



Packaging Council of Australia
Annual Review of Regulatory Burdens on Business
Submission to the Productivity Commission

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www.pca.org.au

Regulatory Burdens: Social and Economic Infrastructure Services

Submission to the Productivity Commission Review of Regulatory Burdens

Executive Summary:

The current regulatory approach in Australia for energy, water and waste is unnecessarily complex, does not directly target the issues to be resolved and is duplicated across jurisdictions.

Key regulation on these issues has, in some cases, become more about reporting than fixing problems.

There has been a significant increase in regulation and reporting requirements for industry across the issues of energy, water and waste. Policy debate and development in these areas has, however, at times been in conflict with existing regulations, circuitous and also duplicated across jurisdictions.

This increase in regulation and general environmental legislation has had the effect of increasing administration, auditing and reporting for companies in the packaging industry while at times also creating uncertainty and confusion. The bottom-line impact has resulted in increased cost without a commensurate improvement in environmental standards or business performance.

Good regulation around energy, water and waste is vital for Australia's economy and environment and provides potential value to Australian industry. The World Economic Forum's Global Competitiveness Report 2007-08 ranks Australia 16th out of 125 nations for the overall stringency of its environmental regulations. This provides a generally recognised high standard and good trading platform for the nation.

Of fundamental concern however is the lack of coordination and policy consistency across Federal, State and local governments. This has given rise to overly complex regulation and the sense that data collection and reporting requirements are sometimes established for "the sake of it" without the information being used in any coherent policy way.

Regulations of concern:

(1) Energy and water

- The National Greenhouse and Energy Reporting Act (Commonwealth)
- Energy Efficiency Opportunities Act (Commonwealth)
- Environmental Resource Efficiency Plans (Victoria)

- NSW Department of Energy, Utilities and Sustainability Energy and Water Action Plans (NSW)
- The Clean Energy Act (QLD)

Regulation of industry's energy and water use has become a tangle of multiple reporting requirements that is losing sight of the objective.

All of the above regulations, except for the National Greenhouse and Energy Reporting (NGER) Act have a dual purpose – firstly, to improve data gathering, transparency and reporting around energy and water use and, secondly, to place an obligation on large users to commit to reduction activities. The NGER does not require the second step as that is encompassed under the proposed Carbon Pollution Reduction Scheme.

While the Packaging Council of Australia (PCA) supports the intent and objective of these regulations, the problem is that each pursues those objectives in a different manner.

For example, the thresholds differ across jurisdictions as to whether businesses have a reporting and compliance obligation. The NSW scheme requires businesses using more than 10 giga watt-hours of electricity and/or 50 mega litres of water to participate while in Victoria it is 100 tera joules of energy and/or 120 mega litres. Victoria also includes waste disposal but does not yet have a threshold tonnage.

Each State currently has differing standards of data gathering and reporting and differing time lines for both reporting and for changes to the thresholds.

The impact of these differences is confusion and added costs. The actual impact on different companies varies. For larger organisations, operating many sites over a number of States, it has presented significant challenges to allocate appropriately trained and experienced staff to enable understanding of the organisation's obligations and how to comply. At a corporate and site level there is a fundamental need to understand the raft of reporting requirements and differing obligations and align such obligations with existing company data gathering and reporting.

At present only the Victoria Environmental Resource Efficiency Plan enables flexibility in this regard as participants can use their existing data and reporting to comply and does not require reporting in a specific format (as long as it is to a reasonable standard and is capable of verification). All other schemes require reporting in a specific manner, and some with external independent verification. Therefore, if a national organisation is compiling the necessary data at a corporate level it will need to report that data in at least three different formats.

Businesses are also being preyed upon by misleading advisers. The PCA is aware that consultants and auditors have quoted \$40,000 to assist a single-site to meet the requirements of the Victoria Environmental Resource Efficiency Plans. While the Victorian Environment Protection Authority has

expressed concern at this and that consultants may be seeking to take advantage of a company's ignorance, the full extent and cost of this kind of activity is unknown.

