are already improving packaging sustainability including work underway by industry to meet the National Packaging Targets.

RECOMMENDATION 9

While changes are being made to legislation to make the used packaging scheme sustainable into the future, governments take interim actions to reinforce the ongoing expectation that parties who can influence the design, procurement and use of more sustainable packaging will re-design packaging to improve sustainability, optimise recovery and reuse, collaborate across the packaging chain and be accountable for the achievement of outcomes.

Response

The government **supports** this recommendation.

It is important that liable businesses maintain their commitments to the current co-regulatory arrangement while longer-term reforms are being developed and implemented.

The government is working with state and territory governments to improve brand owners' understanding of their existing obligations and encourage participation and compliance in the current co-regulatory arrangement while reform work progresses.

ATTACHMENT A

TERMS OF REFERENCE¹

Scope

The independent review will evaluate a range of administrative, policy and legislative issues around the application, effectiveness and efficiency of the co-regulatory arrangement as a whole, including but not limited to:

1. The extent to which the UPM NEPM and Covenant are achieving the national environment protection goals set out within them.
2. The need for variation or amendments to the UPM NEPM and/or the Covenant.
3. The resources available for implementing the UPM NEPM and Covenant.
4. The interaction of the UPM NEPM with other Commonwealth legislation.
5. Any other matters including environmental, cost and regulatory issues relevant to the optimal operation of the UPM NEPM and Covenant.

For the purpose of the Review, the term 'packaging' will include consumer and business-to-business packaging.

Matters covered by the Terms of Reference

Matters to be covered under each scoping question are included below:

- 1. The extent to which the UPM NEPM and Covenant are achieving the national environment protection goals set out within them**

The Review should consider:

- whether the goal(s) and scope of the UPM NEPM and the Covenant remain appropriate
- the suitability and effectiveness of existing and alternative legislative frameworks, including the appropriateness of the current co-regulatory approach

¹ Agreed by the Government Officials Group in September 2020.

- whether the goal(s) could be more effectively achieved through alternative legislative frameworks, including a consideration of the potential costs and benefits of alternative models
- the appropriateness of the obligations of liable parties and the scope of activity to be delivered under the Covenant
- the ability of the co-regulatory arrangement to provide for the necessary compliance and enforcement arrangements, particularly in addressing free rider advantage.

2. The need for variation or amendments to the UPM NEPM and/or the Covenant

The Review should consider:

- changes that would improve the effectiveness and efficiency of the UPM NEPM and Covenant in achieving the national environment protection goals set out within them, in particular changes that would lead to greater reductions in packaging waste
- the clarity of definitions, in particular 'Brand Owner', 'threshold', 'consumer packaging', and 'distribution packaging'
- the national consistency and appropriateness of criteria and thresholds for determining liable parties
- whether packaging targets and performance indicators should be prescribed in the UPM NEPM
- whether the goal of the UPM NEPM should be expanded to include waste avoidance
- what transition actions can be implemented to progress any recommended changes to the UPM NEPM and Covenant
- any priority actions that can be taken in the short-term and which do not require changes to the regulatory framework, but which can assist in achieving the objectives of the UPM NEPM and Covenant in the interim, while regulatory reform is being considered.

3. A review of the resources available for implementing the UPM NEPM and Covenant

The Review should consider the costs and benefits of existing and alternative arrangements (such as informal forums, policy agreements agreed by all Australian jurisdictions, or other Commonwealth-level legislation) to achieving the goal(s) of the UPM NEPM and Covenant.

4. The interaction of the UPM NEPM with other Commonwealth legislation

The Review should consider:

- *The Product Stewardship Act 2011*, as well as the Final Report and recommendations of the review of the *Product Stewardship Act 2011* (July 2020)
- The proposed *Recycling and Waste Reduction Bill 2020*.

5. Any other matters including environmental, cost and regulatory issues relevant to the optimal operation of the UPM NEPM and Covenant.

For example, the Review should consider:

- the national consistency of state and territory processes in identifying and supporting eligible brand owners to meet their obligations under the UPM NEPM (or produce equivalent outcomes to those achieved through the Covenant)
- the national consistency of state and territory compliance and enforcement processes and penalties
- the governance arrangements of the UPM NEPM and the Covenant, including the roles of APCO and the Australian Government
- the appropriateness of the administrative and reporting obligations of signatories, particularly in relation to small-to-medium sized enterprises
- whether the UPM NEPM functions consistently with contemporary technology, knowledge, policies, terminology, and industry conditions, in particular whether the co-regulatory arrangement supports and promotes the transition to a circular economy
- the level of actual and required agility of the UPM NEPM to respond to changing dynamics and opportunities in the contemporary packaging sector
- the appropriateness of data collection and auditing

- the consistency with and contributions of the UPM NEPM to national policies such as the National Waste Policy and Action Plan
- the degree to which the UPM NEPM interacts with other product stewardship schemes.

