

russ@globalpsc.net

Mobile: +61 417 445 644

Phone: +61 2 9489 8851

PO Box 755

Turramurra NSW 2074 Australia

www.globalpsc.net



GLOBAL PRODUCT
STEWARDSHIP COUNCIL

Stakeholder Submission on *Recycling and Waste Reduction Bill 2020*

The Global Product Stewardship Council Inc. (GlobalPSC) appreciates the opportunity to make this submission on the *Recycling and Waste Reduction Bill 2020* (Bill). While we have reviewed the Bill in its entirety, our comments relate primarily to ch 3, Product Stewardship, unless otherwise indicated. Our comments generally reflect those we made on the Exposure Draft Legislative Package.

Who we are

The GlobalPSC is an Australia-based independent, not-for-profit organisation dedicated to facilitating the development of effective product stewardship and extended producer responsibility (EPR, otherwise known as 'co-regulatory' in Australia) schemes globally. Our approach is based on three key aspects:

- Sharing knowledge
- Building capacity
- Creating connections

GlobalPSC members include producers, product recovery organisations, reproducers, NGOs and governments at federal, state and local levels.

The GlobalPSC is not an activist group on product stewardship and EPR. Rather, we facilitate the development of effective product stewardship schemes by examining Australian and international product stewardship and EPR programs and policies, their strengths and weaknesses, and the circumstances under which they work most effectively. We also facilitate multi-stakeholder discussions to help tailor solutions to the jurisdictions in question. Importantly, this approach also builds stakeholder engagement, consensus and ownership to help ensure more effective implementation.

Our major activities and relevance to Australia

In the 10 years since our founding, the GlobalPSC has worked actively with the Australian Government and other stakeholders to develop and enhance Australian product stewardship programs by tailoring international experience to local circumstances using independent, objective research, facilitation and advice not biased in favour of, nor against, any particular product types or approaches.

The Australian Government supported the GlobalPSC's International Product Stewardship Summit 2010 and International Stewardship Forum 2018, both in Sydney, to help inform the development and review of the *Product Stewardship Act 2011* (Act). The GlobalPSC also provided a submission and Senate testimony on the bill that became the Act.

The GlobalPSC convened the inaugural International Stewardship Forum in Sydney April 2018, attracting over 130 participants and 13 international speakers from 8 countries. The GlobalPSC's second International Stewardship Forum in Paris July 2019 attracted 250 attendees from 30 countries, including representatives of 17 countries' Ministries of Environment or similar agencies.

These larger Forums provided a unique opportunity for participants to gather practical insights of product stewardship and EPR programs across a broad range of products and substances. The GlobalPSC also hosts smaller, region-specific events and conducts applied research on international policies and programs with similar objectives.

Our CEO Russ Martin served on the Government's Product Stewardship Advisory Group and on the advisory body for Australia's development and implementation of the Act. In addition, Russ assisted the Department of Agriculture, Water and the Environment's (Department) review of the Act. The Department is a Standard Government member of the GlobalPSC.

We have also held product stewardship and EPR discussions with Environment Ministers and/or senior Government representatives in Australia, Canada, France, Hong Kong, New Zealand, Singapore, Switzerland, Taiwan and the US in addition to the OECD in France.

Framework and regulatory approach

The GlobalPSC supports the framework nature of the Bill's product stewardship provisions in order to allow greater flexibility and ability to adapt to changing needs over time.

We encourage the Government to consider reflecting more of a clear willingness to pursue co-regulatory approaches as appropriate to build upon the proposed strengthening around the Minister's priority list. There's a risk that the producers and schemes actively involved in product stewardship are undercut by free riders that benefit from having schemes in place without contributing their fair share.

Co-regulatory / EPR schemes provide a regulatory underpinning to help address free riders, which better supports the efforts of producers and schemes that are actively taking responsibility. We note that the Bill does add provisions to strengthen co-regulatory approaches, which will help to address these concerns.

One of the issues facing product stewardship in Australia today is that Liable Parties tend to see their inclusion as a cost of compliance to be minimised rather than a commercial opportunity to expand their services offered and as a value-add job creator. Most other countries we have worked with have large cohorts of businesses that realise more of a business case in product stewardship / EPR and highlight their economic value to stakeholders.

The Commonwealth could develop language around product stewardship's broader contribution to the Australian economy and the increased societal expectations of producers. There is increasingly more of a 'social licence to operate' aspect in addition to reducing environmental impacts.

A largely voluntary approach to product stewardship has worked reasonably well for Australia to date, but can have limits that Australia has been skirting around for some time now. In the past, the Australian Government's resistance to pursuing more co-regulatory action has impeded the development and expansion of product stewardship schemes.