Companies in the packaging supply chain are allocating staff time and significant extra costs for reporting and auditing, resources which should otherwise be allocated to actual energy and water improvements.

Of particular confusion in this respect has been the development and use of OSCAR – the Commonwealth Government's on-line system for comprehensive activity reporting. This has long been presented as the key reporting tool through which energy and water tracking will be streamlined and made more efficient and effective. In reality the system has been under development and consultation for a number of years, it is still limited in its use, is not compatible with State-based requirements and requires the allocation of significant resources and training.

(2) Waste

- National Packaging Covenant
- National Environmental Protection Measure (NEPM): Used Packaging Materials
- Container Deposit Legislation (SA)
- Hazardous Waste (Regulations of Exports and Imports) Act (Commonwealth)
- Waste Avoidance and Resource Recovery Act (NSW)

Waste regulations in Australia are wrongly being used as a catch-all for broad environmental concerns. Packaging in particular is being threatened with over-regulation to address perceived upstream environmental issues.

Australia has numerous independent and interconnected regulations governing waste. From over-arching State Environment Protection Acts, to hazardous waste laws, to industry-specific co-regulation such as the National Packaging Covenant, waste generation and disposal is subject to layers of regulation.

The PCA's interest with respect to waste regulation is primarily with State-based waste reduction policies and agencies, the provision and delivery by local government of waste collection and disposal services, specific legislation such as the South Australian Container Deposit Legislation and the National Packaging Covenant. The only Federal legislation of interest is the Hazardous Waste (Regulations of Exports and Imports) Act as it can have an impact on the recovery and recycling of used packaging materials where the materials are exported to be recycled.

Our primary concern is whether the regulations are proportionate to the issue being addressed, whether the regulatory responses are practical and whether they deliver tangible environmental benefits.

In our view, regulations to manage the use and disposal of used packaging are often not proportionate to the environmental impacts that used packaging may have if disposed incorrectly. In general, policy makers are using waste management regulations with respect to packaging to address perceived upstream environmental impacts.

Waste regulations seek to enforce the appropriate disposal of used materials. Incorrect disposal can cause pollution in the form of emissions to air, land or water, leachate, litter/amenity and greenhouse emissions.

The incorrect disposal of used packaging is in itself not a significant risk for any of these pollution concerns except for litter/amenity. Packaging in Australia is made from plastic, glass, paper, metal or variations and/or combinations of these materials. All of these materials, except for paper, are inert if disposed of to landfill. Paper in landfill decomposes and gives rise to methane, a greenhouse gas, which if not captured is a pollutant with global warming potential.

Packaging serves an important function in the delivery of goods and services. Packaging protects products and enables consumers to attain the full benefit of their purchase. The environmental and economic benefit of packaging is clearly seen in the food and grocery sector where packaging can significantly reduce wastage.

The Australian Food and Grocery Council (AFGC) Sustainability Report for 2003 states that, “the most water intensive process in the food and grocery supply chain is primary production, followed by use and consumption in the home. The relative water intensity of these two stages is, respectively, about 100 and 10 times more water intensive than most processing and packaging”.

Life cycle work by Dairy Australia examining the whole of life greenhouse and environmental impacts of dairy found that “about 85% of greenhouse gas emissions are farm related, of which 74% are on-farm emissions. Packaging is estimated to contribute about 4% to total emissions”.

Overseas experience is similar. A study by the Industry Council of Packaging and the Environment (INCPEN) found that “environmental gains in other parts of the food chain are often achieved by increasing packaging which itself has a relatively small environmental impact in relation to that of food production and distribution”.

