One Planet Consulting

NEW SOUTH WALES GOVERNMENT

SUBMISSION TO DRAFT PRODUCT LIFECYCLE RESPONSIBILITY REGULATION 2025 (BATTERIES)

14 November 2025

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Product Lifecycle Responsibility Regulation 2025 (Batteries)
NSW Environment Protection Authority
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To whom it may concern,

I welcome the opportunity to comment on the Product Lifecycle Responsibility Regulation 2025 (Batteries) and commend the NSW Government's leadership in advancing a product stewardship framework under the Product Lifecycle Responsibility Act 2025.

The Regulation represents a significant step toward establishing a robust, transparent and accountable battery-stewardship system for New South Wales. It is far preferable to have national consistent, harmonized legislation and regulation, and avoid the complex bureaucracy of multiple schemes such as CDS, nevertheless, the NSW Government's move is to be applauded for bringing mandatory producer responsibility closer to fruition.

It is vital I emphasise the real urgency of this regulation. Too many voluntary stewardship schemes are tired, poor and unable to fulfil their purpose, invest and provide essential public services. There is a very real danger that schemes will fold, good people will give up and reputations be ruined. It is essential the Government commits to a date in early 2026 and the core principles as outlined here.

My comments on the regulations draw upon decades of working in industry associations, business and governments, and the last 13 years as consultant enabling sustainability transformations at scale through strategy, programs, collaborative projects and investments, such as assisting the formation and operations of Soft Plastics Stewardship Australia (SPSA). I also draw upon decades on boards and my training in governance, business and circular systems.

Some of my observations and recommendations in this submission also come from successive study tours/periods overseas: 2018 Churchill Trust international scholarship, 2023 Planet Ark delegation to Europe, and my recently six months working in Europe investigating and attending meetings regarding circular economy, particularly EPR, PSOs, eco-product regulations and repair.

It is a mighty admirable ambition and task to shift NSW to a more productive, competitive and circular economy and an electric zero emission future. It involves many more parties than just a PSO. I encourage the NSW Government to adjust the draft regulations to improve likelihood of success, reduce risks, costs, free riders and improve collaboration amongst parties.

I commend the NSW EPA for this work and look forward to the regulations being adjusted to not only enable the appointment of PSO, but to also pave the way for a circular, all electric future.

Thank you also for the opportunity to provide feedback to your draft regulations. I welcome the opportunity to elaborate, discuss and support the NSW Government going forward.

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POINTS ARISING FOR ATTENTION IN THE REDRAFTING OF THE REGULATIONS

1. **Moving toward circular products and industry in NSW.** The draft regulations currently present batteries as waste and a hazard and it is not clear how the regulations will encourage and track increased reuse and repair of batteries and creation of new end-of-life battery-component products. The current requirement for reporting is linear, and not circular, as it only requires reporting on collection and recycling and does not include fields (mandatory or optional) for reporting on such improvements as reuse and recirculation for these or other formats, nor whether such work is conducted in Australia or overseas.

   Recommendation: The regulations are amended to enable reporting not only on collection and recycling, but also on other circular factors such as rechargeable, reuse and reprocessing, end markets in Australia and overseas.

2. **Data and reporting on quantities and members of PSO, minimising 'free riders'.** The current regulations present a number of loopholes that may enable brands to avoid paying the PSO fees and compliance with the regulations for responsibility in NSW. 'Free riding' is one of the biggest threats to the capacity and success of a PSO and undermines the EPR legislation. This includes gaps in current definition and scope of 'brand' and sources, such as online and cross-border trade.

   It is highly recommended that the NSW EPA investigate ways to utilise the global harmonised product registry system available through NFP entity GS1 which is used by other Australian government agencies, such as TGA (Therapeutic Goods Administration) and some CDS operators in Australia. It could be included as part of the method of tracking country of source and quantity of designated regulated product into NSW and assist identifying brands liable under the scheme, their quantities per format.

   This would be valuable data for the regulator as well as policy makers within NSW EPA and would enable them to observe trends in different formats available in NSW over time, including whether they are rechargeable and their chemistries and therefore what strategies may be adopted.