Governance and Deliverables

The review will be undertaken by an independent reviewer contracted by the Commonwealth. The Department of Agriculture, Water and the Environment will act as secretariat to support the review and will provide regular updates on the progress of the review to the Government Officials Group.

The independent review will commence in 2020, with a written report and recommendations provided to the Minister in 2020/2021. The report and next steps will be presented to environment ministers at a Meeting of Environment Ministers.

Methodology

The independent review will include a targeted stakeholder consultation process with relevant state and territory government environment agencies, local government associations, the Australian Packaging Covenant Organisation, targeted industry groups and non-government organisations, representative businesses across the packaging supply chain in each state and territory (APCO members and businesses under NEPM arrangements). The review should report on the recommendations from past reviews (either statutory or non-statutory) of the NEPM and Covenant that have not yet been implemented, including whether those recommendations remain valid.

Background

Policy and legislative framework

National Environment Protection Council Act 1994

Provides for the establishment of the National Environment Protection Council to determine NEPMs.

Section 14(1)(f) identified that Council may make a NEPM for ‘the re-use and recycling of used materials’.

NEPMs must comprise one or more of a national environment protection standard, goal, guideline and/or protocol and must be consistent with the principles of environmental policy in Section 3 of the Agreement and other considerations (s14(3)).



Used Packaging Materials NEPM

Relates to the re-use and recycling of used materials of the NEPC Act (Section 14(1)(f)) and is to be implemented by the laws and other arrangements participating jurisdictions consider necessary.

Contains provisions to prevent signatories to the Covenant suffering any competitive disadvantage as a result of fulfilling their commitments voluntarily under the Covenant.

Identifies the national environmental protection goal, guidelines, and protocols.



Australia Packaging Covenant

Agreement entered into by governments and industry participants in the packaging chain based on the principles of product stewardship and shared responsibility.

Covers consumer packaging.

Voluntary system of self-regulation underpinned by the NEPM.

Covenant signatories provide information to assess the performance of the Covenant and progress towards the NEPM goal.

Annual reporting to the Meeting of Environment Ministers (MEM) is undertaken by the Commonwealth (s19).

The Covenant is administered by the not-for-profit company the Australian Packaging Covenant Organisation Ltd., which was established for this purpose.

Compliance measures - NEPM implementation across state and territory agencies

Jurisdiction	NEPM Instrument	Legislation Underpinning NEPM Instrument
Commonwealth	National Environment Protection (Used Packaging Materials) Measure 2011	Subsection 14 (1) of the <i>National Environment Protection Council Act 1994</i>
NSW	Part 5B Recycling of Consumer Packaging, Protection of the Environment Operations (Waste) Regulation 2005.	<i>Protection of the Environment Operations Act 1997</i> <i>National Environment Protection Council (New South Wales) Act 1995</i>
VIC	Waste Management Policy (Used Packaging Materials) 2012	Sections 16A(1) and 17A of the <i>Environment Protection Act 1970</i> <i>National Environment Protection Council (Victoria) Act 1995</i>
ACT	Waste Management and Resource Recovery (Environment Protection—Used Packaging Materials) Code of Practice 2020. [Disallowable Instrument DI2020-256]	Section 60 (Codes of Practice – approval) of the <i>Waste Management and Resource Recovery Act 2016</i>
WA	Environmental Protection (NEPM-Used Packaging Materials) Regulations 2007	<i>Environmental Protection Act 1986</i> <i>National Environment Protection Council (Western Australia) Act 1996</i>
SA	Environment Protection (Used Packaging Materials) Policy 2007	Section 29 of the <i>Environment Protection Act 1993</i> <i>National Environment Protection Council (South Australia) Act 1995</i>
TAS	Adopted Commonwealth <i>National Environment Protection (Used</i>	Section 12A of <i>State Policies and Projects Act 1993</i>

	<i>Packaging Materials) Measure 2011</i> as a State Policy under Section 12A of <i>State Policies and Projects Act 1993</i>	Implemented under the <i>Environmental Management and Pollution Control Act 1994</i> <i>National Environment Protection Council (Tasmania) Act 1995.</i>
QLD	Part 5A (Used Packaging Materials) Waste Reduction and Recycling Regulations (2011)	<i>Waste Reduction and Recycling Act 2011</i> <i>National Environment Protection Council (Queensland) Act 1994</i>
NT	2007 Re-thinking Waste Disposal Behaviour and Resource Efficiency Interim Action Plan.	If necessary, provision under <i>Waste Management and Pollution Control Act 1998</i> to apply an Environmental Protection Objective to ensure the NEPM can be applied legislatively in the NT. Plastic bag ban and container deposit scheme administered under <i>Environment Protection (Beverage Containers and Plastic Bags) Act 2011.</i>