



An independent, non-profit organisation dedicated to understanding and advancing the principles of product stewardship

**SUBMISSION TO THE AUSTRALIAN SENATE  
ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE  
ON THE *PRODUCT STEWARDSHIP BILL 2011* – APRIL, 2011**

The Global Product Stewardship Council (Council or GPSC) appreciates the Senate Environment and Communications Legislation Committee's invitation to provide this submission on the *Product Stewardship Bill 2011* (the Bill). The Council supports the Bill's development and is available to provide testimony or answer any questions arising from this submission.

The Council is an independent, not-for-profit organisation dedicated to understanding and advancing the principles of product stewardship. Within the first year of establishment, the GPSC has held the International Product Stewardship Summit in Sydney and grown membership to span six countries and include businesses, other non-profits (including producer responsibility organisations) and governments at all three levels.

The Council is pleased to have been appointed to the Government's Product Stewardship Framework Legislation Stakeholder Reference Group (SRG) and to have been invited to present on overseas drivers and lessons from international product stewardship and extended producer responsibility (EPR) schemes to the SRG's inception meeting.

Our Australian members include:

- Department of Sustainability, Environment, Water, Population and Communities
- NSW Department of Environment, Climate Change and Water
- Queensland Department of Environment and Resource Management
- Sustainability Victoria
- City of Sydney
- Brisbane City Council
- Foster's Group Limited
- Lion Nathan National Foods Australasia
- Australian Mobile Telecommunications Association
- Mai-Wel E-Cycling Services
- Publishers National Environment Bureau
- Martin Stewardship & Management Strategies Pty Ltd
- Helen Lewis Research

Representatives from each of these member organisations participated in discussions facilitated by the Council during the International Product Stewardship Summit. Our Issue Paper summarising the discussions is available on the Council website ([www.globalpsc.net](http://www.globalpsc.net)) and highlights the importance of developing framework approaches and harmonising scheme development where possible.

The GPSC supports Australia's development of product stewardship framework legislation and has actively participated in the SRG discussions and the public stakeholder consultations in Sydney on the framework legislation and the National Television and Computer Product Stewardship Scheme. We appreciate the Australian Government's use of the GPSC as a resource to draw upon and offer our continued involvement in this capacity.

The GPSC also supports the majority of the Bill's provisions. In particular, we support the Bill's intention to support voluntary and co-regulatory approaches to product stewardship. Our experience, as reinforced by overseas participants in the International Product Stewardship Summit, is that Australia has had greater success with voluntary programs than many overseas jurisdictions have. The Bill provides sensible frameworks to support these voluntary and co-regulatory approaches.

### Objects

The Bill's objects (section 4) are largely consistent with the GPSC's Product Stewardship Principles and Actions (attached), and we are therefore supportive. The objects rightfully emphasise reducing the impacts that products and substances in the products have on the environment and on human health and safety throughout the life of the products. We note, however, that shifting financial responsibility to producers, which is instrumental to product stewardship and producer responsibility initiatives, is not specifically included as an object of the Bill or otherwise addressed in the Bill.

During SRG discussions, the GPSC supported managing products as resources rather than as waste and our submission on the Consultation Paper supported allowing for the broader benefits (both to the community and to affected industries) of resource conservation through product stewardship. We are therefore pleased to see the inclusion of 'managing waste from products as a resource' as an object of the Bill.

Over time, EPR and product stewardship have moved from an emphasis on end-of-life issues to better encompass broader sustainability issues across product supply chains. This broader emphasis includes carbon and water, as well as EPR's original intention to shift physical and financial responsibility to producers, potentially driving design-for-environment improvements across product life-cycles. Having an object to 'contribute to reducing the amount of greenhouse gases emitted, energy used and water consumed in connection with products and waste from products' is therefore supported.

### Product Stewardship Criteria

As the Council noted in our submission on the product stewardship framework legislation Consultation Paper, most products have a suite of factors that may make them appropriate for product stewardship and distilling these factors into legislative criteria is challenging. That said, the Bill's product stewardship criteria (section 5) are largely consistent with the GPSC's Product Stewardship Principles and Actions.

