

# **S U B M I S S I O N**

**TO THE**

**INQUIRY INTO WASTE MANAGEMENT**

**BY THE**

**PRODUCTIVITY COMMISSION**

**Prepared by:**

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## **EXECUTIVE SUMMARY**

The National Association of Retail Grocers of Australia (NARGA) is the peak national body representing the independent retail grocery sector in Australia.

Retailers provide the interface between manufacturers and producers and the general public. Retailers are significantly impacted when government acts to 'manage' waste through regulation of elements of the supply chain for products and packaging, particularly when regulation imposes additional requirements on retailers or where there is a call for allocation of retail space.

NARGA fully supports the Commission's key findings as detailed in the Waste Management Draft Report, especially the recommendation relating to the need to base waste policy on consideration of economic efficiency as a means of capturing the combination of resource and capital efficiency in ways that optimise community benefit.

Such an approach would prevent policy decisions being based on a single 'excuse' such as 'sustainability (narrowly defined)', 'the waste hierarchy', 'hazardous content', 'avoidance of landfill', 'consumer concerns', 'resource efficiency', 'market failure' and the wide range of simplistic justifications used for current waste management policy approaches.

### **Waste Policy**

NARGA would like to see government policy on waste management and 'resource efficiency' based on sound, robust, best practice approaches to policy development using as a starting point the COAG principles on regulatory impact assessment which require a rigorous analysis of costs and benefits, as well as alternatives to regulatory intervention.

Our position is that current waste policy at both state and federal level needs to be reviewed on that basis and that such a review needs 'whole of government' input – i.e. input from departments other than those involved with environmental protection.

Development of waste policy needs to take into account the possibility of adverse effects on business and to recognise that policy can impact disproportionately on small business.

Good policy formation should be based on clear identification of the issue or problem to be addressed and, if the existence of a problem is confirmed, examination of whether it is serious enough to warrant intervention, an examination of the available mechanisms and an analysis of whether the

proposed method of intervention would be effective, cost-effective and worthwhile.

### **Plastic Shopping Bags**

It would appear that, during the development of policy, the shopping bags themselves became the 'problem'. There appears to have been little or no attempt to quantify the plastic shopping bag potential for impact on marine life (or other animal life), no assessment of how many plastic bags actually find their way into the marine environment nor how the impact of plastic bags compared with other materials littered into that environment.

Whilst the environmental problem associated with plastic shopping bags is identified in the DEH report as one of potential for harm to marine life, the DEH report quotes just one study of the problem, taken from the Environment Canada website.

However the report misquotes the Environment Canada report in two key ways. Both misquotes result in a significant overestimation of the hazard to marine life posed by plastic shopping bags.

We do not believe that DEH has properly identified the environmental issues that the proposed plastic bag reduction or replacement strategy is supposed to address and that the policy action proposed is a disproportionate and inappropriate response to the issues associated with plastic shopping bag use.

A more appropriate policy response would have been to address plastic shopping bag litter as part of a total litter reduction program.

NARGA believes that government has not been well advised on this issue.

The current policy on plastic bags imposes significant costs on business, costs that do not appear to result in commensurate community benefit.

Costs associated with plastic bag reduction activities are passed on to consumers either directly as is the case with purchase by them of reusable bags, or indirectly in the form of higher prices.

Retailers and consumers have also had to manage the inconvenience associated with the use of reusable shopping bags at the checkout and beyond the store.

NARGA does not support current government policy on plastic shopping bags. Government policy sets an arbitrary reduction target for the use of plastic shopping bags and aims to eliminate their use in the future.

We believe that the policy was poorly developed and does not address the perceived environmental issues associated with plastic shopping bag use appropriately or proportionately. We suggest that the current program (and its targets) should be abandoned.

NARGA supports a policy approach which sees plastic shopping bag litter as part of the total litter problem to be addressed by a comprehensive policy aimed at a reduction of total litter incidence.

Litter fines and other enforcement activity that targets littering behaviour should be a significant component of any anti-litter policy response.

### **National Packaging Covenant**

Whilst the first packaging Covenant was an attempt to assist local government reduce recycling collection costs through improved efficiencies and to assist companies in the packaged goods sector introduce environmental management programs in a relatively cost-effective manner, the new Covenant imposes data gathering requirements and arbitrary targets which do not of themselves result in increased community benefit.

Taken together, the new requirements come at significant cost to business, particularly non-exempt small business, and exert pressure on business to move away from multi-material / multilayer packaging (which has technical benefits) to more 'recyclable' packaging.

Although additional regulatory burdens tend to impact disproportionately on small business there was, in our view inadequate representation of small business interest in the 'negotiations' leading up to the finalisation of the new Covenant, as the industry bodies represented on Covenant Council do not represent small business. This can lead to a situation where agreement is reached on a regulatory mechanism which large companies are set up to cope with but which imposes higher burdens on smaller businesses

The new Covenant proposal was subjected to a RIS process which failed to properly identify the huge cost to business associated with the proposed changes or to justify the need for this more data intensive and bureaucratic approach. Certainly the 'no regulation' option was not canvassed.

There was no cost benefit analysis conducted on the recycling targets set for the revised Covenant, nor on the new emphasis on 'away from home' recycling.

Not surprisingly, a significant proportion of companies that signed up to the first Covenant have not signed the second. The two major supermarket chains, Woolworths and Coles, have not yet signed the second Covenant.

The new National Packaging Covenant imposes increased costs on business and the community, costs which do not necessarily translate into improvements in community benefit.