Despite this, local and State Governments have targeted the disposal of used packaging as a significant environmental issue. For example, the NSW Waste Avoidance and Resource Recovery Act sets out powers to implement extended producer responsibility (EPR) schemes to force responsible parties to pay for waste avoidance and / or material recovery for specific products. The products identified by the NSW Department of Environment and Climate Change for consideration in an EPR scheme in 2004 were:

Agricultural/veterinary (Agvet) chemicals

Agvet chemical containers
Batteries
Cigarette butts
Computers Televisions
End of life vehicle residuals
Treated timber
Mobile Phones
Tyres
Office paper
Packaging
Paint
Plastic bags
Polyvinyl Chloride (PVC)
Used oils and lubricants
Other electrical products

Many of the materials listed do indeed have a risk of significant environmental harm if disposed of incorrectly. However, leaving aside the litter issue, packaging does not.

Other States have developed similar policy approaches, many based on a no-waste to landfill or zero waste ideal.

These policy instruments are not based on a consistent set of standards and do not address the questions of whether the regulation is proportionate to the issue being addressed and whether the regulatory responses are practical.

In November 2008 the Environment Protection and Heritage Council (EPHC) agreed to establish a national waste policy. There is a general consensus from all States and the Australian Government that a national waste policy is and update of State waste policies is needed in the context of broader government policies on climate change and sustainability. While welcoming this decision, it should be noted that the EPHC has already developed and published a National Waste Framework which has been largely ignored by Governments.

The debate about and development of EPR schemes for packaging, including the extension of the South Australian Container Deposit Scheme in 2008 and the work by the Governments of Western Australia and Tasmania to introduce EPR schemes for used beverage containers, continues to be an issue for companies in the packaging supply chain (the Australian Senate also has a private members bill for a national container deposit scheme).

Substantial time and work is needed by companies to participate in this policy debate which is including packaging even though the National Packaging Covenant (NPC) and associated NEPM is the policy instrument adopted by the EPHC for the management of used packaging in Australia.

The Covenant is a powerful co-regulatory tool to address the range of potential environmental concerns associated with packaging, including waste disposal. Some jurisdictions have either extended or sought to introduce regulations that would conflict with the Covenant without actively using the powers that it and the associated NEPM currently provide.

The Covenant and NEPM

The NPC and NEPM warrant attention from the Productivity Commission in respect to their position in the suite of regulations for waste collection, treatment and disposal. While the Commission examined and made recommendations about the Covenant in its 2006 report, we believe it is now timely to review the regulatory burden and benefit inherent in its application.

The PCA played a leading role in the establishment of the NPC in 1999. We believe it is a successful co-regulatory scheme to efficiently and effectively measure and promote environmental improvement in packaging. The Covenant addresses the key concerns for packaging manufacture, use and disposal. It is being reviewed at present in the context of extending its life beyond its expiry in mid 2010.

Scope exists to significantly improve the Covenant framework. In terms of the current review, attention should be given to the fundamental purpose of the Covenant as well as the extent and nature of the Key Performance Indicators (KPIs).

The Covenant – Its Role

The Covenant needs to be clear and specific about its objectives and the problems it is endeavouring to solve.

The purpose of the present Covenant is a “catch all” of various issues including lifecycle management, resource efficiency, recovery systems, consumer behaviour, supply chain actions and continuous improvement.

In short, its ambit is too wide which, in turn, diminishes its effectiveness. A more focussed and targeted Covenant would be a more productive Covenant.

This “scattergun” approach is particularly evident in the KPIs. There are simply too many KPIs, some of which have proved to be unnecessary and/or redundant. For companies, there are now some superfluous and impractical reporting requirements and data gathering that do not have a material impact on achieving the NPC objectives.

Following is the list of Covenant KPIs.

Key performance indicators	Who reports this KPI?	Reporting measure (bold = must be publicly reported)
1. Total weight of consumer packaging (domestic & imported) sold per annum into the Australian market and the total weight of products packaged	Brand owners	1A Report tonnes of packaging by material type ¹ by source (local or imported) 1B Report net tonnes of packaged product sold 1C Report ratio of product to