We note that the criteria are satisfied if two or more of the criteria are met and that one of the criteria is that 'the products are in a national market'. The GPSC has supported national approaches to product stewardship and addressing products in national markets, so we support the inclusion of this criterion. As most products to be addressed are in a national market, then only one additional criterion is necessary for the product stewardship criteria to be satisfied.

The Bill's criterion of 'the potential to: (i) increase the conservation of materials used in the products, or increase the recovery of resources (including materials and energy) from waste from the products; and (ii) contribute to reducing the amount of greenhouse gases emitted, energy used or water consumed in connection with products and waste from products' represents an improvement over the wording contained in the Consultation Paper.

We continue to note that the criteria for application of the legislation are quite broad and could apply to virtually every product sold in Australia. Most products are sold nationally and most would contain "potential" for increased resource recovery. But at what cost and how significant is the potential? What is the dimension of the problem and the potential - minuscule or significant? On these matters the Bill is silent.

There was a clear presumption in the Bill's Consultation Paper that more reutilisation/recycling and higher targets are, ipso facto, better. Given the existence of some counterexamples that are available, it was unfortunate that the paper failed to recognise that higher targets and greater reutilisation may not be better for the environment. As recycling/reuse rises, so do the marginal economic and environmental costs. More proactive, informed debate around such trade-offs can help to strike the right balance between potentially competing objectives. Such references appear to not be present in the Bill, which represents an improvement in the Government's approach.

The criterion that 'the consumer is willing to pay for action that reduces the impact' causes the greatest concern. A potential limitation of willingness-to-pay (WTP) studies is that they may overstate the general public's actual WTP. Consumers are generally not sufficiently informed to effectively judge their WTP and surveys that educate respondents sufficiently to judge WTP could provide results that may not necessarily be representative of the general public's WTP. Whilst we understand the Government's intent with this criterion and that WTP was instrumental in justifying the TV and computer recycling scheme, we nonetheless have reservations about its application in this instance.

The Consultation Paper raised the possible inclusion of an additional criterion for product stewardship where it can help Australia meet its international obligations. We understand that this issue was a principal issue for the Government's approach and note that meeting international obligations is an object of the Bill. In the Council's submission on the Consultation Paper, we supported including this as a criterion. We therefore question why assistance in Australia meeting its international obligations is not included as one of the Bill's product stewardship criteria and applies only to mandatory arrangements in the Bill.

### Co-Regulatory Arrangements

The Bill and Explanatory Memorandum are confusing with regard to co-regulatory arrangements (Part 3). The Explanatory Memorandum (p.20) states that 'Clause 20 does not require an arrangement to be in writing. This provides flexibility for arrangements to evolve over time without the need for administrators to continually re-seek approval for any changes from the Minister. This is consistent with the co-regulatory philosophy of avoiding government intervention as long as outcomes and basic operational requirements are met.' The Council understands and supports this intent.

However, section 25 of the Bill states '(1) The administrator of a co-regulatory arrangement may apply for the Minister to approve the arrangement in relation to a class of products, specified under section 19, to which the arrangement relates. (2) The application must be accompanied by a *written description (emphasis added)* of the arrangement that sets out: (a) how the arrangement proposes to achieve the outcomes specified under section 21 in relation to the class of products; and (b) the matters dealt with by the arrangement; and (c) any other matter specified in regulations made for the purposes of this paragraph'. These provisions appear contradictory.

Paragraph (21)(2)(c) states that the regulation for a co-regulatory arrangement may 'specify requirements for achieving those outcomes with which the administrator must comply'. Rather than specifying such requirements, specification of performance-based outcomes might better deliver the desired outcomes whilst still providing accountability. Even if a combination of specific actions and performance-based outcomes were to be provided (as allowed under the Bill), the Council's preference is strongly in favour of a performance-based approach.

### Mandatory Arrangements

The Bill's provisions for mandatory product stewardship arrangements appear to be overly broad as currently worded. For example, paragraph (37)(3)(d) states that regulations may 'specify requirements in relation to packaging a product in that class'.

