

6 April 2011

Mr Stephen Palethorpe
Secretary
Senate Environment and Communications Legislation Committee
PO Box 6100 Parliament House
CANBERRA. ACT, 2600.

Dear Mr. Palethorp

AgStewardship Australia's Submission on Product Stewardship Bill 2011

AgStewardship Australia is pleased to provide its response to the Product Stewardship Bill 2011 ("the Bill"), which is being considered by the Senate Environment Communications Legislation Committee.

AgStewardship considers the voluntary, co-regulatory and mandatory approach of the Bill is an appropriate structure for addressing the different types of products and risks in achieving better waste management outcomes. However, other aspects of the Bill are likely to work against the objects of the Act, increase costs and complexity without improving stewardship outcomes. AgStewardship submits that the key points for the Committee to consider are:

1. The Bill in its current form can expose schemes to higher costs and operational inflexibility through duplication with other regulation, such as the Competition and Consumer Act 2010 and jurisdictions' regulation.
2. A mechanism to encourage importers to participate in relevant voluntary schemes is needed to assist in reducing the incidence of free-riders and ensuring all liable parties fulfill their responsibilities in managing the life-cycle of their products in Australia.



Encouraging and Fostering Voluntary Stewardship Success

AgStewardship, formed by Local Government and the Agricultural and Agvet Chemical Industries, has oversight of leading voluntary stewardship programs **drumMUSTER** and ChemClear®. Through the commitment of local councils, farmers and their communities and the support of animal health and crop protection chemical manufacturers, these programs have diverted over 75 per cent of farming chemical packaging waste that would have otherwise gone to landfill, compared to when **drumMUSTER** began in 1999. We have collected and safely disposed of over 250,000 kg/litres of unwanted and obsolete agvet chemicals since 2003.

These voluntary programs are a success. Their participants are committed to building on these achievements in the future. It is from this perspective that AgStewardship welcomes the recognition of voluntary schemes in addressing waste management through the Product Stewardship Bill 2011.

Based on our history and experience, we believe the effectiveness of the Bill can be improved through amendments that will ensure unintended consequences will not discourage new stewardship schemes or impede the operations of existing, established and proven programs, such as those run by AgStewardship.

Higher Costs & Operational Inflexibility through Regulatory Duplication

While the Bill does not prescribe how a voluntary accreditation system would operate, which is to be determined by the Minister via a legislative instrument, we are concerned that the Bill is deficient in its potential to duplicate other regulation voluntary, co-regulatory or mandatory stewardship organisations may be subject to.

AgStewardship has previously outlined the potential for the proposed legislation to duplicate other regulation (AgStewardship 2010). Some product stewardship arrangements would fall under more than one regulator, such as the ACCC as governed by the Competition and Consumer Act 2010. The **drumMUSTER** and ChemClear programs are required to have ACCC authorisation to operate and must undergo a public benefit test by the ACCC every 5 years or if there is a change in circumstances that would trigger a review of the ACCC's authorisation. In this process it is assessed whether a public good exists and whether this exceeds the cost of anti-competitive behaviour, which in the case of AgStewardship includes an industry funded levy applied by participating manufacturers in order to fund **drumMUSTER** and ChemClear. There would be similarity between the matters considered by the ACCC and those of the proposed accreditation system or the co-regulatory assessment and review process encapsulated in the Bill.

The resources required to obtain ACCC authorisation in addition to those underpinned by the Product Stewardship Bill would be considerable and may have three undesirable consequences without assuring better stewardship outcomes.

The first is that costs associated with duplicate regulation would be a major disincentive for industry to initiate stewardship programs or to participate in an accreditation system.

Secondly, cost pressure from the funding additional regulatory requirements could contribute to losing ACCC authorisation if the higher costs exceed the public benefit the programs provide.

Third, higher costs reflected in a higher levy may discourage participants to join the stewardship program, or encourage existing participants to leave, reducing the reach and effectiveness of the program.

AgStewardship has previously argued that the cost of compliance could be a barrier to fostering voluntary arrangements. Generally, organisations operating stewardship programs are not-for-profit organisations, whose financial model is to recover costs of program delivery and retain earnings for future capital investment, rather than generate maximum commercial returns for its owners. Thus they may have less capacity to absorb or pass on these costs.

In this context, meeting additional compliance costs would mean trade-offs in achieving program outcomes. AgStewardship has estimated that on the basis of suggested regulatory approaches discussed by the Department of Sustainability, Environment, Water, Population and Communities (2010), it would have initial setup costs that would equate to 4 per cent and ongoing annual costs equivalent to 3 per cent of container waste collected by *drumMUSTER* in 2009.

This does not include accreditation fees to be charged by the accrediting authority or costs for local government and participating manufacturers in providing data for meeting regulatory reporting requirements. This is a considerably sized group, with 84 agricultural chemical manufacturers and suppliers participating in *drumMUSTER*, along with over 430 councils and collection agencies across rural and remote Australia.

