



Submission to the Inquiry into the Product Stewardship Bill 2011

Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). The Municipal Waste Advisory Council is a standing committee of the WA Local Government Association, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management).

The Regional Councils members of MWAC include the Eastern Metropolitan Regional Council, Mandarie Regional Council, Southern Metropolitan Regional Council, Rivers Regional Council, Western Metropolitan Regional Council and the City of Geraldton-Greenough. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate. This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

Due to meeting schedules and the short timeframe of the consultation, this Submission has not yet been endorsed by MWAC, however, it will be put before the Council at the earliest opportunity (Wednesday 20 April 2011) and the Environment and Communications Legislative Committee will be informed of any changes to this Submission following consideration by the Municipal Waste Advisory Council.

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Executive Summary

Local Government made a Submission on the Department of Sustainability, Environment, Water, Population and Community Consultation Paper on Product Stewardship Legislation; this highlighted Local Governments strong support for the development and implementation of National Product Stewardship Framework Legislation to enable the development, accreditation and implementation of Product Stewardship Schemes.

There needs to be a fundamental shift in how responsibility for waste management is assigned. The current assumption that Local Government will continue to provide services for all products is not sustainable. Waste is no longer simple, cheap or easy to deal with, as waste increases in volume and complexity so does our understanding of the impacts of waste on the environment, society and the economy. The proposed Product Stewardship Bill 2011 provides a positive step toward making this shift.

This Submission includes comments on the Product Stewardship Bill and the general process of selecting products for and developing Product Stewardship Schemes.

Key Recommendations

Key Recommendation: The Department of Sustainability, Environment, Water, Population and Community develop guidance for Product Stewardship regulation development including consideration of:

- Equity of service delivery and outcomes in Product Stewardship Scheme design – nationally consistent application may not result in consistent outcomes.
- Negotiation and assignment of roles and responsibilities.
- A well publicised complaints process, as one mechanism to monitor compliance.

Key Recommendation: The Commonwealth Government develop a list of priority products for product stewardship schemes in consultation with State and Territory Governments, Local Government and the community.

PART 1 - Introduction

In Western Australia, under the Waste Avoidance and Resource Recovery Act 2007, Local Government is responsible for Local Government waste - this is defined as material collected from households and generated by the Local Governments own activities. Local Government provides waste services to the majority of households in the State. In the metropolitan area, a collection service for waste and recycling is provided to the vast majority of households. In the non-metropolitan area, the majority of regional centres have both kerbside waste and recycling services; in the regional areas waste and recycling services vary dependent on population. In addition to service provision, Local Government also has a role as a community representative and regulator.

From Local Governments point of view, there needs to be a fundamental shift in how responsibility for waste management is assigned. The current assumption that Local Government can continue to provide services for all products is not sustainable. Waste is no longer simple, cheap or easy to deal with, as waste increases in volume and complexity so does our understanding of the impacts of waste on the environment, society and the economy. Given that situation, Local Government strongly supports the development and implementation of National Product Stewardship Framework Legislation to enable the development, accreditation and implementation of Product Stewardship Schemes.

Costs and responsibility for disposal of material will always be borne, ultimately, by society and the environment, however through Product Stewardship schemes the responsibility and cost can be negotiated and directed toward the producer. For producers this means there is an imperative to think through the life cycle of their product, considering waste minimisation and intelligent product design and ensuring there are disposal or recycling options available.

The WA Local Government Association has developed a Policy Statement on Extended Producer Responsibility (included as Appendix 1).

1.1 Local Government Comments on the Product Stewardship Consultation Paper

Local Government made a number of recommendations regarding the development of Framework Product Stewardship Legislation, some of these have been included in the Product Stewardship Bill. Table 1 outlines Local Government concerns and the extent to which they have been incorporated into the Product Stewardship Bill. Some of the issues raised may be outside the scope of the Product Stewardship Bill itself, but are necessary for the implementation of effective Product Stewardship Schemes.