   The regulation could also stipulate that brands are listed with a registry such as GS1 (many are already registered, but not all).

   At the moment all the onus is upon the PSO to collect and aggregate data and it is feasible and reasonable for the NSW Government to adopt the approach of other governments and agencies to obtain data via NFP providers such as GS1. It is not clear how and what role the regulator will play to identify and verify non-compliant brands and proceed to penalise them.

   It is also important to note that in other schemes overseas, brands are obliged to record their PSO member number on invoices, and that distributors and retailers are obliged to notify the PSO if brands are not members of the PSO and thereby assist reconcile records on membership, quantities, formats etc.

   Recommendation: The regulations are amended to describe how the regulator will gain and use the data recovered from the PSO and a product registry, and require brands to register with such a registry. Also that the regulations are amended to require brands to include their PSO number on invoices and such data to be recorded by distributors/retailers.

3. **Fixed fines for brands.** Both the regulations and the explanatory document currently propose a fixed fine to be paid to the Regulator for non-compliance. This means that brands may avoid paying a levy to the PSO and instead pay a predetermined, fixed fine to the Regulator.

This sets up the strange situation that the PSO may be undercut by the regulator and brands may choose this as the least cost option. Given, hopefully, the PSO will adopt eco-modulated fees to provide financial incentive via high malus fees for brands to cease dangerous or non-recyclable chemistries and designs, they will be limited in the maximum fee they can charge because the regulator has a pre-set fine. This could mean that brands liable for high fees may choose to not contribute to the scheme, instead wear the cost of the regulator's fine.

The results could be equivalent to the Plastic Recycling Tax in UK where it is cheaper for brands to buy virgin and pay the fine, than buy more expensive recycled content, and so consequently the plastics recycling tax is not resulting in higher recycled content. In Belgium the fine charged by the Regulator for brand non-compliance is pegged to the levy charged per tonne by the PSO plus additional costs for: administration, pursuit of the company, and payment in arrears in instances where companies have failed to pay levies over a period of time.

Recommendation: regulations are amended to change the Regulator penalty-fee structure to reflect the PSO rate with additional costs.

4. **Fines becoming a tax and income into government consolidated revenue.** The Act and draft regulations specify that there will be penalties issued by the Regulator should a brand owner not register with either the Regulator or PSO. The regulations do not specify where these funds will go and what will they be used for.

   It is appropriate the regulations state that collected fines will only be allocated to the purpose of managing the scheme and brands, and contribute to improvements in the product category, such as public education campaigns and increased processing of recovered material in NSW.

   If brands opt to pay the fine rather than join the scheme, the income from fines could be considerable. It would be inappropriate for fees paid for non-compliance in the management of batteries to be diverted away from managing batteries.

   Appropriate investment of fines would be:

   a. Compensate the PSO for lost fee revenue so they can continue their work
   b. Public education on batteries
   c. Programs that improve battery recycling and prevention of fires.

   Recommendation: The regulations are amended to describe how paid fines will be invested and used to manage the PSO and improved management of batteries in NSW.

5. **Multiple PSOs.** The explanatory document clearly states that the Regulator may approve multiple PSOs for this product category. There is some commentary in the Regulatory Impact Statement. The regulations clearly allow for more than one PSO and it is conceivable that the regulator may seek and appoint more PSOs for the same product category, and at any time. Furthermore, that competing PSOs do not have to meet consistent standards or coverage of NSW, or that they must collaborate to provide a seamless service. Likewise the draft regulations do not stipulate when, how or why the regulator may choose to approve additional PSOs or what notice is required to be given to an existing PSO, if any.

   It is strongly recommended that the Regulator does NOT approve multiple competing PSOs (whether for profit or not-for-profit). There are multiple real-life examples of what the consequences will be for this, not only with the NTCRS operators in Australia, but also in countries overseas. In those countries overseas that have competing PSOs (Germany, Austria, UK for example) convoluted additional bureacratic structures and regulations are required to compel reporting, to aggregate data, manage competing brands and messages, and to compel cooperation amongst competing schemes.

