



ACOR
AUSTRALIAN COUNCIL
OF RECYCLING

PO Box 506
Bulimba Qld 4171

Phone 1300 375 440
Email admin@acor.org.au

www.acor.org.au

ABN 60 574 301 921

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Secretary
Senate Environment and Communications Legislation Committee
Parliament House
Canberra ACT 2600

Dear Sir

SUBMISSION TO THE INQUIRY INTO THE PRODUCT STEWARDSHIP BILL 2011

We are pleased to present to the Committee this submission on the above Bill. ACOR is an independent, non-profit, national association for businesses involved in Australia's recycling industry and businesses demonstrably committed to sustainable materials management. It is the industry's leading industry policy body with a proud history of advocacy for companies delivering innovative solutions to sustainable resource use through product and materials recycling.

ACOR continues to work closely with Government to develop policies that improve resource recovery and support the recycling industry. ACOR actively works with government and non-government stakeholders to promote the principles of sustainable materials management to all companies in the product supply chain. ACOR members are also involved in ongoing research to identify innovative and better ways to maximise the recovery and recycling of resources in ways that improve environmental performance and economic efficiency.

Introduction

ACOR supports the principle of extended producer responsibility (EPR) for specific products, particularly where the products contain rare or recoverable materials or materials which if disposed of represent a risk to the environment, or health and safety. The current Bill is being introduced to facilitate the introduction of product stewardship schemes for TV's and computers. ACOR strongly supports this initiative, particularly with the growing product stream of computer products and the pending changeover of analogue to digital television receivers. Other products that could be candidates for EPR include lead acid batteries, tyres, white goods, other electronic products including mobile telephones, recreational gas cylinders, mercury containing lights, and smoke detectors.

Product Stewardship arrangements already exist in a range of European jurisdictions, particularly in relation to electronic products. The development of business systems and supply chains to deliver these initiatives has simultaneously provided European companies with head start in developing systems to administer product stewardship but also lessons from which Australia can learn as it moves to introduce the concept.

Framework Legislation

ACOR recognises that the Bill constitutes 'framework legislation' providing for a range of business models to provide for PS arrangements, both for pending and future products to be incorporated. The framework of providing for:

- Voluntary
- Co-regulatory and
- Mandatory

PS arrangements are an appropriate starting point for these arrangements in Australia.

Objectives

The objects in Section 4 of the Bill are generally appropriate however ACOR would draw attention to two matters:

The reference in subsection (1) to "throughout their lives" and "throughout the lives of those products" is potentially misleading. The 'life' of a product usually refers to the period during which it is in active or productive economic use. While the impacts of a products use are certainly something a producer should take into account in the design and sale of a product, a primary purpose of product stewardship is to ensure proper steps are taken for 'end-of-life' management of products to recover the resources which make up the product and recycle it as much as possible.

Accordingly, in this context the above phrases might be rephrased, even having regard to the definitions, to better reflect the full ambit of the Bill's operation.

The use of 'waste' in paragraphs (2)(d) and (2)(d) needs to be read with caution. This appears again in section 21(3)(d). It is the products and their materials which constitute them that need to be treated as a resource so as to promote and maximise the recovery and recycling of those resources. Under a sound product stewardship regime, there is no 'waste' as such until all recovery and recycling/reuse options have been exhausted. The Bill should emphasis the priority that needs to be given to resource recovery and recycling of all products to which the Bill may apply.

Product Stewardship Criteria

The key criterion in section 5 is paragraph (c). This is because the core purpose of the Bill is to manage these products at the end of their life to achieve maximum recovery of the resources of which they consist. The purpose is to make brand owners responsible for the 'take back' and 'remanufacturing' of the products in some form so as to 'close the loop' in the chain of use of the materials that make up the product. This forces a focus on the design of the product to improve the efficiency of its recovery and the use of materials that have the greatest chance of being reincorporated back into productive economic use in new products.

ACOR has no objection to the approach of '2 or more paragraphs' applying however if a decision was made on the basis of paragraphs (a) and (f) alone, it would hardly justify a PS scheme being established. Perhaps a clearer model would be to require that the criteria are satisfied if paragraph (c) and at least one other paragraph were met.

We note there is some debate about the extent of the 'potential' that should exist to achieve the matters referred to in paragraph (c) and whether that potential should be substantial or significant. It would be better not to be too prescriptive in the Bill and perhaps allow in the regulations for the Minister to issue guidelines which clarify the circumstances in which a decision based on paragraph (c) being satisfied might be met.

Voluntary Arrangements

A key issue with voluntary arrangements is the cost of establishing and maintaining such arrangements. Informal arrangements currently exist for batteries among some importers, the collection of farm chemicals, and the Commonwealth has recently set up a 'Flourocycle' scheme for fluorescent lamps. It is important that if an industry comes to the Minister seeking endorsement of their voluntary arrangements, that the administrative costs of applying for approval and reporting are not unduly onerous. This will be essential if such arrangements are to be encouraged. That is not to say there should not be an appropriate reporting regime to ensure transparency and accountability for the costs and performance of any scheme. There should also be the capacity to withdraw 'approval' for a scheme with fails to meet reasonable performance benchmarks.

Co-regulatory Schemes

A key issue in these schemes is their transparency and accountability, particularly in relation to the operations of the administrator. While the Bill requires the administrator to report to the Minister (sections 23 and 24), there appears to be no public reporting of the financial or performance of the schemes. The Bill should at least flag the potential for regulations to be made in this respect, if not include a reporting requirement in the Bill.

The outcomes specified in section 21(3) are generally appropriate but again fail to prioritise the need to maximise the recovery of resources and the recycling of materials from the products to which the PS scheme applies. Consideration should be given as to how this priority can be reflected in the intent of the Bill.

Mandatory Schemes

The Australian Government currently has two mandated schemes: used oil and used refrigerants that are ozone depleting under the following legislation –

- *Product Stewardship (Oil) Act 2000*
- *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

It would be appropriate for the Committee to give consideration to other matters for which the Parliament should consider mandatory product stewardship arrangements and the circumstances or criteria for their application.

For example, a key activity undermining the recycling of vehicle tyres is the baling and export of whole tyres from Australia. This activity has grown by more than 300% in the last 3-4 years. It should not be regarded as a legitimate export activity as the tyres are exported illegally to China via Vietnam for use as fuel with little or no environmental controls. It is a 'waste' product, not a useable economic commodity, as it still requires processing before it can be used.

A similar situation occurs with the crushing and baling of whole cars – oils, gas bottles, lead acid batteries and all – for export. Not only does this risk serious environmental harm elsewhere outside Australia through indiscriminate use in developing countries but it deprives Australia of jobs in its recycling industry where proper environmental licensing and controls are in place. Needless to say, it also deprives our manufacturers of recycled secondary materials processed into a usable form for steel manufacturing etc.

The bottom line is that there is ample opportunity for the Parliament to:

- a) improve the efficiency of PS schemes by requiring certain products to be made in substantial part by recyclable materials, and
- b) grow investment and employment in our domestic recycling industry by preventing the export of products which have not at least undergone some processing here in Australia to convert the end-of-life product into a useable economic secondary material in the true sense.

ACOR remains willing to support the Committee in its deliberations and looks forward to the outcome of the Committee's assessment of the Bill.

Yours sincerely

Rod Welford
Chief Executive