Recommendation	Comment
Key Recommendation: Increasing cost of waste management, for the community and Local Government, should be included as a key driver for Product Stewardship.	Recommendation partly met: Cost to Commonwealth, State, Territory and Local Government is recognised as one of the criteria for a product stewardship scheme. The key driver for Product Stewardship in the Bill is reducing the impacts products have on the environment and the health and safety of human beings.

<p>Key Recommendation: Need to ensure consistency between the drivers for the legislation, object clause and the product selection criteria.</p>	<p>Recommendation not met: there is still some inconsistency between the drivers for the legislation (as identified in the Consultation Paper), the Objects of the Act and the product stewardship criteria. These inconsistencies largely centre on the inclusion of greenhouse gas emission reduction, energy use and water consumption. Although the aim is supported it was not initially identified as a driver for Product Stewardship and it could be argued is already covered by the objective of reducing environmental impacts of products throughout their lives.</p>
<p>Key Recommendation: The need for industry to take greater responsibility for end-of-life product management be recognised as a key driver for regulation.</p>	<p>Recommendation partly met: the method identified for achieving the Object of the Act is by encouraging or requiring manufacturers, importers and other persons to take responsibility for products.</p>
<p>Key Recommendation: A list of priority products for product stewardship is developed by the Federal Government in consultation with State/Territory Governments, Local Government and the community.</p>	<p>Recommendation not met: discussed further under Section 1.5 of this Submission.</p>
<p>Recommendation: Equity of service delivery be a consideration in Product Stewardship Scheme design – nationally consistent application may not result in consistent outcomes.</p>	<p>Recommendation not met Equity of service provision is not included in the conditions for Schemes. If not included in the Act, the equity provision will need to be included in each Regulation relating to a Product Stewardship Scheme.</p>
<p>Recommendation: That roles and responsibilities in relation to the collection of materials be clearly negotiated for all product stewardship schemes.</p>	<p>Recommendation not met Roles and responsibilities are not addressed in the Bill. If not included in the Act, the negotiation relating to roles and responsibilities will need to occur on a case by case basis in each Regulation relating to a Product Stewardship Scheme.</p>
<p>Recommendation: The conditions of accreditation be clearly articulated and should include clear aims, auditing and review mechanisms to ensure voluntary schemes are meeting the objects of the Government.</p>	<p>Recommendation met There is a requirement for meeting measurable outcomes relating to the Objects of the Act. The Minister can also apply conditions to Accreditation including review. The wording is broad enough that this could include requirements for audit.</p> <p>The process of accrediting voluntary schemes is likely to be useful to Local Government as it will ensure that due diligence is undertaken on the way the products are collected and</p>

	recycled and will mean that individual Local Governments / or the Association does not have to undertake this task before recommending a scheme.
Recommendation: To ensure co-regulatory schemes meet Government Objectives these schemes should include clear and binding aims, auditing and review mechanisms.	Recommendation met Clear outcomes related to achieving the outcomes of the Act are included. There is a requirement for review and auditing included.
Recommendation: That mandatory schemes not be limited in their potential application.	Recommendation met A mandatory scheme has the same level of requirement as the co-regulatory approach.
Recommendation: Sufficient resources be allocated within government to ensure that compliance and enforcement activities can occur.	Recommendation not met It does not appear that specific staff will be allocated to this task, existing staff (Commonwealth/State/Territory Government) may be appointed as inspectors to investigate compliance with the Act.
Recommendation: A well publicised complaints mechanism be included as a method of monitoring compliance.	Recommendation partly met Specific details of Schemes are not addressed in the Bill. There are penalties and inspection provisions within the Bill which may address the complaints issue. However, these will need to be clearly publicised to ensure the complaints process is know.

Table 1: Comparison of Local Government comments and Product Stewardship Bill

1.2 Current Product Stewardship Schemes

Local Government, as a service provider, has direct experience with a number of existing Product Stewardship schemes. Information on these schemes is included in this Submission to highlight some of the potential consequences of different scheme design, that a nationally applied scheme will not necessarily have the same outcome everywhere and the need to ensure producer responsibility for products.

