

28 August 2006

Ms Mary Hardwood  
First Assistant Secretary  
Environmental Quality  
Dept Environment & Heritage  
**By email;** mary.hardwood@deh.gov.au

Dear Ms Hardwood

### **Review of NEPC Act, 1994**

Kimberly-Clark Australia wishes to make a brief submission to the review of the National Environment Protection Council Act 1994.

We recommend that the Act be amended by deleting section 14 (1) (f), viz, **rescind;**  
*14 (1) (f) the re-use and recycling of used materials;*

Section 14 empowers the Council<sup>1</sup> to make national environment protection measures (NEPMs) listed in clause (1).

We fully support the object of the Act as stated in Section 3

*“The object of the is Act is to ensure that, by means of the establishment and operation of the National Environment Protection Council;*

*(a) people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia: and*

*(b) decisions of the business community are not distorted, and markets are not fragmented, by variations between participating jurisdictions in relation to the adoption or implementation of major environment protection measures.”*

Based on this worthwhile objective we see no basis for the Council to have the powers under 14 (1) (f) above.

All of the aspects in section 14 (1), *except (f)*, (see section 14, attached) are clearly areas of the biophysical environment that human activities and influences can affect adversely. So it is sensible and reasonable that potential environmental effects in these areas be managed by national measures as provided by the Act.

But the power of section 14 (1) (f) is remote from, and essentially irrelevant to, the object of the Act.

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<sup>1</sup> We use ‘Council’ to mean both the National Environment Protection Council (NEPC) and the National Environment & Heritage Council (NEHC)

Perhaps the inclusion of section 14 (1) (f) reflected public concerns that disposing of some selected wastes, eg used packaging, is ‘a waste of resources’. This argument is certainly put by environment authorities now when trying to justify waste reduction programs. The objective to conserve resources is sound and should be supported by government. And it should be managed by an appropriate authority, eg, departments managing, resources, energy or industry. But this objective and power does not fit logically in the environment portfolio.

### **Productivity Commission challenges NEPMs**

The Productivity Commission’s recent Draft Report on *Waste Management*<sup>2</sup> is critical of many aspects of environmental policies on wastes and recycling. Many of these policies flow from the NEPC’s power to make NEPMs relating to “*the re-use and recycling of used materials*”. The Commission cites, as examples of waste and recycling policies lacking adequate justification, NEPMs or schemes relating to;

- The National Packaging Covenant (NPC)
- Waste oil
- Television sets, and
- tyres

The Commission states;

*“yet there is little evidence that the problems to which they [schemes above] are being directed have been clearly defined, or are sufficient to justify the costs of intervention.”*<sup>2</sup>

Kimberly-Clark Australia has noted this inadequacy when commenting previously on Regulation Impact Statements (RIS) for proposed NEPMs such as the NPC. Lack of details of the problem is but one fault. We have been dismayed at the lack of any reasonable cost benefit analysis for various RISs for NEPMs or similar policy instruments, including those for the NPC, the various waste reduction targets (eg, in NSW 50%, then 60%) and the drive to reduce the use of plastic shopping bags.

### **Mandatory Recycling found to be Costly and Wasteful**

Council developed the NEPM for Used Packaging Materials (see <http://www.nepc.gov.au/>) under section 14 (1) (f). At the time, a related cost / benefit study estimated a net loss of \$162 million per year for Australia’s kerbside (domestic) recycling program. This confirmed mounting evidence from increasing costs in local government and industry that compulsory – not market driven – recycling led to significant and real financial losses and resource wastefulness.

### **Used Packaging NEPM violates object of Act**

We also consider that the NEPM on Used Packaging Materials and the NPC;

- a) “distorts decisions of the business community”, and
- b) “fragments markets”.