### **Additional Comments**

Comments are provided on problems with the way policy is developed, including the tendency for environment departments to base advice to government on simplistic or one dimensional notions of sustainability. A pattern of uncritical adoption of regulatory models from overseas, particularly Europe, is also common. This is often done without evaluating local differences or consideration of local costs and benefits. Regulators may be assuming that overseas authorities have done their homework. Our examples on Extended Producer Responsibility (EPR) show that this is not necessarily so.

Our comments on the South Australian container deposit system (CDL) show that the legislation supporting the system was not properly assessed in terms of costs and benefits, yet seemed to have no problem getting past the procedures put in place under National Competition Policy arrangements which are supposed to provide a clear mechanism for the review of new and existing regulation.

### **Conclusion**

In summary, NARGA believes that the Australian community is poorly served by current approaches to the development of waste management policy and that a higher level of intellectual rigour in the development of policy is called for.

We endorse the recommendations made by the Taskforce on Reducing Regulatory Burdens on Business, in its report 'Rethinking Regulation' (January 2006) on the six principles of good regulatory process.

We believe that waste policy and legislation in Australia require an overhaul using such 'best practice' principles.

## **WHO WE ARE**

The National Association of Retail Grocers of Australia (NARGA) is the peak national body representing the independent retail grocery sector in Australia. It is composed of and related to the following organisations:

- Retail Traders and Shopkeepers Association of NSW
- The Master Grocers Association of Victoria
- Queensland Retail Traders and Shopkeepers Association
- WA Independent Grocers Association
- Tasmanian Independent Retailers
- IGA Retail Network
- State Retailers Association of SA

Together these represent more than 5000 small to medium sized businesses employing over 100,000 people

Retailers provide the interface between manufacturers and producers and the general public and are therefore significantly impacted by government efforts to 'manage' waste through regulation of elements of the supply chain for products and packaging, particularly where these impose additional requirements on retailers or where there is a call for allocation of retail space.

## **NARGA SUPPORT FOR THE COMMISSION'S POSITION ON WASTE POLICY**

NARGA fully supports the Commission's key findings as detailed in the Waste Management Draft Report. In particular we endorse the following:

- Waste management policy should be guided by best practice approaches to policy development (as opposed to being based on a series of environmental myths)
- It is inappropriate to use waste management policy to address upstream environmental externalities as these are more effectively and efficiently addressed by policies directed at the sources of these impacts
- Waste policy should not be based on the concept of a 'waste hierarchy' as this has no scientific basis. Use of the 'hierarchy' tends to promote the use of one method of waste management over others, without the necessary examination of costs and benefits or unintended consequences. Further, use of the 'hierarchy' concept can result in policy decisions that impact negatively on the environment – e.g. the use of the 'Reduce' or 'Avoid' mantra has been interpreted as a need to reduce or avoid packaging with the inherent risk of increased breakage or spoilage.
- Policies aimed at minimising the proportion of waste disposed in landfills and / or maximising the proportion recycled tend to increase community cost without resulting in optimum community benefit (or even environmental benefit)
- Landfill externalities have been exaggerated to justify current waste policy settings and landfill levies. Landfills externalities are relatively small and are well managed through current levels of landfill regulation.
- Landfill greenhouse gas externalities are best managed in the context of a wider response to greenhouse issues (and are most easily and more economically addressed at source rather than by diversion of materials from landfill).
- Sending the right pricing signals to disposers of waste, including households, for example by 'pay as you throw' mechanisms, is the appropriate way to find a balance between recycling and disposal of waste.
- The use of landfill levies to 'internalise' landfill 'externalities' is inappropriate as these externalities are small and such additional taxing mechanism is inefficient. Landfill levies are being used by some states to fund waste management programs aimed at achieving arbitrary waste diversion targets and / or as sources of revenue (e.g. NSW). In either case they result in an additional tax on households (transferred through



council waste charges / rates) and a direct additional tax on business through waste disposal costs.

- Mandatory schemes (or forced 'voluntary') schemes designed to place more responsibility for end of life disposal on producers or business should be much more carefully assessed and only considered after detailed cost-benefit analysis and where such schemes are judged to be the most cost-effective approach.
- Better coordination of waste planning is needed – beyond the local council level – including planning for future landfill capacity, thereby avoiding the need to claim that 'we're running out of landfill' as a cover for lack of forward planning.
- The need to refocus waste management policy ensuring it is guided by rigorous cost-benefit analysis and that the public is better informed of waste realities as opposed to waste mythology.
- **The need to base waste policy on consideration of economic efficiency as a means of capturing the combination of resource and capital efficiency in ways that optimise community benefit.**

Such an approach would prevent policy decisions being based on a single 'excuse' such as 'sustainability (narrowly defined)', 'the waste hierarchy', 'hazardous content', 'avoidance of landfill', 'consumer concerns', 'resource efficiency', 'market failure' and the wide range of simplistic justifications used for current policy approaches.

## THE NARGA POSITION ON WASTE POLICY

Current policy settings have adverse impacts in terms of increased costs, less-than-optimum resource allocation (e.g. use of retail space) and a reduction in flexibility and in the capacity to innovate.

Costs are increased whenever waste policy dictates actions that are less cost-effective, such as a requirement to source separate materials for recycling (when the cost of doing so exceeds the benefit derived in terms of reduced waste costs), a requirement to use recyclable or recycled materials, or where landfill levies are imposed either to support 'waste reduction' initiatives or to provide government with a source of additional revenue, as is the case in NSW.

Retail space is a valuable resource to the retail sector. Allocation of such space to waste reduction or recycling initiatives imparts a cost to the sector that needs to be considered in any cost-benefit analysis and retailers should not be required to 'donate' such space where they themselves cannot gain a direct benefit.