Regulatory duplication also introduces the potential for increased operational inflexibility because changes to operations may require approval from more than one agency. For example, in the past when seeking to include the collection of non-hazardous farming chemical containers, such as surfactants, foliar fertilisers and wetting agents in the *drumMUSTER* scheme, a minor variation to the ACCC authorisation was required before this change could be made (ACCC 2002).

The Bill currently requires co-regulatory schemes to notify the Minister of changes to operations or membership of the arrangement. Regulations for accreditation of voluntary arrangements could also require such notification and approvals. In the above example, a stewardship arrangement would have to go through a notification or application process with two regulatory bodies over the same event.

This would further impede a product stewardship scheme's ability to adapt to changes in the market place in a timely and cost effective manner.

This duplication would be simply avoided through amending the Bill to recognise valid and current ACCC authorisations for those stewardship schemes where they apply, be it a voluntary, co-regulatory or mandatory scheme.

The Bill makes provision for State and Territory laws to be excluded that deal with the avoidance, reuse, recycling of waste as relates to co-regulatory or mandatory schemes. However, it does not apply to voluntary product stewardship, which may give rise again to situations where a program will have duplicate or different regulatory requirements between the jurisdictions. Applying exclusions for accredited voluntary schemes would resolve this and provide an incentive to participate in the accreditation arrangements.

Encouraging Importers to Participate in Voluntary Schemes

The Bill seeks to encourage or require imported products (amongst others) to take responsibility for their product lifecycle. This is welcomed by AgStewardship as important platform in addressing the potential of free-riders and ensuring Australia's waste management policy is not eroded through differing expectations for imported and locally manufactured products. The co-regulatory model should be effective in including imported products as liable parties. However, there is not a clear mechanism for doing this in the voluntary scheme, yet they face the similar challenges with the potential for free-rider products.

It is recommended that the Bill also require the Minister to consider a mechanism for encouraging importers to participate in the voluntary product stewardship category.

Concluding Comments

The benefits arising from voluntary stewardship include industry using its skills and experience to managing the life-cycle of its products and services at a lesser burden to the tax payer compared with regulated approaches. The Bill presents an opportunity to foster this. However, in not addressing the potential for duplication with other regulation, the productivity and operational benefits would be reduced for negligible, if any, demonstrable improvement in stewardship outcomes.

While the Bill recognises that importers have a responsibility for the waste impacts of their products, it does not extend this to voluntary arrangements. Hence, there is scope to improve the effectiveness of the Bill by including a mechanism to encourage importing liable parties to participate in voluntary product stewardship.

AgStewardship's *drumMUSTER* and ChemClear programs demonstrate the effectiveness of voluntary stewardship in addressing the impact products have on the environment and address product life-cycle issues. It considers that the Bill can be a vehicle for promoting more voluntary stewardship, but its current form needs to be amended to avoid regulatory duplication and better achieve its objectives.

Yours sincerely

Karen Gomez
Chief Executive Officer

About AgStewardship Australia

AgStewardship Australia Limited has been established to develop and implement stewardship programs for Australia's agricultural sector. It is a not-for-profit company, which brings together a partnership of organisations representing the supply chain, from chemical manufacturers to primary producers and local government. These partners share the common goal of managing safely agvet chemicals and their containers, from manufacture to disposal.

The organisation is responsible for overseeing the successful **drumMUSTER** and ChemClear® programs, which have become benchmarks for product stewardship in Australia. These programs were previously managed by Agsafe Limited, which has been contracted by AgStewardship to continue delivering them on its behalf. Over 430 rural councils participate, with the support of over 5,000 people from local government and 80 community groups at 750 collection sites. To fund this work, the AgStewardship manages levies which have been collected under the Industry Waste Reduction Scheme (IWRS) since 1998, to which 84 agricultural chemical manufacturers and suppliers contribute.

AgStewardship Australia is also responsible for developing and implementing new stewardship programs for the agribusiness supply chain, to enhance Australia's reputation for producing 'clean and green' food and fibre products for domestic and international markets. It has five member organisations - the National Farmers' Federation, Croplife Australia, the Animal Health Alliance, the Veterinary Manufacturers and Distributors Association, and the Australian Local Government Association.

References

AgStewardship Australia (2010) *Product Stewardship Legislation: Submission to Consultation Paper November 2010*.

Australian Competition and Consumer Commission (2002) *Determination Application for Minor Variation of Authorisation Lodged by Agsafe Limited in Respect of Drummuster Program for the Collection And Disposal Of Farm Chemical Containers*.

The Department of Sustainability, Environment, Water, Population and Communities (2010) *National Waste Policy: Less Waste More Resources Product Stewardship Legislation Consultation Paper*.