Clause 37 allows for ‘product return payments’ and the Explanatory Memorandum (p.32) states that ‘the purpose of these payments is not to put an impost on the persons required to make the payments, but rather to provide for ‘refunds’ to encourage consumers to return used products for reuse, recycling or other end-of-life management’. Such deposit-refund systems are commonly associated with traditional approaches such as container deposit legislation. One exception is a deposit instituted in Austria in 1995 on certain white goods. Retailers charged the deposit to end users but could waive the deposit if the retailer participated in a government-approved, nationwide waste management scheme and if the end-user was provided with an individually numbered sticker that essentially served as a down payment for collection and treatment of the product after use. The deposit was ultimately replaced by a more comprehensive approach for waste electrical and electronic equipment.

It is important to note that deposits rarely factor into recently-developed product stewardship approaches. Where deposits and product stewardship programs co-exist, the deposits were generally instituted as means of reducing beverage container litter and increasing beverage container recovery prior to the development of comprehensive recycling programs. As comprehensive recycling programs and other product stewardship programs were implemented, they were designed around the pre-existing deposit systems.

#### Other Comments

In our submission on the product stewardship framework legislation Consultation Paper, the GPSC highlighted the importance of not letting definitional issues over terms such as ‘product stewardship’ and EPR detract from addressing product stewardship in a meaningful way. It is important to first have clarity within Government on how these terms are to be applied within Australia and then to ensure that this clarity is conveyed to stakeholders. By not specifically defining such terms but addressing the expectations of voluntary, co-regulatory and mandatory product stewardship arrangements, the Bill appears to have struck a reasonable balance without getting hung up on some definitional issues that have delayed other programs.

The Bill’s Consultation Paper stated, “The legislation will set requirements and obligations for product stewardship arrangements. However, the legislation will not specify a preferred structure for governance of voluntary and co-regulatory product stewardship arrangements.” The Council viewed this as a positive statement of intent that deserved support and we are pleased to see that this intent has carried through to the Bill.

The interaction of ‘excluded laws’ with the Bill is confusing in its current form. Clarification is requested.

The bill’s approach of ensuring that arrangement administrators are held responsible under each of the approaches (voluntary, co-regulatory and mandatory) is supported.

The Global Product Stewardship Council is supportive of the overall approach established by the Australian Government to prepare the product stewardship legislation and we offer our continued support in developing and implementing the legislation as Australia enters this new phase of product stewardship.

## PRODUCT STEWARDSHIP PRINCIPLES AND ACTIONS

### OVERVIEW

The Global Product Stewardship Council is an independent, not-for-profit organisation dedicated to understanding and advancing the principles of product stewardship. The Council was established to help industries and governments work more effectively together in the development and implementation of product stewardship programs. Discussions with key stakeholders have highlighted the need for a body like the Council to promote product stewardship through independent and transparent analysis, information exchange and facilitation.

### PRINCIPLES OF PRODUCT STEWARDSHIP

The Council supports the following broad principles for product stewardship based on those developed by the US-based Product Stewardship Institute ([www.productstewardship.us](http://www.productstewardship.us)).

- **RESPONSIBILITY:** The responsibility for reducing product impacts should be shared among industry (designers, manufacturers, and retailers of products or product components), government, and consumers. The greater the ability an entity has to minimise a product's life-cycle impacts, the greater is its degree of responsibility, and opportunity, for addressing those impacts. Manufacturers have the greatest ability, and responsibility, to reduce product impacts.
- **INTERNALISE COSTS:** All product lifecycle costs – from using resources, to reducing health and environmental impacts throughout the production process, to managing products at the end-of-life – should be included with the total product cost. The environmental costs of product manufacture, use and end of life management should be minimised, to the greatest extent possible, for local and state governments. Manufacturers should thus have a direct financial incentive to redesign their products to reduce these costs.
- **INCENTIVES FOR CLEANER PRODUCTS AND SUSTAINABLE MANAGEMENT PRACTICES:** Policies that promote and implement product stewardship principles should create incentives for the manufacturer to design and produce “cleaner” products – ones made using less energy, materials, and toxics, and which result in less waste (through reduction, reuse, recycling, composting and energy recovery where this is carried out under regulations imposing strict emission standards such as those in the EU) and use less energy to operate. These policies should create incentives for the development of sustainable and environmentally-sound systems to collect, reuse, and recycle products at the end of their lives.
- **FLEXIBLE MANAGEMENT STRATEGIES:** Those that are responsible for reducing the health and environmental impacts of products should have flexibility in determining how to most effectively address those impacts. The performance of responsible parties shall be measured by the achievement of goal-oriented results.
- **ROLES AND RELATIONSHIPS:** In realising these principles, industry will need to provide leadership. Government will also provide leadership in promoting the practices of product stewardship through procurement, technical assistance, program evaluation, education, market development, agency coordination, and by addressing regulatory barriers