packaging (by weight)		
2. Resources used to produce packaging: - Energy (megajoules) - Water (kilolitres)	Packaging mfctrs	2A Report energy consumption in megajoules (MJ) per tonne of packaging produced, by material type 2B Report water consumption in kilolitres (KI) per tonne of packaging produced, by material type
3. Improvements in design, manufacture, marketing and distribution to minimise the environmental impacts of packaging	Packaging Supply Chain	3A Report examples of improvements made to packaging and their effect on minimising the environmental impacts of the packaging 3B Quantitative details of substantial improvements should be provided where available e.g. tonnes of packaging avoided, increased recyclability etc.
4. Changes to protection, safety, hygiene, shelf-life or supply chain considerations affecting amount and type of packaging used	Packaging Supply Chain	4A Report changes to protection, safety, hygiene, shelf-life or supply chain considerations affecting amount and type of packaging used with examples, and their associated impact on the amounts and types of packaging used 4B Quantitative details of changes should be provided of substantial changes where possible e.g. additional tonnes of packaging required, changes to materials used etc.
5. Average % per annum, of post-consumer recycled content in packaging manufactured	Packaging mfctrs	5 Report average annual percentage of recycled content incorporated into packaging manufactured (finished packaging) by material type
6. Total weight, by type, of 'non-recyclable' consumer packaging sold per annum into the Australian market	Brand owners	6A Report tonnage of 'non-recyclable' packaging sold by material type and total 6B Report total 'non-recyclable' packaging as a % of total packaging sold
7. Total weight of consumer packaging disposed to landfill	NPC Council	7 To be calculated by subtracting aggregated tonnage data relating to total packaging recycled in Australia from total tonnes of packaging consumed in Australia

8. Consumer packaging as a % by weight of total waste and relative to other waste stream components	State, territory, local govts	8A Report consumer packaging by weight as a % of total household waste and relative to other household waste stream components 8B Report consumer packaging by weight as a % of commercial and industrial waste and relative to other C & I waste stream components
9. Total weight of consumer packaging recycled, through: a) domestic and b) away-from-home recovery systems	NPC Council State, territory, local govts	9 Report total tonnes recycled per annum, by material type for a) domestic and b) away-from-home recovery systems
10. Total weight of recycled consumer packaging sold to end-users	NPC Council	10 Report total tonnes of consumer packaging sold, by material type and end-user market
11. Number of councils operating according to good practice collection principles and state-based benchmarks	NPCC State, territory, local govts	11 Report by state or territory, the number of councils meeting state-based benchmarks for good practice recyclables collection
12. Percentage of households with access to kerbside collection systems	NPC Council State, territory, local govts	12 Report on the number of households, as a percentage of total households within the state/territory, that have access to a kerbside post-consumer packaging and paper collection system
13. Percentage of households with access to other domestic collection systems	NPC Council State & territory govts	13 Report on the number of households, as a percentage of total households within their municipality, that have access to a domestic collection system, other than those systems reported in KPI 12
14. Number of commercial and industrial premises with packaging recycling collection systems	NPC Council	14A Report total number of commercial and industrial premises with packaging recycling collection services nationally 14B Report total number of commercial and industrial premises with packaging recycling collection services at state/territory level, if available
15. Percentage of councils and government agencies providing public place recycling infrastructure	State, territory, local govts	15A Report number of government agencies providing public recycling facilities as a percentage of government agencies with public place responsibilities