Examples of space allocation currently required include:

- Provision of recycling facilities for plastic bags in supermarkets
- Provision of recycling facilities for packaging materials (other than cardboard) in shops and shopping centres
- Current emphasis on 'away from home' recycling in the National Packaging Covenant resulting in an increased emphasis on provision of recycling facilities in shopping centres

It should be noted here that councils now also require new high rise residential developments to provide space on each floor for waste disposal and recycling. Allocation of space for recycling comes at an additional cost to the development.

Of particular concern to retailers are proposals at state level to move towards container deposit systems for beverages where retailers could be asked to provide container return services through, say, reverse vending machines. Western Australia is proposing a CDL approach to recycling and South Australia is looking at ways of 'improving' its approach to CDL. Both appear to be examining the reverse vending machine option. A major barrier to the introduction of CDL is the need for a collection infrastructure and, in particular, the provision of collection sites. The retail sector is concerned that the temptation to commandeer retail space through regulation will be too great. There are numerous overseas examples of where this has occurred.

A requirement for new packaging to be recyclable, as implied under the current version of the National Packaging Covenant imposes additional costs to the community by placing a limitation on packaging material choice.

Current trends in packaging technology are away from rigid materials of the type currently recovered through kerbside recycling systems (glass, steel, aluminium etc.) and are increasingly composites or multi-material in nature (e.g. laminates) which use less material in total but are not easily recycled nor worth recovering for recycling. This trend is cost driven. An imposition of a recyclability requirement reduces flexibility in packaging choice.

New and innovative packaging technology such as active packaging and smart packaging can yield product preservation and safety benefits, but the resulting package can be less recyclable. Again the recyclability constraint should not be allowed to impede innovation.

**Current waste policy settings do not appear to optimise community benefit and impact adversely on business, particularly small business.**

## THE NARGA POSITION ON PLASTIC BAG REDUCTION

### The policy objective

It does not appear that the nature and extent of problems associated with plastic bags in the environment was properly defined or researched by DEH prior to recommending policy to government. If the end objective was to avoid harm to marine creatures, at least the extent to which supermarket bags contribute to a potential problem should have been properly researched.

Good policy formation should be based on clear identification of the issue or problem to be addressed and, if the existence of a problem is confirmed, examination of whether it is serious enough to warrant intervention, an examination of the available mechanisms and an analysis of whether the proposed method of intervention would be effective, cost-effective and worthwhile.

In the case of plastic supermarket bags it would appear that the bags themselves became the 'problem'. There was little or no attempt to quantify the potential for impact on marine life (or other animal life) and no assessment of how plastic bags compared with other materials littered into the marine environment in terms of potential threat – i.e. should we act on supermarket plastic bags or act on bait bags or discarded fishing line or any of the other myriad of items that find their way into the marine environment.

Analysis of the broad extent of the problem associated with land and sea litter based marine pollution would have allowed supermarket plastic bags to be placed in a broader context and a decision to be made on the priorities associated with dealing with this form of marine pollution. If, for example, supermarket plastic bags were a relatively small part of the perceived problem, as appears to be the case, it may have been more appropriate to focus on other aspects of the marine litter stream or to take a broad, comprehensive approach to marine litter.

Having decided that plastic bags were the 'problem', an arbitrary target was set to reduce by 75% the proportion of supermarket plastic bags in the **land based** litter stream, at a time when there was (and still is) no hard data on the proportion of supermarket plastic bags in litter.

Rather than viewing plastic bags in litter as a litter issue (a behavioural issue) and addressing plastic bag litter in the context of a broad litter strategy (i.e. addressing those who litter – the source of the litter problem) it was decided that the best way to reduce plastic bag litter was to reduce or eliminate plastic bags. This is like saying that the best way to reduce car accidents is to take some or all cars off the road – don't bother fining people for traffic infringements or worry about driver education.

Other possible mechanisms for reducing the 'problem' were not properly canvassed. It would seem that it was easier to make business 'responsible' for solving the perceived problem than to tackle the problem at its source – more stringent enforcement of litter laws and better management of landfills are just two examples of what could have been the focus of a 'plastic bag' policy.

A similar policy approach has recently been taken on cigarette butts, where cigarette companies have been asked to be 'responsible' for reducing cigarette butt litter through a separate cigarette butt program.

In each case costs are being shifted to business instead of to the litterer through littering penalties.

### **The RIS Process**

The plastic bag Regulatory Impact Statement<sup>1</sup> (RIS) focussed on plastic bag reduction options rather than broad litter reduction options.

The RIS was prepared on behalf of DEH by Nolan-ITU (et al) and examines a range of plastic bag reduction options, including the imposition of a tax or levy.

The Executive Summary (p6) refers to the success of such a levy in Ireland:

*“This levy has resulted in a dramatic decrease of 90-95% in ‘single use’ plastic bag consumption...”*

However there appears to have been no survey conducted in Ireland on the volumetric reduction of plastic bags after the levy, nor on its current impact on litter.

The grocery market in Ireland is not comparable to Australia as there are proportionately fewer supermarkets and a greater proportion of smaller stores.

Further on in the report it is claimed (p11) that:

*“Ireland is the only country with a plastic shopping bag levy paid directly by the consumer....”*

The authors may not have been aware that supermarket shopping bags were charged for in a number of European countries, including Germany and Netherlands and these laws had been in place for more than ten years prior to the Irish legislation.

The report estimates that plastic shopping bags (of all types) make up around 2% of litter, although the proportion of all shopping bags that end up as litter cannot

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<sup>1</sup> Plastic Shopping Bags – Analysis of Levies and Environmental Impact – DEH, December 2002

be estimated because the total size of the litter stream is unknown. The report suggests that this is less than 1%, although no data is provided to support that estimate – the proportion could be lower.