Product Stewardship for Used Oil Scheme

Experience with existing product stewardship schemes, such as the Product Stewardship for Used Oil (PSO) Scheme, indicates that problems can arise when producers do not have a practical interest in the material collected through a scheme, where governments are in the position of being 'responsible' for the disposal of this waste and where there is a limited market for materials.

Local Governments have expressed concerned that the product stewardship philosophy does not adequately resolve the issue of shared responsibility for product disposal. For example, in the case of the PSO, it is assumed that Local Government will be responsible for the disposal of products. This approach does not provide compelling drivers for significant change in producer or consumer behaviour. If producers take some responsibility for their products at end-of-life, they acquire a direct incentive to maximise the ease and affordability of discharging that responsibility.

The current PSO arrangements have lead to a situation in WA where market failure has occurred in regards to used oil. Oil recovery has increased with only limited market development. Currently Local Governments are paying for the recycling of used motor oil. This situation is not the case in other states, where sufficient volumes and market options mean free collection has continued.

DrumMUSTER

DrumMUSTER is an industry-run scheme where the collection and recycling of the material is organised by industry (and the material collected at Local Government sites). As industry runs the scheme, responsibility lies with them to organise the recycling and ensure that it occurs.

1.3 Objects of the Act

The Objects of the Act are identified as to reduce the impact:

- That products have on the environment, throughout their lives; and
- That substances contained in products have on the environment, and on the health and safety of human beings, throughout the lives of those products.

The Objects also include:

- To contribute to Australia meeting its international obligations concerning the environmental and health and safety impacts of products.
- To contribute to reducing the amount of greenhouse gases emitted, energy used and water consumed in connection with products and waste from products.

Local Government raised the issue in the initial consultation that reducing the cost of waste management to government (Commonwealth, State, Territory or Local) should be included as an objective for the legislation.

1.4 Product Stewardship Criteria

The product stewardship criteria outlined in the Bill are discussed in Table 2.

Product Stewardship Criteria	Comment
The products are in a national market	Support, clarification requested The definition of a national market is requested. If a product or material were in (or a material of concern in) the majority of states/territories it could be argued that rather than the individual jurisdictions legislating a more systematic approach would be for national legislation.
The products contain hazardous substances	Support
There is the potential to: <ul style="list-style-type: none"> - increase the conservation of material used in the products, or increase the recovery of resources (including materials and energy) from waste from the products; and - contribute to reducing the amount of greenhouse gases emitted, energy used 	Support, with Amendment Previous comments regarding the drivers for the Act and the contribution to reducing greenhouse gas etc have been outlined in Table 1. The second part of the criteria may be difficult to quantify, while the recovery of the resource itself may be easier to model. This

or water consumed in connection with products and waste from products.	is likely effect the Regulatory Impact Assessment stage of the process and may make it more difficult to assess whether the scheme will address a particular problem. Therefore it is recommended that these two sections be separate criteria.
Reusing, recycling, recovering, treating or disposing of the products involves a significant cost to the Commonwealth, or State, Territory or Local Government.	Support The cost to Local Government has been identified as a significant concern by the sector.
The consumer is willing to pay for action that reduces the impact: <ul style="list-style-type: none"> - that the products have on the environment, throughout the lives of those products; or - that substances contained in the products have on the environment, or on the health or safety of human beings, throughout the lives of those products. 	Support This could be seen as a proxy for the community concern criteria established in the WALGA Policy Statement.
Taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy.	Support Local Government supports the development of local markets and uses for materials. If there are linkages between product stewardship schemes and market development this will assist in ensuring the long term success of Product Stewardship Schemes.

Table 2: Product Stewardship Criteria

1.5 How will products come to be subject to the legislation?

From the Consultation Paper and Product Stewardship Bill there does not seem to be a specific process envisioned for how products will be selected for product stewardship; rather a range of approaches are proposed including industry 'self selection' for voluntary schemes and a political process for determining other priority products.