Voluntary schemes can provide industry with a platform upon which to design their own collection and recycling system, set their own KPIs and agree on reporting schedules. Historically this has been a good and efficient starting point to address a product category on the priority list. However, the Department should consider a reasonable timeframe to implementation for a voluntary approach.

Should implementation not occur within a reasonable timeframe, the Department could seek to move to a co-regulatory approach using this information gathered to inform a regulatory impact statement and cost-benefit analysis for regulation. Setting a reasonable time to voluntary implementation could send clear signals to industry to mobilise or face the prospect of regulation.

Minister's Priority List

The GlobalPSC supports the proposed changes regarding the Minister's priority list, specifically the inclusion of actions and timeframes that the Minister recommends. Currently, the list is relatively open-ended without necessarily requiring that specific actions be undertaken, which has not provided significant incentive to make progress in developing and implementing product stewardship schemes and has not provided sufficient clarification about what is necessary for a product to be de-listed.

We note that the Act originally included a Product Stewardship Advisory Group (PSAG) to advise the Minister on the Minister's priority list; until the PSAG was disbanded, this provided some measure of transparency about list development and products to potentially be listed. The announced Product Stewardship Centre of Excellence does not appear to address this role and the product impact assessment process is unclear, so we recommend that steps be taken to help ensure greater transparency around product impact assessment and prioritisation, and development of the Minister's priority list.

We note that in s 67(3), while the Minister may have regard to any matter that they consider relevant in preparing the priority list, the process may benefit from establishing minimum criteria that must be considered by the Minister in order to help ensure a consistent analytical underpinning for the priority list. For example, the opportunity to consider business opportunities under s 67(3)(d)(iii) could become one of the minimum criteria, as this is an important consideration beyond the current Act and a welcome addition.

Under s 68(2) of the Bill, the Minister may at any time cause a statement to be tabled in Parliament with regard to accredited voluntary arrangements. While s 95 includes provisions that the Minister must publish on the Department's website for accredited voluntary and approved co-regulatory arrangements, we suggest that product stewardship could be strengthened by clearly allowing the Minister to table statements in Parliament at any time for any product stewardship schemes, whether voluntary, co-regulatory or mandatory. Such statements could still be subject to restrictions such as those in s 95(2) restricting publication of information that prejudices commercial interests or that is not in the public interest.

Objects of Product Stewardship

The GlobalPSC supports the expanded Objects of the Act in s 3 as they relate to product stewardship. This includes the stated object to "realise the community and economic benefits of taking responsibility for products, waste from products and waste material". While shifting responsibility is

often a primary objective of product stewardship and EPR, it is less frequently stated as such and this represents a welcome addition.

The GlobalPSC noted on the Exposure Draft of the legislative package that circular economy was not explicitly stated as an object or otherwise explicitly referenced and that elsewhere, such as the French Roadmap for the Circular Economy, such linkages are stronger and clearer. We therefore support cl 3(1)(c) adding that an Object of the Act is “to promote a circular economy that maximises the continued use of products and waste material over their life cycle and accounts for their environmental impacts”.

We note however that the Bill lacks recognition that recycling has not truly occurred until demand for recovered materials and products causes them to be reused or returned to use as new products. It is not enough to simply collect materials; demand pull through recycled content, standards, circular economy principles and related approaches including design for environment should be integral in order to make recycling and waste reduction more sustainable.

We note that the Bill does not reference either ‘producer responsibility’ or ‘shared responsibility’ and we encourage such clarification to better address the free riders that can benefit from a scheme without accepting appropriate physical or financial responsibility.

Clearinghouse

The Review of the Product Stewardship Act (namely Recommendation 7 and Recommendation 14) calls for consideration of a clearinghouse to assist with outcomes, compliance and enforcement. Such a clearinghouse could also assist with transparency and public reporting of product stewardship outcomes, which the GlobalPSC would support. We appreciate that the full merits of a clearinghouse are still to be determined; however, the Bill does not appear to allow for the establishment of a clearinghouse and we would encourage the Government to ensure that proper provisions would be available for such a role.

Review

S 185 calls for Ministerial review within 10 years from commencement. We note that the Product Stewardship Act calls for review every 5 years, yet we are only now seeing the first review complete and made public nine years after the Act’s commencement. Given the significance and evolving nature of product stewardship and the Waste Export Ban in particular, review every 5 years that is diligently undertaken on schedule would be more appropriate and more effective than review every 10 years.

We suggest there be greater Ministerial authority to call for a review should the annual reporting identify severe or detrimental issues against the Objects of the Act or lack of progress toward outcomes. This is consistent with the GlobalPSC’s recommendation that the Minister be able to table statements in Parliament at any time for any product stewardship schemes, whether voluntary, co-regulatory or mandatory.

Moving Forward

The GlobalPSC greatly appreciates the opportunity to provide these comments on the Bill. We look forward to continuing this collaborative approach and to assisting the Government wherever possible.