The 2% plastic bag litter estimate is derived from the 2002 Clean Up Australia “Rubbish Report” and in which data is derived from 9% of the sites cleaned up by volunteers on “Clean Up Day” and where, on average 28.3% of bags collected were assessed – a sampling level of 2.5% of bags of rubbish collected. Overall the rubbish collected at some 495 sites was seen as representative of littering throughout Australia.

Other aspects of the use of this survey as the basis for a policy on plastic shopping bags are also of concern:

- the survey was not a properly conducted litter survey
- sites are selected on the basis of the need for a clean up – hardly an unbiased sample
- non-coastal sites (86% of the sites in the survey) do not contribute significantly to the marine pollution problem
- equivalent quantities of garbage and rubbish plastic bags were found but were not targeted for specific action
- close to equivalent quantities of plastic food bags and plastic wrap were found, but not targeted for specific action
- equivalent quantities of plastic straws and greater quantities of plastic bottles, plastic caps and lids, chips and confectionary bags were found but were not targeted for action
- There was no indication of whether any of the plastic bags found were full or empty – significant because of the way litter moves before it can become a hazard to marine life

The DEH report suggests (in the absence of hard data) that less than 1% of plastic bags end up as litter. So we have a policy which are seeking to reduce the incidence of plastic bags in litter by 75% by reducing or eliminating (supermarket type) shopping bags when, if the Clean Up Australia data is to be accepted, these bags make up around 17% of all of the bag type materials in the litter stream, and a much smaller proportion of plastic materials in the litter stream that could potentially end up as a marine animal entanglement medium, should these materials find their way to the ocean.

Further, the Clean Up Australia Rubbish Report treats polystyrene (foam plastic) as a separate category – it does not include it within the plastic category in the survey. Polystyrene items make up 7% of litter, as measured by this method, as opposed to shopping bags which make up an estimated 2%. Polystyrene is considered a marine animal entanglement problem, but no equivalent action is proposed for polystyrene in litter.

Whilst the environmental problem associated with plastic shopping bags is identified in the DEH report as one of potential for harm to marine life, the report quotes just one study of the problem (p30), taken from the Environment Canada website.

The DEH report suggests:

*“A figure of 100,000 marine animals killed **annually** has been widely quoted by environmental groups; this figure was from a study in Newfoundland which estimates the number of animals entrapped by **plastic bags** in that area over a four year period from 1981-1984...”*  
(our emphasis)

The Environment Canada website<sup>2</sup> reads:

*“A four year study off the coast of Newfoundland estimated that over 100,000 animals were killed by **entanglement** from **1981 to 1984**.”*  
(our emphasis)

This suggests that the quote in the DEH study misquotes the Environment Canada reference in two key ways, both of which would significantly overestimate the hazard to marine life posed by shopping bags:

- The annual level of entanglement is estimated at 25,000 not 100,000
- The entanglement was not claimed to be due to plastic bags – as the item explains, it is due to a wide range on materials found in the marine environment.

Further, the data provided by Environment Canada refers to a Newfoundland study where impact on marine animals is estimated by the group undertaking the assessment. The study is not referenced and hence the source cannot be checked. The language is imprecise with no detail given on the area surveyed, the species assessed and the area to which the extrapolated assessment applies. The reliability of such estimates is heavily dependent on the underlying assumptions and the methods used. This data is not provided.

Therefore, even on the basis of the reference quoted, the plastic bag ‘problem’ is significantly less than claimed in the report. Given that this report was used as the basis for the policy approach to be taken on plastic shopping bags, it is suggested that the policy direction taken is not well founded.

There is evidence to suggest that entanglement of marine animals is a problem, but the sources of entanglement are a wide range of materials including discarded nets, fishing line, strapping materials, polystyrene and a variety of materials discarded or deposited (deliberately or accidentally) at sea. Although

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<sup>2</sup> <http://www.ec.gc.ca/marine/debris/eng/facts.html>

supermarket style plastic bags could represent a small (as yet undetermined) proportion of these materials, there is little doubt that reducing the proportion of shopping bags in land-based litter stream would not even begin to address the marine entanglement problem and does not represent an appropriate or direct response to this issue.

DEH has also failed to take into account the fact that the number of plastic shopping bags used does not relate directly to the number of bags littered. This is because littering is a behavioural problem and cannot be related simply to the number of bags available.

No study was conducted on plastic bag use and re-use, although it was recognised that plastic shopping bags had a high re-use rate as bin liners and are put to wide variety of other uses.

Also significant is the fact that the majority of supermarket type shopping bags would, in the first instance, be taken home whilst plastic bags used by, say, take away food outlets – which are not the primary target of this campaign – would be more likely to be available in an outdoor or recreational setting.

We do not believe that DEH has properly identified the environmental issues that the proposed plastic bag reduction or replacement strategy is supposed to address and that the action proposed is a disproportionate and inappropriate response to the issues associated with plastic shopping bag use.

A more appropriate policy response would have been to address plastic shopping bag litter as part of a total litter reduction program.

**NARGA believes that government has not been well advised on the plastic bag issue.**

### **Impact on business**

The basis of plastic shopping bag reduction efforts is the ARA Code of Practice for the Management of Plastic Bags published in October 2003 (the Code) and signed by major supermarket chains (Group One retailers), and a proportion of smaller (Group Two) retailers.