   The current regulations without variations may:

a. lead to significant confusion in industry on different operators, their offering etc
b. undermine investment by PSO and partners in the supply chain in short and long term
c. diminish the duration and scale of plans and commitments
d. undermine confidence between parties in the supply chain in forming contracts for service
e. curtail innovation such as testing and implementing new collection systems, processing methods or or undertaking ventures such as eco-modulating fees for rechargeable or recyclable batteries
f. result in brands and parties in the supply chain looking at ways to game the system, frequently switching schemes according to their advantage with fees and reporting thereby undermining the financial viability and predictability for the PSOs and their investments
g. result in a race to lowest price for brands and consequently minimal service for public.

Recommendation: Amend the regulations to remove these uncertainties and thereby enable the establishment of a close collaborative relationship between governments and PSO toward shared objectives.

6. **PSO as Not For Profit.** Neither the legislation or current regulation make it clear whether the scheme could or should be for-profit or not-for-profit. It is appropriate that the regulation specifies that PSO applicants are required to be a NFP with a governance board.

   Given shifting to battery circularity is complex, risky and un-economic, involves hundreds if not thousands of parties and contracts, and requires a PSO to work cooperatively with governments, and for the PSO to not be a threat or competitor to the private sector in performing what is fundamentally a public service, it is logical that the PSO is a NFP entity.

   For all these reasons the NFP model is preferred and used in the most highly performing nations in EU and other nations. It is also the one advocated by PSOs and by peak bodies, including by those in countries that have the misfortune of multiple PSOs in one country.

   It is worth noting that just last week the UK Government advertised for Applications for the PRO for Packaging. It clearly states:

   > 'The Producer Responsibility Organisation (PRO) will be an independent, not-for-profit, producer-led body that works alongside PackUK in delivering the EPR for packaging scheme'. After decades of competing, for-profit entities, the Government has admitted and made clear there will be only one, not multiple, and it must be NFP. This aligns with international consensus that best designed and run PSO schemes are NFP.

   There is a great deal more that could be said on this topic, including board governance, representation, independence from supply chain contractors, for example.

   Recommendation: The regulation is revised to provide this clarity that a) schemes are to be NFP and b) not competing.

7. **Equitable coverage.** It appears, for example, that brands or collectors or other parties may choose to apply to set up their own rival PSO, and the regulation does not close this loophole OR require that any PSO or brand must meet equivalent standards and coverage across NSW. At the moment it is conceivable that the Regulator could form multiple and unequitable agreements with different or overlapping scope, breadth and geographic coverage.

   In Czechia, Europe, for example their regulations require basic standards for one NFP PSO and that any brands choosing not to join and instead offer their own services must provide the same standards and national coverage in taking back their own product.

This provides brands the option to not join a PSO, but it requires that they provide an equally good service and coverage in managing their own material (not an equivalent amount to what is put into the market) which they are obliged to report to the regulator in the same way as the PSO.

Recommendation: the regulations are revised to stipulate that PSOs and brands are required to meet the same level of service, coverage and reporting, and for brands this is for their own product.

8. **Adjacent schemes and programs.** Regulations could also note and require that action is taken when there are schemes in adjacent product categories (batteries, mobile phones, electronic goods). It is not clear what is to be done when households put incorrect batteries in recycling bins that are covered by another scheme, for example mobile phones (whole or batteries).

   The Regulation ought make provision that PSOs in related product categories negotiate and reach agreement on delivery of service, and pay a proportional allocation of levies toward costs according to what is collected in one another's schemes. This may extend to exchange in data, collected product, processing on behalf of another PSO and/or exchange of fee.

   It is a common practice in long established EPR schemes in Europe that recognition is given to compensation/sharing between PSOs for incorrectly deposited material that is collected by them. In Austria, there is a clever sharing arrangement between PSOs, likewise in France, between the packaging PSO and the paper PSO for shared costs and allocations in collection and sorting.