		<p>15B Report number of councils providing public place recycling facilities as a percentage of local councils</p> <p>15C Report total number of recycling bins provided by agencies</p> <p>15D Report total number of recycling bins provided by councils</p>
16. Percentage of signatories providing recycling collection facilities for post-consumer packaging generated on-site	All	<p>16A Report whether on-site recycling facilities are provided</p> <p>16B If yes, provide details</p>
17. Amount and type of consumer packaging in the litter stream	NPC Council State & territory govts	17 Report amount and type of consumer packaging in the litter stream
18. Contamination rates in consumer packaging recovery systems (e.g. kerbside, events, venues, public places, workplaces)	NPC Council State, territory, local govts	<p>18A Report % contamination from domestic systems</p> <p>18B Report % contamination from away-from-home systems</p> <p>18C Report specific examples of % contamination by system or location if available</p>
19. Improvements in consumer knowledge about the functional attributes of packaging, including recyclability / reuse	NPC Council	19 Report details of specific knowledge and trends over time in changes in consumer knowledge
20. Improvements in littering behaviour	NPC Council State & territory govts	20 Report details of specific aspects of littering behaviour and trends in behaviour over time
21. Estimated tonnage of consumer packaging sent a) for recycling and b) to landfill from on-site collection facilities	All	<p>21 Report on amounts of consumer packaging from on-site collection which is:</p> <p>a) Sent for recycling (tonnes and % of total waste) and</p> <p>b) Sent to landfill (tonnes and % of total waste)</p>
22. Number of signatories who have formally adopted the ECoPP and developed systems for its implementation	Packaging supply chain	<p>22A Report whether ECoPP has been formally adopted</p> <p>22B Report actions and commitments that demonstrate that the ECoPP has been implemented</p>
23. Application of Covenant compliance procedures by NPCC to identify non-compliant signatories	NPC Council	<p>23A Report total number of signatories assessed by NPCC</p> <p>23B Report total number of signatories referred by NPCC to jurisdictions, by jurisdiction</p>
24. Implementation of NEPM	State & territory govts	24 Report number of

procedures by jurisdictions		companies contacted in relation to NPC and NEPM
25. Enforcement of the NEPM to 'free-riders' and non-compliant Covenant signatories	State & territory govts	25 Report number of formal enforcement actions taken
26. Implementation of buy recycled purchasing policy or practices	All	26A Report whether the signatory has implemented a buy recycled purchasing policy or practices 26B If yes, provide details and quantitative data where available
27. Establishment of baseline performance data	All	27A Report indicative baseline data (where available), including qualifiers and assumptions, by 30 November 2005 27B Report established baseline data by 31 October 2006
28. Annual reporting against action plan	All	28 Report to be lodged by 31 October each year commencing 2006 and outlining progress against baseline data, individual action plan commitments, targets and timelines
29. Demonstrated improvement and achievements against individual targets and milestones	All	29 Annual report to clearly demonstrate continuous improvement and performance against individual targets and timelines in action plan

A review of Covenant Action Plans (www.nationalpackagingcovenant.org.au) shows that many signatories – both Government and companies - struggle to fulfil the letter of the reporting requirements.

It is questionable whether all the KPIs are necessary for achieving the Covenant's objectives. A lot of the information being provided is not being used and is not progressing Australia to better manage waste.

Clearly, some of the KPIs are redundant and it has become reporting for the sake of it. Specifically, KPIs 1 and 2 as they apply to business are a significant and unnecessary burden. The collection of information enabling reporting against KPI 1 is a very large task for any organisation and given the range of products and packaging types being used, it is providing a largely meaningless set of data. For KPI 2, while the reporting burden is not as great, this kind of information is presented by manufacturers under other regulations, such as the Energy Efficiency Opportunity Act or similar State-based requirements.

Most discussion by Governments and the EPHC with respect to the success or otherwise of the Covenant has been around recycling rates – specifically whether the existing Covenant will meet the recycling rate targets set out in 2005. The PCA recognises that the recycling rate is an important and widely understood measure of progress but would simply make the point that if recycling rates are to be the primary measure of the NPC's success then much of the current reporting requirement is unnecessary.

The fundamental principle of the Covenant is to manage the lifecycle impacts of consumer packaging in Australia. Review of the existing NPC and consideration of a further extension should focus on less reporting and thereby reduce the regulatory burden on companies in the packaging supply chain.

Conclusion

The increase in environmental regulation in Australia is a double edged sword.

Greater transparency and accountability around energy, water and waste benefits Australian society and the economy. However, there has been a growth in regulation that duplicates requirements already in place and embeds reporting requirements that increase costs and risks without commensurate progress towards the regulations underlying objectives.

The attached document, *The Status of Packaging Sustainability in Australia*, provides some further general information on the packaging industry in Australia and the industry's approach to energy, water and waste improvement.

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