The Code commits the sector to the government plastic bag reduction target of a 25% reduction by end 2004 and a 50% reduction in plastic shopping bags by end 2005 – against which a 45% reduction by Group One stores has been reported.<sup>3</sup>

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<sup>3</sup> Plastic Carry Bags – Working Towards Continuous Environmental Improvement, ANRA Report to EPHC, 22 May 2006



The Code also commits the sector to work with government to achieve a 75% reduction in plastic shopping bag litter – which is the arbitrary target set by EPHC ministers.

It is not clear how the two sets of targets are linked, given that there is no reliable baseline litter data showing the proportion of plastic shopping bags in the litter stream or information on how a reduction in *supermarket* sourced shopping bags impact on the quantity of plastic bags in litter.

The same ANRA report suggests that Group One members have to date incurred costs in excess of \$50 million, but there is no survey data available in the costs incurred by smaller retailers.

These costs come from the following changes that have occurred at the retail level in varying proportions as a result of the plastic bag campaign:

- Supply of alternatives to plastic bags – either as a sale item or as a give-away and associated space allocation and ordering costs
- Supply of space and other facilities for plastic bag recycling services
- Staff training
- Supply of information to customers and contribution to promotional programs
- Purchase of plastic shopping bags with recycled content
- Purchase of ‘degradable’ plastic bags at higher prices
- Participation in programs aimed at developing standards for degradable bags
- Reduction in operational efficiency associated with the use of re-usable shopping bags
- Potential for an increased incidence of theft of goods and / shopping trolleys and baskets which plastic shopping bags are designed to reduce.

**The current policy on plastic bags imposes significant costs on business, costs that do not appear to result in commensurate community benefit.**

### **Consumers interests**

Costs associated with plastic bag reduction activities are passed on to consumers either directly as is the case with purchase by them of reusable bags, or indirectly in the form of higher prices.

Consumers have also had to manage the inconvenience associated with the use of reusable shopping bags at the checkout and beyond the store. The larger capacity of the reusable bags commonly used means that, on average, these bags are considerable heavier and more difficult to manage, especially for older customers.

## **The Irish Experience**

The following quotes from the Carrier Bag Consortium website are pertinent:<sup>4</sup>

### *Increased use of plastic in Eire*

*“We’ve experienced a growth of 300-400% (in garbage bag sales). It’s been phenomenal. You can trace it back to when the bag levy came in”*

### *No evidence of litter reduction*

*“In the two years since taxing plastic bags, there has been no evidence in published litter surveys of any reduction in litter in Eire”*

### *Increased retail Theft*

*“...the tax on plastic bags...is responsible for every retail member losing 450 (Irish Pounds) in stolen wire baskets each month. This equates to a total loss for small retailers alone in Ireland in one year of 24.3 million(Irish Pounds).”*

*“...(Although) our customers are less likely to need a bag because they are purchasing only a few items, an increase in shoplifting has also been attributed to the Irish levy. The absence of bags makes it difficult to identify customers who have made a purchase.”*

*“...reports a major increase in ‘push outs’ where shoppers fill trolleys with high value goods (no carrier bags needed or supplied) and walk straight out – estimated cost is 10 million annually.”*

*“...When plastic bags were free, you never saw customers leaving a store with products just piled into a trolley. But with the introduction of a bag tax it’s now quite common to see this.”*

## **The NARGA position on Plastic Bags**

**NARGA does not support current government policy on plastic shopping bags which has set an arbitrary reduction target for the use of plastic shopping bags and aims to eliminate their use in the future.**

**We believe that the policy was poorly developed and does not address the perceived environmental issues associated with plastic shopping bag use appropriately or proportionately.**

**NARGA supports the Commission’s recommendation in relation to plastic bags:**

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<sup>4</sup> [www.carrierbagtax.com](http://www.carrierbagtax.com)

***“Governments and retailers should not proceed with their foreshadowed plan to eliminate plastic shopping bags by the end of 2008, unless it is supported by transparent cost-benefit analysis. The analysis should clarify the problems that the ban would seek to address, the response of the community to a ban, and whether or not alternatives – such as tougher anti-litter laws and means for encouraging greater community participation in controlling litter – would achieve better outcomes for the community.”***

**- except that we support the abandonment of the current program (and its targets) on the basis of the poor underpinning data.**

**NARGA supports a policy approach which sees plastic shopping bag litter as part of the total litter problem to be addressed by a comprehensive policy aimed at a reduction of total litter incidence.**

**Litter fines and other enforcement activity that targets littering behaviour must be a significant component of any anti-litter policy response.**

## **THE NARGA POSITION ON THE NATIONAL PACKAGING COVENANT**

### **Historical context**

The first National Packaging Covenant signed in August 1999 was negotiated against a backdrop of complaints by local government that they were carrying the cost of recycling (although this was passed on to householders through rates) and that such costs should either be borne by 'industry' or at least shared.

The push for industry funding could have been related to events in Europe where, since 1990, the German packaged goods sector became responsible for the collection of all packaging, a trend which has since spread throughout Europe, aided by the passage of the Packaging and Packaging Waste Directive in 1994.

As early as 1991 the Victorian EPA tried to include a German style packaging levy in their waste ("Resource Recovery") legislation. This was successfully resisted by the packaged goods sector.

Pressure for 'industry' to fund household recycling collection services here increased during periods of low commodity prices and it became clear that the matter needed to be addressed.

Representatives of packaging and packaged goods related industry associations met with representative from local government from late 1997 to early 1999 to find common ground on a way forward.

The final offer from industry representatives was an agreement in which local government would be assisted to reduce costs through improved efficiency brought about by research into better collection methods etc and protected from the effects of commodity price fluctuations through the promotion of model contracts which aimed to shift this risk to the contractor.