   This is an important loophole to be addressed as it is already evident and exploited between CDS operators in NSW and Qld. For example, the Qld CDS scheme does not fund or recognise containers from Qld which are sorted in NSW MRFs.

   Recommendation: Regulations are revised to require PSOs in adjacent schemes to reach agreement on exchange and/or compensation.

9. **Shared responsibility for EPR success.** This is one of the most significant gaps to be addressed in redrafting the regulations. The current draft does not specify, list or require cooperation or compliance by other parties such as retailers or councils or related suppliers in the supply chain to collaborate with the PSO or assist with education, provision of approvals or access to sites; all the responsibility sits with the PSO.

   This is out of step with other nations where such actions are a regulated requirement upon relevant key parties in the supply chain. The current sole focus places all responsibilities upon the PSO which places the PSO in a difficult position and raises the stakes for potential failure.

   For example, it is conceivable that the current draft regulations, unless altered, will result in distributors and sellers of batteries refusing to provide accessible sites and safe storage for battery return, or may demand exorbitant fees, or cancel their commitment upon change in ownership or management. Such inconsistency will impeded public participation, diminish trust, viability and capacity of the PSO to perform according to its agreement with the regulator.

   For example, it is a regulated requirement in many countries, from Czechia to Spain that retailers and distributors must provide safe and accessible points for battery return under arrangements with the PSO. The Spanish PSO website states this regulated obligation:

   > "All distributors offering batteries and accumulators for sale are obliged to accept the return of used portable batteries and accumulators free of charge to their holders or end-users, and may not require them to purchase or acquire new portable batteries or accumulators." (Ecopilas, November 2025, website: https://www.ecopilas.es/en/who-we-are/about-us/)

   Recommendation: Amend the regulations to require, at a minimum, that distributors and sellers of batteries are obliged to accept the return of used batteries free of charge, and other similar requirements as applied in other nations for battery return and public education.

Conclusion

In conclusion, I urge the NSW Government to apply and enable the internationally recognised Golden Rules for success as drafted by EXPRA, the global alliance of packaging stewardship schemes.

EPR as a solution – Golden Rules

5th Anniversary Expra Extended Producer Responsibility Alliance

Key principles that EPR should follow:

a) **A clear separation of roles and responsibilities** of all relevant actors involved;
b) **Ownership of the EPR** limited to the **obliged Producers** and packaging value chain; no conflict of interests
c) **Not-for-profit set-up;**
d) **Measurable waste management targets;**
e) **Reporting** obligations of all actors of the packaging life cycle;
f) **Equal treatment of producers** of products regardless of their origin or size;
g) **Information to and education of consumers;** able to take an informed decision
h) **EPR transparency on money and material flows**;
i) **Cost coverage**, to reflect the end-of-life costs of its products;
j) **Cost efficiency,** if third parties receive funding scope and performance has to be defined clearly; tender procedures if possible
k) **Fee modulation,** reflecting the **net costs** of a packaging**,** taking into consideration the packaging' **recyclability** in a second step;
l) **Monitoring and enforcement by government and authorities**



Source: EXPRA, from presentation to Australian, New Zealand and EU-UK audiences, October 2025.

I have endeavoured to set out the key reasons why PSOs are so effective in EU and other nations with high public access, high rates of collection and therefore high rates of recycling. The adjustments I have recommended will increase the probability of NSW's success in achieving its circular economy vision and objectives, cutting fires and racing insurance premiums. Some of the recommendations, such as single NFP scheme, are fundamental.

I am confident these improvements will also make it easier for the PSO to fulfil their obligation to the Regulator, their members and public. The PSO will also be better able to predict quantities collected and reprocessed and therefore form long term contracts, plan budges and make significant investments.

Adjusted regulations will enable the PSO to function reliably and be able to investigate and roll out innovations such as eco-modulating their fees for better designed product being sold in NSW, more extensive education campaigns and invest in end market programs within NSW.

All this also results in governments achieving their targets, confidently forming strategies and new targets with the cooperation of their PSOs and parties in supply chains. It helps lift innovation, productivity, circularity and public satisfaction.