Local Government would like to propose that a list of priority products needs to be developed. This list of priority products needs to be established using information from an open and accessible consultation. This would assist in identifying the range of products that are (or are becoming) a problem. Such a process would allow Government to show leadership in this area and clearly identify problems for action, rather than wait for industry to self select. In a previous *WALGA Submission on the EPHC Industry Discussion Paper: Co-regulatory Frameworks for Product Stewardship (2005)* the advantage of this approach was also highlighted, "the system of creating priority lists...invest a systematic responsibility in government for identifying whether an industry has reached the point where it must act, rather than leaving that question to industry to resolve". If a particular list of priority products is developed, this shows clear leadership from Government and puts industries 'on notice' that Product Stewardship is required.

PART 2 - Conclusion

Several issues have been identified in this Submission which may well be outside the scope of the actual legislation but are still significant if Product Stewardship scheme are to be successfully implemented. These issues include:

- Equitable service provision;
- Roles and responsibilities for Schemes; and
- Complaints mechanisms.

In order to ensure that these issues, and others, are included in future Product Stewardship Schemes it is recommended that clear guidance for such schemes be developed.

Key Recommendation: The Department of Sustainability, Environment, Water, Population and Community develop guidance for Product Stewardship regulation development including consideration of:

- **Equity of service delivery and outcomes in Product Stewardship Scheme design – nationally consistent application may not result in consistent outcomes.**
- **Negotiation and assignment of roles and responsibilities.**
- **A well publicised complaints process, as one mechanism to monitor compliance.**

The consultative approach the Department of Sustainability, Environment, Waster, Population and Community has taken in the development of the TV's and Computers Product Stewardship scheme has been greatly appreciated by Stakeholders. This could provide a basis for the development of future schemes. The resources needed to undertake the development of the regulations, and from the stakeholder point of view to engage in their development have been substantial. To ensure the effort put in by government and stakeholders has the best environmental, social and economic outcome a clear and agreed process for considering products is needed.

Key Recommendation: The Commonwealth Government develop a list of priority products for product stewardship schemes in consultation with State and Territory Governments, Local Government and the community.

Specific comments regarding the Product Stewardship Bill include:

- Potential inconsistency between the drivers identified for Product Stewardship, the Objects of the Act and the criteria for Product Stewardship;
- Separation of the two points under Section 5 c) of the Product Stewardship Criteria; and
- Sufficient resourcing for the implementation of the Act.

These areas are highlighted for consideration by the Legislative Committee in this Inquiry.

Appendix 1: WALGA Extended Producer Responsibility Policy Statement



Policy Statement on EXTENDED PRODUCER RESPONSIBILITY

PREPARED BY THE



MUNICIPAL WASTE ADVISORY COUNCIL
"Getting the Environment Right"

June 2008

Status of this Policy Statement

This Policy Statement has been prepared by the Municipal Waste Advisory Council and adopted by the Western Australian Local Government Association. The Municipal Waste Advisory Council is a standing committee of the WA Local Government Association with delegated authority to represent the Association in all matters relating to solid waste management.

The Municipal Waste Advisory Council has been formed through collaboration with Regional Councils who are not ordinary members of the WA Local Government Association. The resulting body effectively represents the views of all Local Government bodies responsible for waste management in Western Australia.

Policy Statements adopted by the WA Local Government Association represent a consolidated viewpoint from local government and may differ from the positions adopted by individual member organisations. The Municipal Waste Advisory Council and the WA Local Government Association will strive to promote this Policy Statement and to act consistently with its contents. Individual Local Governments and Regional Councils are encouraged to support them but are not bound by the document.

Policy Statements adopted by the WA Local Government Association are reviewed and new Policy Statements are developed regularly. The latest WA Local Government Association Policy Statements can be obtained from the website: www.wastenet.net.au

In-line with standard MWAC policy, this policy statement will be reviewed 6-months after its endorsement by the State Council. It will be reviewed again at least every 2-years subsequent to this; with any significant developments acting to instigate an earlier review.