The program would be supported by industry funding of up to \$3 million p.a. over the five year life of the agreement (Covenant), this level of funding being matched by the states on a dollar for dollar basis.

Funds were not to be used to subsidise recycling, either by paying councils a proportion of their costs or by propping up commodity prices. It was felt that the best way to make recycling 'sustainable' would be to help councils move to 'best practice'.

European style packaging levies were not supported. They were seen as an expensive and complex way of paying for recycling – gathering funds this way would be like setting up a separate taking system for packaged goods. Taxes of this nature would disadvantage products in recyclable packaging and distort

packaging markets if different materials were to attract differing levies – as is the case in Europe.

It was also pointed out that recycling costs were typically 50c per household per week and not worth setting up a separate taxing mechanism when local government already had a direct means of recovering these costs through rates and waste charges.

### **Covenant Mark I vs Covenant Mark II**

The first Covenant (July 1999 to June 2004 – later extended to June 2005) required company signatories to contribute funds to the National Packaging Covenant program, based in the company's place in the supply chain and annual turnover. Companies were also to agree to an Environmental Code of practice for Packaging (aimed at 'better' design of new packaging) and develop a Covenant Action Plan giving commitments to improve environmental performance over a range 'product stewardship' areas of activity. The latter became a tailored 'environmental management plan' for each company and was entered into on a voluntary basis. This Covenant had no recycling targets.

The benefit of this approach was that companies could choose to commit to activities that had positive outcomes but also made good business sense.

The objectives of the first Covenant were as follows:

- *“Establish a framework based on the principle of shared responsibility for the effective lifecycle management of packaging and paper products including their recovery and utilisation.*
- *Establish a collaborative approach to ensure that the management of packaging and paper throughout its lifecycle and the implementation of collection systems including kerbside recycling schemes, produces real and sustainable environmental benefits in a cost effective manner.*
- *Establish a forum for regular consultation and discussion of issues and problems affecting the recovery, utilisation and disposal of used packaging and paper, including costs.”<sup>5</sup>*

When the first Covenant was reviewed for 'effectiveness' reviewers did not measure outcomes against these stated objectives, but rated all signatories (including non-business participants) against perceived performance in the eight 'product stewardship' areas of company improvement against which each signatory company could make voluntary commitments.

As a result of that review many believed the Covenant needed 'strengthening'.

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<sup>5</sup> National Packaging Covenant, July 1999, P1

The Covenant now in place (Mark II) has been 'strengthened' as follows:

- The Covenant sets a series of overarching targets, including recycling targets and a cap on the amount of packaging material to go to landfill
- Companies have to supply extensive packaging and packaged goods data in the form of a 'baseline data set'
- This data has to be updated annually
- Companies have to comply with and report against a series of Key Performance Indicators – these, and the reporting framework apply pressure to move more packaging into the 'recyclable' category
- Companies now have to produce three year Action Plans, and commit to targets in each 'product stewardship' area
- There is greater emphasis on 'away from home recycling'
- Companies agree to a rewritten 'Environmental Code of Practice for Packaging' – based on the requirements of European packaging law

Taken together, the new requirements exert pressure on business to move away from multi-material / multilayer packaging (which has technical benefits) to more 'recyclable' packaging.

The new Covenant proposal was subjected to a RIS process which failed to properly identify the huge cost to business associated with the changes or to justify the need for this more data intensive and bureaucratic approach. Certainly the option of no regulation was not canvassed.

There was no cost benefit analysis conducted on the recycling targets set for the revised Covenant nor on its new emphasis on 'away from home' recycling.

Not surprisingly, a significant proportion of companies that signed up to the first Covenant have not signed the second. The two major supermarket chains, Woolworths and Coles, have not yet signed the second Covenant.

### **Impact on business**

The new data requirements impose significant additional costs on business without any improvement in environmental outcomes. Action planning and reporting requirements impose additional costs and only lead to improved outcomes if the agreed actions do so.

Although additional regulatory burdens tend to impact disproportionately on small business there was, in our view inadequate representation of small business interest in the 'negotiations' leading up to the finalisation of the new covenant, as the industry bodies represented on Covenant Council do not represent small business. This can lead to a situation where agreement is reached on a regulatory mechanism which large companies are set up to cope with but which imposes higher burdens on smaller businesses.

There is no guarantee, however, that the new emphasis on increased recycling and greater levels of packaging recyclability will result in a net benefit, given that the increased costs involved are unknown.

The new regime tends to put business in a straight jacket in relation to packaging innovation, as it counters current trends in packaging towards more efficient but less 'recyclable' materials.

The current Covenant exempts companies with a turnover of less than \$5 million from prosecution under the 'back-up' legislation – the National Environmental Protection Measure for Used Packaging Materials.

However, non exempt small to medium sized businesses in the packaged goods supply chain are still impacted by the Covenant and tend to be impacted disproportionately because they do not have the resources to comply with Covenant requirements. Such companies are forced to bring in external consultants, at a cost, to meet Covenant action planning and reporting requirements.

### **Consumers Interests**

Additional costs imposed on business are passed on to consumers through their packaged goods purchases.

Consumers will also be affected should the Covenant recycling and recyclability requirements result in less than optimum packaging choices, as these will impact on both function and cost.

### **Conclusion**

**The new National Packaging Covenant imposes increased costs on business and the community, costs which do not necessarily translate into improvements in community benefit.**

**NARGS supports the Commissions recommendation on the National Packaging Covenant (Draft recommendation 10.1):**

***“The terms of reference for the scheduled 2008 review of the National Packaging Covenant should be expanded beyond an assessment of effectiveness. An independent review should consider all relevant evidence about whether the Covenant (and supporting regulation) delivers a net benefit to the community.”***

**NARGA suggests that, in the interim, the Covenant's KPIs and data requirements undergo a review to determine which impose undue costs on participants.**

## **OTHER COMMENTS ON THE DRAFT REPORT**

The following are general comments relevant to the report and the topics covered.