Ie, the NEPM on Used Packaging Materials violates the object of the NEPC Act in section 3 (b). Those in doubt should note the \$162 million real financial cost of kerbside recycling, previously noted. This cost is borne by both business and local government – and of course consumers really pay for it with higher costs for products and services. In anybody’s

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<sup>2</sup> Productivity Commission 2006, *Waste Management* Draft Report, p 307

language this is a “*distortion of decisions*” as a result of state government programs and the NEPM under section 14 (1) (f).

### **Internalise Environmental Externalities**

For an economic and environmental optimum, government should either limit the externalities (eg, by environmental controls) or directly impose a charge for the environmental externalities. Of course some reasonable economic argument, developed in consultation with stakeholders, should be developed to determine appropriate levels for environmental charges on externalities.

However it is not sufficient to justify charges for externalities on the basis of ‘driving a recycling program’ as is sometimes the case politically. The management of externalities should be quite independent of economic resource recovery. Appropriate charges for externalities will change the economics and lead to changes to minimise costs, including those from assessed environmental impact.

The wise and responsible management of resources and the environmental commons is complex and often counter intuitive. Importantly, resource economists have the most appropriate skills to develop policy and management options for the best use and conservation of resources. This would be best managed by a department with the proper skills and responsibility.

### **Environmental Effects managed by EPAs**

The disposal of wastes, eg to landfills, has the potential to adversely affect the biophysical environment. So it is appropriate that waste disposal (but not re-use, recycling) is managed by environmental authorities and the NEPC under all the items in section 14 (1), **except 14 (1) (f)**.

### **Process to assess and rank environmental issues and priorities**

As a separate, though related point, we suggest that the Council give consideration to **how best to assess and rank environmental issues and priorities in Australia?** We note that the US EPA conducted such a high level assessment in 1990<sup>3</sup> and found that there was an almost inverse relationship in the ranked significance of issues to the effort and costs applied to them. Ie, the least important issues were receiving the most attention and budget allocations.

It appears this could also be the case in Australia. It could be appropriate to amend the NEPC Act to require such a process of assessment and ranking. This does not appear to be outside the scope of NEPC’s current powers. But it would give additional focus and credibility to its work to have such a process formalised. The ranking process could apply to Council programs and give guidance to state programs. It could be a natural extension to current state of the environment reporting and strategic planning.

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<sup>3</sup> US EPA 1990. *Reducing Risk: Setting Priorities and Strategies for Environmental Protection*. Science Advisory Board, US EPA. SAB-ED-90-021. September 1990

**We therefore conclude with our basic recommendation that section 14 (1) (f) of the NEPC Act be repealed.**

Yours sincerely

A handwritten signature in black ink that reads "H Wright". The signature is written in a cursive style and is centered on the page.

Dr Harley Wright  
Environmental Manager

Encl Section 14 of NEPC Act

cc Mr Philip Weickhardt,. Commissioner, Productivity Commission

**NATIONAL ENVIRONMENT PROTECTION COUNCIL ACT 1994 - SECT 14**

## Council may make national environment protection measures

(1) The Council may, by instrument in writing, make a measure, to be known as a national environment protection measure, that relates to any one or more of the following:

- (a) ambient air quality;
- (b) ambient marine, estuarine and fresh water quality;
- (c) the protection of amenity in relation to noise (but only if differences in environmental requirements relating to noise would have an adverse effect on national markets for goods and services);
- (d) general guidelines for the assessment of site contamination;
- (e) environmental impacts associated with hazardous wastes;
- (f) the re-use and recycling of used materials;
- (g) except as provided in subsection (2), motor vehicle noise and emissions.

(2) Noise and emission standards relating to the design, construction and technical characteristics of new and in-service motor vehicles may only:

- (a) be developed and agreed in conjunction with the National Road Transport Commission; and
- (b) be determined in accordance with the National Road Transport Commission Act 1991 and, where appropriate, the Motor Vehicle Standards Act 1989 .

(3) National environment protection measures must each comprise one or more of the following:

- (a) a national environment protection standard;
- (b) a national environment protection goal;
- (c) a national environment protection guideline;
- (d) a national environment protection protocol.

[End section 14]