The Municipal Waste Advisory Council's member organisations are:



MUNICIPAL WASTE ADVISORY COUNCIL

Policy Statement on EXTENDED PRODUCER RESPONSIBILITY

Title:	WA Local Government Association Policy Statement on Extended Producer Responsibility June 2008
Background:	<p>The twin roles of Local Government Local Government has developed this policy with reference to its twin roles as a representative of the community and as a service provider. Local Government must represent community values since these are the fundamental basis for undertaking new challenges and continuing past work. Local Government must also apply its service provider expertise when considering means by which to achieve community benefits.</p> <p>Community support for sustainability Local Government asserts that the community supports the Sustainability Principle which the State Government defines as “meeting the needs of current and future generations through integration of environmental protection, social advancement and economic prosperity”. The community expects waste management activities and policies to be pursued in accordance with the Sustainability Principle.</p> <p>Sustainability Principle Local Government considers that the Sustainability Principle must be applied to ensure the development far-sighted waste policies. This Principle requires that the materials currently consumed and discarded as waste, will be valued by current and future generations as a resource to be conserved, reused and recycled.</p> <p>Section 1.3(3) of the Local Government Act 1995 states “In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity”.</p> <p>Applying the Sustainability Principle For reasons set out below, Local Government contends that the Extended Producer Responsibility approach can provide effective tools to advance the key outcomes required in applying the Sustainability Principle to waste management policy.</p> <p><i>Key outcome 1: Clear, sensible and effective designations of responsibility for the management of lifecycle impacts of products</i> The development of Extended Producer Responsibility mechanisms requires policy makers and stakeholders to negotiate the assignment of responsibilities. By not simply defaulting to the status quo, the process of negotiation forces a reasoned consideration of the question of where responsibilities should be vested to achieve the maximum public good. Because they require certainty in the assignment of responsibility Extended Producer Responsibility mechanisms have the potential to clarify the responsibilities of key stakeholders. In addition, where a rational assessment process precedes implementation, Extended Producer Responsibility mechanisms can be expected to assign specific responsibilities to those with the best capacity to discharge them.</p>



Statement of Policy:	<p><i>Key outcome 2: Improved valuation, pricing and incentive mechanisms</i> Extended Producer Responsibility can link waste generating behaviour to the costs of managing the impacts of waste. This enhances the capacity of markets to transmit information about environmental and social costs and makes waste minimisation more attractive to producers and consumers. Extended Producer Responsibility mechanisms can improve the attractiveness of using recycled materials. Extended Producer Responsibility mechanisms can generate incentives to design products in order to minimise waste and to maximise potential for material or resource recovery.</p> <p><i>Key outcome 3: Greater investment in infrastructure and research and development</i> Extended Producer Responsibility mechanisms can increase the funding available to expand and improve recycling and resource recovery. This can occur through direct subsidies or as a consequence of reducing the costs incurred by waste managers. By providing appropriate financial drivers, Extended Producer Responsibility mechanisms can encourage research and development in recycling and resource recovery technology. Extended Producer Responsibility mechanisms can provide a logical link between expansions in production and expansions in recycling and resource recovery infrastructure. Such a link would safeguard the capacity of waste management services to cope with growth in waste streams.</p> <p><i>Key outcome 4: Greater transparency and accountability</i> Extended Producer Responsibility mechanisms can oblige regulators and producers to pay closer attention to the total impacts of products. Extended Producer Responsibility mechanisms may involve detailed reporting requirements which can move valuable information into the public domain. Extended Producer Responsibility can include measures to make producers physically responsible for the products at the end of life and consequently problematic aspects of their products will become direct liabilities for the producers.</p> <p>In its role as a representative of community views and values, Local Government will continue to have regard to the wider context in which it operates and will seek to give effect to the views and values of residents.</p> <ol style="list-style-type: none">1. Sustainability Principle The World Commission on Environment and Development (the Brundtland Commission), 1987 defines sustainability as "<i>the development that meets the needs of the present without compromising the ability of future generations to meet their own needs</i>". The development of the Sustainability Principle will endorse the conservation of Bio-diversity and Ecological integrity. Local Government endorses the application of the sustainability principle to the development of its waste policy; recognising that economic, social and environmental principles can guide waste managers by providing a simple expression of the sustainability principle in a waste management context,2. Support for Extended Producer Responsibility Local Government endorses the Extended Producer Responsibility approach as an important part of achieving sustainability. Local Government considers that the Extended Producer Responsibility approach can provide effective tools to advance the key outcomes required in achieving sustainable, economic, social and environmental principles. Local Government considers that these key outcomes are:<ul style="list-style-type: none">• Clear, sensible and effective designations of responsibility for the management of lifecycle impacts of products• Improved valuation, pricing and incentive mechanisms
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- Greater investment in infrastructure and research and development
- Greater transparency and accountability