### **Advice to government**

Waste management issues tend to be regulated by environment protection departments or agencies without much input from other government agencies. They, in turn, rely on advice from consultancies selected on the basis of their environmental expertise. The result is that advice given to government on waste related issues tends to be one-sided and missing real world relevance, particularly in the area of costs and impact on business.

### **Misinterpretation of objectives and mechanisms**

Much of what is regulated in the area of waste management is aimed at enhancing the sustainability of communities. Unfortunately sustainability tends to be narrowly defined in terms that emphasise improvement in environmental outcomes, without the same level of concern for the other aspects of sustainability – the economic and social or community impacts.

This ‘environment first’ approach has a tendency to lead to commonly used terms to be redefined or misinterpreted. For example, any time that markets don’t seem to be doing what is seen as ‘environmentally preferred’ is interpreted as ‘market failure’, providing justification for intervention. So, if levels of packaging recycling are not increasing, this is not interpreted as the system coming to some equilibrium, but as ‘market failure’ requiring intervention.

The emphasis on recycling has grown to the extent that it has become an end in itself, rather than a means to an end, an improvement in net community benefit.

The tendency towards simplistic approach to policy assessment has resulted in the adoption of simplistic guidelines such as the ‘waste hierarchy’ into every state’s waste legislation. Once entrenched into legislation, this simplistic guide is then used as justification for action or intervention.

### **Regulatory transfer**

There is a tendency within the environmental regulatory agencies to look at the things that are regulated in other markets and the type of regulatory mechanisms used and to seek to transfer then into the Australian state or federal regulatory systems. This is done without due regard to the need for such regulation here, its local relevance or its cost impact.



It is common, for example, to look at regulatory measures taken in Europe and attempt to translate these into Australian law, without taking into account factors such as:

- Differences in population and population density
- Differences in availability of infrastructure and in industry capacity
- Differing political and social frameworks
- Differences in economic capacity

It also appears that local regulators assume that measures taken in Europe are well thought out, logically sound and have been subjected to cost-benefit analysis and / or proper scrutiny. This is not often the case, given the way EC Directives are developed.

## EPR

Extended Producer Responsibility (EPR) is a case in point. Ever since Germany passed its packaging ordinance in 1990 which places obligations on business to recover consumer packaging, European regulators found that they could introduce product and packaging recovery and recycling schemes without having to worry about getting budgetary approval from their minister to do so. 'Business' had to pay for it.

It is not widely appreciated that each of these schemes come at substantial additional community cost. The German 'Green Dot' organisation, for example, has a staff of 400 people, a significant proportion of whom are employed to combat the 'free rider' problem – a problem that is a direct consequence of the EPR approach.

The fact that these European schemes do not get an appropriate degree of scrutiny prior to their implementation is demonstrated by the recent review of the 1994 batteries directive which requires the recycling, of among other things, NiCd batteries.

A report by Bio<sup>6</sup> Intelligence Services looking at options for the future of the Battery Directive found that "... *the added regional/continental concentrations of Cd calculated from Cd emissions during NiCd batteries life cycle are very small, under the worst case scenario, NiCd batteries contribute to less than 1% of the anthropogenic emission sources*" (p153). In other words, **recycling NiCd batteries makes little difference to human exposure to cadmium.**

It should be noted that the repeal of the requirement to recycle NiCd batteries was not part of the consultant's brief. So, although that outcome would be one logical conclusion that could have been reached, it is not discussed.

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<sup>6</sup> Impact Assessment on Selected Policy Options for Revision of the Battery Directive – Bio Intelligence Services for EC DG Environment, July 2003

It should be noted that the NSW government lists NiCd batteries as one of the materials that are to be targeted by EPR mechanisms.

A report by Planet Ark<sup>7</sup> on computer recycling prepared for the computer industry discusses the justification for a computer / e-waste recycling requirement, in the absence of a cost-benefit analysis. It points out that the leachate test commonly applied to CRT screen material to determine the amount of landfill suitability does not reflect the performance of CRT screens in landfill.

The test was first designed by the US EPA to simulate mixed waste going into landfill and to determine the leachate likely to arise from an **unlined landfill**. It was later adapted to test CRT screens, but in a way that does not duplicate the leachate characteristics that would result from such screens being placed in landfills.

The question that has not been answered is whether the community would be better off if substantial funds were to be expended to recycle computers and other e-waste. No such study has been undertaken.

NSW has passed legislation to provide for the introduction of EPR schemes<sup>8</sup> which outlined circumstances in which such schemes may be implemented. One of these is *“whether economic analysis supports the implementation of the scheme”*(Clause 17 (1) (d))

However, this clause only has effect in the case where the minister is about to regulate for a mandatory scheme for a particular product, which has been threatened, should a ‘voluntary’ scheme not be forthcoming from the computer industry.

In the meantime the computer industry is holding discussions with representatives from the various environment departments to obtain agreement on the form that the ‘voluntary’ scheme should take.

Industry had offered a forward looking program where computers and related equipment sold after a certain date would be recovered for recycling and funded by charges incorporated into the product price. Companies marketing branded products were also prepared to recycle their own brands. Government representatives want a scheme which, as is the case in Europe, also covers historic and ‘orphan’ products.