and, where necessary, ensuring compliance through ‘level playing field’ underpinning regulation. Industry and government shall provide – and consumers should take full advantage of – information needed to make responsible environmental purchasing, reuse, recycling, and disposal decisions.

## **TRANSLATING PRINCIPLES INTO ACTIONS**

Understanding when and how to implement product stewardship schemes is crucial to ensuring that product stewardship principles maintain their integrity and promote meaningful program development. The GPSC proposes the following approaches for translating product stewardship principles into action.

### **Determining Need**

- Intended policy objectives need to be made clear and prioritised, and options to achieve those objectives must be fully evaluated and strive to effectively balance social, economic and environmental outcomes.
- A comprehensive, carefully considered approach is necessary as no single policy approach can deliver all desired outcomes nor reflect the full diversity of products.
- Extended producer responsibility (EPR) schemes, and to a lesser extent product stewardship schemes, are generally more appropriate and cost-effective for truly hazardous or expensive to manage products than for relatively benign or inert products where externalities are minimal or where such products do not impose net costs on the community to manage. That said, product stewardship schemes should be facilitated in conjunction with stakeholders in instances where products are not hazardous but addressing them through a consensus-based approach could provide significant externality reduction.
- Programs are more likely to be effective when similar EPR or product stewardship schemes exist overseas. However, the relative costs, benefits and risks of such schemes need to be understood and examined within a local context prior to adoption.
- Approaches requiring greater levels of regulation should be pursued only after market-based, voluntary and co-regulatory approaches have been clearly shown to be relatively ineffective in achieving desired outcomes.
- National, and to the extent practicable, international consistency is critical, and should reflect regional differences, available resources and commitment to common objectives.
- Where necessary, underpinning legislation should be developed in cooperation with industry and effectively enforced by Governments.

### **Engaging Stakeholders**

- Active stakeholder engagement, joint fact finding and constructive, good-faith commitment to achieving optimal outcomes are needed in clarifying objectives and priorities and in developing and implementing product stewardship programs.
- Stakeholders are more likely to collaborate on and effectively implement voluntary and/or co-regulatory approaches than where approaches are unilaterally mandated.

### **Sending the Right Signals**

- Stewardship initiatives should meet their environmental objectives in the most efficient, cost-effective manner.
- Appropriate incentives must be designed to send appropriate signals to all affected parties.

- Intended approaches should incorporate existing infrastructure, policies and programs to the fullest extent possible and seek to minimise negative impacts on existing programs.
- Industry leaders should be rewarded for improving sustainable practices, while laggards should be sent clear messages about need for improvement and be given the opportunity to respond accordingly. Innovation should be encouraged, not stifled.
- Industry should be provided significant flexibility to ensure environmental objectives are achieved in a sensible, cost-effective manner.
- Environmental impacts of energy consumption should also be minimised across the supply and recovery chains, for example decision making should consider how the product is to be distributed and whether distribution requires special conditions such as refrigeration. The design of the product system should optimise transport efficiency (and therefore fuel consumption), for example by maximising the amount of product transported in a truck or container.
- The potential impacts of external influencers such as changing demographics should be understood and recognised.
- Stewardship initiatives should include promotion of market development and the use of recovered materials where appropriate.
- Appropriate mechanisms should be instituted to ensure effective, transparent monitoring, data collection and public reporting.
- Where available and where carried out under regulations imposing strict emission standards such as those in the EU, energy recovery and resource utilisation through energy from waste (EfW) or alternative waste technologies (AWT) are appropriate for residual materials remaining after cost-effective recycling.

**For questions or comments, please contact the Council at [info@globalpsc.net](mailto:info@globalpsc.net).**