In its role as a service provider, Local Government will assess proposed Extended Producer Responsibility schemes with reference to the following criteria (points 3 – 9):

3. Reflect appropriate priorities

Local Government considers that Extended Producer Responsibility schemes should be developed where and when they are most necessary and most practicable.

Priority waste or product types for Extended Producer Responsibility schemes should be established prior to developing specific schemes. When prioritising waste or product types for Extended Producer Responsibility schemes, proponents should address the following questions:

- a. Does the waste or product cause significant environmental or social impacts?
- b. Does the waste or product cause significant costs for waste processors?
- c. Does the waste or product have unrealised potential for recycling / resource recovery?
- d. Is the waste or product likely to be disposed of illegally?
- e. Does the waste or product cause significant community concern?
- f. Is the producer well placed to reduce the impacts of their products?

4. Set clear objectives and targets

Schemes must be specific and clear about what they seek to achieve and provide means by which to assess whether these objectives have been achieved.

The achievement of objectives must be assessed with reference to measurable targets and the failure to meet targets must be accompanied by clear and firm consequences.

5. Establish clear responsibilities

Schemes must designate clear roles to each participant in the product chain.

Local Government favours the assignment of clear responsibilities for specific outcomes to particular participants within the product chain.

6. Can be implemented in a timely fashion

Schemes must be capable of being delivered within a reasonable time.

Where an unacceptably long delay will be unavoidable when implementing any specific scheme, other options must be vigorously pursued, notwithstanding that these other options might be otherwise less preferred.

7. Apportion costs appropriately

Schemes must aim to achieve an appropriate sharing of costs, between the various tiers of government and industry.

New schemes must appropriately apportion costs to the various stakeholders, taking into account considerations including:

- a. What allocations will be fair, given the distribution of total costs and benefits?
- b. Which price signals may be desirable?
- c. Who has the capacity to pay?
- d. Will an allocation arrangement be able to be efficiently administered?

8. Give due consideration to the specific characteristics of the waste or product type

Schemes should be designed so as to be appropriate to the product or waste stream in question.

Local Government will assess any proposed program or measure with reference a range of criteria, which are likely to include criteria a. – f. under point 3. (as above).



	<p>9. Support claims with reference to credible evidence <i>Schemes should be supported with reliable evidence that demonstrates that the objectives of the scheme are likely to be able to be delivered.</i> In its twin roles as community representative and waste management service provider, Local Government has an obligation and a right to expect that proponents will demonstrate the merit of proposed Extended Producer Responsibility schemes. This must be done with reference to respectable and verifiable evidence.</p>
<p>Date of Adoption:</p>	<p>June 2004 Amended June 2008</p>
<p>Associated Policies:</p>	<p>Policy Statement on Household Hazardous Waste (December 2003)</p>
<p>Definitions:</p>	<p><u>Extended Producer Responsibility:</u> The financial and/or physical co-responsibility of those involved in making, providing or selling a certain product for the management and disposal of that product at the waste phase. Extended Producer Responsibility schemes generally engage producers in financing or carrying out the collecting, processing, recycling or disposing of post-consumer waste. Extended Producer Responsibility schemes may also be directed at changing manufacturing practices.</p>
<p>End of Policy Statement</p>	