A “Producer Responsibility Organisation” (PRO) was to be set up to manage the program. It would seem to be self evident that a PRO charged with the responsibility of recycling all computers would be insolvent from day one, unless another party (government?) were to be prepared to provide a guarantee to

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<sup>7</sup> AIIA – E-Waste Program Development Phase, AIIA and Planet Ark Consulting, June 2005

<sup>8</sup> Waste Avoidance and resource Recovery Act 2001

cover unfunded liabilities, or the levy on new product were to be high enough to cover these costs. In the latter case, purchasers of new equipment would be paying a tax to cover the recovery of old equipment which they did not own or use.

**NARGA supports the Commission’s recommendation (Draft recommendation 10.2) in relation to EPR:**

***“Product stewardship schemes for computers, televisions and tyres should not be introduced without robust evidence that:***

- ***There would be a net benefit to the community***
- ***Other policy options would not deliver a greater net benefit***

***This is particularly the case if a mandatory approach – involving either industry-government co-regulation or government regulation – is being contemplated”***

**CDL**

Those wishing to increase the recovery for recycling of consumer packaging often see Container Deposit Legislation (CDL) as a means of achieving higher recycling goals.

South Australia is the only state which has CDL in place. It applies to beverage packaging only and has its origins with the refillable packaging systems used by local brewers and soft drink manufacturers which, in the case of SA, lasted longer than they did in other states.

Whilst most would understand that a deposit based system is based on the payment of a deposit which is repaid when the item is returned, the way the deposit and return infrastructure in SA is funded is not generally understood.

Whilst the deposit paid on each container is 5c, companies marketing beverages in SA pay up to an additional 5c per container in the form of a ‘handling fee’. The cost of this fee can be offset by the value of the material recovered, which makes a difference in the case of aluminium, but does not help in the case of say, flavoured milk cartons.

It may surprise that members of parliament, who are ultimately responsible for the legislation governing the system, do not appear to understand how it works.

A report into waste management by the SA Environment, Resources and Development Committee,<sup>9</sup> recommended, among other things, that:

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<sup>9</sup> Waste Management, 52<sup>nd</sup> report of the Environment, Resources and Development Committee, SA parliament, 7 December 2004.

- “25. *The Committee recommends that the EPA collect data to make the container deposit scheme more transparent, and determine the amount of unredeemed deposits.*
26. *The Committee recommends that government investigate the value of unredeemed deposits so that unredeemed deposits can be returned to the system for litter education initiatives”*

Even though the Committee had received submissions and heard evidence from the EPA, collectors, ‘supercollectors’ and others involved in the container return system, it was not evident to the Committee that, in the way the deposit system is managed in SA **there are no unredeemed deposits.**

It was also not aware that the cost to the community of recovering a deposit item through the scheme in situations where no refund is given can be as high as 10c per item.

Deposits are only refunded when items are returned to collection centres, either by the individual purchaser, by someone who has picked it up from the street or out of the litter bin, or by municipalities who have collected it through kerbside recycling collections. In each case the 5c handling fee applies and becomes a cost. In cases where the purchaser does not return the container, e.g. when it is placed in the household recycling bin, the cost to the purchaser increases by another 5c, the deposit he has foregone.

It can therefore cost the individual up to 10c an item within that system. This suggests that recovery costs for small items can be quite large. For example, for a 3 gram per unit *Yakult* bottle, this adds up to \$30,000.00 per tonne. – for a plastic type that is generally not recovered for recycling.

Whilst CDL does have an impact on **beverage container** litter, it is debateable whether SA has a better overall litter outcome. SA does not enforce litter legislation strongly, averaging perhaps 20 litter fines per month, compared with NSW which has a litter fine rate of around 1000 per month.

South Australians do not directly carry the costs of their expensive CDL system, except where the product concerned is sold in SA only. Marketers of major national brands tend to sell them at the same price in SA as elsewhere. Although they pay the CDL system up to 10c per item collected, this additional cost is spread over all of the product sold by that company throughout Australia. This is affordable as SA sales typically make up less than 10% of national sales.

However, should the CDL system spread to other states, as is recommended by South Australian politicians, the high cost of the system will become quite apparent.

It is interesting to note that, whilst CDL was initially introduced to help protect local SA based manufacturers from competition from interstate beer and soft drink suppliers, it is now acting against SA interests as local brands have to pass on the full cost of the system to their customers.

SA's legislation has undergone the regulatory review process required under Competition Policy but the legislation was not questioned by the national Competition Council as the SA government claimed it was in the 'public interest'. No proper cost-benefit analysis has been conducted on the legislation.

**NARGA supports the Commissions draft findings on deposit-refund schemes and CDL. (Draft finding 9.2)**

## **A MORE RIGOROUS MODEL FOR REGULATORY IMPACT ASSESSMENT**

The Taskforce on Reducing Regulatory Burdens on Business, in its report 'Rethinking Regulation' (January 2006) has recommended that government should endorse six principles of good regulatory process.

They are:

- Governments should not act to address 'problems' until a case for action has been clearly established
- A range of feasible options need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework
- Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements
- Mechanisms are needed to ensure that the regulation remains relevant and effective over time
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle

NARGA endorses this recommendation.

## **Conclusion**

In summary, NARGA believes that the Australian community is poorly served by current approaches to the development of waste management policy and that a higher level of intellectual rigour in the development of policy is called for.

We endorse the recommendations made by the Taskforce on Reducing Regulatory Burdens on Business, in its report 'Rethinking Regulation' (January 2006) on the six principles of good regulatory process and ask that a thorough review of current waste regulation be undertaken using these principles as a guide.

In particular, we seek urgent review of both the plastic shopping bag reduction / elimination program and the KPIs and data requirements of the National Packaging Covenant.